
COPYRIGHT REFORM : PARALLEL IMPORTATION OF BOOKS & OTHER PUBLISHED WORKS

On 27 June 2000 the Government announced that it will seek to amend the Copyright Act to allow legitimate software products, books, printed music and periodical publications to be parallel imported. This information sheet deals with books, printed music and periodicals (all referred to as "books" and "magazines"). A separate information sheet is available on software.

WHY HAS THE GOVERNMENT MADE THIS DECISION?

The amendments will create the potential for lower prices and greater availability of books and magazines. The Government believes that there is no need to allow publishers and other copyright owners to maintain power over the importation of these items.

For many years, US and British publishers, who dominate the English language book trade, have divided markets between themselves. Australia has been part of the market for British publishers. Consequently, US editions, whether cheaper, better, or available in formats different from the British or local edition, are often not able to be legally imported commercially. (This now relies on first publication - see "What is the 30 day rule" below). The main instrument used to enable this control has been the copyright law.

These rules may have been justified in the past, when fewer countries had signed up to international conventions for the legal protection of authors and copyright owners. Further, as Australia is an isolated market there may have been reasons to provide such a power, eg. to ensure publishers had sufficient reason to service this market.

The Government considers that there are no such arguments today in an era of rapid, global communications and high levels of adherence to relevant treaties.

WHAT IS 'PARALLEL IMPORTATION'?

A book or magazine is 'parallel imported' when it is imported by someone other than the copyright owner or authorised distributor. Books and magazines are protected by copyright in their contents. Under the Copyright Act as it currently stands, the copyright owner can (subject to the '30 day rule') control who is allowed to import books

for commercial purposes. Parallel importing provides an alternative distribution channel for legitimate books and magazines that have been published, and is not dependent on the Australian copyright owner's permission for that distribution.

DOES THE DECISION MEAN BOOKS CAN NOW BE PARALLEL IMPORTED?

While an announcement has been made, amendments to the Copyright Act are necessary to give effect to the Government's decision. These are intended to be put forward as soon as possible, but it may be some time before the legislation is passed. It must be introduced into the Federal Parliament and passed by both the House of Representatives (where the Government has a majority) and the Senate (where the Government does not have a majority).

Some books can already be parallel imported (see "What is the 30 day rule" below) however, this is only under certain limited circumstances.

WILL PARALLEL IMPORTATION BE ALLOWED IF THE AMENDMENTS ARE PASSED?

The changes for books and magazines would be delayed by 1 year after the Copyright Act is amended. The publishing industry has many small publishers. The Government is concerned to ensure they have this additional time to adjust their business arrangements to best deal with the changes.

WHAT ABOUT BOOK PRICES?

Australians have been paying higher prices for books and magazines for many years. Successive studies by the former Prices Surveillance Authority in 1989 and 1995 and the Australian Competition and Consumer

Commission (ACCC) in 1999 have suggested that Australian consumers have been paying higher prices for many best-selling, imported books than consumers in the UK and the USA. The information gathered by the ACCC suggests an average of a 50% higher price in Australia for paperback fiction than in the USA over the 10 years from 1989-1999. There was an average 12% difference over UK prices.

The data varies, and the price differences narrow with the weakening of the Australian dollar. Nevertheless, without competition from parallel imports the data strongly suggests that the price differences will rise with the strengthening of the A\$. With implementation of the Government's decision to allow parallel importation of books and magazines, that difference could be expected to be far less.

WILL BOOKS BE CHEAPER?

Many books can be expected to be cheaper. When it comes into effect, this decision will ensure that competitive market behaviour will determine prices, as it does with a huge range of other goods. That is, the possibility of alternative commercial supply will push publishers to provide to consumers a range of book titles that are priced in line with the prices of copies for sale in other major markets.

Recent research undertaken by the New Zealand Institute of Economic Research into the effects of New Zealand's decision to permit open parallel importation of all copyright protected goods, supports the benefits of parallel importation. The Institute reports that prices of CDs and books now rival the rest of the world, the speed of delivery of new titles has improved and there is access to a wider range of titles.

