

Appendix A

THERE WILL BE THOSE who will ask why I gave evidence at the Prices Surveillance Authority Enquiry exposing British publishers' exploitation of prices in Australia, when I had for many years managed the largest British-owned publisher in Australia, which had profited from the situation.

The answer is that I had been increasingly vehement in my criticisms of pricing policy in the privacy of the board room, in memos and in conversation with my British colleagues at what I considered to be not only an indefensible situation, but ultimately one which would become self defeating. I warned that the goose that was laying such golden eggs would not survive.

My warnings went unheeded. My position as a director of the parent company in Britain, as well as managing director of the Australian company meant I could not speak out publicly. By 1984 I could no longer accept the situation, and I decided finally to retire.

While I understood that economic pressures and in some cases the threat of takeover had given accountants in British

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publishing more power in the struggle to make acceptable profits, there was undoubtedly an arrogant disinterest or dismissal of the eventual consequences of pushing up prices in Australia to such high levels under the quasi-monopoly created unintentionally by Australian copyright law.

There was and still is a case for higher prices in Australia for both British and American books than the prices within Britain and the United States. The cost of freight and Australian stockholding has to be paid for somewhere. This could be in the region of 10 per cent of the transfer price. It was only in the late 1970s that Australian prices were forced up year by year and by the mid 1980s had reached what can only be described as the astonishing level of 31 per cent higher than the UK as established by the Prices Surveillance Authority in 1989.

Given the situation, it is not surprising that no publisher, no representative of the British Publishers' Association came to Australia to defend their position and limited themselves to a written submission.

There is strong evidence to suggest that the changes made by the government to the Australian Copyright Act as a result of the Prices Surveillance Authority's Inquiry has brought about significant improvement.

SUBMISSION TO THE PRICES SURVEILLANCE AUTHORITY INQUIRY INTO BOOK PRICES

1. Background to this Submission

The level of public concern finding expression in the media, on the question of book prices and availability of books in Australia, has never been higher.

At the same time sweeping changes of ownership, of major publishers in the USA, the UK, and Australia, are introducing new possibilities, many of which are of a positive nature. At least some of these big changes are

motivated by the opportunities which are arising from the exciting technical developments in communications of ideas, of which books form only a part.

This inquiry is therefore, in my view, most timely.

As someone who has had a key role in book publishing in Australia from 1961 to 1985, and is now independent, I am able to set out the position as I see it, free from any outside pressure.

2. *Method*

I shall attempt to set out the key factors which operate in the process of book publishing insofar as they relate to the terms of this inquiry, and which need to be understood in attempting to arrive at any conclusion on the problems relating to price and availability of books in Australia.

3. *Contracts Between Book Publishers and Authors/Artists*

Such contracts are usually a lease of rights by the author/artist to the publisher, with the copyright reverting to the author/artist, should certain conditions, such as failure to keep the book in print, not be fulfilled.

For books published in the English-language, these rights are usually on a basis of territories. This division of copyright by geographical territories would apply only rarely in the case of languages other than English.

The division is in most cases as follows —

US Publisher USA and its dependencies (including Canada if the contract is initiated in the USA).

UK Publisher UK and those territories which largely would be the British Empire as it stood in 1939. The Publishers' Association in London issued a recommended list of such territories which form a part of UK publishers' contracts (including Canada if the contract is initiated in the UK).

Where territories are not listed, eg. most non-English-speaking countries, then in book trade jargon an *open market* exists. In the *open market*, US and UK editions of the same title are available.

In the 1970s the Justice Department of the US Government mounted a legal challenge on the division of territories between US and UK publishers, as a result of which the Publishers' Association in London modified certain restrictive agreements.

In practice little else was changed and the *status quo* was maintained with only token differences in practice.

Note: Tertiary textbooks are usually contracted on a basis of world rights, mostly by US publishers who maintain substantial marketing organisations and companies in all of their major world markets, of which Australia is an important part.

4. *Side Effects of Territorial Rights in English-Language Division Between the US and UK*

UK and USA editions of the same title are often set up in type separately, at great additional cost. Reasons given are for example; requirement for different typographical design, differences in spelling and house style,

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variations in grammatical usage, but in reality, it is often simply a desire to be different for its own sake, although this would be denied.

US publishers almost always place greater importance on speed of availability than UK publishers. This is probably a cultural difference, eg., most books by UK authors are published in the US very close to UK publication date, and sometimes earlier. The reverse situation is that there is often a delay of months after US publication for titles published in the UK by US writers. This delay then extends further to Australia.

It is only in exceptional circumstances that the time gap between UK, US and Australian publication dates is a matter of a few weeks.

Hardback prices vary greatly title by title, according to print runs, variable production costs and judgment by the publisher of what the market will bear.

US editions are generally printed on superior paper, better bound than UK editions.

