



9 December 2015

Penguin Random House response to the Productivity Commission Inquiry into *Intellectual Property Arrangements*

We are pleased to submit our response to the Productivity Commission Issues Paper, October 2015 (the **Issues Paper**). We understand that the Australian Government has made some preliminary recommendations in its response to the Harper review regarding the retention or otherwise of parallel importation restrictions in Australia. Prior to the Australian Government committing any such decisions to legislation we ask that the Commission highlight the issues raised in this submission with the Australian Government.

We provide this submission in response to the specific question: *Do existing restrictions on parallel imports still fulfil their intended goals in the digital era?* We frame our response adopting the framework outlined in the Issues Paper, namely through a consideration of effectiveness, efficiency, adaptability and accountability.

We acknowledge and support the draft submissions of Oxford University Press, the Australian Copyright Council and the Australian Publishers Association in response to other matters raised in the Issues Paper.

The publishing industry- innovation, investment and creativity

We support the Australian Government's stated policy aims as outlined in the Issues Paper of wanting to ensure that the intellectual property system provides appropriate incentives for innovation, investment and the production of creative works while ensuring it does not unreasonably impede further innovation, competition, investment and access to goods and services. The Australian publishing industry has a long history of fostering diversity and the long term interests of consumers, the encouragement of efficient investment, innovation and entrepreneurship. We want to ensure that Australian consumers receive access to the best possible content at the best possible prices.

In any review of governmental policy, a holistic approach must be adopted to enable any perceived benefits of change to be properly analysed to ensure their likelihood of success. In the area of intellectual property, a review must take into account the entire value chain, market structure, opportunities for innovation, and production and logistics realities in order for perceived consumer benefits to be realised.

In 2009, the Productivity Commission conducted a complete and thorough review of parallel importation through the *Parallel Importation of Books Study*, to which Penguin Random House (then Random House and Penguin) provided full and



lengthy submissions. In 2014 Penguin Random House made submissions to the Harper Review supporting the retention of the PIR system.

The PIR regime has enabled the creation of new and valuable intellectual property in Australia and the export of the Australian cultural experience to the rest of the world. Our authors include globally recognized literary figures including Richard Flanagan and Tim Winton. We do not consider that the maturation of the digital era undermines the need for parallel importation restrictions (**PIRs**).

Parallel importation restrictions benefit Australian society

- The PIR regime has not resulted in higher prices for books for Australians.
- The PIR regime has not resulted in delayed access to books for Australians.
- The digital era has not lead to a marked decline in the consumer demand for print books.
- PIRs are a limited set of intellectual property arrangements that enable Australian companies and authors to compete globally.
- PIRs put Australian companies on a level playing field with other global publishers who enjoy the benefit of territorial copyright in foreign jurisdictions.
- PIRs ensure that local investment is made in local content, enabling Australian consumers to have access to the best and broadest list of Australian book titles.
- PIRs ensure that Australian authors are appropriately rewarded for their work.
- PIRs encourage innovation and investment in Australian culture by providing some surety of return on investment for local publishers.
- The current laws work.

Effectiveness of PIRs

PIRs support additional innovation and creative output. PIRs are not inconsistent with the competition policy aims of the Australian Government and should be maintained for the following reasons:

- **An open market will not result in cheaper books for consumers.** During the period of parallel importation restrictions, physical book prices have come down and books are sold in the Australian market at comparable prices to other territories, indicating that parallel importation restrictions do not stifle competition in the local market and have operated in accordance with the promotion of the long term interests of Australian consumers. The below chart shows price comparisons in the Australian and UK markets across print and ebooks.

