

Kathryn Fox

RE: Productivity Commission Draft Report on Intellectual Property

## **INTRODUCTION**

I am a full-time Australian author whose sole income is derived from writing.

I am also a small business owner who pays income tax, company tax and GST. I have NEVER applied for, or received a government grant.

My business employs three people – one to write educational textbooks and interactive software, another to manage the accounts, and I write content – novels, media articles, screenwriting for film and television. We also subcontract work to other small businesses for web design, graphics, promotional materials, etc., legal work re contracts, in addition to employing a literary agent. In lieu of payment for speaking functions, I invite local booksellers to attend to promote books.

We self-fund travel to writers' festivals to continue professional development and learn even more about the craft and business of writing. For me, writing is a full-time profession.

Hence, my business contributes to our economy in many ways, directly and indirectly. The proposed changes to copyright recommended by the Productivity Commission in its April 2016 Draft Report will decimate my business' income and my ability to earn a living. It will be impossible for us to continue to create uniquely Australian stories and academic texts/software.

In this submission, I will focus more on authoring and books than other arts industries but will mention them when relevant.

### **Are all writers professional?**

We all acknowledge that some people write for enjoyment, as a hobby, just as many people play sport, without ever being able to make a living from it. The act of writing or playing does not make any of them professional. Being able to read music does not make someone capable of writing a symphony, let alone one consumers will pay to hear. The same applies to writing. Self-publishing a project on the Internet does not make a writer professional.

The writing component for a book (including research), can take one or more years. Once the editing process begins, it is usually 6-12 months before it appears on the shelves or in e-book format. Screenplays can take years to research, write/rewrite before being optioned or sold. The same applies for a TV series. The process of bringing a book to film or television can take more than 10 years to develop.

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There is no short cut to a writing career. Computerisation has shortened the physical time it takes to edit a page, but the process is still labour-intensive, time consuming and 'hands on'. Most readers and book buyers know this too.

### **Writers are big consumers of books**

It is impossible to be a professional author without being a voracious consumer of books.

Writers and writing students are a significant group of consumers who will supposedly benefit from the productivity commission's recommendations on copyright. However, no writer is supporting the proposed changes to copyright, Fair Use, eliminating PLRs/ELRs or removal of Parallel Importation Restrictions.

### **Background: How publishing a book actually works and the jobs involved.**

It appears that there is a fundamental public misconception about what is involved in publishing a book, in terms of labour, jobs and economy.

Once a contract is signed, the advance is usually divided into three payments – one third on signing, another on acceptance of the manuscript (which can take at least a year), and a third on publication (which can be another year later.)

After receiving a manuscript, editors work with authors through the rewriting process, then sub-editors, proof-readers, cover designers, the sales reps then pitch to stores, and the marketing team kicks in well before printing and distribution.

Many of these jobs are subcontracted. Agents and lawyers assess contracts and literary content.

This is how and why Australian publishing produces more than 7000 books annually, and supports over 1000 retail businesses.

Australia's book industry alone is a \$2 Billion industry well worth preserving for economic and social reasons.

Writers like me are not looking for government handouts. We are asking for the right to continue to earn a living from our writing, not have it appropriated by others after a relatively short time. As it stands, writers in Australia are lucky to receive \$1- \$3 royalty per book sold. Royalties may be less when books are sold through discount chains. I currently receive about 50 UK pence per book sold in the UK. We are, therefore, reliant on ongoing royalties to make a living.

My work should remain my property, just as shares, a home, investment portfolio or possessions should not be acquired for free (also known as stolen)

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by anyone else after 15-20 years. There will be no compensation for losing my body of work this way.

The report suggests that in lieu of the proposed changes to Intellectual Property, I might be able to apply for grants/government subsidies as some form of compensation.

However, this will not provide long-term employment or the means to earn a living.

## **WHY COPYRIGHT MUST NOT BE REDUCED TO 15-25 YEARS:**

### **Creative works:**

Writers do not receive superannuation, sick leave, holiday leave or maternity pay. They rely on new work contracts and royalties from previous works.

It takes, on average, seven books for an author to develop a loyal readership. (That may be 7-14 years of the writers' working life).

Writers receive no superannuation, sick leave, maternity leave or holiday leave.

