

Michael Heyward  
Publisher  
The Text Publishing Company  
Melbourne

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Re: Productivity Commission 29 April 2016 Draft Report on  
Intellectual Property Arrangements.

Thank you for the opportunity to make a submission in response to the draft report. I am the publisher at The Text Publishing Company, an independent book publishing company based in Melbourne which publishes many leading Australian writers and sells their rights internationally. Text is an innovative and entrepreneurial company which successfully competes against much larger companies here and abroad and which successfully exports the intellectual property that it licenses from the writers that it publishes. Our Australian authors include Graeme Simsion, Helen Garner, Magda Szubanski, JM Coetzee, Peter Temple, Kate Grenville, Shane Maloney, Tim Flannery, Peter Singer, Anna Funder and Raimond Gaita, among many others. Most of these authors are published internationally as well as in Australia.

I want to write briefly about the Productivity Commission's proposal to slash the term of copyright before I address the question of

territorial copyright in more depth. The Commission knows that it is flying a kite with its suggestion to reduce the term of copyright, that Australia cannot act unilaterally on this issue, but the proposal itself reveals the degree of irrational obsession that the Commission has with destroying the livelihoods of writers. The draft report overall reveals an intemperate and profoundly unbalanced hatred of the concept of ownership of intellectual property. The Commission actively supports a regime in which everyone except the writer can profit from the work the writer has created.

How dare our writers have the gall to expect that their work should be protected by the law as the work of writers in other countries is protected? The Productivity Commission, for instance, is dismayed that Australia, in line with most of its major trading partners, upholds copyright for seventy years after the death of the creator:

To provide a concrete example, a new work produced in 2016 by a 35 year old author who lives until 85 years will be subject to protection until 2136. The evidence (and indeed logic) suggests that the duration of copyright protection is far more than is needed. Few, if any, creators are motivated by the promise of financial returns long after death, particularly when the commercial life of most works is less than 5 years.

Imagine if the Productivity Commission applied this miserable logic to other forms of property. Recast the last sentence, replacing 'creators' with 'investors' and 'works' with 'enterprises', and you'll see how keen the Commission is to sell our literary innovators short. 'Few, if any, investors are motivated by the promise of financial returns long after death, particularly when the commercial life of most enterprises is less than 5 years.' (According to many estimates, 75 per cent of all small businesses fail in the first five years.)

It is patently ridiculous to use the fact that it is a difficult thing to launch a new business as an argument for removing the incentive to start that business. By the philistine logic of the Productivity Commission it is more efficient to strip away the incentive to write books at all. Think of all those countless hours writers waste on books which don't become bestsellers! It is testament to how central the book is to our society that there are so many talented Australians who either are or want to become writers, despite the risk of failure. It is scandalous that the Productivity Commission has no idea how important reading and writing are to the wellbeing of our society. It gets worse. Since seventy years after the death of the author is too long a term, and no writer has the humanity or even foresight to

want to provide for his or her family after death, we need a new solution:

While hard to pinpoint an optimal copyright term, a more reasonable estimate would be closer to 15 to 25 years after creation; considerably less than 70 years after death.

Imagine you are 30 years old, and you are finishing your first novel. You have spent a great many hours writing it, and you hope you might not only be able to make some money after it's published, but the book might make a contribution to the imaginative wealth of your own society. The personal risk you are taking is significant, but if it turns out that your novel is good, that a publisher wants to buy the rights, that publishers in other countries want to license it too, that people want to read it and talk about it and even after a while watch the movie based on it, then you have done well to back your own talent, to have the confidence to put something new into the world that makes a difference to how people think about life. You have behaved entrepreneurially; you have backed your own ability to innovate.

