



Australian Government
Productivity Commission

Copyright Restrictions on the Parallel Importation of Books

Productivity Commission
Issues Paper

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Commissioners: Mike Woods (presiding) and Louise Sylvan

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The Productivity Commission

The Productivity Commission is the Australian Government's independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians. Its role, expressed most simply, is to help governments make better policies, in the long term interest of the Australian community.

The Commission's independence is underpinned by an Act of Parliament. Its processes and outputs are open to public scrutiny and are driven by concern for the wellbeing of the community as a whole.

Further information on the Productivity Commission can be obtained from the Commission's website or by contacting the Media and Publications section on (03) 9653 2244 or email: maps@pc.gov.au

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How to use this Issues Paper

This paper is intended to assist you in preparing a submission to the Productivity Commission's study into copyright restrictions on the parallel importation of books.

The paper outlines a range of issues about which the Commission is seeking information. However, **you do not have to answer all of the questions posed in this paper or limit your comments to the issues mentioned.** You are free to submit any information you consider relevant to the study's terms of reference. You should give evidence to support your views, such as data and documentation.

Please read Attachment B for details about how to make a submission, and use the submission cover sheet provided at the end of this paper. While the Commission would welcome earlier submissions, your submission should reach us by no later than **20 January 2009**. This will ensure that the Commission can give your input due consideration in formulating the study's draft report, which will be released by early March 2009.

1 What is the study about?

Under the *Copyright Act 1968*, authors and publishers who create a book are automatically entitled to a number of 'exclusive rights' over their work. Copyright protection of a book makes it illegal for others to make copies of that book without the permission of the copyright holder.

Other provisions in the Copyright Act — the 'parallel import restrictions' — provide copyright holders with additional rights. They allow Australian copyright holders to prevent the importation for sale of copies of their works that have been legally produced and purchased overseas (see box 1).

A number of other countries, including the United States and the United Kingdom, also have parallel import restrictions. In effect, these additional rights allow copyright holders to 'segment' international markets, which in theory may allow them to charge different prices or royalties in different markets without the risk that prices in any one market will be undercut by (cheaper) imports of the same book from other markets.

This study is about whether Australia's parallel import restrictions are justified. The full terms of reference are reproduced as Attachment A. In brief, the matters the Commission has been asked to examine include:

- the extent to which the restrictions on parallel book imports promote and achieve the objectives of the Copyright Act;

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- the benefits and costs to all affected parties of any restriction on competition resulting from the present provisions on parallel book imports; and
 - options for reform to the current provisions, and any transitional arrangements that should accompany such reform.

In undertaking this examination, the Commission is required to have regard to a range of matters, including the intended objectives of the parallel import provisions with the Government's overall policy framework, relevant international treaties and the findings of other relevant reviews.

Box 1 Australia's parallel importation rules for books

Copyright provides protection to authors and publishers for the books that they create. With some limited exceptions, it is an infringement for someone to create a copy of a book, or to make available for sale copies of the book, without the permission of the author or publisher.

An author or publisher may sell the rights to produce copies of a book to foreign publishers, so that they may be sold in their local markets. However, for the most part, local booksellers cannot legally source their supplies from overseas. Thus, section 37 of the *Copyright Act 1968* makes it an offence to import into Australia copies of a book that has been legally produced for an overseas market in order to sell them. And section 38 of the Act makes it an offence to sell an imported copy of a book, if that copy was imported without the permission of the copyright owner.

Changes to the Copyright Act were made in 1991 to allow limited parallel importation of books into Australia, in order to increase the timeliness and availability of books in the Australian market.

Under the current law, the '30 day' rule stipulates that in order for publishers to protect against parallel importation into Australia, they must make available for sale new titles within 30 days of first publication overseas. If a book is not published in Australia within this 30 day timeframe, Australian booksellers can import that book from foreign publishers themselves.

In addition, section 44A of the Copyright Act contains what is known as the '7/90' day rule. This allows a bookseller to import copies of a book if an Australian publisher does not respond to a written request within 7 days, or cannot supply those copies within 90 days. In this circumstance, a bookseller may import a reasonable number of copies of a book without the permission of the copyright owner.

