17 April 2009

Wiley Australia:
Submission #2 to the Productivity Commission:
Copyright Restrictions on the Parallel Importation of Books

Wiley Australia publishes and sells books into three major markets in Australia: Higher Education, Professional/Trade and School. Due to the different dynamics of these three markets, and our position within them, our response to the proposed changes to the current Parallel Importation Restrictions—as per the Productivity Commission's Discussion Draft Report of March 2009—varies significantly between them.

Overall, we are concerned that a range of recommendations have been made despite the acknowledged lack of data about the Australian publishing industry. We agree that there is scope for improved service to consumers in some areas of the industry. However, we seriously question that potentially far-reaching changes are being proposed despite a foundation of flimsy evidence. Further, we have specific comments on a market-by-market basis:

1 **Higher Education (H/E)**: about two-thirds of our revenue is earned from the sale of locally-created and published titles and the balance from the sale of imported Wiley and agency titles.

The majority of the Discussion Draft focuses on the Trade market. The Higher Education market operates very differently to this and we are concerned by what we perceive as a lack of understanding about this market, and the consequent mis-placed assumptions and recommendations for change.

We have summarised these concerns at the start of Appendix 1, and provided further details in the rest of the Appendix.

2 **Professional/Trade**: about one-third of our revenue is earned from the sale of titles that we create and publish in Australia; the other two-thirds is earned from the sale of Wiley and agency titles that are published overseas.

As stated in our January submission, our pricing, supply and customer service strategies are markedly different to other players in this market. Indeed, specifically on the pricing front, we price our imported titles as close to parity as possible, with a small buffer to cover the costs of bringing the stock into Australia from the country of publication (primarily the US and the UK). Indeed with the recent strengthening of the Australian dollar against the UK pound, we are planning to reduce the recommended price of our UK titles shortly.

We therefore believe that we are already providing an excellent service to the local market in terms of all three of these key service metrics, as was noted by key independents Readings and Gleebooks in their joint submission.

While the widespread perception that far too many imported titles handled by other publishers have recommended retail prices that are too high and that the availability of them is poor, we don't support the proposed changes to the PIRs as the way to achieve this. Why? Because we don't believe the proposed changes will deliver the outcomes being sought, and will actually have a detrimental effect on a publisher like Wiley which (without wishing to sound like a paragon of all the virtues) is already meeting the stated aims of the proposed changes, and meeting them well.

Our concerns remain as we outlined in our January submission. Specific to the recommendations in the Discussion Draft:

- The intended removal of the PIRs one year after publication will add significant cost and workload to the industry, as both publishers and booksellers will have to manage differently the supply of titles that fall either side of this divide, and also monitor when individual ISBNs change from one category to the other.
- The removal of PIRs after one year will significantly change the dynamics regarding the supply and sale of backlist titles. It is likely that many booksellers will try to source these titles from overseas-based suppliers. Whilst it could be argued that booksellers would still come to Wiley Australia for our titles due to our pricing/supply/customer service strategies, the reality is likely to be that the booksellers simply don't have the time and resources to treat us differently, and so would go to those overseas-based suppliers for our titles as well. Whilst revenue would still flow to Wiley as a global corporation under this scenario, this change could result in significant loss of revenue to Wiley Australia, which would force us to scale back our operations in this country.

3 **School** (in which we operate under the Jacaranda brand): all of our revenue is derived from the sale of titles (print and digital) that we create and publish in Australia for the Australian market, and we export only minimal amounts of these titles. Therefore, the proposed changes are not likely to have any impact on our activities in this market.

In summary, whilst we don't believe that the proposed changes would have any impact on our School operations, we believe that they could have a highly detrimental effect on our Higher Education and Professional/Trade operations, and on other players within the Australian industry, including other publishers, authors, booksellers, printers—and the consumer.

We are therefore strongly opposed to the proposed changes being recommended by the Productivity Commission.

