



Penguin  
Random House  
Australia

17 November 2014 –

## **Penguin Random House response to the *Competition Policy Review Draft Report September 2014* –**

We are pleased to submit our response to the draft recommendations of the *Competition Policy Review Draft Report 2014* (the **Draft Report**). –

### **Competition and the publishing industry –**

Competition is at the heart of what drives the Australian publishing industry. As a global leader in the publishing market, we are fully engaged in a healthy, competitive market that promotes innovation and economic growth in the local economy through the production of content across various media, accessible by Australian consumers everywhere. –

We support the Panel’s policy aims as outlined in the Draft Report of fostering diversity and the long term interests of consumers, the encouragement of efficient investment, innovation and entrepreneurship, the entry of new firms in to the publishing market and the maintenance of secure standards of access and equity. We welcome the ability to participate in a review to ensure that Australian consumers receive access to the best possible content at the best possible prices. –

In any review of competition policy, a holistic approach must be adopted to enable any perceived benefits to be properly analysed to ensure their likelihood of success. In the area of intellectual property, a competition review must take into account the entire value chain, market structure, opportunities for innovation, and production and logistics realities in order for perceived consumer benefits to be realised. –

In 2009, the Productivity Commission conducted a complete and thorough review of parallel importation through the *Parallel Importation of Books Study*, to which Penguin Random House (then Random House and Penguin) provided full and lengthy submissions. As such, our response here is restricted to draft recommendations 7, 8 and 9 of the Draft Report. –

### **Response to draft recommendation 7 – intellectual property – review –**

We consider that intellectual property in Australia has been subject to extensive, repeated review and note that the ALRC report on *Copyright and the Digital Economy* has not yet been responded to by government. We consider that if a further review of the intellectual property regulatory regime is to be conducted, it should be via a multi-disciplinary approach that will enable proper consideration of the competition drivers –

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and their interaction with intellectual property rights through the innovation and entrepreneurship currently engaged in by participants in the market. –

### **Response to draft recommendation 8 – repeal of section 51(3) of the CCA –**

Any decision to repeal section 51(3) of the *Competition and Consumer Act (CCA)*, which exempts intellectual property from the CCA, should be based on the outcomes of a review of intellectual property legislation. –

We would also note that the exception currently contained in section 51(3) of the CCA facilitates innovation by publishers by enabling them to enter into licensing and other arrangements to commercialise content in a manner that might otherwise be caught by the broadly defined provisions of the CCA. –

### **Response to draft recommendation 9 – parallel imports –**

Parallel importation restrictions are not inconsistent with the competition policy aims of the Panel (at page 4 of the Draft Report) and should be maintained for the following reasons: –

- § They relate only to commercial quantities of books and do not inhibit individual consumers' equality of access to books available in other markets. –
- § The *Speed to Market Initiative*, voluntarily entered into by publishers and retailers in 2012, ensures speed of supply of commercial quantities of titles into the Australian market and the resupply of titles to retailers, further ensuring Australian consumers have equal access to books published in any market. –
- § During the period of parallel importation restrictions, physical book prices have come down and books are sold in the Australian market at comparable prices to other territories, indicating that parallel importation restrictions do not stifle competition in the local market and have operated in accordance with the promotion of the long term interests of Australian consumers. –
- § The existence of parallel importation restrictions ensures that publishers and authors can fully exploit their assets and receive a fair return on investment that encourages innovation and further investment in local content, ensuring that Australian consumers have more titles physically available to them at competitive prices, diversity of works are published and efficient investment is engaged in by publishers. –
- § Barriers to entry for publishing in the local market are low and parallel importation restrictions, even in their relatively small application now, assist the local industry in investing in local marketing and publication of titles, in the knowledge that international distributors (who have not borne these costs) cannot take unfair advantage of expenditure and effort by the local industry. This provides benefits to consumers by encouraging the release of a wide variety – a depth and breadth - of –



titles in the Australian market at competitive prices and is in line with the Panel's stated aim of encouraging innovation and entrepreneurship and the entry of new firms.

- Any assessment of current parallel importation rules should recognise that competition is already a key attribute of the local publishing market, and one that is present all the way through the value chain. In publishing, competition and consumer choice are present in abundance, existing restrictions do not impede competition or productivity, but provide measures to ensure that both local and international distributors can compete fairly, note particularly:
  - Consumers may order, for private use, any edition of any book in the world from anywhere in the world.
  - If Publishers don't meet current deadlines to supply, retailers may order that title in volume from anywhere in the world
  - Online purchasing is a freely available service. The opening of channels to support this, such as government initiatives to extend broadband internet access, will contribute to online shopping becoming more accessible than ever.
  - Overseas sources are not subject to GST and as such present considerable value to the consumer that Australian distributors cannot compete with.
- Competition is further enhanced through industry participants, including Penguin Random House, making their own commitments to preserving the rights and choices of the consumer:
  - Self-regulation introduced by collaboration between Booksellers and Publishers to reduce the legislated 30-day deadline to import titles for local publication down to 14 days. The corresponding reduction of the time to renew supplies from 90 days down to 14 days is a strong indication of our ongoing commitment to ensuring that we, and booksellers, can meet consumer demand.
- Availability of digital versions. Any removal or lessening of parallel importation restrictions allowing retailers to source content from overseas markets would mean that related industries would likely suffer (including but not limited to local jobs at printing companies), affecting the local economy and industries.
- The primary benefit of any lifting of parallel importation rules would sit with major retailers rather than individual Australian consumers, thereby undermining the stated competition policy aims of the Panel of fostering diversity and making markets work for the long term benefit of consumers.
- A removal of parallel importation restrictions is likely to move the market to overseas supply (where suppliers do not face the impost of GST and Australia's high postage costs). Independent and smaller book retailers would be disadvantaged in their ability to compete with major retailers in the importation of commercial quantities of books given the lack of a sale or return model in the importation model.



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It is our view that current parallel importation restrictions are not inherently anti-competitive and, given their relatively low impact on the market, the consideration of their removal should be an equally low priority of the Panel.

- § In order to compete with US and UK distributors working with economies of scale and without costs such as GST and high postage costs, local distributors would have to hedge their bets in deciding both how much international product to import and how much local product to acquire and print. Furthermore, both the US and UK, the two major English language markets, have parallel importation restrictions in place. In order for Australian publishers and writers to compete effectively in the core business of selling publishing rights to these markets, a level playing field must be preserved and one whereby those rights won't be undermined by the lifting of Australian parallel importation restrictions.
- § Funding marketing campaigns and publicity tours for local authors, would be subject to extra commercial scrutiny by publishers unsure of whether they would realise the profit associated with their efforts or if, in fact, international distributors taking advantage of relaxed parallel importation regulations would be the beneficiaries. Naturally, this expenditure with an expected decline in profits would be untenable for any publisher and our local authors, our homegrown intellectual property, would suffer.
- § The implications for industries related to the publishing industry will come into real focus, the most obvious being our local printers. Printers printing local works as well as imported works printed locally to ensure timely turnaround and compliance with the industry-imposed 14 day rule, would be considerably impacted by the new-found conservatism in relation to ordering volume that will be necessary if the parallel importation rules are relaxed.
- § Publishers would have to assess the commercial viability of local acquisitions (i.e. local authors), innovation in systems, process and local intellectual property as well as long term investment in each of these areas.

Any lifting of parallel importation rules would provide a playing field that absolutely disadvantages local authors, denying them the basic power to control the management of their asset. The foremost benefit of any lifting of parallel importation rules would most likely sit with major retailers rather than individual Australians (be they authors or consumers).