The current law also allows booksellers to import a single copy of a book to fill a customer order, even if that book is otherwise covered by the parallel import provisions. And, of course, consumers can import books themselves directly, for example by purchasing a book via an overseas online bookseller.

2 The Commission's broad approach

While requiring the Commission to examine options for reform, the terms of reference should not be taken as meaning that the current restrictions are necessarily inappropriate. That is a matter to be examined in this study.

In doing so, the Commission — in accordance with the policy guidelines in the *Productivity Commission Act 1998* — will take a community-wide approach. That is, the Commission's interest will not be solely on whether the restrictions benefit copyright holders or particular sections of the book industry. Rather, it will consider the benefits and costs to all affected parties, both in the books sector (see box 2) and in the community more generally.

The Commission interprets 'benefits' and 'costs' in their fullest sense — that is, covering the value of social and cultural matters and activities, as well as financial or material ones. So, for example, the Commission will be interested in any evidence or argument that the current restrictions generate cultural benefits for Australians, and will seek to weigh these and other benefits against any costs (financial or other).

Several studies in recent years have examined restrictions on the parallel importation of books. These include studies by the CLRC (1988), PSA (1995), ACCC (1999), the Ergas Committee (2000) and the Senate Legal and Constitutional Affairs Committee (2001). Apart from the 1999 ACCC study, all of these received public submissions. Accordingly, most if not all of the key 'in principle' arguments for and against the removal of these restrictions are already well known. This study provides an opportunity for proponents on both sides of the debate to provide contemporary evidence to support their cases for the retention, removal or modification of the parallel import restrictions. It also enables them to develop further some lines of argument, relating for example to cultural matters, that may not have been fully explored in previous reports.

Box 2 **The books sector**

Gaining a comprehensive and up-to-date picture of the size and make-up of the book sector is difficult, in part because the ABS conducted its last survey of book publishers and retailers in 2004. This problem can be compounded by terminological misunderstandings — for example, data on ‘new Australian titles’, or on ‘titles originating in Australia’, is sometimes used as an indicator of the number of Australian-authored titles published here, even though these categories contain a potentially sizeable component of foreign-authored works that are published in Australia.

What is clear is that Australia has a significant market for books.¹ In 2003-04, publishers sold over 128 million books, with a value of around \$1350 million (of which wholesale sales comprised around 77 per cent and sales to final consumers, such as libraries, around 23 per cent). ‘New Australian titles’ (which, as noted, is not a grouping limited to Australian-authored books) accounted for 60 per cent (\$800 million) of the value of sales, and nearly 70 per cent (or around 90 million) of the number of books (ABS 2005a).

Many parties are involved in producing, distributing and selling books, including:

- *Authors*, who are responsible for creating the original literary works. In 2001, there were an estimated 7300 professional writers in Australia (Throsby and Hollister 2003). However, data on the number of locally-authored books sold in Australia is not readily available.
- *Publishers*, who develop books, engage printers and generally handle marketing and promotion matters and sometimes distribution. The ABS (2005a) estimated that, in 2003-04, there were some 230 businesses whose main function was publishing.
- *Retailers* — including book chains, independent book stores, department stores, newsagents and other vendors such as supermarkets — who sell the finished books. In 2003-04, 1570 businesses were estimated to be involved in book retailing (ABS 2005b).
- *Governments*, which play a role through direct funding to authors (using grants or awards), funding of libraries and ensuring returns to copyright holders for books held in libraries (public and education lending rights schemes).
- *Other parties*, including printers, authors’ agents and copyright collection agencies.

On the demand side of the books market, a large number of Australians are consumers of books. While estimates vary, ABS (2008) data indicate that, in 2006, around half of the population (aged 15 and over) read books at least once a week. Books are read for work and study as well as pleasure, and they cover a variety of interests. Categories include educational and professional books, and ‘trade’ books, which comprises a variety of genres: children’s books, science fiction, romance, crime, travel, cooking, science, history, biography, politics and so on. As a leisure activity, books compete for people’s leisure time with other activities such as television, radio, the internet, cinema and physical pastimes.

¹ In accordance with the Copyright Act, for the purposes of this study, the Commission intends to interpret the term ‘books’ to exclude books whose main content is a transcript of musical works, as well as computer software manuals or periodicals.

