



SUBMISSION ON THE NEGATIVE IMPACT OF THE PRODUCTIVITY COMMISSION REPORT ON INTELLECTUAL PROPERTY

SUBMITTED BY: President, Romance Writers of Australia, Inc.

Dear Sirs/Madam,

I am writing to you on behalf of the 1000 strong members of Romance Writers of Australia. Romance Writers of Australia is one of Australia's largest independent organisations of writers. We are a not for profit whose mandate is to educate our members on writing and the publishing industry, to provide network opportunities and support for Australian romance writers and to help them on their publication journey. We are run by writers for writers.

It is with great concern that our members read your report on Intellectual Property and the changes you are suggesting in regards to copyright longevity and parallel importation restrictions. We understand the impetus of your report, and do not disagree that books in Australia are very expensive, and would like to see a way forward that would mean books could be more affordable for the general consumer, however, we do not agree that what you have suggested is the best way forward. In fact, with intimate knowledge of the industry and the opinions and experience of our members backing me, I fear that repealing parallel importation restrictions would destroy the Australian publishing industry as it did to the New Zealand industry, and the outcome of that would mean less opportunities to publish Australian set books by Australian authors and would impact on the ability of Australian writers to make a decent living. Not only are you suggesting changes to parallel importation restrictions that would affect our writers' royalties, not to mention their livelihood, but you are suggesting changes to copyright longevity that will do the same.

As it is, many Australian authors make less than minimum wage (the latest figures suggest that most earn less than \$4000 a year) and they must take on a second job to make ends meet and support their writing. This all impacts on a writer's ability to create. Writers need time and headspace to write, which is eaten into by the needs of a second job, not to mention family and other commitments. If what you propose comes to pass, writers will no longer even have the time they now have to spend on writing as they will have to make up the shortfall in income by working more at the second job. And your suggestion that this shortfall will be made up through writing prizes and grants is not only ignorant, it is laughable. Grants for creative endeavours are at an all time low and the process to apply for them is laborious and needs specialist knowledge and help to be successful. Most writers will not have the time to apply, and even if they do and are successful, these grants and prizes won't make up for, not only the loss in remuneration, but will create a situation where writers will have less time to write and no impetus to build their career, given their hard work will be lost to them in multitudes of ways. Less will be written and the Australian consumer will not be able to buy books set in Australia,



written by Australians, that share our stories and add to the social psyche of our nation. This would be a tragedy and a travesty if allowed to come to pass.

Now that I have stated the overall objection to the changes suggested in the report, I would like to speak to certain statements that I can only assume comes from a lack of true understanding of the nature of the publication industry in Australia and the life of Australian writers, in particular, those who are our members who I have been asked to speak on behalf of.

COPYRIGHT LONGEVITY CHANGES

On pg 5 of the report, you state:

‘ Because IP rights give holders the ability to prevent others from using that IP, there is a risk that rights allow parties to unduly exercise market power. As noted by the Harper Review Panel in its recent report on the competition policy, this can manifest in owners of IP rights extracting excessive royalties from IP licences or placing anticompetitive restrictions on knowledge dissemination, with adverse knock-on effects for innovation.

You then go on, on page 17 to state:

‘A number of studies have attempted to estimate the duration of protection where the benefits to holders are matched by the costs to users. These studies find that a term of around 25 years enables rights holders to generate revenue comparable to what they would receive in perpetuity (in present value terms), without imposing onerous costs on consumers.’

These statements are used as the main reasons behind the changes to copyright longevity, however, they are based on a false understanding of how modern day writers in the digital age earn royalties and is most particularly erroneous in regards to writers of fiction.

Fiction writers are entertainers. There can be no worry of a writer placing anticompetitive restrictions on knowledge dissemination with adverse knock-on effects for innovation, because that is not part of our industry or the purpose of our work. We express social consciousness through our stories and allow our readers to reflect on their thoughts and beliefs on various issues, both personal and societal. We tell familiar stories, but our work is original and couldn't be created in exactly that way by anyone else; we tell and retell the same stories in different voices from different perspectives to seek further understanding of the world and situations we find ourselves in.

We do not earn a wage for this, but are paid in royalties, which are often slow to come in and require us to build a backlist of works before we ever start to make anything that would be considered a reasonable remuneration for our work. We are part of the social consciousness, but the idea that allowing us to hold the rights over our intellectual



property – the work of our imaginations and hard work only – could impact on innovation that would negatively affect consumers, is simply overstating things. We are the users of innovation, the encouragers of it, but if you take our rights to earn an income from our work, to have a say over what happens to it and who uses it and how, then you will hinder our ability to do this and will in actual fact, drive many to a position where they will be unwilling and incapable of writing at all.