Women's writing is often interrupted in child-bearing years, which disadvantages them even more if copyright is limited as per the report's recommendations.

Therefore, women with children are less likely to have produced ongoing work at the same rate as a male counterpart. Consequently, they are likely to be disadvantaged more financially by changes to current copyright.

Now more than ever, books have a longer reading life. I challenge the veracity and source for the finding in the report that the life of a book is less than 5 years. Page 114 of the PC draft report states, "literary works provide returns for between 1.4 and 5 years on average. Three quarters of original titles are retired after a year and by 2 years, 90 per cent of originals are out of print."

Clearly, this does not consider authors who grow a reader base and series books, in particular. With e-books, the life of a book can be extended far longer than print versions. This also does not apply to textbooks.

Readers often hear about or read a newer book, then go back to the author's previous works (known as a backlist). This is particularly true for a series. One of my book series has taken twelve years so far, in between other writing commitments. I cannot afford to lose the copyright to my early works while they are still being read and purchased by new readers.

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As many films are based on books, this equally disadvantages authors. In the wake of the draft report release, I received an email saying that a reader was keen to repackage my first book as his own work, as soon as the copyright expired. A screenwriter or producer could choose to do the same if the recommended changes to copyright are adopted.

Actors and producers deservedly receive residuals payments and/or royalty payments from around the world when their work is purchased, viewed or rented. Writers, the creators of the actual content, will be unduly penalised by limiting ownership of their own work as any royalty payments will cease after copyright expires. Producers will often option a screenplay or book for a minimum amount. All they need to do under altered copyright arrangements is to hold on to that work until copyright expires, and have free access to it.

Screenwriters and authors may take years to sell a script. It is only then that producers may want to see other works they have written. Under the Commission's proposed changes to copyright, if a writer has a number of previous, unsold screenplays or books, it is highly possible that by the time their career takes off, they will have NO ownership of their own works. Years of a writer's labour will be "free" on the market without any remuneration. This makes no financial sense and does not contribute more to the economy. There will be no GST paid on works acquired for zero cost.

We accept that sporting champions are not made overnight. They work for years before achieving success, then are rewarded. The Australian taxpayers paid around \$310 million per gold medal at the 2012 Olympics. Given the amount of manuscripts that are rejected by publishers, having a book published is like winning a gold medal for writers.

Yet the book industry in Australia is not subsidised by government. Like our athletes, Australian stories inspire, inform, instil national pride and unite us.

Why can we not accept that Australian writers be rewarded for their successes? Rather than deride writers' work as undeserving of ongoing payment for success, why don't we acknowledge and encourage the hard work, persistence and talent involved - just as we do with sports people?

Consumers happily buy magazines, tickets to sporting events, movie tickets, music albums for more than they expect to pay for a book.

#### **Academic works/text books/educational software:**

Textbooks and content for educational materials are written by academics, for relatively poor remuneration. In fields such as physics, maths, biology, botany, history, geography, anatomy, the content itself is constant, despite modifications to curriculums. New/revised editions of texts vary little in content, and are not necessarily considered newly copyrighted material.

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There will be little incentive for academics to invest the time, labour and knowledge into writing textbooks for Australian students if they lose copyright, and payment through PLRs/ELRs.

Schools are the institutions that should best understand and value the importance of reading and written works. It is argued that they should have free access to materials for teaching, yet other providers are not being regulated to provide free desks, chairs, audio-equipment or uniforms for students. Builders do not provide their materials and labour for free, and gardeners expect to be paid for upkeep, without being accused of gouging schools and pupils.

### **Effects on National Curriculums for Schools.**

Educational texts must not only comply with the National curriculum, but must satisfy state-based variant requirements. Local teachers and academics are required to write the texts to suit the state's specific needs. Given the curriculum doesn't change that often, these books should have a long lifespan. They are sold at reduced cost so students can afford them. It takes a longer period for a textbook author to see a return for his/her work.

Shortening the duration of copyright jeopardises books written for the National Schools Curriculum and reduces incentive and remuneration for the authors.

## **CONSEQUENCES OF COPYRIGHT CHANGES BASED ON COMMERCIAL AVAILABILITY.**

One of my novels was published in 2014 by one of the major publishing houses. It produced a large paperback format and remaindered that edition with the view to releasing a small paperback version. However, it was decided not to produce a small paperback last year.