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Appendix 1: Wiley Australia's Higher Education group: Concerns about the Productivity Commission's Discussion Draft

Executive Summary

- The draft report is very flawed and its implementation will be bad for not only publishers and therefore for jobs in this industry in Australia but also for campus bookstores. More importantly however these changes will seriously affect lecturers and the ultimate consumer, students. I'm sure that is not the intention of the Productivity Commissions draft recommendations but it will be the outcome.
- There is a willingness by the Productivity Commission (PC) to make draft recommendations without sufficient pricing evidence. In the H/E market it has not been established that prices are higher. Further, this link to higher prices in H/E seems to be made on the tenuous thread that Higher Education publishers have monopolistic tendencies because of the adoption process but this assumption is wrong.
- There's an assumption that all sectors of the market work in the same way; the Higher Education market is very different from the Trade and School markets and this should be recognized and taken into account in the paper and recommendations
- There is a lack of understanding of key elements of the Higher Education market and how they work. For example:
- it is a referral market (publishers 'sell' directly to lecturers who then decide what text to use and then the lecturer advises the campus bookstore what text to order from the publisher)
- the H/E market has lots of cheap (e-books, second hand books) and free (borrowing from the university library, photocopying chapters) substitutes which compete.
- lecturers rely on teaching and learning resources which are supplied free to the lecturer on adoption of the textbook etc.
- There's an assumption that Asia is one market when it clearly has as many markets as there are countries. The report also assumes Asia is a producer when it's only an intermediary subsidised via books published in thriving overseas markets such as the US, UK—and Australia. It adds no value on the way through if texts were allowed to legally come back into Australia.
- It assumes campus booksellers will pass on savings they may be able to make by sourcing from cheaper suppliers. At best there may be some cheaper textbooks on offer at various times (this can occur now when campus and offsite bookstores have student discounting wars) but the main supply chain at the beginning of the semester period will be so chaotic that students will be unable to get textbooks at critical times. Because of the lack of certainty that will be created in the market, publishers will not bring in their large bulk orders for fear they won't sell the stock and will have to write it off. Publishers will not subsidise campus bookseller to cherry pick especially given we don't believe campus booksellers will lower their prices below the Australian RRP. Lecturers and students have no real understanding of what goes on behind the scenes to get a textbook to market and will not know the value of that certainty until it is gone! The occasionally cheap textbook will be countered by students not being able to access the right textbook at critical times. There are only so many secondhand copies in the market and so many copies of the text in the university library.

Submission

Throughout the Productivity Commission's report, the position taken assumes the PIRs for books benefit publishers, authors and printers but impose costs on consumers. These costs for consumers are reportedly from upward pressure on book prices, in at least some sectors of the market. The Commission has taken a major leap to get to this position as there are no statistics to verify this save some cobbled-together pieces of data that are at best suspect. To make the link on such tenuous evidence is dangerous and I find it extremely disappointing. Frankly, I would have expected more of the Commission. If you don't have the data then surely it is prudent to not recommend any changes right now but seek funding to gather the data and then come to a recommendation based on facts. The Commission doesn't have to bear any consequences from their recommendations but the industry does. There is an unnecessary risk being taken with the recommendations that have been put forward; a risk that even the Commission admits may a) deliver little return to consumers and b) cause the industry to contract. It seems to be sufficient to the Commission that there is the possibility (but not necessarily the probability) for some benefits to consumers at particular points in time but it assumes all other things remain constant. I contest they won't and that there are many interplays here that warrant waiting for better information on which to make a sound argument for any perceived need for change.

There are also many incorrect statements, not fully qualified statements, as well as misunderstandings or incomplete statements in the draft report which I feel need comment. I haven't been able to list them all here because there are just too many but here are the most important ones.

1: Overview xv - Last para. This is misleading. Higher Education publishers are specialist suppliers but in this same vein so campus booksellers are specialist retailers. Campus bookstores have few competitors especially those universities in the suburbs of major cities or in regional areas. Some city campus universities do have off site bookstores competing with the campus bookstore but most of these competitors are only interested in stocking small quantities of first year texts and nothing else. Just because a text is prescribed doesn't make it more susceptible to monopolistic pricing practices by publishers. It's more likely that the campus bookstore would adopt this practice rather than publishers. In the big first year undergraduate courses publishers face fierce competition to get their text adopted (prescribed) and part of this process is a negotiation on price.