Top 10 PRH Titles 2015 YTD on Nielsen Bookscan	Physical Book	eBook
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	Title	Author	RRP AUD	UK RRP Incl. Freight AUD	US RRP Incl Freight	Australian eBook Agency Price AUD	UK eBook Agency Price AUD	US eBook Agency Price AUD
1	Grey:Fifty Shades of Grey as Told by Christian:Fifty Shades	James, E. L.	\$19.99	\$21.60	\$28.64	\$10.99	\$10.38	\$11.04
2	Girl on the Train,The	Hawkins, Paula	\$32.99	\$35.12	\$16.14	\$10.99	\$14.54	\$16.56
3	Go Set A Watchman	Lee, Harper	\$45.00	\$51.33	\$50.26	\$16.99	\$16.61	\$17.94
4	Make Me:Jack Reacher	Child, Lee	\$32.99	\$40.52	\$52.05	\$17.99	\$18.69	\$20.70
5	Everyday Super Food	Oliver, Jamie	\$55.00	\$70.28	\$62.82	N/A	N/A	N/A
6	Girl Online	Sugg, Zoe	\$19.99	\$21.60	\$32.30	\$14.99	\$10.38	\$13.80
7	Fifty Shades of Grey:Fifty Shades	James, E. L.	\$19.99	\$21.60	\$28.64	\$9.99	\$10.38	\$8.27
8	14th Deadly Sin:Women's Murder Club	Patterson, James	\$32.99	\$37.82	\$50.27	\$10.99	\$10.38	\$20.70
9	Magical City,The	Cullen, Lizzie Mary	\$22.99	\$27.01	N/A	N/A	N/A	N/A
10	To Kill a Mockingbird	Lee, Harper	\$14.99	\$21.60	\$30.51	\$8.99	\$10.38	\$15.18

