

FYI — our view on

Bringing it in: the NZ parallel importing debate

Laws on parallel importing are under review in both Australia and New Zealand. In New Zealand, the Government is considering whether to re-introduce the ban on parallel imports. Here, **Kevin Chapman**, and then **Tilly Lloyd** and **Anna Applin**, present their perspectives on the benefits and disadvantages of the current situation, and their hopes for future outcomes.

A publisher's view

Parallel importing came to New Zealand in May 1998, like a thief in the night. It was hustled through the House under urgency, as if free debate might shed unwanted light on the complexities of such an issue.

The complexities are exactly why the Government took such an approach. Past attempts to change the Copyright Act had always foundered once the draft reached Select Committee, where the issues raised were shown to be much more complex than had been assumed, and the amendments not the cure-all their proponents claimed. Open debate didn't work, so the government took the alternative approach in 1998.

Funnily enough, it wasn't really about books. It started out as being about car parts and car imports. In February 1998 the New Zealand Institute of Economic Research (NZIER) prepared a report for the Ministry of Commerce on parallel importing, looking specifically at motor vehicles, books and CDs. Despite widespread criticism of the report, it was used as the rationale for the law change.

In late 1999, a new government (Labour/Alliance coalition) was elected, and one of the items on its election platform was a commitment to re-introduce a ban on parallel importing of cultural goods (books, music, videos) for a period of up to two years. Although the new government made a number of major changes in areas such as fiscal policy and industrial relations in the initial period of its term, there was a concern that parallel importing had fallen off the priority list. When a government has a three-year term, campaigning for re-election can start quite quickly and difficult issues can be put aside. Eventually though, there was action.

What happened was two-pronged. One prong was a process of 'consultation' undertaken by officials. The second was a follow-up report by NZIER, for the Intellectual Property and Competition Review Committee in Australia, on the effects of parallel importing.

The 'consultation' consisted of series of interviews with interested parties, followed by the distribution of a questionnaire. The responses, combined with the 2000 NZIER report, formed the

basis of a discussion paper published in December 2000.

In essence the discussion paper has said the following:

- The Government committed to the re-introduction of a ban on parallel importing in order to encourage greater investment in local creative talent.
- The officials consulted widely and do not believe that a law change will achieve this end.
- The threat of parallel importing has resulted in better service and lower prices.
- Piracy is an issue that can be separately addressed.
- More submissions are called for.

The NZIER report says that parallel importing (or the threat of it) has been responsible for book prices being so low in New Zealand and for an improvement in service and supply. It is worrying to think that these conclusions are being used by the Australian Government in formulating its policy on controls.

The fact is that publishers have consistently said that a major factor of pricing in New Zealand is the market dominance of one retail player and its approach to the market. The fact that most retailers sold *Harry Potter IV* below cost is an indication of how strong that party is.

This argument regarding price issues has been ignored or played down consistently by those officials researching the parallel importing impact. New Zealand has seriously underpriced books and this underpricing can't continue, as the cost of books is international, not local. We are now seeing prices rise regardless of the threat of parallel importing.

On service, there is no doubt that timings and service have improved in the last 18 months, as they had improved in the previous 18 months. Larger publishers are seeing the value of international release dates to exploit worldwide publicity and promotion. An increase in local printings as well as overseas publishers getting material down to this part of the world faster have steadily eroded the gap between UK/US publication dates and New Zealand release. This is an inevitable result of the world becoming a smaller place, not of parallel importing!

Looking forward, New Zealand publishers (and the music and video industries) have two problems. The first is that the officials involved in this consultation process are implacably opposed to any change. That is not surprising since some will have been instrumental in the law change in 1998, and if you studied economics in an environment of free-market support, and worshipped at the altar of de-regulation, parallel importing is a given and you support it. Unfortunately these are the officials who formulate advice for ministers, so we have a challenge to get our message across.

The second problem is that our argument is not a simple one, and simple arguments, although inevitably flawed, are seductive. Whenever open markets are mooted, straightforward advantages such as lower prices are offered as the rationale. Simple, isn't it! When these advantages fail to materialise it simply leads to the argument that a roll back of the law will lead to higher prices.

The current papers imply that the world will fall apart if a ban on parallel importing is introduced. Prices will balloon, release dates will lag, and lots of titles will simply not be available. Just like 1997, before the market opened? Except that in 1997 that was not the case. Libraries and booksellers got the books they needed, and some New Zealand dollars even stayed in New Zealand, economic heresy though that may be.

So now the cultural industries have to decide how to proceed before 30 March, when submissions are due on the discussion paper. If you put in a submission you can't expect it to be a factor in advice to ministers, but you can't complain because you had your say. If you don't put in submissions you aren't entitled to complain because you didn't take part in the process. It gives me new respect for the accuracy of 'Yes Minister'.

We will continue to make our point somehow, but without some law change it is difficult to be optimistic about the long-term health of the New Zealand publishing industry.

Kevin Chapman is president of the Book Publishers Association of New Zealand.

An independent bookseller's view

When the New Zealand Government suddenly created an open market in 1998; the committee on Parallel Importing of the NZ Book Publishers Association howled in outrage; the general manager of Blue Star Consumer Retailing (owner of the Whitcoulls group) crowed his pleasure at the BooksellersNZ Conference; and independent booksellers, like Unity Books, stated that we were pleased to have our strategic quantities of parallel imports decriminalised.

