

25 November 2015

Submission in response to Intellectual Property Arrangements
Productivity Commission Issues Paper, October 2015

Black Inc. is an independent Australian publisher to the general trade and the ABIA Small Publisher of the Year 2015. We are committed to publishing Australian authors: Anna Krien, Benjamin Law, James Boyce, David Marr, Alice Pung, Amanda Lohrey, David Hunt and the great poet Les Murray, to name a few.

We also regularly license works from overseas to publish exclusively in Australia, which represents roughly 20% of our publishing program each year.

An established, growing and significant part of our business is the licensing of international rights or exporting the intellectual property we have licensed from our Australian authors.

Black Inc. understands the full range of Intellectual Property rights are under review, but we will confine this submission to copyright, and specifically to the question below:

“Do existing restrictions on parallel imports still fulfil their intended goals in the digital era?”

Book buyers have never had greater access to books in a range of formats and at affordable prices. Maintaining territorial copyright does not prevent a consumer from purchasing a book for their own use from anywhere in the world via online retailers such as Book Depository or Amazon.

With the growth of online retail for print books and the rise of ebooks there has been much speculation about whether territorial restrictions would be too difficult to uphold. But this has not been the case. Publishers all over the English-speaking world are maintaining agreements based on traditional territories. In short, the system works as well as ever.

Some background:

Since 1991, it has been understood under the Copyright Act that a book is “first published in Australia” if it is published here within 30 days of being published overseas. So long as we publish our licensed editions of foreign books within 30 days of the overseas edition, parallel import restrictions apply. Booksellers are obliged to order books from the local supplier, unless it is unable to supply the book within 90 days.

Rather than being anti-competitive, the current regime assists in the creation of new works, both Australian and international. The goals of parallel import restrictions

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were to foster a thriving, competitive Australian book industry – to support and advance the interests of booksellers, publishers, the broader industry and consumers. The rule has enabled us to create a book here and license that book in the UK/Commonwealth (excluding Australia) and in North America. These markets have their own territorial copyright.

Take the example of *Unpolished Gem*, by Alice Pung. We published *Unpolished Gem* in Australia and licensed publishing rights to Portobello Books in the UK and Penguin for North America.

Each edition of *Unpolished Gem* was refined, re-packaged and promoted differently in each territory.

Author Alice Pung earned a “home” royalty in each territory. Increased earnings encouraged the author to create new works.

As publisher, we gained licensing revenue, helping us invest in Australian writing and the creation of new works.

What would happen without parallel import restrictions in the case of *Unpolished Gem*? Foreign editions could be imported by Australian booksellers who would simply look for the lowest purchase price. This wouldn't benefit the local consumer, as they would be reading overseas editions of the book edited and packaged for an overseas reader. And with the territorial restrictions still in place in the UK and North America, our ability to export would be limited, giving foreign players an unfair advantage.

What would it mean for the author? Export royalties can be as low as 5% of net receipts on paperback editions. The same paperback royalty on the local edition would be 10% of RRP. Or in the case of a \$20 book, \$2 to author versus export income of 45 cents to author. So author Alice Pung would lose income and this could affect her ability to create future works.

Australian publishers would have little reason to license their works overseas when these works could then be exported back into Australia and hurt local margins. Rights trading creates business for Australia. Without territorial copyright, Australian publishers would also have little reason to publish an Australian edition of a foreign work. Why make the investment if there are already export editions available? For our business, that would mean the reduction of our list by about 15%-20%. And broadly, a contraction in the market would result. The consequence would be to limit the number of new Australian books we could invest in. And this would apply to most Australian trade publishers.

Foreign books licensed here means income for printers, commissions for local distributors and booksellers. But what about the consumer and broader cultural life? Having a local publisher champion an author means tours, talks and related media – for example, in 2016 we are touring Gloria Steinem, Vivian Gornick and Diane Fresquez, three outstanding American authors. If we weren't recognized as a discrete publishing territory, it is highly likely that their works would be exported here, which

means in turn that they would be underpublicized, unsupported and highly unlikely to reach a broader market.

Maintaining territorial restrictions also means we can pick up Australian rights to an ebook, which would otherwise be sold here by the originating publisher. This means increased competition and increased revenue for Australia-based ebook retailers. E-tailing giants like Apple and Amazon recognize the importance of merchandising to a local readership, which means greater visibility for Australian authors. The creation of Australian-facing ebook stores (like Kindle Australia) means Australian consumers can buy the full range of ebook offerings from around the globe, and can also discover new Australian authors who might otherwise be hard to see amid the crowd. Discoverability is key to the promotion and sale of books online.

Conclusion:

Parallel import restrictions are as important as ever in the digital era. The removal of the restrictions makes no sense while the UK/Commonwealth and North America maintain their own territorial copyright. It would be an entirely retrograde act, returning Australia to a dumping ground for foreign exports. Our publishing trade would suffer, as would Australian booksellers.

Outstanding authors would start leaving an industry that offers less protection and support for new works, preferring instead to partner with agents overseas and originate their works elsewhere. This would give a competitive advantage to foreign companies.

Whenever I go to an international book fair, whether it be Frankfurt or London, I hear resounding praise for our industry – one that punches well above our weight and maintains a large independent bookselling sector. The digital era has added another dimension and more opportunities for innovation and discovery. Coupled with the existing copyright regime, which creates new business, we are positioned ideally for now and well into the future.

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