



Society of Children's Book Writers
and Illustrators (SCBWI),
Australia West
<http://australiawest.scbwi.org/>

In reply to the Productivity Commission's draft report on Intellectual Property Arrangements:

I write on behalf of the members of the Society of Children's Book Writers and Illustrators (SCBWI), Australia West branch. Our organisation supports the professional development of children's writers and illustrators, both published and pre-published, in Western Australia and the Northern Territory. Many members are young and emerging in the field. We currently have over 140 active members, of whom 65 are published.

SCBWI exists to support children's book creators, and to promote literacy and creativity in children. We strongly believe that Australia's children deserve to see and read a diversity of Australian stories, to be exposed to different ways of thinking and living and doing through interaction with locally produced books, and to be inspired through story to be innovative, creative, productive members of Australian society.

To this end, our members are deeply concerned with three of the recommendations made by the Productivity Commission:

- that copyright duration be reduced to 15–25 years,
- that parallel importation restrictions be repealed, and
- that Australia should amend the Copyright Act to replace the current fair dealing exceptions with a broad exception for 'fair use.'

The average Australian author only receives \$13,000pa for their writing; if the government were to accept the draft report's recommendations, that income would be further reduced, a change that would see fewer creators able to create, fewer Australian stories able to be told, and an even slimmer slice of society financially able to share their stories.

It is already difficult to financially support oneself as a children's writer and illustrator in Australia. Though many SCBWI Australia West members have successfully published their work with mainstream publishers, advances and royalty payments from publishers are generally low, while the investment of time and effort needed to produce work is high. As a result, many children's writers and illustrators must work day jobs to financially support their artistic practice. In many situations, writers and illustrators simply cannot afford to spend their time creating new stories, a situation that threatens the diversity, integrity and creativity of the industry.

Thankfully, many writers and illustrators are currently able to secure supplementary income through the educational and public lending rights schemes. A few receive literary prizes, but these are limited. Some receive grants from state and federal funding bodies, though recent cuts to the Australia Council make this more difficult. Some receive licensing fees for stage, TV and film adaptations of their work, those these opportunities

would dry up if copyright duration were reduced. A few authors and illustrators see their books sold in overseas markets, but that is now under threat from the proposal to repeal parallel importation restrictions. The educational copying program administered by the Copyright Agency is another useful income stream, but that is also under threat from the proposal to introduce 'fair use' into Australia.

Copyright duration

The Draft Report recommends reduction of copyright duration to 15–25 years. If introduced, this recommendation would see Australian children's book creators lose control over their work within their lifetime. After 15 years, other individuals and businesses would be able to sell copies of the work and profit from it, despite having had no part in its creation. For example, a business could wait 15 years after a successful children's book had been published and entered the public domain, then produce a potentially lucrative TV or film adaptation, and the creator of the original story wouldn't see a cent.

It is an enormous relief to hear the Minister for the Arts, Mitch Fifield, say that the current government has no plans to change the duration of copyright in Australia. For the report to even suggest it in the first place is completely absurd. You are not allowed to take over someone else's investment property after 15 years; politicians don't stop getting a pension after 15 years. Those who create books—along with those in all the creative industries—have a right to retain ownership over what they have created, and it should never be taken from them without their consent.

PIRs

The report argues that repealing parallel importation restrictions (PIR) would reduce the cost of books in Australia. Analyses differ on whether books actually cost more in Australia to begin with, questioning the necessity of repealing PIR at all.

Aside from that, PIR protects territorial copyright. Australia, the UK and the US all have restrictions on parallel importation. PIR also allows Australian publishers to purchase the rights to publish highly successful overseas titles in the Australian market. The income they receive from the sales of these overseas titles can significantly help with bankrolling investment in local Australian authors and illustrators, a process that sees more Australian stories reach the marketplace. Publishers can better afford to publish socially important Australia stories thanks to the income they receive from publishing US or UK stories.

The UK and US publishing markets are a lot bigger than the Australian market, but because we all have PIR, we have a relatively even playing field. This arrangement helps to protect the vitality of the Australian publishing industry and support the livelihood of our writers and illustrators.

Without PIRs, booksellers could import copies of a book from wherever in the world is cheapest. Australian publishers would still have the right to publish lucrative bestselling titles from the UK or US markets, but might not be able to supply copies as cheaply as the much larger overseas markets, reducing their ability to compete. The international playing field would no longer be even. Australian publishers would make less money and potentially go under; Australian writers and illustrators would also make less money, or seek publication overseas instead, and the net result would be a much less vibrant local industry.

