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.’
Eroding the cultural value of books

- 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