

**SUBMISSION TO THE AUSTRALIAN LAW REFORM COMMISSION**

**by the Adelaide Digital Publishing Group**

This is a collective submission to the Australian Law Reform Commission by the Adelaide Digital Publishing Group (ADPG). Statistics on the publishing activity of this group are provided to give a clear picture of what is happening within the industry in certain respects. The views of the group members are based on this evidence.

1. **About the Adelaide Digital Publishing Group (ADPG)**

***1.1 Members***

The members of the ADPG are:

**ATF Press** (Estab. 1993): religious and general publisher

**DoctorZed Publishing** (Estab. 2006): digital publisher and distributor

**Era Publications** (Estab. 1971): educational publisher specialising in K-8 literacy

**Haese Mathematics** (Estab. 1979): educational publisher specialising in 4-12 mathematics

**NOI Group** (Estab. 1991): medical publisher

**Wakefield Press** (Estab. 1987): trade publisher – fiction and nonfiction

**Working Title Press** (Estab. 1997): children’s publisher specialising in picture books

By virtue of their areas of specialisation, the members of the group are not in direct competition with each other but have concerns in common about survival within an industry that is in the midst of historically very high levels of change. Each is an independent, self-owned publisher – mostly family businesses.

This group is the majority of book publishers in Adelaide and therefore represents a significant portion of the publishing that takes place as part of the creative and cultural dimension of this city and South Australia.

The capacity of the members for creating international standard literary and educational works and going beyond their state and national borders is proven. The group includes publishers who have won national and international recognition in publishing including:

* Numerous Children’s Book Council of Australia awards
* UK Children’s Award
* Australia’s largest selling children’s book
* First-ever readers in the 3 Sami dialects in the Arctic Circle
* First-ever readers in the Tetun language for East Timorese children
* Numerous export awards

***1.2 Economic impact***

*1.2.1 Employment*

The 7 member publishers of the ADPG employ a total of between 45 and 46 full-time employees. This number has fallen slightly in recent years due to the general economic downturn.

When the lifetime of the individual ADPG members is considered, with some companies operating for more than 40 years, the employment years then amount to the thousands.

* + 1. *Royalties*

Although their full-time employee numbers are relatively low, the 7 member publishers pay royalties to 517 authors, illustrators and other rights holders. This is a significant influence on the income of creative members of Australian society, especially when the lifetime of the publishing entities is considered.

* + 1. *Outsourcing*

Among these businesses, work is also outsourced regularly to local editors, designers, audio-engineers, printers, musicians, voice actors, programmers, etc.

* + 1. *Export*

All 7 member publishers are involved in the export of printed books and/ or digital books and the licensing of their intellectual property. Among the companies, 122 countries around the world are their export destinations (see [*Appendix 1*](#_APPENDIX_1:_Countries)). Export is a significant part of the group’s revenue (see 2.4).

* + 1. *Investment*

The major investment made by publishers is in the creation and development of intellectual property. The investment is in the highly skilled workforce members they employ or outsource to edit, design and refine manuscripts to a publishable state and then market these works. They are able to sustain such investment only because of the existence of copyright law. Their investment is at risk due to the competitive nature of the industry and its domination by multi-national companies.

The economic advantage to Australia with such companies is that:

* they are invariably family businesses that rarely relocate to another state or country and so do not require government incentives to remain in a particular geographical location
* they involve very little financial support from government compared to industries such as the motor vehicle industry

***1.3 Cultural impact***

*1.3.1 Domestic market*

The baby-boomer generation went to school with learning materials that were created either in the UK or the US. There was precious little content that reflected the Australian culture. So children learned about UK and US history, literature, customs, culture, places and images (Christmas scenes always had snow).

The Australian publishing industry began to address this situation in the 1970s and 1980s in children’s literature and content for teaching reading. The content that children meet in their formative years at school influence the way they think about the world. Australian content published for Australian schools over the last 30+ years has given Australian children a view that their multi-cultural nation is something worth reading about. This cultural impact from our creative industries is of great importance where young minds are concerned.

