



**Response to
Competition Policy Review Final Report
May 2015**

t: 02 9394 7600
f: 02 9394 7601
Level 15, 233 Castlereagh Street
Sydney NSW 2000
e: info@copyright.com.au
www.copyright.com.au
ABN 53 001 228 799

1 INTRODUCTION

Our response focuses on implications of the recommendations in the Competition Policy Review Final Report (the Report) for Australia's copyright system.

We made submissions to the Competition Review Panel in response to its Issues Paper and Draft Report. We have not repeated all aspects of those submissions here, but they remain relevant given that the recommendations affecting the copyright system in the final report are substantially the same as those in the Draft Report.

We have repeated here the summary of our position from our response to the Draft Report. There are details on each point in our submissions to the Review Panel.

We have also set out in this submission some assumptions in the Report that we contest, calling into question the basis for recommendations in the Report.

2 SUMMARY OF POSITION

- a further review of copyright by the Productivity Commission is not warranted, particularly given the government has already announced its intention to simplify the copyright system;
- the government's negotiations on intellectual property (IP) issues in trade agreements currently occur with stated objectives;
- repeal of section 51(3) of the Australian Consumer and Competition Act is not warranted; and
- further amendment to the provisions in the Copyright Act covering importation of books is not warranted, particularly given the provisions were reviewed as recently as 2012 and an industry arrangement is now in place.

3 ASSUMPTIONS UNDERLYING THE RECOMMENDATIONS

We agree with many of the statements in the Report about copyright policy and the copyright system, such as:

- *Access to and creation of intellectual property (IP) will become increasingly important as Australia moves further into the digital age.*
- *Our IP policy settings should encourage [the use of] technology to its full extent in our business production processes and as end-consumers.*
- *An appropriate balance must be struck between encouraging widespread adoption of new productivity-enhancing techniques, processes and systems on the one hand, and fostering ideas and innovation on the other.*
- *The IP system should be designed to operate in the best interests of Australians.*

But there are assumptions underlying the recommendations that we contest.

3.1 Assumption 1: IP protection is 'excessive'

Excessive IP protection can not only discourage adoption of new technologies but also stifle innovation.

We note the following about Australia's copyright system:

- The copyright system is designed to encourage the sharing of and re-use of ideas and information: copyright only applies to certain forms of creative output, not the underlying ideas and information;
- Australia's copyright system has a very large number (by world standards) of exceptions and statutory licences that enable socially desirable uses of content without the permissions usually required.

3.2 Assumption 2: IP protection 'stifles innovation'

Excessive IP protection can ... stifle innovation.

- The copyright system is designed to, and does, promote innovation by enabling return on investment in creative output;
- It is not in Australia's interests to sacrifice support for the creation of new content to the ambitions of business models based on the uncompensated use of other people's content

3.3 Assumption 3: The copyright system requires review

The Panel therefore considers that Australia's IP rights regime is a priority area for review.

Australia's copyright system is actually working well in most respects. It is not fundamentally 'broken' or out of date. Most aspects of it are 'technology neutral', particularly given the Digital Agenda amendments in 2000. Certain details of the legislation may appear to be old fashioned at face value, but they do not impede the day-to-day licensing and other business arrangements that are built on the core aspects of the regulatory environment.

The copyright system supports major contributions to Australia's economy. A recent study conducted by PwC found that copyright industries were Australia's fourth largest industry.¹ In 2014 copyright industries employed over one million people (8.7% of the workforce), generated economic value of \$111.4 billion (7.1% GDP) and generated over \$4.8 billion in exports (1.8% of total exports).

The licensing solutions managed by Copyright Agency enable copying and sharing of content by millions of Australians, without the individual copyright clearances otherwise required, including more than 3.6 million school students, one million university students, 260,000 school teachers, 100,000 university staff, and 820,000 government employees. In 2014, this licensing delivered \$103M to more than 7,600 content creators.

The Report assumes rather than makes a case for change. In making a case, regard must be given to the costs of change as well as any benefits. Calls for review of the copyright system invariably overstate the benefits (partly because they give inflated importance to minor issues) and understate the costs (partly because they ignore the myriad business and other arrangements that operate on the foundation of the current system).

3.4 Assumption 4: Legislative change is required

There is increasing recognition internationally that developing the copyright system to both accommodate and harness technological change requires measures other than legislative change. A key recommendation of the 2011 UK Hargreaves report, accepted by the UK Government, was a 'digital copyright exchange'. This proposal has since developed into the Copyright Hub,² an industry led project with technical support from the UK Government. The Hub is extending its global reach

¹ The PwC study is available at copyright.org.au.

² <http://www.copyrighthub.co.uk/>

through an alliance with Copyright Agency in Australia. There are similar developments elsewhere, including a recent meeting hosted by the US Patent and Trademark Office³

3.5 Assumption 5: Productivity Commission can formulate overarching IP policy framework

We agree that an overarching policy framework has been missing from inquiries such as the recent one by the Australian Law Reform Commission into copyright and digital economy. Having said that, we do not think the Productivity Commission is the right body to formulate a framework for copyright. The right framework needs to take account of a range of social, cultural, legal and economic issues that are beyond the particular expertise of the Productivity Commission.

3.6 Assumption 6: No objectives for negotiation of international trade agreements

From our experience of dealing with governments on international trade agreements, the government's objectives for copyright seem reasonably clear: better opportunities for export of Australian copyright-based products and services. At the same time, apart from the Australia–US Free Trade Agreement (AUSFTA), Australia's negotiating position has been to seek provisions that do not require amendment to Australia's copyright legislation. Even the changes that resulted from AUSFTA were more beneficial, and less costly, than often recognised.⁴

4 ABOUT COPYRIGHT AGENCY

Copyright Agency is a not-for-profit copyright management organisation. It has more than 27,000 members, who include writers, artists and publishers.

Copyright Agency is appointed by the Australian Government to manage statutory licences in the Copyright Act for educational and government use of text and images, and to manage the artists' resale royalty scheme. It also offers a range of other licences as non-exclusive agent for its members, including to the corporate sector. These licensing arrangements enable copying and sharing of copyright content by millions of Australians without the individual permissions that would otherwise be required. The licences also deliver about \$100M in copyright fees and royalties a year to more than 7,500 content creators.

Copyright Agency is a member of the Australian Copyright Council, and endorses its response to the Report.

5 FURTHER INFORMATION

We would be happy to provide any further information that may be of assistance.

³ <http://www.uspto.gov/learning-and-resources/ip-policy/copyright/facilitating-development-online-licensing-environment>; see also <http://www.copyright.com/2015/05/improving-licensing-should-not-be-alarming>.

⁴ For example, the Joint Standing Committee on Treaties report on AUSFTA referred to cost estimates for the extension of the period of copyright protection by Dr Phillip Dee. The estimates were, however, based on an obviously flawed premise: that there is a constant flow of royalties throughout the period of copyright protection. On the other hand, data collected by Copyright Agency showed that 70% of works used under its licences were less than 10 years old, and that works whose authors had died between 50 and 70 years previously made up only 0.02% of material copied.

Libby Baulch
Policy Director