That was until the shadow of the Productivity Commission fell upon you. Fast forward to 31 December fifteen years later, when you're 45, when the children (odd, I know, but writers have families too) are in

school, and you are trying to pay down the mortgage and all the rest of it. On the stroke of midnight any income you might make from your book will evaporate just as everyone else is chanting the new year in. The Productivity Commission loves concepts of efficiency. Is there a more efficient way of inhibiting literary activity than this proposal?

The draft report also recommends abolishing by the end of 2017 the qualified territorial copyright arrangements or parallel import rules we have in Australia. These precisely limited arrangements which have operated in Australia since 1991 make copyright enforceable in Australian book publishing. They are the market mechanism that allows Australians to compete with other English-language writers and publishers throughout the world who all (with the exception of those suppliers who remain in New Zealand) publish under the umbrella of territorial copyright. Without this market mechanism the ability of Australian writers and publishers to compete for the benefit of Australian consumers would be eroded.

If the recommendations in the draft report were adopted the effect would be to harm the wellbeing and long-term interests of consumers who are book buyers, and to harm the ability of writers and publishers to be entrepreneurs and to innovate. It would be

harder for new players (emerging writers, publishers and booksellers) to enter the market. Far from encouraging competition the removal of territorial copyright will transfer revenue to foreign publishers, retailers and wholesalers because they will continue to operate in the other major English-language territories with the benefit of territorial copyright.

It is important to understand that territorial copyright makes copyright itself enforceable. Territorial copyright means that the contracts that creators enter into under the terms of copyright are in tune with the law. Territorial copyright can therefore be justified as a means to enforce the inherent right of copyright that attaches to creative effort. The Copyright Act cannot fulfil its objectives in the absence of territorial copyright because without it copyright holders cannot enforce the contracts they license.

One critical point must be understood in this entire debate. The current rules not only encourage competition, but make it possible. You cannot have proper competition without proper copyright laws, and Australian writers and publishers cannot compete in their own territory or internationally without the same rights that writers and publishers have in other English-language markets. The precisely limited rules on parallel importation that we have in Australia

encourage Australian writers and publishers to compete and therefore are in the long-term interests of Australian consumers.

The goal of the Productivity Commission should be to argue for a clear, predictable, fair and reliable regime which properly balances the interests of consumers, writers, publishers, booksellers and printers. Australia has the most successful copyright regime in the English-speaking world in relation to books because the 1991 amendments to our copyright law are an example of brilliant legislative reform which balanced the interests of all these parties.

The reform ensured that books would be made available to consumers in a timely fashion, thus protecting the competitive interests of booksellers, and it upheld the principles of territorial copyright for Australian writers and publishers, allowing them to compete. It permitted parallel importation for own use, allowing consumers to buy books from all over the world, and it permitted booksellers to parallel import upon customer request. It applied downward pressure on prices. Australia now has the greatest diversity of independent booksellers in the English-speaking world, who operate in the fairest and most liberal territorial copyright regime in any major English-language country.

The 1991 amendments were timely reforms given the advent of online retail. The right of the Australian consumer to buy books wherever there are online book retailers has been enshrined in law for more than two decades now. It is important to understand moreover that when consumers parallel import for their own use they uphold the ability of Australian writers to compete internationally because the Australian writer whose foreign edition is bought by the consumer is paid a full domestic royalty for that sale. The draft report contains a number of factual errors on this score. On page 19 it says: 'Parallel import restrictions on books are the analogue equivalent of geoblocking.' This is untrue. Consumers can legally import any book from anywhere. There is no restriction whatsoever on the right of the consumer to parallel import physical books.

The draft report goes on to say: 'There is no new evidence that changes the case for removing the remaining restrictions on parallel imports of books.' This is not true. There is in fact substantial new evidence about the growing success of Australian writing and publishing, and substantial new evidence about falling book prices. The Productivity Commission has no idea whether or not there is new evidence because it has done no research, even though book



publishing is one of our greatest cultural success stories. I urge the Productivity Commission to do its homework.