Members of the ADPG also sponsor various social, educational and literary entities within South Australia, including:

* Independent Arts Foundation literary club
* The History Council
* The Children’s Book Council of Australia
* Lawrence and Haese Scholarship for Mathematics

*1.3.2 International markets*

Since the 1980s, Australian publishers have been actively pursuing export markets and managed to reverse the trend of imported learning materials and pedagogy. They created an Australian identity in learning materials together with new pedagogies that had been developed in Australia and New Zealand. The UK, the US and other English-speaking markets and, for 30+ years now have been exporting Australian learning materials and pedagogy.

To succeed, the publishers had to improve on the existing materials available, and in doing so, demonstrated to the world that Australia was capable of producing world-class products in sophisticated areas of industry. The wine industry took a similar path in those years.

This demonstration of capability and sophistication is part of the overall image-building of a competent nation and marketing this sense of confidence to the world. Publishing is an industry that does more than create content – it has a cultural impact on its audience. That which is published carries with it an aura of credibility, albeit subject to professional criticism. This is an often unrecognised benefit of the publishing industry to Australia.

Members of the ADPG also support various cultural causes overseas, including:

* The Central Asia Institute (education for girls in Central Asian communities
* The Alola Foundation, East Timor
  1. ***Reasons for collaboration***
     1. *Addressing the digital revolution*

For most businesses the digital revolution is impacting their administrative, production, marketing and distribution functions, but they still make and innovate on the same product types. Even so, such businesses bemoan the constant change in technology, and the cost of hardware and software upgrades and service.

For publishers, the digital revolution presents all of those concerns but also a fundamental shift in the product types, production functions, distribution channels and means, and the security of their Intellectual Property that is the basis of their business. Hundreds of years of print technology is being influenced by digitisation of books and their means of distribution and consumption.

* + 1. *Training and learning*

The cost of the steep learning curve in the digital world is debilitating for small publishers. So the ADPG members collaborate to share knowledge on the technical and distribution functions associated with digital publishing. Effectively we learn from each other and combine to share the costs of training where possible.

* + 1. *Global marketing*

With the difficulty of surviving in a domestic market that is dominated by a few multi-national publishers, small publishers need to ‘swim in a bigger market pool’ by seeking specialised markets overseas. This is demonstrated in the evidence provided in this submission regarding export activity as a share of total revenue.

The members of the ADPG share global market knowledge and promote or recommend each other to relevant overseas contacts. Collectively, the group’s market reach is globally greater than many of the Australian offices of our multi-national competitors.

1. **Sources of income** 
   1. ***Domestic vs export revenue***

Fig.1 demonstrates:

1. The relative importance of export revenue to the ADPG members
2. The members’ contribution to the state and national economy through exports
3. The effect of the current global economic crisis on their exports and hence their overall revenue. In ‘normal’ economic conditions their average export success is considerably higher in value and higher as a percentage of their overall revenue.

*Fig.1: Export sales as a percentage of total revenue among ADPG members FYE2011-2013.*

* 1. ***Print vs digital revenue***

Fig.2 demonstrates:

1. The effect of ADPG member investment in digital publishing
2. The growth in sales of digital products versus print products as a portion of the total revenue of ADPG members FYE2011-2013.

Member investment in digital publishing is producing positive results, but the growth does not make up for the downturn in print sales.

*Fig.2: Digital product sales as a percentage of total revenue among ADPG members FYE2011-2013.*

Fig 3 demonstrates:

1. The proportion of revenue among members that is print versus digital based and the total revenue
2. Rapidly falling print sales (also supported by industry figures)
3. Slowly increasing value of digital sales. The public perception is that ‘digital products should be cheaper than print because they are cheaper to produce’. This assumption is fallacious. The cost of development of intellectual property is the same for both outputs, but the technology cost of development and maintenance of educational products due to their often multimedia nature is higher than print.

The overall diminishing revenues of the ADPG publishers eventually must impact on employment numbers. This is already beginning to happen.

**Fig 3: Print sales vs digital sales value**

*Fig.3: Digital product vs print sales value among ADPG members FYE2011-2013.*

What these figures also demonstrate is that the ADPG members as small publishers are investing in the research, development and global marketing of digital products that are sufficiently innovative to attract the attention of the markets. However, profitability in this space is problematic at this stage in the industry’s development – it is marginal at best. Any move to weaken copyright law in education will have a significant impact on the viability of such investment.

