



SIMON & SCHUSTER
A U S T R A L I A A CBS COMPANY

19 January 2008

The Commissioners
Parallel importation of books study
Productivity Commission
GPO Box 1428
Canberra City
ACT 2601

Simon & Schuster Australia Pty Ltd Submission

Thank you for the opportunity to participate in this process of public consultation with regard to the Commission's review of copyright restrictions on the parallel importation of books into Australia.

Simon & Schuster Australia is opposed to any changes to the existing legislation on the basis that the consequences to the Australian book industry in particular, and the Australian economy in general, will be severe. A lifting of the current restrictions will shift a substantial proportion of local economic activity off-shore to US and UK-based wholesalers operating out of closed markets, resulting in substantial job losses across a wide range of sectors and a decimation of viable Australian cultural activity.

Most of the bestselling titles in the Australian market are printed in Australia and this is also true for the majority of Simon & Schuster's lead titles where our sales exceed 4,000-5,000 units. This is in order to ensure that they are available to Australian booksellers and readers simultaneously with the first publication elsewhere in the world and because it is more cost-effective than the alternative – air-freighting an international edition from the other side of the world. This process of local manufacture of the books (either through acquisition of ANZ rights or as 'import replacement') often entails some redesign of the cover and internals of the book, including revisions to make books more suitable for

Australian consumers. If the publisher is confident that they can invest in the promotion of the book (through marketing, advertising, author tours and other publicity) because they will be able to act as the sole supplier, then the 'supply chain' broadens to include: authors, literary agents, freelance editors, designers, typesetters, publishers, paper manufacturers, printers, distributors, freight companies, postal services, journalists, media channels, retailers, developers and many more. Removing any economic activity from this industry supply chain that may threaten the viability of any of these sectors will have far-reaching economic consequences. Wholesalers do not provide any promotional support and if consumers are less aware of new books it will lead to a self-fulfilling decline in sales volumes and less access to a good range of books.

The current legislation already gives booksellers virtual *carte blanche*.

The majority of titles published in other English-speaking markets are already an 'open market' to local booksellers as they are not published or released in Australia within 30 days of the first publication elsewhere in the world and they are therefore free to order them from any source of their choosing. The provisions also already allow booksellers to bring in stock of other editions if they already have an order for that title from a customer.

A Simon & Schuster global case study

Australian & New Zealand rights to the following list of bestselling authors are currently held as follows:

Matthew Reilly – Pan Macmillan Australia

Kate Moreton – Allen & Unwin

Jodi Picoult – Allen & Unwin

Jeffery Deaver – Hachette Australia

Stephen King – Hachette Australia

Kathy Reichs – Random House Australia

The first two authors on the list are Australian authors who may never have achieved their worldwide success if they had not been published in Australia first by local publishers prepared to develop them over many years and invest in them. All these companies are Australian companies employing Australian citizens and residents and they all have substantial local publishing programs supporting Australian authors. If they experienced a drop in profitability due to a

change in the current legislation, they would be forced to cut back on staff and their local publishing activity and some of them may choose to do none at all.

The North American rights to all six of these major brand authors are held by Simon & Schuster Inc. in New York and yet they will never supply their editions directly to an Australian bookseller as they respect the terms of the contracts under which these rights were traded. This would be true even if restrictions were lifted and Australian copyrights were surrendered, because the terms of publishing agreements are always honoured. Simon & Schuster Inc. will not, however, be able to refuse to supply their editions of these authors' works to US-based wholesalers due to antitrust legislation in the US, and those wholesalers would therefore be the ones reaping the greatest benefit from any changes to the current legislation.

As you can see, our global corporation stands to gain by increased sales to US wholesalers (in a year in which all of these authors have a new book, their combined sales at the tills, including backlist and foreign rights income, would approach \$20 million) and yet we are asking you to maintain the *status quo*.

Would books really become cheaper?

No. The main reason that a small group of booksellers have worked so hard to get this matter back on the Australian government's agenda is because they wish to use the threat of sourcing books from other markets as leverage to negotiate more favourable terms from local publishers and distributors. There is nothing stopping them from lowering the price of books right now and many booksellers already do. The pressure to improve margins is as great in the book industry as in any other, evidenced by the fact that some booksellers are selling a broad range of books for more than the Recommended Retail Price, and if they were able to source titles at lower prices from other markets, they would not pass any savings on to consumers – this is simply a populist furphy to mask their real intent.

Are books really cheaper in other markets?