Consequently, that book is out of print and copyright should revert back to me as per our signed contract. To retain the electronic rights to that title, the publisher need only sell \$200 Australian worth of e-books per year. Therefore, the print rights remain important to me as a potential source of income. I can sell them to another publisher and still earn royalties.

However, if copyright changes are made based on commercial availability, I would have already lost print rights to that book – a title that is less than 2 years old. Another publisher or small imprint could have begun printing and selling hard copies for profit, and I would receive nothing.

The odds against earning a living for a writer are great enough as they are. Undermining copyright will make them close to impossible.

## **IS ALL MATERIAL SUBJECT TO INTELLECTUAL PROPERTY EQUAL?**

Intellectual property protection of patents and items such as drugs and smart phones in the form of patents is very different from copyright protection.

Most importantly, the barrier of entry to industries such as drug manufacture and smart phones is high and excludes just anyone from reproducing the product without substantial financial input and infrastructure. Their patented products are protected from unfettered competition for a certain duration.

In total contrast, the barrier of entry to reproducing copyright works by producing and selling e-books, for example, is extremely low, irrespective of location. Anyone with a scanner or knowledge to download files can do this, appropriating others' works and profiting from them. As a result, there is no 'one size fits all' intellectual property solution.

Copyright protection for books should not be considered the same as patents for expensive equipment or pharmaceuticals. It should be comparable to that of other content producers, with the same protections employed by the USA and UK.

## **FREE IS NOT FAIR – WHY AUSTRALIA SHOULD REJECT 'FAIR USE'**

Under 'Fair Dealing', Australia's current copyright permits schools, TAFEs and tertiary institutions to copy and share any material they select for a fair payment to creators of that content. According to a paper by the Australian Copyright Council (May 2016),

"This equates to about \$17 per school student per year or about \$30 per tertiary student, paid for by institutions, not individuals."

This is unfettered access to global material for less than the cost of a textbook per student each year.

This payment to publishers and creators mean that new educational materials and content can be produced for Australian teachers and students.

Exceptions currently exist for users of content who are not required to pay for material. These include news reporting, reviews, criticisms, parodies/satire, personal research and study, people with disabilities, and copying by libraries, among others. As content producers, my staff and I believe these exemptions are currently fair.

A PwC Australia report (February 2016) recently estimated that introducing 'Fair Use' in Australia could result [in a loss of GDP of more than \\$1 billion](#). 'Fair use' means that schools and universities could refuse to pay licence fees for all the copyright material they access. This will result in the loss of millions in

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royalties to content producers, job loss and fewer Australian- published works. Canada found \$30 million lost to authors after introduction of similar changes.

This will have an adverse effect on writers and providers of Australian content – in books, film, television and educational materials.

Canada’s experience was gauged for the report, which found ‘fair use’ “had an immediate and [profound effect](#) on the production of Canadian-specific material for schools and universities.” In other words, they became more reliant on US and British produced textbooks.

Fair Dealing works. Fair Use has already been shown to have significant difficulties in its policing and implementation.

‘Fair Use’ only appears to be defined and determined in court, during litigation on a case-by-case basis. The number of cases in the US citing fair use in copyright cases is a staggering 43%. In Australia, fair dealing as the prime issue was only cited in 4/94 cases involving copyright, or 0.04%. That is one thousandth, of the percentage for the US when you compare rates of litigation for fair use with fair dealing.

Can we really afford to lose a billion dollars in GDP and clog our courts with litigation from adopting ‘Fair Use’ in copyright law? Writers cannot afford prolonged litigation to protect what is already theirs. Giants like Google and Apple, who will no doubt capitalise on this and stand to profit the most. In no way does theft of intellectual property constitute ‘Fair Use’.

The PwC reports found that if Fair Use is introduced to replace Fair Dealing,  
- Australian-produced works will decline – with a \$1b+ loss to GDP  
- Litigation will rise permanently  
- Australia’s effective and fit-for-purpose licensing system, will be undermined.

