

27 November 2015  
Commissioner Karen Chester  
Commissioner Jonathan Coppel  
GPO Box 1428  
Canberra City  
ACT 2601

Dear Commissioners,

I am writing in my capacity as President of the Australian Literary Agents' Association (**ALAA**). ALAA represents more than a thousand established and emerging authors and illustrators across all sectors of the publishing market: children's picture books, books for younger readers and the flourishing young adult market, literary fiction, quality commercial fiction, and myriad non fiction titles including award winning history and political titles, and best selling memoir, self help, and cookbooks.

Along with many others in the publishing community, our members were alarmed to hear that the federal government is considering the repeal of existing parallel importation restrictions (PIRs) on books.

It is ALAA's position that the existing PIRs in the *Copyright Act 1968* be preserved. We believe these protections are adequate and appropriate and they serve the intent and purpose of the Copyright Act:

*'to promote creativity and innovation by providing exclusive economic rights to copyright owners and to promote the social benefits that arise from a free flow of knowledge and expression'.<sup>1</sup>*

### **Challenges to strong copyright protections**

Finding the balance between competition (possibly delivering greater choice to the market and driving prices down) and encouraging investment and innovation (in the case of Australian publishing, creating incentives for, and encouraging a healthy local market for Australian authors and their works) is a constant challenge.

However, ALAA believes that the protections and provisions provided by the current Copyright Act meets this challenge – it's a system that is as fair for educators and for content creators as it is for authors and consumers.

Current copyright protections have been an important incentive enabling publishers to invest in the creation of a healthy and robust publishing industry. Australian writers are now respected, and read, throughout the world.

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<sup>1</sup> The Department of Attorney General, 'Fair Use and Other Copyright Exceptions: An examination of fair use, fair dealing and other exceptions in the Digital Age', Issues Paper, (May 2005).

However, ALAA believes there can be no long-term growth for Australian writers, or for publishing and associated industries in Australia, if the present restrictions to the parallel importation of books are changed. 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. In short, the current restrictions provide a safety net that allows *risk* – a key factor required for building the careers of emerging writers and illustrators.

There is no need to reform the provisions of the Copyright Act. Since 1991 a successful yet delicate balance has developed between the needs of writers, the publishing of Australian books, the publishing and distribution of international books by local and international publishers, booksellers' requirements, and consumer needs.

### **Growth in the current climate**

There has been a period of significant growth since the current parallel importation rules were introduced. This is reflected both in the number of agents in Australia and in the number of international sales made on behalf of our clients. Our clients, Australian creators, are much better placed than ever before to be published both locally and internationally.

Over the past decade Australian agents have been able to increase their clients' earnings significantly through the trading of rights. On a regular basis we are able to split rights and sell them into different territories.

### **The outcome of parallel importing**

It's worth thinking about which books – from the more than 450,000 new titles per annum available to them – booksellers would choose to import if the market were opened. Our research indicates that children's books and commercial literary fiction by Australian writers and illustrators are the two areas that would be most affected by competing imports.

**What price are the voices of Australian authors?** Fiction titles such as Richard Flanagan's Booker Prize winning *The Narrow Road to the Deep North*, Hannah Kent's *Burial Rites*, Liane Moriarty's *Big Little Lies* and iconic children's titles such as *Where is the Green Sheep?* by Mem Fox and Judy Horacek will be jeopardised in an open market.

For example: *The Narrow Road to the Deep North* by Richard Flanagan

- Richard's home royalty would be undercut by cheaper imports: The Australian recommended retail price (ARP) of the B-format paperback edition of *The Narrow Road to the Deep North* is AUD\$19.99 (although retailers are already able to sell this edition at discount enabling consumers to shop around for cheaper editions both in store and online). But the author still earns a royalty on the official RRP, approximately \$2 per copy regardless of what price the consumer pays for the book. Whereas on imported cheaper editions purchased in Australia, the author receives only 10% of *net receipts* (after discounts, cost of

shipping etc are deducted). In most cases paying less than 25% of the home royalty. Our Copyright Act already enables the importation of single copies of a cheaper edition - the irony being that via Amazon, consumers can already import the US edition of *The Narrow Road to the Deep North* for USD8.77 (plus shipping).

