

## **1.0 Preamble**

- 1.1 The Eleanor Dark Foundation (EDF) owns and operates "*Varuna , the Writers' House*" at Katoomba New South Wales. Varuna was the home of Eleanor Dark, one of Australia's finest writers of the 20<sup>th</sup> Century. It was at Varuna that Eleanor wrote eight of her ten novels. Her best known novel was the bestselling *The Timeless Land* (1941), the first part of a trilogy with *Storm of Time* (1948) and *No Barrier* (1953).
- 1.2 In 1998, Mick Dark, the son of Eleanor and Eric Dark, gifted Varuna to the Foundation with the objective of providing a residential environment for the professional development of Australian writers.
- 1.3 Today Varuna is Australia's only national provider of retreat fellowships and programs for manuscript development for Australian authors and illustrators. For over a decade, Varuna's programs have assisted large numbers of writers towards publication of works in many genres. Varuna offers pathways to publication or performance for writers living away from major metropolitan centres, particularly those in regional and remote areas and indigenous writers disadvantaged by their distances from support organisations, publishers and agents.
- 1.4 Varuna's work, and the continued development of a professional literary culture in Australia is dependant on a sustainable domestic publishing sector that has both the commitment and financial incentive to publish Australian authors.

## **2.0 The Foundation's Position**

- 2.1 The EDF believes the provisions amending the *Copyright Act* 1968 ("the Act") introduced by the Labor government in 1991 were an innovative and effective way of granting to the consumer greater access to an international publishing catalogue and, at the same time, encouraging a domestic publishing industry. The Act provides a balance between the statutory monopoly concomitant with the concept of copyright and the reader's interest in having a wide access to published works. Varuna's experience with writers and publishers in the period since the amendments indicates that this has had the additional benefit of developing the Australian printing and publishing industries. For these reasons, the EDF supports the maintenance of the status quo and makes the following brief observations in support of its position.
- 2.2 The proponents of relaxing the parallel import provisions in relation to the book industry appear to raise two main arguments:
  - (i) *Such a relaxation will lead to cheaper books for Australian readers*

This argument is based on the premise that publishers and retailers in some English speaking countries – in particular, the USA and the UK – are able to produce books at a lower per unit cost, such that when freight, distribution and taxes are added, an Australian retailer would be able to sell them for less than the same product published in Australia. The EDF would argue that this could only be achieved in the following circumstances: an overseas publisher or supplier has greater economies of scale, and/or is paying lower royalties and/or has a market oversupply that warrants disposal to recover costs. All of these circumstances, as a background to importation, would be detrimental to Australian authors, publishers and independent retailers.

Inherent in the "cheaper book" argument is the premise that all, or a substantial majority, of books made available to Australian consumers under parallel importation would be cheaper than the equivalent Australian product. The EDF does not agree that relaxing the import provisions would result in generally cheaper books, for the following reasons:

- Realistically, books only will be imported if it is believed there are a substantial numbers of potential buyers. We contend that this proposition at best, would relate only to some books.

For example, while the novels of a Dan Brown or a Bryce Courtney might be attractive to sell at a marginal or even meaningful discount, the work of many fine but less well-known writers would have little appeal for an importer. Under the current "30 day rule", it is open to an importer to bring in and sell at a discount less popular or well known catalogue that has not been published in Australia. The EDF is not aware of any convincing evidence that this has occurred, presumably because importers are seeking to exploit high volume popular titles, rather than expand the range of titles available in Australia.

- There is no guarantee that consumers, as opposed to retailers, would benefit from unrestricted imports. For example, in the case of a popular international title, there would be nothing to prevent an international retail chain acquiring product at a cheaper price off – shore, for example Indonesia, importing and selling the title near or at the prevailing market rate in Australia, and retaining the financial benefit.
- The only comparable English speaking country of which the EDF is aware which has unlimited parallel importation of books, is New Zealand. In the absence of any reliable research, no conclusions can be drawn on the effect of this development on the price of books in New Zealand. Anecdotally, books appear no cheaper in New Zealand than Australia.
- There is no necessary nexus between the availability of cheaper books and literacy, or access to books, in low/middle income families. We would suggest that the key factors in the levels of reading and literacy are family environment and education, rather than the cost of books. In this context, it is worth noting that the public lending library network in Australia is one of the best in the developed world and allows access to a wide range of books.

(ii) Parallel importation provisions act as a restriction on competition

Underlying this contention is the argument that competition would be increased in the market for retail sales of books in Australia if Australian retailers were allowed unfettered access to markets that can produce books more cheaply than can Australian publishers.

The EDF does not believe that this argument is valid or that it justifies the removal of the "30 day rule", for the following reasons:

- We contend that competition amongst retailers would not necessarily result in generally cheaper books for Australian purchasers. While some high volume, popular titles may be cheaper, other books may become more expensive if the Australian publishing industry has to compete against loss leaders marketed by local retailers.
- An increase in competition, if any, may benefit some major retailers but be detrimental amongst other relevant markets.
- A unilateral change by Australian lawmakers to the scheme of copyright protection granted amongst English speaking countries would significantly disadvantage Australian authors and publishers vis-à-vis their counterparts in those jurisdictions. Copyright is exclusively a creature of statute, subject to such exceptions and limitations as each relevant country believes appropriate to its society and convention obligations. The international scheme of copyright protection, therefore, is underpinned by territorial considerations. Any move by Australia which diminishes territorial protection will not change international practice but will reduce the rights enjoyed, in particular, by Australian authors.
- The removal of parallel importation restrictions would not lead to a change in the usual practice of licensing by territory. Copyright protection is a combination of protecting certain exclusive rights (reproduction, performance by making available, etc) in a given territory. Each territory has different market conditions that impact on the terms of the licence. Films, recordings, musical and literary works are licensed by territory, irrespective of the means of distribution. Notwithstanding the ability to purchase books online, rights are still licensed having regard to territory and the relevant contractual provisions that apply are determined by the territory in which the sale is deemed to have occurred. The question of internet distribution raises issues for authors and publishers in countries that are net importers of copyright, such as Australia but the argument is not relevant to, and should not be used to justify, diminishing the rights of Australian authors and publishers.

- The experience of legal parallel importation in the recording industry is not relevant to the book industry because the recording industry is dominated in Australia by major multinationals which generally acquire worldwide rights to an artist (generally not the case in the book industry). Therefore, in most cases, royalties paid on the sale, broadcast etc. of a parallel imported recording are made ultimately to the same entity or group. We contend that the book industry is a more diverse, multifaceted industry with small and large players competing in a dynamic domestic and international market.

### **3.0 Summary**

The EDF supports the maintaining of the current "30 day rule" because it has proved to be an appropriate balance between the interests of the consumer and the need to have a sustainable publishing industry in Australia. We contend that it is not in the interests of the Australian public as a whole to change the law in a way that puts at risk a viable and energetic industry, moreso where the scope and recipient of any potential benefit is unknown and uncertain. Put simply, we believe there would be many Australian authors whose works would never be published and the community would be the poorer for it.

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