

General Manager  
Small Business, Competition and Consumer Policy Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By Email: [competition@treasury.gov.au](mailto:competition@treasury.gov.au)

Dear General Manager,

The Australian Digital Alliance (ADA) and the Australian Libraries Copyright Committee (ALCC) thank the Treasury for this opportunity to provide feedback on the *Competition Policy Review Final Report*. The ADA and ALCC support the broad direction of the report, to promote more dynamic, competitive and well-functioning markets. Our specific comments are directed only at our area of expertise, copyright, namely recommendations 6, 7, 11 and 31.

## **Recommendation 6**

### **Overarching review of intellectual property**

The ADA and ALCC in principle support a directed overarching review of intellectual property, provided that it doesn't unnecessarily delay long-outstanding copyright reforms.

A number of these outstanding reforms are of a technical and routine nature inappropriate for an overarching review. For example, under the terms of the Australian-US Free Trade Agreement the exceptions to technological protections measures are due for review every four years.<sup>1</sup> The review is currently substantially overdue, and is causing practical difficulties for schools, libraries, consumers and other groups.

Other recommendations, such as increased flexibility in exceptions<sup>2</sup> and clarifications around geoblocking<sup>3</sup> technologies have been the result of thorough in depth reviews, and are essential for Australia's international competitiveness. These should not be further delayed, indeed the Panel notes in the *Final Report* that clarification of consumer's ability to bypass geoblocks is a consumer-empowering market solution that should be used to address international price discrimination.<sup>4</sup>

Considering the above, the terms of reference for the review should be carefully set to ensure the right level of specificity and context. In particular it will be important to ensure cohesion between the main focuses of competition policy issues arising from new developments in technology and markets; and the principles underpinning the inclusion of intellectual property provisions in international trade agreements.

The ADA and ALCC agree that the Productivity Commission would be the appropriate independent body to conduct such a review.

### **Intellectual property in trade agreements**

The ADA and ALCC support a review into the processes for establishing negotiating mandates to incorporate intellectual property provisions in international trade agreements. However we note

---

<sup>1</sup> [Australia – United States Free Trade Agreement](#) Chapter 17 Article 7(C)(b)(viii)

<sup>2</sup> Australian Law Reform Commission Report 122 [Copyright and the Digital Economy](#) (2014)

<sup>3</sup> Standing Committee on Infrastructure and Communications Report [At what cost? IT pricing and the Australia Tax](#) (2013)

<sup>4</sup> See Recommendation 31 *Competition Policy Review Final Report* (2015)

that several recent reviews, such as the ongoing review in to the Commonwealth's Treaty Making Process<sup>5</sup> are also examining this area. We would recommend exploring the possibility of incorporating some of these reviews into the process to avoid duplication.

The ADA and ALCC strongly support international trade negotiations being informed by an independent and transparent analysis of the costs and benefits to Australia of any proposed intellectual property provisions. We agree that such an analysis should be undertaken and published before negotiations are concluded. However for ongoing negotiations, such as the Trans-Pacific Partnership, whose negotiating terms may preclude the analysis being made public before the agreement is signed, we recommend that the analysis is completed, informs negotiations and is published *as soon as possible in the process*. We recommend that such analyses are undertaken immediately for all major trade treaties currently being negotiated, especially in consideration of the advanced nature of some of the negotiations.

### **Recommendation 7**

The ADA and ALCC support the repeal of subsection 51(3) of the *Competition and Consumer Act 2010*.

### **Recommendation 11**

The ADA and ALCC agree that the parallel import restrictions on books should be removed, and that the remaining provisions of the *Copyright Act 1968* that restrict parallel imports be reviewed by an independent body, such as the Productivity Commission.

### **Conclusion**

In closing we strongly endorse the Panel's approach that "the IP system should be designed to operate in the best interests of Australians" and believe the recommendations with the provisos noted above, would help achieve this aim.



Derek Whitehead OAM

Chair, Australian Digital Alliance



Margaret Allen

Chair, Australian Libraries Copyright Committee

---

<sup>5</sup> See Senate Standing Committee on Foreign Affairs Defence and Trade, References Committee inquiry, accessible at <<[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Foreign\\_Affairs\\_Defence\\_and\\_Trade/Treaty-making\\_process](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Treaty-making_process)>>