UK editions generally use inferior paper to the US edition and have poorer quality binding.

Why? US publishers have longer print runs, and access to lower-cost better-quality paper. Yet over the last four or five years, US published editions are often cheaper than the UK edition of the same title, at current exchange rates.

Paperback prices in the US are also generally significantly lower than in the UK.

US publishers have longer print runs and US paperbacks are generally inferior in production standards to UK paperbacks.

UK publishers, with shorter runs, costlier and slightly better quality paper; also frequently use different type setting at considerable cost when very often this is of questionable value.

5. Tertiary Textbooks Ex USA

As world rights normally apply, the same edition is sold in all markets, with separate editions of the same title simultaneously for different parts of the world, an exception.

Competition does not exist between different editions of the same title in any market.

Competition does exist between publishers with different titles striving for acceptance and use in the same subject areas.

This does result in a degree of price competition.

An examination of comparative US and Aust \$ prices by title will show that the retail prices in Australia are about the same or less in Australia than in USA, usually less.

6. Copyright

Existing legal protection, through the Copyright Act, of *territorial rights* reduces competition in certain ways.

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Only UK editions of major bestsellers, such as say, John Le Carré novels of British origin, or Tom Wolfe novels of American origin, can be imported into Australia for resale.

However, within a genre there is competition, such as between rival editions of different dictionaries.

An examination of prices will show that competition, where it exists, has the effect of reducing prices.

Prices are generally especially low in classic out-of-copyright works such as Shakespeare, much lower than can be explained away by absence of royalty payments.

Competing UK and US editions of such titles are legally on sale in Australia.

Paperback publishers in the UK often produce early, low-price paperback editions of best sellers to compete in the *open market* only against US editions.

Again competition = faster availability and lower prices.

7. Safety valve in The Australian Copyright Act

Individuals may import direct from any country any edition of a title, regardless of territorial rights, provided the book is not for resale.

With wide use of credit cards, this means that a book can be ordered from an American or British bookseller with no foreign currency complications. If the order is placed by air letter, the book will arrive within a month; if ordered by fax, within two weeks.

The cost is published price in country of origin plus postage.

It is usual for major libraries to obtain at least some of their requirements by ordering from overseas suppliers, thus overcoming the problems of high Australian prices and publication delays.

8. Publishers' Closed Markets in Australia

These came into effect fully in the late 1960s and early 1970s.

Why was this marketing strategy adopted? The reasons were complex.

(a) Until the introduction of the Trade Practices Act, Australian booksellers and UK publishers had long had agreements, legal at the time, which fixed an Australian retail price according to the UK sterling invoice price, by means of a schedule. This ensured substantial profit margins for the booksellers, margins which were then increasingly regarded by publishers as unacceptably high. This was organised through the British Publishers' Association.

(b) The supply of small orders to retailers in Australia from publishers in the UK at high discounts, became increasingly unprofitable for publishers.

(c) The requirement for more sophisticated marketing methods, especially for paperbacks, demanded a control of release dates to coincide with advertisements publicity, author visits, TV or film release dates.

This was possible only by the publisher bringing into Australia the market

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need for the whole country and thus controlling release dates. The price schedules were thus circumvented. The book trade jargon for this system is *the closed market*

(d) Many booksellers resent the closed market as the only source of supply for them is the local publisher or agent in Australia.

(e) As the paperback market in Australia developed in the 1970s it became necessary for book publishers to follow the established practice of magazine publishers and supply on a basis of unsold copies being returned for credit. Book trade jargon for this is *on sale or return*.

This practice was only possible with a closed market.

(f) The Copyright Act protects closed markets.

(g) The closed market steadily became a basis for exploiting the retail price structure. (This is dealt with fully under para.13 under the subject heading *Transfer Pricing*).

This exploitation has led to much of the current concern at book prices which has resulted in the current inquiry.

9. Retail Price Comparisons

This is a complex subject over which there are conflicting attitudes within Australia.

(a) General public requires the lowest prices and the maximum choice of titles.

(b) UK and US parent companies of Australian subsidiaries want maximum retail prices in order to achieve the highest transfer price while maximising the profits of the subsidiaries.

(c) Australian subsidiaries of overseas publishers are under pressure to maximise profits and upward pressure on retail prices all too often offers the easy solution.

(d) Australian-owned publishers would not wish to see a decrease in the price of imported books, since this would put pressure on their pricing in a climate of high local production costs, a small domestic market and the need to remain competitive with imported books.

(e) Australian booksellers *mostly* want high prices, especially the large bookshop chains, in order to maximise turnover and sustain a price structure to provide the high profit margins to cover the high cost environment in which they operate.

Few booksellers would admit that higher gross sales would result from lower unit prices. All would be concerned at any threat to their profit margins, if lower prices reduced publishers' gross profits, from which retail profit margins ultimately derive.

