



## **Response to Productivity Commission Issues paper: Bilateral and Regional Trade Agreements**

1 March 2010

### **Australian Publishers Association**

The Australian Publishers Association (APA) is the peak industry body for Australian book, journal and electronic publishers.

Established in 1948, the Association is an advocate for all Australian publishers: large or small; commercial or non-profit; academic or popular; locally or overseas owned. The Association has over 210 members and represents more than 91% of the industry, based on turnover.

### **Summary of APA's position**

Australian Publishers regard copyright laws and especially territorial copyright as important to building export markets of Australian published books and Australian rights.

The terms of reference of the Study, which are relevant to this submission, are:

- role of such agreements in lending support to the international trading system and the World Trade Organization and
- impact of trade agreements on Australia's trade and economic performance, in particular any impact on trade flows,

In particular, Australian Publishers supports the use of bilateral agreements for two reasons. They are tools for extending the international regime for the protection of intellectual property particularly in circumstances where the party to the bilateral agreement, other than Australia, has not signed all of the international agreements. Regardless of whether the other party has signed all of the international agreements, a bilateral agreement can provide through its Articles other measures such as enforcement of the protection of intellectual property rights.

In both circumstances, bilateral treaties can bring a level of certainty to Australian publishers. This is a necessary first step when deciding whether to export Australian published works and rights to another territory.

When considering Regional Treaties the same observations made in respect to Bilateral Treaties are applicable.

## **Background Material**

- **Two major sections in the Australian Book Industry.**

The Australian book publishing industry is divided into two major sections: trade titles (a diverse category that includes everything from literary works through children's books to how-to, gardening and cooking books which make up about 60% of Australian book sales); and educational and professional books (which represents the other 40% of the market).

The University of Melbourne Book Industry Study (UMBIS) is the most recent independent study of the Australian Book Industry. As ABS surveys of the industry no longer occur, the findings in UMBIS report are a major source of aggregated data for this submission.

- **Overseas Book Fairs**

The sector showcases the Australian writing and publishing industry internationally each year and secures firm contracts for the supply of educational texts and the sale of rights to Australian fiction and non-fiction to overseas markets. The London, Frankfurt and Bologna (Children's) Book Fairs are used to promote Australian authors and their books.

Over the past three years our success has secured a high level reputation for Australian authors and publishers and the quality of product has seen Australian authors, Kate Grenville "Secret River" and MJ Hyland "Carry Me Down", J M Coetzee "Summertime", Steve Toltz "A Fraction of the Whole" reach the short list for the Mann Booker prize for Literature in London building on Peter Carey, Thomas Keneally and DBC Pierre who have won the prize. Grenville and Hyland are published by The Text Publishing Company in Melbourne that started as a small Australian company some 15 years ago with two people and is now a seriously successful publisher and growing.

In 2012 Australia has been selected to be the market focus nation at the Bologna International Children's Book Fair based on the growing reputation for producing some of the finest children's books in the world and which contributes to it being the most successful rights trading fair for Australian publishers.

- **Drivers for Export Sales of Australian published books**

Australian publishers that export Australian published books and/or rights see two factors as determinants of whether exporting books or rights into a overseas market constitutes a far greater risk of loss of revenue than might be gained through the sale. The two factors are whether copyright and territorial copyright is recognised within the overseas market. The commercial consideration here is whether there is any chance of reprographic works or printed works being generated at a lower cost for sale in the overseas market or back into Australia or another territory occasioning loss of revenue for the Australian publisher.

- **Form of Export Sales**

Australian publishers export published books and rights into overseas markets. The published book market is about three-quarters of the export market by value.

- **Export Sales as a percentage of all sales of Australian published books sold in 2008.**

In 2008 the percentages of export sales of Australian books sold by Australian publishers were:

	Trade Publishing	Educational Publishing	Estimated value A\$M
Export sales - % sales Australian Books	17.7	28.7	200

These figures, which are based on an internal industry assessment, support the general thrust of the UMBIS.

