



Response to Competition Policy Review
Draft Report
November 2014

t: 02 9394 7600

f: 02 9394 7601

Level 15, 233 Castlereagh Street
Sydney NSW 2000

e: info@copyright.com.au

www.copyright.com.au

ABN 53 001 228 799

1 SUMMARY OF POSITION

- a further review of copyright by the Productivity Commission is not warranted, particularly given the government has already announced its intention to simplify the copyright system;
- the government's negotiations on intellectual property (IP) issues in trade agreements currently occur with stated objectives;
- repeal of section 51(3) of the Australian Consumer and Competition Act is not warranted; and
- further amendment to the provisions in the Copyright Act covering importation of books is not warranted, particularly given the provisions were reviewed as recently as 2012 and an industry arrangement is now in place.

2 ABOUT COPYRIGHT AGENCY

Copyright Agency is a not-for-profit copyright management organisation. It has more than 26,000 members, who include writers, artists and publishers.

Copyright Agency is appointed by the Australian Government to manage statutory licences in the Copyright Act for educational and government use of text and images, and to manage the artists' resale royalty scheme. It also offers a range of other licences as non-exclusive agent for its members, including to the corporate sector. These licensing arrangements enable copying and sharing of copyright content by millions of Australians without the individual permissions that would otherwise be required. The licences also deliver about \$100M in copyright fees and royalties a year to more than 7,500 content creators.

Copyright Agency is a member of the Australian Copyright Council, and endorses its responses to the Draft Report.

3 AIMS OF COMPETITION POLICY

We support the aims of competition policy set out in the Draft Report at page 4, including to:

- make markets work in the long-term interests of consumers;
- foster diversity and choice; and
- encourage innovation and entrepreneurship.

Our concerns relate to recommendations in the Draft Report that do not appear to achieve these aims.

4 FURTHER REVIEW OF INTELLECTUAL PROPERTY

The Draft Report says:

Given the influence that Australia's IP rights can have on facilitating (or inhibiting) innovation, competition and trade, the Panel believes it is crucial that the IP system be designed to operate in the best interests of Australians.

We agree with this statement. But, contrary to the Panel's apparent understanding, the current copyright system *is* 'designed to operate in the best interests of Australians'. This is apparent from statements from the government in connection with introduction of the Copyright Act in 1968, and the many amendments since then.

The current government has recognised that there may be areas in which aspects of the implementation of the copyright system could be streamlined. It has already committed to a simplified copyright regime. It has before it numerous reviews of copyright and other material to assist with this task, including the recent Australian Law Reform Commission (ALRC) report on copyright and the digital economy.

It is difficult to see what further developments, since the ALRC inquiry, would warrant yet another expensive review of the kind undertaken by the Productivity Commission.

5 FRAMEWORK FOR TRADE NEGOTIATIONS

The Draft Report refers to the need for an overarching framework or objectives for IP rights in negotiations for international trade agreements.

Contrary to the Panel's apparent understanding, these negotiations do occur within a framework.

First, the overall objectives of a trade negotiation apply to all aspects of that negotiation, including IP issues. For example, the Department of Foreign Affairs and Trade (DFAT) describes the broad objective of trade agreements as 'helping Australian exporters access new markets and expand trade in existing markets'.¹

For IP in particular, the government has described its objective for the Trans Pacific Partnership Agreement (TPP) as 'a more consistent approach to intellectual property protection and enforcement', in accordance with the standards in international agreements such as the Berne Convention, with a view to encouraging 'creativity, innovation, certainty and investment, and promot[ing] international trade in legitimate products and services while reducing the volume of counterfeit and infringing products and services imported into Australia'.²

It describes its approach to the negotiations as 'seeking an outcome on intellectual property that is consistent with relevant international intellectual property treaties to which Australia is a party, and that retains the flexibilities we currently have'.

In recent and current trade negotiations, the objective for copyright is an environment in other countries that is more conducive for export of Australian copyright-based products and services, including physical products such as books, digital products such as ebooks online subscriptions, and services such as licensing solutions.

Australia's implementation of any international treaties is, of course, subject to Parliamentary scrutiny through review by the Joint Standing Committees on Treaties (JSCT).

It is also worth noting that copyright-related costs associated with the Australia–US Free Trade Agreement were highly over-estimated in the course of Parliamentary review of the agreement.³

¹ <http://dfat.gov.au/fta/>

² <http://dfat.gov.au/fta/tpp/faq.html>

³ The estimates were based on an obviously flawed premise: that there is a constant flow of royalties throughout the period of copyright protection.

6 INTELLECTUAL PROPERTY EXCEPTION IN CCA

The Panel's recommendation seems to be based on an in-principle position rather than evidence of its role in practice. In particular, there is no evidence that the exception has had any deleterious effect on competition. To the contrary, copyright industries have referred to the exemption as a 'safety net' in licensing arrangements. Its repeal would create unnecessary uncertainty.

7 PARALLEL IMPORTATION

We appreciate that the Panel's recommendation regarding parallel importation reflects an in-principle position from an economist's point of view, and applies to all industries to which parallel importation restrictions apply.

However, parallel importation of books has been subjected to detailed scrutiny on a number of occasions, most recently in 2012. The current arrangement – an industry agreement based on a legislative framework – conforms with the principles set out in the Panel's Recommendation 1. The arrangement increases the choices available to consumers by:

- providing an incentive for Australian publishers to establish efficient supply of books for sale through Australian retailers, as an alternative available for consumers to online purchase of physical and ebooks; and
- supporting the ongoing production of books to meet consumer demand for books by Australian authors that reflect Australian experience.;

Further intervention by the government is not warranted, and would result in costs to the community not outweighed by any benefits.

A number of these costs are outlined in the Draft Report: 'appropriate regulatory and compliance frameworks and consumer education programs'. In addition, the Panel's recommendation would require government regulation to replace an industry agreement, contrary to the government's policy of reducing regulation and red tape.

8 FURTHER INFORMATION

We would be happy to provide any further information that may be of assistance to the Review, including on copyright-related issues raised by other submitters to the Review process.

Libby Baulch
Policy Director