The report paints parallel importation restriction as an insidious “*geographic price discrimination ... [that] is only possible if rights holders can prevent consumers, retailers or importers from purchasing those goods from overseas markets directly.*” But consumers are not restricted from purchasing books from overseas markets—not at all. For years now, consumers have been free to purchase books from any online bookshop based anywhere in the world at any time they choose. There is currently no major impediment to consumers so that argument is moot. Yes, retailers and importers are prevented from accessing books from overseas markets, but that arrangement doesn’t exist to cause harm to consumers; it exists to put the Australian book industry on a level playing field internationally and, above all, to protect the livelihoods of Australian creators. Why would we want to give our two main competitors in the English language book market, who are already much larger than us, even more of an advantage? Why would we want to limit our capacity to present Australian literature on the international stage?

It should be noted that since 1998, when parallel importation restrictions were repealed in New Zealand, the NZ book industry has contracted, the range of books sold has shrunk, and the volume of print books sold has dropped. It hasn’t helped the productivity of the NZ book industry at all, and it is sad to think that NZ children now have access to fewer local stories.

Parallel importation restrictions must be upheld to protect the vitality of the Australian publishing industry and its creators, so that we can continue to provide Australian children with stories they can relate to and be proud of. Australia is a diverse country, its children deserve diversity in the stories they read, and Australian book creators can only produce these stories if the market is nurtured, not neutered.

Fair use

The introduction of a US-style ‘fair use’ system is unnecessary in Australia. Our current Australian system provides effective protection and remuneration for creators, while also allowing access to and use of materials by others in return for licensing fees. Australian children’s writers and illustrators benefit greatly from the Copyright Agency’s current educational copying scheme: the Agency gathers license fees from Australian education institutions, and then if one or more of our books are photocopied for educational purposes, we receive compensation. This supplements our existing income from advances, royalties and the educational and public lending rights schemes, contributing to our total average income of only \$13,000pa. With a fair use system, the educational copying scheme would be under threat, and our average income would be even less. Unless book creation in Australia is to be only the pastime of the independently wealthy, we need to compensate book creators in a way that allows them to continue creating. What a shame for Australian literature if our stories came only from creators able to work without pay.

The recent introduction of fair use in Canada had detrimental effects, most notably on the use and production of Canadian-specific educational materials. This saw publishers close or constrict, and the introduction of British and American textbooks into schools instead. The case against Google Books in the US also shows the dangers of introducing fair use: Google was allowed to reproduce sections of copyrighted works and provide them free to the public without compensating the creators of the work; the Supreme Court recently rejected an appeal against this decision. But how can creators afford to create new work if that work isn’t recognised as having monetary value? How can new creators enter the industry if their time and effort isn’t financially rewarded? And how can the overall

wellbeing of Australian society be enhanced by reducing the vitality and diversity of our literature?

A report by PwC Australia from February this year determined huge economic and social costs if fair use is introduced in Australia: a decline in Australian-produced works with over a billion dollars in lost GDP, and a permanent rise in costly litigation (Copyright Agency, *Fair Use*, <http://copyright.com.au/about-copyright/fair-use>). With the average Australian author's annual income already so low, litigation is well beyond our means—hence the need for a strong and protective copyright system such as the one we already have.

Conclusion

The Terms of Reference for the Inquiry into Intellectual Property Arrangements asked the Commission to:

“recommend changes to the current system that would improve the overall wellbeing of Australian society ... including changes that would:

- a. encourage creativity, investment and new innovation by individuals, businesses and through collaboration while not unduly restricting access to technologies and creative works*
- b. allow access to an increased range of quality and value goods and services.”*

In our mind, the draft report has neglected these elements of the terms of reference. The proposed changes to copyright duration, parallel importation restrictions and fair dealing will not encourage creativity and new innovation from individuals: they will reduce the already meagre annual income of Australia's writers and illustrators, discourage diversity and vitality, discourage the creation and release of new work to the public, and encourage the move to UK- or US-based publishers instead.

The proposed changes will not encourage investment by businesses: they will discourage Australian publishers from investing in Australian authors, as the potential for a return on their investment will be lower.

The proposed changes will not allow access to an increased range of quality and value Australian books: they will damage the local industry and reduce access to Australian stories, as they did in New Zealand and in Canada.

The Government must reject the recommendations to reduce copyright duration, repeal parallel importation restrictions and introduce fair use if it wants to support the Australian publishing industry, and ensure Australian children grow up proud to be Australian, influenced by Australian stories and inspired by Australian creators.

Yours Sincerely,

James Foley
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