- **Export Sales by Territory**

The APA's internal industry assessment identifies APA members' exporting of Australian published books to ten identified regions: USA, Canada, UK, Europe, New Zealand, Asia, Papua/New Guinea, South Africa and Other.

The APA's figures<sup>1</sup> suggest there was a 25% increase in the value of Australian published books exports in 2008 compared with 2007. Of this increase the larger share was attributed to the trade book sector.

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<sup>1</sup> Internal industry assessment is a reference to estimates founded in unpublished and anecdotal material.



The greatest increases on the 2008 figures occurred in Europe, which saw a large increase off a very low base. In the same period the figures for Asia saw about a 50% increase — again, off a low base.

### **Overseas rights sales**

UMBIS states:

Our final question about the effect of copyright legislation on business related to overseas rights sales. When asked “How do you expect revenue from overseas rights sales for Australian titles to change over the next three years under the present copyright legislation?” few publishers gave negative responses; there were strong concentrations expecting stable revenues or growth of more than 10%.<sup>2</sup>

### **Global expectations**

UMBIS survey has disclosed:

In both the trade and educational publishing sectors, Australian book publishers increasingly view their prospective markets, and opportunities for growth, in global rather than national or regional terms. One indication of this change has been the shift in the destinations of Australian book exports. Whereas New Zealand was by far the largest destination in the early 1990s, consistently accounting for 40% or more of book exports, by 2000 it had been overtaken by the USA, and its share has continued to decline in subsequent years. Similarly, exports to Oceania have become less important, while exports to Asia have grown.

The responses to our survey indicate that this shift is likely to continue, with Australian publishers increasingly attuned to emerging markets in Asia alongside the traditional English-language markets of the USA and UK. Even very small publishers reported selling books both locally and overseas, with a substantial majority of small firms offering books for sale directly over the Internet.<sup>3</sup>

### **Most important global markets**

The UMBIS states:

When we asked publishers which markets they believed would be most important for book publishing globally in the coming decade, their responses combined an awareness of the enormous size of English-language markets in the developed countries with a recognition of the emerging strength of the Asia-Pacific region.<sup>4</sup>

Figure 1<sup>5</sup>

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<sup>2</sup> Op. cit., p.65

<sup>3</sup> Op. cit., p.69

<sup>4</sup> Op. cit. p.70

<sup>5</sup> Material extracted bar charts found in the University of Melbourne Book Industry Study, Chapter 3, Figures 18,20 & 22, p.62, p.64 & p.66.

*Estimated Volume and Value changes of Australian book exports and value of right sales under the current copyright regime being retained from 2008 to 2011*

	Book Volume %	Book Value %	Value of Right %
Decline > 10%	2.5	2.5	5
Decline 5 – 10%	2.5	0.1	3
Decline < 5%	4.5	3.8	2
Remain steady	24	31	31
Grow by < 5%	14	10	6
Grow by 5 – 10%	26	15	15
Grow by > 10%	23	25	25

**Figure 2<sup>6</sup>**

*Australian Publishers assessment under the current copyright law regime of the countries with the best opportunities for growth in the coming decade, and the most likely rapid growth in the coming decade and the most important regions for publishing in the coming decade.*

	Best Opportunities for publishing growth in the coming decade (%) with ranking	Most rapid growth in publishing in the coming decade (%) with ranking	Most important regions for publishing in the coming decade (%) with ranking
USA	55.66 (1)	North America 11.1 (7)	65.6 (1)
ASEAN	41.7 (2)	30.6 (3)	23.7 (5)
United Kingdom	36.1 (3)		
India	36.1 (4)	69.4 (1)	52.6 (2)
China	33.3 (5)	61.1 (2)	39.5 (3)
East Asia	19.4 (6)		7.9 (8)
Canada	13.9 (7)	North America 11.1 (7)	
NZ	11.1 (8)	Australasia 5.6 (8)	
Middle East	8.3 (9)	13.9 (5)	
Eastern Europe	8.3 (10)	27.86 (4)	10.5 (7)
Western Europe	8.3 (11)	2.8 (9)	36.8 (4)
South America		11.1 (6)	5.3 (9)
Australasia		5.6 (8)	18.4 (6)
PNG/Fiji/Pacific	2.8 (12)		
Africa		2.8 (10)	2.6 (10)

