

To Whom It May Concern,

As an Australian author, I read the recent Productivity Commission's Intellectual Property Arrangements Draft Report with some misgiving, and would like to address some of the suggestions put forward in the Draft Report. With eight novels published both within Australia and abroad, and several novellas, and some unpublished novels, I have a clear interest in Intellectual Property, particularly with regards to copyright and parallel importation restrictions, which I will highlight in this submission.

One assumption I feel I must address first is that made on page 114 of the Draft Report:

"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"

This does not seem to have taken the advent and incorporation of digital technology into consideration. With the introductions of e-books and digital readers, we've seen an extension to the life of a book. My first published novel (2011) is now 5 years old, and still provides royalty return. It has a copyright date of 2010. Indeed, many books have been revived with the digital revolution, e-books are cheaper to purchase, easier to store, etc., and are therefore very attractive to voracious readers to purchase and consume. As yet, I have not seen any of my novels 'retired'. I still earn royalties, I still receive monetary benefit from having those books in the market. With the addition of the digital media clauses in publishing contracts, the term 'out of print' is fast becoming a challenging business term, as generally speaking a digital book is not 'out of print' unless conscious effort is taken to remove the title from sale. I feel this statement is flawed, and doesn't reflect the current publishing landscape, nor does it factor in the continuing earning potential of an author.

Not only that, but when an author releases a title, and new readers discover it and enjoy it, one thing they do (and I can attest to this as both a reader and an author) is look for previous works. This also has the effect of extending the life of previously written novels beyond that stated above. The Draft Report (page 17) also states:

The evidence (and indeed logic) suggests that the duration of copyright protection is far more than is needed. Few, if any, creators are motivated by the promise of financial returns long after death, particularly when the commercial life of most works is less than 5 years.

As mentioned, I believe the basis for this assumption is flawed. It doesn't seem to take into consideration the availability and accessibility of the digital version of the book, nor does it factor in the continuing earning potential raised from subsequent works.

Also, I hate to break it to you, but although I absolutely love to write, to create powerful characters and compelling stories ... I am motivated by the promise of financial return. I am motivated to contribute not only to my family's income and lifestyle, but also to my nation as a tax payer, and I'm motivated by the fact my written works could possibly help provide for my family after my demise. To suggest that writers aren't motivated by financial return is disingenuous and so, so wrong. We aren't *just* motivated by money, but it's a clear incentive, let's be honest.

Also stated (page 17):

Other costs are harder to quantify. Long periods of copyright protection, coupled with automatic application and no registration requirements, results in many works being 'orphaned' — protected by copyright but unusable by libraries, archives and consumers

because the rights holder cannot be identified. Many other works are also unavailable to consumers once outside of their window of commercial exploitation.

If it seems too hard to find the owner of the rights, why consider removing the rights (and depriving an author of the potential to earn)? Why not consider instead creating a record to make it easier to find the owner of the rights? Just because something seems challenging should not result in a worker losing their rights.

Which brings me to my next point.

Draft Finding 4.2

While hard to pinpoint an optimal copyright term, a more reasonable estimate would be closer to 15 to 25 years after creation; considerably less than 70 years after death.

This is of grave concern to me. At present, I view my novels and novellas as not only a part of my work that provides earnings (because I worked hard, created something and receive reward for it— in effect, I *earned* this reward), it's also an investment for me. This is something that can quite reasonably continue earning for me into the future, and provide not only for me and my family now, but also something that can be inherited by my family for continued reward after my death. It's something I made, it can be passed on to my family, much like a property or investment portfolio.

To write a novel takes time and considerable effort. Sometimes the actual writing process can take a year or perhaps even longer. Then comes the editing process, revisions, copyediting, proofreading, cover art design, etc., and it's not unheard of for this process to take another 12 months or more. To ascertain that at minimum thirteen years after my novel is published I no longer have the right to its earnings is ludicrous and inaccurate, particularly with digital publishing involved – and quite unfair, I might add.

If a novel then goes on to capture the attention and interest of a film or television studio, there is further work completed, further time, with the potential to increase sales of the original work if it's reproduced in a different form of entertainment. Regardless of the likelihood of this happening, this is still an opportunity, but as per the finding above, I would be excluded from receiving reward for my own work.

In my mind, this is akin to a builder designing and constructing a home, something that provides for his/her family, only to have the keys available to anyone interested fifteen years after the first sod of earth was turned. This action would deprive the builder of a valuable asset, much like releasing a work from an author would deprive said author of a valuable asset.

The result of the above finding would basically remove something that belonged to me – without my consent – from my ownership. With the opportunities that arise from a book that continue beyond the assumptions made in this report, decreasing the term of copyright to 15-25 years after creation is effectively removing my ability to continue to earn from my work.

I have never applied nor received a government grant. I self-fund my career. I pay for my own professional development, I attend conferences and workshops, and for any titles that I self-publish, I contract the services of editors, proof-readers, formatters, cover art designers, etc., and essentially become a small business. I pay my taxes. I contribute. To remove something that I have toiled for, spent considerable time and effort in creating, and have then negotiated rights with publishers, etc., from my ownership I feel is unfair, unjust and a government-sanctioned form of theft. This is a

strong view, I know, but this essentially means that something that was mine is no longer mine, not because I gave it away, but because it's been removed from my ownership.