If you were to interview first year coordinators in any of the non-humanities subjects (eg the sciences and business) they would give you a clear picture of just how competitive it is. While the publisher does set the price of a text book when it lands in Australia or when it first publishes in Australia, it is always priced within a range around our competitors' prices. If we are more than $10 above our competitors then first year coordinators will not even consider adopting the title unless they can see some very special added value for the student. We'll be told to come back when our price is more acceptable. So this is where the price is determined not after it is prescribed. This is the price that the text is sold by the publisher to the campus bookstore ie at the ARRP (Australian Recommended Price) that was agreed to with the lecturer. The campus bookseller's standard trade discount is then deducted from this price. This ARRP is just that though….a recommended price and campus booksellers are under no compunction to charge it.

We do not wield market power such that we can charge whatever we like. We are not immune to our end customers' (students) ability to pay. If our prices are too high they will look to substitutes eg second hand books, library copies, photocopying or an overseas online retailer and these are increasing, not decreasing. In addition to this, piracy of illegal and legal editions from Asia is increasing as is illegal commercial copying of textbooks in Australia. Additionally many of the first year hard science books eg mathematics and physics are very homogenous, commoditised products with any differentiation happening through publishers offerings of free teaching and learning resources. That means students can substitute one publisher's first year text for another in some subjects. Additionally the lecturer sometimes tells students to use a prior edition of the text if they can't afford the new edition of the text. In reality there are many substitutes so these all keep downward pressure on prices and, along with foreign exchange fluctuations, keep a firm downward pressure on our profit margins too! To suggest throughout the draft report that consumers pay more for textbooks, because of non-competition, without qualifying this sector of the market is very misleading.

2: Page xix – 5th para. Asia is referred to as one market. However in the many different countries in Asia, each has its own price threshold for Higher Education texts. In Singapore where people are wealthier the price is higher, in the Philippines where people are still relatively poor the price is very low. Prices can range from US$5 toUS$40. The suggestion of an average price for the region simply reinforces the Commission's lack of understanding of this area.

There are also other larger issues surrounding copyright protection and piracy. In some countries there are no legal protections against piracy. Over time this is getting better however if texts are priced too expensively (ie they are out of reach of the student) then increased piracy occurs. Price setting in Asian countries is a fine balance taking into account a student's ability to pay and a country's legal and regulatory system.

Wiley is only able to offer cheaper (priced-to-market) textbooks in certain Asian markets because of the thriving Australian industry. Any income generated in Asia is additional to the sales in Australia where we can recoup our costs, and these low prices are not sustainable without the revenue generated by sales in Australia. Should Wiley sales to booksellers in Australia be jeopardised by imports from Asia, we would have no choice but to no longer supply books into Asia, and lose these sales completely. It is therefore a false argument of the Commission's report to say that cheaper books from Asia are a potential advantage of the removal of PIR.

3: Page xix – 6th para. Distribution could be improved? In what way could it be improved in the Higher Education sector? The highly competitive nature of the HE sector has meant supply has improved considerably over the last 10 years as the UniCoop statistics clearly show.

4: Page xxi – inflated cost structures and inefficiencies in parts of the supply chain. Once again what evidence is there in the H/E sector for this statement?

5: Page xxiii – last sentence: Price pressure is limited and cultural externalities are not apparent. The first point is wrong. As outlined above we experience fierce downward pressure on prices. The second point doesn't recognise that a significant amount of textbooks are now locally published, be they fully indigenous or heavily adapted US textbooks. US texts need to be adapted to local editions to provide the local market with relevant material for a number of reasons including:

a) Regulatory and legal (local disclosure requirements around international accounting standards, local financial regulations, employee benefits and superannuation etc),
b) Cultural and social conditions (such as a small open economy with non head office locations versus US texts which refer to a large dominant economy with many head offices; economic data; management practices; human resource practices; in psychology this will include domestic health and social policy along with content specifically around indigenous issues) and
c) Curricula differences (eg. the first year course for chemistry includes much more organic chemistry than in the US).

6: Page 2.6 last para. The information in this paragraph is confusing and is mixing School and Higher Education selling practices which are very different. There are no national or state teaching curricula for Higher Education courses. Guidelines are given by professional bodies for accreditation to enter their professional bodies but they do not set a curriculum.