All the same, the independents were concerned. As always, we were conscious of power imbalances in the book trade. Internationally, independents are still under siege from superstores and on-line ordering. What, we wondered, would the big picture be if the exchange rate improved? We suspected that the viability and courage of NZ publishing would be affected more by the pressures of the single major chain than by the tyranny of an open market. Visions of NZ authors and the local publishing industry on their knees while the chains ran amok with parallel imports and loss-leaders were enough to keep us awake a little longer at night. Already, some of our best customers were shopping with impunity over the Internet.

Current political landscape

Almost three years later, the open market has failed to produce any parallel importing tsunamis. The discouraging exchange rate and the security of local supply chains are the predominant reasons. Another may be that, at the time of writing, Blue Star has not announced a buyer for the Whitcoulls group and Angus & Robertson.

The now not-so-new Labour Government proposes to introduce parallel imported bans for periods of up to two years for music recordings, books, motion picture products and software. The Government is presently seeking submissions to the Competition and Enterprise Branch of the Ministry of Economic Development. Unity Books' submission will reject the two-year protectionism idea, since although we still feel that backlist is important, with print runs as small as they are, most books don't last that long. The more pressing concern is that we would be seriously disadvantaged in terms of our ability to compete with offshore Internet booksellers, which already have a competitive advantage over us because they don't charge GST. Closing the market will give them another.

Local loyalties

Unity Books in Auckland and Wellington is well known for parallel importing, but our local supply relationships have always been crucial. We recognise that we benefit from local publishers' terms and services, in particular through reps, prices, sale or return and (mostly) good release dates. As well, publishers supporting co-promotions in advertising and newsletters, providing review copies to the literary pages, and holding launches and gigs advantage us every day. We also love those reading copies and the general book and trade dialogue.

Supply issues

Despite the open market, NZ suppliers have continued on in a scenario of territorial copyright, and NZ booksellers have supported this. But here's the rub. Unity Books experiences daily instances of delayed supply, and, occasionally, high prices, from NZ suppliers. We have experienced improvements in NZ warehouse stockholding and airfreight, but there continues to be a degree of supply complacency, especially on more literary books with a low warehouse stock-turn. And the range of books available is about the same as before May 1998 – cautious.

Booksellers are inured to reports stating 'London 3 recorded. TOS March 01'. Which part of March, we wonder. A due date of six weeks is unacceptable to anyone except NZ suppliers, and industry standards are overdue for further debate.

Temptations resisted

Unity Books has had hundreds of examples where parallel importing was a possibility. We provide two here.

A book agent recently offered us parallel imported remainders, a mixed bag of Vintage paperbacks, including some by two local authors. Unity Books didn't buy. We feel an ethical connection to the NZ Society of Authors whose members' work should not be prejudiced by a book agent making a few thousand bucks. Victoria University Press and Random NZ don't have a lot of muscle to protect these authors unless they have a contractual arrangement with the overseas publisher. In our view, these kinds of parallel imports are bad news for co-editions, and co-editions are good for the profile of NZ writing.

During December, HarperCollins ran out of *Memories of the Great and the Good*, and during January Scholastic was out of stock of *Northern Lights*. Both companies explained that the re-orders were far higher than the initial subs for these books. We figured we had all

misjudged the demand. Unity Books chose not to parallel import; the locals were airfreighting and we had a co-promotion with both authors. What did our customers do? Some waited, some dialled out on the modem.

Unity Books' view

Unity Books does not support the Australian Government's drive towards an open market. We like the Australian Copyright Act 1991 the way it is. The NZ book trade has been greatly advantaged by it. If Australia becomes an open market, what will happen to all those delicious Australasian trade paperbacks?

NZ booksellers have not collectively discussed the proposed NZ legislative proposal of a two-year safety net for copyright holders, but Unity Books rejects it outright. The 1998 attempt to globalise territorial copyright hasn't really played out on the street, but it has on the Internet. Any changes made to the law by the NZ Labour Government should prioritise two critical areas of copyright vulnerability: offshore remainders of NZ authors and publishers' copyright work, as described above; and harnessing the myriad of copyright issues the digital environment has thrown up.

The Government might also revisit some decisions made by the NZ Commerce Commission, such as accepting the flawed NZIER research that led to the open-market decision, and endorsing monopoly positions such as that held by the Whitcoulls Group. The first decision, leading to the NZ Copyright Law of 1998, resulted in our local suppliers experiencing a lack of leverage with the Whitcoulls Group. The second decision resulted in independent booksellers experiencing a relative lack of leverage with NZ suppliers.

Above all, Unity Books needs a copyright law as intelligent as Australia's – one specific to the NZ market, and one aligned with an intelligent open market provision that permits us to maintain supply of *key shop-definition titles* (both stock and customer's special orders) when NZ 'copyright' holders (both multinationals and small independent agencies) are not fulfilling their part of the supply contract.

Tilly Lloyd is the manager of Unity Books, which has operated for 33 years in Wellington. Anna Applin is the buyer. This store and the 13-year-old Auckland store are award winning independent booksellers.