10. Price Comparisons Between Different Titles within Australia

This is likely to be a pathway to confusion. Variation of transfer pricing policy between those overseas publishers with Australian subsidiaries and those supplying agents in Australia; variations of costs relating to different

print runs; variable royalty payments for different authors; fluctuating exchange rates; all contribute to a situation where meaningful comparisons become impossible.

Much time could be spent on an inquiry into this area without achieving any sound, clear conclusion.

11. *Price Comparison of the Same Titles in Different Countries*

Here it is possible to shed more light, since the comparison is between the same title in differing market conditions.

Although this is repetitive, for the sake of clarity, we are looking at usually two editions of non-Australian English-language books: one a US edition, the other a UK edition.

(a) In some cases, but not often (more on this later) the US and UK editions are the same printing, differing only in publisher's imprint on the title page, perhaps in binding and cover design and usually differing in price.

This applies most often to books where the US and UK total markets combined is so small that only one print run is an economic proposition.

(b) Generally (and with thousands of titles appearing each year out of which to produce exceptions, it is necessary to generalise) the UK and US editions of all except tertiary text books, are a different type setting, separate printing, and different typographical design, paper quality and binding.

See paragraph 4.

(c) Some US tertiary textbooks are published in special low-cost editions for export.

(d) British book prices *in the UK market* have tended to go up in comparison with US prices in the USA, in recent years, using current exchange rates between the \$US and sterling.

This is a new phenomenon and the flow-through effect to Australian prices of British titles compared to American prices of the same title has surely been a factor in the current public concern at book prices in Australia.

(e) Why, then do, prices vary for UK produced editions between various territories and countries?

The answer is, in part competition and in part the establishment of a price each market will bear.

An interesting question arises in this context. That is: *To what extent is it acceptable to the Australian community that we should pay a higher price in Australia for certain titles than, say, Canadians pay because the close proximity of Canada to the USA creates a more competitive price environment than in Australia, which is distant from the USA?*

(f) *Open Market*

Major titles of the kind that sell well in English in the EC countries and Switzerland often appear in US and UK paperback editions much earlier than in their respective domestic markets. It is not uncommon for a UK paperback to be released to the open market very much earlier than in the

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UK and elsewhere, to compete with the American paperback, just released in the USA, and on sale in the EC countries.

Thus customers of EC bookshops can often buy low-cost paperback editions of important books long before British book buyers see them appear in British bookshops. Australians must wait even longer.

If the arguments for the split in territorial rights between the US and territories and the UK and territories is acceptable business practice, these disparities inevitably follow.

It is in the area of territorial rights that the matters being considered by the inquiry are inevitably centred.

(g) Special Releases in Australia

Where a major film release or TV serial can be tied in with publication, certain titles will appear much more quickly in Australia, sometimes at surprisingly competitive prices where a lower price is seen as likely to achieve larger sales.

Why? Sound marketing to maximise sales, where the wide margin brought about by the generally high prices, and high margins, enable such price reductions to be made and still be profitable.

How? Through transfer pricing adjustments, and/or adjustments in gross profit margins in Australia.

12. Transfer Pricing

Book exports for US publishers, with their huge domestic market, form a tiny percentage of total sales of most publishers.

Published statistics are available.

Less attention is given to export sales by US publishers than by UK publishers.

UK publishers depend, mostly, for around 50 per cent of total sales on exports from the UK.

Published statistics are available.

UK publishers with subsidiary companies in their major overseas markets have become very sophisticated in transfer pricing policy, partly for reasons of tax and partly to maximise profits.

Conflicting professional advice has been offered in my experience, in this difficult and controversial area.

13. Transfer Pricing: UK Publishers' Policy and Practice

British publishers meet regularly as a fundamental part of the activities of the British Publishers' Association.

Considerable energy is employed in the following areas of interest to the Inquiry in relation to book prices and availability.

(a) Traditional territorial rights are maintained wherever possible. As might be expected in an area of business activity so long established, there is a deep sense of tradition, which is both a strength and a weakness. It can be expected that some of the entrenched attitudes will change under the

impact of the substantial changes in ownership of UK publishers in recent times, where control of many important and major British publishing companies have been taken over by American companies, and in one important case, a German company. The failure of the US Justice Department to significantly alter the practices of US and UK publishers' division of territorial rights referred to in paragraph 3 is an indication of the diplomatic and business skill of the British Publishers' Association.

(b) Meetings in the UK between British publishers executives, both formal and informal, take place, at which pricing policy and other matters relating to 'traditional' overseas markets are discussed.

The British Publishers' Association is deeply involved in considerations of commercial matters in all areas where British books are sold. It is the *raison d'être* of the organisation.

