

25 May 2016

To whom it may concern,

Writers Victoria welcomes the opportunity to provide feedback on the Productivity Commission's draft report on Intellectual Property Arrangements.

As the state's peak body for writers and writing, Writers Victoria supports, represents and advocates for more than 3,200 members and the broader literary sector.

We are a not-for-profit membership organisation that works within the small-to-medium arts sector and as a member of the National Writers Centre Network, Australia's largest network of writers.

Two of the Commission's recommendations present some of the biggest challenges ever faced by Australia's writers, readers and literary organisations:

- That Australia should allow the parallel importation of books.
- That Australia should adopt US-style 'fair use' copyright exceptions.

### **Parallel importation**

Parallel Import Restrictions (PIRs) prohibit booksellers from importing books from overseas when a local edition is available.

Removing PIRs will allow mass importation of low-royalty and/or royalty-free editions of Australian authors' books into the Australian marketplace.

This might make some books cheaper at the bookstore, but this is an over-simplistic calculation, and would be at the expense of Australian writers and Australian publishers.

Removing PIRs would make local publishers reluctant to sell foreign rights to Australian authors' works, which means those writers would miss out.

It would reduce local publishers' ability to distribute local editions of international bestsellers, which would give them less money to invest in Australian authors.

Australian authors already earn less than \$13,000 per year on average. If PIRs are removed, they would lose advances, royalties, income from overseas rights sales, and the support of a healthy local publishing industry.

Our writers may stop writing, or move overseas. Our publishing houses may take less risks, publish fewer and less diverse Australian authors, shrink or even close down. Our independent booksellers will find it harder than ever to make ends meet. Jobs will be lost. Our Australian stories may stop being told.

And as Thomas Keneally said for the new Books Create Australia campaign, “Australians deserve that their lives, experiences, country and culture be reflected in the literature that they read.”

“My message is really simple: if this comes in, I will not write another book and I will really start thinking about leaving the country, Magda Szubanski said to Publishing Perspectives. “Because the financial cost of being here is becoming ridiculous.”

“There can be no long-term growth for Australian writers, or for publishing and associated industries, if the present restrictions to the parallel importation of books are changed,” President of the Australian Literary Agents’ Association (ALAA) Jacinta di Mase wrote for The Victorian Writer magazine.

“The current system allows authors to maximise their income and exposure through the separation of rights and the worldwide licensing of their copyright. It also allows publishers to invest in emerging authors, secure in the knowledge that their production, editorial, marketing, and publicity investment won’t be undercut by cheap imports.”

#### **‘Fair use’**

Under our current copyright laws, it is legal for anyone to use copyrighted content for specific reasons without having to get the creator’s permission. These reasons are set out in a set of Copyright Act exceptions known as ‘fair dealing’

The Productivity Commission has recommended we change to the US-style intellectual property system (known as ‘fair use’). But while our current ‘fair dealing’ exceptions include examples of what is defined as ‘fair’, a new ‘fair dealing’ system would not. That means that ‘fairness’ would have to be determined by courts on a case-by-case basis (assuming a writer has the time, energy and resources to sue every time their copyright is infringed).

That’s good news for lawyers but bad for creators, wrote Chief Executive of Copyright Agency Adam Suckling in Artshub. “The problem with fair use - is that it is not fair. What it actually has meant in practice is that large companies and institutions who previously needed a licence to use copyright material, do not need a licence for use of this material.”

The Australian Society of Authors (ASA) has shared a PricewaterhouseCoopers audit into the introduction of ‘fair use’ in Australia that forecasts an increase in litigation costs to producers and artists of \$133m a year.

“To have to pay for costly litigation to protect their work from infringement is something that most artists cannot afford,” the ASA wrote in their statement.

“Canada went down this path by widening their ‘fair dealing’ provisions to exempt educational use and the results have been devastating, with a loss of income to authors of more than \$30 million and a dramatic reduction in the creation and publication of Canadian content,” they wrote.

“Fair use is actually a long way away from being fair for Australian artists,” said ArtsPeak Co-convenor and Director of Theatre Network Australia, Nicole Beyer. “We have seen what ‘fair use’ has meant for writers in the US with Google able to digitise 20 million books for its Google Books project without paying a cent to the authors.”

### **Impact on the sector**

Australia has a strong, diverse publishing industry, which currently makes a substantial contribution to the country’s economy and well as to its cultural landscape.

“Libraries and bookstores are opening here, not closing,” said Director of the Melbourne UNESCO City of Literary Office, David Ryding, at the recent Creative Industries Engagement Forum in Melbourne. “We’ve had the number one comic shop in the world and the number one library in the world. And Readings Books in Carlton were recently announced as the number one bookstore in the world, a title it received because it gives money away to writers.”

“We pay our writers. This shouldn’t be remarkable but it is,” Ryding said, noting that festivals across the UK do not pay similar appearance fees. “And we have more high quality literary journals per capita than anywhere else.”

“Nowhere else in the world has an Emerging Writers Festival, Express Media or Wheeler Centre,” Ryding added at the Forum (not knowing that the first two of those organisations would be unfunded by the Australia Council a week later).

But this vibrant sector (and the writers and readers it supports) are now at risk.

Literary heavyweights Richard Flanagan, Tom Keneally and Peter Carey have all been out warning of the potential impact of the proposal which threatens the livelihood of the book industry. At the Australian Book Industry Awards in Sydney last week, Jeanette Winterson, Jonathan Franzen, Tim Winton and Jackie French all condemned the proposals for free import of books and free use of copyrighted material.

Combined with the impact of this month’s Australia Council cuts, the impact on the sector could be devastating. We strongly encourage you not to adopt these recommendations.

Best regards,

Kate Larsen  
Director

On behalf of Writers Victoria