3 Key arguments raised in earlier studies

Some arguments for retaining the restrictions

It has been argued that restrictions on the parallel importation of books provide an incentive, additional to that provided by copyright alone, for people to create literary works. As well as benefitting the creators themselves, the restrictions are said to generate broader cultural benefits by promoting Australian authorship and/or the generation of Australian stories. It is sometimes argued that assisting Australian publishers, rather than just authors, is important because having a healthy Australian publishing sector helps to foster the development of works by Australian authors. And the existence of an Australian publishing sector is said by some to have benefits for booksellers, by expanding the range of titles available to them and by enabling them to acquire books on a ‘sale or return’ basis from the publishers. The restrictions are sometimes also supported on the basis that they assist the Australian printing industry (with the related benefit of reducing the carbon footprint associated with the transportation of imported books).

Related to these arguments, retaining the parallel import restrictions is seen by some as important to:

- avoid the dumping of remainders of overseas production runs of books on the local market (which could undercut the locally produced product and reduce author royalties); and
- assist in combating piracy (although in the past this argument was generally acknowledged to be much weaker in the context of books than for other items, such as DVDs).

Another argument has been that removing Australia’s restrictions, without equivalent reforms overseas, would effectively be ‘surrendering’ the local market to overseas companies/authors, who would retain such protections in their local markets. It has also been suggested that, without parallel import restrictions, there might be additional pressures for Australian authors to write for a more global audience, which could involve reductions in the ‘Australianess’ of the themes or language used in their works.

Those supporting the restrictions further contend that the costs of the restrictions are overstated. In particular, they claim that the 1991 amendments to the restrictions — the 30 and 90 day rules — have largely overcome earlier concerns about the timely release of works onto the Australian market. Likewise, the availability of lower priced books from overseas via the internet might be seen as providing an avenue for more cost-conscious consumers to circumvent any price-raising effects of the parallel import restrictions.

Some arguments for removing the restrictions

A key argument put forward for removing the restrictions has been that those restrictions allow higher prices to be charged for books in Australia, thereby disadvantaging book consumers. To the extent that the restrictions do keep cheaper volumes off the shelves of Australian bookstores, they are seen by some as discouraging readership and the broader social and cultural benefits it may bring. Some booksellers have expressed a related concern that, under the current arrangements, they are disadvantaged as they need to pay higher prices for their merchandise, and lose some custom to overseas internet sales.²

Proponents of the removal of Australia's parallel import restrictions also point out that Australia is a significant net importer of copyright material, including books. They go on to argue that the benefits of the restrictions for local book creators are far outweighed by higher payments from Australians to foreign book creators.

It has also been argued that if government has the objective of assisting Australian book producers (whether authors, publishers or printers), direct subsidies or other policy instruments could achieve this objective at less cost to the community than is associated with parallel importation restrictions.

On a different tack, an argument raised in the past has been that, were the parallel import restrictions to be removed, copyright holders might still be able to use contractual arrangements to control imports into Australia. The implication is that the adverse effects on local authors and publishers from removing the restrictions might not be as significant as supporters of the current restrictions claim (although the corollary of this argument is that the potential benefits to consumers of removing the restrictions would also be smaller).

* * *

Are these the key arguments for retaining and removing the current restrictions on the parallel importation of books, and how should they be weighed against each other? What other issues should the Commission consider in this study? What evidence is there to support the contentions of the supporters and the critics of the current provisions?

² The Commission is also aware of concerns that local booksellers are disadvantaged in relation to overseas online booksellers, as GST does not apply to sales made by the latter. However, this matter does not fall within the terms of reference of this study.

4 Some specific issues

While the Commission invites comment on any issue of relevance to the terms of reference, it is particularly interested in receiving comment and evidence in relation to the following matters, where circumstances may have changed since earlier reviews or which arguably were not fully addressed in some previous reviews.

The workings of the book sector

As noted earlier, there are a number of players in the books sector. While the way the sector works has been canvassed in previous reviews, there are likely to have been developments in recent years affecting its operations that may have implications for the assessment of parallel import restrictions.

What relationships between parties in the sector bear upon the efficacy of the parallel import restrictions? For example, to what extent is it important for Australian authors to have access to an Australian publisher in order to develop and promote their works? To what extent is access to an Australian publisher more important for a debut author than one with a track record?