The Intellectual Property and Competition Review Committee (IPCRC) conducted an independent review of intellectual property and competition. The IPCRC concluded in its final report on parallel importation (June 2000 - available at www.ipcr.gov.au), that the repeal of the parallel importation provisions is an effective way of ensuring that Australians do not pay more for copyrighted works than is being charged overseas.

WHAT ABOUT CONTRACTS FOR THE EXCLUSIVE DISTRIBUTION OF BOOKS?

Such contracts will still be possible. They are an appropriate and common business arrangement applying right across the economy. However, when the law is changed copyright would not be able to be used by a distributor/owner to stop another person/business acquiring legitimate copies outside Australia (in virtually any country) and competing for business with those copies in Australia. Publishers will have to match service and price. If their costs are high they will have to find efficiencies - as do all other businesses.

WON'T THE PARALLEL IMPORTERS 'FREE-RIDE' ON AUTHORISED DISTRIBUTORS' / OWNERS' PROMOTION AND SUPPORT?

Promotion and advertising is only a part of a successful business. Publishers will retain advantages in marketing their books. They will have guaranteed supply, an existing well-developed supply network and the possibility of producing special Australian editions. They will also be able to target their advertising and promotion to focus on supply of the book editions they are providing.

With this change they would face the prospect of new competitors and other suppliers of their titles. While this is threatening, it is no different to most business.

A number of our trading partners already have provisions similar to this reform. New Zealand, Singapore, Japan and Malaysia allow parallel importation. The European Union does not permit copyright to be used to prevent the free trade of goods within its borders and the law in the USA allows reimportation of goods sold out of the USA.

WON'T 'REMAINDERED' AND OTHER CHEAP BOOKS DISPLACE LOCAL BOOK SALES?

This is unlikely. The Copyright Act already allows parallel importation of all books if they are not published in Australia within 30 days of first publication. Thousands of books are published annually and only a fraction of these are currently published in Australia within 30 days of first publication. This situation has existed since 1991 without 'flooding' the Australian market.

Remainders are excess books sold at a very low price. Typically authors will not be paid a royalty for remainders. Books are generally 'remaindered' because they have not met with consumer acceptance. They do not flood the market because they are not what people want to buy. If other books are made available in Australia, this is as likely to stimulate interest in reading as it would be to depress the market overall.

BUT WHAT ABOUT 'REMAINDERS' OF AUSTRALIAN AUTHORS?

The changes would allow the possibility of remainders of books written by Australian authors competing with the Australian publisher's own sales. However, for an Australian author to be so affected they would have to be publishing internationally. This is a very small proportion of the overall number of Australian authors. Further, the author's work would have to be over-produced or the subject of a failure in another market to the extent of making it available cheaply. If not, of course, the relevant royalty, however calculated under the contract for that place, would be payable. Last, the remainders would have to be able to be brought to Australia in sufficient quantity to have a significant impact on the author involved, or the publisher's return.

The Government has singled out the book and related industries for special transitional arrangements. This will permit them an additional 1 year beyond the passage of the legislation to make contractual and other adjustments for the new environment.

WHAT IS THE 30 DAY RULE?

The 30 day rule was an amendment to the Copyright Act that came into force in December 1991. If the local rights holder fails to publish a book in Australia within 30 days of its release overseas, then others are able to import legitimate copies of the book without the local rightholder's permission. Only books published after December 1991 qualify to be parallel imported if the 30 day rule is not met. Printed music, periodical publications and computer manuals are excluded.

WILL THESE CHANGES HURT BOOK PRINTERS?

None of the evidence suggests there will be any significant impact on book printing as a result of these changes. Some printers have

sought to draw a correlation between the introduction of the 30 day rule and an upsurge of printing in Australia. They state that publishers undertook more printing in Australia to meet the 30 day rule. This was examined closely by the Industry Commission (IC) in a 1995/6 review of the printing industry. It found far greater growth in the industry than could possibly be attributed to increased Australian printing by publishers as a result of the 30 day rule. The IC recommended in favour of open parallel importation.

