

Dear Bookseller & Publisher,

I read the WBN special report today on a potential review of Australia territorial copyright by the Productivity Commission with a sinking heart. I was one of the authors who, as a committee member of the Australian Society of Authors, participated in the Senate Committee review on possible parallel importation in 2001. Back then I was surprised by some of the people in the book industry who thought an “open” market was a good idea. I am surprised again to read that it is apparently current ABA policy to seek an open market.

My comments that follow are based on my experience as a (long ago) former bookseller with the Daltons in Canberra, a former editor with HarperCollins Australia, a literary agent with Curtis Brown Australia, and as an author who is published here in Australia, in the USA, the UK and many other countries.

I am surprised there is support for an “open” market in Australia because it would be no such thing. It would actually be a “surrendered” market. The entire publishing world still works on the basis of territorial copyright and it will do so for a long time to come, despite electronic editions and the Internet, of which I will have more to say down the page. This is particularly the case with English language publishing. The USA and the UK have actually been strengthening their respective book copyright regimes, not surrendering them. What is “open” about Australian-published books not being able to be sold in the USA or the UK, but American, British or any other English-language edition from anywhere being able to be freely sold here?

In a Surrendered Market retailers could almost certainly find cheaper editions of most of their top titles, as they could bring in any legal edition. This is presumably the immediate attraction to some booksellers – but I suggest they may not have fully thought the implications of this through, not just for Australian authors and publishers, but also for themselves.

To address the basic issues for authors and publishers, if Australia becomes an Surrendered Market, then there is no longer an exclusive Australian copyright territory. It essentially ceases to exist. So Australian authors have nothing to sell to Australian publishers, because any local edition can be white-anted by a US overstock, a UK

remainder, or simply a perfectly legal Indian English-language edition that just happens to sell 90% of its print run in Australia. Some utopian commentators have suggested that this can be controlled by contract, that Australian authors can effectively control entire chains of supply, third-party fulfilment houses and so on. This does not reflect the reality of the publishing world.

Given that their most successful and profitable authors will most likely also be their most internationally successful authors, Australian publishers will find that they have to compete with US and UK publishers – who themselves will continue to have the economic foundation of a secure copyright territory. In fact, the Surrendered Market would present these overseas publishers with a great opportunity to expand into Australia, particularly the British publishers who have traditionally attempted (and often succeeded) to include Australian rights in their territorial copyright bloc anyway.

Without the security they need to invest in publishing their top-selling authors, what will most of the bigger Australian publishers be forced to do? Revert to being distributors of US and UK product again, as they mostly were up to the 1970s, and not bother trying to develop and build up an Australian author. After all, why publish someone locally when their book is also being published in the USA and the UK and those editions will come flooding in?

It's pretty clear what would happen to Australian publishers and authors if we do go to a Surrendered Market. But may I suggest some booksellers might not have really examined what could happen to their own part of the book trade? There is a lot of talk about the changing marketplace, the impact of Amazon and electronic editions and so on. These are real issues, but surrendering our territorial copyright would not help booksellers meet these challenges. It would actually make them worse and introduce new challenges.

Yes, in a Surrendered Market, many Australian booksellers could almost certainly access cheaper editions – and so could their competitors, including lots of new ones both at home and abroad.

For a start, it would actually make an Amazon.com.au immediately much more viable. Amazon could take the major monthly new releases and key backlist (of which the great majority in terms of value would have US or UK counterpart editions) source the

cheapest edition from the US or UK six months ahead of release, get them at its usual massive discount because of the volume, and offer it at 50% off to the consumer as they already do in the US and UK, without the barrier to the consumer of international shipping. The end result is that book prices go even lower, consumer price expectation goes lower as well, and current Australian retailers lose more sales.

Another good business to go into in the event of a Surrendered Market would be to set up shop on a short-term lease in October somewhere near a good existing bookshop and just offer all the top titles at a bigger discount than they can match, because you won't have the overheads. You could buy them cheaply from a US overstocks source, arrange a special printing with the US or UK publishers (who won't care where they go) or even maybe buy several hundred of each one from Amazon – there are a multitude of ways to get cheap books if you can legally sell them. Stay there till Christmas, then take a holiday till the same time next year.

Returning to the theme of the Internet and electronic editions, it is undeniably true that digital versions of books largely ignore territorial copyright and it is probably pointless to try and restrict them, load them up with copy protection or whatever. But these digital editions can fight it out in a true open market. An Australian digital edition can get into the USA or UK, just as their digital editions can get in here. This is not true of printed books, which still make up somewhere between 98-99% of actual book sales.

If in the future the takeup of electronic books is such that territorial copyright makes no sense, by all means let us abandon it – but at the moment, territorial copyright for books makes perfect sense, not least because every other nation in the English-speaking world enshrines it in their laws. Which is probably where someone will mention New Zealand, and their Open Market, so perhaps I should say (without meaning any disrespect to New Zealand, who never had a chance in terms of economy of scale), all the significant nations in the world of English-language publishing.

I should add for the record, that I personally would not economically suffer much if we did surrender our territorial copyright. I am already a very established author in the US and the UK, so much so that American and British readers are surprised to discover I am Australian. If we did give our market away, I'd likely get a much-reduced royalty on the cheap imported editions coming in to my own country, but I'd be OK since I'd be in the ironic position of earning proper royalties outside Australia. But my Australian publisher,

Allen & Unwin, would probably have to stop publishing my books, so I'd be an Australian author without an Australian publisher, and they would be without the revenue from sales of Australian editions of my books. I'd also miss my local bookstores, which would almost certainly succumb to the combined forces of new competitors and an even easier discounting and loss leader environment for the supermarkets and "non-book" retailers.

But besides the Australian publishers and booksellers, you know who would really be affected by a Surrendered Market? Beginning authors, like I was, twenty years ago, when my first book was published by an Australian publisher, and sold by Australian bookshops. That same beginning author, in a brave new world of a Surrendered Market, would likely have only small presses to go to here, or needs must go straight into competition against every English-speaking author in the world who wants to be published in the USA or the UK.

The 30-day rule works well to modify our territorial copyright and help both booksellers and consumers access books at reasonable prices. It's a sensible modification to the international rules. Let's not change those rules even further, and find ourselves mere spectators on someone else's level playing field.

We must not unilaterally surrender our territorial copyright.

Garth Nix