

Margot Hilton

Karen Chester and Jonathan Coppel
Presiding Commissioners
Intellectual Property Arrangements for the Productivity Commission
GPO Box 1428
CANBERRA ACT 2601

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Dear Commissioners,

I write to express my great concern and alarm at the recommendations made by the Productivity Commission in its recent draft report on Intellectual Property Arrangements.

The Productivity Commission has proposed that:

1. The term of copyright should be reduced to 15-25 years from creation.
2. Parallel importation rules on books should be removed.
3. Australia should adopt US-style "fair use" exceptions to our Copyright Act.

Over the past fifty years or so Australian writing has become acclaimed for being recognisably 'different' both locally and internationally, attracting a significant following across all its forms. Australian writing is the commercial bedrock that has allowed the Australian book publishing industry to come into being and succeed as a multibillion-dollar business, employing virtually 20,000 people. Its success - and protection - relies upon copyright as it exists now in Australia and in almost every other country in the world.

With reference to the first proposal, currently the term of copyright the author retains in the work is from the date of its creation until 70 years after the author's death. The Productivity Commission seeks to reduce the term to 15-25 years from creation - an empty recommendation at present as, due to the important international agreements to which Australia is signatory, Australia simply cannot unilaterally change these provisions. The fact that it is included at all in the Productivity Commission's recommendations, however, is an important signal that authors, together with the entire book industry, must prepare to mount a defence against a future onslaught on what is now our existing right to a secure financial future for ourselves and our families. We have to retain full and long-lasting ownership of our intellectual property i.e. retain copyright as it stands in our works in the same way that we would retain commercial ownership of any other business that was/is the fruit of our life's work.

With reference to the second proposal, in Australia (and in the UK and USA) the author owns territorial rights to his/her work. This means that we can sell our books under contract to one publisher in Australia, one in America and another in the UK and it is only those publishers so contracted that have the exclusive right to sell those books and they can only do so *within their own*

stipulated market. Booksellers can therefore only buy bulk copies of a title from the publisher who has the rights to it in their own territory. This is why Australian booksellers buy books from Australian publishers.

Equally, if a publisher fails to make a new book available to a bookseller within 14 days of its publication anywhere in the world, that publisher then loses their exclusive right and the bookseller is then legally entitled to purchase stock from anywhere else in the world.

At present in Australia there is a fair balance between author and consumer interests and a flourishing book industry producing 7000 new books a year and some \$2 billion in revenue. This is because, as stated by the Australian Society of Authors, "...our present rules enable publishers to manage risk and support the creation of new Australian stories. There is no benefit to changing the present provisions and every reason not to."

If these rules are abandoned as proposed, it will be enable bulk copies to be sourced from any market in the world at any time, which will flood the Australian market with cheap copies. This will undermine authors' contractually agreed territorial royalties, decimate our income, cause job losses in the publishing industry as well as the loss of revenue as profits are transferred overseas and a radical diminution of the kinds of Australian books publishers will be able to publish.

The argument that books will become cheaper if the rules are changed ignores the fact that books have already become cheaper within the existing rules because of market forces.

It is evident that as things stand the current system has sufficient safety nets in place to protect the interests of the consumer while still allowing authors to retain control of our rights and income. The present arrangements allow consumers to source and buy cheap books legally at any time at any price from anywhere in the world without trespassing on our existing territorial rights.

For these reasons the Parallel Importation provisions should be left as they are and not tampered with.

With reference to the third provision that Australia should adopt US-style "fair use" exceptions to our Copyright Act, at present Australian law sets out a series of clear exceptions to copyright restrictions known as "fair dealing" which are defined or specified. These exceptions allow use of copyright material for the purposes of review or criticism, research or study, parody or satire, new reporting, judicial proceedings or legal advice. Meanwhile, schools, universities, businesses and libraries pay a small fee to publishers and authors to copy sections of their work without seeking permission.

The proposal from the Productivity Commission is now to replace this system with "fair use", the American arrangement, which allows any use of copyright material without permission, provided that the use is "fair". However, the

American legislation does not define what is "fair" leaving "fairness" to be determined by courts on a case-by-case basis.

It is apparent that, as stated by the Australian Society of Authors, "...Fair use is decidedly unfair." The adoption of this American system would result in a significant diminution of authors' income (some \$30 million when the rules were changed in a similar way in Canada), a reduction in investment in Australian content and a sharp increase in litigation at the author's expense.

The Australian book industry is not a government subsidised or protected industry. By contrast, the film industry receives in excess of \$200 million a year of taxpayer support and the mining industry \$17 billion, while the total amount of direct federal government subsidy extended to Australian writers is less than \$2.3 million a year. This is not to argue against subsidies to other industries. It is to indicate that the Australian book industry as it stands is a free trade success story that doesn't take from the public purse but returns much to it in direct and indirect taxation. The only real subsidy is that made by writers themselves who, while our work is the bedrock of the entire industry, earn, on average (according to a recent report by Macquarie University) only \$13,000 a year.

This debate was last conducted in 2009. At that time the average paperback, cost \$25 (with GST). It now costs \$20 (with GST) - a reduction of 20 per cent, which is also a 20 per cent reduction in authors' income per book. When inflation is added the figure in real terms is closer to 30 per cent. Going on from this, it is worth noting that while a paperback today is virtually the same price as it was in the mid 1990s, in the same period a federal MP's base salary has almost tripled - from \$76,000 in 1994 to \$195,000 today - the equivalent of 15 years' work for a writer.

Allowing American and English books to be dumped into our market may make a handful of mass-market titles cheaper but it will destroy a large income stream for Australian publishers. It will force them to downsize and slash their local lists. The overall consequence will be a great decline in the publication of a variety of Australian books, while those few Australian books that continue to be published will become more expensive to cover rising costs.

If the government really seeks to make books cheaper, it should exempt books from the proposed GST rise of 5 per cent and follow the example of, for instance, Germany which allows for a split GST, with books remaining at 10 per cent GST.

If the government really seeks to establish fair competition, it should impose GST on all Australian purchases of books made via Amazon, so that Australian bookshops don't have to compete with a global enterprise that doesn't pay Australian taxes.

Australian copyright law as it stands provides for the same rules and intellectual property rights that prevail for writers and book publishing in the

USA, Britain, Europe and Asia. There is no proposal that these should be changed. The rules and rights in place in Australia today via our Copyright Act are what has encouraged so many Australians to become published writers and enabled Australian writing to flourish.

If left alone, it will continue to do so.

Yours sincerely

Margot Hilton