

Intellectual Property Arrangements
Productivity Commission Draft Report
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Australian books matter to Australian consumers. The capacity to create Australian stories in our market, written and implemented for our market, is a fundamental right of a free and culturally-vibrant society. I believe the Productivity Commissions' proposed changes to territorial copyright, the introduction of 'fair-use' copyright criteria, and the weakening or dissolution of Parallel Importation Restrictions (PIRs) in Australia, has the capacity to dismantle our identity as a creative and lucky country.

I work for an Australian book publisher. I am astounded by the diversity of industries, communities and individuals who play a role and who rely on books for their living. Within my company alone, a whole ecosystem of passionate book-lovers pour their heart and soul daily into producing the best possible books for Australian readers, advocating the best possible outcome for authors, particularly Australian authors. We balance artistic and commercial interests and innovate constantly to remain strong and agile in an ever-changing marketplace. These themes of innovation, economic robustness and intellectual agility are central to our current government's political mantra and they *are* important.

Australian publishing currently receives little to no subsidies, unlike many arts industries and creative organisations. We invest 120 million dollars a year and are the 14th largest publishing industry in the world. Indeed, we are the most successful creative industry in Australia. The Commissions' recommendation that Australian writing should be subsidised in an open market is an admission of its adverse impact. Recent cuts to key arts-funding institutions – particularly to the traditionally under-funded writing industry – leaves little hope of ongoing government commitment to subsidising writers and industry stakeholders who are affected by these changes.

I believe the proposed changes to copyright and PIRs will be counterintuitive to consumers and industry alike, and respond to just some of the key findings and recommendations below;

1: Finding - That copyright should only last 15 to 25 years after creation (reduced from 70 years after the creator's death)

- Treating an artist's work as their intellectual property for the term of their life and 70 years after, is the core principle by which writers, creators and their dependents are rewarded for their ideas and creative efforts. This is their employment – their life's work. Writers, on average, make \$13000 a year, which means they rarely have the ability to earn a feasible living for themselves, their families or their future dependents during and after their lifetimes. They must find other means of remuneration. Copyright and royalties are a very small, ongoing incentive that allow an artist to pursue creative endeavour.
- A reduction in the protection of an artist's work to only 15 or 25 years after its creation would mean, for example, that seminal works like *True History of the Kelly Gang* or *Cloudstreet* would no longer provide any financial return to their living authors for ongoing publication and other commercial uses from potentially as soon as this year.
- Current Arts Senator Mitch Fifield has already publicly ruled out such a change in response to the outpouring of author anger at the suggestion.

2: Recommendation - Move to a US-style 'fair use' on copyright

- The advocated US 'fair use' system allows content to be used for any purpose provided the use meets certain 'fairness' criteria. But the confusion over what constitutes 'fairness' has resulted in complicated litigation proceedings in the US.
- Under 'fair use' laws, for example, Google won the right to digitise over 25 million books without permission or compensation to the right's holders. If we are fighting illegally pirated T.V. or film content made overseas, why would we allow our local and written intellectual property to be accessed under oblique and ill-defined terms, without creator consent?

3: Recommendation - Lift parallel importation restrictions

- The Commission's report argues that lifting PIRs will reduce book prices and create a freer more flexible market for Australian consumers. The Australian book industry shares the desire to satisfy book consumers. However, the industry already goes to great lengths to limit the time between foreign publication of a book and its availability in Australia. Almost all books are published in Australia within 14 days of their overseas counterparts.
- The price of books have reduced in Australia by 25% since the data was produced that informed the Commissions' findings (the 2009 Productivity Commission report). In that time, comparable markets that have had their PIRs lifted, like New Zealand, have only seen a 14% reduction in pricing.
- Individual consumers can purchase books at any time, from any market already. The individual's freedom to buy online has already created considerable demand for the local industry to be naturally competitive in its release dates and pricing.
- The USA and Great Britain have strong PIRs in their markets, designed to protect their industries and writers from off-shore or inferior imports. Consequently, they will be best placed to capitalise on our loss, by flooding our market with cheap paperback editions, overstocks and remainders of both local and international books – that provide far less royalty compensation to the authors who wrote them.

I don't believe that opening the market and repealing PIRs and thus destroying territorial copyright will ultimately strengthen our industry, improve the quality or value of books in Australia, or create better conditions for Australian consumers. It may contribute to a short term price drop in books, but the long-term impact on the output and vibrancy of our written stories, and our ability to invest in these stories, will be significant.

If the Productivity Commissions' draft report recommendations are acted on, we can expect a contraction in the Australian publishing industry and a throttling of its ability to take risks on less marketable or commercially-oriented Australian authors, and therefore local booksellers will suffer. Our cultural and literary output will be more monotonous and less innovative.

I strongly urge that territorial copyright laws and PIRs remain intact, along with the ability for authors and writers to protect their intellectual property, and be fairly compensated for their essential contribution to our cultural landscape.

Best wishes,
Ellen.