7: Page 4.13 2nd para: Quotes lots of Trade book statistics but no textbook statistics. One cannot help wonder if this is because the textbook examples do not show that PIR's have a tendency to put upward pressure on price. Additionally in the fourth paragraph on this page it refers to the price gap narrowing and potentially reversing when the Australian dollar is weak. It has to be recognized that publishers cannot be changing their prices daily as the exchange rates change. A 'best guess' of the forex rate needs to be estimated to set prices for the next 6-12 month trading period to ensure prices do not change constantly. If prices go up and down constantly booksellers complain as this can create a lot of administrative work so some stability over prices is always required.

8: Page 4.14 – first para. There would be opportunities, at least from time to time'. This may be so but the cost to consumers is not tackled here. The amount of chaos created by opening up the supply chain will mean there are, at least in theory, occasional opportunities to get a cheaper price from time to time but if a majority of students cannot get the text book they need for their course when they need it (ie at the beginning of term) then how does the consumer benefit?

9: Page 4.15 – last para. Why would publishers have incentives to set a joint price for developing countries in Asia and Australia? The local investments we make for publishing, marketing and sales are at Australian salaries and this business is not sustainable in the long run at lower retail prices. We would be more likely to close down operations here and operate out of Asia. This is a very naive statement by the Commission. It also refers to Asia if it is just one country, yet each country is culturally diverse and each country has its own economic system. There is not one Asian economic system and that means there are different prices in each country and there is not just one Asian price.

10: Page 4.19 – 5th para. Geographic price discrimination. Asia doesn't have the expensive first world costs eg human capital nor does it invest in publishing unlike the US, UK and Australia. We are subsidizing the Asian prices. It doesn't work the other way around because they have nothing to sell back into Australia, except books they have imported from the US, UK or Australia that have been sold (at 'priced to market' levels) to those markets by the US, UK and Australia. It would be different if they had their own indigenous publishing programs and they were just cheaper producers than Australia…but they are not.

11: Page 4.21 second para. Asia could also serve as a greater source of books more generally in the future; but it doesn't publish anything: it is only an intermediary market, that would take a margin on the way through to selling into Australia, with no value add, with profits being shared by Asia and the originating publisher rather than by Australia and the originating publisher.

One of the other issues about Asian supply is that almost all Australian universities have twinning arrangements with Asian universities eg Monash with Malaysia, VUT with Viet Nam etc. When an adoption decision is made for the Australian university, let's take Monash for example, the lecturer at say Monash Clayton campus will ask us what the price of the text will be in Malaysia. To get this price we work with our Asian colleagues and ask them what would be a reasonable price in Malaysia and relay that to the lecturer at Monash University in Clayton. Once this has been agreed then we ship the required stock to our Singapore operation which then sells it through a distributor or directly to the Malaysia campus bookstore to satisfy that campus's requirements and our Asian operation handles the billing to the customer for this.

In many countries in Asia we work with intermediaries because a traditional model as in the US, UK or Australia is not viable financially. This means that intermediaries could also supply campus bookstores in Australia without us being aware of it. This is not so much an issue now because campus booksellers in Australia order through the Australian publisher but reimportation of this nature into Australia, which is now illegal, will be legal under the draft recommendation.

One of the points continually made throughout the draft report is that the restrictions have efficiency costs, including the transfer of income from Australian consumers to overseas authors and publishers. By trying to 'solve' this supposed efficiency cost will mean a transfer of income from overseas authors and publishers (perhaps now in the US and UK) to another group of overseas beneficiaries eg distributors/intermediaries in Asia. All this is doing is changing which country gets the overseas income while trying to give local consumers a lower price (which is highly laudable) but which is by no means guaranteed. The Commission accepted that prices are generally lower in Australia than in the US or UK and there is no guarantee that if campus book shop retailers are able to source cheaper texts from somewhere else that they will pass this lower price on to students. In some ways it is almost guaranteed that they will not do so. They can only hold one price in their systems at any one time.

