



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

Dear Sir or Madam,

### **Submission to the Competition Policy Review Final Report**

The Australian Society of Authors (ASA) is the peak body representing the rights and interests of Australia's semi-professional and professional literary creators. The ASA was formed in 1963 and operates under Australian corporation law. Our organisation directly represents over 3000 members nationwide who write and illustrate books in all genres. We also represent more broadly the interests of over 15,000 authors and illustrators working in Australia today.

In the following the ASA offers its response to those recommendations contained in the document 'Competition Policy Review – Final Report' that we consider are of direct relevance to Australian literary creators who produce and trade copyrightable content largely in book form, in print and digital formats. For additional details, we refer the commissioners to our earlier submission on the Competition Policy Review Draft Report, of September 2014.

### **Recommendation 6: Intellectual Property Review**

A review of copyright functioning in Australia's digital economy was undertaken by the Australian Law Reform Commission between 2012-13. Its analyses and conclusions are available to the Government for consideration, should it wish to do so. We also understand that the Government is also undertaking its own, further review of the Australian Copyright Act and present copyright regime.

Our authors are meanwhile not confident that a separate unified, single Intellectual Property Act that could remove all impediments to trade, advance consumer interests, protect the rights of creators, and assist them in better reaching the current and potential markets they service, would actually be achievable. Given the diverse forms of IP content and law, it is in any case likely that technological change would almost immediately disrupt the identity and functioning of such an all-encompassing Act as soon as it was passed.

The ASA sees more sense in reform of aspects of IP in ways that tackles specific issues as they arise. Rather than attempting an unlikely to succeed 'one-time big fix', this would seem a more expeditious and practical approach.

At the same time, the proposal for formal review/oversight of IP elements in trade treaty arrangements also seems superfluous. The negotiation of IP within Australia's international trade arrangements is already undertaken with a view to the benefits to Australia expected or sought from copyright. The ASA would argue that trade deals with copyright components should be pursued on the basis that no changes need be made to

Australian copyright law. This is as much a matter of maintaining our national equity and interests as a trading country, and as such simply requires that our negotiators continue to seek to maximise returns on the value of our tradable copyright IP.

### **Recommendation 7: Intellectual Property Exception**

A number of problems exist in the couching of the recommendation to repeal subsection 51(3). One lies in the idea that copyright has become too heavily skewed towards creators' and owners' needs, and thus the 'balance' has to be tipped and 'got right'. This implies that copyright *itself* is somehow able to be granted or skewed in ways that might serve a consumer's or accessor's desires.

However, copyright is not – under international treaty instruments such as Berne, or a local act such as the Australian Copyright Act – a right that is 'granted' to creators, with constituent parts or meanings that may be extracted (as seems to be suggested by CHOICE (p.102)) to allow for other purposes. The reality is that copyright is in place universally when the form of a work has been achieved, its integrity remains indissoluble via moral rights provisions, and in the first instance belongs to creators to dispense as they see fit.

A further problem for literary creators is that the term intellectual property itself – which is otherwise useful and has descriptive and legal purchase over a range of creative outputs, and which identifies certain creative outputs as indeed forms of property – has also come to do service for, or obscure, the bedrock notion of copyright – that is, the right to copy.

The right to control copying of one's property in intellectual creation – whether the copying is done in 'hard' format or digital – is the fundamental tool of trade for creators, the only means by which they may personally and materially benefit from their own creations. Remove copyright as a governing law in this area of life and you remove the capacity of creators to own and license to others that which they have made.

The ASA argues that it is copyright law as it currently exists and is understood that creates the necessary market incentive for our members and constituents to develop and supply the materials for a specialised element in intellectual property trade materials of a kind that consumers (readers) need and want. If Australian copyright law is weakened, and loses its uniqueness within the broader reaches of our IP laws, the ability of our authors and other creators to innovate and grow their activity will be weakened along with it.

### **Recommendation 13: Parallel Importation**

The ASA does not support yet another review of the parallel importation restrictions, or their complete removal. We fail to see what it is that may not already have been said, or already concluded, on this subject – especially as the fears that have led to calls for their removal in the past have, to all intents and purposes, already been settled by earlier enquiries and actions.

The Productivity Commission report of 2009, for instance, stated that removal of the parallel importations restrictions would '...not be likely to affect the availability of books in Australia, and rejected the Commission's recommendation' (Book Industry Strategy Group [BISG] Report 2011, p. 16).

Since then, and in response to a recommendation arising out of the BISG Review, the major book industry participant organisations – the ASA, APA and ABA – have acted together to reduce any significant remaining time impacts of the PIRs, in order to get books onto the shelves more quickly to meet consumer demand: ‘... industry associations successfully negotiated and implemented a voluntary agreement to reduce the conditions around the parallel importation of books from 30/90 days to 14/14’ (BISG Report 2-13, p. 22).

This agreement, known as the ‘Speed-to-Market Initiative’, allows for popular titles or big sellers to be available in Australia at approximately the same time as they are overseas. The ASA believes there are no serious problems remaining around access to such titles by Australian customers.

Meanwhile, we see the destruction of territorial copyright licensing rights, and economic penalties for Australian authors, as being direct consequences of the removal of these restrictions in their entirety. The absence of territorial restrictions would, among other negative outcomes, allow for the importation and dumping of overseas published and remaindered editions of Australian authors’ books, which in turn would be sold without royalty or payment to the Australian author.

### **Recommendation 31: Price Discrimination**

We see no major difficulty for consumers wishing to access overseas editions of books via the internet, and instead sufficient price competition online and in physical bookstores to make consumer-focused selection and purchase entirely feasible.

We agree that a specific prohibition on anti-competitive international price discrimination should not be reintroduced into the CCA. However, we do not see that the removal of the current protection of the PIRs over books should be part of any additional means to end any perceived price discrimination.

We take this position on the basis outlined in our earlier submission, that: “(a) there is already a sufficiently competitive range of prices evident for the same or similar print format book titles in Australia; (b) in the Australian marketplace, consumers are already able to legally access competitively-priced books; (c) removal of the PIRs, which would create a form of ‘open market’, might in theory make some difference to price/availability of a limited number of overseas titles, but would also undermine or destroy territorial copyright benefits for Australian authors and their publishers; (d) geo-blocking exists as an important and internationally applied, if imperfect, tool for writers and publishers to trade and manage the supply of their electronic-format copyright works into other markets.”

### **Conclusion**

Finally and unfortunately, missing from the Final Report is a proper sense of how it is that copyright work comes to be created. Support for the human agency in creative production is also, or should be, as much a matter of public interest as ‘price’ to the consumer. Our authors do not produce their work ‘freely’. It comes at costs and risks to them. Against this, an important ‘objective of the restriction’ asserted by copyright is to allow at least the safety net of private property for such individuals and the entities who invest in them.

As we stated in our earlier submission, "...there is no one public interest around IP but many interests. And while many interests may be aggregated for descriptive purposes, they cannot all be satisfied in reality by the application of any single mechanism such as price. Against this, some interests – such as the ability to have the protection of a property right over the creation and trading of one's own goods – must remain fundamental."

We would urge the Government to reject those recommendations made in the Final Report that are insufficiently cognisant of these fundamentals and which have the potential to compromise our literary creators' ownership and licensing of their copyright productions. Were these recommendations to be implemented, there is every expectation their livelihoods would be damaged and their further output constrained.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Loukakis", is placed on a light grey rectangular background.

Angelo Loukakis

Executive Director

on behalf of the Board of the Australian Society of Authors

25 May 2015