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The Role of the *Book Importation Regulations* in Canada's Market for Books

April 2012

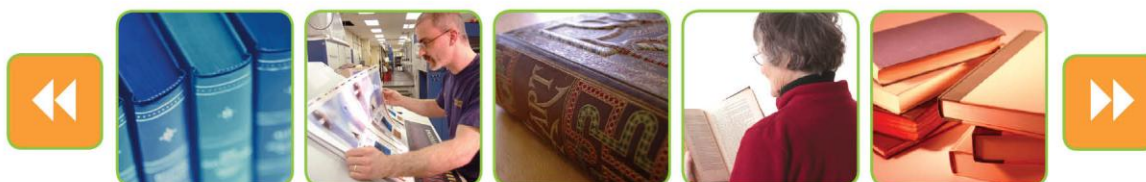
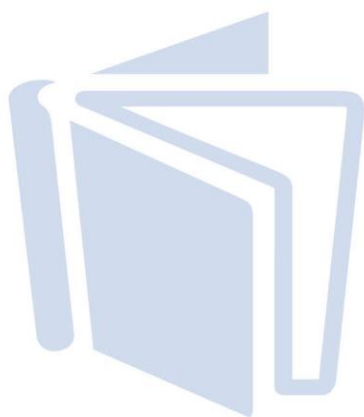


Table of contents

Introduction	2
Background:	
Legal and Regulatory Provisions	3
Origins of the <i>Book Importation Regulations</i>	9
Part I:	
Role of the <i>Book Importation Regulations</i> in Canada’s English-Language Market for Books	17
Part II:	
Role of the <i>Book Importation Regulations</i> in Canada’s French-Language Market for Books	68
Annex A: International Comparison of Book Importation Regimes	92
Annex B: Complete Text of the <i>Book Importation Regulations</i>	101

Introduction

Since Canada's *Book Importation Regulations* came into effect in 1999, the environment for book distribution in Canada and internationally has changed dramatically and continues to evolve in a number of important ways, especially with respect to online commerce and the rise of digital reading.

In light of these changes, and to help ensure that any future policy decisions in this area are based on accurate, current, and comprehensive factual evidence, two separate research studies were commissioned in 2011 by Canadian Heritage, the federal government department responsible for policy measures specifically targeting the book industry. These studies addressed the role of the Regulations in Canada's English- and French-language markets for books and were led, respectively, by Turner-Riggs and Édinova inc., independent consultants with proven expertise in the Canadian book industry and the effects of government policy on the market for books in Canada.

The resulting report presents their findings in its two main parts, which are based on the extensive quantitative and qualitative research they conducted from July to December 2011. Parts I and II are bookended by a background section and an international comparison annex based on research conducted internally at Canadian Heritage. Given the complexity of the issue, the background section may be particularly useful to readers in explaining and establishing the historical context for Canada's book importation regime. The complete text of the *Book Importation Regulations* is also annexed.

Taken as a whole, it is hoped that this report will serve as a useful resource in any examination of the *Book Importation Regulations* and their effectiveness and utility in the market for books in Canada in the digital era.

Background: Legal and Regulatory Provisions

Canada 

April 2012

Canada's *Book Importation Regulations* operate under the *Copyright Act*. Their purpose is to extend the Act's protection of copyright holders to exclusive distributors of books in case of parallel importation, provided that certain distribution and notice provisions are met. Before the Regulations came into effect, the Act protected only copyright holders in Canada against parallel importation.

"Parallel importation" occurs when a retailer or institutional buyer imports copies of a title without sourcing them through the appropriate rights holder in the given territory. This practice, also referred to as "buying around" the licensed territorial supplier, is usually motivated by the possibility that sourcing through a foreign supplier will be cheaper or faster.

The Regulations are intended to support investment in Canada's book industry as a whole by helping to protect the commercial interests of businesses operating throughout the book supply chain in Canada. This protection is also intended to serve the public policy objective of ensuring access by readers everywhere to a wide range of Canadian-authored books, in that large distributors in Canada are often vertically integrated with major publishers of Canadian content: the publishers thereby have the benefit of "cross-subsidy" support from the surplus revenues generated through the distribution of imported titles.

This discussion of the statutory framework for book importation in Canada refers to two types of rights holders:

- The **copyright holder** is the owner (usually the author) or, for a given territory, the exclusive licensee (usually the publisher) of the right to reproduce a work—literally, the right to copy. For example, a Canadian-based publisher may be licensed to produce copies of a certain title only for the Canadian market, making that publisher the copyright holder.
- The **exclusive distributor**, meanwhile, is the sole licensed importer and supplier of a title to retailers and institutions in a given territory on behalf of the copyright holder. For example, a Canadian-based firm may be appointed by a foreign publisher to be its only distributor in Canada, making that firm the exclusive distributor.

Both copyright and the right of exclusive distribution may be undermined by parallel importation, such as in the following example:

A publisher in Canada is exclusively licensed to produce a title for the Canadian market, but a Canadian bookstore sources the title by importing copies from a supplier in the United States. In this case, the Canadian publisher loses the return on its investment in producing the title (i.e., the copyright licensing, editing, and production costs, among others). If, instead of a publisher, there is an exclusive distributor of imported copies of the title in Canada, that rights holder likewise loses the return on its investment in supporting the title in the Canadian market (i.e., the warehousing, transportation, customer service, and, in many cases, sales and marketing costs, among others).

In Canada, as in most developed countries, copyright law makes parallel importation an infringement of copyright in a book, meaning that copyright holders in essentially all cases are

protected against it. This notion of territoriality is central to the protection of intellectual property rights everywhere. Canada's *Copyright Act*, however, goes further than copyright law in other countries in making parallel importation an infringement of copyright in an *imported* book, as well, on the condition that exclusive distributors observe the Regulations.¹ The distribution and notice provisions imposed on rights holders by the Regulations help protect Canadian buyers against the possibility that increased market exclusivity could result in higher prices or lower standards of service.

These provisions are discussed in detail below.

Notice of exclusive distributor

First, to ensure buyers in Canada know where to source their stock, the Act requires both exclusive distributors and copyright holders to give “notice of exclusive distributor”² as prescribed in the Regulations.³ In case of infringement by parallel importation, no rights holder is entitled to the remedies in the Act unless this notice was given before the infringement occurred.

Criteria for imported books

The Regulations impose additional criteria on exclusive distributors of imported books in the form of pricing⁴ and service⁵ provisions. These criteria, if met, serve to qualify exclusive distributors for the extended protection of the Act. If these provisions are not met, buyers are legally entitled to “buy around” the exclusive distributor by importing copies of the title in question from a foreign supplier.

The pricing and service provisions in the Regulations vary depending on the country of origin and the language (English or French) of the imported book.

The Regulations also specify the number of days within which an exclusive distributor must confirm whether the order can be filled, if asked by one of its buyers.⁶

Pricing provisions:

- The Canadian list price of books imported from the United States must be no more than 10 percent higher than the original US list price in Canadian dollars at the prevailing rate of exchange.
- For books imported from Europe or any other non-US country, the list price must be no more than 15 percent higher.

¹ See [section 27.1 of the Act, “Parallel Importation of Books”](#)

² See [section 27.1\(5\) of the Act](#)

³ See [section 4.\(1\) of the Regulations](#)

⁴ See [section 5.\(1\)\(a\)\(iii\) of the Regulations](#)

⁵ See [section 5.\(1\)\(a\)\(i\) of the Regulations](#)

⁶ See [section 5.\(1\)\(b\) of the Regulations](#)

Take, for example, an American title listed at USD\$14.99. If the Canadian dollar is “at par,” the list price of imported copies of the book in Canada must be no more than CAD\$16.49 for the exclusive distributor to qualify for the extended protection of the Act in case of parallel importation.

After the list price has been set, retailers and institutional buyers purchase copies of the book minus the usual trade discounts, which are negotiated between buyer and supplier. In the example above, the exclusive distributor might sell copies to a retailer at a discount of, for example, 45 percent from the list price, or \$9.07 per copy. The retailer is then free, in turn, to offer copies for sale to its customers at the price of its choosing (the retail price), without necessarily referring to the list price or “suggested retail price,” which is sometimes printed on the book cover. Book retailers can return any unsold inventory to the publisher or distributor for a full refund or full credit on their account.

Neither retail pricing nor trade discounts are regulated under the *Copyright Act*.

Service provisions:

- In the case of an English-language book imported from the United States, for example, copies must be shipped to customer accounts in Canada within 3 days if the title is in stock when the order is placed, or within 12 days if the title is not in stock.
- To use a different example, a French-language book imported from Europe must be shipped to customer accounts in Canada within 5 days if the title is in stock, or within 60 days if it is not.

If, under the Act, there were no regulations establishing distribution criteria for exclusive distributors, these particular rights holders could not claim entitlement to protection under the parallel importation provisions of the Act. This would be the case if, for example, the existing Regulations were repealed.⁷

Criteria for Canadian editions

The pricing and service provisions in the Regulations do not apply to Canadian editions.

The Regulations define a “Canadian edition” as a book published under an agreement that confers on a publisher, whether in Canada or elsewhere, a separate right of reproduction—that is, copyright—for the Canadian market.⁸

⁷ See the definition of “exclusive distributor” in [section 2 of the Act, “Interpretation”](#)

⁸ See [section 1 of the Regulations, “Interpretation”](#)

For Canadian editions of books that are imported into Canada⁹ (i.e., the right of reproduction, or copyright, is not held in Canada), the exclusive distributor in Canada is required by the Regulations to identify and list the book as a Canadian edition¹⁰ and make sufficient copies available¹¹ to satisfy demand for the title in Canada.

Neither the exclusive distributor in Canada nor the foreign holder of copyright in these cases is entitled to the extended protection of Canada's *Copyright Act* if notice of exclusive distributor has not been given.¹²

Copyright holders in Canada are not subject to any of the requirements imposed by the Regulations. They are automatically protected against parallel importation under the *Copyright Act*.¹³

Remedies in the Act

In case of infringement by parallel importation, the Act makes all its remedies, with the exception of statutory damages¹⁴ and criminal penalties,¹⁵ available to qualified exclusive distributors.¹⁶ A remedy specific to the parallel importation of books allows the exclusive distributor to obtain a court order for the seizure and detention, by customs officials, of illegally imported shipments of books at the border.¹⁷

Exceptions

The Act permits individual consumers to import up to two copies of a work from a foreign source for their own use.¹⁸ For example, any Canadian may import one or two copies of a book by purchasing them through Amazon.com or any other supplier based outside of Canada, even if that book is also made available in Canada through a Canadian publisher or exclusive distributor.

A library, museum, or educational institution may similarly import a single copy of a book without sourcing it through the Canadian rights holder.¹⁹

The Act also permits the parallel importation of all second-hand books except textbooks.²⁰ The Regulations, however, qualify this clause to permit the parallel importation of second-hand textbooks.²¹

⁹ See [section 2.\(1\)\(b\) of the Regulations](#)

¹⁰ See [section 6.\(1\)\(b\) of the Regulations](#)

¹¹ See [section 6.\(1\)\(a\) of the Regulations](#)

¹² See [section 27.1\(5\) of the Act](#)

¹³ See [section 27\(2\) of the Act](#)

¹⁴ See [section 38.1\(6\)\(c\) of the Act](#)

¹⁵ See [section 42\(5\) of the Act](#)

¹⁶ See [section 34.\(1\) of the Act](#)

¹⁷ See [section 44.2 of the Act](#)

¹⁸ See [section 45.\(1\)\(a\) of the Act](#)

¹⁹ See [section 45.\(1\)\(d\) of the Act](#)

The Regulations also establish specific categories of books to be partially or wholly excluded from the parallel importation provisions in the Act, such as remaindered stock, special orders, and used textbooks.²²

Finally, the Regulations do not appear to apply to rights holders for digital books, since the specific provisions of the regime address only the realities of print book distribution. What is more, the legislation defines a “book” as “a volume or a part or division of a volume, in printed form.”²³ If they are not, in fact, subject to the Regulations, publishers and exclusive distributors of e-books (wherever the latter may be present in the e-book supply chain) cannot access the extended protection of the Act in case of parallel importation.

It should be noted that the application of the Regulations to e-books has not been judicially tested to date.

The protection of the Act is available as usual to publishers of e-books, as to all book publishers, in case of any other form of copyright infringement—for example, if a person reproduces the e-book without permission. This protection is available under a clause that protects copyright in all “works” more generally.²⁴

Summary of Application			
	<i>Book Importation Regulations</i>		<i>Copyright Act</i> protection available
	Distribution (pricing and service) provisions apply:	Notice provisions apply:	
Imported books that are exclusively distributed	✓	✓	✓
Canadian editions for which copyright is held outside of Canada	✗	✓	✓
Canadian editions for which copyright is held in Canada	✗	✗	✓
Imported books that are distributed on a non-exclusive basis	✗	✗	✗

The Regulations came into force on September 1, 1999.

See Annex B for the complete text of the *Book Importation Regulations*.

²⁰ See [section 45.1\(e\) of the Act](#)

²¹ See [section 8 of the Regulations](#), “Textbooks”

²² See [sections 7, 8, 9, and 10 of the Regulations](#)

²³ See the definition of “book” in [section 2 of the Act](#), “Interpretation”

²⁴ See [section 27 of the Act](#)

Background:
Origins of the *Book Importation Regulations*

Canada 

April 2012

The *Book Importation Regulations*, which came into effect on September 1, 1999, extend the protection of the *Copyright Act* to exclusive distributors of printed books in case of parallel importation, provided that certain distribution standards and notice requirements are met. The Act was amended to include these provisions in April 1997 through Bill C-32, An Act to amend the *Copyright Act*. Previously, the Act protected only copyright holders against parallel importation.

The Regulations were developed in consultation with interested parties from across the book industry. They reflected the prevailing market conditions at the time, including a Canada–United States rate of exchange significantly different from today’s (C\$0.60-0.70 to the US dollar in the 1990s), as well as other market conditions that have remained consistent since that time.

The new regulatory regime introduced service and pricing standards for exclusive distributors, with service standards a more pressing concern for interested parties at the time. These measures sought to ensure the timely supply of a wide array of book titles in Canada as well as a consistent level of service to bookstores and libraries.

While applicable across Canada, the Regulations were created to address mainly the challenges of the English-language market. The question of exclusive distribution rights was much less of an issue in the French-language market as Quebec already had a law in place (*Loi 51*) which, among other things, has the effect of offering some protections to exclusive distributors of books. For this reason, French-language stakeholders were much less concerned with and involved in the development of the Regulations.

Market conditions and other motivating factors

The rationale for extending protections to exclusive distributors was to restrict “buying around,” which occurs when books are sourced directly from a foreign-based supplier rather than the Canadian-based supplier. Booksellers maintained at the time that “buying around” occurred because exclusive distributors often did not provide timely service or competitive prices, forcing booksellers to purchase directly from the United States in order to offer good service and competitive prices to the public. “Buying around” had been a longstanding concern for Canadian publishers and distributors, dating back to possibly as early as the late 19th century.²⁵ By the 1960s, “buying around” had become one of the most publicized distribution conflicts within the book industry.²⁶

A 1989 Peat Marwick study commissioned by the Department of Communications (the precursor to the Department of Canadian Heritage, which was formed in 1993), titled “English-language Book Publishing and Distribution in Canada: Issues and Trends,” concluded that the practice of “buying around” was increasing and that considerable revenue was lost to exclusive distributors because of this practice. Moreover, industry experts estimated that the loss caused by parallel

²⁵ Parker, George. “The Publishing Industry in Canada 1918 to the Twenty-First Century.” <http://hpcanpub.mcmaster.ca/case-study/publishing-industry-canada-1918-twenty-first-century?page=1>

²⁶ Ibid.

importation amounted to between \$50 million and \$150 million annually, or between 3 and 10 percent of the industry's annual revenues.

The problem of “buying around,” and its negative impact on the book industry, put the issue of exclusive distribution agreements on the agenda of the Department of Communications in the early 1990s. In his announcement of a new federal policy framework for the book industry in 1992, Minister Perrin Beatty stated that the Government would introduce amendments to the *Copyright Act* designed to provide exclusive distributors with more adequate protection of their distribution rights in the Canadian market.

Because the loss of revenues caused by the practice of “buying around” affected the ability of publishers (who in many cases were also exclusive distributors) in Canada to fund the publication and marketing of original Canadian titles, the Government reasoned that extending protections to exclusive distributors would result in a stronger domestic industry that is better able to invest in the production, distribution and promotion of Canadian-authored books. Moreover, it was persuaded that the publishing industry would benefit because the protection of exclusive distribution rights would strengthen east-west distribution networks, and thus facilitate the distribution of both English and French-language books across Canada.

Bill C-32, An Act to amend the *Copyright Act*, was introduced in the House of Commons in April 1996. The importance of exclusive distribution agreements to the publishing industry in Canada was noted during second reading later that year. It was indicated that 45 percent of book industry sales were derived from exclusive distribution agreements, with a total value of \$587 million.

While the amended Act would seek to protect exclusive distributors from “buying around,” it would also require exclusive distributors to comply with certain measures governing their distribution activities. Although these measures could have been included within the *Copyright Act* itself, it was deemed more appropriate to place them in regulations, because they were expected to be lengthy and contain extensive details, requiring more time for negotiations. Compared to legislation, regulations were expected to provide greater flexibility, making possible a somewhat less complicated revision process if necessary.

A limited retroactivity provision—from June 30, 1996, to 60 days following Bill C-32's Royal Assent—was included to prevent stockpiling of parallel-imported books by retailers or other book buyers as the Bill worked its way through the parliamentary process. During that period, the protections against parallel importation were available to exclusive distributors as long as they were making their books commercially available in Canada. Thus, regulations setting minimum service requirements were not necessary during this period. However, if regulations were not in place two months following Bill C-32's Royal Assent, the protections against parallel importation were to cease being available until regulations were in place. Government officials reasoned that this process would encourage efficient and timely negotiations between publishers, exclusive distributors and booksellers.

Bill C-32 received Royal Assent on April 25, 1997. When the retroactive period passed without regulations having been put in place, the temporary protections against parallel importation

ceased to be available to exclusive distributors. It would take more than two years before the protections would once again be available to exclusive distributors when the *Book Importation Regulations* finally came into force on September 1, 1999.

Consultation process

Consultations with the major interested parties were held on a regular basis during that extended period. During the consultations, officials from Canadian Heritage and Industry Canada (which share responsibility for copyright policy and the Act) took a relatively hands-off approach, preferring interested parties to take the lead and work out an agreement on the parameters of their relationship within the industry. This process, it was hoped, would ensure relative equilibrium between the interests of booksellers and purchasers of books in obtaining high standards of service and those of publishers and exclusive distributors in protecting their market against “buying around.” It was expected that the standards negotiated by industry stakeholders would be incorporated into the eventual Regulations.

Negotiations between industry representatives took place under the auspices of the Book and Periodical Council (BPC), the umbrella organization for associations in the book industry in Canada. At the time, the BPC was viewed as the best vehicle for bringing stakeholders together as most English-language book industry associations were members. The BPC’s Task Force on Voluntary Industry Guidelines (the industry committee responsible for the negotiations) was made up of English-language representatives from the Association of Canadian Publishers (ACP), Canadian Publishers’ Council (CPC), Canadian Booksellers Association (CBA), Canadian Library Association (CLA), Periodical Marketers of Canada, Canadian Telebook Agency and Canadian book wholesalers. The Task Force, chaired by the CLA’s Paul Whitney—who was acceptable to all the stakeholders and viewed as having a relatively impartial perspective—met on numerous occasions through 1996 and 1997 to negotiate and draft the guidelines.

Government officials—mainly from Canadian Heritage, with one representative from Industry Canada—were present during all the Task Force meetings. The officials played an important coordinating role, preparing industry participants for the meetings and updating them on various matters as needed. Officials were also quite transparent with industry participants in indicating that, in the event that the Task Force failed to reach agreement on the guidelines, regulations would still be drafted without industry participation.

Although not members of the Task Force, representatives of the French-language market were present at one Task Force meeting in January 1997, but decided that their presence at subsequent meetings would not be essential. French-language stakeholders were not overly preoccupied with the drafting of the guidelines since Québec already had a law in place (*Loi 51*) which has the effect of protecting exclusive distributors of books. Also, the problem of “buying around” was seen as less acute in the French-language market, given its geographical isolation from France, the largest exporter of French-language books. Nevertheless, some French-language stakeholders, including l’Association nationale des éditeurs de livres (ANEL) and l’Association

des libraires du Quebec (ALQ), met with government officials on a number of occasions in order to convey their comments on the draft Regulations.

The development and drafting of the Regulations

The voluntary industry guidelines

As the Regulatory Impact Analysis Statement (RIAS)²⁷ accompanying the Regulations notes, the Regulations were “consistent with voluntary industry guidelines that were negotiated by industry stakeholders.”²⁸ This statement captures the vital role that the guidelines played in the development of the Regulations. From the onset of the Task Force negotiations, the Government made it clear to all involved that the eventual Regulations would be largely based on the guidelines. Thus, given the importance of the guidelines, it is of little surprise that the Task Force met periodically for almost two years, with the final meeting held on November 4, 1997.

During the meetings, the Task Force addressed some issues that were resolved relatively easily between the parties, including pricing standards and provisions for importing remaindered books. Negotiations on other matters, which included provisions for delivery times, special orders and giving notice in writing, were more difficult.

All interested parties acknowledged that transportation to and within Canada and other costs of doing business in Canada warranted different standards for pricing books imported from the United States, Europe and the rest of the world. Agreement on the pricing standards was not particularly difficult to achieve as they were consistent with industry practice at the time.

Unlike the pricing standards, negotiations on delivery times were more difficult, with agreement being reached only in the final meeting of the Task Force. The guidelines ultimately represented an approximation of actual transportation times and were incorporated into the eventual Regulations largely unchanged.

The issue of delivery times turned out to be one of the major concerns of representatives of the French-language market, with ANEL and ALQ telling government officials that the standards negotiated for the English-language market were unsuitable for the French-language market. Subsequently, the Government decided to establish different rules for the two markets.

²⁷ A RIAS is required for all proposed regulations. The RIAS must “demonstrate that the proposed regulation is preferred over other policy tools to achieve the objectives; describe the stakeholder consultations that have taken place; and explain the strategy to ensure compliance and enforcement.” Treasury Board of Canada Secretariat, http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/manbetseries/vol1401-eng.asp

²⁸ The Regulations’ RIAS: <http://www.cb-cda.gc.ca/act-loi/regulations-reglements/99324-e.html>

Importation of used textbooks

Although the guidelines were agreed to by industry stakeholders in November 1997, the final Regulations (which had been expected to be in place by the spring of 1998) did not come into force until September 1999. They were delayed because a number of issues still had to be resolved, including provisions for the importation of used textbooks.

Used textbooks, like all used books, were initially excluded from the parallel importation provisions when Bill C-32 was first introduced. However, in December 1996, the Standing Committee on Canadian Heritage adopted an amendment to the Bill to make used textbooks subject to the provisions in the Act.²⁹ Although used textbooks represented only 7 to 8 percent of total textbook sales, or \$14-16 million per year, it was argued that the dynamics of the Canadian used textbook market were changing and that the importation of used textbooks would increase.

As a result of this amendment to the Bill, the treatment of used textbooks became a major concern for campus bookstores and student associations. The Department decided to undertake a study of the importation of used textbooks into the Canadian market to determine whether such activity undermined the ability of publishers to invest in and publish new titles for the post-secondary market. The study found little evidence that the college textbook industry was suffering special difficulties or that any special damage was being inflicted by the importation of used college textbooks.

However, the study, along with continued consultations with interested parties, including Western Canadian College Stores Association (now part of Campus Stores Canada), Eastern Campus Booksellers, Canadian Federation of Students, Canadian Alliance of Student Associations and Follett Campus Resources, contributed to delaying the coming into force of the Regulations. In the end, the Regulations allowed for the importation of used textbooks but only for use within an educational institution or an educational body established or conducted for profit.

Gazetting process

The proposed Regulations, which closely reflected the guidelines developed by the Task Force, and accompanying RIAs were pre-published in the January 30, 1999, issue of the *Canada Gazette*, Part I. As with all proposed regulations, the purpose of pre-publishing the *Book Importation Regulations* was to familiarize a broader population with their content and to allow interested parties to submit comments within the specified gazetting period, which in the case of the Regulations was 45 days.