Furthermore, on page 129 the draft report says that 'Individuals may parallel import books for personal consumption, but bookstores are unable to parallel import foreign editions of books.' It is not true that bookstores are unable to parallel import. Bookstores can parallel import in commercial quantities those many thousands of titles that have not met the 30-day rule, and can parallel import on customer demand individual copies of foreign books that have met the 30-day rule.

Much of what the draft report goes on to say is invalidated by these errors of fact and these erroneous assumptions. If the market is completely open for the individual consumer, and partially open for bookstores it is not possible without qualification to assert, as the draft report does, that rights holders are uniformly engaging in price discrimination.

None of the assumptions about higher book prices which inform the draft report is tested. On page 129, the draft report also says: 'By raising book prices, PIRs adversely affect Australian consumers with little or no change in the incentives for producing works by authors (notwithstanding claims to the contrary).'

Where is the evidence that Australia's qualified regime of parallel importation rules in fact raises book prices? And yet there is substantial evidence, because of the growth of the Australian book industry, that this regime provides considerable incentives for authors to write and publishers to publish.

The fact is that the Productivity Commission has done no research on price since it delivered its 2009 report. Yet according to Neilson BookScan's numbers, the average selling price of printed books has declined by at least 25 per cent in Australia since 2008.

The draft report asserts, 'Most of the additional income from higher book prices goes to overseas authors and publishers whose works are released in Australia.' In the absence of evidence that book prices are in fact higher than they would be in the absence of PIRs, this is merely an assertion.

What is incontestable is that PIRs benefit Australian writers and publishers by providing a level playing field with the writers and publishers in the US and the UK with whom they compete.

The PC says on page 130: 'In effect, PIRs impose a private, implicit tax on Australian consumers that largely subsidises foreign copyright holders...The PIRs reduce incentives for the local book industry to operate efficiently, and distort the allocation of resources from their

highest value uses. Whether foreign markets retain PIRs is irrelevant in determining Australia's policy settings —as with trade barriers in other industries, the costs to Australia of retaining PIRs does not depend on whether other countries also have protected markets.'

These sentences require some discussion. PIRs largely support Australian copyright holders, and if they were removed the effect would be of a direct subsidy to foreign wholesalers and retailers who would become free riders in this market. Our precisely qualified PIRs create powerful incentives for our industry to operate efficiently. I am appalled that the PC believes that Australian PIRs 'distort the allocation of resources from their highest value uses.'

Let us be clear. What the Productivity Commission means by this is that in its view Australia will be better off with fewer writers and publishers. The Productivity Commission will not be happy until the book industry has been destroyed and those people who currently allocate their resources into the writing and publishing of books have been forced into other activities. This sentence reveals the Productivity Commission's true agenda: to reverse engineer every single gain we have made in our industry over the last few decades. It betrays the Productivity Commission's outrageous attack on Australian book culture. Everything is distorted in the Productivity

Commission's house of mirrors. Are our highly qualified rules about parallel importation, in which the consumer can freely parallel import at any time, really similar to trade barriers? Is it possible that our balanced laws, respecting the rights of both consumers and creators, in fact contribute to competitive prices in Australia? Bear in mind that the US and the UK have far stricter parallel import rules than Australia. No bookseller in those countries enjoys the importation rights enshrined in our legislation.

The Productivity Commission ought, in the interests of transparency, put its assumptions to the test. It ought to commission a proper and independent price analysis before it recommends dismantling the extraordinarily successful arrangements which came into place in 1991. There has been no ABS data on the industry for more than a decade, since 2003–04. The Productivity Commission did some price analysis for its 2009 report, but was not prepared to quantify the effect of parallel import restrictions on prices or to predict what would happen to prices if they were removed. On page 6 of its supplementary report issued in September 2009, the Productivity Commission said:

In summary, while it is not possible to provide a definitive estimate of the effects of PIRs on book prices, or an

unequivocal prediction of market-wide price movements in their absence, the evidence assembled during the study enabled the Commission to draw conclusions about those price impacts that, in its experience, are sufficiently robust for assessing the merits of policies such as PIRs.