Much of what you refer to in the report is to do with companies who employ people to create and innovate – the companies being the owners of the intellectual property, not the individuals. Companies that can use their many resources to withhold their intellectual property from the community in general and can create market share and pricing monopolies. This does not describe writers at all, or the issues that affect or are effected by writers. Writers are individuals. We are not employed and supported by a company. We do not want charity and handouts. We are not pariahs on society, feeding off the hard work of others, using government handouts to support us. We are, on the whole, self-supporting, using up only our time and energy and money to enable us to write. We employ others to help in the publishing process, and thereby support others by what we do. We are tax payers. We are hard working individuals who add to the Australian story.

The idea that after all this hard work that someone else would have the rights to decide what can be done with our work and earn money from it with no reference to us, the creator, is anathema to every writer I know. Nobody else should be given rights over our work, particularly in our lifetime and even after it. Who else should benefit from the toil of our effort – someone unknown to us who has had no part in the creation of the stories we take and share with the wider community when we publish, or those who were most affected by the sacrifices we make while doing this virtually thankless job: our families? If what you suggest, limiting copyright protection to 15-25 years comes to pass, those we love will benefit in no way from the product of our work. Property owners would not accept such a judgement if you said that the property portfolio they worked on increasing to benefit themselves and their loved ones in the future would be lost to them after 25 years and shared among whoever put their hand up to take it. Taking our copyright protection away is no different from this, no matter how you spin it.

You also have completely overlooked the inherent nature of the publishing industry where an author can produce work for 10 years or more before seeing any substantial benefits from their work. You state numerous times that a book only has earning potential for less than 5 years. I'm not sure where these figures come from or how they were collected, but they in no way resemble the reality of what the industry is actually like for our members. In the past, where a book had a print run, where the remainders system was rife and books, unless they were big sellers, rarely ever got a reprint, I would imagine the figures you quoted were basically correct. Now, however, with the advent of ebooks, authors who haven't earned money from early works for years (and those earning weren't very high on those early books because at that time, they were unknowns) can begin to earn royalties from those books once again. Unless these books are taken down from the digital publishing sights, they are available for sale



forever. Why should someone else have the ability to earn money from these older works over the rights of the person who created them in the first place? And why should someone else have the rights to publish something the creator does not want published anymore for very good business or personal reasons? And how is this helping the consumer to allow this to happen?

Changing the copyright longevity laws would impact on an author's ability build and benefit from their backlist. A backlist is essential in enabling an author to make a living out of writing, more so now than ever before because we are in a world where anyone with a computer and a thought that they have a story worth telling can publish a book. Despite what you state, most authors do not earn considerable income in the first 10-15 years of being published. Earning potential is cumulative depending on backlist and how quickly an author can publish more books. It used to be that it took 4-5 books for this growth to occur. Now, because of the growth in published works via ebooks, an author has to have 8-10 books out before they begin to make anything close to a replaceable income. It can take 15-20 years to accomplish this (depending on how quickly an author can write and redraft a novel). Under your proposal, the author would lose the ability to not only earn from their earlier works just when their career reaches something considered successful, but would lose the rights to say what could be done with those earlier works, including movie, TV rights and the royalties gained from these, not to mention further publications.

25 years might seem generous in terms of a normal working life, but being a part of the creative arts is not anything close to normal in relation to financial rewards. How can the commission say that 25 years enables rights holders to generate revenue comparable to what they'd receive in perpetuity? Many authors now considered a household name, earned a mean living in their 'working' lifetime. And if we, the writer and creator, cannot be the beneficiaries of our hard work, our families should benefit, not some unknown person.

In the report, you say that these arguments are flawed assumptions. They might not be empirical evidence, but the shared experiences of our many members is just as important and quantifiable and are most definitely not flawed. Are we only to have the capacity for fair earnings for such a limited time? If it takes 15 years to build to a place where we are earning fairly, are we to only enjoy this for 10 or less years if the 15-25 year limit was enacted? I am not expressing a flawed assumption here, but making these points based on certain knowledge from the anecdotal evidence collected in various surveys done here and overseas about author earning capacities and trends on author earnings, not to mention feedback from our own 1000 strong membership.