- Meanwhile, Richard's Australian publisher, who has put the investment into building his career over 20 years, would receive nothing from this import sale.

It is worth saving a few dollars at the expense of the creator and the local industry while supporting foreign economies and multinationals companies that don't invest in our culture or economy and don't pay tax in Australia?

### **The Australian market**

Thanks to the protections afforded by the Copyright Act the Australian publishing industry has been able to encourage creativity, investment, and innovation resulting in a thriving literary culture including:

Small, independent, and multinational publishers; an association of literary agents; hundreds of metropolitan and regional writers' festivals; a diverse range of literary journals; support for indigenous writers through the *First Nations Australia Writers' Network*; national residency and mentorship programs; a network of national writers' centres; the Copyright Agency's *Reading Australia* program that promotes the teaching and reading of Australian books in Australian schools; the Prime Minister's Literary Awards; the Australian Book Industry Awards (ABIAs); the Stella Prize; the Miles Franklin Literary Award; the Australian Children's Laureate; and the Children's Book Council of Australia (CBCA) Awards (now approaching their 70<sup>th</sup> year). All these programs, and more, build audiences, support creators and keep consumers in touch with, and reading, Australian works.

Australia is culturally different from both the UK and the USA. As an industry, we have spent many years nurturing and developing a distinct Australian literary culture that reflects and celebrates our differences. We have our own spelling, our own education system, our preferred style of illustration, and our own cultural stories to share. Our children would not necessarily inherit these if the market was opened and fewer Australian books were available.

We are incredulous that a government that generously supports Australian creators through the support of these initiatives on the one hand, would consider undermining them through opening the market with the other.

### **Many other key members of the publishing industry feel as strongly as we do:**

Henry Rosenbloom, Founder and Publisher of Scribe Publications:

*'Everything is to be sacrificed to the workings of the free market -- especially writers, independent booksellers, independent publishers, and the nation's cultural integrity.' Parallel imports are banned in the US and the UK, and the UK often publishes books several months after they come out in the US. Our peculiar problem is that we are a*

*small English-language market, exposed by the above factors in an economy that can never produce the economies of scale enjoyed by our larger competitors.’<sup>2</sup>*

David Day, Executive Director, Australian Society of Authors:

*“Removing PIRs threatens local authors and allows the publishers of London and New York to get an even tighter grip on the Australian book market.”*

*Authors have already been hit hard by a big drop in book prices, which has caused an average halving of their writing income over the last decade. Using academic theories about competition to interfere in the creation of Australian culture is sure to make the situation of authors even worse.”<sup>3</sup>*

Kevin Chapman, Founder of Upstart Press, and former Managing Director of Hachette New Zealand:

*“The open market does away with your local market. Why should I invest in a book so Book Depository and Amazon can make a fortune?”<sup>4</sup>*

At this time, while other countries are looking for ways to strengthen their territorial copyright why would Australia choose to open our market and allow others to benefit?

Economists believe that the future is in intellectual copyright and we strongly recommend, on behalf of Australian authors and illustrators we represent, that the current protections afforded by restrictions to parallel importation are maintained.

Yours sincerely,

**Jacinta di Mase**

President Australian Literary Agents Association (ALAA)

Australia Council Visiting International Publisher Program committee member

ALAA Book Industry Council of Australia (BICA) representative

Cc.

Senator the Hon Mitch Fifield, Minister for the Arts

The Hon Scott Morrison MP, Treasurer

Senator the Hon Stephen Parry, President of the Senate

Hon Mark Dreyfus QC MP, Shadow Minister for the Arts

Michael Gordon-Smith, CEO, Australian Publishers Association

David Day, Executive Director, Australian Society of Authors

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<sup>2</sup> Henry Rosenbloom, *Sociopaths in Suits: The Productivity Commission Goes for Broke* (Melbourne: Scribe Publications blog, 2012).

<sup>3</sup> David Day, *Government set to drop parallel importation restrictions on books; industry responds* (Melbourne: Bookseller+Publisher online, 2015)

<sup>4</sup> Kevin Chapman, *Independent Publishers Conference* (Melbourne 2015).