In certain areas, of which paperback publishing is one of major economic significance to powerful members of the British Publishers' Association, such meetings are attended by senior executives of British publishers, most of whom are regular visitors to Australia, and through the parent company have a direct or indirect say in the operation and policies of the UK-owned Aust subsidiary in its pricing and marketing policies.

Because of sharp awareness of the Australian Trade Practices Act in the British Publishers' Association, executives of Australian subsidiaries are rarely if ever part of their discussions in the UK to my knowledge. Neither is it necessary, to obtain the UK publishers' objectives.

Most if not all of these policies are possible only because the territorial rights protected by Copyright Law create a monopoly on a title-by-title basis for the publisher in a way that is open to exploitation.

It is too early to say, what effect, if any, the widening control of large sections of British publishing to American and German hands will have in this area. My own guess is that very little will change because of the commercial benefits of the present position.

14. *Transfer Pricing: Accounting Practice*

Under this heading I limit my comments to UK publisher practice based on personal experience.

(a) All small UK publishers rely on agents in overseas territories covered by their contracts with authors.

Clearly, the publisher must make a profit at the point of invoicing in the UK on all sales through agents.

Since the UK publisher generally knows the likely resulting retail price in an overseas market against any given UK invoice price, the UK publisher has a vested interest in high overseas retail prices. The higher these are, the higher the UK invoice price and the greater the UK publishers' profit. With around 50 per cent of sales as export, substantial time and effort are made. However, some UK publishers, especially the smaller publishers are not

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always competent in this area. This lack of competence does at times result in quite extraordinarily high prices in Australia or unacceptable time lag in availability. These problems also sometimes occur with larger publishers.

(b) The large UK publishers mostly have wholly owned subsidiary companies in Australia and other export markets for British books.

Such publishers are frequently agents for smaller UK publishers, in addition to serving their UK parent.

They play a dominant role in the Australian market in all areas except tertiary book publishing which, as stated earlier, is dominated by US publishers.

The balance is currently changing as a result of recent takeovers of major UK publishers by US-based publishers, with effects which it is too soon to evaluate.

Transfer pricing methods vary from publisher to publisher and individual publishers vary their methods with time and according to professional advice. However, through exchange of information and informal agreements reached in the UK by UK parent company executives, the end result in Australian retail prices follows a close pattern and is effectively controlled.

The principle of charging what the market will bear operates, but arguably not in the public interest, because of

(a) Entirely legal collusion in the UK on pricing policies which would be an offence under the Trade Practices Act if conducted in Australia. I would expect such collusion to be denied.

(b) The unintended effect of the Copyright Act in creating a monopoly on a title-by-title basis through territorial rights agreements.

Australian taxation law demands that transfer prices between an overseas parent and its Australian subsidiary should be at 'arm's length'.

Some UK publishers with access to UK tax incentives of various kinds, and in any event paying corporate tax at much lower levels than their subsidiaries in Australia, have therefore had a compelling incentive to avoid Australian tax by transfer pricing practice. Professional advice in this area has in my experience been conflicting.

It is a problem area of significance.

In practice, by maximising the transfer price and by means of setting profit objectives as part of a business plan from year to year, the parent company exercises control, all of which is unexceptional.

However, when the Australian subsidiary is a publisher, it is pressured by these circumstances into not only seeking performance through sound management, but also to obtain results by increasing prices. Because of the monopoly conditions created by the Copyright Act, price increases and profit levels are obtained that would be unachievable in conditions of normal healthy commercial competition.

Also, by obtaining a high transfer price, greater profits are made by the parent company at the lowest tax rates.

15. *Transfer Pricing: Some Questions*

Since this subject, together with the effect of the protection of territorial rights lay at the heart of the problem, some key questions arise. They are questions to which I offer no answers.

Question 1 What is the definition of 'arm's length' to be applied in these circumstances?

Question 2 Is it justifiable and acceptable from the Australian point of view for a UK publisher to have a lower transfer price to Canada, for example, than to Australia, because the Canadian market is more competitive than Australia for reasons of the geographic proximity of Canada to the USA?

Question 3 Is it justifiable or sound practice to compare a UK domestic invoice price to a UK wholesaler, with a transfer price to, say, an Australian subsidiary which is, in effect in that transaction, performing the same function?

Question 4 If Question 3 is justifiable, how far can comparisons be drawn where for example, a UK wholesaler may enjoy benefits such as terms c.i.f. where the overseas company terms may be f.o.b. or where the UK wholesaler may well enjoy full credit on unsold copies while the overseas subsidiary may not, or only in part?

Such differences have the effect of creating de facto higher transfer prices which translate into higher Australian retail prices.

16. *Current Changes in Ownership of US and UK Publishers*

Changes in ownership and changes in control of several large publishers, notably Collins, Hutchinson and the Cape/Bodley Head/Chatto and Windus group, mean that the ultimate policy making decisions of a major section of the UK book publishing industry is now being made in New York rather than London.

