

Australian Literary Agents' Association

Supplementary Submission to the Productivity Commission Inquiry into Copyright Restrictions on the Parallel Importation of Books - addressing specific questions raised by the commissioners Karen Chester and Jonathan Coppel at Public Hearings into Intellectual Property Arrangements in Melbourne and Sydney, 23, 24, and 27 June 2016.

The Australian Literary Agents' Association (ALAA) believes there can be no long-term growth for our clients, Australian writers, or for publishing and associated industries in Australia, if the present provisions with respect to the parallel importation of books are changed. The current system allows agents to maximise authors' income and exposure through the separation of rights and the worldwide licensing of their copyrights.

The Australian Literary Agents' Association

Members of ALAA are bound by a Code of Practice.ⁱ And represent more than 1000 established and emerging Australian authors, of which a significant number are major award winners and/or best sellers.ⁱⁱ

Literary agents work to protect, manage and optimise an author's copyright. They license the work of authors they represent and ensure that authors get a fair payment for all rights. They negotiate the contracts between authors and those who licence the copyright in their work—book publishers, film, theatre, radio and television producers, and others, including publishers in international territories for translation and English language rights.

Agents work on a commission basis. They do not charge reading fees or retainers. The income of an agent is derived solely from the sales they make on behalf of their clients.

Current Climate

The robust and vibrant local market that exists in Australia is a springboard for the sale of an author's foreign rights. The first thing foreign agents or publishers will ask when they are sent a book to represent or buy for their market is, "Which Publisher licensed the rights in Australia?".

There has been a period of significant growth since the current parallel importation rules were introduced. This is reflected both in the number of agents in Australiaⁱⁱⁱ and in the number of

international sales made on behalf of our clients. Our clients, Australian writers, are much better placed than ever before to be published both locally and internationally.

Over the past decade Australian agents have been able to increase their authors' earnings significantly through the trading of rights. On a regular basis we are able to split rights and sell them into different territories. More than 50% of our authors are sold internationally.

It is often essential to have made a sale in the UK or USA before attracting the interest of these smaller translation markets. These sales might not be for large sums of money but together they provide *significant additional income* for authors who generally earn far less than the average Australian.^{iv}

When markets operate under the same rules, local and international successes feed into each other, and territorial copyright makes this possible. Australian agents are regularly in contact with foreign agents, publishers, and editors. The efforts of the local publisher in terms of the book's creation through editorial expertise, packaging, marketing, and publicity all contribute to attracting the interest of international publishers.

Without a flourishing local industry our authors would be without a launching pad; in turn, international success results in increased income and recognition for Australian authors and publishers. To eradicate the boundaries between these markets by removing the current copyright restrictions would undermine them both.

Copyright

Copyright is all authors have to sell.

Rights have been traded between the two major English language territories—USA and UK—for many years, and the English language market in Asia is growing rapidly. It is common practice for books to be published by different publishers in each territory. Each country determines which books will be of interest to its population and licenses copyrights accordingly. In the past fifteen to twenty years Australian writers have become an essential and successful part of this trade in rights, and this trade is continually increasing.

Although we live in a global economy, culture is not global. If we examine the best-selling books (fiction and non-fiction) from January-June 2016^v in Australia, the USA, and the UK, we have evidence of this: The best-selling book in each country and each division is a *different* title, in

fact the top five across the territories are all different, and in Australia two of the top five are by Australian authors (*The Dressmaker* (film-tie-in edition) by Rosalie Ham, and *The Treehouse Fun Book* by Andy Griffiths, Jill Griffiths, and Terry Denton).

Where there are similarities on the three best-seller lists, it's important to note that each of those titles is published in an edition *specific to that territory*. These rights sales all allow an additional advance payment and royalties to be paid to the originating author either via their publisher or their agent.

The splitting of rights, selling them separately into each market, allows that market to choose what its consumers will read. In addition it ensures that a book is given every chance to succeed on its own terms in each market. Each publisher positions the book according to its market's tastes and expectations. This could not be achieved if British or American publishers were simply shipping books to Australia. Our authors—and readers—would suffer a terrible disservice.

The imagined future

Any change to the current Copyright Act is likely to have a negative effect on authors' incomes and consequently that of agents.

There are a number of reasons this might occur. First, there is no doubt that Australian publishers will be deterred from publishing Australian authors under circumstances where they may have to compete with foreign editions. It is likely that to protect their investment in the production of a book they will demand world rights. Immediately the potential income of Australian authors will be threatened. Publishers take a greater percentage for executing a foreign deal than do agents, and they may even decide not to sell international rights to maximise their sales and income in Australia. More than one Australian publisher has already indicated that in the event that the restrictions are removed they will attempt to purchase world rights in books and then refuse to license English language rights outside Australia as a way of securing the local market. The use of such strategies to maintain control in a world where there is no territorial copyright would leave authors with significantly diminished ability to build an international career.