Furthermore, the fall in print sales means the members must hold fewer print copies of any title in inventory. This has the effect of increasing the unit cost of printing. So profitability is being squeezed at both ends of the product spectrum at the moment for the ADPG members.

1. **Copyright Agency payments**
   1. ***Benefits to smaller publishers and creators***
      1. *Royalty revenues outside publisher sales*

The royalty revenues that publishers receive outside their normal domestic and international sales are Public Lending Rights (PLR), Educational Lending Rights (ELR) and Copyright Agency (CA) royalties the latter two being more to education publishers, authors, illustrators and photographers.

These royalties all recognise the use of published works beyond the scope of their original purchase. Each is quantified through the use of statistical sampling and so is seen as the most equitable and practical method of assessing the disbursement of royalties for such use.

* + 1. *CA Royalties to ADPG Members and their authors*

Fig.4 shows:

1. The value of CA royalties paid to ADPG members and their authors during the FYE2011-2013 period
2. The degree of penetration into the education market and the resulting use by schools and teachers
3. A significant decline in CA payments to ADPG members over the last 3 financial years

*Fig.4: CA royalties paid to ADPG members during FYE2011-2013.*

Fig.5 shows:

1. The value of CA royalties paid to ADPG members as a percentage of their total revenue during the FYE2011-2013 period
2. A significant decrease in this revenue to the ADPG members

*Fig.4: CA royalties paid to ADPG members as % of total revenue during FYE2011-2013.*

ADPG members were asked to rate the significance of CA royalties to the profitability of their businesses. Table 1 indicates the degree of importance publishers place on royalties for copying of works in education as a contribution to their net profit.

|  |  |
| --- | --- |
| **Rating** | **No. of Publishers** |
| Minor significance | 2 |
| Significant | 3 |
| Very significant | 2 |

*Table 1: Importance of CA royalties to bottom-line profit of ADPG publishers*

Given the low percentage of total revenue that CA royalties represent for these publishers, the fact that 5/7 of the publishers regard these receipts as significant / very significant to their final profitability indicates the low margins under which publishers operate when the research and development, operational overheads, royalties and production costs are subtracted from the total revenue. This is not an industry that is excessively rewarding financially for small publishers, in spite of their contribution to the economy. When asked why they persist in operating within the publishing industry, most educational publishers (invariably ex-teachers) respond that they see it as a worthwhile and fulfilling profession in terms of its effect on the quality of education.

The publishers are also aware as a result of direct feedback from their authors and illustrators that CA royalties are very important to the viability of their income as creators. CA royalties, ELR and PLR have become very significant to the income of authors and illustrators – the same creators who are responsible for the publishers’ export products.

* + 1. *The ‘Fair use’ clause*

The interpretation of the ‘Fair use’ clause to allow free copying of intellectual property in educational institutions in the US needs to be viewed with a recognition of the size of the US market compared to the Australian market. US publishers swim in a very big market pool where schools are adequately funded for learning materials.

By comparison, the Australian market is very small, yet demands purpose built content to serve the Australian curriculum. A small market that has been shrinking in terms of spending on learning materials over the last decade (APA figures – Horsley report) together with free copying in schools of texts produced by an industry that is already seeing radical changes through technology and experiencing marginal profitability as demonstrated earlier, cannot sustain such an interpretation of the ‘Fair use’ clause. Nor can individual publishers make equitable individual rights agreements with education authorities and manage the measurement of copying of their works. The only way this can be done efficiently for all concerned is through the statutory licence as it is currently implemented.

* 1. ***Benefits to schools***
     1. Fig. 4, Fig. 5 and Table 1 point to the importance of CA to the ongoing innovation and investment of competing Australian-owned publishers towards Australian education. Prior to the emergence of this industry sector in the 1970s and 1980s, learning materials in schools were largely sourced from the UK and US. It is only Australian-based companies that will serve the particular requirements of the Australian curriculum.
     2. Those group members whose market is predominantly schools and libraries have, through their teacher-authors and sales representatives frequent and intimate relationships with those institutions. This also occurs in schools in which materials are trialled and educational publishers are aware of teacher attitudes regarding the current copyright regime. In particular, teachers are aware of copyright law and plagiarism as they also explain this to students as part of their understanding of the writing process and publishing in classrooms.