The contorted logic of this statement remains painful to read. It is not clear to me how any report can draw robust conclusions in the absence of definitive estimates or unequivocal predictions. Putting to one side the fact that the Productivity Commission's data was vigorously contested at the time, its findings have now been overtaken by the convulsive impacts on book publishing of, among other things, the after-effects of the global financial crisis, the changes in the relative value of the Australian dollar, and the migration of consumers to forms of digital reading.

The Productivity Commission should give due weight to its own equivocation. What if Australian prices under the current regime are not higher than they would be if territorial copyright were dismantled? What is the price evidence in those markets—none of them major English-language publishing territories as Australia is—that do not observe territorial copyright: New Zealand or Hong Kong, for instance? Books are not cheaper there. Where is the up-to-date

analysis of the key comparative markets of the US, the UK and Canada, all of which apply far more rigorous parallel import restrictions than apply in Australia?

I urge the Productivity Commission to think about this issue without preconceptions. It assumes there is a cost to the current arrangements. It is silent on the question of whether there are benefits. The costs of parallel import restrictions can only be greater than the benefits if prices are significantly higher now than they would be without territorial copyright—a prediction the Productivity Commission was not prepared to quantify in 2009—and there is substantial and reliable evidence that in the absence of the current law prices would fall significantly. That is because the benefits of territorial copyright are in fact essential to the wellbeing of Australian consumers, to the maintenance of the principles of competition, and to the encouragement of innovation in the book industry.

If there are costs inherent in the application of territorial copyright, what are their effects? Have they led to a narrower reading culture than would be the case otherwise? Since Australia has very high rates of literacy and of book consumption we must take this argument seriously, while at the same time acknowledging that our high

consumption of books per capita has been achieved in the context of prevailing arrangements. In the light of our flourishing book culture it would be difficult to show, since the current regime was introduced in 1991, that it has discouraged readership and the benefits for consumers that book-reading literacy brings.

What then are the benefits of the current arrangements which have been in place since 1991? Many questions must be asked to arrive at an answer. Have consumers benefited? Are books cheaper in real terms? Are books more widely available? Are more books being published in Australia? Are more authors being published in Australia? Is the market share of Australian books greater now than in 1991? Has qualified territorial copyright helped our book printing industry? Has the value of Australian book exports increased? Has our publishing infrastructure grown? Has it diversified? Are there more people at work in the publishing industry now? Are the standards of editing and book production higher than they were? Do higher editorial standards have an economic value? Is there greater diversity of bookstore ownership? Has the market share of independent book retailers grown? Do we have higher standards of book retailing?

The answer to all of these questions is yes.

In its previous report that Productivity Commission recommended that territorial copyright be replaced by ‘appropriate subsidy arrangements’. It makes the same recommendation in its draft report, on page 132: ‘The concerns of authors that eliminating the remaining PIRs could chill local writing would be addressed by ensuring that direct subsidies aimed at encouraging Australian writing — literary prizes, support from the Australia Council, and funding from the Education and Public Lending Rights schemes — continue to target the cultural value of Australian books (as noted in the previous Commission review).’

It is not in the national interest for writers whose incomes have been reduced by dismantling Australia’s regime of territorial copyright to become dependent on government handouts. The Productivity Commission is proposing to erode Australian culture and Australian cultural values by reducing the book industry to mendicant status. And how would it be in the long-term interests of consumers for the taxpayer to subsidise the increased revenues that would flow to foreign copyright holders at the expense of Australian copyright holders if PIRs were removed? The Productivity Commission is proposing the partial replacement of copyright, a market-driven instrument, with the patronage of the taxpayer. This would be a



regressive move. In a liberal society the value of books depends, amongst other things, on the relative *absence* of government funding and government interference. Free speech in a democracy inheres in a free publishing industry no less than a free media. The most obvious outcome of a compulsory system of public patronage in the absence of enforceable copyrights would be the loss of independence for Australian writers and publishers.