If you look only at the cover price, they sometimes are cheaper, depending on the fluctuation in the value of the Australian dollar and the price of fuel. Last year the Australian dollar peaked at unprecedented levels but at the same time airfreight costs exceeded \$4 per kilogram for most of the year and in an open market environment booksellers would be compelled to fly stock here in order to

remain competitive. The environmental impact notwithstanding, this would negate all the 'savings' and in due course the consumer may even have to pay more if local supply chains have been destroyed in the mean time.

Cars are also much cheaper in the USA than they are in Australia but there is no question that import tariffs on imported motor vehicles will be abolished. The same applies to many other products and industries and it is not clear why books are being singled out. If there is a strong feeling that books should be cheaper then they should be exempted from GST.

On the matter of relative pricing, I refer you to the attached exchange recently published in *The Australian* between Bob Carr, a Dymocks board member, and Chris Burgess, the General Manager of Leading Edge Books. I can't do better than Mr Burgess's eloquent debunking of all the pricing myths that have been rattled out so many times over the years by those who seek to destroy Australian copyright for limited, short-term financial gain.

What if booksellers calling for a lifting of restrictions were to deliver on their promise sell imported books for less and make less dollar margin?

They would go out of business, as many already have. Book retail is one of the toughest sectors to be in and the average annual profit margins across book retail are reported by the Australian Bureau of Standards to be below 2%. This leaves very little margin for error and any booksellers claiming that they intend to sell imported books at lower prices have clearly not done any financial modeling. I urge the Commission to do this modeling if it has not been presented by any parties proposing changes to the current legislation.

Most of the debate has focused on the price of books in the USA, but what about the price of books in India? If we were to have an open market in Australia then Indian wholesalers, for example, would be free and fully within their rights to supply books to local retailers for even less, perhaps at only a fraction of current prices.

The range of retailers who discount books very heavily are already providing consumers with much cheaper alternatives and their high-volume, low margin model does not require the proceeds from their discount book sales to deliver all their profit. They often use the discounted book product as loss-leaders to attract consumers to their stores in the knowledge that they will purchase other, higher-

margin product, so consumers who are motivated by low prices are well served by a sophisticated range of good booksellers across all market and demographic segments.

Why are territories like the USA, Canada and UK closed markets?

Their governments understand the importance of their parallel import restrictions to their cultural industries and general economy and they defend them fiercely.

Why are Indian publishers trying to reverse the open market in their country and to introduce territorial copyright restrictions protected by law?

Because they're finding it almost impossible to build a properly organized, sustainable publishing industry in India amidst the open market free-for-all that exists with multiple editions from various territories being imported and acting as a disincentive for Indian publishers to buy rights and know that they will be able to get a return on their investment.

What are the potential implications for the international publishing community of the lifting of restrictions in Australia?

Australian publishers would stop buying Australian & New Zealand (ANZ) rights. UK publishers would stop buying UK and Commonwealth rights inclusive of ANZ rights and they would pay substantially less for those UK rights as their ANZ partners frequently sell a significant proportion of a book's total sales. The ANZ rights would therefore no longer be considered worth paying for. Publishers and agents trying to sell these rights would have to accept less money for them and they'd have to increase the prices of their books in order to remain viable and imported editions could ironically become more expensive.

New Zealand

The open market precedent in New Zealand has been mentioned by a number of commentators as evidence of how little the changes there have effected their book industry. This is because New Zealand is so intimately linked to the Australian supply chain. The two largest book distribution operations in the region, United Book Distributors (UBD) and Alliance Book Distribution (ADS) now fulfill all orders to New Zealand from consolidated distribution centres in Australia, including a range of major publishing companies like Hachette, Murdoch, Pearson Education, Penguin, Simon & Schuster, New Holland, Text, Scribe and others. Even those companies that still maintain distribution centres in New

Zealand print their major titles in Australia. In short, if the Australian restrictions were lifted, the book industry in both countries would fall together.

The Internet as a perceived threat by traditional booksellers

Sales perceived to have been 'lost' to overseas internet retailers like Amazon are frequently mentioned as another reason why restrictions should be lifted. How will this help local retailers to compete when the functionality of many of their websites continue to be so feeble? There are some notable exceptions to the Australian online bookselling scene and these e-tailers are showing impressive growth, some doubling their sales every 6-12 months. If you have recently tried to purchase a book on any one of a number of websites run by prominent bricks-and-mortar retailers, then you would clearly see why people choose to buy from their online competition instead. Surely the best strategy to compete more effectively would be to develop well-presented sites with good range and functionality like 1-click checkouts and free delivery.

Why are so many booksellers opposed to changing the current legislation?