As interested parties had seen iterations of the draft Regulations throughout the consultation process, comments on the pre-published Regulations were quite minor. Generally, the comments submitted addressed such issues as remaindered books, notification requirements and technical fine points. As such, they entailed no significant alterations. The Regulations were subsequently

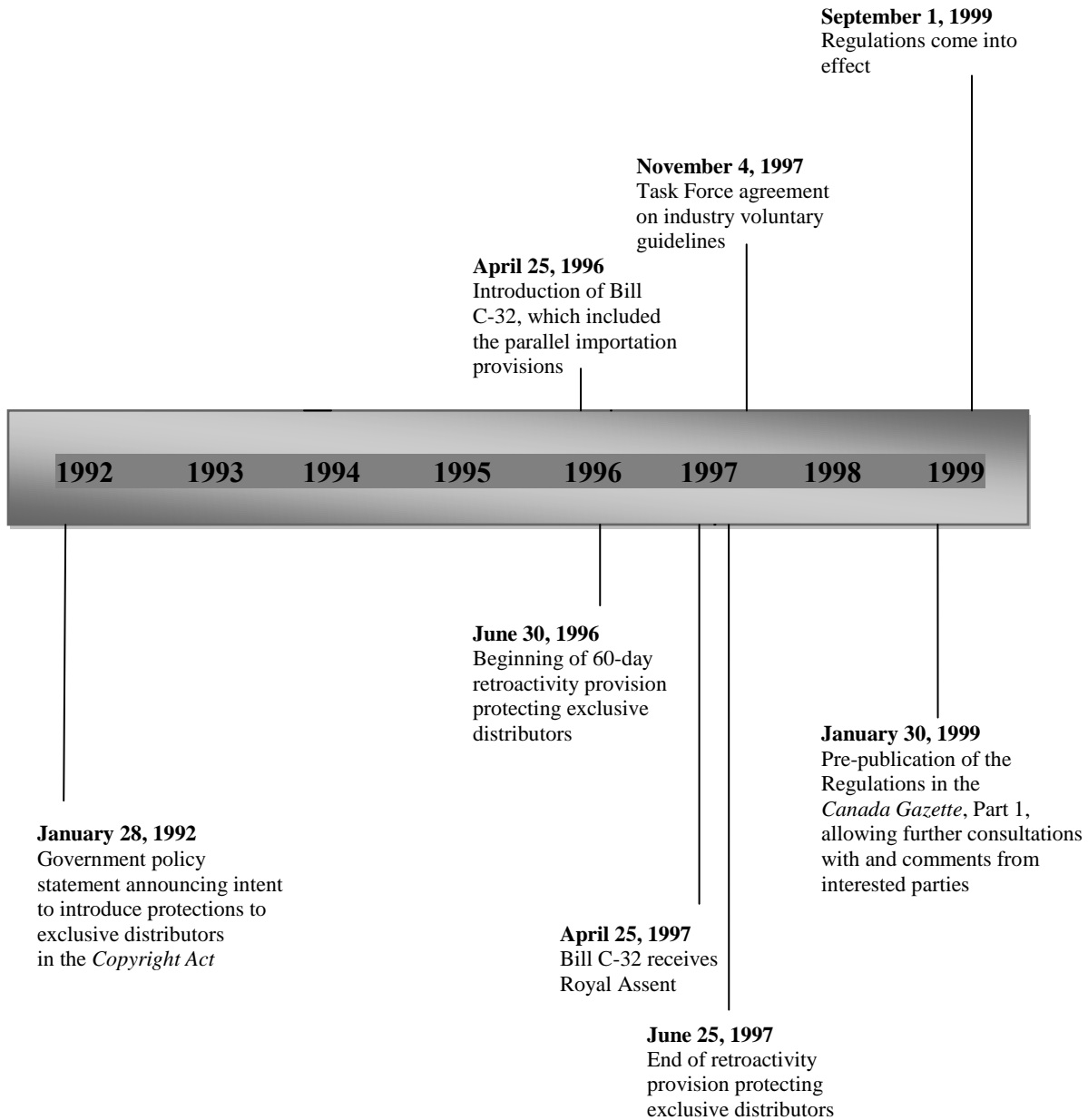
²⁹ By consent of all interested parties, another amendment to Bill C-32 allowed other categories of books, such as remaindered books, books intended solely for re-export and books imported by special order, to be dealt with within the eventual Regulations.

published in the *Canada Gazette*, Part II, on August 18, 1999, and came into effect on September 1, 1999.

According to an article from *Quill & Quire* (the book industry trade journal) on the day that the Regulations came into force, representatives of both sides were satisfied. Most publishers and booksellers considered the Regulations “realistic, if not ideal,” with the then-executive director of the Canadian Booksellers Association, Sheryl McKean, stating that the Regulations were “fair, and doable.”³⁰

³⁰ *Quill and Quire*, “Copyright Regs Take Effect Sept. 1”, September 1, 1999.
http://www.quillandquire.com/omni/article.cfm?article_id=1527

Historical timeline



Part I:
Role of the *Book Importation Regulations*
in Canada's English-Language Market for Books

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The opinions expressed in this section are those of the author and do not necessarily reflect those of the Department of Canadian Heritage.

April 2012

Table of contents: Part I

Executive summary.....	19
1.0 Introduction.....	23
2.0 General observations	26
3.0 Canadian book imports	31
3.1 Import pathways.....	31
3.2 Import data.....	37
3.21 <i>Number of titles in the Canadian market.....</i>	<i>37</i>
3.22 <i>Share of market: Domestic and import.....</i>	<i>38</i>
3.23 <i>Volume and composition of imports to Canada.....</i>	<i>40</i>
3.24 <i>Exchange rate and inflation effects.....</i>	<i>42</i>
3.25 <i>Price behaviour over time.....</i>	<i>44</i>
3.26 <i>Current price differentials: Trade titles.....</i>	<i>48</i>
3.27 <i>A closer look at textbooks</i>	<i>49</i>
4.0 Market effects of the <i>Book Importation Regulations</i>	54
4.1 Market effects with regard to library procurement	55
5.0 Critiques and issues	57
5.1 Critique: Removing the Regulations would reduce the cost of Canadian books.....	57
5.2 Issue: The Regulations are not enforceable	58
5.3 Issue: The Regulations do not apply to digital books	60
6.0 Conclusion	64

Executive summary

Canada's English-language book market is dominated by imported titles and by books from the US in particular. Reflecting the historical (and current) dominant market share of imported titles, a number of Canadian distributors and publishers act as exclusive in-Canada distribution agents for foreign publishers. The distribution revenues they collect as a result have historically been a critical aspect of the business model for many firms in Canada. Some of the oldest publishing houses operating in Canada today—both Canadian subsidiaries of foreign-owned firms and companies founded in Canada—began as exclusive distributors of imported titles, using distribution revenues to finance their first original publishing programs. Many others continue to rely today, to varying degrees, on distribution revenues from imported lines for economies of scale to sustain current distribution and publishing capacity in Canada.

Book distributors generally provide a wide range of services within the supply chain, including sales and marketing, warehousing and inventory management, order processing and administration, logistics and fulfillment, collections, and data management. Exclusive distributors provide a specified range of distributions services (as above) to the publisher for a fee, have exclusive territorial rights to the publishing lines that they represent, and sell to all types of customers, including wholesale accounts. They are distinct from wholesalers who buy selected titles from many publishers and distributors on a non-exclusive basis and then re-sell to retail and institutional accounts.

Given the increasing integration of the American and Canadian supply chains, along with far-reaching technological change in book markets globally, Canadian retailers and book-buying institutions have ready access to foreign suppliers of imported books. However, parallel importation, or “buying around” a Canadian rights holder to order from a foreign supplier, undermines the investment that the Canadian distributor has made in building distributive capacity and in allocating a portion of that capacity to distributing, marketing, and selling a publishing line or title in Canada. To the extent that such parallel importation is widespread, the viability of the Canadian supply chain could be eroded as could its ability to provide a rich selection of domestic and imported books to Canadian consumers.

In recognition of the public interest in a sustainable domestic supply chain, Canada's current *Book Importation Regulations* came into force in September 1999. Their principal objective was (and is) to extend protections to exclusive distributors against parallel importation—that is, against Canadian accounts' “buying around” by importing copies of a title from a foreign supplier rather than ordering them from the Canadian rights holder. However, this distribution right can only be asserted so long as the distributor meets specific pricing and service standards as well as other requirements set out in the Regulations. If the distributor fails to provide due notice of its exclusive distribution rights, if its Canadian list prices exceed specified limits in the Regulations, or if it fails to meet defined service standards, any Canadian account is within its rights to import its stock through a foreign supplier.

At time of writing, the Regulations have been in force for 12 years, a period of time that has seen profound change in Canada's book industry. In particular, there have been major changes that the Regulations did not anticipate when they were established in the late 1990s: the emergence of the

online retail channel, the rapid mainstream adoption of e-books, and a sustained period during which the Canadian dollar has traded at or near par with the US dollar. Each of these has had a profound effect on expectations with respect to book prices and availability, both on the part of consumers and within the supply chain itself.

This study explores the historical and contemporary effects of the Regulations on the structure of and trading practices within the book supply chain serving Canada's English-language market.

Based on data-supported findings throughout the study, we arrived at the following key findings and conclusions as to the market effects of the Regulations:

1. Given the dramatically expanding selection of used and new books of all kinds available to consumers in Canada, we find no indication that the Regulations constrain consumer choice or selection. Imported books have a majority share of the Canadian trade market, likely on the order of a 75–80 percent share overall. A majority of imported titles—representing roughly 70 percent of all trade titles actively distributed in English Canada—are handled by exclusive distributors in Canada and are therefore subject to the pricing and service provisions in the *Book Importation Regulations*. We note as well that under the letter of the law the pricing standards of the Regulations apply to imported titles and not to Canadian editions.³¹ However, our observation is that this distinction is not widely appreciated or applied in the Canadian market and that very similar considerations—including the pricing provisions of the Regulations—are applied to pricing both Canadian editions and imported titles.
2. The Regulations are designed to influence Canadian list prices for imported titles, but this influence is not absolute. While the pricing guidelines in the Regulations set up an important reference point or target pricing zone for imported titles, there are other factors that are generally given equal or greater weight in publishers' and distributors' pricing decisions. As one of our respondents commented, "The biggest thing about the Regulations is that they focus the mind to [stay below the specified pricing threshold]. But that's only part of the pricing decision, and it's often more important to price to market." On balance, we conclude that the Regulations are part of a pricing puzzle, with many other factors at play. Indeed, they likely play as much of a role in driving Canadian and US prices closer together as anything else.
3. In particular, we observe that current and anticipated changes in exchange rates—especially Canada–US exchange rates—have a significant effect on publishers' and distributors' pricing decisions. Even modest exchange rate fluctuations can move Canadian list prices on exclusively distributed imported titles in and out of compliance with the Regulations' pricing requirements. In the case of more dramatic changes in

³¹ Imported books are foreign-originated and -published titles brought into Canada as finished books. In the context of the Regulations, the term "Canadian editions" refers to (i) foreign-originated titles that are produced in Canada and for which copyright has been acquired by a publisher for the Canadian market, and (ii) Canadian-originated and -published titles for which foreign rights have been sold and one or more foreign editions published.

Any such foreign editions will be more or less directly substitutable for the Canadian edition, depending on the degree of adaptation a given title has undergone for the Canadian marketplace.

currency rates, such as we saw in 2006–2007, Canadian list prices can easily fall more sharply outside of those pricing guidelines. This reflects in part the challenge for any physical supply chain in keeping pace with ongoing fluctuations in currency exchange rates.

4. Critique of the Regulations finds its foundation in the belief that such a policy results in Canadian book prices that are higher than they would otherwise be, and more fundamentally in an expectation that normal market functions will allow prices between trading nations—most prominently between Canada and the US—to move closer and match each other over time.

However, this expectation is not supported by research. Two recent Statistics Canada studies demonstrate that the relative prices between the two countries do not often equate, nor do they fully reflect changes in currency valuations. An accompanying *Globe & Mail* commentary on the studies noted the following.

“American and Canadian prices do affect each other, but imperfectly. They move closer, but cross paths only briefly...Some factors in the divergences are readily understandable from people’s ordinary experience. Though most Canadians live fairly close to the US border, almost all cross-border shoppers incur some transportation costs, such as gasoline.”

In the specific case of imported books, the rationale for a price increment above the equivalent exchange rate value—that is, up to 10 percent higher for books imported from the US—arises from a recognition of the incremental costs of distribution in the Canadian marketplace. The argument goes that distributors need to be able to reflect such incremental costs in their Canadian list prices. If they were unable to do so, the business case for maintaining in-Canada distribution capacity would be substantially weakened, to the point that we would likely see increasing volumes of imported titles being distributed by suppliers in the US. This would result in a corresponding erosion of Canada’s domestic book supply chain and also in reduced capacity to invest in publishing new Canadian titles.

Overall, the present study finds that the most significant effect of the *Book Importation Regulations* is that they discourage parallel importation. In so doing, they provide a basis for exclusive Canadian distributors to carry on business by repatriating a significant volume of economic activity that would otherwise be transferred outside of the country.

This has implications for both the employment and tax base generated by the Canadian industry, but we explore a number of additional important outcomes over the course of the study as well. In particular, the economies of scale arising from sales of imported titles result in an expanded field of distribution options for Canadian publishers, more effective sales and marketing in the Canadian marketplace, and increased domestic title production.

We conclude therefore that the *Book Importation Regulations* continue to play an important role in strengthening the Canadian supply chain, supporting additional investment in distribution and original-title production in the Canadian book market, and, in so doing, promoting greater access to books for Canadian consumers.

1.0 Introduction

Canada's current *Book Importation Regulations* came into force in September 1999, having been previously introduced as part of a legislative amendment to the *Copyright Act* (Bill C-32). The accompanying Regulatory Impact Analysis Statement notes, "Bill C-32 contains provisions which greatly increase the ability of rights holders in Canada to protect their exclusive distribution rights in the Canadian market. Previously, the Act allowed only copyright owners and exclusive licensees to limit the parallel importation of printed books. Bill C-32 extends this right to exclusive distributors."

As the term suggests, an exclusive distributor is contracted on an exclusive basis by a publisher to supply (and, in the case of a foreign-based publishers, to import) the publisher's books to accounts in a given territory. The exclusive rights of such distributors are protected against parallel importation—that is, against retail or institutional accounts' "buying around" by importing copies of a title from a foreign supplier rather than ordering them from the Canadian rights holder—so long as the distributor meets specific requirements set out in the Regulations.

In practical terms, the purpose of the Regulations is to establish a requirement for Canadian bookstores, wholesalers, and institutions to source imported books and Canadian editions from exclusive suppliers in Canada. This requirement is not, however, absolute and there are a number of exceptions anticipated in the *Copyright Act*. For example, individual consumers are permitted to import copies for personal use, while retail or institutional accounts may also order from foreign suppliers in cases where an exclusive distributor in Canada has not met specific requirements with regard to pricing, delivery times, and notification.

More specifically, the exclusive distributor's rights are only protected if (a) the Canadian list prices for its imported books do not exceed the guidelines set out in the Regulations (i.e., the original list price plus the current exchange rate plus 10 percent in the case of books imported from the United States—or plus 15 percent for books imported from any other country), (b) the distributor is able to ship orders for imported books within specified time limits, and (c) the distributor provides formal notification of its exclusive rights to supply its imported lines in Canada. In combination, these requirements are explicitly meant to protect retail accounts, institutions, and consumers against the possibility that the increased exclusivity afforded under the Regulations could lead to higher prices or lower service standards within the Canadian market.

More to the point, any protection arising from the legislation lapses when a distributor or a publishing line or even an individual title is out of compliance with these requirements. To the extent that imported titles are priced outside of the requirements of the Regulations (whether because of exchange rate fluctuations or due to errant pricing decisions), for example, retail and institutional accounts in Canada are well within their rights to import exclusively distributed titles from foreign suppliers.

At time of writing, the *Book Importation Regulations* have been in force for 12 years—a period of time that has seen, to say the least, profound change in Canada's book industry—and this

study will explore their effect on the structure of and trading practices within the Canadian supply chain.

The study focuses on Canada's English-language market and is a companion to a parallel effort for the French-language market in Canada.³² It is concerned with both trade³³ and educational markets in Canada, and, while its primary focus is on print book imports, the research scope also necessarily considers the role and relevance of the Regulations with respect to current and emerging digital markets.

The study was commissioned by the Department of Canadian Heritage (PCH) and conducted from August to December 2011. It began with a wide-ranging research and discovery phase that identified and examined existing data and analysis pertaining to book imports in Canada's English-language market. This initial research was expanded through a nationwide interview series with professionals across the book industry—including publishers, distributors, booksellers, wholesalers, librarians, and other specialists in the field—and through supplementary research that relied heavily on proprietary data contributed by interview subjects as well as customized data extracts from select industry sources as well as Statistics Canada and the Canada Border Services Agency.

The research for this paper was further informed by three previous studies conducted by Turner-Riggs from 2007 to 2009: *The Book Retail Sector in Canada* (for Canadian Heritage, September 2007), *Book Distribution in Canada's English-Language Market* (for Canadian Heritage, May 2008), and *Audiobook and eBook Publishing in Canada* (for Library and Archives Canada, February 2009).

All three studies are available on the PCH³⁴ and Library and Archives Canada³⁵ websites respectively, and readers are encouraged to review this related research for additional background on Canada's print and digital book markets.

Before presenting our findings, we should acknowledge that any examination of any regulations that establish or enforce exclusivity in the marketplace will necessarily bump against a variety of perspectives for and against such an intervention, and this is certainly true in the case of the *Book Importation Regulations*.

In simple terms, the affirmative view sees the Regulations as an important structural element of the Canadian marketplace—one that contributes to a more effective and efficient Canadian supply chain, supports investment in domestic publishing and distribution systems, and repatriates a significant measure of economic activity that would otherwise be largely transferred outside the country. Interview respondents who held this view commonly described the Canadian supply chain as an ecosystem and observed that the Regulations make an invaluable contribution to a healthy Canadian ecosystem for books.

³² *Le rôle du Règlement sur l'importation de livres dans le marché du livre de langue française au Canada*. Édinova inc. for Canadian Heritage. 2012.

³³ Trade books are defined as books intended for a general reading audience, as distinct from educational texts or professional or technical titles that would have a more specific academic or applied usage.

³⁴ www.pch.gc.ca

³⁵ www.collectionscanada.gc.ca

In contrast, the critical view of the Regulations sees them as an unwarranted constraint on how imported titles may be sourced, and as a mechanism that keeps book prices in Canada higher than they would otherwise be for end consumers. These interview respondents often spoke of the pricing provisions of the Regulations as a kind of targeted tariff or tax on imported books.

Over the course of this report, we will explore both of these perspectives in depth.

2.0 General observations

The following points are derived from consistent findings in research and interviews conducted throughout the study and are, in our view, essential to any balanced consideration of the *Book Importation Regulations*. The sections that follow will provide further commentary and supporting data. In the meantime, we have summarized the following findings and background points here to set the stage for the more specific observations that follow.

1. It is not possible to reliably measure actual levels of parallel importation across the Canadian market. It is possible to find estimates of historical rates of parallel importation but these are best understood as wide-ranging estimates based largely on anecdotal observation. The fact that there is such a wide range in any such estimates illustrates the lack of reliable data on which more certain conclusions could be based.

Even today, there is little publicly available information on book imports, and there is even less data in the public domain on parallel importation. We have been made aware of proprietary data over the course of the study that provides important insights into parallel importation activity but that cannot be disclosed or published due to its confidential nature. This means there are gaps in the prevailing knowledge about the nature and composition of book imports that cannot be fully resolved through the present study.

The approach we have applied in such cases is to (a) acknowledge material gaps or deficiencies in the available data where they exist and (b) work to an informed estimate of market behaviour or structure wherever possible.

In addition to this, we have been able to observe some broad indicators of rising and falling levels of parallel importation over time, and these will be explored in more detail in the sections that follow (see especially Section 3.24, “Exchange Rate and Inflation Effects”).

2. The Regulations are not applied consistently across the supply chain, or even across the catalogue of an individual publisher or distributor. The degree to which they factor in a publisher or distributor’s pricing decisions, for example, varies from firm to firm. Those firms in Canada with a greater operating presence, share of the market, or both, appear to observe the requirements of the Regulations more closely than those with a weaker footprint in the market.

Similarly, as attention is a scarce commodity in today’s congested and intensely competitive book marketplace, it tends to concentrate most often around high-volume titles and publishing lines. Both retail and institutional accounts as well as publishers and distributors tend to be more mindful of the requirements of the Regulations when making pricing or ordering decisions for major frontlist titles or other new releases as well as for high-volume backlist titles.³⁶ This is perhaps to be expected in a market where there is such a massive number of unique products, but the end result is that *attention*—that is, the attentiveness of

³⁶ The “frontlist” refers to newly released titles available from a publisher, while the “backlist” refers to a publisher’s older books that remain in print and continue to sell.

trading partners across the supply chain to the application of the Regulations to an individual publishing line or an individual title—is a major factor in their implementation.

Thus, it is possible to find ready examples of titles or publishing lines that do not closely observe the requirements of the Regulations. By the same token, one can easily produce a large sample of imported lines or titles that do comply. A more balanced approach is to analyze a large enough sample—by title count or market share—to make it possible to reasonably observe prevailing conditions or trends in the marketplace.

3. The Regulations are not the sole determinant of the Canadian list prices for imported titles. The pricing requirements in the *Book Importation Regulations* represent an important reference point for the pricing decisions of many publishers and distributors. However, other factors, notably currency exchange rates, market conventions for pricing, and the overarching pricing strategies of individual publishers and distributors, also play a major role.
4. Capping Canadian list prices on imported titles based in part on currency exchange rates may be the best available approach but is also fundamentally flawed. List prices for forthcoming books are typically established several months in advance of their Canadian publication date. However, currency exchange rates change continuously, and as they do they can easily move the Canadian list price for a given imported title in and out of compliance with the Regulations.

For example, the Regulations require that Canadian list prices for titles imported from the US not exceed the US list price, plus the current exchange rate, plus 10 percent. A title priced at US\$27.95 would comply with the Regulations if it carried a Canadian list price of \$31.95 and if the US dollar was trading at CDN\$1.0487 in a given week. ($\text{US\$27.95} \times 1.0487 = \text{CDN\$29.31}$; $\text{CDN\$29.31}$ plus 10 percent equals $\text{CDN\$32.24}$. Therefore, the $\text{CDN\$31.95}$ list price is safely within the price limits specified by the Regulations.)

If, however, the Canadian dollar depreciates against US currency the following week and the US dollar begins trading at $\text{CDN\$1.0178}$, the same Canadian list of \$31.95 would be out of compliance with the regulatory pricing requirements. ($\text{US\$27.95} \times 1.0178 = \text{CDN\$28.45}$; $\text{CDN\$28.45}$ plus 10 percent = $\text{CDN\$31.29}$.)

Two things of note about this example: (i) it uses actual CDN–US currency movements over a two-week period in November 2011, and (ii) in this case, the currency fluctuation has caused the Canadian list price to fall outside of the 10 percent range prescribed by the Regulations. This means in practice that the Canadian distributor is also outside the protection of the *Copyright Act* and that retail accounts or institutions would be free to order the title from a foreign supplier.

Like most physical supply chains, the book supply chain is not agile enough to respond to such fluctuations—indeed there may be little value in reacting to day-to-day or week-to-week variations in currency exchange in any case, as by the time new prices have been rolled out to address a currency movement the exchange rate will likely have shifted again. In practice this means that Canadian book distributors tend to adjust Canadian list prices only in response to particularly dramatic or sustained variations in exchange rates.

5. Legal parallel importation occurs but not at every opportunity. Our observation is that buyers in Canada are generally aware of this option (that is, to order from a foreign supplier in cases

where the Canadian list price is beyond the range prescribed by the Regulations), but that not all necessarily pursue foreign sourcing as a default course of action. Depending on the retailer or institution (or even on the publisher or title in question), they may do so or they may go back to the Canadian supplier to propose price adjustments that would bring the Canadian list prices back within the limits required under the Regulations.

There appear to be a few different motivations at work in such cases. First, the retailer or institution may simply be predisposed to order from Canadian suppliers (e.g., for the sake of supporting the Canadian supply chain, out of preference for Canadian editions of foreign titles, etc.). Second, it can be more difficult and more expensive to return unsold inventory to foreign suppliers, and a Canadian buyer may prefer the relative ease of returning stock to a Canadian supplier. Finally, retailers and institutions may have a reasonable expectation of price adjustments to close or eliminate price differentials, particularly in cases where such price gaps can be shown to be excessive.

Sections 5.1(a)(iii)(A) and (B) of the Regulations note that the exclusive distributor shall provide an imported book at the list price “minus any applicable discounts.” It is commonly understood that this reference describes the normal terms of trade discounts between trading partners in the supply chain.³⁷ In practice, however, our observation is that exclusive distributors may extend immediate price adjustments to correct for undue price differentials in a number of ways, through a special account credit or additional discount on existing inventory, some ongoing list price correction going forward, or some combination of these arrangements.

6. Similarly, the connection between the regulatory pricing requirements and the foreign list price is complicated by the emergence over the past decade of other important reference points for pricing. For example, Amazon.com is an aggressive competitor in the textbook category and routinely discounts US list prices on textbooks by as much as 30–40 percent. Even in cases where the Canadian list price for the same textbook is in compliance with the Regulations, this sets up a dramatic and very visible price gap, especially as there are no comparable discount practices on Amazon.ca or elsewhere within the Canadian supply chain. The end result in such cases is that the Amazon.com price is a more meaningful reference price for many buyers than is the US list price.

This finding reflects the significant market share that Amazon holds in both the US and Canadian markets,³⁸ as well as the reality that the company’s influence extends well beyond its market share. That is, it is widely understood within the book industry that both Amazon.com and Amazon.ca play an important role for book buyers and consumers with regard to discovery, price checking, and comparison-shopping.³⁹

³⁷ For more information on trade discounts, see “Terms of Trade” under “A Brief Introduction to the Canadian Book Trade” in *The Book Retail Sector in Canada* (Turner-Riggs for Canadian Heritage, September 2007).

³⁸ Amazon does not publicly disclose data on its North American book sales, but current industry estimates suggest that the company likely holds between 25–30 percent of the US trade market. Comparable data points for Canada suggest that both the online retail channel and Amazon hold a lower share of the market here, and we estimate that Amazon’s current Canadian share for Amazon.com and Amazon.ca combined is likely in the range of 10–15 percent.

³⁹ CBC News provided a concrete illustration of this Amazon price effect in a November 2011 item that used discounted Amazon.com and Amazon.ca prices to describe the Canada–US price gap for Walter Isaacson’s bestselling biography of Steve Jobs:

7. Both the degree and pace of technological change in the book business have had profound implications for the application of the Regulations for the past decade. In particular, the sophisticated ordering and inventory management tools that are now available to virtually all participants in the Canadian supply chain make it ever easier to compare price and availability in real time across vendors in Canada and abroad, and to make pricing and ordering decisions accordingly.

Even more significantly, the emergence of a significant online sales channel and, now, the rapid expansion of digital book markets continue to challenge many basic conventions of the book business, including the roles and responsibilities of participants across the publishing value chain, and the management of territorial rights.

The online sales channel has an important bearing on the impact and contemporary relevance of the Regulations with particular reference to special orders (section 9 of the Regulations), a part of book retail activity that has now been largely transferred to online retail, and also the import of used textbooks (section 8), an issue that we will explore in more detail in the following sections of this report (see especially Section 3.27, “A Closer Look at Textbooks”).

8. It is in no way remarkable that there are price gaps on imported books in Canada as such price differentials exist across the Canadian economy. However, books are something of a lightning rod in any consideration of Canadian price differentials as trade books are a rare example of a product category in which both Canadian and foreign list prices are printed right on the product itself.⁴⁰ Perhaps because of this, a great deal of the discussion within the book industry around the *Book Importation Regulations* has to do with pricing, and with gaps between Canadian list prices and foreign list prices in particular.

It is fair to say as well that Canada–US price differentials are a persistent irritant for Canadian consumers, particularly given the Canadian dollar’s continued valuation at or near par with the US currency. In September 2011, Canada’s Minister of Finance, Jim Flaherty, called for the Senate’s national finance committee to look more closely at the causes of Canada–US price differentials.

The committee’s study is ongoing at this writing. However, there have been a number of interesting observations in its hearings to date, in particular the testimony of Bank of Canada Governor Mark Carney at the Senate committee hearings in November 2011. The Governor reported during his testimony that average Canada–US price differentials on consumer goods have declined in 2011, from an estimated average of 18 percent in April to 11 percent in September. These price declines have been largely attributed to adjustments arising from the relatively high trading value of the Canadian dollar.