Should JK Rowling be forced to give up the rights to her first works in the next few years? Some may say she's earned enough from it already, but would they think the same if they were told that after 25 years of being remunerated for their job, they could no longer be paid for their work? That they had to do it for free? And that everyone but they could benefit from their hard work. There would be a great hue and cry if this were to occur. And how does someone being able to make a new Harry Potter film, or being



able to put a new cover on the book and sell it without paying the author, benefit the community? This smacks of the basest forms of socialism, rather than something a democratic, free society should champion. Why are creative people expected to work for free? Why are we expected to charitably give up our work to others to benefit from with no true remuneration? Are we suddenly living in a socialist country where everyone earns and works for the communal good and no-one is expected to reach for the stars? You have written this report to encourage innovation and creation and yet your suggestions would do the opposite to writers, discouraging them from pursuing their writing careers, stamping out creation and innovation, silencing our ability to tell Australian stories. This cannot be allowed.

PARALLEL IMPORTATION RESTRICTIONS

The copyright longevity changes alarm our authors on an individual personal and business level, but the parallel importation restriction changes worry us on both a personal business level and an industry one. Our publishing industry should be protected in the same way the UK and US industries protect themselves against cheaper overseas editions flooding the market and undercutting their local industries. We don't need to pad the income of overseas publishing industries at the expense of our own. Repealing parallel importation restrictions will do exactly this. The proof has already occurred in our own neighbourhood.

The publishing industry in New Zealand has shrunk in size with many major publishing companies – Scholastic and Random House for instance - closing their New Zealand business doors since they got rid of their parallel importation restrictions. This has the impact of not only a loss of local jobs, but it means that New Zealand writers are now less able to have their NZ based works published. Overseas publishers are less interested in works not set in their own countries (this is particularly the case for US publishers), which means that many NZ fiction writers have to write the stories of other nations, not their own. This could very easily occur in Australia because many of our publishing companies here are local arms of multinational publishing companies.

Allowing cheaper versions of locally published books to flood the market would mean that all the money for those books would go overseas, with none of the profits being earned by local publishers and lower royalties being paid to authors, especially in the situation where they have both an Australian and OS publisher. With no profits, local arms of multinationals would close as they have done in NZ. It has been suggested that these closures would increase the market share of local, smaller publishing firms, but this would not be the case because without the larger companies helping to keep the costs down in related industries, the drop in numbers of books being published locally would raise costs to offset the drop in business and there would be even less ability to increase OS expansion.

Much of this argument for changes to copyright longevity and repealing parallel import restrictions is based on the idea that consumers deserve cheaper books. However, the UK and US have parallel import restrictions and the same copyright length terms as



Australia, and yet their books are cheaper for consumers to buy than they are here. So, it would seem that this argument, that parallel importation restrictions and copyright longevity cost consumers, is flawed. Copyright longevity and parallel import restrictions actually protect local industries and jobs. Repealing PI restrictions might create cheaper books by flooding the market with cheaper, OS versions, but it would destroy the local industry and seriously hinder the remaining smaller presses. Local content by local writers would be published less and less. Stories set and told by OS writers would take up more space on our shelves and consciousness once again, and our local voice would diminish. This would be a tragedy on so many levels, it hardly bears thinking of. The simple fact is, OS publishers are not interested in publishing Australian stories by Australian authors. Australian readers might want cheaper books, but they also want books that they can relate to and refer to them on a personal, emotional level. Cheaper books may seem like something for the greater good, but where the profits are not shared in any way in Australia, but are returned wholly to the publishers and authors OS, this is essentially stealing jobs, creative endeavours and our national identity from Australians. And we in RWA cannot think that this would benefit any of us.

Do we think that books in Australia are reasonably priced in comparison to what is available overseas? No they're not. But abolishing or changing the parallel importation restrictions is not the answer. Taking copyright protection from the rights of those wholly responsible for a works' creation is also not the answer. Both these things will destroy our industry and will affect consumers in more than their hip pocket.

I have the encouragement and backing of our 1000 strong membership when I seriously submit to you that your recommendations are short sighted and stem from a lack of true understanding of the industry and how it supports itself and those at the heart of it. Finally, apart from our own self-interest, we are also consumers, and as consumers, we would never want to benefit from the destruction and unfair approbation of others' hard work or the destruction of local industry.

I hope you will fairly consider these points when redrafting your proposal.

Sincerely,

Leisl Leighton
President
Romance Writers of Australia Inc.