The educational publisher members of the ADPG are aware that teachers value the fact that they can copy any material they require for their lesson planning because it is accounted for by the statutory licence. Furthermore, very few of those same teachers have ever been involved in the sampling process undertaken by CA to establish which works are being copied or used in various ways.

When schools and libraries are unsure of their rights regarding use of copyright material in special circumstances, the experience of the educational publishers is that they frequently approach the publishers and seek permission to use their works in a particular manner that is not simply making multiple copies for classroom use.

One such example of this was the use by a primary school teacher and his class of particular images and text from the award-winning picture book *The Watertower* by Gary Crew and Steven Woolman. The request was for students to create a persuasive multi-modal text in the form of a video. The publisher gave permission for this use without fee. The result was a well-crafted video promotion of the book and was launched by the school on YouTube with considerable success. In such cases, both the school students and the publisher benefited and the publisher, in turn, asked the school teacher for permission to use the children’s video.

Publishers do often cooperate with individual schools on the use of copyright material for no fee. However, there are so many common-place uses of publishers’ copyright materials in schools that publishers cannot manage all these uses individually. The only system the ADPG members see as capable of effectively and efficiently enabling a form of authorised use for schools and libraries is that of the statutory licence enacted through CA.

* 1. ***Relation to exports***

The copying of Australian works that have been exported is also reported on by CA as a result of the many agreements it has signed with RROs around the world. As a result, photocopying and digital use royalties also arise from the efforts of export activity undertaken by the publishers.

1. **Unauthorised Use of Copyright**

***Piracy***

Two of the publisher members of ADPG are aware of the pirated use of their works internationally. One member is aware of pirated editions of its large educational series in China. Another has had its main publication pirated digitally through the practice of ‘torrenting’.

As small publishers, the members are not able to confront piracy through their own resources. The primary tool they have for this is through their membership of Copyright Agency, which has developed strong links with other reprographic rights organisations throughout the world. In fact, through the International Federation of Reprographic Rights Organisations (IFRRO), Australia’s Copyright Agency holds a high level of recognition and influence, and in Asia in particular is involved in educating and supporting nascent RROs in the whole region. The members of ADPG note that CA has a staff member on the board of IFRRO and therefore consider CA as the most likely long-term solution to their problem of piracy due to their specialist legal knowledge in this area and their degree of influence internationally.

ADPG members, through their export activity, become aware of alternative interpretations of the Copyright law. For example, the application of the ‘Fair Use’ clause in the US can and does result in legal actions in that country when schools assume a right to go beyond ‘fair use’. One case in recent years occurred in Birmingham, Alabama with the wholesale copying and distribution of a textbook throughout a school district. Small publishers cannot mount legal actions to counter such blatant transgressions of Copyright. They would need to rely on an industry body or CA with its international influence and expert legal knowledge on international copyright law to advise on such matters.

1. **Summary**
   1. ***Efficiency***

The current system of use of statutory licence implemented by a highly effective organisation such as Copyright Agency is regarded as the most efficient way to properly recompense intellectual property owners for use of their work in various ways.

Teachers and librarians have equal access to any content. This is especially important for small publishers such as members of the Adelaide Digital Publishing Group.

* 1. ***Export***

The professionalism on legal matters, national and international, and the degree of influence wielded by Copyright Agency through the International Federation of Reprographic Rights Organisations is an important support agency for publishers who invest in export activity.

Copyright Agency is a knowledgeable and efficient source of information to publisher members and is responsible for collecting and paying reprographic and digital use royalties that arise from the successful placement of Australian published content in international markets. It increases the period of reward for investment in export activity.

* 1. ***Teacher interests***

Time-poor teachers need the assurance that the statutory licence affords them when they identify elements of content that they need to use in the lesson plans.

Publishers see the current system as the most practical way of achieving this for teachers and schools. Teachers do not have the expertise or time to source the owners of copyright in every instance and seek permission to use their work. Publishers and authors equally do not have the time to administer the many thousands of requests for permissions. It would interrupt the development of products that not only serve the national needs, but also provide export revenue.