It seems that behind their moves are two major objectives. First, the acquisition of companies generating a steady and significant cash flow and profits to cover the high cost of borrowing. Second, the opportunities created by existing links between publishing copyrights and the explosion of TV channels from satellite transmissions, creating an insatiable appetite for original copyright material.

Current wasteful practices in book publishing, where so often unnecessary separate editions are produced at one time of the same title, can now be more easily overcome from within when the one publisher controls both US and UK rights.

The recent end of Angus and Robertson as an entity of at least quasi-independence is a rather dramatic example of the high cost of rationalisation following a takeover. Such moves as there will certainly result in greater profits; it seems unlikely they will result in lower prices.

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While it is not unreasonable to assume that these changes will bring about a more prompt appearance of commercially important titles, it is unlikely that cultural importance alone would be given any priority in Australia by these major publishers.

The bulk of smaller publishers will be unlikely to change their practices.

Nothing in these changes of ownership is likely to lead to lower prices, as they are profit-driven of course, and it is reasonable to expect that every advantage would be taken of the protections offered by copyright law to reducing competition and maximising profit.

17. What Changes Could be made in Copyright Law ?

Can a way be found of increasing competition without adversely affecting the rights of copyright holders?

Can this be done in a way that stimulates the new international publishing giants to meet the challenge of a truly competitive market?

I think the answer to both questions is affirmative.

In my view, a way needs to be found of continuing protection of the copyright holder while removing the monopolistic effect of current copyright legislation.

The nub of the problem lies in territorial rights within the English-language areas of the world.

If Australian copyright law removed protection of the territorial aspects of publishers' contracts, the effect would be to allow any editions into Australia, provided a contract under Copyright law in the country of origin existed between the author and the publisher of that edition.

The big new publishing conglomerates are now well based to respond positively to this, where they control both the US and UK traditional markets.

UK and US publishers in Australia would be faced with true price competition on a title-by-title basis and would in most cases be forced to reduce prices and improve speed of availability.

Transfer prices would come under healthy pressure.

Some problem would arise. For example, reduced stockholding could well result because of uncertainties created by rival editions of the same title becoming available from different sources. Fewer titles would be held in Australian stock because of higher risks.

Australian publishers would be under greater pressure because of a lower price market environment.

Promotions and marketing for new titles, film and TV tie-ins, etc., would become untidy and less effective because of rival editions of the same title, although this could be a factor in hastening the day for one English-language edition which the new conglomerates are well placed to organise.

The danger of removing territorial rights protection from Australian law is that it could have a flow-through effect to other areas of an adverse nature, especially in the protection of Australian-originated copyrights, and this would need careful examination by copyright law specialists.

Powerful resistance to any change of this nature is certain, for such changes would cut deeply into the large profits, in many millions currently being made in the Australian book market.

Publishers would fear a flow-through into other countries similarly placed.

British governments, through the British Council, historically have placed great importance on the dominance of British books in British Commonwealth countries as an adjunct of trade. Such a change, opening Australia to cheaper American-produced books would bring a sharp response from the UK Government.

However, the UK Government would be in a weak position now that such an important section of British book publishing is controlled from the USA and Germany.

They have learned to live with foreign ownership of two other major publishing enterprises at the polarised extremes of British culture, namely the London *Times* and the *Sun*.

Any final decision on this matter is of course almost entirely of a political nature, in which no doubt the balance of advantage will be taken into account.

What seems certain is that the public will no longer quietly accept the *status quo*. The broad answer surely has to be the introduction of competition.

Lack of healthy competition is bad for publishing, for bookselling and for the general public.

Appendix B

EXTRACT FROM THE PRICES SURVEILLANCE AUTHORITY INQUIRY INTO BOOK PRICES FINAL REPORT

19 DECEMBER 1989

CONCLUSIONS

The Authority's Interim Report has set the scene for considerable public debate on the future of Australia's book market. The Authority has welcomed the effect this has had in broadening public understanding of how that market works. However, none of the issues raised in the debate and discussed in the preceding pages has caused the Authority to change its analysis or the recommendations which it made in its Interim Report.