<http://www.cbc.ca/news/interactives/canada-us-price-comparison/index.html>. Of note in this example is that the item did not reference the actual Canadian or US list prices at all.

⁴⁰ In contrast, textbooks often do not carry cover prices. This reflects the longer life of a textbook print run relative to that of a typical trade title. Textbooks are more expensive to print, and so longer runs that are meant to last two to three years are not uncommon. By not publishing with a cover price, the publisher is relieved of the need to reprint covers or re-sticker existing stock to account for any price changes over this longer window of time.

As the *Globe & Mail* reported at the time, “The central banker outlined a number of potential factors that explain why prices haven’t caught up with moves in the currency. They include: higher taxes, higher labour costs, higher transportation costs—in part because of a smaller, more widely dispersed population—differences in inventory levels and a more concentrated [marketplace] on this side of the border that reduces competitive pressure to cut prices.”

These observations are useful to the consideration of price differentials on imported books in Canada in the context of the pricing provisions in the Regulations. As we will see shortly, the vast majority of imported books come from the US, and so we can reasonably expect some reductions on Canadian list prices in periods where the Canadian and US dollars are trading closely with one another. However, as the Senate hearings also demonstrate, there are a number of factors beyond currency exchange rates that contribute to relatively higher prices on imported books in Canada. Therefore, we can also reasonably expect that there will continue to be some degree of price gap between US and Canadian list prices on imported titles.

9. There is a widely held view within the book industry that the *Book Importation Regulations* do not apply to digital books. This perspective is largely confirmed by section 2 of the *Copyright Act*, which sets out that a book “means a volume or a part or division of a volume, *in printed form*” (italics added).

At this writing, Canada’s copyright legislation is in the process of being amended through the introduction of Bill C-11, *An Act to amend the Copyright Act*, which was introduced in the House of Commons in September 2011. Bill C-11 makes no explicit reference to e-books, and it is unlikely that the application of the Regulations to e-books will become more clear as the Bill proceeds through the legislative process.

In the meantime, speculation continues to mount as to how the book supply chain will adjust to a continuing shift from print to digital reading. One obvious implication is that there may well be fewer print books to distribute if consumer behaviour shifts to digital anywhere within even the conservative range of current forecasts. Canadian distributors could therefore be faced with unused distribution capacity, and especially so if, faced with unused capacity on both sides of the border, American publishers are further encouraged to serve the Canadian market from the US. In such an environment, the role of the *Book Importation Regulations* in establishing and reinforcing an exclusive distribution right for print editions would be as important to the stability of Canadian distributors as it is today.

3.0 Canadian book imports

3.1 Import pathways

Books are imported into Canada's English-language market in a variety of ways, both as finished books and in the form of rights sales or licenses that then provide the basis for the publication of a Canadian edition of a title that originated outside the country.

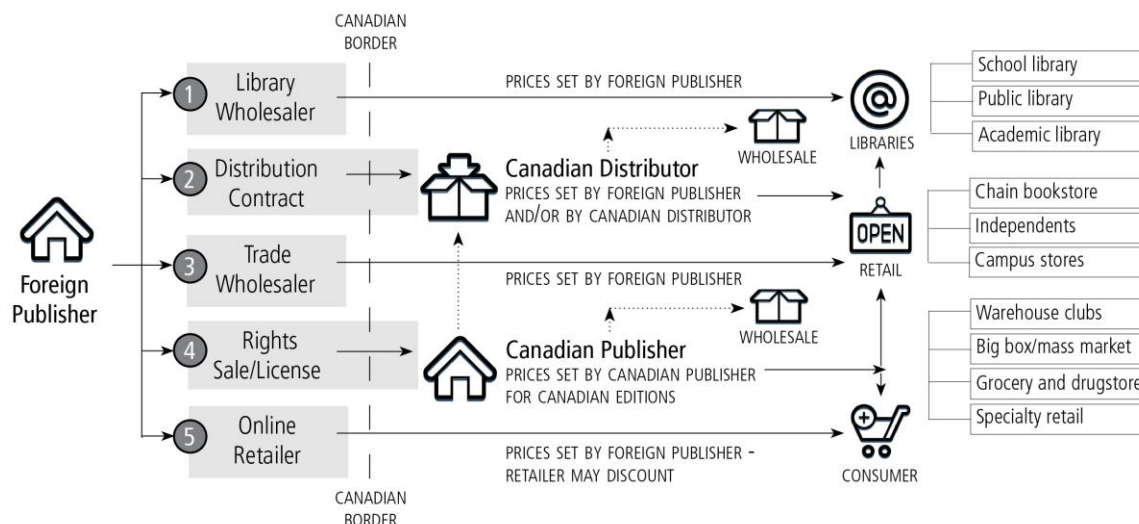


Figure 1. The various pathways by which books are imported to Canada's English-language market

As Figure 1 illustrates, the originating foreign publisher may directly supply library wholesalers, trade wholesalers, or online accounts in its home market or may do so through a distributor. Exclusive Canadian distributors may, in turn, also supply other parties in the supply chain, notably Canadian wholesalers of various types, who then sell on to their respective sales channels. The same is true for both trade wholesalers and online retailers outside of Canada, who may supply wholesale and retail accounts as well as fulfilling orders to end-consumers in Canada.

The Figure 1 flowchart also defines five principal categories or pathways of book importation that apply to both trade titles and textbooks:

1. **Library wholesalers.** Foreign library wholesalers are similar in orientation and client group to library wholesalers in Canada, but, especially in the case of US wholesalers serving the library sector, they often operate with much greater economies of scale and service capabilities. The largest foreign library wholesalers, notably Baker & Taylor, maintain sales representation in Canada to better serve library clients here. Such wholesalers supply, on a non-exclusive basis, directly to libraries in Canada. List prices are set by the publisher or distributor in the foreign market, and library wholesalers are not subject to the pricing or service standards specified in the *Book Importation Regulations*.

It should be noted that publicly available data on Canadian library purchases from foreign wholesalers does not discriminate between legal and illegal cases of parallel importation under the current legislation. Canadian library purchases from foreign wholesalers, in any case, are not necessarily an indication of illegal “buying around” activity on the part of the library. Such purchases may be for books that are not exclusively or actively distributed in Canada or, in cases where the title is exclusively distributed, may represent legal parallel importation if the requirements of the Regulations (i.e., pricing limits, service standards, or notification requirements) have not been met by the exclusive distributor in Canada.

2. Distribution contract. Under this approach, a foreign publisher contracts with an exclusive distributor in Canada for some measure of sales and distribution services. The foreign publisher’s rationale for doing so is that a Canadian distributor offers a high level of service to Canadian accounts and also brings considerable expertise as to the conditions, requirements, opportunities, and challenges of the Canadian market.

Such distribution contracts may range from an arrangement for basic fulfillment services to a more full-service distribution approach that includes sales representation or marketing services or both for the client-publisher’s line(s).⁴¹ In these situations, the distribution contract will specify which party has formal pricing authority for Canada—depending on the contract terms it may be either the exclusive distributor or the client-publisher.⁴² In either case, the exclusive distributor is subject to the pricing, service, and notification standards set out in the Regulations in order to protect its distribution rights against parallel importation.

At the level of an individual distributor, the rationale for protecting an exclusive distribution right arises from the fact that the distributor will have allocated, through the contract with the client-publisher, some of its capacity to supplying the imported title or publishing line in Canada. Therefore, sales lost to parallel importation will undermine the distributor’s ability to recover the value of its underlying capacity investments and discourage further investment in building distribution or publishing capacity or both within the Canadian supply chain.⁴³

In cases where the distributor (or a third party, such as a sales agency) is also providing sales and marketing support in Canada for an imported line, there will be direct investments in these areas that will similarly be undermined through sales lost to parallel importation.

⁴¹ In Canada’s French-language market this differentiation is more formalized with a distinct category of firms providing basic fulfillment services (*distributeurs*) and others providing a broader range of sales representation and marketing services (*diffuseurs*).

⁴² In practice, even in cases where pricing authority rests with the foreign publisher, the Canadian distributor may provide pricing advice or information to help ensure that books are priced effectively for the market, including correcting for any unsustainable price gaps they observe in the Canadian marketplace.

⁴³ The 2008 Turner-Riggs study *Book Distribution in Canada’s English-Language Market* illustrates the significance of this finding. We found in 2008 that the field of distribution options for publishers in Canada is relatively limited and that this contributes to rising distribution costs in the Canadian supply chain as well as more limited access to distribution services, particularly for small Canadian publishers. If increased parallel importation were to aggravate these conditions to the extent that the number of distributors in the Canadian supply chain were further reduced, Canadian publishers would find it harder still to access affordable distribution services and so harder to efficiently distribute their books to Canadian readers.

This import pathway is characterized by a variety of business relationships, such as the exclusive distributor relationship between the international parent of a multinational publishing firm and its Canadian subsidiary (e.g., Random House and Random House Canada), the exclusive distributor relationship between a foreign publisher and a full-service distributor in Canada (e.g., Macmillan and Raincoast), and also arrangements between foreign publishers, exclusive distributors in Canada, and third parties (e.g. the American publisher, Farrar, Straus, and Giroux; its Canadian agent, D&M Publishers; and D&M's Canadian distributor, HarperCollins Canada).

Each of these types of distribution deals may be structured slightly differently, with different sales, marketing, and distribution services delivered by each party, but in the end they are all distribution contracts that establish an exclusive distributor for the Canadian market.

3. Trade wholesalers. As with library wholesalers, foreign trade wholesalers operate in a similar way to their Canadian counterparts and compete on the basis of price, availability, selection, and service. However, the largest of these, such as Ingram in the US, operate with economies of scale that far outstrip their competition in the US and Canada. A sophisticated wholesaler such as Ingram ships directly to retail accounts in Canada—another example of parallel importation that may or may not be in breach of the *Copyright Act* at the level of an individual title or order. Foreign wholesalers may also play an important role in fulfilling online orders placed from Canada by shipping to customers from warehouses in the United States. Pricing for books sold via wholesalers is established by the originating publisher (or exclusive distributor supplying the wholesaler in Canada), and such wholesalers are not responsible for complying with the pricing or service requirements set out in the Regulations since they do not have the exclusive right to sales of the title in Canada.
4. Copyright sale or license. As distinct from the importation of finished books from a foreign source, a copyright sale or license sets the stage for the publication of a Canadian edition of a foreign-originated title with or without modification or adaptation for the Canadian market. In such cases, the Canadian list price is established by the publisher of the Canadian edition, and the publisher, as the holder of copyright in Canada, is automatically protected against parallel importation of the work under the *Copyright Act*. The normal protections and remedies of the Act therefore apply, and the publisher is not subject to the pricing or service standards specified for imported books in the *Book Importation Regulations*.⁴⁴

⁴⁴ In such cases, however, the Canadian copyright owner remains responsible for the “Notice of Exclusive Distributor” provisions under the *Copyright Act* (subsection 27.1(5)).

5. Foreign-based online retailers. The Act allows Canadian consumers to import copies of foreign books for personal use, and these days many of these transactions occur within a relatively small number of major online booksellers operating outside of Canada.⁴⁵ Little is known about the current or historical levels of such import transactions as these sales are not reported publicly by major online retailers, nor are they reflected in import data compiled by the Canada Border Services Agency or Statistics Canada. List prices on such platforms are established by the originating publisher, and the retailer has no responsibility with regard to the pricing or service standards of the Regulations. However, major online retailers can and do frequently discount on list price, and in some cases—such as bestsellers and textbooks—these discounts can be quite significant.

This last point reflects an important aspect of book imports in Canada. As we have noted, neither foreign library wholesalers nor trade wholesalers nor online retailers are subject to or benefit directly from the Regulations. However, the leading firms in each of these categories effectively establish de facto standards for pricing, selection, and service in the marketplace against which all other competitors, including exclusive distributors in Canada, are measured.

In spite of our attempt to present these various book import pathways in an orderly fashion in Figure 1, there is an increasing amount of nuance in the movement of book inventories to Canada. In *Book Distribution in Canada's English-Language Market* (Turner-Riggs for Canadian Heritage, May 2008) we described how Canada's Toronto-centred, east-west domestic supply chain was showing signs of an increasing north-south integration into a North American supply chain.

In 2008, we looked at the following developments as evidence of a growing north-south integration:

- The effectiveness with which industry-leading US wholesalers, notably Ingram, can serve the Canadian market, and the persistent anecdotal reports of increasing US wholesale shipments to Canada.⁴⁶
- The increasing use of US warehouses and distribution capacity operated by the international parents of Canadian subsidiary firms, such as Simon & Schuster Canada and Random House Canada.⁴⁷

⁴⁵ Notwithstanding the consumer's right to order personal-use copies as they wish, it is commonly understood that online retailers operating in Canada (e.g., Amazon.ca, Indigo.ca) are responsible under the *Copyright Act* to source exclusively distributed titles—that otherwise comply with the requirements of the Regulations—from the exclusive Canadian distributor. In practice, however, the complexity of the supply chain for major online retailers in Canada makes it especially difficult to track or assess parallel importation orders for compliance with the Regulations.

⁴⁶ We also noted in the earlier distribution study that, while such orders may be returnable to a US wholesaler, it is relatively more difficult and costly for a Canadian account to do so, and this appears to contribute to a pattern of US-sourced orders being returned to exclusive distributors in Canada.

⁴⁷ Such parent-to-subsidary transactions would generally be classed as an export by the parent company and an import by the subsidiary company. We note though that actual reporting practices for such transactions may vary depending on the company structure, whether the subsidiary or the parent company owns the inventory, and whether the sale is assigned to the subsidiary or the parent.



Figure 2. Increasing north-south integration in the North American book supply chain
Source: *Book Distribution in Canada's English-Language Market*

In related developments since the 2008 distribution study:

- We now see examples, such as ECW Press's North American distribution arrangement with Independent Publishers Group, of Canadian firms relying more heavily (or exclusively in the case of ECW) on US distributors to serve accounts in Canada. It is usually understood within the book industry that a US distributor in this scenario could protect its rights in Canada (and by extension its Canadian client-publisher's rights) by observing the requirements of the Regulations. In practical terms, the pricing benchmarks of the Regulations are so well established and widely understood that any such distributors would likely invite additional buying around from US wholesalers if they were out of compliance, especially on pricing.
- Other major publishers—most notably Hachette Book Group and Macmillan, two of the market-leading “Big Six” publishers in the US—are now using their US distribution capacity to serve the Canadian market. In the case of Hachette, this US-based distribution is supported by an in-Canada sales and marketing office. In the case of Macmillan, Raincoast provides sales and marketing support as well as distribution to smaller accounts across the country.⁴⁸

⁴⁸ Both Macmillan and Hachette had been previously distributed in Canada by H.B. Fenn. In April 2008, the US division of Hachette Livre announced its intention to serve its Canadian accounts from US distribution facilities, effectively removing itself as Fenn's then-largest distribution client. Unable to recover from this lost sales volume, Fenn would file for bankruptcy in February 2011.

With the recent collapse of the Borders chain in the US, we expect there will now be more momentum than ever toward this north-south integration in the book supply chain as American publishers and distributors now have excess sales and distribution capacity that would have served Borders previously.

Finally, and as we will see in the following data tables, there is evidence of an increasing volume of book imports for which the country of origin is none other than Canada. That is, finished books that were exported at one point, primarily to the US, and then subsequently re-imported. We expect that the bulk of this re-import activity occurs in the form of sales through US-based wholesalers or online retailers to customers back in Canada, and as such it reflects another dimension of north-south integration in the Canadian supply chain.

It is usually understood within the book industry that Canadian publishers or exclusive distributors of such titles can assert their rights via the notification provisions to discourage parallel importation of such titles. However, it is also likely in such cases that the originating Canadian publisher ships their books south with the clear expectation that at least a portion of that inventory is going to come back to Canadian accounts and consumers. This expectation is especially relevant in the case of those major US wholesalers and online book retailers that have demonstrated they can serve the Canadian market very effectively and that also demonstrate varying degrees of integration within the Canadian supply chain.

3.2 Import data

3.2.1 *Number of titles in the Canadian market*

As one of our interview respondents put it, “Canada is the single most crowded book market in the world.” Book buyers in English Canada now enjoy an era of virtually unlimited choice with hundreds of thousands of books—the vast majority of which originate in the United States or the UK—actively distributed in Canada. Needless to say, many hundreds of thousands more are readily available from online distributors and retailers of all kinds.

There are few ready measures of the total number of titles available in Canada’s English-language market, nor are there clear statistics on the number of Canadian-authored or Canadian-published books currently available, whether in digital or print. However, we can approximate the marketplace using some of the available data.

BookNet Canada’s recent analytical report *The Canadian Book Market 2010* reveals that there were 688,801 “active” ISBNs reported in 2010 by participating retailers, primarily English-language, in the Canadian market. This reflects the number of titles either held in inventory or sold during the year that were tracked using BookNet’s SalesData point-of-sale system.

This is a useful approximation of the total number of trade titles in Canada’s English-language market that were distributed in print by a Canadian publisher, exclusive distributor, or non-exclusive distributor—that is, wholesaler—during the year.⁴⁹

However, the actual number of books available in Canada’s English-language marketplace is likely considerably higher still. BookNet’s SalesData system includes 1.4 million records in total and is derived from a Bowker database (US-based) of 14 million English-language titles (not all of which are available in Canada).

Within these totals, there is little data available on the number of textbooks available in the Canadian market. But background statistics provided by Campus Stores Canada suggest that the total number of higher-education titles is slightly more than 140,000.

⁴⁹ Two important qualifications here:

First, the BookNet retail sample, while large and reasonably comprehensive, does not capture the entire population of book retailers in English Canada. It includes major accounts, such as Indigo and Costco, a limited sample of Amazon data, and a growing number of independent stores across the country. While there are a good number of independent booksellers and non-traditional outlets that remain outside of the sample, BookNet estimates that, “BNC SalesData tracks approximately 75% of the Canadian book market with data from over 1,500 retail sources, including chains, independents, online, college/university stores, and non-traditional bookstores, such as specialty and discount stores.”

Second, the total value of 688,801 ISBNs very likely includes some titles without active Canadian distribution. BookNet believes that this portion of the total title count is quite small.

3.22 *Share of market: Domestic and import*

To take a closer look at the share of the market claimed by imported titles, we examined a large sample of data from BookNet Canada. The sample consisted of the 5,000 best-selling trade titles for the Canadian market in 2010. It represents less than one percent of all titles tracked by BookNet in that year but, reflecting the high concentration of sales in the book market, accounted for more than 50 percent of all tracked sales.

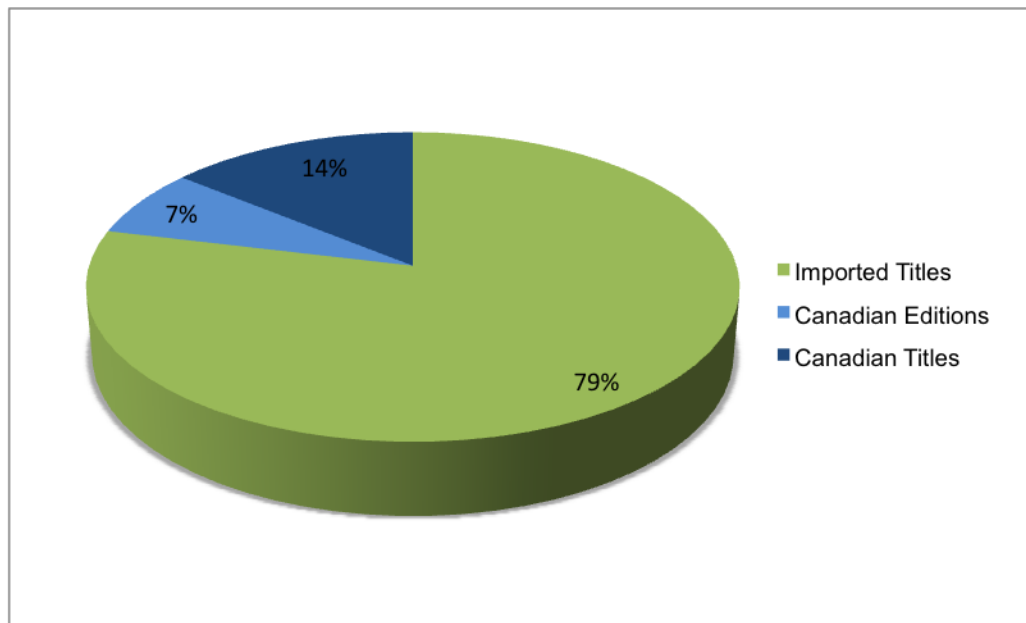


Figure 3. 2010 share of Canadian market by sales volume for imported titles, Canadian editions of foreign-originated titles, and original Canadian titles
Source: BookNet Canada

Imported titles accounted for 79 percent of sales in our 5,000-title sample, whereas Canadian editions of foreign-originated titles had 7 percent and original Canadian titles 14 percent. The breakdown by title count (Figure 4) is comparable at 81 percent imported, 5 percent Canadian editions, and 14 percent original Canadian titles. That is, the overall import-to-domestic split for the 2010 sample by title count was 81:19. Canadian editions of foreign-originated titles claim a higher share of sales (relative to the percentage of total titles that they represent) as several of these books are major blockbusters that were widely sold in markets around the world.

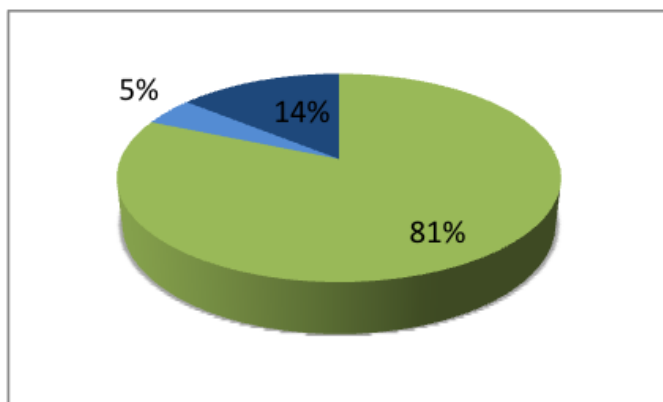


Figure 4. 2010 share of Canadian market for trade books by title count
Source: BookNet Canada

Given the large percentage of total tracked sales (53 percent) that the sample represents, we can take this as a reasonable approximation of the total trade market in Canada. In projecting this observation against the entire market, however, we would expect that the total market share by sales volume for Canadian-originated titles is larger than we have shown here, likely on the order of 20 percent or more. As noted above, the BookNet sample excludes a number of independent bookstores as well as smaller-scale non-traditional retailers, and Amazon provides only a limited set of sales data for the BookNet sample. These categories continue to be important outlets for Canadian publishers and their original titles.

More specific to our consideration of the import regulations, the vast majority of the imported titles in the sample—roughly 3,487 out of 4,070 titles, or 85.7 percent—are distributed in Canada via exclusive distributors whose rights and responsibilities are set out in the *Copyright Act* and the *Book Importation Regulations*. Put another way, nearly 70 percent of the books in the 5,000-title sample are subject to the service and pricing standards in the Regulations. We expect this is likely to be a reasonable approximation of the whole trade market so that, of the 688,801 active ISBNs tracked by BookNet Canada, as many as 480,000 titles would be subject to the regulatory pricing constraints.

3.23 Volume and composition of imports to Canada

To establish a baseline for book import activity in Canada, we arranged a custom data extraction with Statistics Canada based on all of the Canada Border Services Agency code set for finished book products. The extract provided data for six years over a fifteen-year period from 1995 through 2010 so that we could observe some baseline import values both before and after the *Book Importation Regulations* were brought into force in 1999, and also before and after the Canadian dollar began an extended period of par (or close to par) valuation with the US dollar in 2007.

Table 1 shows a summary of book imports over this period with all amounts in current-year Canadian dollars. StatsCan advises that these figures reflect all of the import methods reviewed earlier in Figure 1, with the exception of individual orders from online retailers and rights sales. That is, the data reflects shipments from wholesalers, distributors, and publishers outside of Canada to accounts, institutions, wholesalers, and distributors in Canada.

	1995	1998	2001	2004	2007	2010
Art/pictorial	\$4,341,429	\$3,161,786	\$3,460,723	\$9,438,092	\$13,823,982	\$17,517,168
Children's	\$13,913,924	\$18,460,334	\$24,924,075	\$38,660,734	\$49,679,381	\$54,388,638
Dictionaries	\$9,141,090	\$13,102,726	\$10,872,481	\$10,995,670	\$10,954,092	\$7,845,351
Encyclopedias	\$7,688,616	\$4,007,105	\$5,120,420	\$6,866,240	\$3,715,740	\$1,904,298
Hardbound	\$131,226,204	\$180,986,101	\$172,623,398	\$182,540,736	\$163,295,535	\$222,857,498
Liturgical books	\$11,159,788	\$12,492,118	\$15,605,828	\$21,790,891	\$19,571,409	\$24,956,036
Paperback	\$114,064,338	\$138,858,310	\$152,370,545	\$184,195,520	\$169,793,086	\$224,283,595
Technical	\$323,563,436	\$265,071,234	\$222,799,720	\$213,108,894	\$240,187,787	\$167,503,213
Textbooks	\$59,576,614	\$79,241,155	\$66,641,890	\$61,151,762	\$75,873,458	\$77,734,916
Total	\$674,675,439	\$715,380,869	\$674,419,080	\$728,748,539	\$746,894,470	\$798,990,713

Table 1. Book imports to Canada by book category for selected years, 1995–2010
Source: Statistics Canada

The import values in Table 1 also include internal transactions between multinational parent firms in the US and their Canadian subsidiaries. As we noted earlier, these have increased in recent years as some of the largest Canadian subsidiaries have come to rely more heavily on their parent companies' US distribution capacity in order to serve Canadian accounts.

Table 2 (below) shows the same import values by the top countries of origin.