How well developed is the trade in rights to literary works both in Australian and overseas markets? How important is this trade to Australian authors and publishers?

Has the structure or nature of the books industry changed in recent years in ways that bear upon the benefits and costs of parallel import restrictions? In particular, have recent technological changes — for example the availability of online purchasing, ebooks or printing-on-demand — materially changed the industry and the ways in which copyright issues should be addressed?

High level objectives

The terms of reference ask the Commission to determine whether the parallel import provisions meet the objectives of the *Copyright Act 1968*. The Commission is also asked to have regard to the intended objectives of the parallel importation provisions within the overall policy framework of the Government including competition, intellectual property, trade and industry policies. Although the terms of reference do not mention cultural policies and objectives explicitly, the Commission sees these as also being a potentially highly pertinent aspect of the Government's 'overall policy framework'.

According to the Ergas Committee report (2000, pp. 48, 62), in Australian law, copyright has been very much an economic right, designed to work as an incentive for appropriate forms of investment in creative endeavour. The Ergas Committee indicated that the parallel import restrictions which were granted to owners of copyright material could not be justified in terms of some inherent right that attaches to creative effort. Rather, it concluded that the restrictions need to be assessed in terms of whether the benefits they may bring, including through improved investment in, and access to the results of, creative efforts outweigh the costs they impose.

Broadly conceived, a focus on encouraging an appropriate level of investment in creative book-related activity would accommodate many of the matters of concern to proponents of parallel import restrictions. For example, higher levels of creative effort are likely to be reflected in the output of Australian authors and publishers, which in turn may generate cultural benefits. Nonetheless, the Commission is interested in views on whether this approach, interpreted in this broad way, is defective in any respect.

Is the provision of ‘an incentive to appropriate forms of investment in creative endeavour’ the high level objective of the Copyright Act? What, if any, other objectives are relevant when considering the merits of the parallel import restrictions?

Cultural issues

Submissions to previous reviews argued that the cultural benefits arising from the creation and reading of books are a reason for maintaining the current parallel import provisions. Broadly, some contend that books are cultural goods that have benefits for society as a whole. These benefits may be related to the diffusion of social norms and understandings and/or the historical or symbolic value of literature — including the value of ‘Australian stories’ to Australian society.

The Commission has examined cultural objectives in previous studies — most prominently in its inquiry into broadcasting (PC 2000). While cultural considerations along with social, environmental or other economic considerations are all relevant in assessing the merits of government policies, it is important that the nature of cultural objectives and associated benefits be clearly identified, so that policies aimed at them can be made effective and efficient.

What is the precise nature of the cultural benefits arising from books? Do cultural benefits arise from the existence and output of authors per se, or from the creation and dissemination of particular types of stories and writings? How

large are these cultural benefits relative to the other benefits associated with books?

In addition to informing or reminding readers about Australian culture, history, identity and perspectives, books can generally broaden the readers' horizons — expanding their knowledge of other cultures, providing imaginative frontiers for escapism or insights that may not pertain to any specific culture. However, these benefits do not appear dependent of the nationality of the author.

How much greater (if at all) are the cultural benefits attaching to Australian works compared to foreign works? What is the source of these differences? For example, do any such additional benefits arise from all books by Australian authors — including those dealing with non-Australian events or themes, but which are expressed in the Australian idiom or told through Australian eyes? Or do these additional cultural benefits arise only or primarily from those books with specifically Australian themes?

Are the cultural benefits of Australian works reflected in Australian consumers' purchases of books? For example, what conclusions should be drawn from the 2001 Books Alive survey that found that only 10 per cent of Australians purchased a book on the basis that it was by an Australian author?

Existing assistance for arts and culture

Australian governments fund a range of programs to assist Australian authors and the publishing and dissemination of Australian and other stories (see box 3). This funding will go at least some way towards addressing any cultural value of artistic creations that is not reflected in consumers' purchasing decisions.

Does or could (additional) government arts funding achieve similar outcomes, or serve as an alternative, to the current parallel import restrictions?

In considering the cultural objectives that might be achieved by Australian stories, the Commission is also interested in any views on the importance of the medium for securing those cultural benefits. Australian culture, expressed through Australian stories, can be disseminated in any number of ways — through television and radio, production of Australian films, visual creations such as paintings and sculpture, and live performances of music and theatre, as well as through books. In this context, the Australian, state and territory governments provide cultural funding across all creative mediums.