* 1. ***Cultural impact***

Australian content for schools and libraries has a high cultural value that contributes to our national sense of identity. It also has an effect on Australia’s identity internationally in very powerful ways on young minds. The industry sector that produces and exports such material needs to be viable. It is vital that the copyright law is not changed in ways that serve to undermine the value of that intellectual property in its domestic setting. A viable domestic market is a requisite for the research and development of content that meets international standards and can achieve export success and international cultural influence.

The cultural impact of the group is also felt both domestically and overseas through members’ various sponsorships and philanthropic work.

* 1. ***Comparing apples with apples***

Modelling the application of copyright law on interpretations adopted by much larger markets with radically different funding models for the supply of learning materials in schools and culturally different understandings of equity and social justice is a recipe for problems. Australia already has a system that works. Political aspirations of finding a silver bullet solution to lowering the cost of education, or legal opinions that have scant practical understanding of the implementation of education as it is faced by teachers today are fraught with danger.

The ADPG is a very small subsection of publishing in Australia. If the economic realities of this small group are scaled out to the industry as a whole, the cost of the statutory licence becomes small indeed at $16 per school student for teachers to have ready access to any content they choose from the whole of the publishing industry.

To tell teachers that serving their needs in this way is too expensive, or to tell the creators that their works are not worth $16 per student would appear parsimonious at least.

* 1. ***Practicality***

The Members of the Adelaide Digital Publishing Cluster are representative of many businesses throughout Australia that have to deal with the current upheaval in an industry undergoing a historically rapid rate and nature of change. To enable industry to navigate this difficult terrain and at the same time provide the market with what it needs and wants, we need government policy that maintains a practical system that already works and does not introduce further disruption to an already very disruptive commercial and technological environment.

*Submission written by Rodney Martin of Era Publications on behalf of the Adelaide Digital Publishers Group (ADPG)*

*Data from ADPG members was collected and aggregated by the ADPG secretariat, Shepard International.*

*31 July 2013*

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| |  |  |  | | --- | --- | --- | | Angola | Greece | Oman | | Antigua & Barbuda | Guam | Pakistan | | Argentina | Guatemala | Palestinian Territories | | Austria | Honduras | Panama | | Azerbaijan | Hong Kong | Papua New Guinea | | Bahamas | Hungary | Peru | | Bahrain | Iceland | Philippines | | Bangladesh | India | Poland | | Barbados | Indonesia | Portugal | | Belgium | Iran | Qatar | | Bermuda | Israel | Romania | | Bolivia | Italy | Russian Federation | | Bosnia & Herzegovina | Jamaica | Saudi Arabia | | Botswana | Japan | Serbia & Montenegro | | Brazil | Jordan | Singapore | | Brunei Darussalam | Kazakhstan | Slovak Republic | | Bulgaria | Kenya | South Africa | | Burkina Faso | Kuwait | South Korea | | Cambodia | Lao People’s Democratic Republic | Spain | | Canada | Latvia | Sudan | | Chile | Lebanon | Sweden | | China | Lesotho | Switzerland | | Colombia | Liechtenstein | Syrian Arab Republic | | Costa Rica | Lithuania | Taiwan | | Croatia | Luxembourg | Tanzania | | Cuba | Macedonia | Thailand | | Cyprus | Malaysia | Timor-Leste | | Czech Republic | Malta | Turkey | | Denmark | Mauritius | Uganda | | Dominican Republic | Mexico | United Arab Emirates | | Ecuador | Monaco | United Kingdom | | Egypt | Mongolia | Uruguay | | El Salvador | Morocco | USA | | Estonia | Mozambique | Uzbekistan | | Ethiopia | Myanmar | Venezuela | | Fiji | Namibia | Vietnam | | Finland | Netherlands | Virgin Islands, British | | France | Netherlands Antilles | Virgin Islands, US | | Georgia | New Zealand | Zambia | | Germany | Nigeria | Zimbabwe | | Ghana | Norway |  |  APPENDIX 1: Countries to which ADPG members export |