<sup>6</sup> Material extracted from University of Melbourne Book Industry Study, Chapter 4, Figures 24, 25 & 27, p.70, p.71 & p.74.

Other	13.9	2.8
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**Figure 3**

*Details on whether a region is a signatory to Multi-treaties on intellectual property.*

	Best Opportunities for publishing growth in the coming decade ranked	Most rapid growth in publishing in the coming decade ranked	Most important regions for publishing in the coming decade ranked	Signatory to all multi treaties on intellectual property <sup>7</sup>
USA	1	7 (North America)	1	X
ASEAN	2	3	5	
United Kingdom	3			X
India	4	1	2	X
China	5	2	3	X
East Asia	6		8	
Canada	7	7 (North America)		X
NZ	8	8 (Australasia)		X
Middle East	9	5		
Eastern Europe	10	4	7	
Western Europe	11	9	4	X
South America		6	9	
Australasia		8	6	
PNG/Fiji/Pacific	12			
Africa		10	10	
Other	13.9	2.8		

**Figure 4**

*Industry challenges facing all firms - Frankfurt Book Fair 2007 (Material extracted from UMBIS)*

Competition from other media	9.72	competition
Territorial copyright	8.83	copyright
Environmental sustainability	8.13	
Excessive power of internet retailers	8.10	Competition/copyright
Over publishing	7.71	competition
Conglomeration/concentration of ownership	7.58	competition
Competition from user-generated content	6.67	Competition/copyright
Piracy	5.97	copyright

<sup>7</sup> Information extracted from the website [http://en.wikipedia.org/wiki/List\\_of\\_parties\\_to\\_international\\_copyright\\_agreements](http://en.wikipedia.org/wiki/List_of_parties_to_international_copyright_agreements), accessed 26 February 2010.

Literacy levels	5.96	
Other	5.00	
Other rights issues	4.68	copyright
Censorship	3.22	

## Figure 5

*Compilation of Data in Figure 3*

Competition	25.01	31%
Copyright	19.48	24%
Other	22.31	27%
Competition/copyright	14.77	18%
Total	81.57	100%

UMBIS asked the question of participants in their book industry of what government assistance would be wanted. Amongst the issues raised was copyright:

Tighter copyright law was another possibility that found strong favour, though not among medium-sized firms, which were far more inclined to suggest increased federal or state government support for the industry as a whole.

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Support for tighter copyright law was strong in all sectors, though strongest among global publishers. Interestingly, small publishers supported the idea on an industry-wide basis but were significantly less concerned when it came to their own businesses, while the reverse was true for medium-sized publishers and independents.

One possible explanation for this is that many medium-sized and independent firms have become (or seek to become) more export-oriented, and see themselves as especially vulnerable to any erosion of local copyright provisions during a period of potential growth based on overseas sales.<sup>8</sup>

## The Gap between rapid growth, opportunities and best opportunities

Data from the UMBIS of publishers' opinions shows that the expected growth regions for export opportunities by Australian publishers are not necessarily those where the

<sup>8</sup> University of Melbourne Book Industry Study, Australian Book Publishers 2007/08, Jenny Lee, Mark Davis, Leslyn Thompson, p. 50 and p. 52



most rapid growth is to occur and overall these do not equate to what Australian publishers see as the best opportunities.

The lack of nexus between these opinions can be seen from this shortened Figure.

