

# Australian book prices and the Copyright Act

For most books published overseas, Australia forms a closed market — an arrangement whereby an overseas publisher assigns exclusive rights to sell and distribute his/her books in Australia to an agent in Australia. The agent is often an Australian subsidiary of the overseas publisher. This means that Australian retailers must buy copies of those books from that agent. It means that the publisher or his/her agent can prevent the sale of any other edition — or any edition at all — in Australia.

The term 'territorial copyright' is used to refer to the right of a copyright owner to sell separately the rights to distribute in different territories. Most commonly, the British and Australian rights are sold together. The closed market is made possible by the provisions to the *Copyright Act 1968*.

It is often argued that this situation means that the Australian market is controlled by British-based multinational publishers, that overseas books cost a great deal more in Australia than in the United Kingdom or the United States, and that titles published overseas are frequently not available in Australia for a long time after their original publication, if at all.

Libraries are not affected by the closed market, since the importation provisions of the Copyright Act relate only to books imported for commercial

purposes, such as for resale or hiring. Libraries, like individuals, may legally import books from overseas, even when someone owns the Australian rights and holds stock of the book in Australia. Many libraries do this, mainly because it is cheaper, and often quicker, to do so.

## Government enquiries

The Commonwealth Government has held two enquiries into this state of affairs. The Copyright Law Review Committee (CLRC) presented its report in late 1988<sup>1</sup> and the Prices Surveillance Authority (PSA) presented its interim report in July 1989.<sup>2</sup>

The report of CLRC (the Sheppard Report) proposed, among other things, that it be made legal for an Australian bookseller to import directly from overseas (that is, buy around the closed market) provided that one of two conditions was met:

1. 'The article is not available in Australia, and will not, within a reasonable time, be available in Australia, from the copyright owner or his or her licensee or agent.'
2. The bookseller 'has received a specific order in writing for the article, signed by the person requiring it, in which that person states that the article is not required for the purposes of trade or commerce.'

A number of issues arose from these

recommendations. One was what was meant by a 'reasonable time': how long should Australian agents be given to supply a book before the bookseller was allowed to import copies himself or herself? Other issues related to the availability of 'substantially similar' editions, and to whether orders for multiple copies would be permitted under the specific order provisions.

On the issue of prices, CLRC decided that there was insufficient evidence to determine whether the higher prices paid in Australia for books were due to high costs of supply and distribution or to excessive profits by publishers.

## Excessive profit

The PSA enquiry was intended to provide 'a fuller economic analysis of those provisions (of the Copyright Act) than the CLRC was able to undertake.' It examined the issue of price in particular, and reached the clear conclusion that the prices of books in Australia were too high, and that excessive profit was involved.

PSA took a much more radical approach in its recommendations too. Whereas CLRC had recommended some modifications to the closed market in order to free up the book trade a little, PSA recommended virtual abolition of the closed market. The only

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exceptions would be for pirated books (books published in breach of copyright) and for the works of authors resident in Australia.

PSA, chaired by Professor Allan Fels, argued that the closed market brings about 'higher prices and delayed availability [which] jeopardise Australia's economic and cultural future.' It also criticised Australia's fragmented book distribution system, involving a multitude of small distributors. It suggested that most of the benefits of the closed market went to foreign publishers, the costs being borne by Australian consumers. PSA suggested that, in an open market, prices for overseas books may fall by as much as 20-30 per cent on general titles, and more on specialist titles.

### Divisions remain

Since the CLRC report, publishers and booksellers have reached broad agreement that its recommendations can be lived with by both. However, while publishers oppose radical deregulation, booksellers are divided, and the New South Wales bookselling chain, Dymock's, has led a group of larger booksellers pushing for complete deregulation, as proposed by PSA.

The recommendations of PSA are opposed by the Australian Book Publishers Association (ABPA) and by the Australian Booksellers Association (ABA), both of which agree with the more cautious recommendations of CLRC, and propose that a 'reasonable time' for supply by a local agent should be 90 days. On the other hand, consumer organisations and the ACTU have come out in support of the PSA recommendations.

The two reports are being studied by the Commonwealth Attorney-General, who must decide which conclusions (if any) will be accepted by the Commonwealth Government and turned into legislative amendments to the Copyright Act.

### Seminar

Most recently, a seminar called by the Australia Council on 16 October saw representatives of the main parties to the debate state their points of view. The statement given below represents the point of view given on behalf of ALIA.

### ALIA STATEMENT

The Australian Library and Information Association represents about 7500 librarians throughout Australia. Its role at this meeting is as a consumer organisation: Australian libraries (according to PSA) buy about \$50 million worth of books each year.

Many libraries are able to buy around the closed market, but would prefer, on the whole, to buy from a

competitive Australian book trade. Other libraries, mostly smaller ones, do not have the option of buying overseas, for a range of practical reasons. A strong, competitive book trade in Australia would benefit those libraries which now buy in Australia from the closed market, and would be likely to attract the business of those libraries which now buy around the closed market. In official statements over the past decade, ALIA has traditionally supported the closed market, and continues to do so.

Libraries have frequently stated their concerns about the Australian book trade. These can be summarised as price, availability, and efficiency. In other words: Do publishers use the closed market to charge too much? Do they fail to make available the full range of material required by Australians? And do they provide a prompt, efficient service, including effective reporting? In all three areas, the Australian book trade had deficiencies.

ALIA believes that the present level of protection is not likely to lead to the creation of a strong competitive book trade, and that change is necessary. We support the major recommendations of CLRC, which provide for two major exemptions from the closed market: where a book is not available within a reasonable time from the Australian stockholder; and where a bookseller has a specific order from a customer.

Further, we support the recommendation of PSA that 'reasonable time' be taken to mean 'simultaneous publication for new titles and 2 weeks for back orders.' Although some qualification may be necessary in practice, we see no reason to regard 'reasonable time' as anything greater than the time that would reasonably be taken to supply from stock in Australia. With regard to specific customer orders, ALIA endorses the approach set out by ABA.

ALIA does not at this stage support the major recommendation of PSA that the Australian book trade be almost completely deregulated. However, we propose that, following amendment of the Copyright Act to implement the recommendations of CLRC, a review period should be set, and the effects of the amendment be assessed in order to determine whether full deregulation is in the national interest.

ALIA rejects the main recommendation of PSA at this stage on several grounds:

First, because PSA has asserted that there will be major changes in the book industry as a result of the implementation of its recommendations, but is unable to predict the nature and extent of those changes. The final effects of deregulation may be deleterious to libraries and to other consumers.

Second, most libraries do acquire some or all of their stock from Australian sources, and all libraries are concerned about the level of stockholding in Australia, particularly the number and range of titles held here; PSA believes that stockholding would fall with full deregulation.

We conclude therefore that the implementation of the CLRC recommendations would provide a stage on the way to full deregulation, should this be desirable, and a means of testing the effect of more-limited freeing up of the Australian book trade.

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- 1 *Prices Surveillance Authority: Report No. 24 Inquiry into book prices: interim report, 31 August 1989. Sydney: PSA, 1989. (Available from the Prices Surveillance Authority, PO Box R364, Royal Exchange, Sydney, NSW 2000.)*
- 2 *Copyright Law Review Committee: The importation provisions of the Copyright Act 1968, September 1988. Canberra: AGPS, 1988. (Available from AGPS.)*

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