

Submission: Productivity Commission Draft Report
Intellectual Property Arrangements

Alison Croggon

I am an Australian writer and critic. Over the past thirty years I have had work published in all areas of Australian publishing, from small press poetry publishers (seven collections), to international commercial fiction (seven titles). I am also a cultural commentator and journalist, and have written extensively on Australian arts and cultural policy.

My submission is solely concerned with the Recommendations that affect the Australian publishing industry and, in particular, writers and artists. My major concern is that principles are being applied without regard to or concern for their cultural outcome, on the culture in general and on individual artists in particular. I am also concerned by the dismissive and at times insulting lack of attention paid to the Australian writers who these recommendations will profoundly affect.

In particular, I am concerned by **DRAFT RECOMMENDATION 5.2: The Australian Government should repeal parallel import restrictions for books in order for the reform to take effect no later than the end of 2017.** This will have massive unintended consequences for a major Australian industry worth \$7.2b to our economy. Other submissions, such as from the Australian Publishers Association, will argue in more detail why: I wish to ask why the Productivity Commission and those eager for IP reform are so dismissive of the vast experience of those who work in publishing or of writers who make their livings from writing books. I wish to know why outdated and dubious data about comparative book prices can be used to drive such a destructive policy.

Like most authors, I understand that the rapidly changing digital environment and other factors means that copyright and IP reform is desirable. I myself am no fan of the 70-year copyright term. However, the Commission seems to believe

that the sacrifice of one of our major cultural industries, and the direct and devastating impact on our cultural workers, is a necessary part of these reforms. I believe that this sacrifice is both unnecessary and wilful, and will have many unintended consequences. Recent governmental policy on culture, such as the rushed creation of the NPEA and the subsequent destruction of large parts of our vital small to medium arts sector, has been unequivocally irrational, implemented without consultation or consideration for its consequences. In tandem with policy from the Productivity Commission that refuses to take into consideration the cultural ramifications of its decisions, I fear for the future of Australian culture.

The Commission has made the error of considering books and other imaginative and intellectual expressions as solely economic products. They are not interchangeable, as pharmaceutical products are: they are uniquely different from each other. They are, of course, products *as well*, but they are not solely, not even mainly, products.

The cultural value of artistic works, as expressions of Australian identity, as constantly evolving reflections of Australian values and preoccupations, as works with intrinsic value that enrich our country in myriad tangible and intangible ways, is given so little consideration that it amounts to none at all. I believe this will have massive unintended consequences: we will return to a colonial literature, and the work of decades of building a confident and brilliant literary culture will be undone. The quality of the work written here is acknowledged both locally and internationally as being exceptionally high, and Australian writers punch well above their weight.

We may end up with cheaper books, although this is highly arguable. Readers can already import books. If cheaper books were truly a desire, then exempting books from taxes such as the GST, which as you know is a cumulative tax which accrues at every level of service, would go a long way to making Australian books competitive with those from other countries such as Britain, where books are exempt from these taxes.

But even if we do (unlike the New Zealand experience) end up with cheaper books, they will be cheap books from elsewhere, principally from the US. This will primarily benefit overseas publishers, who will move into an open market and obliterate local publishing, especially the smaller publishers who mostly generate local work.

Australian writers already compete against huge marketing machines that promote international titles, often tied to film or television adaptations. Australian publishers are up against economies of scale which means that it is much cheaper per copy to print books in large numbers, as well as rapid changes in the publishing environment. So far Australian publishing has survived, even thrived as it has evolved. But removing PIRs could well prove to be a deathblow.

Yes, we will have books. But they will not be books written from Australian experiences, in Australian languages. I am not a nationalist by choice or nature, but I believe in the talent we have in this country. The loss of the vitality and innovation that would ensue from the inevitable shrinkage of Australian publishing – as we have seen in New Zealand following their own revocation of PIRs, where the range of published books decreased by 35 per cent and books did not, in fact, reduce in price – would be, in my view, a tragedy.

The same applies to the revocation of PIRs, which will in practice compromise Territorial Copyright. Publishers will not see why they should pay for territorial rights if they can more easily and cheaply import foreign editions. So far I have been lucky, in that I have been able to sell my books in bigger markets, like the UK and the US; but this has only happened because I was published in Australia first. But now I face the possibility of discounted or royalty-free editions competing against local editions in my own market, again reducing my income.

Worse, the shrinkage of the Australian publishing industry that would follow the revocation of PIRs means that Australian authors, already facing challenging times in an extremely competitive market, already facing the bleakest funding

environment in 40 years, will be much less likely to be published in the first place. Almost every Australian author who has been internationally successful was supported here first.

The wide-ranging US-style Fair Use provisions recommended by the Productivity Commission will usher in an era of uncertainty for Australian artists, by placing the onus on the artist to prove any copyright infringement. And again they will represent a substantial and uncompensated loss for creators, whose work sustains a thriving and mostly unsubsidised industry.

Authors are outraged because their rights are, in their view, being stolen for no good reason. The widespread anger about the Finding that copyright ought to be reduced to 15 years from publication is a reflection of ongoing frustration from artists who see their life's work, often created at the cost of great personal sacrifice, constantly dismissed and devalued. This Finding reveals the Productivity Commission's profound ignorance of how authors generate income, perhaps because they only consider the mass market, and in particular the mass US market, which operates very differently from a small culture like ours.

It is very clear that the Productivity Commission has no idea that Australian authors still make money from their work long after 15 years. To speak personally: my fantasy series Pellinor has been in print continuously internationally since first publication in 2002, and a new book in the series is presently being released, prompting new editions worldwide. My husband, the playwright Daniel Keene, still receives regular and not insubstantial payments from productions of plays he wrote 30 years ago. We are by no means exceptional.

Given that this Finding will not be implemented, I question why it is in the Draft Report at all. But it does have the virtue of revealing the Commission's underlying attitude towards cultural labour.

I would respectfully submit that the Productivity Commission's suggestion that authors who lose income through the implementation of the PIR revocations and the adoption of a Fair Use copyright regime should be supported by the Australia Council or other forms of government funding, is utterly confounding.

Perhaps the Productivity Commission is not aware of what has been happening to arts funding in Australia in the past three years. It has been cut by \$300 million in total, a situation exacerbated by chaotic and constantly changing policies that have redirected the funds that remain towards larger companies, at the expense of small and medium organisations and individual artists such as writers. The Recommendations concerning the publishing industry seem to be cut of the same cloth as recent arts policy, in their lack of consultation, in their refusal to consider how the publishing industry actually works, both locally and internationally, and in their contemptuous dismissal of the very real concerns of those they affect. And they will introduce similar levels of uncertainty.

I do not doubt that they will have the same unintended consequences. I do not doubt that this will lead to a grievous diminishment in our culture. A brain drain, as our best and brightest young talent leaves a country in which they understand their work is considered to have no value, is already happening. And all this, for outcomes which are at best uncertain. I urge the Commission and the Government to reconsider.

Alison Croggon

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