**Figure 6**

	Most rapid growth in the coming decade	Most important regions in the coming decade	Best Opportunities in the coming decade	Signatory to all multi treaties on intellectual property <sup>9</sup>
USA	7 (North America)	1	1	X
United Kingdom			3	X
Western Europe	11	9	4	X
NZ	8		8	X
	(Australasia)			
ASEAN	3	5	2	
India	1	2	4	X
China	2	3	5	X
East Asia		8	6	
Canada	7 (North America)		7	X
Middle East	5		9	
Eastern Europe	4	7	10	
South America		6	9	
Australasia		8	6	
PNG/Fiji/Pacific	12			
Africa		10	10	
Other	13.9		2.8	

Recent purchases of Australian educational curriculum by overseas countries illustrate the potential for exports and at the same time the difficulties. Vietnam has purchased the NSW HSC curriculum and the United Arab Emirates has purchased part of the NSW curriculum and are now looking for textbooks to support it. Vietnam is a signatory to the Berne Convention and TRIPS Trade Related Aspects of Intellectual Property Rights. It is not a signatory to UCC Geneva (Universal Copyright Convention Geneva), UCC Paris (Universal Copyright Convention Paris) and WCT (WIPO Copyright Treaty)<sup>10</sup>. The United Arab Emirates have signed no multi-treaties on intellectual property.

The examples of Bilateral Trade Agreements are those of Thailand and Singapore. Thailand and Singapore have not signed all of the Multi-treaties on intellectual property. Both have signed the Berne Convention. The WIPO Treaty has not been signed by Thailand and this Treaty provides additional protections for copyright deemed necessary due to advances in information technology since the formation of previous copyright treaties. Article 1302 of the Australian-Thailand Trade Treaty does seek to cover intellectual property protection of advances in information technology.

<sup>9</sup> Information extracted from the website

[http://en.wikipedia.org/wiki/List\\_of\\_parties\\_to\\_international\\_copyright\\_agreements](http://en.wikipedia.org/wiki/List_of_parties_to_international_copyright_agreements). accessed 26 February 2010.

<sup>10</sup> Attached is a list of the signatories of these Treaties.



This is an example of the rectification benefit Bilateral Treaties can achieve. For Australian publishers it is important that potential trading partners for Australian rights and Australian published books accept internationally recognised rights.

Figure 6 raises the question as to how the gaps of the survey participant's expectations might be aligned where Government's have signed up to international treaties that deal with intellectual rights.

For example:

	Most rapid growth	Most important regions	Best Opportunities
India	1	2	4
China	2	3	5

Both of these countries are signatories to all of the international treaties on intellectual property rights. Yet it is of concern that 'copy-shops' operate within these jurisdictions breaching the terms of these treaties. It is of concern that printed copies Australian published books will be re-printed within countries and that this printed material is then exported into other countries where they are sold below the cost of the Australian published work. This is referred to as 'piracy'.

Bilateral treaties contain Articles that can add additional provisions that might enhance anti-piracy enforcement measures for breach of copyright and territorial copyright provisions.

Copyright provisions are an essential feature of the international structure for the protection of intellectual property rights. It is this structure that grounds the commercial viability of the mass dissemination of works. It is important that these rights are respected and enforced.

Where copyright piracy is anticipated to result in a commercial loss through the export of pirated goods to other countries, particularly where operating markets exist in that country, and that loss is expected to be commercially sensitive, then the decision not to export to that country is more than likely to occur. This is one explanation why the traditional markets still feature as the best opportunities when they might not be seen as the most rapid growth or the most important regions for export opportunities.

In the making this observation it is acknowledged that export trade is more than words agreed between governments in a bilateral treaty. Successful export trade is a result of relationship building, risk taking on publishing works for a new market and much more. However, part of the confidence necessary to start this work is recognition of a range of principles based on copyright and territorial copyright and multi-trade and bilateral and regional trade agreement do assist to create this confidence.

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