The Productivity Commission has done no modelling about how much it would cost the taxpayer if all those affected were compensated for the abolition of territorial copyright. It can't do this modelling because by its own admission it can't quantify any upward pressure of prices caused by PIRs. ('Given that there is uncertainty about the magnitude of the price raising impact of the PIRs,' the Productivity Commission said in its 2009 report, 'setting an appropriate subsidy rate to replicate the assistance provided by PIRs would be problematic.')

Total public funding of writers in Australia, including Public Lending Right and Educational Lending Right which are market-driven schemes that compensate writers who are already published, is less than \$30 million annually. Publishing is at least a \$2.2 billion industry, bigger than film and recorded music combined. How big

would the compensation package be, on a recurrent basis, if free-riding foreign editions of Australian books were permitted to be sold here without restriction? The Productivity Commission cannot answer this question.

And this is only to consider those who are already part of the industry. How do you compensate a debut author whose novel cannot find a publisher because of the loss of confidence that would follow the abandonment of territorial copyright? How do you compensate an author whose book is not edited or published to the same standard because of the contraction in the industry that would follow the abandonment of territorial copyright? How do you compensate an author whose foreign rights are not sold because in the absence of territorial copyright the publisher that might have traded them no longer acts entrepreneurially? How do you compensate a trainee editor or designer who cannot get a job because the publishing industry has contracted?

The Productivity Commission acknowledged in its 2009 report that there would be 'significant adjustment costs for book producers' if our regime of PIRs is dismantled. In this draft report it does not consider the costs to consumers through potential job losses in the printing and publishing industries, the lessening of writers' incomes,

the loss of export revenue or the potentially higher production costs and therefore higher prices of Australian books that would ensue because fewer books would be published in Australia. The Productivity Commission's discussion paper, released on 4 April 2009, was clear about all of this. It predicted: 'a reduction in publishing activity'; 'authors would generally face reductions in their income'; 'lower royalty payments'; 'would likely result in some authors exiting the market, and might discourage some others from entering it'; 'new or undiscovered authors would find it more difficult to gain attention in an open market'; 'the difficulty for all new authors in obtaining local publication'. None of these effects is in the long-term interests of Australian consumers, nor do they encourage innovation or entrepreneurship. But for the Productivity Commission this all amounts to a healthy and more efficient allocation of resources.

The draft report notes the fact that Australia is a net importer of copyright. The fact is that every writer whose book is published in the US or the UK (or any other market) is a net exporter of copyright. Some publishers, of which Text is one, are net exporters of copyright. The dismantling of territorial copyright, to the extent that it disabled the export of Australian writing, would therefore damage creators

and entrepreneurial producers, and in turn damage Australian culture and the Australian economy.

It is perverse to argue that because Australia is a net importer of copyright that it should legislate to ensure that it remains a net importer of copyright, which is effectively what would happen apropos of books if we dismantled territorial copyright.

It is also wrong to argue that our qualified territorial copyright means that Australians make higher payments to foreign book creators. In 2009 the Productivity Commission argued that the additional income flowing overseas is around 1.5 times that retained by local copyright holders'. It did not explain how it could arrive at this figure while also declaring that it was 'not possible to provide a definitive estimate of the effects of PIRs on book prices'.

In fact PIRs particularly benefit Australian copyright holders. The overwhelming majority of Australian authors are on domestic royalties in Australia and the overwhelming majority of foreign authors whose books are distributed here are on far lower export royalties. (Export royalties are commonly around one third the value of a domestic royalty.) In general, the only foreign writers on domestic royalties are those who have licensed their books to Australian publishers just as Australian authors receive domestic

royalties in foreign countries when they license their books to publishers in those countries.