notes

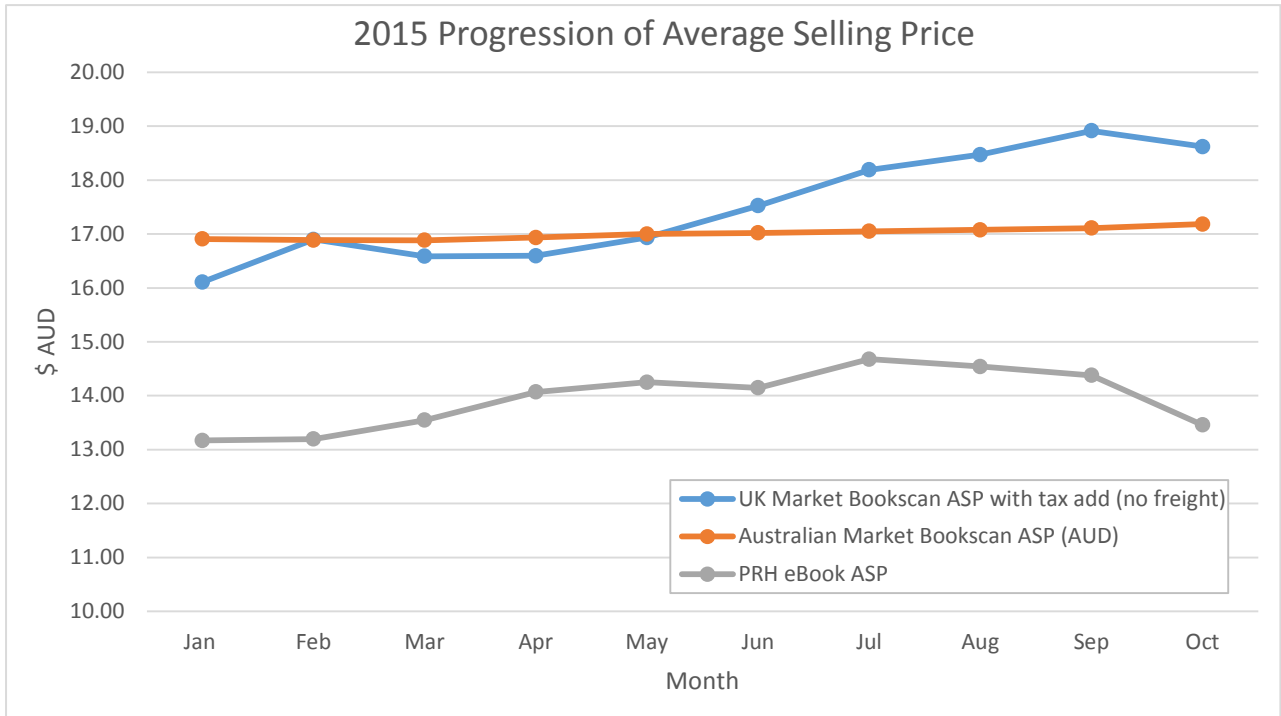
oxforex Exchange Rate 25/11/15

Notes

Exchange rate Source Oxforex 25/11/2015 (UK 0.480904, US 0.724034)

Freight cost 30%

- **The digital age has not lead to a marked decline in consumer demand for print books.** At present, total local ebook sales represent 11% of our overall local sales of titles across the Penguin Random House list. Ebook technology has not enabled certain genres (including children’s and lifestyle and cook books) to be properly published in the digital format, leading to even higher consumer demand for print books across those genres. With the low impact to overall sales that the digital era has resulted in, a technological based reason for a change in legislation is unfounded.
- **And if consumers do take up ebook alternatives, Australian pricing is already low.** As stated above, the ebook take up in Australia is quite low. However the average pricing of titles in this format is competitive in the Australian market. The table below illustrates the pricing differences. Again, the system is working effectively and there is no reason to change the PIR system.



- **Authors will have fewer publishing opportunities in Australia.** The existence of PIRs ensures that publishers and authors can fully exploit their assets and receive a fair return on investment here and internationally that encourages innovation and further investment in local content, ensuring that Australian consumers have more titles physically available to them at competitive prices, diversity of works are published and efficient investment is engaged in by publishers. Investment in local publishing must be funded by each local publishing company. It takes time and significant investment to cultivate an Australian author into a success.
- **Authors will have fewer publishing opportunities globally.** Given the difficulty faced by Australian authors in securing an overseas publisher, we may not see a future Richard Flanagan winning the Booker Prize. This matters. Not having an Australian voice in the global environment seriously undermines the local cultural landscape by diminishing the interest and access to our writers and our stories by global publishing businesses.
- **The major beneficiary to a change in PIRs would be global retailers, not Australian consumers.** The primary benefit of any lifting of parallel importation rules would sit with major retailers rather than individual Australian consumers, undermining the stated policy aims of the Australian Government to improve the overall wellbeing of Australian society.



- **A removal of parallel importation restrictions is likely to move the market to overseas supply** (where suppliers do not face the impost of GST and Australia's high postage costs). Independent and smaller book retailers would be disadvantaged in their ability to compete with major retailers in the importation of commercial quantities of books given the lack of a sale or return options in the importation model. Only large retailers will be able to bear the stock risk inherent in firm sale acquisition models.
- **PIRs enable Australian publishers to compete:**
 - barriers to entry for publishing in the local market are low and PIRs, even in their relatively small application now, assist the local industry in investing in local marketing and publication of titles, in the knowledge that international distributors (who have not borne these costs) cannot take unfair advantage of expenditure and effort by the local industry. This provides benefits to consumers by encouraging the release of a wide variety – a depth and breadth - of titles in the Australian market at competitive prices and is in line with the Australian Government's stated aim of encouraging innovation, investment and creative works.
 - competition is already a key attribute of the local publishing market, and one that is present all the way through the value chain. In publishing, competition and consumer choice are present in abundance, existing restrictions do not impede competition or productivity, but provide measures to ensure that both local and international distributors can compete fairly:
 - Consumers may order, for private use, any edition of any book in the world from anywhere in the world;
 - If publishers don't meet current deadlines to supply, retailers may order that title in volume from anywhere in the world;
 - Online purchasing is a freely available service. The opening of channels to support this, such as government initiatives to extend broadband internet access, will contribute to online shopping becoming more accessible than ever;
 - Overseas sources are not subject to GST and as such present considerable value to the consumer that Australian distributors cannot compete with.
 - Both the US and UK, the two major English language markets, have parallel importation restrictions in place. In order for Australian publishers and writers to compete effectively in the core business of selling publishing rights to these markets, a level playing field must



be preserved. A diversity of supply into our market also enables revenue to properly develop local talent.