The important provisions of the *Copyright Act 1968* have been used by publishers to exercise international price discrimination, which has resulted in excessively high prices for books in Australia. Although retail price maintenance for books was rejected by the TPC in 1972, effective price competition by retailers has been thwarted by the operation of the closed market. To quote the TPC: 'The most obvious form of competition, is price competition particularly in industries where quality or product is fairly uniform. Keen retail price competition promotes efficiencies, penalises the inefficient and generally means lower prices for consumers. The ability of

retailers to compete on price depends in part on their being able to put pressure on suppliers for better buying terms and conditions. This in turn forces suppliers (both at the wholesale and manufacturing levels) to be more efficient. Any measure that lessens the ability of suppliers to compete, or reduces the need for suppliers to compete (such as fixing of a minimum retail price or limiting the number of suppliers) tends to remove at all levels the inducement to be efficient, to achieve economies and to be innovative. In such an environment experimentation normally declines, new products are slower in coming and traditional means of production and distribution tend to become established. The industry itself may thus suffer and consumers will be disadvantaged. For example, in the case *Interstate Parcel Express Co. Pty Limited v Time Life International (Nederlands) B.V. & Anor Murphy J.* stated: 'Neither Angus & Robertson Bookshops nor the respondent chose to expose the full facts. The evidence is scanty, but suggests that the Australian public will suffer if the respondents succeed, that the copyright is being used to manipulate the Australian market, and that the respondents will control the outlets, and the price to the public will be almost doubled, and the Australian public will have delayed access to publications freely available in the United States'.

Various participants in the debate have suggested that the Authority's economic approach has been too narrow and misses the value of culture and reading which cannot be expressed in financial terms (see, for example, Donald Horne writing in *the Australian*, 8 December). On the contrary, the Authority believes that the information, culture and learning contained in books are far too important to be priced out of the reach of many Australians and to be delayed by overseas publishers. Although not a formal signatory, Australia observes the Florence Agreement on the importation of educational, scientific and cultural materials by not imposing tariffs on imported books because of their significance for cultural and technical progress; yet we continue to allow publishers to impose import quotas and raise the domestic price of those same books.

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Appendix C

EXTRACT FROM THE PRICES SURVEILLANCE AUTHORITY PROGRESS MONITORING REPORT ON BOOK PRICES AND THE IMPACT OF THE 1991 AMENDMENTS TO THE COPYRIGHT ACT 1968

SEPTEMBER 1993

CONCLUSIONS

The price comparisons conducted for this progress report suggest that currently the average prices for all books in Australia are 12.01 per cent and 10.58 per cent higher than in the US and UK respectively. There is, however, considerable variability in these figures.

A comparison between Canadian and UK prices suggests that Canadian book prices are, on average, 4.1 per cent lower than in the UK. This is similar to the results reported in the 1989 inquiry. Caution is necessary in interpreting these results as the methodologies are different. However, the observation that relative Australian/UK prices appear to have fallen while there has been little change in relative Canadian/UK prices suggests that the Australian experience has been confined to it. This provides some support for the suggestion that the 1991 amendments have had an impact

on domestic prices. However, it also suggests that Australian prices are still on the high side.

For bestsellers, the results suggest that the average price differentials between Australia and the UK and US, have decreased in the four years between 1988/89 and 1992/93.

In 1992/93, the recommended retail prices of bestselling titles, including hardback and paperback fiction, trade books and children's books, were, on average, 12.78 per cent higher than in the US but 1.22 per cent lower than the net price in the UK. In comparison, best-selling fiction hardbacks were cheaper in Australia than either the US or UK. However, best-selling fiction paperbacks in Australia, relative to the US and UK, were 41.84 per cent and 6.74 per cent more expensive respectively.

Thus there continue to be segments of the domestic market, including bestselling paperbacks, where Australian consumers pay significantly more than consumers overseas. Advice received from the Attorney-General's Department indicates the 1991 amendments do not prevent the importation of an alternative cheaper edition even if a paperback edition from a different country is available in Australia. The apparent differential between the prices of Australian and US bestselling paperbacks suggests, however, that there continues to be an impediment to international arbitrage.

It appears that the availability of books has improved as a result of the 1991 amendments. In particular, new foreign releases are available in Australia sooner than was previously the case. This indicates that for many books (higher-volume titles especially) publishers are anxious to maintain territorial copyright. This is an expected outcome of the amendments. However, the new provisions are complex and there is *some evidence of administrative burden* on both publishers and booksellers, as well as confusion about their operation.

Copies of the following Reports are available from

The Prices Surveillance Authority
10 Queens Road
MELBOURNE VIC 3004

or 5 Elizabeth Street
SYDNEY NSW 2000

Inquiry into Book Prices Interim Report 31 August 1989
Inquiry into Book Prices Final Report 19 December 1989
Progress Monitoring Report on Book Prices and the Impact on the 1991 Amendments to the Copyright Act, 1968
September 1993

Editorial
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Appendix D

Editorial from *The Sydney Morning Herald*
12 September, 1989

PSA right on publishing

AT LAST, commonsense on the book copyright issue. The Prices Surveillance Authority yesterday recommended the almost complete deregulation of the Australian book market. "Almost complete" because, it would retain, for 10 years, the restrictions on imports of books by those Australian-resident authors who have local publishing contracts. That's if such an exception to the rule of free trade were legally possible. If not, the PSA says, the import barriers should be completely removed.