## **PARALLEL IMPORT RESTRICTIONS FOR BOOKS**

### **LEARN FROM THE EXPERIENCES OF CANADA AND NZ**

Removal of PIRs will have a disastrous effect on Australian culture. As happened in NZ, books from the US , UK and China flooded their markets. The consequences were multifold:

Locally based educational content for schools was eroded. This has been demonstrated in Canada and NZ, two examples in which removal of PIRs had deleterious effects on book publishing and local content providers.

In response to copyright changes and removal of PIRs in Canada, “The educational publishing market continues to erode in Canada, and the consequences are more than just financial,” said Association of Canadian Publisher’s Executive Director, Kate Edwards. “Without incentives to publish, the

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variety and quality of contemporary Canadian educational content will decline. At the end of the day, it's students and teachers who will lose out."

Contrary to expectations, following removal of PIRs, the price of books did not become cheaper. According to a Castalia report on Publishing in NZ, 10 years after parallel importation, "The price differential between NZ and other English speaking countries is relatively unchanged."

In contrast, Australian book prices have fallen by 30-35%.

The report continues, "The number of NZ titles published has declined relative to the trend in other English speaking countries. There is evidence that at least some publishers have rolled back their infrastructure in NZ."

So for no benefit to consumers, the book industries in those countries suffered significant job losses and published fewer books by local authors, damaging once thriving local industries and important local entertainment and educational content.

I urge the PC to review, not ignore the Canadian and NZ experiences, which will serve as templates as for what will happen if Australia removes PIRs.

## **WHAT ABOUT THE USA AND UK?**

The USA and UK continue to fiercely protect their authors and creators of content with PIRs and the current copyright rules. Removing Australian PIRs will be handicapping Australian writers, on what will never otherwise be a level playing field.

## **EFFECTS ON AUSTRALIAN STORIES:**

Australian stories are truly unique. They reflect our voices, landscapes, history and culture. Like Olympic medals, they give us all a sense of national pride and hope. The demand for Australian stories has never been greater. Acclaimed and successful TV shows are often based on books – The Slap, Miss Fisher's Mysteries, Underbelly, Jack Irish, Tomorrow When the World Began, to name a few. Under threats to PIRs, we risk losing uniquely Australian stories.

In 2012, Scott Morrison told the Sydney Morning Herald, "I don't read international fiction. I just don't relate to it. I'm interested in our stories."

As shown in the NZ and Canadian experiences, removing PIRs will mean fewer Australian stories will be available to read. Additionally, we will be flooded with more stories published in countries such as China, UK, USA and India. From authors lucky enough to be published overseas, we are likely to read alternative versions of their stories, tailored to non-Australian markets.

## **IMPORTING TRANSLATED VERSIONS OF AUSTRALIAN STORIES**

A scenario in which Australian Stories are translated into 'American' and sold back to Australians may seem far-fetched. However, this already happens.

Australian authors whose works are published in the US, for example, find their work is given to a translator, whose job involves translating the text into not only American spelling but removing most or all Australian vernacular, cultural references and even measurements. Kilometres become miles, Celcius becomes Fahrenheit, and in some cases, seasons are reversed to suit American months. For Australians to read about a home Christmas in the midst of winter, not only jars and insults, will blatantly misinform.

I often receive emails/letters from readers criticising my books for being 'too American, and their disappointment at wanting to read something Australian only to read something that fails to differentiate from American stories. These readers have in fact, read the US editions purchased online from bookshops such as Bookdepository and Amazon. A cheaper version of the book does not mean it is identical to one published in Australia.

James Patterson, (the world's biggest selling author) co-wrote Private Down Under – a book set in Sydney, with an Australian author. His mass of Australian fans soon discovered the book was published as an American novel. Both the publisher, Random House, and the Australian co-author author, received a barrage of abuse from angry readers who felt cheated by the blatant disregard for Australian readers.

Without PIRs, this will happen far more frequently, and the authors have little, if any, say in it.

### **DO WE EVEN NEED TO REMOVE PIRs on books? CURRENT PRICE COMPARISONS (as of 18th May 2016)**

A quick Internet search for one of my fiction books, under today's PIRs, shows there is no price advantage in purchasing either ebook or paperback from overseas. Importantly, the E-book price for Amazon is what an American pays.

