

31st May 2016

After reading the Productivity Commission's Issues Paper on Intellectual Property I would like to make the following response.

As a published Australian author my main concern is the recommendations in the Draft Report in regards to copyright protections and the Parallel Importation of books and so my submission will particularly address these issues.

It is stated in the issues paper that the purpose of IP protections is to 'encourage creativity, investment and new innovation'. Removing the restrictions on parallel importation would have the exact opposite effect and stifle creativity and investment. If you remove a creator's opportunity to make a living from their work, you remove their ability to do that work. Authors and illustrators work in the creative fields, not as a hobby but as a means to support themselves and their families. Creating books is a job and if authors and illustrators cannot earn an income from that job they will be forced to take up other careers. If Australian publishers cannot generate a profit from the creation of Australian works they will be unable to continue to create them. If they cannot make a profit from Australian editions of popular overseas books they will have even less money to invest in Australian stories and may even be forced to close up their business completely as occurred with many New Zealand publishing houses after the freeing up of parallel importation restrictions in that country.

Another goal as outlined in the issues paper is to 'allow access to an increased range of quality and value goods and services'. The key terms in that sentence are 'quality' and 'value'. Removing parallel importation restrictions opens up the Australian market as a dumping ground for remaindered books from overseas. The value of these books might be low in monetary terms but if they are corresponding of low value in 'quality' terms has the Australian public been done a disservice? The Australian publishing industry is world-renowned for the 'quality' of its products, produced by an independently profitable industry that does not rely on government subsidies. The provision of quality books for Australian readers relies upon the availability of Australian stories written by Australian authors and produced by Australian publishing houses. Of course overseas books do have their place as diversity is a valuable part of the reading experience but how much diversity will be lost if Australian stories are removed?

The third consideration as outlined in the issues paper is 'the relative contribution of imported and domestically produced intellectual property to the Australian economy, for example to Australia's terms of trade and other economic impacts of IP protection, including on inward investment'. As outlined above, the current Australian publishing industry is a thriving marketplace, the profits from which go straight into the Australian economy. The removal of parallel importation restrictions would mean that a huge chunk of that profit would go directly into the economies of other countries, to the financial detriment of Australia.

The issues paper also expresses 'the Government's desire to retain appropriate incentives for innovation and investment, including innovation that builds on existing work, and production of creative works'. If the publishing industry cannot support itself, a scenario that is highly likely if the draft recommendations regarding our

industry go ahead, those incentives will increasingly have to come in the form of government grants and subsidies with the effect that a once independent and thriving industry will of necessity become a burden on the economy. What possible argument could there be in favour of these changes? Economically and culturally it makes no sense. For examples to back up this argument please see the effects of similar changes on both the Canadian and New Zealand book industries. There will be no incentive for Australian authors and illustrators to continue to produce new work if the financial benefits to them are lessened. The average Australian author currently makes less than \$13,000 per annum. These are not workers that can survive further cuts to their income, an outcome that is guaranteed if the draft document's recommendations are put into place.

In regards to 'the economy-wide and distributional consequences of recommendations on changes to the existing intellectual property system, including on trade and competition', these changes will be a great asset to the trade of other countries such as the United States. However there will be no material benefit to the Australian economy, which must surely be our first and most important consideration. In regards to competition, the Australian book industry already has strong competition from the online sales market, particularly overseas booksellers such as Amazon and Book Depository, which the Australian public already have access to. This competition has increasingly led to the closure of local bookshops. Any further opening up of our market would have devastating effects on what is left of our local independent bookselling industry without actually providing more choice for the consumer. Rather it would limit the choice of the consumer.

It is accepted knowledge in the issues paper that 'IP is an important contributor to economic growth and community welfare. However, some forms of IP, once known, can be copied at little cost, which may in turn lead to under-investment in innovation. The process of granting individuals and organisations with exclusive rights to their inventive and creative output seeks to overcome this and other attributes of IP by limiting the extent to which competitors can 'free ride'. The recommendations in the draft document go completely against this knowledge and in fact encourage our competitors to take a 'free ride' with Australian creative content and Australian markets.

It is also agreed that 'Most IP rights establish general 'exclusivity' for a specified period, which the holder may then use to derive a financial benefit'. On a personal note I spent almost 20 years working on my craft, attending workshops and festivals, paying for manuscript appraisals and writing and rewriting my first book before it was accepted for publication. I did not invest considerable time, effort and finances into this as a hobby. This was my apprenticeship for my future career, a career where I fully intended to be financially remunerated for the work that I did. If these changes had been made prior to my work being accepted for publication all those years of work and study would have been for nothing as the publishing industry would not have had the resources to take the chance on an unknown writer. This also goes back to the issue of quality. Do we want our thriving publishing industry to be stretched so thin that the only new work they can take on is that of 'celebrity' authors who have guaranteed sales due to their marketability? How many truly talented writers, great thinkers and creators of beautiful poetry and prose will no longer have their works published because they are not television or sporting personalities and therefore

cannot sell the required number of books in the required number of weeks needed to keep their publishing company afloat? In an industry with no safeguards for Australian content this is the most likely scenario. Must we sacrifice quality in the name of trade? The United States and the United Kingdom are not removing their parallel importation restrictions. They are continuing to protect the IP of their creators. Why should we sacrifice our publishing industry and the livelihoods of our authors and illustrators if they are not willing to do the same?