How do cultural benefits generated by books differ from those from other forms of cultural creation or expression? Are there reasons for government policies

and/or funding of cultural outcomes to favour books over other forms of artistic or cultural creation or expression, or vice versa?

Box 3 Existing government literary funding

The Australian, state, territory and local governments fund many cultural projects, both on an ongoing and ad hoc basis.

The Australia Council for the Arts is the Australian Government's primary arts funding body, providing, among other things, direct financial assistance to Australian authors, and grants to organisations that provide support and income-generation opportunities for authors. It also provides funding for publishers — both for Australian publishers to increase domestic and overseas markets for their books, and for foreign publishers to publish Australian titles. All Australian states and territories have arts funding bodies that provide some additional support to literary endeavours.

The Australian government also provides personal income tax deductibility status for Registered Cultural Organisations. These are private institutions established to achieve some cultural objective; and include writer and author associations, as well as organisations that deliver larger cultural events, such as the Melbourne and Sydney Writers' Festivals.

Governments promote literacy and reading through a range of public information and advertising campaigns. The Australian government also compensates authors and publishers for books held in public and educational libraries through the Education and Public Lending Rights schemes.

In addition to government funding, private philanthropy and literary prizes are a non-government source of support for some Australian authors.

Gauging the effects of the parallel importation restrictions

The terms of reference for this study note that the current restrictions on the parallel importation of books *potentially* result in higher prices and less availability of books to the disadvantage of Australian consumers. While the Commission would welcome any specific examples that illuminate the effects of the current restrictions on the prices and availability of books in Australia, and indeed on the books sector, it is also keen to obtain more robust and systematic statistical evidence on these matters.

While no technique will be without limitations, some approaches that could help to provide a more systematic indication of these effects are:

- studying the impact of removing parallel importation restrictions in other markets; and
- comparing prices and availability in the Australian book market to those in foreign markets from which imports might be sourced were the restrictions removed.

Case studies of removing parallel import restrictions in other markets

Australia removed restrictions on the parallel importation of CDs in 1998. In the same year, New Zealand opened its market to the parallel importation of books. A decade on, these reforms may serve as useful case studies about the effects of parallel importation restrictions, although their value will depend on the extent to which the experiences are transferable to the Australian book market.

What happened, and what are the lessons, from reforms to parallel importation rules for other copyright goods in Australia and from New Zealand's experience in relation to books? Are there particular factors that limit the conclusions that can be drawn in relation to the Australian books market?

International price comparisons

International price comparisons are another technique, albeit less direct, that have been used in previous studies in an attempt to gauge the impact of parallel importation restrictions on book prices. For example, the ACCC's 1999 and 2001 reports contained comparisons of the recommended retail price of books on the bestseller list in Australia with the recommended retail price of the same titles in the United States and United Kingdom.

Given the methodological and data issues that arise, it is unlikely that any particular price comparison could reveal precisely any price differences between Australia and other markets. Indeed, several studies over the past two decades that have estimated the average price differential between books sold in Australia and overseas have been criticised.³

Perhaps more importantly, it is unclear whether such comparisons can provide a good indication of what effects removing Australia's parallel import restrictions might have on book prices in Australia, and thus a metric on the price impacts of the restrictions. This is because removing the restrictions could potentially have a range of effects on the nature and prices of books offered for sale in Australia, depending on the responses of copyright holders, book importers and booksellers. Hence, price comparisons of book prices in Australia and the United Kingdom or United States with the current arrangements in place, even if they could be conducted reasonably robustly, would not necessarily shed much light on the extent of any price reductions or other changes that might occur if the restrictions were removed.

³ International comparisons in Australia were initially conducted by the PSA (1989, 1995) and were later updated by the ACCC (1999, 2001). The Australian Publishers Association (APA) also analysed the price differentials between the Australian, US and UK book markets (APA 2001).

Accordingly, the Commission is seeking views on the scope for it to undertake price comparisons that would provide robust and meaningful results for the questions raised in the terms of reference, as well as on how to interpret those price comparisons that might be submitted by interested parties.

How relevant are the findings of the earlier price comparison studies for the current study? In terms of gauging the impacts of parallel import restrictions, what countries should be included in comparisons?

