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

Cantatore, Francina

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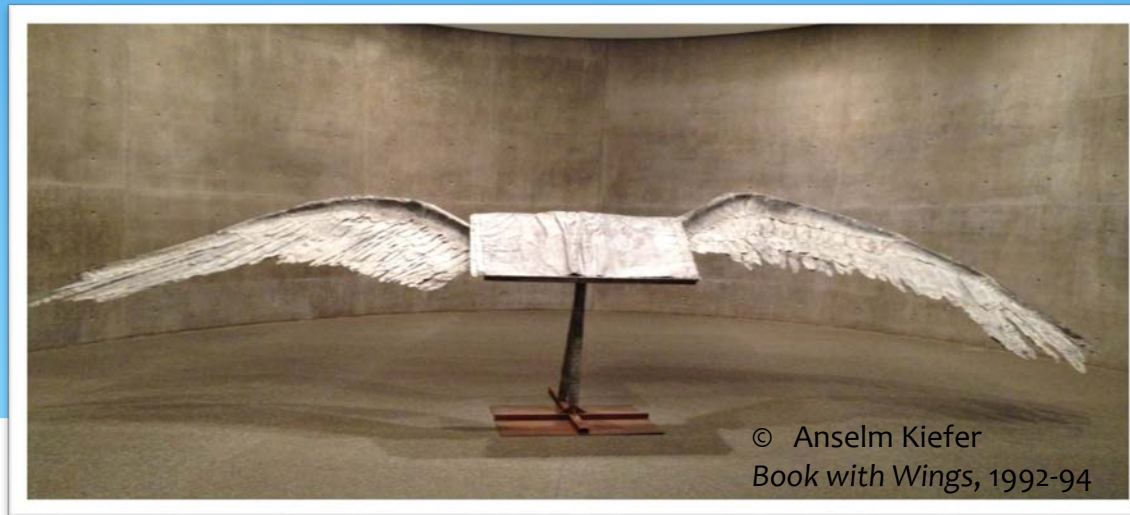
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THE MIGRATION OF THE BOOK ACROSS TERRITORIAL BORDERS

COPYRIGHT AND CULTURAL IMPLICATIONS

Franci Cantatore

Bond University, Australia



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Book with Wings, 1992-94

Introduction & Scope

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



- * 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)

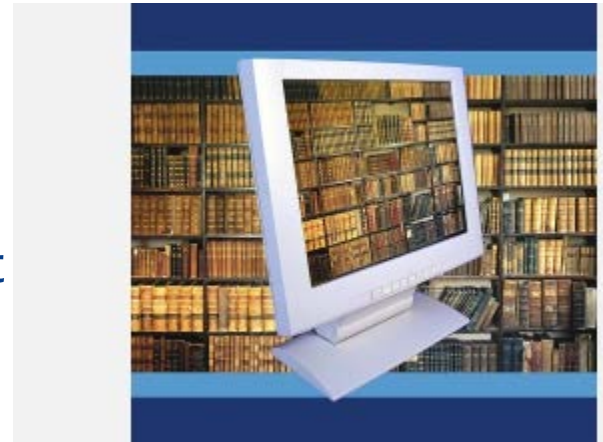
Background

- * 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



The Heavenly Library

- ❖ 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

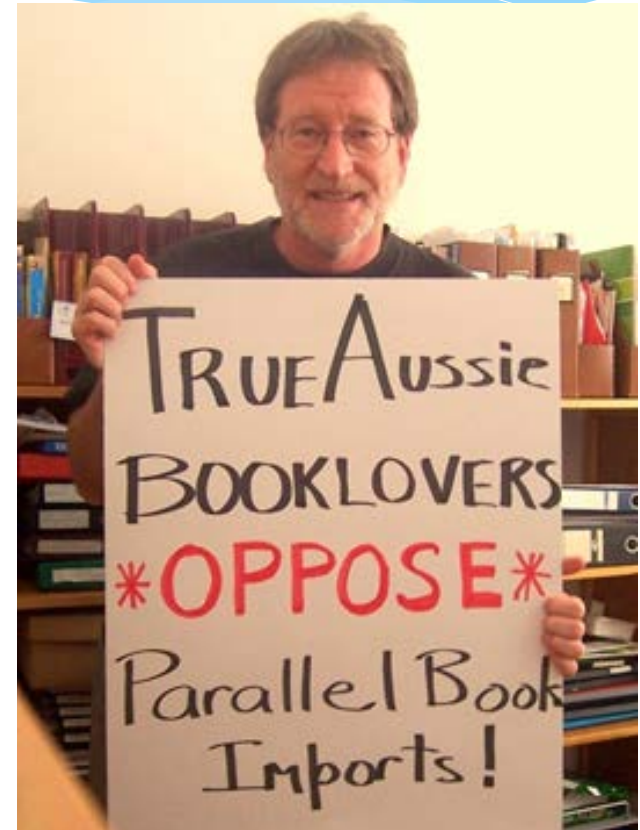
Territorial copyright in ebooks?

- * 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.’*

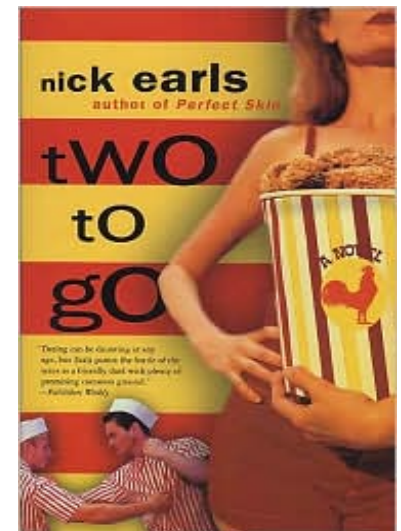
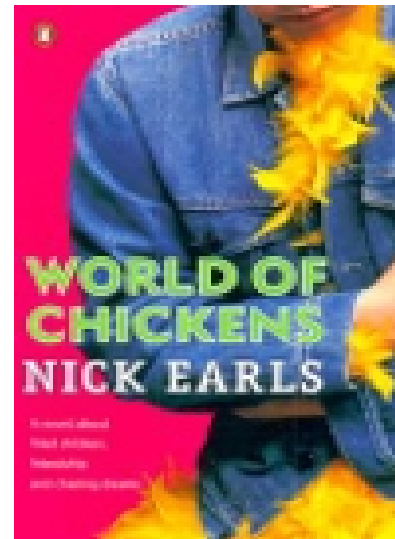
Eroding the cultural value of books

- * 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