If the Productivity Commission believes its own logic on this issue, is it then in favour of the maintenance of PIRs in the US and the UK because the existence of restrictions in those countries causes a leakage of revenue overseas to the benefit of Australian copyright holders? Or does such revenue merely encourage Australian writers to persist with the inefficient allocation of their resources?

The fact is that our qualified territorial copyright benefits Australian creators above foreign creators because Australian creators are in general paid much higher royalties here, and our rules uphold the territorial clauses in their contracts. Abandoning territorial copyright will benefit foreign copyright holders at the expense of Australian copyright holders simply because the volume of foreign books sold here is likely to increase, and the volume of Australian books is likely to decrease, whether or not there is any measureable impact on prices. Australian writers will begin to earn export royalties on foreign editions of their books sold in their own country, so their incomes will fall, as the Productivity Commission knows.

Trading in rights—buying and selling—is critical to any modern publishing industry such as we have in Australia. Any visitor to the

Frankfurt Book Fair where publishers from the nations of world gather each October can see this in a moment. This activity can only happen within a regime of territorial copyright. The benefits of selling the territorial rights of Australian authors abroad should be obvious. The benefits of buying Australian territorial rights from foreign writers to publish here are also widespread. The books of these writers are printed in Australia, creating jobs. Their contracts are written and negotiated in Australia, creating jobs. Their books may be edited for Australian conditions, creating jobs. Their books may be designed in Australia, creating jobs. The Australian publishing industry supports 20,000 jobs.

Buying and selling rights creates economic opportunity. There is a great deal of evidence that the current arrangements have since 1991 allowed Australian publishers who license rights to bring books to market successfully in ways that would never have happened otherwise. Licensing foreign rights here has added to the vigour of the domestic economy.

The anticipated loss of confidence, in the event of territorial copyright being dismantled, will hit Australian authors and Australian publishers hardest, because they will be penalised for taking the global risks that success in this industry requires. The

ultimate loser will be the Australian consumer who will have a poorer choice of titles to select from. The great majority of those Australian authors whom most Australians want to read, i.e. bestselling Australian authors, do not publish solely for the Australian market. The abandonment of territorial copyright threatens the income and incentive to create of our best and brightest authors, at the same time as it reduces the publishing infrastructure available to debut authors.

This is why any proposal to dismantle territorial copyright is in fact a radical instrument of reverse cultural engineering. Any proposal to remove PIRs needs to acknowledge this. Previous enquiries have struggled to find the expertise to address this question. For instance, back in 1995 when the former Prices Surveillance Authority recommended removing the 1991 arrangements it commented: 'In general, books which are distinctively Australian are less likely to be affected by an open market. Indeed, it could be expected that an open market would give greater encouragement to publishers to publish such books to the benefit of local authors.' These sentences are puzzling because many of the distinctively Australian books that Australians read are also published outside Australia. The PSA's

argument in 1995 falls into place once we realise that 'distinctively Australian' means 'lacking in export potential'.

Not only can profoundly Australian books be exported, they routinely win international prizes. It would be a disaster if in the absence of territorial copyright the competitive response of Australian publishers was to publish books without export potential in order to shield themselves from the consequences of exporting rights.

The key question posed by this possible competitive response from Australian publishers is: who is going to publish in Australia bestselling Australian writers who also have international readerships? The answer is foreign companies who would be competitively advantaged in the quest for such authors by the absence of territorial copyright. It is not in the economic interest of Australia for Australian copyrights to go offshore. And who is going to publish debut authors, the bestsellers of tomorrow, in the absence of territorial copyright? Fewer publishers, taking fewer risks, I would suggest.

The removal of territorial copyright, as the Productivity Commission well knows, will trigger a contraction in every aspect of our industry: fewer authors published, fewer books printed, fewer Australian-



made books sold. The rights market will be eroded because one will no longer be able to define Australia as a publishing territory.