Are there improvements that could be made to the methodology employed in past price comparison studies to produce more useful estimates of price differentials? For example, are there more extensive and/or more reliable data sources available now that were not available in the past?

The Commission is also seeking contemporary data on freight costs, taxes, the cost printing in different formats and other relevant factors that effect the price of books in different markets.

Comparisons of availability

In examining the availability of books, there are two relevant concepts to consider: the range of titles available and the speed at which titles become available. This has also been the subject of previous research, with some studies estimating the gap between when books become available in Australia and when they become available overseas (ACCC 1999, PSA 1995). The 1991 amendments to the Copyright Act (see box 1) were intended principally to address concerns about the availability of books in the Australian market.

What statistical or other evidence is there to suggest that availability is or is not a problem in Australia today? For example, what use is made of the 7/90 day rule? How easy is it to use? What difference has the emergence and growth of Amazon and other online booksellers made to availability? What effect do the parallel import restrictions have on the range of books in Australia?

Future market developments affecting the benefits and costs of Australia's parallel import restrictions

To assist in its assessment of what should happen to parallel import restrictions in the future, the Commission is keen to develop an understanding of the ways in which the book sector might change and develop, both with the current restrictions in place and in the case where they were removed or modified. The scale and pace of technological and market changes in modern society means that predicting the future is inevitably an imprecise task. Nonetheless, the Commission invites participants to consider how the book industry might develop, and to present evidence and reasoning to support their propositions.

How is the size, structure and viability of the book industry likely to change over the next decade or two, assuming that the parallel import restrictions were retained? What factors would be most influential in these respects?

What is the likely future impact of technological developments such as ebooks and online purchasing on people's reading habits and book buying activities? To what extent might such developments strengthen or weaken any protections to local publishing and printing provided by parallel import restrictions?

How might the business models of different book industry participants change were the parallel import restrictions to be removed. For example:

- *Would local booksellers or buying groups source more books from UK or US wholesalers? To what extent would they seek to import more (heavily discounted) remaindered titles from those markets, or English-language editions of books sold in (lower priced) markets such as in Asia? What factors would influence these decisions?*
- *Would some publishing activity amalgamate and/or move off-shore? What types of books would continue to be published in Australia?*
- *What impact would these changes have on book wholesaling, distribution and retailing in Australia? What impact would they have on decisions to print books in Australia?*
- *Would Australian authors have less opportunity to gain publication, whether in Australia or overseas? How might the role of Australian literary agents change in this environment?*
- *What sorts of actions, including changes to contracting arrangements and different publishing strategies, could any or all of these groups take to mitigate any adverse impacts from removing parallel import restrictions?*

Reform options

The terms of reference ask the Commission to report on any identified options for reforms to the existing rules. Potential reform options can be seen on a spectrum from the maintenance of the status quo, to amendments to the existing provisions, to removal of parallel import restrictions on books (perhaps augmented with other, complementary policies).

The Commission is interested in views on the sorts of reform options that might lie along this spectrum, as well as on the costs, benefits and any other implications that such changes might have.

Within the framework of the current territorial copyright provisions, are there modifications that could be made to the existing rules that would increase competitive disciplines on local book prices, or in other ways improve the benefit-cost calculus for the Australian community? For example, is there scope to reform the 30 and 90 day rules to improve their effectiveness in encouraging the timely availability of books on the local market? Would such changes be more easily accommodated by particular sectors of the industry?

The Commission is also interested in whether any potential alternatives to the parallel import restrictions might deliver comparable benefits *for the Australian community* but at lower cost (ie more cost-effectively). For example, if parallel import restrictions increase book prices in Australia, they will ostensibly benefit not only Australian copyright holders but also foreign copyright holders. An alternative might be some form of subsidy to Australian authors or publishers to provide them with a comparable level of support to the parallel import restrictions, but without the need for Australian book consumers to subsidise foreign copyright holders.

Could direct subsidies or other potential assistance mechanisms provide similar benefits to Australian authors/publishers as the parallel import restrictions? Are there other potential mechanisms for assisting Australian authors and publishers that would be more cost-effective from the community's point of view than parallel import restrictions?

