

**THE EXAMINATION BY THE PRODUCTIVITY COMMISSION OF THE PROVISIONS OF
THE *COPYRIGHT ACT* 1968 THAT RESTRICT THE PARALLEL IMPORTATION OF
BOOKS INTO AUSTRALIA**

SUPPLEMENTARY SUBMISSION BY ZEPHYR MUSIC PTY LIMITED

1 OBSERVATIONS ON THE DISCUSSION DRAFT (March 2009).

1.0 Zephyr acknowledges that the Commission has chosen to interpret the word “book” as having the meaning the Copyright Act gives it in Sections 44A(9) and 112A(9), and that consequently, the effects of the current parallel import restrictions on the trade in books containing musical works did not form part of the present Study.¹ For simplicity in this supplementary submission we will use the term “*book*” to mean a book containing a literary work or works, and the term “*printed music*” to mean a book whose main content is a musical work or works.

1.1 The Draft Recommendations would allow the parallel importation of books after twelve months from the date of first publication in Australia. However, printed music would be excluded from this new and welcome concession by the same definitional mechanism that excludes it from the current 30/90 day concessions.² Therefore, if the Draft Recommendations were implemented, printed music would become even more heavily parallel import restricted relative to books than is the case under the current law.

1.2 Section 135ZL allows Australian educational institutions to make multiple printed reproductions or photocopies of copyright works without infringing copyright if, among other things, the work “*cannot be obtained within a reasonable time*”.

Section 135ZL makes no distinction between classes of books based on content. It simply refers to “*works that are in hardcopy form*”.

Therefore, if the Draft Recommendations were implemented, the obligation to supply works “within a reasonable time” would continue to apply **equally** to booksellers and printed music sellers, but booksellers would be in a much better position to meet the “reasonable time” requirement. Printed music sellers, on the other hand, would be left completely dependent for supply on parallel-import-protected importers with no access to a procurement safety mechanism in the form of the current (30/90 day rules) or the proposed twelve month PIR expiry recommendation.

¹ See “Restrictions on the Parallel Importation of Books – Discussion Draft March 2009” at page 1.4

² i.e. Sections 44A(9)(a) and 112A(9)(a)

2 **REQUEST FOR INCLUSION OF AN ADDITIONAL RECOMMENDATION IN THE FINAL REPORT.**

- 2.0 The anomalies highlighted above impede the supply of printed music to Australian consumers and clearly need to be addressed. If the Draft Recommendations were implemented, the disparity between the regulatory treatment of books and printed music would become even wider than it is under the current law. This would not seem to be an intended consequence of the Commission's recommendations.
- 2.1 It is unjustifiable and not in the public interest for Australian consumers and Australian educational institutions to have their access to overseas-published printed music much more heavily protected against parallel importation than books.
- 2.2 In our Initial Submission we said that because the nature of the copyright subsisting in musical works and literary works is essentially the same, it was unnecessary for the Copyright Act to treat the material forms of these two classes differently in relation to parallel importation restrictions. In the Discussion Draft, the Commission "*acknowledges that the arguments put by Zephyr have some merit.*"³
- 2.3 For above reasons, we respectfully request that a recommendation be added in the final report along the following suggested or similar lines:

“Before any implementation of these Recommendations, the definition of the term “book” given in Sections 44A(9) and 112A(9) should be reviewed with the aim of determining whether a more uniform system for the regulation of parallel importation could be implemented that does not discriminate between books on the basis of the type of copyright works that they contain.”

Thank you for considering our comments.

DATED: 14th April 2009

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Peter Evans
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³ Discussion Draft page B.2