In 2001, when the government of the day introduced legislation to change our territorial copyright regime, the Explanatory Memorandum which accompanied the Copyright Amendment (Parallel Importation) Bill 2001 acknowledged that if the legislation was passed 'there may be some loss of confidence' and that 'some individual publishers' may 'fail'. If the purpose of removing the restrictions is somehow to make foreign companies earn their Australian market share then its purpose will always be doomed because its single greatest effect will be to give foreign publishers unprecedented access to this market at the expense of Australian publishers who must stare failure in the face. It will hand the territory to foreign free riders. I will not rehearse the obvious cultural and social arguments which could be mounted about how undesirable this would be, but in the absence of territorial copyright we will be more likely to have a monochromatic publishing industry, and a monochromatic book retailing industry.

The 2001 Explanatory Memorandum effectively conceded this, and implied that the policy goal of legislation was to marginalise independent book publishers. 'The largest publishers,' it declared,

'are large corporations well able to make adjustments to meet changed business conditions. The small publishers may be less well-placed but many publish in niche markets that are unlikely to become targets for parallel importers.'

This was a gross distortion for the many Australian publishers for whom the publication of Australian writers is a mainstream activity and who behave entrepreneurially to export the work of those writers. By what logic is publishing and exporting Australian writing a niche activity?

Under a regime of unilateral parallel importation there is no such thing as a successful exporter of rights, because an exporter of rights will be punished precisely to the degree that he or she is successful.

The greater the number of books that are manufactured outside Australia under licence, the greater the number of books which will potentially be imported into Australia to capture the market which the Australian publisher created in the first instance. It is hard to imagine a more effective means of making Australian publishers, who cannot export their editions into those significant territories where they have sold rights, uncompetitive.

The removal of parallel import provisions will transfer revenue from Australian companies and from Australian authors to foreign

companies and it will make it extremely difficult for internationally focussed Australian publishing companies to compete. It will impede their ability to continue to provide Australian consumers with greater choice than has ever existed before in the Australian books they can buy and read.

Australian publishers are operating in a market where the demand for Australian books is at historically high levels and is growing. A majority of books sold in Australia are originated here. Australian companies have a domestic base which is secure under the current copyright regime to allow them to cultivate export markets. Domestic and export success are inextricably linked.

At Text, for instance, the foreign revenue we attract by selling rights considerably exceeds the royalties we pay as a consequence of Australian sales. Most of this foreign revenue flows through to the Australian writers we publish. The value (measured in Australian dollars) of our books in print outside Australia is greater than the value of our original domestic editions. It shows what can be achieved if—as the current territorial copyright regime allows us to—we conceive of Australia as a sovereign territory upholding the same rights in copyright as our international competitors. And it shows the threat to competition if those books, produced precisely

because we have licensed rights outside Australia, are allowed to enter this market as free riders. The profitability of our company and many companies like ours is directly related to our ability to license foreign rights on exactly the same terms as the foreign publishing companies we compete with. As much as a third of our company's revenue is generated internationally. Around two-thirds of the royalties we pay our writers are generated internationally.

Removing territorial copyright will give access to the Australian market to foreign publishers to whom Australian publishers sell rights without any reciprocal access to their markets. Editions of our books published by foreign publishers will be sold here even though Australian publishers cannot export their editions of Australian books into overseas markets because overseas markets are closed once the rights sale has been made. This will discriminate against Australian publishers in favour of foreign publishers.

In selling rights, Australian publishers currently insist that the foreign publisher remove Australia (and New Zealand) from the list of territories where it can sell their edition of the book. Australian publishers have no trouble doing this now because they can secure territorial copyright by publishing first under the 1991 arrangements. In general Australian publishers have no trouble

publishing first where they control the sale of British and North American rights because the foreign publisher will co-operate under the current rights regime.