- **Scale required to ensure successful books.** Australian publishing companies rely on scale given our relatively small market. We need to publish a broad range of titles to manage the risk of investing in Australian authors and to supply the human and system infrastructure to market, sell and distribute books in Australia. The PIR system allows Australian publishers to use revenue from its bestselling books as the basis for reinvestment in local content. Without PIRs, these best-selling titles would be the primary target for large importers, significantly reducing available revenue to local companies. Currently 20% of the titles we publish locally generate 70% of our local publishing revenue. Of our cash advance investment in local publishing, currently 30% of our investment is not earned back through local sales. This recognises the potential of the author and is central to their ability to commit to writing. But paying advances is highly risky for the publisher.

Efficiency of PIRs

The current PIRs have a relatively low impact on the market and the benefits are not outweighed by an unnecessary cost to Australian society.

- **Books will not be cheaper if PIRs are abolished.** Refer table above.
- **Books will not be available in Australia in a shorter time period if PIRs are abolished.** The *Speed to Market Initiative*, voluntarily entered into by publishers and retailers in 2012 already ensures speed of supply of commercial quantities of titles into the Australian market and the resupply of titles to retailers, further ensuring Australian consumers have equal access to books published in any market. Publishers will only invest in new technologies to further enhance this speed to market in a stable regulatory environment that supports local investment.
- **Consumers already have access to books from other markets.** PIRs relate only to commercial quantities of books and do not inhibit individual consumers' equality of access to books available in other markets. Australian consumers can, and do, price compare and purchase goods from other jurisdictions including through online retailers. PIRs represent an efficient restriction in the balance between ensuring a healthy local publishing environment and enabling consumers the freedom to source product from other jurisdictions.
- **PIRs are an efficient tool to ensure diversity of product offering.** Given their low impact on other aspects of the market, PIRs are an effective and efficient mechanism to ensure that the diversity of publishing that Australian consumers currently enjoy is maintained. They ensure a diverse retail offering in the Australian market. Without PIRs, Australian publishers would not want to bear



the inventory holding risk and cost that is required to offer a diverse product range.

- **PIRs are an efficient way to create a level playing field.** Any lifting of PIRs would provide a playing field that absolutely disadvantages local authors, denying them the basic power to control the management of their asset. The foremost benefit of any lifting of parallel importation rules would most likely sit with major retailers rather than individual Australians (be they authors or consumers).

Adaptability of publishers within the current PIR system

- **Online presence within the PIR environment already assist consumer price comparison.** As stated above, Australian consumers can, and do, price compare and purchase goods from other jurisdictions including through online retailers. This practice is only increasing with the increase take up of online retailing by Australian consumers. The current PIR regime does not limit Australian consumers' ability to access the best books at the best price.
- **Australian publishers respond to the Australian consumer desire to have speedy access to product.** Self-regulation introduced by collaboration between retailers and publishers has significantly reduced the legislated deadline to import titles for local publication. With the ability of consumers to access titles online, there is real commercial imperative for publishers to arrange simultaneous publication of global titles.

Accountability and the policy of PIRs

- **The reasons for changing the current system are not based on contemporary evidence related to the publishing industry.** We refer to our comments above regarding pricing and the speed of access to goods by consumers.
- **Consumers can and do vote with their clicks.** The ability for consumers to shop online means that publishers have transparent drivers to ensure speed to market and price demands are met in the Australian market