	1995	1998	2001	2004	2007	2010
US	\$563,478,606	\$619,702,506	\$561,355,129	\$555,354,157	\$548,786,443	\$587,993,731
France	\$48,093,626	\$18,627,593	\$23,392,311	\$50,153,647	\$54,206,745	\$45,401,055
UK	\$24,250,274	\$28,491,397	\$19,106,517	\$17,831,280	\$19,324,697	\$13,134,446
Other	\$38,852,933	\$48,559,373	\$70,565,123	\$105,397,098	\$124,576,585	\$152,461,481
Total	\$674,675,439	\$715,380,869	\$674,419,080	\$728,736,182	\$746,894,470	\$798,990,713

Table 2. Book imports to Canada by country for selected years, 1995–2010
Source: Statistics Canada

Some initial observations based on these summary values:

- To reiterate, we expect the StatsCan figures under-report the actual volumes of import activity—for example, they do not reflect online or offline orders shipped directly to Canadian consumers—but they are nevertheless useful as a baseline of import activity.
- These values reflect all reported import activity to Canada and do not discriminate between parallel importation transactions and other imports.
- From these reported values, overall book imports to Canada have increased more than 18 percent from 1995 to 2010, but this includes both inflationary effects as well as exchange rate fluctuations over time, which we will attempt to factor out below.
- The United States is far and away the dominant country of origin for Canadian book imports, but its share of total imports to Canada has declined over the survey period, from 83 percent in 1995 to 74 percent in 2010.

As noted earlier, Canada also appears in the StatsCan data as a country of origin for book imports to Canada. In fact, these apparent re-imports of Canadian books have increased by nearly 4,000 percent over the survey period, from just over \$400,000 in 1995 to \$16.7 million in 2010. Because online retail transactions are not included in the StatsCan data, we infer that this increase largely reflects the re-import of Canadian books via US wholesale shipments to Canada. It may also reflect an increase, to some degree, of parallel importation activity via the wholesale channel (as well as via the online retail channel, which is not included in the StatsCan data).

	1995	1998	2001	2004	2007	2010
	\$416,052	\$1,519,100	\$11,734,662	\$10,158,509	\$12,674,402	\$16,708,958
Year +/-		265.12%	672.47%	-13.43%	24.77%	31.83%
Total +/-						3,916.07%

Table 3. Book imports to Canada where Canada is reported as country of origin, 1995–2010
Source: Statistics Canada

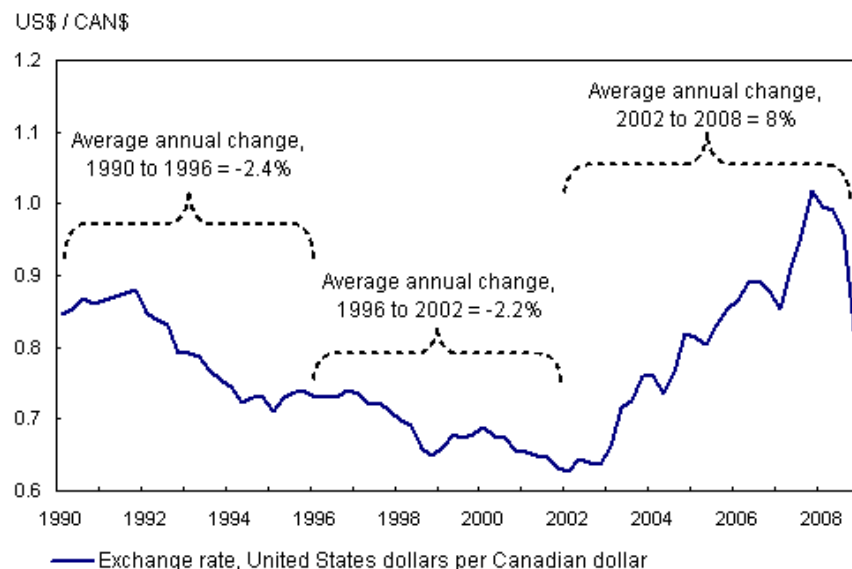
We should note as well, however, that this increasing re-import activity appears to be stimulated in part by Canadian publishers' interest in using these channels to serve Canadian customers and accounts.

This reflects the complex relationship that major American wholesalers have with the Canadian marketplace. On the one hand, many segments of the Canadian supply chain may be wary of increased parallel importation via major foreign wholesalers. On the other, such wholesalers compete on a scale that no Canadian competitors can match and this can make them attractive suppliers for Canadian accounts and, by extension, attractive to some Canadian publishers as well.

3.24 *Exchange rate and inflation effects*

When observing overall import volumes over time, it is necessary to factor out the effects of both inflation and exchange rate fluctuations in an attempt to observe “real” growth. As we will demonstrate below, the dramatic changes in Canada–US exchange rates have had a profound effect on the value of Canadian book imports.

When the *Book Importation Regulations* were brought into force in 1999, the Canadian dollar was at a low ebb and had been declining against the US currency for much of the previous decade. However, as the following chart illustrates, the trend began to reverse itself around 2002, and the Canadian dollar has been appreciating in value since, including a sustained period from 2007 onwards where the two currencies have traded at or near par with one another.



Note: Average annual growth calculated as total change in exchange rate over the period, divided by the numbers of years.

Figure 5. Tracking Canada–US exchange rates from 1990 to 2008

Source: Statistics Canada

This level of currency appreciation has a number of important effects with respect to the position of imported books in the Canadian market:

- First, as the example presented earlier illustrates, even modest rate fluctuations can move Canadian list prices on exclusively distributed imported titles in and out of compliance with the Regulations' pricing requirements. In the case of more dramatic changes in currency rates, such as we saw in 2006–2007, Canadian list prices can easily (and did) fall more sharply outside of those pricing guidelines.
- As also noted earlier, trade books are a rare example of a product category where both the Canadian and US list prices are printed on the product itself. When facing a \$.60–\$.70-cent dollar, most consumers would not take the trouble to convert a US list price into its Canadian-dollar equivalent. Any potential buyer, however, can easily do those conversions when the two currencies are at par with one another, and this easy comparison drove a lot of the consumer backlash (and by extension retailer backlash) against Canadian list prices from 2007 onward. This phenomenon triggered a round of Canadian list price reductions on imported titles in Canada and was especially acute in very price-sensitive markets, such as textbooks. (While “dual cover pricing” is not the norm in textbook publishing, price comparisons are easily made online between Canadian list prices and other available price points for imported educational titles.)

Factoring out inflation from reported import values is a relatively straightforward matter, and we have applied the current Consumer Price Index (CPI) rates (using 2002 as the base year) in the table below. The table first converts the current-year, Canadian-dollar import values to their US-dollar equivalents (using the average Canada–US exchange rate for each year) and then adjusts that value for inflation using the CPI index.

	1995	1998	2001	2004	2007	2010
Cdn Value	\$563,478,606	\$619,702,506	\$561,355,129	\$555,354,157	\$548,786,443	\$587,993,731
Exchange	0.7287	0.7006	0.6670	0.7709	0.8573	0.9503
US Value	\$410,606,860	\$434,163,575	\$374,423,871.	\$428,122,519	\$470,474,617	\$558,770,442
CPI Index	87.5	91.2667	97.7833	104.658	111.45	116.467
Adjusted	\$469,264,983	\$475,708,638	\$382,911,878	\$409,068,126	\$422,139,629	\$479,767,180
Year +/-		1.37%	-19.51%	6.83%	3.20%	13.65%
Total						2.24%

Table 4. Book exports from the US to Canada, 1995–2010, adjusted for inflation and currency effects
Sources: Statistics Canada, Bank of Canada

We noted earlier that the unadjusted import values from StatsCan showed an overall increase of over 18 percent from 1995 to 2010. Given the US’s declining share of total imports over this period, the unadjusted growth rate for exports from the US to Canada alone is 4.35 percent. As Table 4 illustrates, this growth rate is reduced to 2.24 percent after adjusting for inflation and currency fluctuations as above.

The very low rates of real growth in exports from the US to Canada over this period suggest to us that the *Book Importation Regulations* did play a role in reducing foreign sourcing of imported books by Canadian retail accounts and institutions. The marginal growth in book imports from the US over this period is particularly notable. Given the strong indicators of greater integration in the American and Canadian supply chains that we explored earlier, we would expect to see greater growth in imports from the US. That this hasn’t been the case suggests that other factors are playing a part and, in particular, that the Regulations have curbed import growth over this period.

In fact, we see a sharp decline in book imports from the US in 2001, the first year in our survey after the introduction of the Regulations in 1999, and we see a sharp increase in 2010, following an extended period of at-par trading for the Canadian dollar. Absent that 2010 increase, the real value of book imports from the US would have declined over this 15-year period by 5 percent, after adjusting for inflation and exchange rates.

3.25 Price behaviour over time

One of the important questions that revolves around the *Book Importation Regulations* is whether or not they have had an effect on Canadian list prices for imported titles. In order to establish some observations in this respect, we examined Canadian and US list prices for bestselling, imported hardcover titles from 1997 to 2002 as well as from 2006 to 2010. In doing so, we were trying to observe whether or not there was any notable change in pricing around two major events during the broader survey period: (1) the introduction of the Regulations in 1999

and (2) the Canadian dollar's persistent par or near-par valuation vis-à-vis the US dollar from late-2006 onward.

While we would fully expect to find varying price effects, and different price gaps in particular, for different samples of books across the wider marketplace, we concentrated on hardcover bestsellers for this sample for the following reasons:

1. The original list prices for each were reliably published in bestseller lists over the period of our survey.
2. These hardcover bestsellers almost always represented lead frontlist titles for their respective publishers and, reflecting back on our earlier point regarding the relationship between attention and pricing, would have been priced with relative care for the Canadian market and would also have been most subject to scrutiny from retail and institutional buyers with respect to the pricing constraints in the Regulations.
3. As bestsellers, these titles would also have accounted for a disproportionate share of sales, and this extends the impact of the sample beyond the strict number of titles included for each year.
4. With rare exception, the vast majority of these imported, high-profile, frontlist titles would have been exclusively distributed in Canada.

It is important to note at this point that we would find both imported titles and Canadian editions in the sample we have described here. Under the letter of the law, the pricing standards of the Regulations would apply to imported titles but not to Canadian editions. However, our observation is that this distinction is not widely appreciated or applied in the Canadian market and that very similar considerations—including the pricing provisions of the Regulations—are applied to pricing both Canadian editions and imported titles.

For each of the survey years, we noted the Canadian and US list prices for 12 to 14 bestsellers, including both foreign editions and Canadian editions of foreign-originated titles. Using the average annual Canada-US exchange rate for the month of the corresponding bestseller list, we then calculated the following related elements:

- Regulatory price limit (US list price converted to Canadian dollars plus 10 percent)
- Price gap (the gap between the actual Canadian list price and the Canadian-dollar equivalent of the US list price)
- Six-month average gap (an average of the price gaps in the month the bestseller list was published, and the gaps resulting from running the same calculations using the Canada-US exchange rate at plus three months and minus three months)

The average values for each of these elements are summarized below for 1997 to 2002.

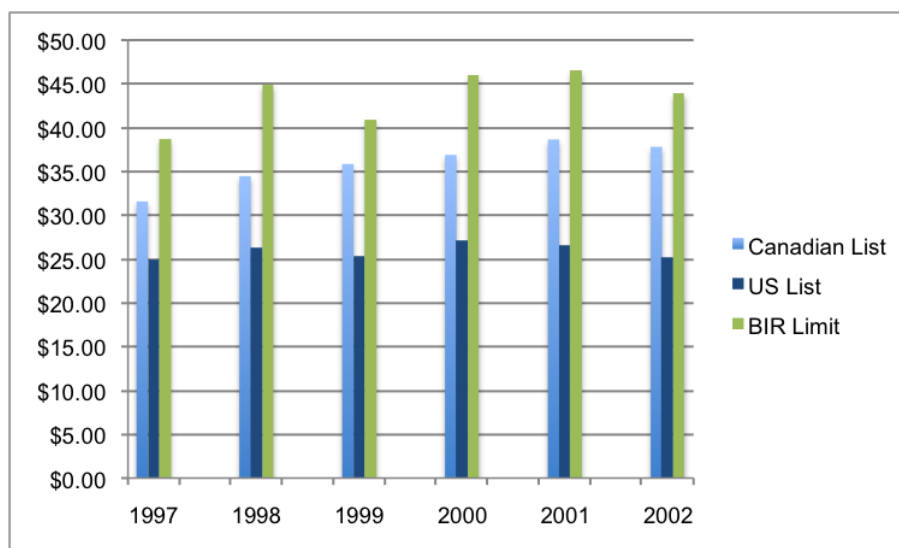


Figure 6. Comparing average Canadian list prices, US list prices, and regulatory price limits, 1997 to 2002
Sources: *Globe & Mail, New York Times, Quill & Quire*

	1997	1998	1999	2000	2001	2002
Gap	-8.31%	-13.69%	-3.78%	-10.96%	-7.87%	-4.15%
6 Mth Avg	-8.07%	-12.32%	-3.96%	-8.84%	-6.94%	-2.75%
Exchange	1.415	1.552	1.462	1.544	1.587	1.581

Table 5. Average gaps between Canadian list price and Canadian-dollar equivalent of US list, 1997 to 2002

As the data shows, the Canadian list prices for the titles in our sample lagged behind the Canadian-dollar equivalents of the corresponding US list prices in each of the survey years. In other words, the Canadian list prices for this sample of bestselling titles were reliably below the Canadian-dollar equivalent of the US list prices during this period. This is in spite of the fact that average Canadian list prices on these titles increased over the period, at a rate (nearly 20 percent) that greatly outstripped the negligible increase in US list prices (less than 2 percent) from 1997 to 2002.

These patterns illustrate the significant impact of currency exchange on import prices. Even as publishers and distributors were raising import list prices in Canada, the Canadian dollar continued to fall against the US currency and so the price gap between the two remained such that Canadian prices were persistently lagging below their US equivalents.

In addition, these patterns were playing out both before and after the introduction of the *Book Importation Regulations* in 1999. Canadian list prices continued to climb after 1999, but in no case, for the titles sampled here, did they exceed the pricing guidelines under the Regulations, nor did they meet or exceed the Canadian-dollar equivalent of the US list prices for these titles.

The next figure and table pairing shows the same values for bestselling imported titles (including Canadian editions of foreign-originated titles) from 2006 to 2010. It again illustrates the important role of the currency exchange rate in determining prices as well as the relationship between domestic and foreign prices on imported books.

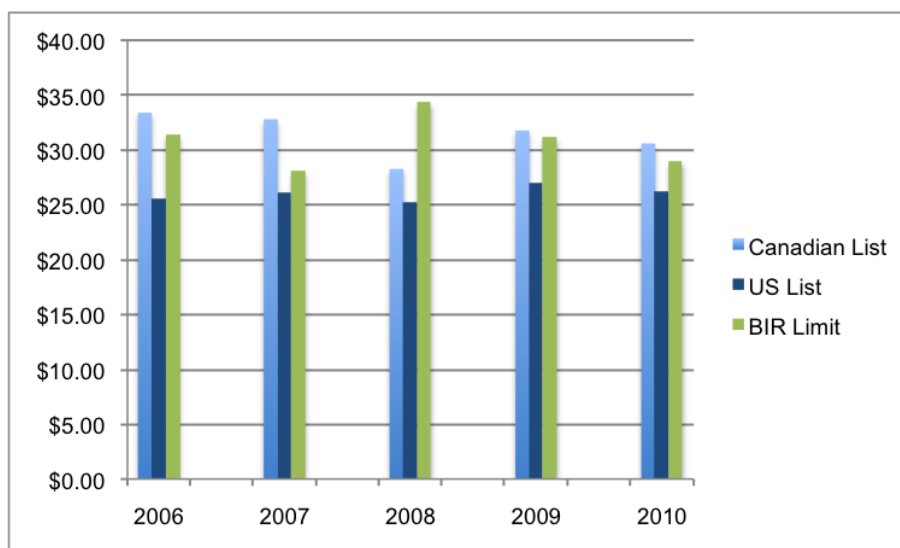


Figure 7. Comparing average Canadian list prices, US list prices, and regulatory price limits, 2006 to 2010
Sources: *Globe & Mail*, *New York Times*, *Quill & Quire*

	2006	2007	2008	2009	2010
Gap	17.20%	28.12%	-9.57%	12.68%	16.04%
6 Mth Avg	15.99%	23.45%	-4.57%	11.18%	15.42%
Exchange	1.119	0.976	1.235	1.051	1.006

Table 6. Average gaps between Canadian list price and Canadian-dollar equivalent of US list, 2006 to 2010.

In contrast to the 1997–2002 period, here we see that the Canadian list prices reliably exceeded the pricing requirements of the Regulations. This occurred in spite of the fact that prices on these books came down by more than 8 percent from 2006 to 2010, even as US list prices continued to increase modestly over the period (2.5 percent).

Most notable about this period otherwise is that the Canadian dollar appreciated sharply against the US dollar throughout. The effect therefore was the inverse of what we observed for 1997 to 2002. During that period, Canadian publishers and distributors significantly increased Canadian list prices on imported titles and those prices continued to lag behind the corresponding US prices. In the 2006–2010 period, publishers and distributors reduced prices, and yet in most years Canadian-US price gaps that exceeded the regulatory pricing thresholds persisted. The exception was in 2008, where Canadian prices again lagged behind (nearly 10 percent). In hindsight this appears to have been something of an over-correction in response to the dramatic change in exchange rates (and corresponding consumer backlash) from 2007.

This relative movement of Canadian and US list prices underscores the important effect of changing exchange rates on Canada–US price differentials. As we observed earlier, even modest fluctuations in exchange rates can move Canadian list prices in and out of compliance with regulatory pricing requirements. More dramatic changes in exchange rates, such as we saw from 2006–2010, have a more profound impact, and what we really see in the analysis above is a Canadian book industry that was struggling over these years to bring its pricing in line with a dramatically different relationship between the Canadian and US dollars.

We note as well that even though, in percentage terms, we see Canadian list prices running above the regulatory pricing thresholds over this period, this often reflects very marginal price variations in absolute dollar terms. For example, the average Canadian list price of the bestsellers in our 2008 sample was \$28.27. At that point, the gap between the Canadian list price and the Canadian-dollar equivalent of the corresponding average US list price was -4.57 percent. That is, Canadian list prices were running slightly below the Canadian-dollar equivalent of the US list prices on those same books.

By 2010, the average Canadian list price for our bestseller sample had increased to \$30.60—an increase of \$2.33 over two years—but the price gap for the sample had jumped up to 15.42 percent in response to a relatively modest change in absolute price values. This reflects how small the margin for error can be in trying hit a certain pricing window or pricing threshold on a relatively low-priced item like a book, especially in cases where currency exchange rates are fluctuating to any significant degree.

Observing the relationship between the US list price, the Canadian list price, and exchange rates in this way leads us to conclude that current and anticipated Canada–US exchange rates are a major determinant of Canadian list prices. The pricing requirements of the *Book Importation Regulations* are clearly an important reference point or target for publishers and distributors in setting Canadian list prices. Still, we observe that anticipated currency exchange rates and a desire to “price to market” (that is, to hit established price ranges for different book categories) play an even larger role in the decisions of publishers and distributors regarding Canadian list prices.

3.26 Current price differentials: Trade titles

To establish a wider, contemporary sample of relative pricing, we consulted a proprietary price-comparison tool that has been developed within the BookManager platform. BookManager is widely used by independent bookstores in Canada and provides an integrated system for stores to manage ordering, inventory, suppliers, point-of-sale data, returns, customer information, and accounting functions.

BookManager delivers the PubStock service, an aggregated data feed with pricing and availability details for hundreds of thousands of titles that are actively distributed to Canadian bookstores. PubStock is a sophisticated system that is widely used among independent bookstores in Canada. It stands as an example of the inventory and ordering tools that are readily available to virtually all members of Canada’s book supply chain, one of the effects of which is to facilitate active and ongoing comparisons for price and availability among different suppliers in Canada and abroad.

One of the basic functions of PubStock is to generate a daily report for the top-selling 100,000 titles in the Canadian market. The report is compiled using the most recent supplier feeds in PubStock and comparing the Canadian list price data in that feed against the in-stock prices found at two major US wholesalers: Baker & Taylor and Ingram.

When fully compiled, the report provides a supplier-by-supplier breakdown with the following details for each publisher or distributor:

- Number of titles in survey
- Average, minimum, and maximum price gaps for all titles
- Average, minimum, and maximum price gaps for new releases (in the BookManager system, this applies to titles published in the previous three months)
- Average, minimum, and maximum price gaps for forthcoming releases (that is, titles to be published in the next six months)

For the sake of maintaining the confidentiality of this proprietary system, we have prepared a weighted-average summary of price gaps for the top-selling 100,000 titles in the BookManager survey for November 19, 2011.

	ALL TITLES	NEW RELEASES	FORTHCOMING
November 19 Pricing	16.74%	13.33%	14.41%

Table 7. Weighted average price gaps as calculated on November 19, 2011, using a Canada–US exchange rate of \$1.02
Source: BookManager

As this summary indicates, the weighted average price gap for these 100,000 titles is 16.74 percent, and the total sample is nearly 7 percent over the pricing requirements of the Regulations. New releases in the sample reflect a smaller gap of 13.3 percent, and the forthcoming titles are priced slightly above that.

Please note, however, that the BookManager system does not discriminate between imported and domestic titles, and so the 100,000-title sample used to generate these averages includes both types of books. That is, the sample includes books for which the pricing requirements of the Regulations apply (imported titles that are exclusively distributed in Canada) as well as those for which the pricing provisions in the Regulations do not apply (Canadian-originated titles as well as Canadian editions of foreign-originated books and foreign titles not exclusively distributed in Canada). This sample cannot therefore conclusively indicate whether, in the aggregate, the pricing provisions are respected wherever they apply.

That said, given our earlier analysis with respect to import market share, we would expect that roughly 80 percent of the titles in this sample would be imported books and that roughly 85 percent of those would be exclusively distributed in Canada and therefore subject to the service and pricing standards in the *Book Importation Regulations*.

3.27 A closer look at textbooks

Canada’s post-secondary, English-language textbook market shares many characteristics of the English-language Canadian book market as a whole. The textbook sector—by which we mean books that are published primarily for educational purposes as opposed to the more general

reading audience for the trade book market—is dominated by a relatively small number of large, multinational educational publishers, sales are highly concentrated within a relatively small number of titles, and foreign-originated books hold a majority market share.

We have focused on post-secondary in this study as it is a more open market with a wider field of retailers and other supply chain participants—and a greater degree of substitutability—than is the case for the relatively controlled K-12 textbook sector where sales are mainly made through provincial ministry—adoption of tailored editions of core texts. These K-12 texts are more commonly originated in Canada or heavily adapted Canadian editions of foreign-originated titles.

As noted earlier, Campus Stores Canada estimates the number of post-secondary textbook titles actively distributed in Canada at just over 140,000. As is true for the Canadian trade market, sales are highly concentrated at one end of the demand curve. Less than 200 titles (about 0.12 percent of all available textbooks) account for 10 percent of sales, and just over 3,600 textbooks (about 2.5 percent of all available textbooks) make up 50 percent of sales.

There are two linked aspects to this concentration: On the one hand, there is the familiar sales concentration among titles. On the other, there is a corresponding concentration of sales within a relatively small number of courses and disciplines, and textbook sales are especially massed within the large-enrolment, introductory-level courses that characterize the early years of popular programs of post-secondary study at universities and colleges across the country. By some estimates, 80 percent of the textbook market is concentrated within 20 percent of university courses and 40 percent of the available academic disciplines.

The other characteristic that the textbook sector shares with the wider book market is price sensitivity. In the case of textbooks, however, this factor is amplified by the higher list prices of textbooks (the average price of a textbook is over \$75) and by the very real budget concerns of the end-consumers—that is, the post-secondary student.⁵⁰

To get a better feel for relative Canadian and US textbook pricing, we took a closer look at a sample of 70 textbooks in use in first- and second-year university courses. Fifty-nine of the 70 were imported titles, with the balance either Canadian editions of foreign-originated titles or Canadian-originated texts.

Of the large educational publishers active in Canada, some, notably McGraw-Hill Ryerson and Pearson Canada, have substantial domestic publishing programs and so a higher proportion of Canadian-originated titles and Canadian editions of foreign-originated texts in their catalogues.

Without the benefit of any summary statistics or a wider sample to draw on, it is difficult to project the breakdown from our small sample to the market as a whole, but it seems clear that imported texts hold the majority of the market.

⁵⁰ As we noted earlier, Canadian or US list prices are not often printed directly on the covers of textbooks. However, both campus retailers and students have easy access to a variety of price comparison tools. In some cases, these comparisons include a considerable range of options for the student-customer. These may include Canadian list prices, US list prices, available prices on Amazon.com and Amazon.ca, rental prices, and prices for used editions. Most students can easily make these comparisons, whether by use of a web-based tool or mobile application or even at their own initiative in looking up prices for an individual title from various suppliers.

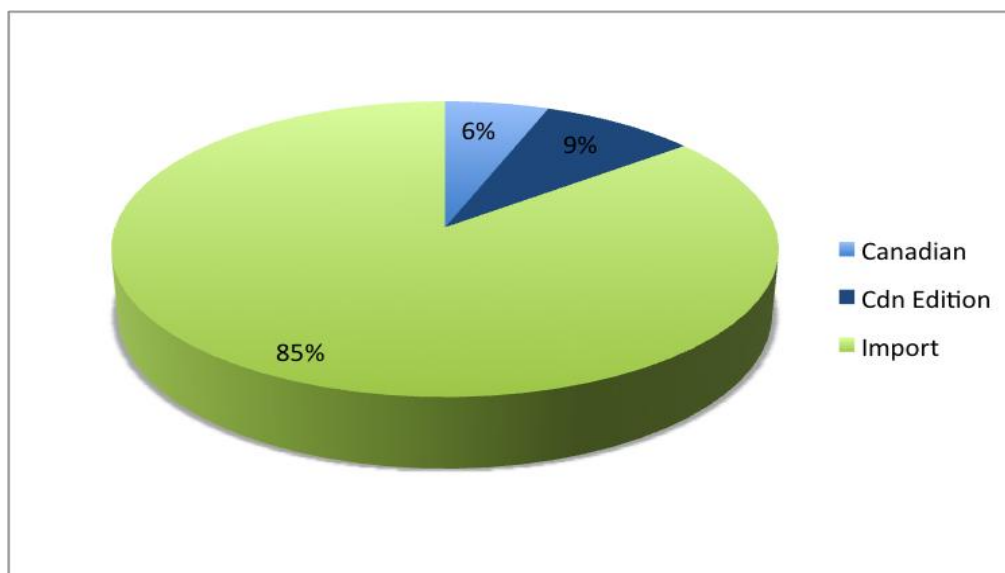


Figure 8. The domestic-to-import breakdown of a 70-title sample of higher education textbooks

US LIST	AMAZON.COM	DISCOUNT	CDN LIST	PRICE GAP	AMZN GAP
\$136.32	\$116.67	21.96 percent	\$138.09	3.94 percent	21.36 percent

Table 8. Average values for US list price, Canadian list price, and Amazon.com price, and related gaps, as calculated on November 15, 2011, using a Canada–US exchange rate of \$1.0208

Table 8 summarizes our calculations for a number of price variables for each of the 59 imported titles in our sample, and indicates a closer alignment in Canada–US textbook pricing than we previously observed with the larger trade sample.