Fatal Impact – e-book

Prices Australia, QBD/Apple ibooks/Dymocks **AU \$9,99**

Amazon.com **AU \$10.01** (US \$7.31)

Fatal Impact - Paperback – Amazon.com AU \$13.43

Shipping and handling AU\$14.87 ,

**Order total is AU\$28.30**

Fatal Impact Australia - Booktopia **AU \$25.95** (free postage),

- Angus and Robertson Bookworld - **\$26.99** (free postage)
- It is not available through the Australian amazon site.

There is nothing special about this title in terms of discounts or pricing. There are many more examples a mouse click away, available to consumers. Given that competition in the market has already reduced book prices by up to 35% in the last ten years and the NZ and Canadian experiences have shown that changes to PIRs, have not been reduced book prices, there is no need to dismantle an already functioning competitive marketplace.

Alarming, removal of PIRs will have an adverse effect on Australia's thriving book industry, jobs, local content and author income. There is no logical or fiscal argument to show benefits of removing PIRs. The PC report admits it does not know what will happen to Australian book prices, but it seems pretty clear that resultant industry damage without significant benefit to consumers makes little sense.

### **PUBLIC LENDING RIGHTS (PLRs) AND EDUCATIONAL LENDING RIGHTS (ELRs) ARE IMPORTANT SOURCES OF INCOME FOR CREATORS.**

According to the Australian Government Department of Communication and The Arts website, PLRs and ELRs are "Australian Government cultural programs which make payments to eligible Australian creators and publishers in recognition that income is lost through the free multiple use of their books in public and educational lending libraries."

Important to note, it continues, "PLR and ELR also support the enrichment of Australian culture by encouraging the growth and development of Australian writing."

Scrapping of PLRs and ELRs will be detrimental to Australian writers and content. Suggesting writers apply for grants in lieu of PLR/ELR payments increases unnecessary 'red tape' for small businesses like mine, and sole trading authors. The extra hours and labour taken to apply for grants in lieu or these established payments will be unremunerated. This is at odds with the government's repeated intention to reduce red tape for small businesses.

The PC report suggests that writers only do it for pleasure, not profit. I am a professional writer and earn my income through my works. As mentioned, there are no benefits provided to writers – holiday, long service, sick leave, superannuation etc. Therefore, I am solely dependent on ongoing income from writing.

Ongoing royalties, PLRs, ELRs, and being able to have my books published in Australia are my investments for my and my children's futures. Losing them will reduce my source of income and the contribution my business makes to the economy and other businesses.

The proposed changes to the Copyright Act and lifting of Parallel Importation Restrictions will destroy my income through reduction/loss of royalties with overseas imports. Abolition of PLRs and ELRs will remove a vital source on income. These are legitimate payments for consumption and use of my work. As it is, authors receive nothing for sales in second hand bookshops. Teachers and educators often appropriate written work without payment as it is.

As we have seen in books, film and television, local content reflects Australian voices and culture and employs Australians and boosts the economy. The recent movie, *The Dressmaker*, based on a book by Rosalie Ham, is a prime example.

As demonstrated by the NZ and Canadian experiences, removal of PIRs, means it is likely that books with such localised content would not be published in Australia, and overseas publishers would only accept contracts that gave them Australian distribution as well. This will make Australian publishers redundant and greatly affect their financial ability to publish new Australian authors and what many deem mid-list authors.

This PC report seems to imply that US and UK versions of books, TV, movies, are adequate substitutes for Australian stories, because they may be cheaper for Australian consumers. Australian viewers still demand and enjoy local made dramas. *Home and Away* and *Neighbours* are not the equivalent of *Coronation Street*. In comparison, how much does an international soap-opera contribute to our economy?

In this country there have been public campaigns urging consumers to buy Australian products, particularly in the supermarket. Such campaigns prove that people are willing to pay extra to support local jobs, if they are aware of the problems local producers face. It's why we demand labelling on Australian grown and made products.

It is why we now face a campaign to support Australian Dairy Farmers.

Removing PIRs and reducing copyright periods is about far more than streaming *Game of Thrones* for free the moment it is available.

Reacting to consumers' demand for free or cheap products does not save jobs or support our economy. It merely devalues the work, labour and costs involved in bringing the product to market.

As will be shown, this is not a long-term, sustainable solution for consumers.

### **CHEAPER DOES NOT MEAN EQUAL, OR VIABLE IN THE LONG TERM.**

Cheaper is not necessarily equal to a more expensive product, and does not mean the same quality, or more variety.