The PSA has rightly concluded that Australia's Copyright Act has allowed British publishers to grossly overcharge the Australian public. The Copyright Act prohibits

Australian booksellers from importing except through the organisation with the Australian copyright. For English-language books, it is usually the British publishers who have exclusive right to supply Australia. The Australian law prevents Australian booksellers going to US publishers who, because of their long print runs, can produce the same book more cheaply.

Naturally, British publishers have exploited their monopoly of the high-income Australian market. They release books here at their convenience and they charge what the market will bear. The PSA found that Australian prices for British books were about a third higher than in the UK. In Canada,

where British publishers face US competition, the prices charged by British publishers are frequently lower than the British prices.

It's amazing what a little competition will do - and almost as amazing that Australian governments have been content with the present closed market. Governments have stood by while Australians have been overcharged and underserved. Perhaps Governments have been seduced by arguments about the need to protect Australian literature. The publication of Australian literature, it is often argued, would not be profitable without the protection of the closed Australian market. There are two claims: that Australian works are cross-subsidised by other protected works; and that the closed market is necessary to achieve the economies of scale to make Australian literature profitable. Rightly the PSA rejects both. "It seems highly unlikely that publishers would invest in Australian literature if they did not expect it to be profitable," the PSA says. It is just as unlikely as that, in the absence of the present

closed market, the publication of Australian literature would be unprofitable. In fact, the PSA argues, Australian authors get very little out of the closed market which has inhibited the growth of wholesalers who would distribute local books at reasonable cost. In any case, if support is required for Australian authors and publishing, this should be supplied through direct subsidies where taxpayers can see what they are getting for their money. It should not be done through a system which allows British publishers to overcharge Australian consumers on the vague promise that they will be kind to Australian writers.

The Federal Government should adopt the PSA's recommendation and remove the general import restrictions from the Copyright Act. The law, however well meant, has given British publishers excessive market power which they have exploited to the great disadvantage of the Australian public. It should also grant the PSA the reference it wants to look at the effects of the Copyright Act on the marketing and price of records.

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Editorial from *The Sydney Morning Herald*
28 December, 1989

Bad compromise on books

MR BOWEN says the proposed changes to the copyright law strike a "reasonable balance" between the interests of the readers and the writers and publishers. In fact they are a dismal compromise. The interests of the Australian public have been compromised to suit mainly British publishers and some noisy, greedy Australian writers. Yes, the changes will increase the availability of new books on the Australian market. But they will preserve the right of the publishers to overcharge the Australian public.

Mr Bowen's compromise will allow booksellers to import books not released here within 30 days of their publication overseas. That will increase the speed at which new books are released on to the Australian market, and curb one abuse by the publishers of the monopoly power conferred by the present copyright law. However, it will still allow the publishers to engage in price discrimination against Australian readers.

The mainly British publishers who dominate the Australian market have used the protection of the copyright law to grossly overcharge the Australian public. The Prices Surveillance Authority found that Australian prices for British books were about one third

higher than the UK prices. Under Mr Bowen's proposed new law, the publishers merely have to make a book available within the 30-day limit - at any price they like - to block import competition. No doubt the publishers will bring out best sellers within the 30-day limit - at a premium on their already inflated prices.

And that is by no means the end of the story. Once the publishers have met the 30-day rule and acquired the protection of the Australian copyright law, their obligation to maintain supply is strictly limited. Only if a protected book is unavailable from the local copyright owner for 90 days may the bookseller import it. Why should the publisher be given three months to supply a book that the booksellers can import more quickly (and, you can bet, much more cheaply)?

Mr Bowen predicts that the changes will push book prices down in Australia. The prices of some books probably will fall. It will not be profitable to launch many of the less popular titles within 30 days of their overseas publication. They will be imported by booksellers at international prices. Technical books, which are grossly overpriced in Australia, should become cheaper.

In addition, bestsellers will be available in cheaper paperback more quickly than in the past. One of the ways publishers exploit the Australian public is to delay the release of cheaper paperback editions. The new law will allow booksellers to import the paperback editions that are not released by the publishers to the Australian market within 90 days of overseas publication. But again, why should the Australian public have to wait three months for paperbacks that are readily available overseas?

In Canberra, Mr Bowen's package is widely regarded as clever

politics. Perhaps, however, Australian readers are less bovine than Mr Bowen thinks. More dangerously, they may take the Government's proposed reform of the book market as a fair test of its capacity for micro-economic reform. If Mr Hawke can't face the wrath of the authors, how will he face the wrath of the Waterside Workers' Federation, or the stevedoring companies, or Telecom and its unions? If Mr Bowen's compromise on books makes the Government look tired and weak, that will be poetic justice.