The average gap between Canadian list price and the Canadian-dollar equivalent of the US price for the sample was 3.9 percent. However, 37 of the 59 imported titles in the sample were substantially discounted by Amazon for an average discount of nearly 22 percent from the US list. If we use the Canadian-dollar equivalent of the discounted Amazon price, rather than the US list price, to calculate the price differential with the Canadian list, the gap increases to 21.4 percent.

Given the visibility and degree of Amazon.com discounting on textbooks, this price point has established itself as an important reference point for students and campus retailers in comparing Canadian and US list prices. And of course the *Copyright Act* entitles end consumers to import personal-use copies of books, including textbooks, from foreign suppliers. In that sense students are well within their rights to import foreign editions of required texts, whether those titles are exclusively distributed in Canada or not.

Anecdotal reports from interview respondents suggest an increasing incidence of this type of “lost sale” to online booksellers outside Canada, but educational publishers in Canada are understandably reluctant to share any internal tracking data for such sales.

There is one exception to this to be found in the “Management Discussion and Analysis” commentaries of recent annual and quarterly reports from McGraw-Hill Ryerson. We have

excerpted two illustrative comments below from the 2010 Annual Report and the First Quarter 2011 Report respectively.

“The Company’s Higher Education Division experienced a sales decline of 4% compared to 2009, driven mainly by a decrease in sales of imported titles. This drop in sales of imported titles was seen industry-wide in 2010 and is partially a function of sales by U.S. vendors into Canada.”

“Online booksellers in the U.S. and other countries have created an avenue for Canadians to purchase published products directly from foreign retailers, thus bypassing the Canadian marketers and distributors of those products. In particular, students are able to access a very large source of second-hand and/or rental products. Sustained increases in market penetration by foreign-based virtual bookstores and wholesalers could adversely impact the Company’s market share and financial performance. The impact of this issue varies partly in relation to the volatility in the Canadian dollar/U.S. dollar exchange rates.”

The second of these quotes points to two other factors that are affecting market composition and buying patterns in the textbook market: used book inventories and rental textbooks. Of the 70 textbooks in our sample, pricing for used editions was readily available for 36 titles with an average discount of just over 31 percent over the list prices of new editions. Similarly, rental editions were available for 57 of the titles in our sample at a discount of more than 54 percent from the current list prices for new editions.

These relative price points reflect a current benchmark in textbook pricing where a new edition that carries a price of \$100 will often have corresponding used editions available at a 25 percent or more discount, digital editions at roughly 50 percent of the list price for a print copy, and rental editions available for 40–45 percent of the list price of a new edition.⁵¹

Needless to say, the online sales channel has greatly invigorated the trade in used and rental textbooks. Section 8 of the Regulations addresses the question of used text imports in a pre-online era. But, as reflected in the McGraw-Hill excerpt above, it is fair to say that the far more pressing concern for Canadian publishers, distributors, and retailers these days is the ready availability of vast inventories of used texts online.

The emergence of a vigorous online marketplace for used books has some particular implications for our consideration of the impact of the Regulations. First, as mentioned above, any individual student is entitled under the Act to order textbooks for personal use from a foreign supplier. Second, the aggregation and efficient distribution of used textbook inventories online brings a level of transparent price competition, ease of discovery, and ease of acquisition to used textbooks that virtually no other channel can match.

Similarly, the online channel has also proven to be an effective platform for a new category of vendor providing rental texts. Rentsbooks.com, for example, is a third-party provider affiliated

⁵¹ On a related note, section 10 of the Regulations provides for the parallel importation of leased books by Canadian libraries, but the Canadian Urban Libraries Council has recently reported that this practice is declining among Canadian libraries.

with selected universities and colleges in Canada and the US. Through this affiliation, they jointly make rental copies available for selected titles and for varying rental terms ranging from 30 to 125 days. The student finds the rental listing on the rentsbooks.com site or on the site of the affiliate institution, and rentsbooks.com ships the order to them directly. When the rental period concludes, the student returns the rental edition(s) via their university or college.

As these developments reflect, this is clearly a very disruptive time in the textbook sector. In addition to secondary markets that have created or invigorated the trade in used and rental editions, we can also observe the following:

- The rapid adoption of digital materials is having a profound impact on the development and sale of educational texts.
- The increasing integration of the North American supply chain is giving highly price-sensitive student and retail buyers more ready alternatives for sourcing textbooks than ever before, whether in compliance with the Act or otherwise.

As the McGraw-Hill example again reflects, the sales of imported titles in Canada are most vulnerable within this heightened competition for textbook sales. From our research over the course of the current study, it seems clear that publishers are responding by developing unique or adapted editions for Canada (e.g., in part through the bundling of texts with Canada-specific access codes for related online learning resources), by investing in digital content, and by reducing Canadian list prices on imported textbooks.

It seems clear as well with regard to any list price reductions that, while the pricing requirements of the *Book Importation Regulations* represent an important “target zone” for list pricing on imported textbooks, firms will give equal or more weight to the need to be competitive with regard to lower-priced used and rental editions as well as the aggressive pricing strategies of major online booksellers.

The unprecedented price transparency—across new, used, and rental titles—in the textbook market carries with it some particular implications for Canadian distributors and campus retailers. For example, the deep discounting on textbook list prices by major online retailers may in some cases limit the price advantage of legal parallel importation from a US supplier with a lower list price (that is, the US list price may be lower than the Canadian list but likely not less than the “available price” of a major online retailer such as Amazon). In the extreme case, the best course of action for the campus retailer may be to order from a deep-discounting online retailer themselves. This is especially true in cases where they are unable to get price or term adjustments from a Canadian distributor to help narrow any uncomfortably large Canada–US price differentials.

4.0 Market effects of the *Book Importation Regulations*

There are a number of important findings in the preceding sections' data summaries and commentary:

- Imported books have a majority share of the Canadian trade market, likely on the order of a 75–80 percent share overall.
- The vast majority of imported titles—likely 85 percent or more—are handled by exclusive distributors in Canada and are therefore subject to the pricing and service requirements in the *Book Importation Regulations*.
- Canadian list prices on imported titles tend to lag behind currency movements but track toward persistent currency exchange trends over time.
- A majority of Canadian book imports—between 73 percent and 83 percent over our survey period—come from the US.
- Real growth of book imports in Canada from 1995 to 2010 has been modest, particularly from the US.
- We can observe sharp declines in imports from the US following the introduction of the Regulations in 1999.
- We can also observe sharp increases in imports from the US following a sustained period of par-currency trading from 2007 onward.

Based on these data-supported findings, we can reasonably conclude the following as to the market effects of the *Book Importation Regulations*:

1. The Regulations influence Canadian list prices for imported titles, but this influence is not absolute. While the pricing guidelines in the Regulations set up an important reference point or target pricing zone for imported titles, there are other factors that are generally given equal or greater weight in publishers' and distributors' pricing decisions. As one of our respondents commented, "The biggest thing about the Regulations is that they focus the mind to [stay below the 10 percent threshold]. But that's only part of the pricing decision, and it's often more important to price to market." Current and anticipated changes in exchange rates (especially Canada–US exchange rates) as well as competitive pressures (notably online retail pricing, US wholesaler pricing, and consumer expectations regarding price) are often greater determinants of Canadian list prices on imported titles.
2. Given the dramatically expanding selection of used and new books of all kinds available to consumers in Canada, we find no indication that the Regulations constrain consumer choice or selection. On the contrary, to the extent that the Regulations contribute to a strengthening of the Canadian supply chain, we expect that their overall effect in this

regard is to expand the selection of titles—both domestic and imported—available to Canadian consumers.

3. The most important direct effect of the Regulations is to discourage parallel importation. This is not to say that parallel importation has been eliminated with the introduction of the *Book Importation Regulations*. In fact, the anecdotal evidence and available data suggest that the level of parallel importation activity ebbs and flows over time and is broadly correlated to currency exchange fluctuations.

All things being equal, in periods where currency movements create too large a gap between Canadian and foreign prices parallel importation levels will be higher. Certainly, to the extent that imported titles are priced outside of the requirements of the Regulations (whether because of exchange rate fluctuations or due to errant pricing decisions), retail and institutional accounts in Canada are fully within their rights to “buy around” the exclusive distributor in Canada to source from a foreign supplier. At the end of the day, a distributor’s exclusive rights in the Canadian market are protected only so long as it is in compliance with the pricing guidelines and other requirements of the Regulations. Any protection arising from the legislation lapses when a distributor is out of compliance with those requirements with respect to a certain publishing line or an individual title.

With the force of the *Copyright Act* behind them, the Regulations nevertheless create both a sufficient deterrent against buying around as well as a reasonable way of structuring the distribution of imported titles, and this appears to have the overall effect of reducing parallel importation levels.

The Canadian retail market is highly concentrated, both in traditional and non-traditional retail channels, and an implication of this is that publishers and distributors can better observe and respond to any incidences of buying around within large retail accounts. Any such interventions are both triggered and supported by the publisher’s or distributor’s access to internal sales data or other proprietary data, such as BookNet Canada’s SalesData, that demonstrate where notable instances of parallel importation have occurred. And needless to say the Regulations represent an important framework for encouraging compliance across the supply chain in such cases as well.

4.1 Market effects with regard to library procurement

The *Book Importation Regulations* have had similar market effects in library channels. Here, the legislated requirement to source exclusively distributed imported books from Canadian suppliers, subject to the Regulations, has proven to be an important counter to both the pull of advanced systems and services offered by major US library wholesalers⁵² and to any imperatives from municipal governments to source books from the lowest-cost suppliers.

⁵² While Canadian wholesalers have closed this service/systems gap somewhat in recent years, it is generally acknowledged that a gap remains between the capabilities of Canadian and US library wholesalers in this respect.

Our research indicates that the Regulations are also an important counterpoint to other systemic factors that may weaken the libraries' attachment to Canadian suppliers, particularly in cases where a library outsources some aspects of collections management to outside vendors. We see this with e-books, for example, where Canadian libraries often do not build e-book collections in the classic sense of library practice but, instead, select e-book titles from the catalogues of major library service providers, such as OverDrive, a US digital book supplier.

We see it as well with the increasing prevalence of so-called "profile buying,"⁵³ where a service provider fills a standing order for certain types of newly released titles. In such automated-ordering models, for example, a foreign edition that is released first may trump a subsequently released Canadian edition. This can particularly be an issue, for example, in the case of co-publication projects in both scholarly and trade publishing. In an international co-publication arrangement, one or more Canadian and international partners share the costs of producing a title. If the foreign partner publishes first, or even transmits bibliographic data about the project to the (increasingly integrated) supply chain first, then automated library procurement systems may select that title over the Canadian edition, even in cases where a Canadian edition has been published simultaneously or shortly after the foreign edition.

The role of publisher or distributor metadata today is an interesting one, and one not anticipated in the Regulations. It reflects the increasing importance of this mode of information exchange—whereby virtually all participants in the supply chain exchange detailed, standardized information about titles in their respective systems. This metadata exchange provides details with respect to pricing, ordering information, availability, and much more, and all at the level of the individual title listing.

We also see reflected here the increasingly important role of sophisticated inventory and ordering systems—in use both in retail and institutional accounts—that allow Canadian book buyers to easily and effectively compare pricing and availability for imported titles. The Book Manager system that we described earlier is one such example, as are the advanced wholesaler-provided ordering systems for libraries that we referred to above.

All that said, the bulk of library purchases are made through library wholesalers in Canada and abroad,⁵⁴ and Canadian library wholesalers compete in part on the basis of Canadian sourcing. That is to say, Canadian libraries generally recognize the *Copyright Act* requirement to source from Canadian suppliers and effectively transfer the responsibility to do so to the Canadian library wholesalers that service them.

⁵³ These plans are variously referred to as standing orders, blanket orders, or automatic release plans (ARPs) and are described in a recent report from the Canadian Urban Libraries Council: "The library creates a purchasing profile that specifies the type of material to buy in a certain subject, as well as a budget. The publisher or dealer supplies the library with new titles as they are released, based on a pre-established agreement. These plans are used mainly by large public and academic libraries to reduce the amount of time staff spends on selecting and acquiring materials and to provide new materials faster. They are most effective in narrowly-defined areas, which might include travel, graphic novels, large print, or multilingual material. These purchasing plans may specify that a library receive all books published by a specific specialty or government publisher."

⁵⁴ While the percentage of total library budgets spent in Canada has declined over the past decade (from 89 percent in 2002 to 76 percent in 2009), this mainly reflects a corresponding shift from print to electronic expenditures—that is, to digital books and other electronic resources—rather than an increased amount of foreign sourcing of imported print editions.

Source: Canadian Urban Libraries Council

5.0 Critiques and issues

There are a number of critiques and issues that are commonly raised in relation to the *Book Importation Regulations*. We have summarized them here with an accompanying commentary for each based on the current research study.

5.1 Critique: Removing the Regulations would reduce the cost of Canadian books

One critical perspective of the Regulations sees them as the source of an additional tax or “private tariff” on Canadian books, the implication being that this is a surcharge or tariff that flows to the bottom lines of exclusive distributors in Canada. This is a view that has been advanced by two industry groups in particular: the Canadian Booksellers Association and Campus Stores Canada.

A recent brief on the subject from Campus Stores Canada asserts the following:

“These regulations allow an importer to charge a bookseller the price of the book in the country of origin, plus the difference in the exchange rates between the two countries, plus an additional 10% for books imported from the United States, 15% for books imported from elsewhere... Campus Stores Canada considers this additional 10 or 15% to be a ‘private tariff.’ ... Removing the tariff would see the cost of Canadian books, and especially Canadian textbooks, fall by as much as 15% virtually overnight.”

Our research to date does not support this argument, particularly with regard to the following:

- The pricing guidelines in the Regulations do not apply broadly to Canadian books, but to a particular type of book in the Canadian market: an exclusively distributed, imported title. Granted, this category holds a major share of the Canadian market, but it is also true that there are other pricing conventions and competitive forces in play that shape Canadian book prices across the entire market.
- The Regulations do not simply allow the exclusive distributor to charge an extra 10 percent (or 15 percent in the case of non-US imports). Rather, they extend the protections and remedies available under the *Copyright Act* to exclusive Canadian distributors in cases where those distributors establish their Canadian list prices below these specified price thresholds. Books priced outside of those ranges are outside the protection of the Regulations and may therefore be sourced from foreign suppliers without contravening the legislative requirements.
- The US is the country of origin for nearly three-quarters of Canadian book imports. Therefore, the 10 percent price threshold—rather than the 15 percent as cited above—is the much more relevant reference point. There is no doubt that Canadian list prices lag

behind currency movements, but it also seems clear that they do track together over time. Our random textbook sample showed an average gap of 3.9 percent based on current exchange rates. Certainly, another sample could be produced that would show greater price gaps, but the larger point to be made here is that the market is driving Canadian and foreign list prices closer together. The pricing requirements of the *Regulations* are an important reference point in pricing decisions, but they are not the sole (or even the most important) determinant of Canadian list prices on imported trade books or textbooks.

- The mark-up on the price of an imported book in Canada does not flow exclusively to the bottom line of the distributor or publisher in Canada but, like every dollar in the sale price of a book, is divided among all participants in the supply chain, from the author all the way to the retailer. The following example from our 2007 study, *The Book Retail Sector in Canada*, illustrates a typical breakdown of the list price of a book, based on information provided by a small literary press in Canada.⁵⁵ This approximates the distribution of a dollar received at the bookstore cashier for a publisher's book:
 - \$.48 to the bookseller
 - \$.10 to the author (royalty)
 - \$.10 to the sales representative (sales commission)
 - \$.15 for fulfillment (distribution fees to a distributor, or costs for a self-distributing publisher)
 - \$.08 for the costs of producing the finished book (paper, print, and binding)
 - \$.09 for the publisher (for administration, marketing, editorial, and pre-press production)

We should also note the larger context in which price gaps on imported titles exist. Price differentials on imported goods are normal across the Canadian economy and, as evidenced in the Senate testimony of Governor Carney cited earlier, there are a number of structural factors that account for this, not the least of which is the relative cost of doing business in Canada.

Regardless of regulatory requirements, Canadian book distributors would likely always aim to charge some increment on foreign list prices, or at least to not lose margin as a result of relative currency effects, in order to recover the relatively higher costs of serving the Canadian market. For most firms, these include both the higher costs of carrying on business in Canada relative to other jurisdictions (notably the US) as well as any incremental investments in building book distribution and book publishing capacity in Canada.

5.2 Issue: The Regulations are not enforceable

There is a widely held view within the book industry that the Regulations are not enforceable, largely due to the following factors:

⁵⁵ This cost breakdown is intentionally simplified here for illustrative purposes. The cost and margin structure of an individual publishing house will vary somewhat by scale of operations and across different types of publishing programs and sales channels.

- The Government of Canada has no active role to play in enforcing the Regulations or the exclusive rights of book distributors under the *Copyright Act*. Rather, the onus is on the exclusive Canadian distributor, as long as it is compliant with the Regulations, to assert its rights by pursuing the remedies and protections afforded by the Act. Where distributors are non-compliant with the Regulations, the onus is on the retailer or institutional buyer to assert its right to buy around, should it so choose.
- The Canadian market is a small one, and for a distributor to assert its rights under the legislation it would need to challenge the legality of its customers' behaviour or, in the extreme case, even sue a customer. Distributors are understandably reluctant to do so.
- It can be difficult to assess whether an exclusive distributor has complied with the Regulations, or whether a buyer has complied with the Act, or not. As we have shown, Canadian list prices on imported books can move in and out of compliance in response to currency exchange fluctuations. The business of tracking compliance and resolving issues with regard to regulatory pricing requirements is further complicated by the demand it places on already over-stretched staff time.
- The situation is equally problematic with respect to the service standards specified in the Regulations. It is generally held within the book industry that these are not meaningful or enforceable provisions in today's marketplace. The staff time and effort required to track service times or to resolve interpretations or findings of fact with respect to service performance are such that few parties in the supply chain would undertake to do so.
- Some types of book inventories, such as used editions and remainders,⁵⁶ are highly liquid—that is, they are sold in high volumes, often outside of normal title-by-title ordering and data systems, and turned over quickly—and so are especially difficult to track or assess for compliance under the Regulations.
- Some aspects of the “Notice of Exclusive Distributor” provisions⁵⁷ are clearly out of date⁵⁸ and so cannot be strictly applied as set out in the Regulations. However, distributors (and publishers of Canadian editions of foreign-originated titles) do regularly meet this requirement to provide advance notice via the regular publication and circulation of title catalogues, through notices in trade publications such as *Quill & Quire*, by maintaining public or trade-facing websites with title listings, and, through the circulation of bibliographic metadata that specifies supply details, including an exclusive distributor, at the level of an individual title.

All that to say that even in cases where a distributor may believe that an account has received books via parallel importation, it can be time-consuming to determine whether or not this is so, let alone to demonstrate conclusively that such imports have contravened the *Copyright Act*.

⁵⁶ See sections 7 and 8 of the Regulations.

⁵⁷ See section 27.1(5) of the Act and section 4 of the Regulations.

⁵⁸ Notably 4.(1)(b)(i) which suggests that notice be given via the now-defunct *Canadian Telebook Agency Microfiche* and the also-defunct *Books in Print Plus—Canadian Edition*.

Our research supports this view: we were unable to find a single case since 1999 where a distributor had pursued a legal claim against a retail or institutional account.

That said, our observation is that in cases where an exclusive distributor has a concern that a Canadian account has ordered around via a foreign supplier the distributor is most likely to take up the matter with the account informally—that is, outside of legal channels. These contacts will often take the form of a phone call or email, or even, in the more severe cases in our review, a “cease and desist” letter from the distributor’s industry association or legal representatives. In all cases, these communiqués serve to assert the distributor’s rights with respect to the title or titles in question.

Just as we were unable to find a single case of any escalated legal action in pursuit of a distributor’s claim, we were unable to find a single case where any such informal (or legal) notifications described above did not serve to reinforce the distributor’s claim and ensure that imported books were properly sourced from the exclusive distributor in Canada.

That is to say that, while it is true that distributors are not taking accounts to court to press their legal claims, it appears that they do not need to do so as accounts are willing to comply when notified of a Canadian distribution right. In that sense, the mere existence of a regulatory requirement to source exclusively distributed imported titles from within Canada seems to provide sufficient grounds to enforce a distributor’s claim. As one of our interview respondents put it, “[The Regulations] encourage people to act in a certain way: to honour contracts between two firms.”

5.3 Issue: The Regulations do not apply to digital books

When we wrote the Library and Archives e-book study in 2009, the opening sections made a case that a shift to digital reading was underway—that the long-forecast popularization of e-books was upon us. A mere two years later, e-books have clearly entered the mainstream of consumer reading behaviour. Starting from roughly 1 percent of major publisher revenues in the US in November 2008, the latest statistics from the Association of American Publishers indicate that digital books’ share of market has roughly doubled each year since and accounted for 20 percent of publisher revenues in the US as of November 2011.

Predictions abound as to how long this dramatic growth can sustain itself before the market begins to level off. On the conservative end of the range are forecasts that e-books will make up roughly 30 percent of publisher revenues in the US by 2014.⁵⁹ The high end of the range puts this estimate at 80 percent by 2014 or 2015.⁶⁰ Canada will lag behind these forecasts somewhat due in part to the delayed release and expansion of e-book devices and platforms in the Canadian market, but the actual percentage of growth or market share is almost immaterial at this point. It seems clear that (a) there will be continued growth in e-book markets and (b) this has wide-reaching implications at all links of the current book supply chain in Canada.

⁵⁹ Source: Barclays Capital

⁶⁰ Source: Mike Shatzkin

To begin, there is the direct question of whether or not the *Book Importation Regulations* apply to digital books. There is a widely held view within the book industry that they do not. This perspective is largely confirmed by section 2 of the *Copyright Act*, which sets out that a book “means a volume or a part or division of a volume, *in printed form*” (italics added).

At this writing, Canada’s copyright legislation is in the process of being amended through the introduction of Bill C-11, *An Act to amend the Copyright Act*, which was introduced in the House of Commons in September 2011. Bill C-11 makes no explicit reference to e-books, and it is unlikely that the application of the Regulations with regard to e-books will become more clear as the Bill proceeds through the legislative process. But for the moment there is a general consensus that they remain outside of Canada’s current import regulations.

The legislative environment for e-books reflects the emerging digital marketplace as a whole: the market is growing and evolving quickly, and trading patterns, terms of trade, and roles and responsibilities of different players across the supply chain are still taking shape. What follows is a quick overview of the early-stage patterns in global and national e-book markets, interspersed with a few predictions as to what e-book imports may look like in the years to come.



Figure 9. Emerging models and roles in the digital supply chain

Industry practice is still taking shape with regard to rights management for e-books. It seems clear at this point that publishers will generally aim to acquire the widest possible digital rights that they can, both for forthcoming titles and for backlist. This reflects the global opportunity that e-books represent as well as the fact that the leading retail and institutional platforms for e-books are international players.

A recent report by US publishing consultant Brian O’Leary comments on the changing environment for rights trading.

“Growth in the supply of and demand for eBooks is challenging traditional models for regional rights sales. Aggregators like Kobo, Google and increasingly Amazon and Apple can distribute digital content globally. This provides opportunities to distribute content cost-effectively to multiple markets. Publishers who have relied on local partners may need to develop new schemes for rights.”⁶¹

⁶¹ *Exporting Digital Books: A Guide to Best Practices for Canadian Publishers*, Livres Canada Books, March 2011.

What is unclear is the extent to which publishers and literary agents will continue to trade in territorial rights of any kind. Certainly, there will be some legacy rights of this type in play (i.e., territory or language rights for previously published works) but going forward the market for this type of territorial division of rights is uncertain. Will publishers and agents continue to trade rights on the basis of national boundaries or language groups? Will such rights be bundled with sales for print edition rights in a given territory? The notion of divisibility of rights by territory is so ingrained in the book industry that it seems likely it will persist in some form. It also seems clear that we will see a greater move to acquiring global rights as a default position across the supply chain.

Industry practice around rights management for digital books is being shaped in part by the major global platforms that put books in the hands of consumers and library patrons. To this point, we see two types of players in this space.

On the one hand, there are the global players—Amazon, Apple, Kobo, Google, and, for libraries, OverDrive—that have the infrastructure, title selection, marketing savvy, and working relationships to compete in markets worldwide. These market leaders are rapidly expanding operations in national markets around the world, operating either alone (such as Amazon’s recent launch in Italy and Spain or Google’s e-bookstore for Canada) or in concert with a local partner (as with Kobo’s recently announced deals with WH Smith in the UK and Fnac in France).

On the other hand, we see local competitors—“local” in the sense that their reach is confined to a single national market—that have carved out a share of market. Barnes & Noble in the US is one of the best examples of this category.

The notable thing about both of these categories of e-book platform is that they are not just retailers, or library service providers in the case of OverDrive. They are also distributors with sophisticated transactions processing, merchandising, fulfillment, and rights management capabilities. If we could magically translate their role in digital markets to the print supply chain, we would get a competitor that combined the roles and responsibilities of a distributor, a bookseller, and, most recently, a publisher. There are specialized distributors in the digital space as well, such as Ingram and Libre Digital, that focus on business-to-business transactions, but they too are global players and operate with a level of investment and at a scale that no current players in the Canadian supply chain could match.

What then, in an environment where a significant share of market is shifting from print to digital, are the implications for exclusive distributors in Canada? What does an e-book import look like?

One obvious implication is that there may well be fewer print books to distribute if consumer behaviour shifts to digital to an extent anywhere within even the conservative range of the current forecasts. Canadian distributors could be faced with excess capacity, and especially so if the greater-capacity-to-lower-sales-volume relationship further encourages American publishers to serve the Canadian market from the US. In such an environment, the role of the *Book Importation Regulations* in establishing and reinforcing an exclusive distribution right for print editions would be as important (or even more so) to the stability of Canadian distributors as it is today because foreign publishers would likely be less inclined to grant (or indeed to respect)

such territorial distribution rights absent the legislative requirements of and protections arising from the Regulations.