### **WILL CHEAPER PRICES BE PASSED ON TO CONSUMERS?**

It also does not mean savings will be passed on to consumers.

If a book has been published in hard back or large paperback format, it is usually remaindered when a new format comes out, eg small paperback. Booksellers can buy these books for \$1-3 each from the publisher. I have seen a number of book stores sell my remaindered editions at full price, aware they were purchased at remaindered prices.

Authors receive no royalties for the remaindered copies bought by the bookseller, and none from the sale of each book to the public.

The bookseller pockets the entire profit. As we have seen in many industries, savings are not necessarily passed on to consumers. And the fluctuant Australian dollar compared to the UK pound, US dollar and will not always mean cheaper books.

Bookdepository was purchased by Amazon. Bookdepository does not charge for postage, whereas Amazon does. In the past few months, the price of books on bookdepository has crept up, such that in many instances, the price is comparable to that of Amazon with postage added. Experience has shown that with this great monopoly, books will not remain cheaper at the expense of profits for shareholders.

### **Disadvantages for book sellers of cheaper overseas imports:**

#### **- Protection and after sales service**

As it stands, bookshops only need to order one or two copies, and can return books that have not sold. They will not have that protection or after sales service if they order from overseas.

#### **- Failed business model**

Bookshops that favour remaindered books have already failed in Australia. My local Angus and Robertson became a discount outlet, and suffered due to the lack of variety and limited new release books available, despite being able to order cheaper versions within two weeks of release. It has since closed.

My nearest franchised bookshop is suffering after doing the same with fewer titles and more of the American and British mass-market bestsellers, which are already discounted by up to 35% at K-Mart, Big W and Target.

Consumers go to bookshops for variety, and to discover new authors. Cheaper books that have failed to sell overseas or are remaindered, will not provide them. Under the current rules, consumers have always been able to buy books from overseas. They are not limited by geography by sites like Bookdepository and Amazon. PIRs do not prevent bookshops ordering individual copies either.

## **AUSTRALIA - A NATION OF INNOVATION**

In a time when the Australian government is advocating innovation and an ideas boom, and its campaign is based on creating jobs to grow the economy, the PC report's recommendations will cause financial harm to creators of content, cost jobs and stifle creativity. Occasional grants will not replace income and jobs.

According to Arts Nation - An overview of Australian Arts, 2015 edition, "Conservative estimate of the economic contribution of the arts is that the performing arts, music recording and publishing, and arts education together contribute \$4.2 billion (0.3% of GDP)," and "Australia's copyright industries have arts and cultural activity at their core. The cultural sector contributes 4.0 percent of Australia's GDP, similar to levels in the United States, Canada and Spain."

Thus, Australia's copyright industries provide the core of a productive and economically beneficial cultural sector. Copyright as it stands works efficiently and effectively, helping to promote creativity and contribute to economic growth.

Malcolm Turnbull has said, "Our innovation agenda is going to help create the modern, dynamic 21<sup>st</sup> century economy Australia needs. Unlike a mining boom, it is a boom that can continue forever, it is only limited by our imagination, and I know that Australians believe in themselves. I know we are a creative and imaginative nation."

In the newly released [Federal Budget 2016](#), Canada's government aims to invest nearly \$1.9 billion (\$1.4B USD) over a five-year period in various cultural industries. The budget sited,

"Our cultural industries represent a key sector of our economy and the intersection of art, science and technology offers infinite opportunities to innovate and problem solve," the report reads. "Investing in the Canadian cultural sector helps to create jobs, strengthens the economy and ensures that the unique Canadian perspective is shared with the world."

I urge the government and the productivity commission to reject adopting 'Fair Use' in Australia, along with the other proposed changes to intellectual property - copyright, PIRs, PLR/ELRs, introduction of 'Fair Use' and copyright loss in the case of commercially unavailable works outlined in this draft report.

Australia should not repeat the mistakes of Canada and NZ made with parallel imports. We should maintain PIRs, and protect the work of creators, as the US and UK continue to do. It should not erode writers' incomes by altering ownership of copyright or remove valuable sources of income such as PLRs and ELRs and allow small businesses like mine to keep Australians employed, educated and entertained.

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