

# Thomas Abraham's Rebuttal on Parallel Importation

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*We engaged in an e-mail conversation with Thomas Abraham, the managing director of Hachette India, on the issue of parallel importation of books into India. We thought it would be in the public interest to publish a substantive part of that conversation.*

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## **Nature of disagreement**

There is essentially fundamental disagreement on principle and definition-and I guess there will always be if you knock actual knowledge and see things as abstract philosophical (and legal) points. Why I think detailed knowledge is necessary is precisely illustrated at the logic (or lack thereof actually) employed by the Ministry. And then there is to me the fundamental problem of disregarding the author's wishes (for no greater good).

## **Second hand books and libraries**

The comparison is not the same. Both (second-hand and libraries) have had a first sale where the copyright holder has got his/her basic right-the designated royalty. (I have explained earlier how export royalties and remainder royalties are much lower and results in losses to the author.) So here we come back to the basic philosophy-who has greater right on deciding on creative works? The creator or the government? A just answer would be the creator provided commercial dissemination fulfilled society's needs-which in India's case would be availability and right pricing keeping in mind socio-economic needs. Both are happening through local publishing and pricing of imports. But parallel imports would take away that right an author has of deriving a rightful income as per existing norms in all mature markets (including India so far). We are heading towards being a mature market and this has come about only because we are in the self-perpetuating framework of publishing, writing, and cultural development.

So the argument is that second hand books and libraries foster reading without depriving the author of rightful royalty or ruining the market.

Parallel importation does both. There is every reason to know that this will happen-that's exactly the substantiation we are offering. And the advocates of parallel importation have none to offer-pricing (where is it high, and by how

much should it come down?), what is not freely available and at special prices? So for what reason do we want the existing law-also made by lawmakers-to change the stated remit of exhaustion from national to international.

No book publisher objects to libraries or even second hand books. But they are objecting to parallel importation. So leave it to them to decide. It is a tad patronizing to tell us what will help us, without having a shred of actual knowledge.

## **Helping libraries and disabled**

This is completely false. No library needs to import from Amazon. And if it is a public library then they are wasting taxpayer money. Almost any book in the world they will still get at a special price through Indian publishers or distributors. There are societies for the disabled to whom publishers give rights at almost no cost. The UK has a law that a copy must be made available at near cost for disabled. By all means have such a law here. Why try and use parallel importation as an excuse for this?

## **Flexibility in the law**

To your point: "Even if prices don't fall, it is good to have the flexibility for libraries to import four copies of a book that students need and isn't being made available in India. That flexibility is crucial, for availability, and just on principle, and not just for the sake of prices". By all means pass the law that gives the libraries the right to import 5 copies of any book they want. Publishers won't gripe at that. Libraries would still get it cheaper here than Amazon but that's the libraries' call.

## **Law should promote fairness and equity, not perpetuate a particular business model**

No disagreement here. But the contention is that it will result in exactly the opposite. Sure, so let the lawmakers demonstrate they have done due diligence and outline evidence for their assumptions and how it will promote fairness and equity. What is unfair right now and what is not equitable? And how this law will address that. Why do other markets have it, and why should we not? On no count is there any detailing-just three false assumptions-availability, pricing and current editions.

Equally one can't have the law being made the proverbial ass because the lawmakers won't do their homework.

## **Export and remainder royalties are lower**

I explained export vs domestic royalties in my first rebuttal. Not just remainders. Remainders are near zero royalties. Export surplus even pre-remainders

are low royalty-against the author's wishes. And parallel importation will result in further loss of royalties from loss of sales of the hitherto legitimate edition.

## **Why anti-dumping laws will not be practical**

Firstly there will be 40,000-plus titles to track, and the damage would have been done by the time you invoke the law. And assuming we want to invoke anti-dumping law, what parameters will be fixed? what discount are you going to fix? What quantity? I'll explain why this will never work. There are no real averages to draw lines and say this much and no more for either discount or price or quantity. To understand why we need to understand cost to price structures. Indian publishing (both publishing and imports) is low margin. Our books are priced to market; that means from cost our mark up is 2.5 times for imports and about 3-4 on average for local publishing-to enable the prices you see. Abroad it is 8-10 times from cost. To enable low pricing in India, we already have overseas terms that exceed 70% discounts, going into 'net pricing' for the ones that we pick to push big. Once the market is opened up, you will have two things-(a) targeted remainders as against the minor trickle now and (b) surplus clearance or even targeted sale to undercut the existing lawful edition. And I repeat the point that these remainders and 'targeted exports' can still end up undercutting the local edition. Not significantly enough to cause a change in pricing pattern (no benefit to consumer), but enough to undermine existing industry structures.

And yes, parallel importation (the current trickle) does see enforcement the logical way (by which I mean that the intensity of the problem merits the level of redressal). So far (believe me, each of us keeps tabs) we have 'unaware imports' and 'deliberate imports'. It is an irritant but is gradually reducing as the market matures. And the unaware ones are easily remedied by a simple letter asking for infringing stock to be withdrawn. In fact 8 out of 10 cases this simple letter works. For the deliberate ones, as I said earlier, it's just one or two where the impact is not worth the cost. Our margins do not allow us to hire expensive lawyers. But the moment it touches key brands or high revenue, legal action is taken.

## **Market expansion**

Again the inherent assumption that this is some 'fat cat' lobbying protest. For once the lawmakers need to apply themselves-why is everybody from Penguin & Hachette (biggest) to Zubaan and Yatra (amongst smallest) all opposing it? Similarly from Crossword (large chain) to 'The Bookshop' in Jor Bagh (small independent), nobody wants this. Why? Surely that must speak for something? The only ones it will benefit are the remainder stalls you see (of which there must be about 25-30 all over the country). But over time every bookshop will be forced to keep this kind of stocking eroding current shelf space (they will have no choice). This is not market expansion.

## **Pricing drop**

The other thing being ignored is that it's not just short term spoiler pricing. When one thinks in purely theoretical terms and says "open up, prices will drop", one is also not factoring in that the composition of what is stocked will change. It's no longer *status quo* at reduced prices. That's the key to a mature market, that what the market needs is available—from bestsellers to literary works to philosophical works—balancing commercial and cultural needs and at prices the market can afford. So sure we can sit back and say we don't care if the history and philosophy shelves are eroded, if local publishing shrinks, let market forces prevail and let there be just foreign mass market novels and old editions (which will flow in by the thousand). But I'd like to hear the government say that.

## **Not just about copyrighted books but about all copyrighted materials**

Yes, and we're not commenting about the others (other materials, i.e.) because we do not know enough. But we cannot have one size fits all if there are legitimate grounds to think about otherwise. Why is there a redressal of authors' needs in the music and film industry and a total disregard of books? Why were there panels created to discuss and thresh the whole thing through for films, and no detailed consultation at all for the books industry?