

To Whom It May Concern:

**I write to you both as an Australian writer who lives off her writing as well as an avid reader and book buyer.**

The proposals of the Productivity Commission's recent report on *Intellectual Property Arrangements* with regard to territorial copyright, parallel importation and fair use express an irresponsible and economically irrational disdain for a vital and highly competitive Australian industry that employs more than 20,000 people and sustains over 1,000 businesses, mostly small business, and that generates \$2.2 billion a year of income, and all that without relying on government subsidy<sup>1</sup>. The proposals also appear criminally indifferent to the destructive effect that, if enacted into law, they would have on Australian literature and culture.

Yet I find it hard to believe that the government's premier advisory body on 'economic, social and environmental issues affecting the welfare of Australians' would knowingly propose measures that would be economically, socially and culturally calamitous. I write to you today, as I know many of my peers and associates have done, in good faith, believing that you have not actually set out, like the firemen of *Fahrenheit 451*, to set our literary house on fire, but that you have somehow failed to see or take seriously the evidence that was before you, that is before us all.

Let's start with **the term of copyright**.

First off - I agree that the current term of copyright (70 years after the death of the author) is illogical and often stifling of creative innovation. Personally, I would be happy to see it end with the death of the author – or perhaps within a five to ten year period of his or her death so that, for example, were an author to die soon after publishing a book, the publisher who invested in it would have a chance to recover some of their investment through sales.

But, as has been mooted, 15-25 years after publication?

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<sup>1</sup> The total direct subsidy to Australian writers (through grants and so on) is about \$2.4 million; compare this with \$18 billion dollars of subsidy to the fossil fuel industry.

As you must know, a Macquarie University study last year showed that on average, Australian writers earn around \$12,900 annually from their creative work. What helps those of us who live off our writing to do so is the fact that we continue to earn money from sales, PLR/ELR and copyright agency collections from our back list (previously published books) as well as our new work. Booksellers' and publishers' business models also rely on the fact that an author's back list is in copyright as well.

My own back list consists of six novels and a novella, a book on Beijing, a China memoir, a collection of essays and a Quarterly Essay, as well as a co-edited volume of literary translations from Chinese. Of these twelve books, seven were published in or earlier than 2001; my first novel (*Eat Me*) in particular continues to provide me with some measurable income year after year. Under a 15-year rule I would no longer be able to profit from the sale of any of those seven – though other people could. Would you tell an Australian inventor or manufacturer that they had fifteen years to profit from what they produced and then – sorry, we're putting it in the public domain? Would that create what I believe is called a 'stable investment environment'?

Writers, publishers and booksellers understand how much writers are sustained by their back lists. The release of a writer's new book almost always results in a spike in sales of his or her previous ones. Surely, there are readers among you? You would know that you can come to an author's work in any number of ways, and if you like one book, you're likely to search out the others. A good book might go out of print but it never goes out of date, and literary history is littered with examples of fine books being discovered by the reading public years after they were first published.

My critically acclaimed China memoir, *The Monkey and the Dragon*, was first published on 4 September 2001. One week later, no one wanted to know anything about China, and nearly my entire, packed schedule of radio, television and other interviews, so carefully put together by my publisher (Text), was cancelled as all media focussed almost exclusively on the news from New York and the broader issues of terrorism, Islam and so on. Understandable, of course – but it pretty much knocked out the three week – three month window that books have to establish themselves in the market. It continues to sell as an e-book, in small but steady

numbers, even after going out of print a few years ago. This can happen to anyone, for any number of reasons – books are not instantly disposable products; a good one will sell over the lifetime of the author, and it's possible most of the sales will occur years after first publication.

On the question of **territorial copyright and parallel importation**:

The argument against PIR comes straight from the multiply discredited copybook of neo-liberal free market fundamentalism – and relies on out-dated statistics and discredited evidence. I don't know how many times we need to make the argument that books are not widgets (socks, toasters, blenders, toothbrushes – see quotations from Kate Grenville, Tom Keneally, etc below). Or how many times we need to make the point that readers are not mindless consumers in perpetual search of a bargain. Even if they were, since the last time the commission recommended the repeal of PIRs, book prices in Australia have aligned with those overseas. Remove the GST from books and you will see how truly reasonably they are now priced. Besides, consumers are free to shop around on Amazon or elsewhere for the best price for any particular book. No one is stopping them from doing this now.

The system isn't broke. In Europe, the UK and even the home of contemporary free-market capitalism, the US, authors and publishers enjoy the protection of PIR. This is because it works to everyone's benefit: readers, writers, publishers and booksellers.

Only New Zealand has scrapped PIR and look what happened: books in New Zealand are now notably less available and more expensive than in Australia. Louise Adler, president of the Australian Publishers Association has written that: 'While since 2008, prices in that market have fallen by 14 per cent, the reality is the range of available books has reduced by 34.5 per cent and the volume of sales has declined by 17.9 per cent. In comparison, Australian book prices have come down by 25 per cent during the same period. New Zealand is a case study in how to kill off a highly competitive and commercial industry.' She predicts the effect on Australia's book industry: "There will be fewer Australian books by fewer Australian writers ... while massive

job losses will occur across the industry. There is zero evidence that book prices will fall or consumers will have more choice.”<sup>2</sup>

As an author, I can (and do) sell overseas rights. My first book, *Eat Me*, was published in over a dozen countries and translated into almost as many languages, and other of my books have been translated and published overseas as well. My overseas income has been very important in allowing me to survive as a writer – but only combined with PIR.