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Editorial from *The Australian Financial Review*
21 September, 1989

A new chapter in publishing

If your thinking of whiling away the hours waiting for an RAAF special flight by picking up an appropriate tome, such as Stephen Hawking's *A Brief History of Time* - on the best seller list in the United States for 18 months - don't look for it at the airport book stands. While Americans have been devouring paperback editions of it for well over a year now (at around \$A6) be prepared to pay through the nose for the hardback in Australia at \$34.95.

And while *Hollywood Wives* by Jackie Collins is snapped up for \$A5.45 anywhere from Beverly

Hills to Brooklyn, Double Bay and Toorak matrons must pay more than double that.

One of the last vestiges of Australia's colonial past is set to come tumbling down, however, following the release last week of the interim report of the Prices Surveillance Authority's inquiry into book prices, which recommends the first open market for books in the English-speaking world.

The books which are available to Australian readers are - believe it or not - determined in the boardrooms of London and New York.

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The Company You Keep

The dividing up of the spoils of the world publishing market - including the lucrative Australian market, worth about \$1 billion a year - consists of a gentleman's agreement whereby American publishers dominate North America and the British rule in their old colonies. But don't look for a conspiracy among the publishing transnationals; they are only taking advantage of the ground carved out for them by well-meaning Australian legislation.

Australia's problem is a self-inflicted one. The "importation provisions" of the 1968 Copyright Act prohibit Australian booksellers from importing overseas books except through the holders of the Australian copyright or their agents. In effect, it allows the overseas publishers to operate a closed market, meaning that Australians are forced to pay a higher price and wait longer than they should to get the benefits of books.

The publishers have jumped on this opportunity, enforcing a system of "geographic price discrimination".

"A book is priced accordingly to what the market in each country will pay," the PSA found in its report, which shows that Australian book prices are on average 31 per cent higher than in Britain. For specialist and technical works, the disparity is even greater. As Arfur would say, "this report was a good little earner".

"Books - and the knowledge they contain - are too important an element in Australia's cultural and

economic life for there to be any justification for them being priced out of reach," the PSA said.

The PSA's chairman, Professor Allan Fels, cites numerous cases of gross distortions in prices on imported books, the long delays in availability (if they are made available at all) and the long lead time before works appear in more affordable paperback form.

The closed market has also led to an inefficient distribution system, where the multiplicity of distributors means that the booksellers have to deal with many suppliers. With the consequent sale and return policy, booksellers invariably over-order - in some cases returning up to 40 per cent of orders - wasting further resources. And attempts to subvert the closed market, which often means simply trying to meet customer requests, sees many booksellers importing books illegally.

Earlier this year, after five years of investigation, the Copyright Law Review Committee recommended relaxing the current importation provisions in a number of ways to improve the availability of books. However, the legalistic CLRC felt the evidence was not sufficient to sway it to propose repealing the import provisions.

In contrast, the recommendations by the economic-based Prices Surveillance Authority are sweeping and could lead to a shake up in the publishing industry. The PSA recommended the removal of the import controls, except in the case of pirated books and books by

resident Australians authors which are published domestically under an Australian publishing contract.

The reasons given by the PSA for favouring an open market were based on the failings of the closed market, which led to "excessive" prices and "poor" availability; the costs of the closed system were borne by consumers while foreign publishers (and foreign authors) benefited; the operation of the import provisions have been a disincentive to the development of Australian publishers and has "effectively acted as a tax on culture"; Australian authors, publishers and distributors would be better off under an open system where "more books would be sold".

Roused by the prospect of losing this cushy arrangement, the privileged publishers, distributors and authors have emerged squawking. Fatuous cries such as "this is the end of Australian publishing as we know it" and noisy rearguard fulminations will fall on deaf ears. Such furchies are typical of groups who know the gravy train is out of puff.

A frequent plaint is that in an open market publishers could no longer subsidise the publication of local authors. Cross-subsidisation is a myth and the only reason foreign publishers take on local titles is because of demand. Australian writing sells. The import provisions only guarantee higher prices and restrict competition.

Authors such as Peter Carey and Tom Keneally point out that the removal of the import provisions would see sales of their local editions threatened by overseas editions of their work returning as "remainders". Undercutting of local prices and reduced writers' royalties will affect only the elite writers and their publishers publishing overseas. Contract arrangements, however, can be modified to obviate the problems.

Of course imported works will be relatively more attractive to readers in terms of price and will place pressure on local production. But in the end, as the PSA said, the net effect may be an increased level of demand for Australian material. Indeed, while price is an important component of a reader's choice, it is surely not the only one. As long as an Australian writing remains meaningful, relevant, entertaining and edifying, it will be supported and will survive.

The Federal Government must seize the opportunity to repeal the outmoded import provisions from the Copyright Act and put an end to the excesses of foreign publishers. It should firmly pursue the reform of the publishing industry in line with its stated objective of general micro-economic adjustment, act in the interests of Australian consumers and remove the last traces of this colonial throwback.

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