What considerations or difficulties must the Commission consider when considering potential alternatives to parallel import restrictions? For example, to what extent do Australia's international treaty obligations limit the range of alternatives available? Do overseas approaches offer any guidance as to the merits of alternatives that could be used here?

References

- ABS (Australian Bureau of Statistics) 2005a, *Book Publishers, Australia, 2003-04*, Cat. no. 1363.0, ABS, Canberra.
- 2005b, *Book Retailers, Australia, 2003-04*, Cat. no. 1371.0, ABS, Canberra.
- 2008, *Arts and Culture in Australia: A Statistical Overview, 2008 (First Edition)*, Cat. no. 4172.0, ABS, Canberra.
- ACCC (Australian Competition and Consumer Commission) 1999, *Potential Consumer Benefits of Repealing the Importation Provisions of the Copyright Act 1968 as they Apply to Books and Computer Software*, AGPS, Canberra.
- 2001, *Summary of the Commission's March 1999 Report on The Potential Consumer Benefits of Repealing the Importation Provisions of the Copyright Act 1968 as they Apply to Books and Computer Software – Including Price Updates for Books, Computer Software and Sound Recording*, AGPS, Canberra.
- ACNielsen 2001, *A National Survey of Reading, Buying and Borrowing Books for Pleasure*, Conducted for Books Alive by ACNielsen, Canberra.
- APA (Australian Publishers Association) 2001, *Inquiry into the Copyright Amendment (Parallel Importation) Bill 2001*, A submission by Australian Publishers Association to the Senate Legal and Constitutional Legislation Committee, Canberra.
- CLRC (Copyright Law Review Committee) 1988, *The Importation provisions of the Copyright Act 1968*, AGPS, Canberra.
- Ergas Committee report. See Intellectual Property and Competition Review Committee 2000.
- Intellectual Property and Competition Review Committee 2000, *Review of Intellectual property Legislation under the Competition Principles Agreement*, (Henry Ergas, Chairman), AGPS, Canberra.
- PC (Productivity Commission) 2000, *Broadcasting*, Inquiry Report, Canberra.
- PSA (Prices Surveillance Authority) 1989, *Inquiry into Book Prices*, Report Nos. 24 and 25, PSA, Sydney.
- 1995, *Inquiry into Book Prices and Parallel Imports*, Report No. 61, PSA, Sydney.
- Senate Legal and Constitutional Legislation Committee 2001, *Inquiry into the Provisions of the Copyright Amendment (Parallel Importation) Bill 2001*, (Senator M Payne, Chairman), AGPS, Canberra.
- Throsby, D. and Hollister, V. 2003, *Don't Give Up Your Day Job: An Economic Study of Professional Artists in Australia*, Australia Council, Sydney.

Attachment A: Terms of Reference

COPYRIGHT RESTRICTIONS ON THE PARALLEL IMPORTATION OF BOOKS INTO AUSTRALIA

The Productivity Commission is requested to undertake a study on the current provisions of the *Copyright Act 1968* (the ‘Copyright Act’) that restrict the parallel importation of books and report within 6 months of receiving this request.

Context

The Council of Australian Governments (COAG) has endorsed a new competition reform agenda designed to enhance Australia’s longer term growth prospects. To advance this work, a number of priority areas have been identified for review. The Productivity Commission is requested to provide advice on the potential for reform with respect to the parallel importation of books.

Background

The Copyright Act gives authors (which includes creators of literary and artistic works) a number of exclusive rights over their original works which provide an economic incentive to promote the creation and distribution of new works for the benefit of the community.

Within these rights, copyright owners through their licensing arrangements, are able to prevent the importation into Australia of books that have been lawfully published in another country (ie ‘parallel imports’). The operation of these provisions potentially results in higher prices and less availability of books to the disadvantage of Australian consumers.

In 1991 amendments were made to the Copyright Act restricting the use of the rights with respect to imported books. Essentially, the amendments permit the parallel importation of lawfully published books where there has been a failure to supply the Australian market once the book has been published in another country. These changes were intended to address concerns about delays in obtaining copies of overseas books.

However, there are a range of views about whether the provisions result in significantly higher prices for Australian consumers compared to other markets.