Agents could take a similar course of action, namely license ANZ rights locally and then wait for several years before selling other English language rights, again to ensure that the local market is free from imports. However the use of such strategies to manage territorial copyright, as noted above, would inhibit authors' immediate incomes. We have spent the past 5 years trying to coordinate more closely publication in Australia with publication in international territories. To change this now would be a return to the middle of the twentieth century.

Secondly, if the agent and author decided from the outset to sell rights to an overseas publisher it is likely that the author would earn export royalties on copies sold in their home territory, Australia.^{vi} Do not underestimate the dire impact that this would have on an author's overall earnings. In publishing, *home royalties* are the royalties an Australian publisher would pay on copies of the work published in Australia. These are calculated on the book's recommended retail price. *Export royalties* are the royalties a US publisher would pay on copies they sell into Australia and these are calculated on the publisher's net receipts. Net receipts are the amount the publisher receives *after* discounts to the buyer and shipping costs are deducted.

It is not only authors whose income would suffer from such arrangements. The sale of each foreign edition of an Australian work will direct income to foreign publishers, printers, designers and warehouses rather than flowing back into our own industry where it could be providing employment and growth.

Contractual Arrangements

There are common misconceptions, even within the publishing industry, that:

- (1) Contractual arrangements could protect Australian authors from the dumping of international remainder editions of their own titles;
- (2) Copyright owners, would be able to prevent parallel importation through their contracts with international publishers, and;
- (3) Australian authors would be able to negotiate home royalties for sales in Australia.

Remainders

Authors get no royalties from remainders no matter what price the consumer pays for them. For example a remainder of an American or English edition of an Australian book can end up in an Australian bookshop selling for any amount that booksellers choose—*with no payment of any kind to the author.*

99% of the time publishers will not agree to a contract in which there is no clause allowing them to remainder copies of a book they have published. Perhaps on *very rare occasions*, and for a very well known author, an agent might be able to achieve this (and excess stock will be pulped rather than remaindered), but for the majority of authors it is a standard clause in their contracts that remaindered copies can be sold at or below cost (with no royalty to the author).

This will not change if the copyright laws are changed. Publishers believe that as they have invested in the book by editing it and publishing it and marketing it and storing it in their warehouse then it is completely up to them what they do with their stock.

Wholesalers

In America publishers sell their books via wholesalers. Under US Federal Law trade regulations once a book is sold to a wholesaler the publisher can have no oversight of resales by that wholesaler. So, although the contract might only be for the territory of the United States the American publisher cannot agree *not to sell books* into Australia because it would be a violation of their Federal Law.

Wholesalers can sell books to whomever they please regardless of the contract between the Australian writer and the American publisher.

Royalties

Because it is the norm in publishing to licence a book to another territory when you can, it is difficult to say what is attainable in relation to licences and contract.

American publishers do not depend on other territories to make their budgets work. Whereas publishers in the UK remain dependent on the market in Australia to make their budgets work. It is regularly the case that they will not buy a book simply because ANZ rights have already been sold. The Australian industry has made terrific inroads into this attitude. To change the copyright law would be a huge boost for the UK market. We have been advised by colleagues in the UK that publishers are poised to do this.

Benefits and Costs

There is little concrete evidence that Australian consumers find books too expensive. Book sales in Australia are increasing, not the reverse. Discounting in the chains, discount department

stores, and independents has become the norm for new books so for the consumer books are cheaper than ever before. Our independent booksellers are the best in the world and the envy of publishers and agents in the USA and the UK, particularly the latter where they lament the market dominance of the supermarkets and the "Amazon effect". Readings Bookstore in Carlton, Victoria was named the inaugural winner of the London Book Fair's Bookstore of the Year award as part of the trade fair's international excellence awards and the 2016 Australian Book Industry Award for Independent Book Retailer of the Year.

Subsidies

ALAA is very concerned by the suggestion that subsidies or remedies could provide similar benefits for Australian authors/publishers as the parallel import restrictions. The very notion that a successful, energetic, innovative and competitive industry would be disbanded and funded by the taxpayer is completely counter-intuitive. Who would the recipient of any such remedy be: authors, publishers, printers, agents, publicists, or booksellers? How would a system of subsidies be implemented and managed in the long term?

Yours sincerely,

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**Australian Literary
Agents' Association**

ⁱ <https://austlitagentsassoc.com/about-2/code-of-practice/>

ⁱⁱ There are also other people who work as agents who are not members of ALAA either through choice or because they do not fit the criteria for membership; we think this number may be around twelve.

ⁱⁱⁱ See section called "The Imagined Future".

^{iv} Australian authors INDUSTRY BRIEF NO. 3: AUTHORS' INCOME 2015 (refer Table 1)
http://www.businessandconomics.mq.edu.au/our_departments/Economics/econ_research/reach_network/book_project/authors/3_Authors_Income.pdf

^v Refer to spreadsheet attachment 1: 'Bookscan Top 10 Data Analysis AU v UK v US Top 10 - YTD to Wk 24 2016'

^{vi} See "Contractual Arrangements" for further discussion.