

Copyright

Copyright restrictions on the parallel importation of books

The Productivity Commission was requested to undertake a study on the current provisions of the Copyright Act 1968 that restrict the parallel importation of books published in Australia. The Productivity Commission has released a discussion draft that examines the effects of the Act's current restrictions on parallel imports of books and assesses whether these restrictions should be repealed or modified. This discussion draft was released on 20 March 2009 (Appendices C to E were released on 31 March 2009). It is available at <http://www.pc.gov.au/projects/study/books/draft>

The Productivity Commission has made the following draft recommendations:

DRAFT RECOMMENDATION 7.1

That Australia's Parallel Import Restrictions (PIRs) for books should be modified as follows.

- PIRs should apply for 12 months from the date of first publication of a book in Australia. Thereafter, parallel importation should be freely permitted.
- If a PIR-protected book becomes unavailable during this 12 month period, then parallel importation should be freely permitted until local supply is reestablished, or the expiry of the 12 month period allows for generalised parallel importation.
- Booksellers should be allowed to overtly offer an aggregation service for individual orders of imported books under the single use provisions.

All other aspects of the current PIR arrangements should continue unchanged, including the 30 day rule.

DRAFT RECOMMENDATION 7.2

The new arrangements should be reviewed five years after implementation. To assist that review, the Australian Bureau of Statistics should, as soon as possible, undertake a revised version of its 2003-04 survey on the books industry and market, having regard to the information gaps and interpretation problems identified in this study and relevant data held by other agencies. It should then update this revised survey prior to the commencement of the review.

They have not opted to completely remove the parallel importation restrictions, but to limit the restrictions to the first 12 months of publication in Australia (including the 30 day rule). After 12 months booksellers could parallel import all they want. The justification for imposing a 12-month limit is that the Productivity Commission saw this as the most profitable time in a book's life, and after this 12-month window, consumers should be given access to possible cheaper overseas versions.

The other part of recommendation 7.1 is to explicitly allow booksellers to offer an aggregation service of individual orders of books. For example, lecturers could, on behalf of students, order cheaper overseas texts for students (rather than each student needing to individually request a bookseller import the book).

The draft makes a number of quotes from the joint submission of ALIA, ADA (Australian Digital Alliance), and ALCC (Australian Libraries Copyright Committee). This submission is available at <http://www.digital.org.au/submission/documents/sub252.pdf> and on the ALIA website at <http://www.alia.org.au/advocacy/submissions/productivity.commission.html>.

We strongly support removal of the restrictions upon parallel importation of books. We believe greater competition will lead to an increase in the variety of books available and more competitively priced books, increasing their accessibility for Australians. (p.8)



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The restrictions upon parallel importation simply have the result of excluding Australians who are less 'internet savvy' from obtaining more competitively priced books, and putting Australian brick-and-mortar book sellers in a less competitive position than online UK and US bookstores. In our globalised, connected world it seems illogical to continue to maintain these importation restrictions. (p.7)

We believe that the 'high objective' of copyright law is to optimise innovation and creation, and at the same time, to ensure that works are available to use and access for the public interest. Because of this, we see that copyright policy is about creating a balance between adequate access to materials on the one hand, and adequate incentives to create those materials on the other. (p.4)

The draft report is the seventh inquiry into the issue of booksellers being prohibited from importing a book if a local publisher can supply it. In 1991, the Act was amended to free the market by placing restrictions on these rights. The so-called "30/90 day rule" gave booksellers the right to import copies of books where the local copyright-holders had failed to supply them in a timely manner.

The push to open the market has come from the big bookselling chains that claim the current regime drives up the cost of books to Australian readers, restricts availability, and prevents them from competing effectively with online bookselling giant Amazon. They claim:

- The 30/90 day rule enshrines inflated prices and prevents competition with online booksellers;
- The removal of parallel import restrictions in the music industry resulted in cheaper CDs for Australian consumers; and
- An open books market in New Zealand has had little or no detrimental effect on local authors and publishers.

The Commission intends to finalise its report by 13 May 2009, after further public consultation and input.

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