Copyright Law and the Future of Education

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As authors, teachers, experts on intellectual property law and champions of public education, we were saddened and disappointed to read that the NTEU is promoting costly, anti-competitive parallel importation restrictions. These laws hurt students, academics, and other members of the education system. We are also concerned that the NTEU has provided an unbalanced account of the Productivity Commission report on Australia’s intellectual property arrangements.

Rather than being a measure for the protection of local culture and local jobs, parallel importation restrictions on books were actually introduced into Australian law in 1912 to help consolidate the Empire market as the international book trade expanded. The provisions prevented Australian booksellers from importing English language books from America. In noting the requirement to only source books from Commonwealth countries, Tasmanian Senator John Keating observed, the law ‘as it stands, affords [opportunity] for blackmail.’

The restrictions facilitated global price differentiation and monopolistic behavior that supported the dominance of British and American multinational publishers. Australian readers, consumers, and citizens have paid dearly for such parallel importation restrictions.
Repeated independent inquiries and investigations, including the Prices Surveillance Authority (1994); Ergas Competition review (2000); the IT Pricing Inquiry (2013) and the Productivity Commission (2016) have all came to the same conclusion. Parallel importation restrictions allow copyright owners to manipulate the Australian market. The main beneficiaries are foreign multinationals and their local agents — not local authors or other skilled Australian workers.

The Productivity Commission has highlighted that Australian consumers were paying much more for books than elsewhere. Commissioner Karen Chester commented: ‘The Commission purchased data on book prices, compared more than a thousand like-for-like titles in Australia, the UK and the US, and found that books were indeed more expensive — by around 20 per cent on average — than in those other jurisdictions like the UK.’

The Commission noted that the evidence of the publishing industry was unreliable (with comparisons of paperbacks with hardbacks, and skewed samples). The Commission also found that there was no evidence that extra profits given to multinational publishers were passed onto local authors or local industries.

Moreover, the Productivity Commission rejected assertions that the removal of parallel importation restrictions had destroyed the New Zealand publishing sector and decimated New
Zealand authors. Commissioner Karen Chester noted: ‘Data on the number of authors shows that, following the reform, the share of authors in overall employment has increased in New Zealand.’

The main defender of Australia’s parallel importation restrictions has been the subsidiary of News Corp, HarperCollins. This is one of the Big Five English-language publishing companies. The largest education publishers in the Australian market are affiliates of British or U.S. multinationals— Pearson Australia, Penguin Random House Australia, and Scholastic Australia.

It is perplexing why the NTEU has been so receptive to industry propaganda. The NTEU asserts: ‘The consequences of PIR go beyond job losses in publishing and printing and profits going overseas but also to a “brutal reduction” in the range of commissioned Australian literary and scholarly works which will directly impact on NTEU members.’

There is simply no evidence to substantiate such extravagant claims. What job losses? Books are rarely printed in Australia. How will the commissioning of Australian works be impacted, by which presses? And as a net importer of copyright works, significant profits are already channeled through local branch offices and sent overseas. These profits for book sales go overseas along with a substantial proportion of the fees generated by the compulsory licensing
for educational works, paid by publicly funded schools and universities to the one Australian copyright collecting society, the Copyright Agency.

The Australian school sector currently spends upwards of $665 million per annum on purchasing educational resources for Australian schools, in addition to over $80 million spent on fees paid to collecting societies.

Commissioner Karen Chester commented that ‘the higher costs of books are borne by all Australians from the bibliophiles, to the students as they (or their parents) are forced to pay more for Harry Potter, Diary of a Wombat and the dreaded text books.’

The reality is that the nature of educational publishing is changing in response to funding shifts that seek to drive improvements in student learning outcomes. Education publishing comprises around 40% of the entire publishing market in Australia. It is the largest sector of the market. All NTEU members will be well aware there is significant pressure for teachers to master blended learning, produce online resources and MOOCS. Large publishers are also well on the way of transitioning their business models to capture this new market. Rather than publishing text books they are already moving to hard copy/ebooks hybrids, online learning platforms and teaching support materials.
The chair of the Australian Competition and Consumer Commission, Rod Sims, has expressed concerns about restrictive copyright laws adversely affecting education. He has called for policy-makers to embrace the suite of copyright reforms proposed by the Productivity Commission: ‘The world is now moving too fast for Australia to get left behind, again.’

Instead of defending dated British imperial parallel importation restrictions, the NTEU should instead be supporting efforts to provide open, accessible, and affordable educational resources. The recent Creative Commons Summit in Toronto showed how students and educators alike could benefit from the open dissemination of education, science, and research. The NTEU should be honoring its policy platform and supporting copyright laws which promote access to knowledge, open education, and freedom of speech.
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