It is true, as stated in the issues paper that ‘The costs borne by creators in developing new IP is often considerably higher than the cost of reproducing that knowledge many times over’ and ‘Unable to earn a sufficient rate of return on their investment, creators might instead opt not to produce that new knowledge’. Both of these are very good arguments against the recommendations of the draft report.

‘Consumers demand both inventive and creative output, and in a well-functioning market, creators would invest time and cost into developing new knowledge to satisfy this demand’. Creators will not have the opportunity or the luxury of creating inventive and creative output if there is no chance of fair remuneration in exchange for their work. Low quality work may continue to be produced by hobbyists who do not invest the same amount of time and care in their work but is that in the interests of the Australian people and does it conform to the stated goals of the issues paper in regards to quality?

It has been argued in the issues paper that ‘The exclusive nature of IP rights can also lead to undesirable outcomes. Because IP rights give holders the ability to prevent others from using that IP, there is a risk the rights allow parties to exercise market power or engage in other anticompetitive behaviour.’ This however, does not apply in the book industry. ‘Unlike patents, copyright applies at a very low threshold to works that are merely ‘original’ rather than innovative or useful. And unlike patents, which offer variable degrees of protection to inventors through the provision of innovation and standard patents, copyright applies uniformly to all new works, offering a standard scope and period of protection.’ In addition, Australian publishers actively seek overseas markets for their work, readily license Australian books to overseas publishers and commonly purchase licenses from overseas publishers. The current system allows publishers across the world equal rights within their own territories. It is beneficial to all parties, whereas the system proposed in the draft report will be extremely unbeneficial and potentially devastating to the Australian book industry with no financial or cultural benefit to the Australian consumer. For proof of this again look to the New Zealand and Canadian examples.

It states in the Draft Report that ‘Prohibiting parallel imports enables IP rights holders to engage in geographic price discrimination’ and ‘Rights holders price discriminate to increase the total returns they earn from their works globally, by charging prices that reflect each country’s willingness to pay.’ This statement is misleading. Rights holders in Australia charge what is necessary for their industry to survive. Larger markets such as the United States are able to produce larger print runs of books at a lower cost per book than their Australian counterparts. If the price of books in Australia is slightly more than the corresponding prices in the United States this is because it costs Australian publishers more to produce those books than it does their

American counterparts. Australian publishers should not be penalised because of the size of their market.

The draft report also states that ‘By raising book prices, PIRs adversely affect Australian consumers with little or no change in the incentives for producing works by authors’. This is also a misleading statement as Australian authors receive lower royalty rates for overseas editions of their work. Therefore if the Australian market is flooded with cheaper, overseas editions Australian creators will earn less royalties than they already do. The average Australian creator earns 5-10% of the RRP of books sold in Australia. As the author of an illustrated book I earn \$0.60 for each \$10 book sold. As you can see that is already very little. Australian creators cannot afford for this amount to be reduced. Having the amount you earn for each book sold drop dramatically would be a huge disincentive for producing further works.

The draft report states that ‘The concerns of authors that eliminating the remaining PIRs could chill local writing would be addressed by ensuring that direct subsidies aimed at encouraging Australian writing — literary prizes, support from the Australia Council, and funding from the Education and Public Lending Rights schemes — continue to target the cultural value of Australian books’. Considering that the funding of the Australia Council has also been dramatically lowered in recent years and government funding for the Qld Premier’s Literary Prize was completely cut there are many less opportunities for Australian creators to receive government funding to create new works. I reiterate that this means taking a thriving, independent industry and forcing it to rely on government funding to survive, government funding that is in no way guaranteed.

In one final statement, the idea has been floated that copyright should only extend for the first 15 years after a work was initially published. This again is a concept that will completely discourage participation in the Australian book industry. What entrepreneur would put their time and money into a business that will only be theirs for 15 years before being handed over to the general public. Writing is a business. For the most part, a poorly paid business. However, the books that do not become bestsellers are subsidized by those books that do. Authors and illustrators are able to continue writing new works by the residual benefits from past works. If a book continues to sell for many years that book is obviously of high quality and a huge amount of effort was put into its creation. The people who did that work, the authors, editors, illustrators, publishers, designers, etc deserve to continue to benefit from the work they did for as long as the public continue to benefit from access to that work. And authors and illustrators, who make a huge contribution to our society and culture, deserve to be able to leave a legacy for their children. Copyright should remain as it now is at 70 years past the death of the creator, not 15 years after the first date of publication.