

Submission re: Productivity Commission Draft Report (Intellectual Property Arrangements)

Thank you for the opportunity to lodge this submission.

This submission formally registers **opposition** to Australia allowing the parallel importation of books.

and also

registers **opposition** to Australia adopting US-style 'fair use' copyright exceptions

Enabling either of these proposed changes would damage Australia's creative literary and book-publishing sectors.

Either of these proposed changes would also weaken Australia's unique cultural identity and would ultimately serve to undermine Australia's future intellectual prosperity as a nation.

This submission notes that currently parallel importation restrictions (PIRs) on books prohibit booksellers from importing books from overseas when a local edition is available in Australia.

It is important to the long-term prosperity of our domestic literary and publishing sectors, and to the health of our unique cultural identity, that the existing PIRs in the Copyright Act 1968 be preserved.

These protections are adequate and appropriate and serve the intent and purpose of the Copyright Act, namely: *to promote creativity and innovation by providing exclusive economic rights to copyright owners and to promote the social benefits that arise from a free flow of knowledge and expression.*

Abolishing our existing territorial rights would deliver our overseas competitors advantages at the expense of our own domestic industry and also to the detriment of associated industries including the Australian publishing sector.

As David Day, Executive Director, Australian Society of Authors has noted: *Removing PIRs threatens local authors and allows the publishers of London and New York to get an even tighter grip on the Australian book market. Authors have already been hit hard by a big drop in book prices, which has caused an average halving of their writing income over the last decade. Using academic theories about competition to interfere in the creation of Australian culture is sure to make the situation of authors even worse.*

Kevin Chapman, Founder of Upstart Press, and former Managing Director of Hachette New Zealand has noted: *The open market does away with your local market and does not lower book prices. Why invest in a book so that the Book Depository and Amazon can make a fortune?*

Kate Larsen, Director of Writers Victoria, notes that Removing PIRs will allow [mass importation of low-royalty and/or royalty-free editions](#) of Australian authors' books into the Australian marketplace.

Larsen notes that suggesting that this may make some books cheaper at the bookstore is an [over-simplistic calculation](#) as it would be at the expense of Australian writers and Australian publishers.

Larsen observes that: *“Removing PIRs would make local publishers [reluctant to sell foreign rights to](#)*

Australian authors' works which means those writers would miss out.

It would reduce local publishers' ability to distribute local editions of international bestsellers which would give them less money to invest in Australian authors.

Australian authors already earn less than \$13,000 per year on average. If PIRs are removed, they would lose advances, royalties, income from overseas rights sales, and the support of a healthy local publishing industry.

Our writers may stop writing, or move overseas. Our publishing houses may take less risks, publish fewer and less diverse Australian authors, shrink or even close down. Our independent booksellers will find it harder than ever to make ends meet. Jobs will be lost. Our Australian stories may stop being told," Larsen observes.

Larsen has also noted that under our current copyright laws, it is legal for anyone to use copyrighted content for specific reasons without having to obtain the creator writer's permission. These reasons are set out in a set of Copyright Act exceptions known as 'fair dealing'

The Productivity Commission is now recommending we change to the US-style intellectual property system known as 'fair use'. But while our current 'fair dealing' exceptions include examples of what is defined as 'fair', a new 'fair dealing' system would not.

This would mean that 'fairness' would have to be determined by courts on a case-by-case basis (assuming a writer has the time, energy and resources to sue every time their copyright is infringed).

The Chief Executive of the Copyright Agency [Adam Suckling in Artshub](#) has noted that: "The problem with fair use - is that it is not fair. What it actually has meant in practice is that large companies and institutions who previously needed a licence to use copyright material, do not need a licence for use of this material."

The Australian Society of Authors (ASA) has shared a PricewaterhouseCoopers audit into the introduction of 'fair use' in Australia that forecasts an increase in litigation costs to producers and artists of \$133m a year.

"To have to pay for costly litigation to protect their work from infringement is something that most artists cannot afford," the [ASA wrote in their statement](#).

"Canada went down this path by widening their 'fair dealing' provisions to exempt educational use and the results have been devastating, with a loss of income to authors of more than \$30 million and a dramatic reduction in the creation and publication of Canadian content," they wrote.

ArtsPeak Co-convenor and Director of Theatre Network Australia, Nicole Beyer, has recorded that: "Fair use is actually a long way away from being fair for Australian artists ... We have seen what 'fair use' has meant for writers in the US with Google able to digitise 20 million books for its Google Books project without paying a cent to the authors."

It is patently observable that those within, or closest to, the sector itself, in other words those best placed to accurately assess the impacts of the proposed changes, are **overwhelmingly opposed** to them.

It is evident that these proposed changes (namely to allow the parallel importation of books *and* to adopt US-style 'fair use' copyright exceptions) should be dismissed as predictably detrimental to Australia's literary, cultural, economic and wider societal prosperity.

What a regrettable and foolish legacy it would be for any government to leave for its people: the weakening of the nation's unique cultural identity and the undermining of what are arguably *the* most important sectors in which any nation might possibly invest – its literary and intellectual sectors.

Submitted by: E. Lamb
Bachelor of Arts (Journalism) Deakin University
Master of Arts (Professional Writing) Deakin University
Clunes, Victoria

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