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Submission to the Competition Policy Review: Issues Paper

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The ASA welcomes the opportunity to make a submission to the Competition Policy Review Issues Paper.

The Australian Society of Authors Ltd (ASA) is the peak national organisation representing the professional rights and interests of Australia's literary creators across all genres. The ASA was formed in 1963, operates under Australian corporation law, and has a total membership of over 3,000 nationwide.

In the following the ASA responds to the section and questions in the Paper that we see to be of particular relevance to Australian literary creators/copyright owners.

2 REGULATORY IMPEDIMENTS TO COMPETITION

Regulatory Restrictions In Goods Markets

2.6 and 2.7 (p.13)

Question of international price discrimination.

Question: Is there a case to regulate international price discrimination? If so, how could it be regulated effectively while not limiting choice for consumers or introducing other adverse consequences?

The availability of books, and the price to Australian consumers, have improved in recent years due to the benefits provided by internet commerce. Competition on price is occurring naturally, both nationally and across borders, with consumers today offered a variety of sources and means by which to purchase books along with a corresponding range of competitive prices.

The market for books is a very competitive one for publishers and sellers in Australia. Local publishers and booksellers, both online and bricks and mortar, know they must be within the ballpark, or better, of prices offered for the same or any similar titles able to be purchased from overseas suppliers. They have no other choice. The book market is currently as competitive as markets for any other consumer goods that might be serviced by overseas sources. Uncompetitive participants are simply not viable in the contemporary world of e-commerce, and this includes those who supply books.

The ASA does not believe that local book purchasers are being gouged or charged 'too much', or are at a disadvantage compared to book buyers in other, similar economies and countries. In the books context, it would also likely be impossible to arrive at Australian-based initiatives (GST, legislative or other) that would actually work in favour of local consumer interest, and be able to effectively define, control or remove 'international price discrimination' without limiting choice.

2.18 (pp. 15-16)
Intellectual Property

"The underlying rationale for governments to grant intellectual property (IP) rights (such as patents, trademarks and copyrights) is that creations and ideas, once known, may otherwise be copied at little cost, leading to under-investment in intellectual goods and services. However, providing too much protection for IP can deter competition and limit choice for consumers."

Question: Are there restrictions arising from IP laws that have an unduly adverse impact on competition? Can the objectives of these IP laws be achieved in a manner more conducive to competition?

Copyright is not a local form of 'regulation' but something far more complex and important. It is not bureaucratic red tape but an international and national form of law, functioning under a variety of international treaty instruments and national legislation. Certainly, Australian literary creators who produce tradeable intellectual property do not see these laws as some form of competition impediment. For background on the local functioning of the Copyright Act, and how it intersects with trade, we point to the following:

"The reproduction and first sale of books in Australia is governed by the Copyright Act, which aims to provide a balance of incentives between the creation and consumption of creative works, including books. Included within the Act are the parallel importation restrictions (PIR), which establish the rules pertaining to the importation of books into Australia. The PIRs provide protection for holders (generally publishers and authors) of Australian rights to a title from competition by suppliers of foreign editions of that title." (BISG Report p. 16)

The ASA does not believe anything more can or should be done to loosen the rules governing importation, without risking the creation of a chaotic 'open' market, which will destroy Australian authors' territorial copyright – the only tool they have available to control their intellectual property and its sale both within Australia and beyond. Our trading partners do not operate without territorial copyright restrictions covering the sale of their intellectual property; it would be fundamentally damaging and destructive to our culture, its trade and educational book sectors, and Australian authors, for Australia to attempt to go down such a path.

Question: Should any current restrictions on parallel importation be removed or altered in order to increase competition?

Although the Productivity Commission in 2009 proposed the removal of the PIRs, the government concluded at the time that changing the regulations governing book imports would "not be likely to affect the availability of books in Australia, and rejected the commission's recommendation (Productivity Commission 2009)." (BISG Report 2011, p. 16)

Nevertheless, since 2011, the major book industry sectors and their representatives (notably the ASA, APA and ABA) have worked and acted in concert to reduce the PIR time frames, so as to improve the speed of books to market and further satisfy the consumer interest for timely delivery. “Following a recommendation from the BISG report, industry associations successfully negotiated and implemented a voluntary agreement to reduce the conditions around parallel importation of books from 30/90 to 14/14 days.” (BICC Report 2013, p.22)

Regarding overseas-originated titles, most books of this kind are simply not published within 30 days in Australia, and can therefore be imported into Australia for sale here without restriction. But parallel importation restrictions based on territorial copyright are vitally needed as a means of supporting the work of our local industry and authors. PIRs function as a bulwark against dumping of books remaindered in foreign territories – including the dumping of any Australian-authored books published in the UK and US territories simultaneously with the local edition.



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