Without territorial copyright Australian publishers will be selling rights from a much weaker competitive position. The foreign publisher might well refuse to buy rights unless Australia is designated as a non-exclusive market. British publishers who still think of Australia as a traditional territory for them to exploit will be likely to insist on this, because the fact that they have territorial copyright will give them a competitive advantage over the Australian publisher.

This will put the Australian publisher in an untenable position. To refuse the sale will strip the writer and the publisher of rights income. To accept it will shrink the domestic market as the foreign publisher distributes its own free-riding editions here. Publishers will have no competitive response.

In cases where the Australian publisher has only Australian and New Zealand rights, contracts with the author in New York and London might in the absence of Australian territorial copyright designate Australia as a non-exclusive territory and foreign publishers will be free to import their books directly as soon as they publish.

The foreign publisher will use its ability to enter the Australian market to extend its print run and lower its unit cost. This will happen even though the Australian publisher has edited, designed and manufactured the book, and has invested in promoting the book with author tours, bookstore signings, poster campaigns and so on. The free-riding foreign publisher might pay the Australian author an export royalty for Australian sales, far lower than the full domestic royalty the Australian publisher would pay. The Australian writer will subsidise this sale, and the Australian publisher will have already subsidised the cultivation of the market for the foreign publisher.

These are all competitive advantages which will be denied the Australian publisher of an Australian book which cannot sell its book in the foreign territory, cannot extend its print run to lower the unit cost and pays a full domestic royalty.

What might happen where the Australian publisher has been able to find a co-operative foreign publisher to buy rights who is prepared to exclude Australia from its own non-exclusive territories? The foreign publisher will in the normal course of its business sell copies of its books to wholesalers with whom the Australian publisher has no contractual relationship and who will bring the competing edition into this territory. The publisher cannot refuse to sell to the

wholesaler and will have no control over where the wholesaler sells the book. It is natural that the wholesaler will want to sell foreign editions of Australian books into this territory because in many cases this territory will constitute the largest market for the book. Australia is the largest market in the world for Australian books.

The foreign edition will then be sold under export royalty clauses alongside books sold by the Australian company on which a full domestic royalty is paid. The author will be short-changed and the Australian publisher, which has invested heavily in the domestic market, will be competitively disadvantaged. The competitive response of some Australian publishers might be to lower domestic royalties but it would be unethical to offer less than full domestic royalties to Australian authors for copies of their books sold in Australia. The Australian publisher will almost certainly be forced to lower its advances to Australian writers. In any event, revenue will be translated from Australian publishers to foreign wholesalers and publishers.

Australian publishers will also be vulnerable to remaindered foreign editions—from which the author either derives a minuscule royalty or no royalty at all—being dumped here. This practice will have the greatest impact on the most successful Australian books.

None of this will encourage competition or innovation and none of it will be in the long-term interests of consumers. Consumers benefit from the quality, price and diversity of the books they buy and read. We want the best possible quality, we want lowest possible prices under a regime which protects the principles of competition for all players, and we want the great possible diversity of choice.

But will the removal of PIRs enable Australian consumers to have the widest possible choice of Australian books? Will the removal of PIRs encourage new Australian writers to enter the market? Will the removal of PIRs encourage new, innovative and entrepreneurial Australian publishers? Will the removal of PIRs encourage the emergence of new Australian booksellers? In other words, under what copyright regime can Australian writers, publishers and retailers best serve the long-term interests of Australian book buyers? No report can deal with the issues of copyright, intellectual property and competition without trying to answer all of these questions. There is no precedent for an English-language territory as significant as Australia abandoning territorial copyright. Australian consumers are entitled to make their decisions about what to read and write in a competitive environment which rewards, by means of territorial copyright, innovation, entrepreneurship and the creation



of high publishing standards. We are all of us, every time we buy a book, also a consumer of the copyright arrangements which encouraged the writer, publisher and retailer of that book to play their parts to create it, bring it to market and sell it.

Michael Heyward

Publisher, The Text Publishing Company