

April 29, 2016

To whom it may concern:

I am writing to put my objections to the proposed changes to the copyright and licensing regime in Australia, as detailed in the Productivity Commission's draft report, released on April 29. My objections are specifically to the proposals in regards to lifting the restrictions on the parallel importation of books, and to change the 'fair dealing' system to one of 'fair use.'

I am an established writer who has had more than sixty books published, in Australia and in many overseas territories, including the USA, the UK, and several other countries in Europe and Asia. Since 2013, I have also, in partnership with two other creators, founded a small publishing house, Christmas Press, based in a regional area, which publishes high-quality picture books and fiction titles for children, including retold traditional tales from many lands, new translations of great classic works, and reprints of out-of-print Australian children's titles. These books are distributed nationally. In this submission, I am writing from both points of view: as an individual creator and as a publisher of other creators' work.

As regards the proposal to lift parallel import restrictions, may I point out first and foremost that in New Zealand, where this was implemented some years ago-- the publishing industry has shrunk, with publishers such as Scholastic and Random House, for instance, closing their NZ offices and conducting their NZ business directly from Australia, with a consequent drop in opportunities for NZ authors to tell NZ stories. This could happen here too—many of our most active publishers are multinational companies, of course, and the resulting shrinking could not be taken up by small press, who may also be affected in any case (especially if the other changes in the report are implemented—see below). The Commission should also ask itself this question: why is it that the US and UK, the two biggest English-language markets for books, still uphold parallel import restrictions on their own books? And I do not believe that the idea that ending restrictions would mean cheaper books which in turn would mean more readers holds any water at all. The cheapness argument is utterly simplistic—for instance, it is very cheap to buy books in the USA (which has PIRs!) yet the availability of 99c books and so on does not mean the USA enjoys an avalanche of readers.

Moving to the proposals to change the current copyright and licensing regime, from 'fair dealing' to 'fair use', and a consequent loss of statutory licences, I believe this would be catastrophic for the industry, both for creators and publishers. Where such a change has recently happened, in Canada, the loss to Canadian authors alone stands at about CAN \$300million annually, meaning writing careers are no longer sustainable. And what's more, it has not resulted in cheaper or easier access by Canadian students to creative works: indeed it's reported there are large increases in course packs as a direct result of collective licenses being dropped.

Utterly confounding also are the proposals that 'fair use' be applied to so-called 'orphan works' and even out of print or commercially unavailable books (and other cultural products). In the latter case, it's even implied that if a rights holder chooses to withhold or not make available republishing rights on a work, then it's open 'fair use' slather, no matter what the wishes of the rights holders! This is indeed extraordinary, an attack on private property rights, and an idea which can only benefit litigation lawyers. In my opinion, it will only serve to further restrict access to out of print or commercially unavailable works, as publishers shy away from such a climate of litigation, and authors are held to ransom by large non-publishing corporations looking to harvest rights without payment or any other form of compensation.

For an author, the fair use proposals mean a loss both of income and of rights. For publishers, of course, it also means a loss of both. But in concentrating on the giants of publishing in your report, you may not be aware that there has been a great flourishing of small press in Australia in recent times, due to the increased accessibility to reasonable production costs—a side-effect of the digital revolution that has been of far greater import in the industry than the advent of e-books. This has led to increased diversity in the publishing scene, increased opportunities for creators, and led to many innovations. And that is where the pain would be felt most keenly, in terms of publishers.

For a small innovative publisher like Christmas Press, the ‘fair use’ proposals, if implemented, would be a real blow. To give you an example—one of our imprints, Second Look, which debuted this year, focuses on republishing out of print works by Australian children’s authors—plays, poetry, fiction—in print on demand and e-book formats, with the aim of making them readily accessible again to a new generation of young readers. These new editions, revised, updated and illustrated, are produced with the full consent and support of the works’ creators, who are properly compensated for the use of their work. If the fair use proposals were implemented, not only would we and the creators lose the income generated by copying of the works in institutions, but republishing out of print works in a fair and sustainable fashion would become uneconomic, as unscrupulous harvesters of so-called ‘commercially unavailable’ material would move in on whatever they could find, as many creators may well be unaware of their rights—or even unaware that such a thing was happening at all.

To add insult to injury, there is a statement in the report that the publishing industry could be compensated for the massive commercial losses sustained as a result of all these things, by grants and subsidies and the like! This is not only deeply unrealistic, but also completely contradictory.

The publishing industry is the most successful of all the cultural industries. Yet it receives the smallest amounts of grants and subsidies. It has been strongly self-sustaining, and offers a rich and diverse range of stories to resonate not only in Australia but all over the world. But these proposals, from lifting parallel import restrictions—an attack on territorial copyright—to the ‘fair use’ ideas, put that industry at great risk. They are attacks on the rights of creative, innovative individuals and companies to the ownership of their own work and their own products—and if implemented, these proposals would make Australian culture the poorer—both literally and metaphorically.

Yours sincerely

Sophie Masson