In terms of a role for an exclusive Canadian distributor of imported e-books, we can imagine the following.

- The distributor's primary role could well shift to sales and marketing within Canada for foreign e-books, in return for which they would receive a percentage of Canadian sales or, in the case of Canadian subsidiaries of multinational firms, perhaps an internal assignment of a portion of in-Canada sales volumes.
- The distributor could also play a role with respect to selling foreign e-books into made-in-Canada platforms for libraries or niche markets, supporting in-Canada partners for international e-book platforms, aggregating Canadian e-book content for distribution to major platforms within Canada and abroad, or any combination of these activities.

6.0 Conclusion

In conclusion, we would like to revisit the two central arguments that underpin most discussions around the *Book Importation Regulations*. On the one hand, there is a critical perspective that sees any such legislative intervention as an undue intrusion into normal market processes that would otherwise see price gaps between nations more or less disappear for like products. On the other, there is an affirmative view that sees the Regulations as a key aspect of an ecosystem that strengthens the Canadian book supply chain and, in so doing, contributes to a more robust Canadian book market with stronger indigenous publishing programs and greater access to both domestic and imported books for Canadian consumers.

The critical perspective finds its foundation in the belief that the Regulations result in Canadian book prices that are higher than they would otherwise be and, more fundamentally, in an economic theory called “the law of one price.” A recent paper from Statistics Canada explains the concept as follows:

*“The postulate that prices for goods adjust between nations to reflect the exchange rate is the ‘law of one price.’ It states that consumers and businesses will move to arbitrage between markets so that the price of a good in Canada is equal to the price of that good in the United States multiplied by the exchange rate.”*⁶²

There is considerable research, however, that demonstrates that this pricing ideal is not often realized. The same Statistics Canada paper goes on to echo the findings of earlier research in the field in stating:

*“The law of one price is seldom supported in practice and may not apply when transportation costs are high relative to the value of the good or service, trade barriers exist, market participants have some form of market power, or for non-traded goods and services.”*⁶³

Nevertheless, this theoretical foundation finds popular expression in the widely held expectation among Canadian consumers that price levels in Canada should closely follow those in the US. However, two recent studies⁶⁴ provide a deep analytical view into this question and suggest that the relative prices between the two countries do not often equate, nor do they fully reflect changes in currency valuations. An accompanying *Globe & Mail* commentary on the studies noted the following.

“American and Canadian prices do affect each other, but imperfectly. They move closer, but cross paths only briefly...Some factors in the divergences are readily understandable from people’s ordinary experience. Though most Canadians live

⁶² *Do Relative Canada/US Prices Equate to the Exchange Rate?*, Statistics Canada, January 2012.

⁶³ Ibid.

⁶⁴ *Do Relative Canada/US Prices Equate to the Exchange Rate?*, Statistics Canada, January 2012; and *New Evidence on Exchange-rate-adjusted Prices in Canada*, Statistics Canada, January 2012.

*fairly close to the US border, almost all cross-border shoppers incur some transportation costs, such as gasoline.”*⁶⁵

These studies, along with earlier research in the field, present a compelling, evidenced-based case that challenges the persistent consumer expectation for pricing parity—an expectation that is nevertheless especially sharp when the Canadian and US dollars are valued closely in relation to one another as has been in the case in recent years.

In any case, our research on the role of the *Book Importation Regulations* in the Canadian market for English-language books leads us to conclude that they likely have little or no inflationary effect on Canadian list prices for books. We conclude that they are part of a pricing puzzle, with many other factors at play. Indeed, they likely play as much of a role in driving Canadian and US prices closer together as anything else. Pricing to market, the relative costs of doing business in Canada, and increased price competition actually bear more heavily on the determination of Canadian list prices for books.

Beyond this, there is the question as to whether or not the Regulations contribute to a stronger book industry in Canada, ultimately leading to a strengthened domestic supply chain and increased Canadian title production. In its compact form, the argument in favour of this view asserts the following:

1. The fundamental effect of the Regulations is to repatriate a large volume of economic activity that would otherwise be transferred outside the country, primarily in the form of increased orders for US suppliers of imported titles.
2. This in turn strengthens the Canadian supply chain in two ways: (i) it contributes to greater economies of scale across the supply chain and (ii) it creates greater stability and certainty for large Canadian distributors and results in greater investments in domestic distribution and publishing capacity.

One of our interview respondents explained this relationship as follows:

“The indigenous publisher and the indigenous publishing program both benefit from the added volume of goods that [an exclusive distribution right] allows, since generally slim operating margins are improved because internal costs, such as the employment of sales representatives and promotion personnel, are distributed more widely. This lowers the per-ISBN overhead for all titles—including Canadian-originated books. As costs decrease, [the distributor or publisher is better able to invest in new publishing, distribution, or marketing capacity].”

If this then is the argument, a question naturally arises: “Is it true?”

It is difficult to prove a direct correlation between the Regulations and investment in distribution capacity, original publishing programs, or both, in Canada. The business analysis that would

⁶⁵ “Shoppers in the night,” *Globe & Mail*, January 9, 2012.

demonstrate this conclusively would rely heavily on proprietary information from the firms involved. This correlation, however, was almost universally asserted by the exclusive distributors and distributor-publishers⁶⁶ we interviewed over the course of the study.

In terms of the relationship between the Regulations and investment in domestic distribution capacity, we have shown over the course of this study that the Regulations do discourage parallel importation and have played a role in limiting import growth, particularly with regard to imports from the US. In that sense, they have the effect as well of strengthening the business case for continued investment on the part of multinational firms in their Canadian subsidiaries, and in sales and distribution capacity in the Canadian market in particular.

It is also objectively true that the main competitive advantage that Canada's exclusive distributors have arises from their economies of scale, and much of those economies are derived from high sales volumes of imported titles.

This is a historical fact of the Canadian book industry and it is a feature of the Canadian marketplace that remains today. Writing for McMaster University's Historical Perspectives on Canadian Publishing project,⁶⁷ George Parker describes the situation in the excerpt below. Note that Parker's "agency system" and "agency distribution" are synonyms for "exclusive distribution":

"Canada's book industry has been shaped by importation, the agency system, and globalization. They are responses to the enormous geographical spread of our small population whose print requirements have never been entirely fulfilled by our authors or by domestic production. With the commodification of books and the upsurge in literacy in the late-nineteenth century, British and American publishers aggressively marketed their books in colonial Canada. Their houses negotiated Canadian rights with their Canadian branches or with local publisher/agents, who imported plates, sheets, or bound books from their principals. The revenues from agency distribution and textbook publishing nurtured original Canadian publishing."

Writing of his own early experience in Canadian publishing in the early 1960s, author and publishing industry veteran Roy MacSkimming echoes Parker's summary:

*"Import distribution was considered an essential part of Canadian publishing: if you aspired to originate trade books, you had to offset the inevitable losses by profitably distributing American and British lines."*⁶⁸

This historical perspective reflects the present-day relationship for many firms between the sales volumes and associated economies of scale arising from distributed lines and the capacity to invest in domestic publishing programs.

⁶⁶ That is, firms that are both exclusive distributors of their own titles as well as the publishing lines of affiliated or client firms and, at the same time, publishers in their own right with active Canadian publishing programs.

⁶⁷ hpcanpub.mcmaster.ca

⁶⁸ MacSkimming, Roy, *The Perilous Trade: Publishing Canada's Writers*, McClelland & Stewart, 2003.

This linkage is also reflected in the fact that most exclusive distributors of imported books in Canada also operate substantial domestic publishing programs. These include Random House of Canada, who recently acquired McClelland & Stewart—home of the New Canadian Library along with many other major works and authors—and publishers of an extensive list of prominent Canadian authors such as Yann Martel (*Life of Pi*), Miriam Toews (*A Complicated Kindness*), and Ami McKay (*The Birth House*). These distributor-publishers also include Penguin Canada (Robertson Davies, Robert Sawyer, Alice Munro) and HarperCollins Canada (Emma Donoghue, Andrew Westoll, Kenneth Opel).

Nearly every exclusive distributor we interviewed also asserted that their present-day operations in Canada either wouldn't exist or would operate under a very different (i.e., greatly reduced) model absent the exclusive distribution right established under the Regulations. If this is even partly true it would mean the removal of a substantial share of distribution and publishing capacity from the Canadian supply chain, with a corresponding loss of jobs and erosion of the tax base in the sector. Any such weakening of the Canadian book supply chain would have the effect of reducing economies of scale and distribution options for both international and domestic firms.

There are two overarching market factors that will put further pressure on Canada's book distribution capacity in the years ahead:

- The ongoing shift from print to digital will reduce the overall volume of print product handled within the Canadian supply chain.
- The increasing integration of the US and Canadian supply chains—in combination with a growing store of excess distribution capacity in the US—will strengthen the business case for in-Canada distributors to consolidate operations with US parent companies and partners.

In other words, for firms active in both markets there are and will continue to be many more reasons to consolidate Canada and US operations than was the case in the past.

The *Book Importation Regulations* are a counter to these potentially harmful market pressures. By discouraging parallel importation, within the limits of their pricing and service provisions, they provide a basis for exclusive Canadian distributors to carry on business by repatriating a significant volume of economic activity that would otherwise be transferred outside of the country. In so doing, they provide a basis for continued or expanded investment in book distribution and book publishing in Canada.

We conclude therefore that the *Book Importation Regulations* continue to play an important role in strengthening the Canadian supply chain, expanding the range of distribution options available to Canadian-controlled firms, and supporting additional investment in distribution and original-title production in the English-language book market in Canada.

Part II:
Role of the *Book Importation Regulations*
in Canada's French-Language Market for Books



The opinions expressed in this section are those of the author and do not necessarily reflect those of the Department of Canadian Heritage.

April 2012

Table of contents: Part II

Executive summary	70
1. Introduction	73
2. Methodology	74
3. Basic principles	75
<i>Bill 51</i>	75
<i>Diffusion and distribution of books</i>	76
<i>Availability of national data</i>	77
4. Scope of book importation	78
5. Practices and issues related to print book importation	81
<i>Pricing for imported books</i>	81
<i>Delivery times</i>	84
<i>Issues specific to textbooks: Grades 1 to 12</i>	84
<i>Issues specific to textbooks: Post-secondary</i>	85
6. Parallel importation of printed titles	86
7. Perspectives and issues related to e-book importation	87
8. Conclusion	91

Executive summary

The purpose of this study is to explore the role of the *Book Importation Regulations* in the defence of (1) the territorial rights of Canadian publishers and exclusive distributors and diffusers (*diffuseurs*) and (2) the interests of Canadian retailers and consumers with regard to the monopoly that may result from that territorial exclusivity, particularly in the French-language book sector. A review of statutory texts, data research on book importation, and consultative meetings with industry stakeholders produced a number of findings:

Scope of book importation

- In 2009, book sales in Quebec totalled \$739 million. The sale of imported books accounts for 46 percent of total sales, or \$340 million, which includes sales of textbooks (\$5 million) and trade books (\$335 million). Very few textbooks for grades 1 to 12 are imported.

Pricing

- Given the importance of Quebec's Bill 51 (*Loi 51*) in establishing business practices in the province's book sector and, by extension, French Canada, diffusers refer to the tabulated statement (*tabelle*) set out in Bill 51 rather than to the *Book Importation Regulations* when setting prices for foreign titles. The greater dependence on Bill 51 is explained by the fact that it covers all business practices in the book sector and applies to the sale of all titles, whether Canadian or foreign.
- The tabulated statement in Bill 51 sets 1.28 as the allowable markup rate for the Canadian price for a foreign title. Despite the prescribed rate, in practice, Bill 51's tabulated statement is not always respected for titles disseminated on an exclusive basis. A brief comparison of foreign and Canadian prices for a sample of titles shows that the average rate used by the six distributors concerned is closer to 1.36, and that two of the six distributors do not respect the tabulated statement for any of the selected titles. Among the 24 selected titles, only 3 were priced below the maximum prescribed in the *Book Importation Regulations*.

Parallel importation

- Even where prices exceed Bill 51's tabulated statement and the maximum rate indicated in the *Book Importation Regulations*, there is no advantage for buyers of French-language books to purchase from foreign suppliers. Buyers cannot turn to a nearby supplier (in North America) to meet their needs more quickly or at a better price. Since the alternate supplier is usually, therefore, the original publisher or a foreign (European) supplier, delivery times are as long as when ordering the book from the exclusive Canadian distributor. Moreover, shipping charges, which may be quite high, must be added to the cost of orders placed with foreign suppliers.

- Beyond the application of the *Book Importation Regulations*, Bill 51 sets out rules in Quebec that prevent all parallel book importation. It requires institutions to buy their books from accredited booksellers who, in turn, are required to respect the exclusive territories of diffusers/distributors. In addition, all printed books must be purchased by the institution at the public price (retail price, without discounts or rebates), and public institutions are required to report to the government on their purchasing practices. These reciprocal obligations prevent all parallel importation, at least by buyers and companies subject to the Bill.
- Parallel importation is believed to be practically non-existent for trade books, textbooks, and post-secondary books. There are, in effect, significant barriers to importation, particularly the relative isolation of Canada's French-language book market and its lack of wholesalers.

E-book importation

- E-books are likely to soon play as much of a role in book publishing as print books do at present. E-books are not only a new format: they also call for new distribution and marketing strategies in a borderless marketplace. Today, e-book offerings are progressively taking shape, marketing mechanisms and business models are being refined, various e-book procurement models are in competition with each other, and several large suppliers are vying for the lead in a market that promises to be huge.
- Quebec's government has been under significant pressure over the past few years to include e-book procurement in Bill 51. However, Bill 51 could only be amended with difficulty. Since it came into effect in 1980, Quebec has signed a number of free-trade and reciprocal business agreements that would today make it practically impossible to introduce a law based on the protection of the national market (despite the "cultural exemption" clauses in these agreements). Bill 51 was maintained under a "grandfathering" provision, and the protection it offers would be lost if it was reopened.
- In 2011, Quebec's cultural sector carried out studies to measure the impact of digital products on each of its individual sub-sectors. In the book sector, it was recommended that Quebec's public institutions acquire e-books "in the spirit of Bill 51," i.e. that institutional purchases be made through a local bookstore, at the price set by the publisher.

Relevance of the Regulations

- The *raison d'être* of the *Book Importation Regulations*, which is to protect the exclusive rights of Canadian distributors and the interests of Canadian retailers and consumers, is still relevant with respect to e-books. E-book importation merits particular consideration, such as that diffusers/distributors who have exclusive Canadian rights should be entitled to tools enabling them to enforce those rights for both digital and printed books.
- Stakeholders unanimously acknowledge that the Regulations remain necessary, particularly given their ties to the *Copyright Act*, and that they are the tool with which the

exclusive territorial rights of Canadian diffusers and distributors can be defended at the highest levels. The Regulations also come with mechanisms for the application of their principles and constitute one of the main tools for establishing business practices in the book sector throughout the country.

1. Introduction

The purpose of this study is to provide an overview of book importation in Canada's French-language market by examining the role of the *Book Importation Regulations* in (1) defending publishers' and diffusers/distributors' exclusive Canadian territorial rights, and (2) imposing measures related to pricing and service that are intended to protect Canadian retailers and consumers from the monopolies that could result from territorial exclusivity. The examination focuses on the conditions that today characterize Canada's French-language book sector, particularly with the advent and rapid growth of e-books, in order to better understand business practices that are being developed to handle this new category of products and better assess the outlook and limits of regulating business practices around e-books.

2. Methodology

This report is based on two complementary sources of information: up-to-date data on book importation to French Canada, and consultation with various stakeholders in the French-language book sector. Organizations that gather or compile data on book importation were approached to provide updated data, including but not limited to the Banque de titres de langue française (BTLF) (which, with the support of the Canada Book Fund, gathers significant data on French-language titles available on the Canadian market with or without an exclusive diffuser), the Observatoire de la culture et des communications du Québec (through its many publications and databases), and the Association des diffuseurs exclusifs de langue française (ADELF) (in its *Étude sur la mise en marché des nouveautés par le système de l'office au Québec*, conducted in 2007). Consultation with stakeholders involved the main organizations and associations representing the book sector: the Association nationale des éditeurs de livres (ANEL), ADELFF, the Association des libraires du Québec (ALQ), and BTLF.⁶⁹ It also involved the Quebec government's Société de développement des entreprises culturelles (SODEC), as well as individual companies.

⁶⁹ All these organizations have received or are currently receiving support through the Canada Book Fund.

3. Basic principles

Before proceeding in depth with our examination of French-language book importation to Canada and the role of the *Book Importation Regulations*, it is useful to consider the elements that distinguish the French-language book sector in Canada from its English-language counterpart and that guide certain practices related to book importation.

Bill 51

First, it is essential to understand the importance of *An Act respecting the development of Québec firms in the book industry*, commonly called Bill 51.⁷⁰ Brought into effect in 1980, Bill 51 is a legal instrument that, through the establishment of business practices for the sector, supports the development of Québec's book industry, the diffusion of Québec literature, and increased access to books.

Chief among Bill 51's provisions is the accreditation (*agrément*) of bookstores, publishing houses, and distribution companies. Accreditation is official recognition granted by the provincial government, attesting that the company meets certain criteria relating to the offer and quality of services rendered, and entitling that company to the advantages of accredited status.

In Québec, the conditions and advantages of bookstore accreditation dictate the book sector's main business practices. In addition to placing conditions on the quality of service offered to individuals and institutions, Bill 51, through subsection 6.(7) of the *Regulation respecting the accreditation of bookstores*, stipulates that an accredited bookstore must:

“receive [its] supplies from an exclusive accredited distributor if the distributor is accredited or has proved and certified his eligibility for accreditation, provided that the distributor complies with the mode of computation of sales price referred to in sections 15 and 16 of the Regulation respecting the accreditation of Québec distributors and the method of calculating sales prices.”

Bookstores are therefore required to respect the territorial exclusivity held by an exclusive distributor for works produced both in Québec and abroad.

In return, accredited bookstores are entitled to the advantages prescribed in the *Regulation respecting the acquisition of books by certain persons from accredited bookstores*.⁷¹ One clause in particular in this regulation stipulates that a public institution must acquire its books from accredited bookstores in the region where the institution is located. Public institutions are therefore required to buy from accredited bookstores, which in turn are required to respect distributors' territorial rights. These mutual obligations dictate the general business practices of diffusers, distributors, retailers, and public institutions with regard to book importation.

⁷⁰ http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/D_8_1/D8_1_A.html

⁷¹ http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=3&file=/D_8_1/D8_1R1_A.HTM

Finally, Bill 51 also states that foreign books must be priced according to its tabulated statements (unless a Canadian price was set by the foreign publisher). A tabulated statement is:

“the factor by which an accredited bookstore must multiply the list price or net price of a book in foreign currency to determine the Canadian sales price to be paid by the institution.”

A distributor, whether it is accredited or not, must refer to the prescribed tabulated statements to establish the Canadian price of any foreign book. Bill 51 sets this tabulated statement at 1.28. Thus, the Canadian price of a foreign book with an original price of €10 should not exceed C\$14.38 (at a 1.42 exchange rate⁷²). Buyers or retailers are not required to respect the diffuser/distributor's exclusivity if the latter do not respect the tabulated statement.⁰

Diffusion and distribution of books

The French-language book distribution sector has two distinct functions: diffusion and distribution; and two distinct professions: diffusers and distributors. The diffusion of books consists of soliciting orders from bookstores and other retail outlets through a network of representatives acting on behalf of one or more publishers. Diffusers promote foreign publishers' catalogues in Canada and therefore usually determine prices for imported titles. Distribution, in contrast, encompasses only the logistics of physically moving books, such as shipping orders to clients and managing related financial matters. Given the complementary nature of these two functions, they are often combined within the same firm, which is then referred to as a diffuser/distributor.

These two functions are also found in the English-language book sector. However, while recognizing that some publishers act as “diffusion” agents for foreign publishers or copyright holders, and even though the role of “diffuser” consists of soliciting orders from bookstores through sales representatives, in the English-language sector they are still referred to as “distributors,” and the same term describes players who are responsible for physically moving the books and managing related financial matters. In French, the former are referred to as “diffusers” (*diffuseurs*) and the latter as “distributors.”

Both functions are addressed by the *Book Importation Regulations*, even though the Regulations refer only to distributors, since prices are set by the diffuser and the order is shipped by the distributor. Both are required to respect the Regulations, the former for setting prices, the latter for delivery times.

It is more often the diffuser (i.e., the company mandated to promote works to retailers) that is granted territorial exclusivity: diffusers may change distributor without seeking the authorization of the represented publisher, while distributors may not change the diffuser of the books produced by publishers it represents.

⁷² Bank of Canada rate on August 15, 2011.

Availability of national data

Even though the study covers the book sector for all of French Canada, it should be noted that, given the concentration of the French-language industry in Quebec, all orders for French-language books go through companies located there, which are subject to some degree (legally or in practice) to Quebec laws, including Bill 51.

Also, although some data on available titles came from the BTLF's Memento and covers all of Canada, the only available data on book sales comes from the Observatoire de la culture et des communications du Québec.⁷³ This data is gathered from reports submitted by Quebec publishers, distributors, and bookstores. With regard to export sales or the sale of imported products, this data assigns to all activities taking place outside Quebec (including the rest of Canada) the status of foreign activities. It also includes sales of English-language titles in Quebec. There is no equivalent data on French-language books available from other Canadian provinces.

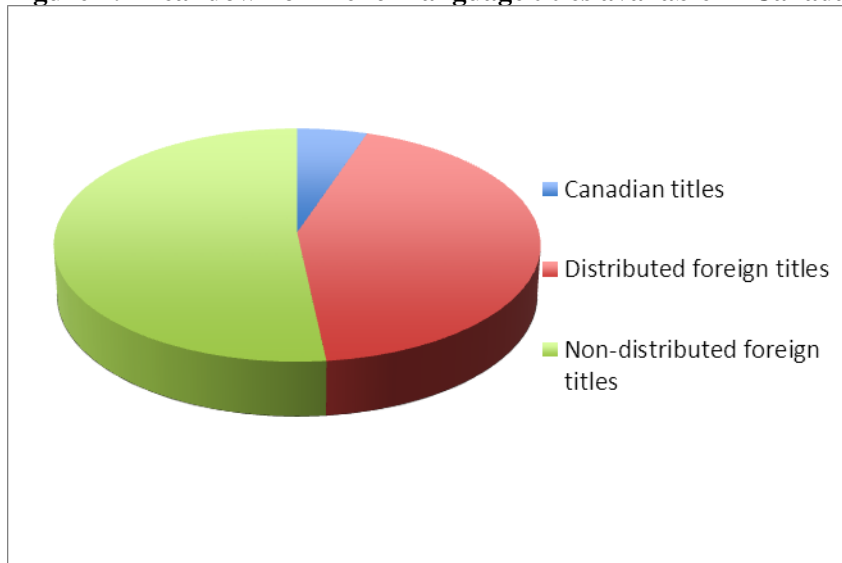
⁷³ Another BTLF product, Gaspard, is a service that provides sales information gathered directly from retailers at the time of sale. However, Gaspard does not provide sales *values* (only the *number* of titles sold) and only covers 40 percent of the retail market, while Observatoire covers the entire sector, whether the books are sold by retailers, distributors, or publishers. As more retailers come on board to provide data, Gaspard will come to constitute a very relevant source of data on French-language book sales throughout the country.

4. Scope of book importation

It is highly relevant to the present study to identify the number of foreign titles available on the market, because these titles are imported and therefore subject to the pricing and service standards in the Regulations. In this report, all titles published by a Canadian publisher (including Canadian editions of titles by foreign authors, either translated or in the original language) are considered Canadian, while all titles published by foreign publishers fall into the category of foreign titles, which must be imported and are therefore subject to the pricing and service standards in the Regulations.

Today, the best source of data on the number of French-language works available on the Canadian market is unquestionably the Banque de titres de langue française (BTLF), through its Memento database, which lists bibliographic data on all French-language titles. BTLF's data-sharing agreement with Electre, its counterpart in France, brings it very close to being an exhaustive database, since, further to this agreement, it includes titles from all Francophone countries. Thus, the combined BTLF–Electre database lists 1.1 million French-language titles from outside Canada. Among these, 442,263 foreign titles are currently available on the Canadian market through a diffuser/distributor. If foreign titles that are currently unavailable (those being reprinted, for example) are added to that number, the total would rise to about 500,000; we could therefore assume that the remaining 600,000 titles in the database are titles not distributed in Canada through an exclusive diffuser (but available if a bookstore wishes to order them) or are simply unavailable. We believe that all books imported to French Canada (trade and scholarly) and having any significant market share are sold through an exclusive diffuser. 60,000 Canadian titles are available out of a total of 130,000 titles listed (70,000 appear to be no longer available).

Figure 1: Breakdown of French-language titles available in Canada, 2009



No data is available on the share of foreign title sales by exclusive diffuser/distributors vs. direct sales by foreign publishers and diffusers. It appears, however, that, for titles unavailable from

Canadian diffuser/distributors, direct purchases from foreign publishers or foreign distributors are negligible.

Nor is there any data currently available on the number of Canadian titles published in both a Canadian and a foreign edition (i.e., published at the same time by both a Canadian and a foreign publisher). This type of information will become available once the ISTC (International Standard Text Code) is implemented, not only for books but for all works, regardless of the language or format. We believe, however, that the number of such titles is negligible, and that they concern only a few Canadian publishers who maintain long-term co-publishing ties with foreign publishers. The Canadian edition falls into the category of Canadian works and is not affected by import issues; in such cases, the foreign edition is not available in Canada.

Moreover, unlike the situation in English Canada, it is very rare that a French-language bestseller is published both abroad for foreign markets and separately in Canada for the Canadian market, as foreign publishers most often serve the entire French-language market globally, including French Canada through their Canadian diffuser.

Other than the number of works available on the market, market share (in terms of the number of copies sold and sales values) constitutes another significant indicator of the scope of French-language book importation.