Incidentally, it is extremely hard – if not impossible – to interest an overseas publisher in publishing a book in the first instance if it is set in Australia, if it is an Australian story. It is our own publishers who are passionate about Australian literature, who nurture Australian writers and publish Australian stories successfully – which in the happiest instances then attract international attention. PIR rules make all this possible. The two books I have published overseas, the anthology of translations and the book on Beijing, had nothing to do with Australia.

Finally, there is the question of **fair use**.

Australian copyright law allows for copyright material to be shared and used in well-defined circumstances that work well for everyone. US-style fair use laws are poorly defined, a writer and publisher’s nightmare and a litigator’s dream. After Canada adopted US-style ‘fair use’ laws, education publishers left the market. It has been a total disaster there, a casebook study in what not to do. A PwC report estimated that US-style fair use would result in a \$1 billion loss to Australia’s GDP, a rise in litigation and a decline in the production of Australian books due to a ‘loss of financial incentives for creators and publishers to develop new Australian content.’

Who wins from all these changes? UK and US publishers, booksellers, printers and wholesalers. Who loses? Australian writers, publishers, booksellers, printers and, ultimately, readers.

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<sup>2</sup> <http://www.smh.com.au/business/writers-and-publishers-voice-opposition-to-new-copyright-proposals-20160429-goias6.html>

As for the suggestion that any loss in writers' income from these measures can be compensated by the taxpayer - well, ho ho ho. That's hilarious. We're in the middle of an election in which (at time of writing) neither major party has yet even to enunciate an arts policy. Already, this government has stripped funding not just from the Australia Council in general but from the Literature Board in particular, moving funds into a Books Council that got lost somewhere under a stack of papers on the desk of the Minister for the Arts and then disappeared entirely. Pull the other one.

I remember the 2008 inquiry. It feels like groundhog day. Kate Grenville was one of the many prominent writers who penned submissions to that one, and her words then are just as relevant today:

If we were producing socks or toasters the decline of a local industry would be of no importance except to the individuals involved. But if Australian writers can't afford to go on writing (and Australian publishers can't afford to publish us) then there will be many fewer books reflecting our unique Australian experience. This has the knock-on effect that there will also be fewer films reflecting our nation, as many Australian films are based on books (including two of my own, with options on two more). Schools will have a narrower base of books with which to explore Australian life. Overseas culture, language, history and values – especially from the US – will dominate our bookshelves as they now dominate our screens. It's obviously important for the vitality of our nation to be able to read about our own history, our people, our issues, in books written by Australians primarily for Australians. Without that conversation with ourselves we'd be an impoverished and stunted society.

In 2009, as the issue wore on, I wrote to my MP, Malcolm Turnbull in a similar vein:

The proposals, and their advocates, speak of books as if they were merely another product like blenders or shoes or mobile phones. Readers are not readers in this dreary vision, but consumers. I've had some of the most surreal moments of my career in the only kind of bookshop that expects to profit from such changes - the book barns run by big chains and staffed by

McJobbers who wouldn't know a novel if it jumped off the shelf and bit them. On a book tour in the US for my comic-erotic novel *Eat Me*, I was introduced by my publicist to a bookseller in one of these stores. 'I have an author here to sign books,' she said. The girl looked up warily. 'Author?' she said with a look of hostile incomprehension. Her po-faced supervisor emerged, checked the stock listings in the computer, and led me over to where the copies had been shelved - the cooking section.

Greg Barns, writing in *Crikey* with incomprehensible glee about the decline of some of the world's most venerable classical recording labels, advised that: 'Australian authors and their publishers should study the classical music recording world very closely because they too will inevitably find themselves done out of business for failing to put the consumer in front of their own pocket. Naxos might even go into the publishing game -- here's hoping.'

It has since been pointed out that Naxos mostly publishes the out-of-copyright music of dead composers.

Fine. Just shoot us.

Alternatively, commit yourself and the Coalition to stand on the side of Australian culture, to stand with this country's writers and publishers and the booksellers who truly care about the future of Australian literature.

For heaven's sake – even international literary luminaries like Jonathan Franzen and Jeanette Winterson have joined the outcry against these insane proposals. Tom Keneally recently wrote in *The Financial Times*:

And it cannot be irrelevant that books are not toothbrushes, as admirable for their purposes as toothbrushes are. Books are our magical doors, our personal treasures, cherished possessions loanable only to closest friends. In the name of the totalitarian Moloch of a free market, some are willing to cut out of the picture not only the present emerging writers of Australia, but writers of the future, and with them the wonders that could be created by them, the beloved artefacts of the spirit of our community.

The proposals, in short, are not productive – to a healthy economy or to a vibrant national culture. They are not beneficial for this country in any way, shape or form. Please – just stop.

Yours faithfully,

Linda Jaivin