They know that it would be bad for the book industry, the general economy, Australian cultural life, literacy and a good range of books for consumers to choose from.

Please let me know if you would like to discuss any of these matters in more detail.

Best wishes

Franscois McHardy

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THE AUSTRALIAN

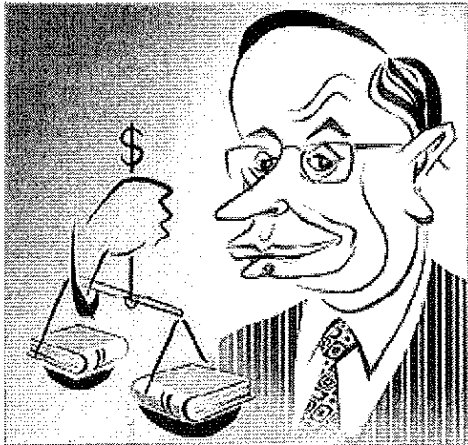
December 16, 2008 05:27pm AEDT

On the case for cheaper books

THE FORUM: Bob Carr | December 13, 2008

Article from: The Australian

WHY does Australia tell its bookshops they cannot import books to sell at the cheapest price?



Bob Carr by Igor Saktor

That is the only question before the Productivity Commission as it opens the sixth inquiry into the subject since 1988 and I hope, at last, the last.

This issue has nagged me for a long time. In 1993 I wrote to the prime minister because our copyright laws then forced Australians to buy British editions of American books. So when I wanted Blanche Wiesen Cook's biography of my heroine, Eleanor Roosevelt, I was told I had to wait until an English publisher got around to printing it and putting it in Australian shops, and at a higher price than Americans could.

It matters to me because I grew up in a house without books. Sure, our train-driver Dad and housewife Mum always gave the four Carr youngsters a slew of children's books at Christmas and birthdays. And Randwick Council invested in a mobile library which, from about the age of 14, I enjoyed looting on a weekly basis. Still, the only adult books in the house were a few Reader's Digest condensed books and some of my father's army annuals given to World WarII servicemen.

When as a university student I visited middle-class homes I looked at the bookcases with envious awe: volumes lined up, spine next to spine of captured knowledge, stories and wisdom. I instantly came to prefer a wall of books to paintings or antiques.

More brimming bookshelves in more Australian households will lift Australian literacy.

A 1991 study on the literacy of 14 and nine-year-olds in 32 countries found the highest scores in countries offering greater access to books in homes and schools. In 1996, the Australian Bureau of Statistics surveyed aspects of literacy and found the highest achievers had more than 25 books in the home. Only this month an Australian study showed boys read if they see their fathers reading.

Think of your childhood. You are challenged by an adult book. It stretches your vocabulary, your comprehension. You may give up on the first try but return later. Experimenting, you achieve, through trial and error, the discrimination of a reader. You soon recognise quickly this kind of book, that kind of author.

But the present law rations those magic encounters. A new edition of the young adult bestseller *Twilight* sells for \$24.99 in Australia but only \$16.90 in the US and \$16.52 in Britain. I have converted to

Australian dollars for this and following comparisons.

The winner of the 2008 Booker Prize, *The White Tiger*, sells for \$32.95 in Australia, \$21.53 in the US and \$30.70 in Britain.

Without the present restrictions, a parallel import edition of Harper Lee's classic *To Kill a Mockingbird* could be sold in Australian bookshops for \$13.95. But the protected Australian edition sells for \$21.95. A parallel import edition of Ian McEwan's *Atonement* could be sold for \$13.95, yet the present Australian edition sells for \$24.95. A parallel import edition of *Memoirs of a Geisha* could be sold for \$13.95, whereas the Australian edition sells for \$23.95.

These best-selling books are unnecessarily more expensive because bookshops cannot buy from overseas if an Australian publisher expresses an interest in publishing it here.

The publishers have engaged lobbyist Hawker Britton to persuade the federal Government to keep this restriction, pushing the argument that this higher price subsidises Australian culture. The argument has been repeated so often, without any supporting statistics, it should have fallen like a dead bough from a wilting tree by now. It reached its most extreme manifestation when a spokeswoman for one Australian publisher told *The Weekend Australian* on July 26 that it was a shame to submit the books of Tim Winton to the base scrutiny of price.

A shame, except if you're a working-class household where price -- even at the margin, especially at the margin -- means everything. And to choose Winton is to lose the argument. Australians will always read the writer of *Cloudstreet*. He requires no subsidy in the form of artificially higher prices. When lower prices result in more sales, as they assuredly will, he will receive more in royalties.