There were no submissions from printers on this issue to the IPCRC even after the publication of its interim report in April 2000 proposing that parallel importation be allowed.

If book printers are adversely affected, there is scope within the Book Industry Assistance Plan for book printers to take measures to enhance their competitive position. The Minister for Industry, Science and Resources announced on 30 June 2000 the commencement of a scheme providing up to \$48 million to the industry over 4 years. Grants under the Enhanced Printing Industry Competitiveness Scheme (EPICS) will cater for projects from individual companies as well as for projects with industry-wide benefits.

WHAT IS THE BOOK INDUSTRY ASSISTANCE PLAN (BIAP)?

The BIAP is an initiative agreed between the Government and the Democrats on the passage of the New Tax System. The plan aims to provide support for printing, publishing, book selling, book authorship and library activities in Australia. Under the plan, \$240 million in additional funding will be supplied to the book industry. EPICS is part of the BIAP.

IS THIS DECISION INCONSISTENT WITH THE BOOK INDUSTRY ASSISTANCE PLAN?

The BIAP is intended to help the development of vibrant, efficient, world-class and world-competitive book production in Australia. A benefit of the decision on parallel importation will be its tendency to make the industry more efficient through greater competition. Together with the BIAP, parallel importation will assist the industry to be more internationally competitive.

DOESN'T PARALLEL IMPORTATION LEAD TO MORE COPYRIGHT PIRACY?

Piracy of books has not been a problem in Australia as the costs of production of acceptable substitutes for the genuine product are high. The Internet and other technological developments offer a challenge to enforcement which is independent of this issue, and which the Government has tackled in the *Copyright Amendment (Digital Agenda) Act 2000*.

The Government's decision to allow parallel importation includes a proposal to adjust the evidential burden in civil cases to place the onus on the defendant to establish the copyright legitimacy of the imported goods in civil enforcement actions: a strong incentive to obtaining only legitimate product.

WILL AUSTRALIAN AUTHORS AND SMALL PUBLISHERS SUFFER?

It is impossible to predict the effect on each individual or small business of a particular change. However, innovative and efficient writers and publishers will flourish.

WON'T BIG BOOK RETAILERS CUT OUT THE SMALL PUBLISHERS?

Not expected. Small publishers almost invariably publish in niche markets which, in most cases, only they are able to service.

WILL LARGE PUBLISHERS BE DISADVANTAGED?

No: they will not be disadvantaged. They will, however, face the prospect of increased competition - perhaps from large retailers. This is expected to lead to improved service. Pricing is likely to be more responsive and retailers will benefit from having the potential for alternative sources of supply.

WAS INDUSTRY CONSULTED?

All of the reports referred to above (see above "What about book prices") involved extensive public and business consultation. The final report of the IPCRC on copyright parallel importation, confirmed that no new material had emerged in the time since the industry had previously articulated its position.

SUMMARY OF CURRENT PROVISIONS AND PROPOSED CHANGES

Currently:

1. Books cannot be parallel imported unless they are:
 - (a) published after December 1991; and
 - (b) are not published in Australia within 30 days of 1st publication overseas.
2. The provisions for parallel importation do not include books of printed music and computer manuals. Importation of these items remains completely under the legal control of the copyright owners.
3. Under certain limited conditions, pre-1991 books can be parallel imported.
4. The provisions for parallel importation only extend to legitimate copies made in member countries of the Berne Convention for the Protection of Literary and Artistic Works.
5. Copies of books made under compulsory licence are not eligible for parallel importation.

Proposed changes:

1. Parallel importation will be possible for all books, whenever they were published.
2. Parallel importation will be possible for books, printed music, periodical publications and computer manuals.
3. Specific provisions for parallel importation of pre-1991 books will be unnecessary.
4. Provisions for parallel importation will be limited to legitimate copies.
5. The restriction on parallel importation of books made under a compulsory licence will continue and imports will be allowed where made in member countries of the Berne Convention and the World Trade Organization.
6. Onus to be placed on defendant in civil infringement proceedings to prove the copyright legitimacy of imported copies.