

Submission to the Productivity Commission Intellectual Property

As an Australian author with a wonderful local publisher and wide experience of international publishing (I've been translated into 23 languages) I feel I have something to add to the discussion on Australia's Intellectual Property laws.

The Productivity Commission's Discussion Draft recommends quite radical changes to copyright and the current parallel importation rules. I believe these changes will silence Australian voices and shrink a vibrant local publishing industry to the detriment of writers, publishers, booksellers, customers and, in particular, Australian culture.

Lost in the dry economic arguments about copyright and open markets is the reality that a book is not a widget. It is not a sweatshop T-shirt from Bangladesh, or a used car, or the latest software or a pharmaceutical. Books are part of our culture. They tell our stories. They connect Australians with their past and with each other; and they also 'export' Australian ideas and ideals to the outside world.

Here are my thoughts on the proposed changes:

- 1) By surrendering territorial copyright on books, Australia will effectively become a publishing *terra nullius* (nobody's land). The last time this happened, Australia became the dumping ground for Britain's unwanted. This time we will become the dumping ground for unwanted books, surplus print-runs and second-rate novels from the UK, USA and Canada.
- 2) Also arriving on our shores will be bestselling titles by big-name authors that are presently the lifeblood of Australian publishers. It is well-known that publishers rely on a relative handful of bestselling books each year to fund new authors, nurture writers and publish uniquely Australian stories. Some of these books will be important to niche markets. Others will be important for posterity. A few will herald the arrival of new literary giants like Tim Winton, Geraldine Brooks or Richard Flanagan. Nobody can ever be certain where the next bestseller will come from, but enormous time, effort and money goes into searching for and nurturing new voices, particularly those that reflect the lives, experiences, history and culture of Australia.
- 3) The changes proposed by the discussion draft will diminish Australian publishing. Australian stories will still be published, but fewer of them. Advances will shrink, marketing budgets will dry-up and money won't be available to help writers tour, or to promote their books to Australian readers.
- 4) Australian publishers who secure the international rights to a talented new local voice will have to think long and hard about whether they offer this book into other English-language markets because they risk having copies sent straight back into Australia, competing with the local product. As a result, fewer Australian writers will be published overseas and Australia could cease to be an exporter of copyright.

- 5) For an established author like myself – UK and US editions of my books will potentially appear on the same shelves as my Australian edition.
- My US editions have different spellings and, in the past, have had entire chapters either added or removed. I do not want these versions turning up in Australia.
 - I will receive a smaller royalty on these books or no royalty at all if they are dumped by a US or UK wholesaler who has picked up remaindered stock or oversupply.
 - The suggestion that this surplus stock only occurs due to an author's 'failure in another market' is wrong. Publishers are always looking for new markets. Almost inevitably, print runs will become larger to accommodate a new territory that is opening up. Australia will again be *terra nullius* (nobody's land).
 - My Australian publishers won't have the same opportunity to sell my Australian edition in the US or UK or Europe because these markets are protected.
- 6) On the issue of copyright and how long it should last, I have a question for the commissioners. How will they resolve the issue that in the UK and US my novels are copyrighted until 70 years after my death, but in Australia you wish to make them freely available 15-25 years after publication?
- 7) Looking at the submissions to the Productivity Commission investigation, I notice that the voices arguing most strongly for the removal of PIR and changes to copyright tend to be economist rationalists or a small number of large retailers. I respect the difficulties local retailers face competing with on-line sellers like Amazon and The Book Depository, but as other submissions have rightly pointed out – the price of books in Australia is comparable to the UK and US and foreign retailers not only get a GST-free head start, but many offer free postage – an expense that Australian taxpayers ultimately pay because of arrangements between international postal services.
- 8) The Australian retailers who are campaigning to remove PIR have argued it will mean cheaper books, but can provide no evidence of this. (It certainly hasn't been the experience in New Zealand). I suspect these retailers primarily want the changes to give them added leverage over Australian publishers in a bid to negotiate even deeper discounts on bestselling titles, which may or may not be passed on to consumers. This will be to the detriment of smaller independent booksellers who don't have the same commercial clout. These same independent booksellers (Indies) are the saviours and standard bearers when it comes to hand-selling Australian books to Australian readers.
- 9) If these draft changes do become law, I believe retailers will come to regret the removal of territorial copyright (as they have in New Zealand). I envision a future where pop-up shops and two-dollar stores will turn up on Australian High Street selling thousands of purposely over-printed, remaindered, surplus and predominantly second-rate books written by US and UK authors. Important Australian stories will disappear, swamped by a tsunami of mediocrity.

The Productivity Commission seems to feel that Australia would be better off without copyright, or with a watered down US version ironically called 'fair use'. I spent a month in Canada early in 2016 and heard first hand from Canadian writers and creators how similar changes in Canada. In the short-term it meant universities and schools could copy and use material without compensating the creators. In the long-term it has seen writers lose precious income and publishers withdraw from the market or commission fewer books.

How is it desirable for those who have the talent to create something, be it words, music, images or whatever, to be deprived of the right to profit from that talent? And anyone who asserts that films, music and books of the same quantity or quality will continue to be produced if we had no copyright is talking nonsense. It would lead to a world where writing, filmmaking, photography, journalism and song-writing would be forever hobbies, never careers. Either that or we will regress to a situation where artists survive thanks to patronage and political favours, going cap-in-hand to governments, corporations or the elites. At the same time, by failing to define 'fair use' the Productivity Commission risks creating a litigation bonanza, with the courts having to rule on a case-by-case basis what 'fair use' means.

IN CONCLUSION

If Australia surrenders our territorial copyright, we will be giving up our sovereign intellectual property right without gaining any reciprocal rights in the US or UK or Canada. This will silence Australian voices and shrinking Australian publishing – a vibrant and successful industry.

This is not about greater competition or cheaper books and it has nothing to do with creating a level playing field. Adopting the Productivity Commission's draft recommendations will mean asking Australian writers and publishers to run uphill, into the wind, against 23 players with a dodgy referee and a rigged result. Even worse, we will become mere spectators, not even in the game.

I urge the commission to drop its recommendations relating to PIR and territorial copyright; and not to go down the American path of 'fair use'. Books are not widgets.

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19 May 2016