Table 1: Number of copies sold according to origin and publishing category, Quebec, 2008-2009

	Number	%
Total number of copies sold in Quebec	19,515,968	100.0
Textbooks	204,361	0.9
Trade books	19,311,607	99.0
Canadian and Quebec copies	9,236,075	47.3
Foreign copies	10,279,892	52.7

Source: Institut de la statistique du Québec, Observatoire de la culture et des communications du Québec, *Optique culture*, No. 02, April 2011

Table 2: Publishers' market share according to location of business and publishing category, Quebec,* 2009

	Textbooks		Trade books		Total	
	\$M	%	\$M	%	\$M	%
Quebec publishers' share**	159	96.9	240	41.7	399	53.9
Foreign publishers' share	5	3.1	335	58.3	340	46.1
Final sales - total	164	100.0	575	100.0	739	100.0

* Excluding sales outside Quebec

** Publishers with an establishment in Quebec

Source: Institut de la statistique du Québec, Observatoire de la culture et des communications du Québec, *Optique culture*, No. 07, June 2011

19,515,968 copies were sold in Quebec in 2008–2009, of which 9,200,495 were from Quebec (47.1 percent), 35,580 from the rest of Canada (0.2 percent), and 10,279,892 from foreign

sources (52.7 percent). The small percentage of textbooks (0.9 percent) compared to trade books is worth noting.⁷⁴

Table 2 shows the market share by sales value of publishers (Quebec and foreign) according to publishing category. In 2009, the total value of book sales in Quebec was \$739 million, of which Quebec publishers (publishers with a location in Quebec) account for \$399 million (53.9 percent), although their share of the number of copies sold was lower (47.1 percent). However, if only trade books are compared (99 percent of copies sold are trade book titles), market share in terms of both sales values and number of copies sold is about 41.7 percent.

We can therefore conclude that sales of imported products represent \$340 million (46 percent), or \$5 million for textbooks (3.05 percent of textbooks sold and 1.5 percent of imported titles), and \$335 million for trade books (58.3 percent of trade books sold and 98.5 percent of imported titles).

⁷⁴ Textbooks hold a greater share of the market in terms of sales values due to their high price. In 2009, the average price of new textbook releases was \$73.17 compared to an average \$30.45 for all other categories combined (*Statistiques de l'édition au Québec 2009*, Bibliothèque et Archives nationales du Québec). The gap is also explained by the short commercial life of textbooks (trade books include a very high number of active back titles). The average print run for textbooks is barely 42 percent of average print runs for all other categories combined.

5. Practices and issues related to print book importation

Given that the *Book Importation Regulations* came into effect in 1999, it is not surprising that they are exclusively concerned with print book imports. However, even print book marketing practices have evolved significantly over the years, both with regard to the sale of Canadian titles and book importation.

Pricing for imported books

Pricing for imported titles constitutes one of the basic provisions, under the *Book Importation Regulations*, governing relationships between distributors and buyers. How are prices set for foreign titles? Who sets them and on what basis? What is the role of the *Book Importation Regulations* in setting these prices?

In the French-language book sector, the price of imported books is set by diffusers (or diffuser/distributors as part of their diffusion function) in consultation with the original copyright holder. Two legal instruments provide the framework in which the diffuser sets prices: the *Book Importation Regulations* and, in Quebec, Bill 51. However, price-setting schedules prescribed by each instrument are different and are not applied in the same way.

The *Book Importation Regulations* impose conditions that the exclusive Canadian distributor must respect to be able to compel buyers to respect its exclusive territorial rights. The Regulations stipulate that:

“where an order for imported books is placed, [...] (a) an exclusive distributor shall [...] provide the book at a price no greater than (A) if the book is imported from the United States, the list price in the United States, plus the current exchange rate, plus 10% of the price after conversion, minus any applicable discounts, or (B) if the book is imported from a country in Europe or any other country, the list price in the country from which the book is imported, plus the current exchange rate, plus 15% of the price after conversion, minus any applicable discounts.”

If the price set by the distributor is higher than the limit prescribed in the Regulations, buyers have the right to import the book in question through another intermediary and ignore the distributor's exclusive territorial rights.

Bill 51 also intervenes in pricing through the tabulated statements. A tabulated statement is “the factor by which the list price or net price of a book in its country of origin is multiplied to establish the maximum price of the book in Canadian currency.” Schedule A of the *Regulation respecting the accreditation of Québec distributors and the method of calculating sales prices* establishes conversion rates, which stipulate a maximum increase of 28 percent (or a factor of 1.28) over the price in the country of origin after conversion to Canadian dollars. The tabulated statement serves for diffusers to set list prices, as well as for booksellers to set the retail price of a foreign title when it is not represented by a diffuser in Canada but ordered directly from the foreign supplier. In a case where a bookseller (or diffuser/distributor, through the bookseller)

attempts to impose a price above that established in the tabulated statement, institutional buyers are not required to respect accreditation rights and are entitled to purchase the product from a source other than the accredited bookseller or distributor. The legislation does not state whether institutional buyers are required to purchase the product from another accredited bookseller, or if it is free to order from a non-accredited bookstore or even a foreign supplier.

Given the broader significance of Bill 51 in establishing business practices in the book sector in Quebec and, by extension, French Canada, diffusers refer as a rule to the tabulated statement in Bill 51 rather than to the *Book Importation Regulations* when setting prices for foreign titles. This more consistent application of Bill 51 is explained by a number of factors: it covers all business practices in the book sector; applies to the sale of all titles, whether Canadian or foreign; and particularly concerns the category of book purchases that is the lifeblood of independent bookstores—institutional purchases.

In practice, however, while Bill 51's tabulated statement represents an important yardstick for pricing, it is not always rigorously respected. Some institutional buyers apply the 1.28 tabulated statement themselves when ordering, through a retailer, titles that do not have an exclusive Canadian diffuser/distributor.⁷⁵ For titles that are exclusively diffused, practices may vary from one diffuser/distributor to another.

A brief analysis carried out in cooperation with the BTLF consisted of comparing prices in France with those in Canada for French-language titles diffused in both territories and imported to Canada. The following table shows the prices in France established by the original publisher, their equivalent in Canadian dollars, and their actual prices in Canada, as set by six exclusive Canadian diffusers. To maintain confidentiality, the names of the diffusers and book titles have been omitted.

⁷⁵ As these titles are not covered by an exclusive diffusion agreement, they are not subject to the *Book Importation Regulations*.

Table 3. Comparison of prices in France set by foreign publishers, and those in Canada set by exclusive Canadian diffusers

	Title	Price in France (€)	Equivalent C\$ (rate of 1.42*)	Price in Canada (C\$)	Rate
Diffuser 1	Title 1	€8.00	\$11.36	\$16.95	1.49
	Title 2	€7.50	\$10.65	\$15.95	1.50
	Title 3	€3.90	\$5.54	\$6.95	1.25
	Title 4	€15.00	\$21.30	\$26.95	1.27
Diffuser 2	Title 1	€6.90	\$9.80	\$11.95	1.22
	Title 2	€13.95	\$19.81	\$24.95	1.26
	Title 3	€7.50	\$10.65	\$13.95	1.31
	Title 4	€8.90	\$12.64	\$18.95	1.50
Diffuser 3	Title 1	€16.00	\$22.72	\$29.95	1.32
	Title 2	€10.90	\$15.48	\$17.95	1.16
	Title 3	€8.60	\$12.21	\$15.95	1.31
	Title 4	€6.60	\$9.37	\$11.95	1.28
Diffuser 4	Title 1	€57.04	\$81.00	\$85.00	1.05
	Title 2	€9.90	\$14.06	\$16.95	1.21
	Title 3	€8.90	\$12.64	\$12.95	1.02
	Title 4	€5.90	\$8.38	\$8.95	1.07
Diffuser 5	Title 1	€30.00	\$42.60	\$56.95	1.34
	Title 2	€21.00	\$29.82	\$39.95	1.34
	Title 3	€7.00	\$9.94	\$13.95	1.40
	Title 4	€4.20	\$5.96	\$9.50	1.59
Diffuser 6	Title 1	€12.00	\$17.04	\$27.50	1.61
	Title 2	€19.70	\$27.97	\$55.95	2.00
	Title 3	€4.50	\$6.39	\$9.50	1.49
	Title 4	€55.00	\$78.10	\$124.95	1.60

* Bank of Canada rate on August 15, 2011.

Source: Banque de titres de langue française

According to Table 3, of the six diffusers surveyed and for the selected titles, only one diffuser (Diffuser 4) appears to consistently respect the tabulated statement. Three diffusers apply the tabulated statement to 50 percent of titles, while two diffusers appear to completely ignore it (Diffuser 5, whose average markup is 1.42, and Diffuser 6, whose average is 1.675). The average rate for all titles is 1.36. Out of the 24 titles, only 10 were priced in accordance with Bill 51 (this number could rise to about 15 with normal exchange-rate fluctuation), and only three titles were priced in accordance with the pricing standards in the *Book Importation Regulations*. For these three titles only, the diffuser/distributor may refer to the *Copyright Act* to compel Canadian buyers to respect its territorial exclusivity rights and prevent them from obtaining the books from a foreign supplier. As for the other 21 titles, buyers would be legally entitled to order from a foreign supplier. However, there is no advantage for buyers of French-language books to purchase from a foreign supplier, as will be explained later. The findings of this brief analysis suggest that Bill 51 constitutes a code of conduct which diffusers refer to when setting the price of foreign books, while the *Book Importation Regulations* do not play a significant role in pricing for imported French-language titles.

It is true that variations in exchange rates (mainly with the euro) influence the price initially set for a foreign title sold in Canada. However, even if that price is not indicated on the cover, it does not usually change over the first year following the initial pricing decision; a change, if any, in subsequent years depends less on the exchange rate than on the book's commercial circumstances (literary awards, total and annual sales, release of a paperback edition, etc.). Diffusers/distributors do not report any significant losses due to exchange rate fluctuations.

Consumers know that prices for imported books are usually higher than for Canadian titles; however, they have few reference points with which to compare the price of French-language books in Canada with their equivalent in France, for example, even if the foreign book's price in euros is indicated on the cover. While consumers are often aware of the exchange rate between the Canadian and US dollar, they are rarely aware of the exchange rate of the Canadian dollar and the euro.

In the French-language sector, variations in exchange rates do not have a significant effect on book importation practices and have no impact on illegal parallel importation.

Delivery times

Delivery times do not appear to be an issue in the importation of French-language titles in the context of the *Book Importation Regulations*, as the majority of titles are readily available from the Canadian distributor. Should a title not be available, buyers cannot turn to any nearby supplier (in North America) to quickly meet their needs. Since the alternative suppliers are therefore the original publisher or a foreign (European) supplier, delivery times from the foreign supplier would be as long as those from the exclusive Canadian diffuser. Moreover, shipping charges, which may be quite high, are added to the cost of orders placed with foreign suppliers, therefore discouraging the practice.

Issues specific to textbooks: Grades 1 to 12

As shown in Table 2 above, the share of imported textbooks (from grades 1 to 12) represents only 3.1 percent of all French-language textbooks. This is explained by the fact that these textbooks are designed to meet the needs of and in accordance with the province's education programs. Consequently, textbooks approved for use in Quebec are all produced by local publishers. These same publishers often supply French-language markets in other Canadian provinces. Few textbooks produced abroad would satisfy the needs of Quebec or French-Canadian schools, and issues relating to the importation of textbooks for grades 1 to 12 remain negligible, even though the only two complaints concerning parallel importation of French-language books in the past ten years concerned textbooks.⁷⁶

⁷⁶ In both cases, schools offering educational programs designed in France had purchased their books directly from suppliers in France.

Issues specific to textbooks: Post-secondary

The *Book Importation Regulations* raise an important issue with regard to textbook importation (for all levels of instruction, including post-secondary) that generate critical questioning, even if the practice is still relatively unusual for French-language textbooks. Section 8 stipulates that:

“a textbook may be imported if (a) at the time of importation, the importer provides documentation such as a certificate or an invoice establishing that the textbook is a used textbook; (b) the textbook is to be offered for sale or distribution in Canada as a used textbook; and (c) the textbook is of a scientific, technical or scholarly nature and is for use within an educational institution or an educational body established or conducted for profit.”

The trade in used textbooks has been growing in recent years (see Lesacdecole.com, Kijiji.ca, Havenbooks.ca, Gestextbooks.ca, Betterworldbooks.com, etc.). In this new context, the industry would be uncomfortable with reopening the Regulations, as doing so could weaken territorial exclusivity granted to diffusers/distributors, even if they respect prescribed pricing standards.

As for other post-secondary titles (reference books, scholarly works, etc.), we do not believe they are imported on a parallel basis, for the same reasons as trade books.

6. Parallel importation of printed titles

As previously mentioned, even notwithstanding the *Book Importation Regulations*, Bill 51 set out rules for Quebec that effectively prevent any parallel book importation. It requires institutional buyers to purchase their books from accredited bookstores who, in turn, are required to respect the exclusive territorial rights held by diffusers/distributors. Similarly, all printed books must be purchased by the institution at the public price (retail price, without discounts or rebates), and each public institution concerned is required to report to the government about its purchasing practices. These reciprocal obligations prevent any parallel importation, at least by buyers and companies subject to the Bill.

We further believe that parallel importation by retailers who are not subject to Bill 51, or by public institutions, is likewise practically non-existent. There are significant barriers to importation due to the relative isolation of Canada's French-language book market. On the one hand, the main source of book importation is France, and shipping costs are such that it is not economically feasible to import one or a limited number of books, which explains the lack of interest in parallel importation of French-language books. Unlike the market for English-language books, there is no nearby French-language territory inviting French-Canadian buyers to "buy around" the exclusive Canadian diffuser. US suppliers, a major source of parallel importation of English-language books, do not usually carry French-language books. Finally, due to the "buy local" requirements imposed by Bill 51, the French-language book market has never been served to any significant extent by wholesalers, a common source for parallel importation. In the French-language sector, wholesalers do not serve even the library market, the largest client group for wholesalers in English Canada.

These factors also apply to French-language higher-education titles, for which parallel importation is practically non-existent. Foreign higher-ed titles are imported through the exclusive diffuser-distributor, where there is one, and going through other suppliers would be too costly. No meaningful data is available on the importation of English-language university titles by French-language institutions.

7. Perspectives and issues related to e-book importation

The rise of digital is a recent development in the book sector. Only three years ago at time of writing, ANEL collaborated with the firm De Marque to create a digital platform⁷⁷—an e-book warehouse—permitting the transfer of digital products from publisher to retailer in Quebec and French Canada. In operation since February 2009, it was the first such platform put in place by French-language publishers anywhere. Publishers in Canada have gradually invested in converting files or digitizing their titles, while buyers have been showing great interest. Every day sees Entrepôt ANEL–De Marque adding more titles to its catalogue, and publishers are more and more participating in the effort. From January to November 2011, 60,000 publications were downloaded from Entrepôt ANEL–De Marque.⁷⁸ At the same time, some distributors have developed their own platforms for the titles of publishers they represent, and they have been negotiating conditions with ANEL to list and give access to their titles through the collective platform.

Internationally, few European publishers (except in the United Kingdom) have been quick to incorporate new technologies and the sale of e-books into their practices. The firm Paidcontent.org suggests a number of reasons: the lack of low-priced digital readers, geographic restrictions and copyright issues, low prices for e-books, higher sales taxes for e-books than for print books, etc. Major French publishers are starting to negotiate agreements with the main Internet content providers to offer their titles in digital format, but for the time being only selected titles in publishers' catalogues are available in digital format. In short, the French-language book sector is approaching this new business sector with caution.

Certainly, however, if the growth of English-language e-books is an indicator, e-books will soon be as much a fixture of French-language publishing as printed books. E-books are not only a new format, but they also call for new distribution and marketing strategies in a borderless marketplace. We no longer have to go out to purchase a book; we can just visit an Internet retail site, which could be based anywhere in the world, and purchase an e-book that is automatically downloaded to any of the digital readers currently available on the market. Not only do these changes affect consumer behaviour, but they also open the door to a complete transformation of library lending practices, where, again, transactions can be electronic and are no longer limited by distance or territorial boundaries.

In the context of this rapid change, and given that the *Book Importation Regulations* do not address e-books, how can the exclusive territorial rights of Canadian diffusers/distributors be guaranteed? What role can the Regulations play in setting a framework for the importation of e-books? A formal government review of the Regulations might permit their reformulation to address the new realities imposed by the advent of e-books.

The emergence of e-books has sparked a lively debate within the industry on the exclusive rights and the even the role of diffusers/distributors. Their function is clear in the case of printed books but far less so for e-books, which, until very recently, were not considered in the original

⁷⁷ Entrepôt ANEL–De Marque constitutes one of the main industry initiatives in the digital book sector. Its implementation was made possible thanks to the support of government partners, including the Canada Book Fund.

⁷⁸ Updated information is available on the site at <http://vitrine.entrepotnumerique.com/>.

exclusivity agreements between publishers and diffusers/distributors. This contracting gap has allowed some publishers to enter directly into agreements with Google, Amazon, and others, giving these content providers the right to digitize and market certain titles in Canada. As a result, these players take on a role that situates them somewhere between the publisher (by offering public-domain and “self-published” titles), the diffuser-distributor, and the retailer (by signing agreements directly with publishers, building impressive catalogues of titles from a variety of publishers, and serving buyers directly). In effect, they are positioning themselves to operate at every link in the e-book supply chain at once.

Meanwhile, other publishers and copyright holders are waiting to better understand the direction the sector will take before deciding on a strategy, with ANEL taking the lead in French Canada by introducing Entrepôt ANEL–De Marque. Some diffusers/distributors (including ADP and Prologue) renegotiated their contracts with each of the publishers they represent to include the exclusive diffusion of digital-format titles, while Diffuseur Dimedia has signed an agreement with Entrepôt ANEL–De Marque to give bookstores access to the titles of the publishers they represent. Unlike Prologue, though, Dimedia does not require diffusion and distribution exclusivity for those titles since a number of the publishers it represents have already concluded direct agreements with other “digital diffusers” or “content providers,” such as Apple, Amazon, Google, Numilog, etc. ANEL and De Marque, through their digital warehouse, proactively negotiate with digital diffusers to obtain favourable conditions for their publishers. The way in which e-books are brought to market is progressively taking shape, and marketing mechanisms and business models are still in the process of being refined, but the role of each link in the book supply chain as well as industry practices will continue to evolve over the coming months and years.

To that end, various e-book procurement models are currently in competition with each other, and several major suppliers are vying globally to be the leader of a market that promises to be huge. Closer to home, the French-language industry in Canada is developing its own mechanisms and tools. To a certain extent, however, these remain only the offshoots of mechanisms established internationally. For example, some large publishers in France are seeking a global monopoly on the distribution of titles from their own catalogues in e-book form by making them available only through subsidiary companies. With digital products, then, territorial exclusivity for intermediaries such as diffusers/distributors could become difficult to maintain.

The Quebec government has been under significant pressure over the past few years to include the purchase of e-books in Bill 51. However, Bill 51 was enacted in 1980 and could only be amended with difficulty. Since it came into effect, Quebec has signed a number of free-trade and reciprocal business agreements that would today make it practically impossible to introduce a law based on the protection of the national market (despite the “cultural exemption” clauses in these agreements). Bill 51 was maintained under a “grandfathering” provision, and that protection would be lost if it was reopened.

In 2011, Quebec’s cultural sector carried out studies to measure the impact of digital on each of its individual sub-sectors. In the book sector, it was recommended that Quebec’s public institutions acquire e-books “in the spirit of Bill 51,” i.e. that institutional purchases be made

through a local bookstore, at the price set by the publisher. Quebec publishers represented by ANEL at the Table de concertation interprofessionnelle du livre agreed that institutional sales should be made through bookstores. This recommendation, which was submitted to Quebec's Ministère de la culture, des Communications et de la condition féminine at the end of 2011, constitutes an important step in defining e-book practices relating to exclusive territorial rights and the principles of the *Book Importation Regulations*.

Owing to the small scale of its market for books, Quebec and French Canada could be forced to comply with conditions dictated by France or the United States. In the face of this challenge, however, they are putting forward their own business models and proposing that foreign suppliers comply with them instead.

A particular advantage for Quebec and French Canada in this regard is that De Marque, the designer of the digital warehouse for the French-language market, has been hired to design national distribution platforms for other countries, including France (Eden Livres) and Italy (Edigita). In October 2009, a few months after Entrepôt ANEL–De Marque started operations, Flammarion, Gallimard, and La Martinière Groupe also contracted De Marque to produce, with ANEL's permission, a clone of the Entrepôt ANEL–De Marque under the name Eden.Livres.⁷⁹ De Marque and ANEL are therefore well positioned to anticipate and negotiate reciprocal agreements between national platforms in respect of territorial exclusivity. Best practices that are progressively being established in Quebec and French Canada could eventually influence practices adopted in some European countries, and developments in 2012 will reveal advances made in this regard.

E-book pricing remains a topic of heated debate on the international scene. Attempts by large content providers such as Amazon to destabilize the competition by cutting e-book prices have, to date, largely failed. A number of practices based on fixed pricing (*prix fixe*), or on the price of the print version less 25 or 35 percent, for example, are being promoted. Nevertheless, it seems more likely that the pricing model that prevails will involve a price established by the publisher (or copyright holder) rather than by suppliers, despite free-market advocates' resistance to the notion of a single uniform price. Campaigns are currently being waged to give the publisher full control over retail pricing.

Inter-library loans of digital offerings also raise concerns and generate debate. Until now, inter-library lending was limited by shipping costs and delivery times, and lending between libraries internationally was rare. Digital products, though, are unaffected by distance, borders, and shipping costs. If conditions of lending are not appropriately structured for digital, inter-library loans could substitute entirely for consumer purchases of e-books. Publishers would then be forced to significantly reduce print runs, and whole categories of titles could become unprofitable. After all, the consumer of e-books, given their non-physical nature, does not have the same interest in purchasing and owning the product as the consumer of printed books.

In Quebec, the Table de concertation interprofessionnelle du livre also addressed the question of e-book library loans by proposing draft memoranda of understanding between libraries and publishers when it made its recommendation on e-book sales to Quebec's Ministère de la culture.

⁷⁹ <http://vitrine.edenlivres.fr/>

These initiatives (and the recommendation submitted to the Minister) do not, however, include *inter-library* loans, where the Canadian government and the *Book Importation Regulations* may be implicated.

Namely, section 10 of the *Book Importation Regulations* very briefly addresses the “lease” of books by libraries: “A library may import leased books through a person other than an exclusive distributor.” The advent of e-books and the ease with which the digital product is delivered call for a close review of the potential effects of this clause in the event that it is applied to e-books. Given the non-physical nature of e-books, traditional notions of purchasing and library loans will need to be redefined. Libraries will not necessarily purchase an e-book for lending out to readers; rather, usage licences could be developed instead with conditions that may include expiry dates. Licences for print-book loans (through the inter-library loan system) as described in the Regulations should not, of course, be confused with e-book loans.

The *raison d’être* of the *Book Importation Regulations*, which is to protect the exclusive rights of Canadian distributors and the interests of Canadian retailers and consumers, is still relevant with respect to e-books. It is difficult, however, to determine the status of digital products in the actual wording of the Regulations, as the concept of “book” is not included among the Regulations’ definitions (section 1). It is necessary, rather, to refer to the text of the *Copyright Act* for a definition of “book” in the context of the Regulations:

“a volume or a part or division of a volume, in printed form, but does not include (a) a pamphlet, (b) a newspaper, review, magazine or other periodical, (c) a map, chart, plan or sheet music where the map, chart, plan or sheet music is separately published, and (d) an instruction or repair manual that accompanies a product or that is supplied as an accessory to a service.”

It may be inferred that the Regulations therefore apply only to print books. Further, a “catalogue” is defined in the Regulations as a publication that lists all book titles in print; a book’s format is defined according to its binding, typeface characteristics, and paper quality; and one of the main performance indicators relates to delivery times.

The importation of e-books raises issues that are unique to e-books, from exclusive territorial rights to pricing and consumer protection.

8. Conclusion

In Quebec, the role of the *Book Importation Regulations* remains somewhat misunderstood and limited, because industry players, both Canadian and foreign, tend to refer to Bill 51 for their book purchasing practices. In this regard, it does not influence French-Canadian book buyers, nor does it significantly govern trade practices in the supply chain for books.

We could therefore ask whether the Regulations are still needed for the French-language market. Stakeholders unanimously assert that the Regulations remain necessary, particularly given their ties to the *Copyright Act*, and given that they are the tool with which the exclusive territorial rights of Canadian publishers, diffusers, and distributors can be defended at the highest levels. The Regulations are also accompanied by mechanisms for the application of its principles and constitute one of the main tools for establishing business practices in the book sector throughout the country, enabling the Canadian government and Canadian book industry to set a framework for the delivery of books from author to reader in full respect of the rights of various Canadian book-chain stakeholders. All recognize that the *Book Importation Regulations* appear to be losing ground in relevance, particularly given the fact that they do not address e-books; at the same time, it is recognized that regulation in general is becoming increasingly important and needed with the advent of e-books—non-physical products that further facilitate access by foreign companies to the Canadian market.

The industry therefore believes that it is necessary to update the text of the Regulations so as to better reflect the differences between the English-language and French-language sectors (for example, the presence of diffusers and distributors, who may equally claim a share of exclusivity and who are both accountable for their practices) as well as other realities, including those relating to the advent and proliferation of e-books.

Annex A: International Comparison of Book Importation Regimes

Canada 

April 2012

Parallel importation occurs when a retailer or other institutional buyer imports copies of a work, such as a book, without sourcing the copies through the appropriate rights holder in the given territory.

Restrictions on the parallel importation of books and other copyrighted products are a common feature of many countries' copyright regimes. Indeed, most developed markets, including major book producers such as the United States, the United Kingdom and France, as well as other markets with a significant English- or French-language publishing presence, maintain restrictions on the parallel importation of books. Typically, it is developing markets, such as Vietnam and Cameroon, which allow it. In the Organisation for Economic Co-operation and Development (OECD), whose members are mostly high-income economies, only a minority of member states—including South Korea, New Zealand and Japan—have unrestricted regimes. For its part, the European Union also permits parallel imports of books, but only among member states as copyright cannot be used to prevent the free trade of products within its borders.⁸⁰

What follows is a review of three specific territories that have different approaches to parallel importation: Australia, New Zealand and India. In these countries, as in Canada, the parallel importation of books is a topic of debate, and all three countries have recently conducted reviews of their parallel importation regimes. These case studies also suggest a number of factors that underpin the rationale for the parallel import regime that is put in place in a given territory.

It is important to note that the parallel import protections in these countries are available only to copyright holders and not to holders of exclusive distribution rights as well, as is the case with Canada's *Book Importation Regulations*. The distinction is an important one. Protection for copyright holders means that rival foreign editions of a title cannot be imported, while protection for exclusive distributors means that buyers cannot import copies of a title directly from a foreign supplier but must source them from the exclusive distributor for that buyer's territory.

