



AUSTRALIAN
COPYRIGHT COUNCIL

SUBMISSION IN RESPONSE TO COMPETITION REVIEW FINAL REPORT

MAY 2015

BACKGROUND

The Australian Copyright Council (ACC) is pleased to have this opportunity to respond to the recommendations in the Final Report of the Competition Policy Review.

The ACC is an independent, non-profit organisation. Founded in 1968, we represent the peak bodies for professional artists and content creators working in Australia's creative industries and Australia's major copyright collecting societies. A full list of our members is attached at Appendix 1.

The Harper Panel has identified intellectual property as a priority area for reform. Intellectual property is the term used to describe the area of law covering patents, trade marks, copyright, designs and related rights. Each is a creature of statute and each confers rights in intangibles. Conferring natural monopolies, as they do, there is an inherent tension between intellectual property rights and competition policy. However, beyond that, there are many differences between the different types of intellectual property regimes.

This submission is concerned only with copyright. Copyright is a significant contributor to the Australian economy. In a study recently conducted by PwC, copyright industries were found to be the fourth largest industry.

In addition, in 2014 copyright industries:

- employed just over 1 million people (specifically, 1,000,167 people), which constituted 8.7 per cent of the Australian workforce.
- generated economic value of \$111.4 billion, the equivalent of 7.1 per cent of gross domestic product (GDP).
- generated just over \$4.8 billion in exports, equal to 1.8 per cent of total exports.

This is the fourth study of this kind that the ACC has commissioned since 2000. Based on World Intellectual Property Organisation methodology and using Australian Bureau of Statistics data, these studies enable a longitudinal view of Australian copyright industries and facilitate a comparison with other economies in the region and elsewhere. The report is available on our website.

<http://www.copyright.org.au/admin/cms-acc1/images/1355629560553d73e0a5427.pdf>

It is clear that Australian copyright industries continue to make a significant contribution to the Australian economy. Moreover, as the report acknowledges, important social and cultural benefits flow from the creation of copyright material. It is against that background that we make this submission.

THE RECOMMENDATIONS

We understand that the focus of the Government's consultation is recommendations that changed between the Panel's draft and final reports. While the ACC made a submission in response to the Draft Report (and the Issues Paper) we note that there were no material changes in the Panel's recommendations in relation to intellectual property.ⁱ We therefore take this opportunity to briefly set out our views in relation to the recommendations.

Recommendation 6 Intellectual Property Review

The Panel has recommended two types of review of intellectual property.

Firstly, it has recommended a 12 month inquiry by the Productivity Commission. The ACC queries the benefit of such an inquiry. Intellectual property is a diverse and complex area of the law. It is unclear to us what a 12 month inquiry will achieve. This is particularly so when one considers the large number of inquiries that have been undertaken in recent years and await a Government response. This is particularly so in the field of copyright.

As we noted in our submission in response to the Draft Report, the rapid rate at which the digital marketplace is evolving suggests that a further review at this time is likely to be premature. The recent roll out of video on demand service in Australia is a striking example of this. In our submission the dynamic state of the market makes it difficult to anticipate the long-term interests of consumers.

We also note that such reviews require significant resources from both government and industry participants and create uncertainty. Without a clear objective in mind, in our submission, it is difficult to justify another review of intellectual property. In our submission, resources would be better allocated to devising practical solutions (including industry led solutions) to address demonstrated market failures.

The Panel has also recommended a separate independent review to assess the Australian Government processes for establishing negotiating mandates to incorporate intellectual property provisions in international trade agreements.

While we are not opposed to such a review as a matter of principle, we query the need to single out intellectual property from other goods and services which are the subject of international trade agreements. As we noted in our earlier submission on the Draft Report, the existing parliamentary mechanisms provide for adequate scrutiny of treaties to which Australia is intending to become party.

Recommendation 7: Intellectual Property Exception

Abolition of the exception in s 51(3) has been recommended in successive reviews and yet no government has acted on this. While such an amendment may 'tidy up' the CCA, it is not apparent to us how it meets the Panel's broader objectives. In our view, this amendment could create further obstacles and uncertainty for rights holders investing in new business models and licensing solutions, such as content licensing hubs for low value, high volume transactions. In particular, we query whether such an amendment would encourage innovation and establish competition laws and regulations that are clear, predictable and reliable.

Recommendation 13: Parallel Imports

The Panel has recommended the removal of parallel importation restrictions for books and has further recommended that the remaining restrictions in the Copyright Act be referred to an independent body such as the Productivity Commission.

Parallel importation is an area that has received much scrutiny over the last two decades. We do not support the recommendation for removal of restrictions as they relate to books. Nor do we support another review.

As we noted in our earlier submission, the Panel was concerned with the digital market place and yet, parallel importation is largely a 'physical goods' issue. Consumers already can and do use the Internet to price compare and purchase goods from other jurisdictions, for example, through Amazon. The parallel importation laws do not prohibit this. They only apply to commercial entities wanting to import stock from other jurisdictions.

As we noted in our earlier response, there are sound cultural reasons for Australia's remaining parallel importation restrictions in relation to copyright material.

Recommendation 31: Price Discrimination

The ACC endorses the Panel's view that market-based mechanisms are the best means of addressing issues in relation to international price discrimination. However, as previously stated, we do not accept that the remaining restrictions on the parallel importation of copyright material adversely affect consumers and we do not support their removal.

Furthermore, we note that there is some confusion as to when it may be lawful for consumers to take steps to circumvent geo-blocks and other restrictions which prevent access to cheaper legitimate goods.

We detail these issues in our information sheet, Geo-blocking, VPNs & Copyright. http://www.copyright.org.au/admin/cms-acc1/_images/20793403354c18ad7cf0d7.pdf

It is interesting to note that similar policy discussions in the European Union are premised on the basis of a single European market. It is important to remember that this is not the situation here.

We therefore caution the Government against adopting the recommendations of the House of Representatives Standing Committee's Report on IT Pricing in Australia.

We hope that the Government finds this submission useful. Please do not hesitate to contact us if we can be of further assistance.

Fiona Phillips

Executive Director

ⁱ Issues Paper submission http://www.copyright.org.au/admin/cms-acc1/_images/329371119546d3fb9e9a51.pdf

Draft Report submission http://www.copyright.org.au/admin/cms-acc1/_images/373193668546d357a95ea1.pdf

Appendix 1: Australian Copyright Council Affiliates

The Copyright Council's views on issues of policy and law are independent, however we seek comment from the 24 organisations affiliated to the Council when developing policy positions and making submissions to government. These affiliates are:

Aboriginal Artists' Agency
Ausdance
Australian Commercial & Media Photographers
Australian Directors Guild
Australian Institute of Architects
Australian Institute of Professional Photography
Australian Music Centre
Australasian Music Publishers Association Ltd
Australian Publishers Association
APRA AMCOS
Australian Recording Industry Association
Australian Screen Directors Authorship Collecting Society
The Australian Society of Authors Ltd
Australian Writers' Guild
Christian Copyright Licensing International
Copyright Agency|Viscopy
Media Entertainment & Arts Alliance
Musicians Union of Australia
National Association For The Visual Arts Ltd
National Tertiary Education Industry Union
Phonographic Performance Company of Australia
Screen Producers Australia
Screenrights