Scope of Study

In undertaking this study, the Commission is to examine the present provisions with respect to the parallel importation of books – which include exceptions to copyright – having regard to, and where possible quantifying:

- the extent to which the provisions promote and achieve the objectives of the Copyright Act;
- whether the provisions amount to a restriction on competition;
- if so, the costs, benefits and effects of the restriction;
- whether the benefits to the community from the present provisions outweigh any costs from restricting competition; and
- any identified options for reform, including non-legislative approaches, and any transitional arrangements.

Key Considerations

In conducting the study the Commission shall have regard to:

- the impacts on all relevant industry groups including authors, publishers, printers, distributors, retailers, consumers, libraries and educational institutions (including small and medium business);
- the intended objectives of the parallel importation provisions within the overall policy framework of the Government including competition, intellectual property, trade and industry policies;
- approaches adopted in comparable other countries;
- relevant rights and obligations under international treaties to which Australia is a party; and
- the conclusions and recommendations made in other relevant reviews and the views of relevant stakeholders.

The Commission is to undertake an appropriate public consultation process including the invitation of public submissions.

CHRIS BOWEN
Assistant Treasurer

[Received 13 November 2008]

Attachment B: How to make a submission

The Commission invites all interested individuals and organisations to take part in this study. Anyone can make a public submission. In your submission, you do not need to address all the issues raised in this paper and you may comment on any other issues that you consider relevant to the terms of reference.

There is no specified format

A submission can be anything from a short note or email outlining your views on a few matters to a more substantial document covering a wide range of issues. You should seek to give evidence to support your views, such as data and documentation. Although we welcome every submission, multiple, identical submissions do not carry any more weight than the merits of an argument in a single submission.

Participants can make subsequent submissions throughout the course of the study. In particular, participants will be invited to make further submissions to respond to the draft report, which will be released by early March 2009.

Submissions should be public documents

This is a public study, and the Commission will make submissions available for others to read. Any confidential material — such as commercially sensitive data — should be provided under a separate cover and clearly marked ‘IN CONFIDENCE’. Submissions, minus any confidential material, will become publicly available documents once placed on the study website. This will normally occur shortly after receipt of a submission, unless it is accompanied by a request to delay release for a short period.

Email lodgement is preferred

If possible, submissions should be lodged by email or as a text or Microsoft Word document (.txt, .rtf, .doc), rather than Adobe Portable Document Format (.pdf), to ensure screen readers can read them. (Submissions may also be sent by mail, fax or audio cassette, and arrangements can be made to record oral submissions over the telephone.)

Please ensure that the version sent to the study is the final version, and that you have removed any drafting notes, track changes, annotations, hidden text, marked revisions, as well as any internal links. Please also remove large logos and

decorative graphics (to keep file sizes down). This will enable the submission to be more easily viewed and downloaded from the website. Copyright in submissions sent to the Commission resides with the author(s), not with the Commission.

Each submission should be accompanied by a submission cover sheet containing the submitter's personal and organisational contact details. The submission cover sheet is available at the end of this attachment or from the study's website.

Please lodge your submission with us by no later than 20 January 2009 so that we can make full use of it in our draft report. Other key dates, submission addresses and contact details are provided at the front of this paper.

Productivity Commission
SUBMISSION COVER SHEET
(not for publication)

Parallel Importation of Books

Please complete and submit this form with your submission to:

Parallel Importation of Books Study
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

OR

By facsimile (fax) to:
Jill Irvine 02 6240 3311

By email: books@pc.gov.au

PLEASE PRINT CONTACT INFORMATION

Organisation: _____

Street address: _____

Suburb/City: _____

**State &
P'code:** _____

Postal address: _____

Suburb/City: _____

**State &
P'code:** _____

Principal contact: _____

Position: _____

Phone: _____

Fax: _____

Mobile: _____

Email address: _____

CONFIDENTIAL MATERIAL

- Please indicate if your submission contains any confidential material — such as commercially sensitive data. Confidential material should be provided under a separate cover and clearly marked 'IN CONFIDENCE'.

Please note:

- For submissions made by individuals, all personal details other than your name and the State or Territory in which you reside will be removed from your submission before it is published on the Commission's website.
- Submissions, minus any confidential material, will be placed on the Commission's website, shortly after receipt, unless accompanied by a request to delay release for a short period of time, where they will remain indefinitely.
- Copyright in submissions resides with the author(s), not with the Productivity Commission.