Also, my understanding is that the current proposal contradicts the AU-US Fair Trade Agreement, as well as the Berne Convention. Australia willingly signed to life plus fifty years as a copyright term with the Berne Convention, and extended that to life plus seventy years with the AU-US Fair Trade Agreement – bringing it into line with other countries such as the USA and UK. Why disadvantage our writers and creators by reducing it to such a short, unreasonable term?

Perhaps, instead, the government would consider removing GST from books...? No, wait, that's a ridiculous idea, to take away the government's legal right and capacity to receive funds and ability to direct those funds to much needed areas. But isn't that what you are proposing to do to authors?

Another matter I'd like to address is that of removing Parallel Import Restrictions (PIRs). As mentioned previously, if I self-publish a book, I contract the services of other providers. Australian publishers do this on a much larger scale, and the investment made in local businesses should be protected – very much like the US and UK protect their home markets.

The concept that removing PIRs will result in cheaper books for the consumer doesn't seem to be borne out by the Productivity Commission's own Research Report into Restrictions on the Parallel Importation of Books, released in 2009. In fact, there is the recognition that trying to quantify and qualify this assertion is quite challenging:

Section 4.2 Evidence on the price effects states:

While the PIRs potentially raise the prices of books published in Australia, assessing the actual magnitude of any such price effect is not straight-forward. To start with, it requires an understanding of the foreign sources from which book imports might be feasible in the absence of PIRs. Even where this is clear, the next issue is whether books could be sourced from these markets at sufficiently attractive prices to make them competitive with locally produced books.

Many previous studies of PIRs have relied on comparisons of prices in Australia with those in other, developed, English-speaking markets, particularly the UK and the US. Participants in this study also provided such comparisons, and the Commission has augmented these with its own analysis.

Even so, gaining a clear indication of the effects of PIRs through such analyses is difficult.

When data was compiled the Participants' comparisons of Australian and US/UK current list prices (page 76) and I quote:

Taken at face value, the comparisons suggest that prices of many titles in Australia can be competitive with, or lower than, the price of UK or US editions.

The Commission did compile its own data, which conflicted with the above statements, but then stated (p81):

Taken at face value, the data provided by the Coalition suggests that substantial reductions in prices could eventuate were Australia to remove its PIRs. However, the Commission notes that, in these circumstances, foreign publishers would not necessarily supply Australian retailers at the wholesale prices they currently offer to booksellers in 'cheaper' countries. In the absence of PIRs, foreign publishers are just as likely to want to engage in price discrimination as at present.

So while there is an assumption here at the outcome of removing PIRs, we only have to look at the cases in Canada and New Zealand particularly to see this may not happen – and that something far worse can and will occur.

New Zealand's publishing industry has been decimated by the removal of PIRs. The presence of publishers in New Zealand has been greatly reduced since the removal of the Parallel Import Restrictions. Less and less New Zealand works are being published.

Removing the Parallel Importation Restrictions affects so much more than just the price of a book (and not necessarily in the manner you are forecasting). I write for an Australian publisher (with an international parent company). They also publish international bestsellers here in Australia, and it is because of that that the Australian publishers can publish the works of the Australian authors.

I fail to see the long term value in allowing the 'dumping' of cheaper, inferior quality books onto the Australian market. Firstly, there is no guarantee this will result in cheaper books for consumers, as evidenced by the New Zealand outcome, but also, if the money isn't going to an Australian publisher (author, printer, graphic artist, etc.), then Australian publishers will have receive less income, which means they will have less reward to offer Australian authors, and may have to reduce the number of titles on offer, which means a shrinkage in the Australian book industry. This translates to lost jobs, lost businesses, lost income, but also a decrease in Australian stories and Australian voices, thus creating a hive mind with the international market (please note, USA and UK are not considering this option, as presumably they see the value in protecting the home market and their cultural voice).

In the last few years, Australian publishing and Australian writing has seen robust activity. It is easier now to find an Australian novel by an Australian author, than ever before. Removing the PIRs will result in few Australian books at the bookstore – a loss of voice, a loss of culture, and a loss of character – a very high price to pay on a gamble that, by the Productivity Commission's own report, may not pay off.

From what I can see, the proposed changes fail when assessed against the analytical framework for the Intellectual Property Draft Report as stated in Draft Recommendation 2.1:

- *effectiveness*, which addresses the balance between providing protection to encourage additional innovation (which would not have otherwise occurred) and allowing ideas to be disseminated widely
 - *I would argue this approach is not affective, it most definitely does not provide protection to an author, and as such it limits innovation as authors will not be able to afford to continue to express new ideas and stories, and in turn, innovation.*

- *efficiency*, which addresses the balance between returns to innovators and to the wider community
 - *With the removal of rights and subsequent earning potential, and the removal of PIRs and subsequent losses, this does not fit the efficiency in any capacity*
- *adaptability*, which addresses the balance between providing policy certainty and having a system that is agile in response to change
 - *As this hasn't factored in the advances of digital technology, the longevity of story, the continuing availability and accessibility of a work, it doesn't seem the adaptability requirement has been met.*
- *accountability*, which balances the cost of collecting and analysing policy-relevant information against the benefits of having transparent and evidence-based policy that considers community wellbeing.
 - *Some information seems to be either completely lacking or positively flawed and based on inaccurate assumptions, and therefore the proposed changes are lacking in consideration, transparency and evidence-based policy that considers community wellbeing.*

I do not accept the proposed changes, and fail to understand how this seems to be a considerable, logical approach, as there is too much risk and a very real substantial loss to make it viable.

Kind Regards
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(Writing as Shannon Curtis)