Currency Press
THE PERFORMING ARTS PUBLISHER

www.currency.com.au
enquiries@currency.com.au

201 Cleveland Street
Redfern, NSW 2016
PO Box 2287
Strawberry Hills, NSW, 2012
Tel: 61 (0) 2 9319 5877
Fax: 61 (0) 2 9319 3649
A.B.N. 75 000 938 929

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Re: Productivity Commission inquiry submission regarding

Intellectual Property Arrangements

Currency Press is pleased to have the opportunity to respond to the Productivity Commission inquiry. While there are many findings and recommendations that Currency Press can support, we have chosen to respond to one draft finding and two recommendations that are likely to have a negative impact on Australian writers, on the cultural capital that their work represents and, in the case of Draft Recommendation 5.3, on the viability of Currency Press.

Background

Currency Press is Australia's leading publisher in the performing arts. Although known mainly as a publisher of plays, Currency also publishes screenplays, manuals and educational texts at primary, secondary and tertiary level, as well as certain trade books also related to the performing arts.

Founded in 1971, Currency is Australia's second oldest publishing house. Although we are a niche publisher with a small staff, we publish 25 to 30 books a year. Roughly 80% of Currency's sales are educational.

Productivity Commission finding and recommendations

Draft Finding 4.2 proposes that the term of copyright should be reduced to between 15 and 25 years after creation on the grounds that the commercial value of most works is fully exploited by that time, and this would free up works to be 'transformed' or exploited in other ways by other creators.

While it's true that the commercial value of a book is usually concentrated into the first few years after publication, this is not true of all works. For instance David Williamson's *The Removalists* continues to sell well more than forty years after it was written. But to write one hit, an author may have to write ten or twenty plays. They may have only one real hit in their career. So the return on that one work is really the result of an entire career of writing. Reducing the length of copyright would reduce an author's ability to exploit the rare works that pay for all the others.

Secondly, copyright is essentially ownership over the fruits of an author's labour. If someone builds a house, that house exists effectively in perpetuity; the owner has the option of selling it or passing it on to their children. No one would expect that after a period of 15 or 25 years any member of the public should be able to enter and stay in the house for free, even if the original owner has died. Currently copyright expires 70 years after the death of the author and this allows an author to leave that work as an asset for the benefit of their children or family. Authors should not be disadvantaged compared to owners of other types of property.

Draft Recommendation 5.2 proposes that current parallel-import restrictions be lifted.

Lifting parallel-import restrictions essentially forces local publishers to compete with international publishers directly in our own marketplace. This will inevitably force some Australian publishers to reduce risk by eliminating marginal titles from their list. New Australian writing is by its nature the riskiest form of publishing, particularly when the writer is unknown or emerging. Many new writers will find it almost impossible to be published locally. In this regard it is worth noting that no other OECD country has repealed parallel-import restrictions. Australia would be going it alone.

Currency Press is unusual amongst Australian publishers in that we have an Australian-only publishing program. As we publish exclusively in the performing arts, and our market is mainly educational, we are therefore unlikely to be directly affected by Draft Recommendation 5.2. This however is not true for the publishing industry as a whole.

Draft Recommendation 5.3 however directly threatens Currency's viability, and that of other educational publishers. Draft Recommendation 5.3 proposes that the Commonwealth *Copyright Act (1968)* be amended to replace current 'fair dealing' provisions with a 'fair use' provision similar to that which operates in the United States.

The Draft Report states, 'At its heart, Australia's exception for fair use should allow all uses of copyright material that do not materially reduce a rights holder's commercial exploitation of their work at the time of use.'[1] In the view of Currency Press this principle introduces a level of uncertainty into copyright law that would greatly increase compliance costs. If, for instance, a teacher photocopies a class set of a play, that in itself might not 'materially reduce' a rights holder's ability to exploit their work. If however thousands of teachers across the country do that same, then clearly there is a material effect on its exploitation. Yet individually, each teacher is likely to be seen as innocent of any breach under a 'fair use' exemption. Current 'fair dealing' exemptions make it clear what is a breach and what isn't, no matter how minor.

In practice it is likely teachers and students will rely on 'fair use' provisions to copy published work without paying for it. When similar 'fair use' provisions were introduced in Canada they led directly to a 98% fall in licensing revenues in the education sector, the closure of Oxford University Press Canada and the closure of a copyright collecting society.[2] A similar fall here would devastate Australian educational publishing, leaving Australian students with exclusively foreign educational texts.

The other issue that remains unconsidered in the Productivity Commission Report is the moral rights of authors. 'Fair use' may include, for instance, a speech from a play or film being sampled and used in a song, thereby 'transforming' it. But it could also include uses for which an author has moral objections, for instance in advertising. In such cases an artist should have the right to

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[1] *Intellectual Property Arrangements*, Productivity Commission Draft Report, p.160.

[2] 'Understanding the costs and benefits of introducing a "fair use" exception', PwC, http://copyright.com.au/wp-content/uploads/2016/02/R01501-PwC-FairDealing-CBA.pdf p.iii.

disallow the use of their work where they feel it misrepresents their views or values, yet this would have to be tested in court on a case-by-case basis.

The draft recommendations and the finding amount to a transfer of benefit from producers of a cultural product to consumers, but implicit in the recommendations is the assumption that the cultural value of foreign works is equivalent to that of locally produced writing, when clearly that is not the case. A patent protects the novelty of an idea, whereas copyright protects its originality – that is, if an author writes a novel, they cannot patent it as there are many millions of other novels and in all likelihood even the content of the novel has appeared in a similar form in another work. Copyright does not impede the consumer from reading the novel; rather copyright creates an incentive to disseminate the work, rewarding the author and publisher for making it available to the widest possible readership. By reducing an author's ability to benefit from the exploitation of their work the draft recommendations and finding could lead to a perverse outcome: reducing the dissemination of Australian writing to Australian readers.

Suggested economic benefits of Draft Recommendations 5.2 and 5.3

The assumption that a transfer of benefit from producers to consumers produces a net economic benefit is untested in the Productivity Commission's draft report. Although intuitively one might expect that repealing parallel-import restrictions would cause the price of books in Australia to fall, an analysis of comparative pricing between locally published international titles and the same titles in similar markets overseas finds no reliable difference.[3]

According to PwC[4], the simple transfer of benefit from one party to another does not in itself create a net benefit to the economy, whereas it will significantly increase compliance and enforcement costs because the 'fair use' provisions are far more open to interpretation than the current 'fair dealing' provisions. The innovation benefits that might derive from increased access to copyright material are dependent on complex factors outside copyright law and therefore are unlikely to accrue.

It is the view of Currency Press that although there is some scope to simplify the current 'fair dealing' provisions in the *Copyright Act (1968)*, Draft Finding 4.2 and Draft Recommendations 5.2 and 5.3 would, if acted upon, have a wholly negative impact on Australian authors, publishers, culture and economy and should not be pursued.

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[3] 'Nurturing creativity in an age of innovation', Australian Publishers Association, http://www.publishers.asn.au/documents/item/390#.

[4] 'Understanding the costs and benefits of introducing a "fair use" exception', op. cit. p.v.