

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

Dear Mr Dolman

The Australian Publishers Association thanks the Government for the opportunity to comment on the Competition Policy Review Final Report.

In general, we support the industry-wide recommendations of the inquiry. At the broad economy-wide level, we believe its recommendations would be likely to increase the consumer welfare of Australians and the competitiveness of our industries. However, we are concerned that some of the industry-specific recommendations may be based more on a priori theoretical analysis than on the basis of any empirical evidence. In particular, we are concerned that adopting the recommendations of the inquiry relating to Australian copyright laws would take significant risks with the Australian book industry in pursuit of unlikely benefits. We further note that our previous submissions to the Panel were not addressed in the Final Report.

We contend the following:

- the cost-benefit of removing parallel importation restrictions (PIRs) does not add up in practical terms
- the costs include risking the diversity of Australian book market
- the benefits to consumers are smaller and less certain than the Panel suggest
- the structural change to the publishing industry will not be minor
- reversing the negative impacts of removing PIRs will be very difficult
- the only real benefit is to a small number of large companies - not necessarily to consumers.

*What are PIRs?*

Australian law recognises the right of copyright owners to control the distribution of their products in Australia. Those rights are the basis on which publishers invest in the editing, production, marketing and promotion of a title. In essence, PIRs restrict the importation of books without the permission of the copyright owner.

PIRs are not a tariff but an expression of territorial copyright. Some economists treat copyright as a distorting intervention and a form of monopoly rather than as a form of property. They believe the restrictions extend rights to copyright owners beyond what is necessary to address free-riding and that removing them will put downward pressure on prices. However, the APA argues that these restrictions

maintain an Australian intellectual property right that, like other property rights, is a condition of the existence of a market.

To remove parallel importation restriction will remove the value of holding Australian territorial rights and will remove the incentive to invest and sell in a diverse portfolio of titles. Removing product diversity from the market will remove one of the fundamentals of competition that the publishing industry is built upon. This will likely result in fewer titles by fewer publishers. In effect, removal of the value of Australian territorial copyright will undermine competition.

#### *Cost/benefit analysis*

Price comparisons show that most titles are available at comparable prices. In fact, Australians are actually better off than consumers in larger markets such as the US. In the last decade, the average selling price of a book in Australia has fallen in real terms by a third and the changes in price-points show publishers have little control over market prices. If the integrity of the Australian copyright territory is removed, the result will be that many larger publishers will move to 'one world' pricing – in essence removing the ability of Australian publishers to price to market. In many cases this will mean that Australian consumers will have to contend with higher prices.

PIRs do not limit the availability of a title. They only apply to the importation of commercial quantities of books produced overseas and do not inhibit individual consumers in any way.

In 2012, the Australian Publishers Association and the Australian Booksellers Association entered into an agreement called 'Speed to Market' Initiative. As a result, Australian consumers do not wait more than 14 days before any hard-copy book in the world is available to be bought in Australia – and more often the wait is less. Australia is the only market in the world that stipulates a 'use-it-or-lose-it' time limit for publishers to act on their territorial rights. The publishing and bookseller industry have proactively reduced supply time lags to the benefit of Australian consumers.

#### *Anti-competitive Impacts*

One of the aims of competition policy is to support the market conditions for diversity of choice for consumers. Removal of parallel importation restrictions will not increase diversity of choice but decrease it. A likely impact will be to shift a significant share of the Australian market to larger overseas interests.

The already competitive publishing market has delivered a diversity of publishers and published content to the Australian consumer. Authors compete with authors to be published, publishers compete with publishers to produce quality and relevant content, booksellers engage directly with consumers to achieve the best retail experience - whether that be bricks-and-mortar or online. Market competition continues to drive investment and innovation in the domestic publishing industry.

#### *Economic contribution*

The publishing industry is a core copyright industry and adds to the collective economic contribution of the copyright industries in Australia as a whole. In the latest report commissioned by the Australian Copyright Council (The Economic Contribution of Australia's Copyright Industries 2002-2014 <http://www.copyright.org.au/news-and-policy/details/id/2296/>), the economic contribution of the copyright industries is significant:

- Employing just over 1 million people (specifically, 1,000,167 people), which constitutes 8.7 per cent of the Australian workforce.
- Generating economic value of \$111.4 billion, the equivalent of 7.1 per cent of gross domestic

product (GDP).

- Generating just over \$4.8 billion in exports, equal to 1.8 per cent of total exports.

The industry is in a period of substantial change to which it is responding innovatively and competitively. Removing the basis of its property rights will engender further unnecessary disruption. Without a meaningful right to the Australian market, Australian authors will be at a disadvantage compared to their competitors from other English language markets and Australian readers are likely to enjoy fewer Australian authors' works as a result.

In summary, the existing provisions of the Copyright Act deliver a strictly limited right to publish to the Australian market. It allows publishers sufficient confidence to invest in publishing and marketing titles for Australian readers without compromising the opportunity for any Australian consumer to obtain any published work from anywhere in the world. The parallel import restrictions that now apply are a case study of effectively balancing interests for an optimal outcome. Changes over many years have removed any earlier problems of delay.

There is no need for change. Implementing the Committee's proposal would create a risk of likely harm that would be difficult to reverse in pursuit of an unlikely benefit.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M. Gordon-Smith' with a stylized flourish at the end.

Michael Gordon-Smith  
Chief Executive