Two recent developments should firm up the Rudd Government's consideration of this reform.

First, despite book publishers fussing about their protected market, Australians are increasingly buying books online. Australian consumers can buy cheaply from overseas; for example, they can buy P.D. James's *Private Patient* for \$23.36 from Amazon or \$28.86 from www.comparebookprices.co.uk, but their bookshops cannot do other than sell the same book for \$32.95.

And the internet underpins a growing \$100 million a year trade that produces no flow of GST to the federal Government.

Second, there is the experience of New Zealand, which in 1998 opened its book market. In 2004 a report from Network Economics into how this affected NZ's creative industries concluded that there was no evidence that the removal of the restriction on parallel import had had an adverse effect on investment in the book industry. And a report last year showed New Zealanders enjoyed domestic book releases within one to three weeks of Britain, instead of three to six months later.

Export of books from NZ rose substantially. Of the 3600 domestic titles published in 2002, nearly 2100 were exported, especially educational books. The income of NZ publishers increased substantially. And the publishing and promotion of NZ titles has not been affected.

Last year, of the 115,000 books released to the Australian market, about 12,000 were Australian-published works. On the NZ experience, this number would not diminish when our market is opened.

All expect reform to happen, the Productivity Commission to say, "Open the market", and the cabinet to agree. The internet sale of books and the NZ experience blow the last bits of resistance across the landscape.

Lower prices mean more sales. More sales mean more books in Australian homes. Pick an argument with that.

Bob Carr, a former premier of NSW, is a board member of the Dymocks group. His book, My Reading Life, was published this year.

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The real price of books

Letters Blog | December 18, 2008 | 7 Comments

WHILE Bob Carr's argument ("Bob Carr on the case for cheaper books", The Forum, Review, 13-14/12) that cheap books equal more books in Australian homes is hard to dispute, the facts on which it is based are not. It would appear that Carr is comparing the Australian Recommended Price (ARP) with the discounted, ex-freight (and GST-free) price of purchasing a book from amazon.com. What is even more disturbing (and downright misleading) is that a number of the books he has chosen are not in fact covered by any copyright restrictions, raising the question as to why his own Dymocks franchisees are not importing and selling them at his suggested retail prices right now.

Under the current legislation, if a book is not made available for sale in Australia within 30 days of its US release, any bookseller is free to import it, irrespective of the UK publication date. Even if there was a local edition available at Carr's supposedly "higher prices", the "single order" rule within the current copyright legislation allows any edition of any title to be imported for a specific customer order. The remainder of Carr's analysis shows a similar lack of factual integrity and legislative awareness.

The first book chosen by Carr as a supposed example of the inflationary influence of territorial copyright is *Twilight* by Stephenie Meyer. This title has no import restrictions relating to copyright. P.D. James's *The Private Patient* is another example chosen by Carr to illustrate his case, again failing to note that having been published more than 30 days post the UK edition, copyright restrictions to imported copies do not apply. The same goes for Aravind Adiga's Man Booker Prize-winning *The White Tiger* - there's absolutely nothing stopping importation of parallel editions of this title based on the current legislation. Once again, if Dymocks is so passionate about cheaper books for Australian readers, why isn't it selling these supposedly cheaper editions right now?

The real reason is that Carr's claims on price are both misleading and spurious. Comparing the GST-inclusive ARP with a freight-free, heavily discounted, GST-free amazon.com price is a gross misrepresentation of the pricing of books in Australia.

Having conducted a realistic analysis considering an average 69c US exchange rate, the price that Australian booksellers are actually able to buy books from US wholesalers, including freight, and allowing booksellers a similar margin to local editions, the numbers come out very differently. *The Guernsey Literary and Potato Peel Pie Society* is published in the US, UK and locally in hardback (ARP \$29.95). The equivalent US edition could realistically be sold here for \$37.87 or the UK edition for \$38.89 - 26 per cent and 30 per cent more expensive respectively. *Kick*, a wonderfully inventive children's book also published in all three markets in the same format, has an ARP of \$19.95 - the corresponding price of US and UK editions would be 20 per cent and 56 per cent higher respectively.

If Bob Carr is as passionate about Australian literacy and the positive cultural benefit of "brimming bookshelves" as he purports, it would be helpful if he checked his facts a little more closely, compared like for like and looked at the real economic basis on which a bookseller in Australia can operate.

Chris Burgess

Gordon, NSW

(The author is general manager of Leading Edge Books, which represents more than 180 independent bookstores)

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