The migration of the book across territorial borders: Copyright and Cultural Implications

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THE MIGRATION OF THE BOOK ACROSS TERRITORIAL BORDERS
COPYRIGHT AND CULTURAL IMPLICATIONS

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Book with Wings, 1992-94
Copyright concerns

* Digitization of the book across borders
* Sale of extra-territorial publications of printed books:
  - Illegal imports
  - Cross-border sales
  - cf Kirtsaeng v John Wiley & Sons (2013 US Supreme Court case)

Side-effect of cross-border sale of books

* Possible effect on cultural fabric of literature
Research conducted with Australian authors

Two stages:

- National online survey - 156 published Australian authors through Australian Society of Authors (ASA)
- + 20 in-depth interviews with authors and publishers

Multi-method approach - ‘qualitative purposeful sampling’ utilized (Patton, Stake)

Doctoral thesis Negotiating a changing landscape: Authors, Copyright and the Digital Evolution (2012)

(More information: fcantato@bond.edu.au)
International copyright?  
USA and Australia currently retain territorial copyright laws (US Copyright Act 1976, Australia Copyright Act 1968)  
* Berne Convention for the Protection of Literary and Artistic Works – protection for ‘foreign works’  
* Includes:  
  § E-books  
  § Extra-territorial publication of printed books  
* But - copyright breaches difficult to address locally  
* Copyright challenges faced by authors in changing publishing space
Advantages of e-books
Authors - a new way to connect with readers
But what are the perceived disadvantages of a ‘heavenly library’?
- Digital copyright protection
- Complexity of copyright law and licencing
- Power of online publishers over content
- Difficult to enforce territorial copyright
Digital copyright - Authors’ views

- Nearly 80% concerned about copyright protection
- More than 50% did nothing to protect
- Less than 20% used DRM
- 30% posted copyright warnings
- 10% used licencing models – Creative Commons
- Lack of knowledge, time, funds
- Not commercially viable to take legal action
Territorial copyright in ebooks?

* In Australia - no restrictions on importation of electronic literary works, except that it must be a ‘non-infringing copy’ (made lawfully in the country of origin) - *Australian Copyright Act*

* Thus no parallel import protection on digital books

* Problematic to enforce territorial CR protection on ebooks

* Authors hold diverse opinions
Cross-border sales of printed books

- Restrictions on the parallel importation of books in Australia & US
- Difficulties in enforcing copyright internationally
- Two issues -
  - Importation of illegally printed copies of books
  - Legally published for an overseas market, then imported back into country of origin
Kirtsaeng v John Wiley & Sons (2013)

Landmark US Supreme Court Case
Copyright Act s 602 and s 109

- 6-3 Majority held in favour of Kirtsaeng – first sale doctrine applied to lawfully made foreign works
- Justice Ginsburg dissenting – criticism of decision
  ‘at odds with Congress’ aim to protect copyright owners against the unauthorized importation of low-priced, foreign made copies of their copyrighted works.’
Cross-border sales can affect cultural impact of books

Possible compromise by sale of electronic versions and importation of overseas copies

Why? Differences in grammar and expression, loss of authenticity and cultural significance

Eg Australian books published in US and imported back
Nick Earls - World of Chickens

* US edition – Two to Go
* Extensive changes to international editions
* 300 changes to US edition
* Eg ‘uni’ v ‘school’
* Title changes – potential to confuse Australian buyers
Conclusion

- A ‘global battlefield’ between supporters of the notion that the internet should be free on the one hand, and the creative industries wanting to protect their copyright on the other – Richard Hooper
- Territorial copyright is complex
- The future of copyright requires flexibility
- More global rights > Dilution of territorial copyright