Australia

In Australia, the parallel importation of books is governed by the Parallel Importation Restrictions (PIRs). Introduced in 1991 through an amendment to Australia's *Copyright Act 1968*, the PIRs specify the conditions that rights holders must adhere to in order to be protected against parallel imports. For example, the Australian rights holder for a book is required to release it in Australia within 30 days of its foreign publication, or else forfeit its right to protection against parallel imports of that book. This is known as the "30-day supply rule." Additionally, the Australian rights holder is required to respond within seven days to a written order for a previously published foreign title, and to ensure that the order can be filled within 90 days. Parallel imports are permitted if the rights holder is unable to respect this "7/90-day resupply rule."⁸¹

⁸⁰ New Zealand Institute of Economic Research, "Parallel Importing: A Theoretical and Empirical Investigation," *Report to Ministry of Commerce*, 1998.

⁸¹ The Productivity Commission, "Restrictions on the Parallel Importation of Books," *Research Report*, 2009.

Background and rationale

Australia's *Copyright Act 1968* originally imposed a complete ban on the parallel importation of books.

In the early 1980s, the Australian Copyright Law Review Committee started examining possible reforms to the Act. Although the Committee's final report (published in 1984) did not offer a conclusive recommendation with regard to parallel importation, it proved to be an important foundation for future reform and the eventual introduction of the PIRs.

Further to the work of the Committee, Australia's Prices Surveillance Authority (PSA), an independent statutory authority, was tasked by the Government to conduct an inquiry into the issue of book pricing. The PSA released a report in 1989 recommending full liberalization of book imports. Although the PSA's recommendation was rejected, the report influenced the Australian Government's decision to relax its parallel import restrictions with the introduction of the PIRs in 1991. The primary motivation behind this policy change was an interest in improving the speed with which new titles were released into the Australian market. While the PIRs allowed parallel importation under certain circumstances, they maintained restrictions in part to help protect the cultural benefits associated with local publishing and writing and with the creation and dissemination of culturally valuable literature.

Impact of the regime

Views regarding the impact of the PIRs differ sharply. Critics of the PIRs contend the restrictions prevent the efficient operation of the market by limiting choice for Australian consumers and by maintaining artificially high prices, since rights holders are free to price their books for the Australian market however they choose. Some, including the Australian Booksellers Association, suggest that this absence of a "price cap" is an important factor in maintaining high prices."⁸² On the whole, the removal of the PIRs, critics argue, would result in significant price decreases.

Supporters of the PIRs, on the other hand, maintain that they have been crucial to the success of the Australian publishing industry. They argue that the restrictions, by increasing revenues to publishers and authors, provide incentives for the creation of Australian books, thereby increasing cultural and related benefits to Australia. Without the restrictions in place, it is argued that investment in the publishing industry would diminish, authors' incomes would be lower, and the quality and diversity of books would be greatly reduced.⁸³

⁸² Ibid.

⁸³ Ibid.

Review of the PIRs

In 2008, the Australian Government asked its primary independent research and advisory body, the Productivity Commission, to undertake a study of the PIRs. In addition to inviting formal written briefs in response to an issues paper, the Commission held roundtables and met directly with industry stakeholders before releasing its final report in July 2009.

Although an earlier draft report proposed only a partial repeal of the PIRs, the Commission's final report recommended that they be repealed altogether, with three years' notice to facilitate industry adjustment.

The Commission based its recommendation on a number of factors – among them, its conclusion that the restrictions put upward pressure on book prices in Australia. However, the Commission was careful to note that Australia's exchange rate has a major influence on the price differences for books. For instance, when the value of the Australian dollar in 2007–2008 was relatively high, the Commission found that trade books sold in Australia were on average 35 per cent more expensive than like editions sold in the US. On the other hand, when the Australian dollar was relatively low, as it was in 2008–2009, the Commission found that average price differentials for books were only 12 per cent higher.⁸⁴

With regard to online buying, the Commission concluded that the PIRs have the result of preventing those Australians who are less likely to shop online from obtaining better-value books, and put Australian bookstores at a competitive disadvantage vis-à-vis British and American online bookstores. It also concluded that the PIRs constitute a poor means of targeting cultural externalities, including the promotion of culturally significant Australian works. The Commission recommended, instead, increased public funding for producers of books of high cultural value.

According to the Commission's report, repealing the PIRs would give local booksellers the option of accessing better-value editions of books from overseas and make publishers look for greater efficiencies in their operations, thus lowering the price of books.

However, the report acknowledged that repealing the restrictions could adversely affect Australia's literary culture. In fact, removing the PIRs, the report indicated, could lead to a contraction or slowing in the growth of the book industry, and to a decrease in the range of Australian-authored titles available.

The Australian Government ultimately rejected the Commission's recommendation to repeal the PIRs, arguing that the repeal would be unlikely to have any material effect on the availability of books and book prices in Australia.⁸⁵ The Government asserted that increased competition from international online booksellers, as well as further innovation and price reductions in e-books, are sufficient to offset potential inefficiencies under the PIRs. It concluded that whatever benefits

⁸⁴ The Productivity Commission, "Restrictions on the Parallel Importation of Books," *Research Report*, 2009.

⁸⁵ Department of Innovation, Industry, Science and Research, "Regulatory Regime for Books to Remain Unchanged," *Media Release*, November 2009.

may result from removing the restrictions would be largely outweighed by the negative costs to Australia's publishing industry.

The Australian Government has since ruled out reopening the debate about its parallel importation regime.⁸⁶

New Zealand

Like most developed markets, New Zealand had long maintained a ban on the parallel importation of books. This, however, changed in 1998 when the Government lifted the parallel import restrictions on cultural products through an amendment to its *Copyright Act 1994*—leaving New Zealand one of the few Western countries, and unique among English-language markets, without any restrictions on the parallel importation of books.

Background and rationale

The decision to lift the prohibition on parallel importing was made further to the release of a report by the New Zealand Institute of Economic Research in 1998. In this report, it was concluded that some copyright products, including books, were more expensive in New Zealand than elsewhere for a variety of reasons. It was expected that removing the ban would benefit consumers through lower prices and wider availability of copyright products, including books.⁸⁷

Impact of allowing parallel importation

There is a range of views regarding the impact of New Zealand's unrestricted parallel import regime. Many believe it has dramatically improved service and title range. In terms of availability—the main rationale for allowing parallel importation in New Zealand—it is argued that domestic book releases have moved from being three to six months behind the United Kingdom to being within one to three weeks behind. It is also claimed that the bulk purchase of backorder titles and end-of-line remaindered books through parallel importation has allowed books to be offered at prices below what was previously possible.

Others, including many publishers, argue that most of the benefits attributed to unrestricted parallel importation are overstated. With regard to service standards, many maintain that improvements are explained by normal industry change and by the competitive inducement to lower prices created by online bookstores. Moreover, it is argued that parallel importation has decreased publishers' revenue from the importation and sale of backlist foreign titles, which supports and often underwrites the publication of New Zealand titles.

⁸⁶ *The Australian*, "Shorten Closes Book on Imports," February 19, 2011.

⁸⁷ New Zealand Institute of Economic Research, "Parallel importing: A Theoretical and Empirical Investigation," *Report to Ministry of Commerce*, 1998.

Review of the regime

The law allowing parallel imports is reviewed periodically by the New Zealand Government. Two recent reports, prepared for the Ministry of Economic Development in 2004⁸⁸ and 2007,⁸⁹ concluded that parallel importation promotes greater choice and availability of titles to consumers. The reports note that since the ban on parallel importation was lifted, book retailers have reported improved speed in filling customer orders, improved availability of and access to foreign titles, and earlier release of new titles. The reports also found no evidence that parallel importation was reducing the quantity of books being published in New Zealand or that it was having any effect on decisions by publishers to publish local authors.

The reports are careful to note, however, that changes in technology trends and rationalization in industry supply chains have had a greater impact on the book industry than parallel importation. This observation is reinforced by the Australian Productivity Commission's report, which cautions that any apparent results of lifting the book import restrictions in New Zealand are highly dependent on prevailing exchange rates, as well as fuel and transportation costs.⁹⁰

Current status

New Zealand continues to be among the few members of the OECD to place no restrictions on the parallel importation of books or other copyrighted goods. A 2008 Cabinet paper recommended maintaining the current policy allowing the parallel importation of books.⁹¹

India

Under India's *Copyright Act, 1957*, parallel importation of books is not permitted. However, as with most other countries, a "private and domestic use" exception allows individuals to import a book from abroad instead of sourcing it through the licensed domestic supplier. That being said, many libraries in India buy books from abroad, often from online retailers such as Amazon and Alibris.⁹² This practice is illegal under India's *Copyright Act, 1957* as the "private and domestic use" is not applicable to libraries. Libraries parallel import because many books (particularly new editions) that students and faculties want are not readily available in India.

Impact of the regime

Many, including booksellers and libraries, argue that India's restrictions on parallel imports have had the effect of limiting access, claiming that equivalent Indian editions of most foreign titles are often over-priced. Allowing parallel importation, they argue, would spur competition, leading

⁸⁸ Network Economics Consulting Group, "The Impact of Parallel Imports on New Zealand's Creative Industries," New Zealand Ministry of Economic Development, 2004.

⁸⁹ Law and Economics Consulting Group, "MED Parallel Importing Review: Impact Upon Creative Industries," New Zealand Ministry of Economic Development, 2007.

⁹⁰ The Productivity Commission, "Restrictions on the Parallel Importation of Books," *Research Report*, 2009.

⁹¹ New Zealand Ministry of Economic Development, "Parallel Importing Cabinet Paper," 2007.

⁹² The Centre for Internet and Society, "Procuring Books in Indian Libraries," 2011.

to a drop in prices. Some add that parallel import restrictions are becoming obsolete given that the principle of territoriality is beginning to yield as a result of online buying.

Others, including most publishers in India, argue that the problem of access is greatly exaggerated. Allowing parallel importation, they claim, would significantly diminish publishers' ability and incentive to invest in producing and promoting Indian authors and Indian books.

Review of the regime

The Government of India has presented a proposal to legalize the parallel importation of books through the *Copyright (Amendment) Bill, 2010*. In April 2010, the Bill was referred to the Parliamentary Standing Committee on Human Resource Development for examination. During the review process, the Committee heard from various stakeholders, including the Federation of Indian Publishers and the Association of Publishers in India. The Committee found that India's book importation regime generally results in high prices for books and that the availability of low-priced books is generally limited to old editions. Allowing parallel importation, the Committee concluded, would foster greater competition and enable consumers to have access to a greater variety of books, at lower prices and in a more timely manner.⁹³

Current status

Further to publishers' vocal opposition, the Indian Government dropped the parallel imports clause from the *Copyright (Amendment) Bill, 2010* and gave some indication that it would, instead, initiate a study on the impact that unrestricted parallel importation could be expected to have on India's publishing industry.⁹⁴

Factors that determine territorial regimes

The type of parallel importation regime in place in any given territory is the product of a range of factors, including the country's geographic proximity to competitive same-language markets, the nature of its domestic book industry, and the extent of government support for books.

Geography

Publishers in Australia, New Zealand, and India all enjoy "natural protection" from import competition from the US and the UK, the world's largest exporters of English-language books. This is a form of protection not available to Canadian businesses.

The risks of openness to parallel importation may also be mitigated by other geographic circumstances. In the European Union, for example, linguistic differences among member states mean that rights holders in the individual markets face little threat of being undercut by large-scale parallel imports from another supplier of the title in the same language.

⁹³ Parliamentary Standing Committee on Human Resource Development, "Two Hundred Twenty-Seventh Report on the *Copyright (Amendment) Bill, 2010*," Parliament of India, November 2010.

⁹⁴ C.H. Unnikrishnan, "Removal of Parallel Imports Clause May Stir Up Debate," Livemint.com, September 2011.

Government support

While not determinative, the presence of extensive government support may provide an incentive for stronger parallel importation protections. Countries that invest significant public funds in supporting their indigenous book industries—as is the case in Canada with the Canada Book Fund—may be unlikely to undercut these efforts by allowing parallel imports. In countries such as New Zealand and India where public support is negligible or non-existent, the rationale for stronger parallel import protections may be weaker.

Domestic publishing industry

In many countries, the lack of a mature book industry, including a robust distribution function, means that parallel importation may be the only way to ensure the availability and affordability of foreign titles. Thus, it is unsurprising that most of the world’s unrestricted parallel importation regimes are found in markets in which territorial rights holders often lack the economies of scale to effectively serve the market for imported books.

While some more developed markets maintain unrestricted regimes, they are generally in response to particular industry conditions. New Zealand’s indigenous publishing industry, for instance, is very small, with foreign publishers accounting for as much as 90 percent of the New Zealand publishing output.⁹⁵ Seen in this context, and given that it is a high net importer of copyrighted goods, New Zealand may have less of an incentive to protect against parallel importation. By contrast, the risks and costs of parallel importing are greater for a market such as Canada.

Conclusion

The three different markets examined in this section have distinct approaches to parallel importation that resemble and differ from the Canadian regime in various ways.

Australia, like Canada, imposes certain conditions on the rights holders it protects. Under Australia’s Parallel Import Restrictions, however, the absence of a “price cap” (such as the one imposed on exclusive distributors under the *Book Importation Regulations*) means that even when books appear to be overpriced relative to the foreign-currency list price, there is no legal justification for Australian retailers to “buy around.” This removes the incentive for publishers to price their books competitively.

New Zealand, meanwhile, is the sole English-language market to have lifted its ban on parallel imports of books. Particular factors affecting the New Zealand book industry’s performance post-reform, however, mean that caution is required in seeking to draw definitive lessons from this case study, since the results of lifting restrictions on parallel imports are viewed as highly

⁹⁵ Law and Economics Consulting Group, “MED Parallel Importing Review: Impact Upon Creative Industries,” New Zealand Ministry of Economic Development, 2007.

dependent on the prevailing exchange rates, as well as fuel and transportation costs.⁹⁶ For example, in the period following the lifting of the ban, the low New Zealand dollar made imported goods significantly costlier, effectively reducing the incentive to parallel import. Canada's experience further captures the correlation between currency exchange rates and imports, with its market seeing an increase in book imports following an extended period of parity between the Canadian and US dollars.

India, for its part, like Canada, has an exception in its *Copyright Act, 1957*, which allows individuals to import a book from abroad for personal use instead of sourcing it through the licensed domestic supplier.

Canada appears to be the only territory that extends its protections against parallel importation to exclusive distributors of books. There are a number of factors that explain this apparent anomaly. For one, Canada's close proximity to and shared language with the US (the largest exporter of books in the world) put the Canadian book industry, including exclusive distributors, in a unique position, calling for unique import regulations. The *Book Importation Regulations* are, moreover, part of a broader policy toolkit that helps protect a distinct domestic book industry that has seen impressive and steady growth over recent decades.

While the Regulations reinforce the territorial rights of exclusive distributors, they also impose a price cap and delivery standards, which are designed to help ensure fair prices and broad availability of books for Canadian consumers. The price cap is set at a level that reflects the higher costs of doing business in Canada, which entails more expensive labour, higher fuel expenditures for transportation, and lower density of warehousing infrastructure, relative to major book markets like the US.

Although Canada's situation is unique in many ways, it is also experiencing similar conditions to those in other countries, most notably the growing impact of digital technologies on the market for books. Indeed, in Canada, as in many other markets, the increasing opportunities to purchase books online mean that consumers are readily enabled, for all intents and purposes, to "parallel import" once titles are released elsewhere. This growing practice, it should be noted, was cited as an important factor in the government reviews of parallel importation regimes in Australia, New Zealand and India. In Australia's case, for example, growing competition from online booksellers and the increased market share of e-books were in fact among the main reasons for the Government's decision to keep restrictions in place.

⁹⁶ The Productivity Commission, "Restrictions on the Parallel Importation of Books," *Research Report*, 2009.

Annex B:
Complete Text of the *Book Importation Regulations*

Canada 

April 2012

Book Importation Regulations (SOR/99-324)

P.C. 1999-1350 28 July, 1999

His Excellency the Governor General in Council, on the recommendation of the Minister of Industry, pursuant to the definition “exclusive distributor”^a in section 2, section 2.6^b subsections 27.1(5)^c and (6)^c and section 62^d of the *Copyright Act*, hereby makes the annexed *Book Importation Regulations*.

^a S.C. 1997, c. 24, s. 1(5)

^b S.C. 1997, c. 24, s. 2

^c S.C. 1997, c. 24, s. 15

^d S.C. 1997, c. 24, s. 37(2)

Book Importation Regulations

Interpretation

1. The definitions in this section apply in these Regulations.

“Act” means the *Copyright Act*. (*Loi*)

“bookseller” means an individual, firm or corporation that is directly engaged in the sale of books in Canada for at least 30 consecutive days in a year and

(a) whose floor space is open to the public and is located on premises consisting of floor space, including book shelves and customer aisles, of an area of at least 183 m² (600 sq. ft.); or

(b) whose floor space is not open to the public and that derives 50% of his or her or its gross revenues from the sale of books. (*libraire*)

“Canadian edition” means an edition of a book that is published under an agreement conferring a separate right of reproduction for the Canadian market, and that is made available in Canada by a publisher in Canada. (*édition canadienne*)

“catalogue” means a publication in printed, electronic or micro-fiche form that

(a) is updated at least once a year;

(b) lists all book titles currently in print that are available from at least one exclusive distributor; and

(c) identifies the title, the International Standard Book Number, the exclusive distributor, the author and the list price in Canada for each book listed. (*catalogue*)

“current exchange rate” means the rate of exchange prevailing on the day on which a transaction takes place, as ascertained from a Canadian bank. (*taux de change courant*)

“format” in relation to a book, means

- (a) the type or quality of binding;
 - (b) the typeface or size of print;
 - (c) the type or quality of paper; or
 - (d) the content, including whether the book is abridged or unabridged, or illustrated.
- (*format*)

“holiday” means a Saturday or a holiday as defined in subsection 35(1) of the *Interpretation Act*. (*jour férié*)

“list price” means the price for a book that is set out in a catalogue or printed on the cover or jacket of the book. (*prix de catalogue*)

“remaindered book” means a book

- (a) that is sold by the publisher for less than the cost of paper, printing and binding; or
- (b) that is sold at a reduced price by the publisher and for which the author or copyright owner receives no royalty. (*livre soldé*)

“retailer” means a person who sells books in the course of operating a business, but does not include an exclusive distributor or a book publisher. (*détaillant*)

“special order” means an order for a copy of a book that a bookseller or a retailer other than a bookseller does not have in stock and that the bookseller or retailer orders at the request of a customer. (*commande spéciale*)

Application

2. (1) These Regulations apply to

- (a) English-language and French-language books that are imported into Canada and for which separate and distinct Canadian territorial rights have been created or contracted; and
- (b) Canadian editions that are imported into Canada.

(2) For greater certainty, these Regulations apply to books referred to in subsection (1) that are added, after the coming into force of these Regulations, to an order placed before the coming into force of these Regulations.

(3) For greater certainty, these Regulations shall not be construed as authorizing anyone to do or to omit to do an act that would constitute an infringement of copyright under subsection 27(2) of the Act.

Computation of time

3. (1) The computation of time under these Regulations is governed by sections 26 to 30 of the *Interpretation Act*.

(2) If a period of less than seven days is provided for in these Regulations, a day that is a holiday shall not be included in computing the period.

(3) If a period for the doing of a thing is provided for in these Regulations and is expressed to end on a specified day, the period ends at the close of business on the specified day.

Notice of exclusive distributor

4. (1) An exclusive distributor, a copyright owner or an exclusive licensee shall give the notice referred to in subsection 27.1(5) of the Act to a person referred to in subsection 27.1(1) or (2) of the Act before the person places an order, in the following manner:

(a) in the case of a retailer other than a bookseller, in writing in accordance with subsection (2); and

(b) in the case of a bookseller, library or other institution established or conducted for profit that maintains a collection of documents, by setting out the fact that there is an exclusive distributor of the book in the latest edition of

(i) the *Canadian Telebook Agency Microfiche and Books in Print Plus -- Canadian Edition*, published by R.R. Bowker, if the book is an English-language book, and the *Banque de titres de langue française*, if the book is a French-language book, or

(ii) a catalogue supplied by the exclusive distributor, copyright owner or exclusive licensee to the bookseller, library or other institution, at the request of, and in the form requested by, the bookseller, library or other institution.

(2) The notice referred to in paragraph (1)(a) shall be sent to the retailer at the retailer's last known address by personal delivery, by mail, or by facsimile or other electronic means.

(3) Instead of the notice referred to in subsection (1), an exclusive distributor that represents all of the titles published by a particular publisher may send a notice to that effect to a person referred to in subsection 27(1) or (2) of the Act, at that person's last known address, by personal delivery, by mail, or by facsimile or other electronic means, before the person places an order.

(4) A notice given in accordance with subsection (1) or (3) is valid and subsisting in respect of any title covered by the notice until the notice is revoked or amended by the exclusive distributor, copyright owner or exclusive licensee, as the case may be.

(5) The notice referred to in subsection (2) or (3) is deemed to have been received by the retailer, if it is

(a) delivered personally, on the day of delivery;

(b) sent by mail, on the tenth day after the day on which the notice was mailed; or

(c) sent by facsimile or other electronic means, on the date and at the time indicated by the sending apparatus.

Imported books

5. (1) For the purpose of section 2.6 of the Act, where an order for imported books is placed, the following distribution criteria are established:

(a) an exclusive distributor shall

(i) ship the books ordered to the intended recipient

(A) for books imported into Canada and in stock in Canada,

(I) no later than three days after the day on which the exclusive distributor receives the order, in the case of English-language books, and

(II) no later than five days after the day on which the exclusive distributor receives the order, in the case of French-language books,

(B) for books imported from the United States and not in stock in Canada, no later than 12 days after the day on which the exclusive distributor receives the order,

(C) for books imported from Europe and not in stock in Canada,

(I) no later than 30 days after the day on which the exclusive distributor receives the order, in the case of English-language books, and

(II) no later than 60 days after the day on which the exclusive distributor receives the order, in the case of French-language books, and

(D) for books imported from any other country and not in stock in Canada, no later than 50 days after the day on which the exclusive distributor receives the order,

(ii) provide the book in the format requested by the person who placed the order, if the format exists, and

(iii) subject to any law of any province with respect to prices concerning the distribution of books, provide the book at a price no greater than

(A) if the book is imported from the United States, the list price in the United States, plus the current exchange rate, plus 10% of the price after conversion, minus any applicable discounts, or

(B) if the book is imported from a country in Europe or any other country, the list price in the country from which the book is imported, plus the current exchange rate, plus 15% of the price after conversion, minus any applicable discounts; and

(b) if the person who placed the order so requests, an exclusive distributor shall confirm to that person whether the order can be filled

(i) if the confirmation is made by telephone, no later than two days after the day on which the order is placed,

(ii) if the confirmation is sent by mail or facsimile, no later than five days after the day on which the order is placed, and

(iii) if the confirmation is sent by electronic means other than facsimile, no later than the day after the day on which the order is placed.

(2) In the case of books provided to libraries, the applicable discounts referred to in clause (1)(a)(iii)(A) shall be based on generally prevailing market conditions in North America.

(3) Subsections (1) and (2) apply to an exclusive distributor of a book in paperbound format only after the end of 12 months after the book first becomes available in that format in North America. If the exclusive distributor provides the book in that format before the end of that period, subsections (1) and (2) shall apply.

(4) If an exclusive distributor is unable to meet the criteria for an order set out in subsections (1) and (2), the person who placed the order may import the book through a person other than the exclusive distributor.

SOR/2008-169, s. 3.

[Previous Version](#)

Canadian editions

6. (1) For the purpose of section 2.6 of the Act, the following distribution criteria are established for Canadian editions:

(a) the exclusive distributor shall make sufficient copies of the Canadian edition available in Canada; and

(b) before an order is placed, the Canadian edition must be

(i) identified as a Canadian edition

(A) on the cover or jacket of the book,

(B) in the latest edition of the *Canadian Telebook Agency Microfiche* and of *Books in Print Plus — Canadian Edition*, published by R.R. Bowker, if the edition is an English-language edition, and in the latest edition of the *Banque de titres de langue française*, if the edition is a French-language edition, or

(C) in the latest edition of a catalogue supplied by the exclusive distributor, copyright owner or exclusive licensee to the bookseller, library or other institution, at the request of, and in the form requested by, the bookseller, library or other institution, and

(ii) listed

(A) in the latest edition of the *Canadian Telebook Agency Microfiche* and of *Books in Print Plus — Canadian Edition*, published by R.R. Bowker, if the edition is a English-language edition, and in the latest edition of the *Banque de titres de langue française*, if the edition is a French-language edition, or

(B) in the latest edition of a catalogue supplied by the exclusive distributor, copyright owner or exclusive licensee to the bookseller, library or other institution, at the request of, and in the form requested by, the bookseller, library or other institution.

(2) If an exclusive distributor is unable to meet the criteria for an order set out in subsection (1) the person who placed the order may import the book through a person other than the exclusive distributor.

SOR/2008-169, s. 4(F).

Remaindered and other books

7. For the purpose of subsection 27.1(6) of the Act, a book may be imported if
- (a) the book is marked as a remaindered book or the original foreign publisher has given notice to the exclusive distributor, if any, that the book has been remaindered, and the book is not sold in Canada before the end of 60 days after the day on which it was first offered for sale as a remaindered book by the original foreign publisher in the country from which the book is imported;
 - (b) the book is marked as a damaged book by the importer or the retailer; or
 - (c) the book is imported solely for the purpose of re-export, and the importer is able to provide evidence, on request, that an order for re-export has been made for the book before its importation.

Textbooks

8. For the purpose of subsection 27.1(6) of the Act, a textbook may be imported if
- (a) at the time of importation, the importer provides documentation such as a certificate or an invoice establishing that the textbook is a used textbook;
 - (b) the textbook is to be offered for sale or distribution in Canada as a used textbook; and
 - (c) the textbook is of a scientific, technical or scholarly nature and is for use within an educational institution or an educational body established or conducted for profit.

Special orders

9. (1) For the purpose of subsection 27.1(6) of the Act, a book that is the subject of a special order may be imported through a person other than the exclusive distributor if the exclusive distributor is unable to fill the order within the time specified by the person who placed the order.
- (2) The exclusive distributor shall confirm within 24 hours after the special order is received whether or not the order can be filled within the time specified by the person who placed the order.

Leased books

10. A library may import leased books through a person other than an exclusive distributor.

Coming into force

11. These Regulations come into force on September 1, 1999.