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It's never made sense that Australians pay more for books than those in the US. Image sourced from Shutterstock.com

Cheaper books are on the way, but IP policy still favours big business

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Cheaper content, but not just yet. That's the message in the federal government's response to the parallel import recommendations by the Harper Review on competition policy.

Australians have long sought quick and cheap access to intellectual property, particularly copyright works such as books and recordings, by importing that content from legitimate sources located overseas. Copyright law has a territorial basis, potentially restricting cross-border movement of commercial quantities of books, videos, sound recordings, computer software, maps and other works. Licensing regimes give copyright owners exclusive rights in a particular territory such as Australia.

One result, highlighted by the Productivity Commission, Parliament and scholars such as Matthew Rimmer, is that copyright owners in the northern hemisphere have been able to charge Australian consumers a premium on products for sale in their own jurisdictions. Think of it as a form of copyright colonialism – the Australian student, mum, dad or academic pays 50% more than their

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counterparts in the USA. The premium isn't justified by the cost of shipping the paper and plastic from Los Angeles and London, or from distribution centres in Singapore and Hong Kong.

Australian law currently allows consumers to import “non-commercial” (i.e. personal) copies of books and other content from overseas. The law however restricts importation by retailers. That typically benefits copyright owners and their licensees rather than consumers. That restriction is anti-competitive. It has accordingly been criticised by the **Productivity Commission** over the past two decades. It is axiomatic that timely and cheap access to content is a social good, irrespective of whether it's a Justin Bieber clip or the latest tract from Giorgio Agamben.

In conducting a “root & branch” review of competition policy the Harper Committee recommended removal of the parallel import restrictions. By implication, retailers could source legitimate stock of books and other material overseas (i.e. not from pirates) and sell the products in Australia. The expectation is that supply would often be quicker and cheaper than current arrangements. Licensees would have an incentive to get their version of the product into the shops rather than delaying or engaging in egregious rent-seeking.

The Harper recommendations have been criticised by some publishers and authors, typically because changes will affect the profitability of local publishers (either overseas owned or relying on licensed sales of overseas material to fund local creators).

The bigger picture

The recommendations sit alongside ongoing structural change to Australian markets for content, with for example accessing software online and uptake of video services such as Netflix that operate on a global basis.

In responding to Harper the government has indicated it will remove the parallel import restrictions on books ... but not just yet.

Removal will be “progressed” once the Productivity Commission's inquiry into intellectual property is completed and there has been “consultation with the sector on transitional arrangements”. The Commission's report is due in mid 2016, with action presumably taking place after a general election and potentially accompanied by industry support funding to local publishers.

Overseas car makers and Australian suppliers, pending the imminent demise of Australian production, have been comforted by retention of restrictions on parallel imports of second-hand cars.

The response needs to be read in context, with the government rejecting Harper's recommendation for a “separate independent review” of “processes for establishing negotiating mandates” to incorporate intellectual property provisions in international trade agreements.

In other words, the government is relying on unsubstantiated claims that there are “robust arrangements in place to ensure appropriate levels of transparency” in agreements such as the TransPacific Partnership Agreement that favour overseas “old industries”.

The claims are deeply problematic. ALP and Coalition ministers have strongly resisted disclosure of information about those agreements. The Productivity Commission has condemned the “black box” approach to negotiation. There are perceptions that Foreign Affairs reads “best outcome” as announcement of a deal rather than lower cost to consumers/taxpayers through a tougher stance on patents, trademarks and copyright.

The parallel import reforms **are** a good thing for consumers and the overall economy. We need however to move to a more progressive IP regime, one where the temper is democratic and bias is Australian rather than privileging Unilever, Microsoft, Disney and Pfizer. The government’s other responses to Harper’s intellectual property recommendations are weak. That might be through lack of understanding or unwillingness to provoke key stakeholders such as Foxtel.

While cheering the prospect of cheaper books, let’s ask some hard questions about incentives for innovation in key sectors such as **biotechnology** and **software**. Are our policy-settings appropriate as we move into a borderless world where people consume bits rather than atoms?

Bruce will be on hand for an Author Q&A between 10 and 11am AEST on Thursday, November 26, 2015. Post your questions in the comments section below.



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