Imagine a scenario where there are 1000 students enrolled in a course. The campus bookstore plans to buy in 800 copies in total because they know that not every student buys a textbook (some share, some go to the library, some buy second hand textbooks and some do without altogether). They order 600 from Asia at a lower cost than they can source in Australia but they also order 200 copies from the Australian supplier so that they can keep their returns rights and have the ability to top up stock quickly should enrolments be higher than expected. Which price do you think they will hold in their system; the ARRP, a price based on their costs of accessing stock from Asia, or an average of the two? There is a very high probability that the price will be the ARRP because campus bookstores do not like constantly changing prices….and neither do students.

This cherry picking just gives the campus bookstore more profits and doesn't help the consumer at all….in fact the consumer will undoubtedly be worse off because textbooks will not be freely available in Australia as they are today. Publishers order by air and sea freight their requirements for Semester 1 in September, October and November so that the stock can be supplied to campus bookstores during October through January for start of semester 1 in late February. If publishers have no certainty of knowing what they will need to supply to campus bookstores they are not going to take the risk of ordering in stock before orders come into from the campus bookstore. We do now because we know the campus bookstore will eventually order from us but we will not know this in the future because the campus bookstore may try to get all its stock from another source.

As a bit of background here our reps record all adoptions they win as they work the market around the country from June to November. As adoptions come in we adjust our orders on our suppliers for stock (whether that be ordering from the US or UK or ordering a reprint of a locally-published title – all of these have varying lead times). If we had to wait until the campus bookstore placed their order there would never be sufficient stock in our warehouse. We take an educated guess on quantities and bear the landing cost and risk of stock write offs if we get this wrong.

The proposed changes to the current system will mean that students are likely to be without textbooks at various times. A few students might be able to get a cheaper priced book very occasionally, if at all, but what's the point of cheaper potential prices for textbooks if the majority of students can't actually buy their text (even at the ARRP) when they need it. How can anyone argue with the basic thrust of trying to achieve cheaper priced texts; it's something we strive to do ourselves by providing cheaper alternatives eg e-books at half the price of the printed textbook. However if a student wants a printed text, it costs more to produce and there are supply chain costs that are built into that product to ensure it's in place when required.

12: Page 5.9 3rd para. The comments made in this paragraph shows a clear misunderstanding of what support materials actually are. This is not something that is in a bundle that students buy. There are no costs to students for teaching aids.

There has been a long history of publishers supplying teaching support materials. Initially this took the form of solutions to end of chapter questions. In the early days the author (and there was generally only one author on a title) would write the text or adapt the text and supply the solutions to the text also. The book would be sold in the normal way and the solutions would be given to those lecturers who adopted the text….the solutions would be provided for free.

We have moved a long way from those simple days. Nowadays first year texts are often authored by 3-4 academics because lecturers are simply too busy to write a complete work. Lecturers have so many calls on their time from increased class sizes (meaning more students to teach and therefore more questions and queries), more mixed classes of students (major, non majors, good English speakers, poor English speakers and students of various levels of knowledge are now all in the same classrooms - which creates a whole raft of issues), the need to continue researching to get any promotion as teaching is not seen as prestigious a path in universities as researching, and the general lack of support staff (or if there is support staff it is very casualised and open to being cancelled at any time). This has meant more and more pressure has been placed on publishers to supply teaching and learning aids. If we want the business, then lecturers demand these teaching and learning resources or they won't adopt the text.

This support material now consists of not only solutions to end of chapter questions, but also teaching notes on how to motivate the classroom; banks of test questions in different formats eg multiple choice, fill in the blanks, essay style etc with level of difficulty assigned, computerized Test Banks so lecturers can build assessment quizzes each week or build final exams; PowerPoints (some with video and questions and answers surrounding the video), right up to the more sophisticated Learning Management System cartridges which provide a whole suite of integrated resources week by week and mobile phone polling software.

The commissioning, editing and compilation of this material is paid for by the publisher. Publishers spend money organizing to video, or paying for permission to use for example ABC footage, they pay other academics to write up questions and answers around the video, they pay academics (not the authors as they are usually exhausted after writing the text) to write banks of questions (some of these Test Banks consist of thousand of questions). This all can cost a lot of money. It is true that ultimately all of this cost is reflected in the price of the text. All publishers are faced with this distorted business model because of lack of university funding or even lack of university recognition that this happens. It's a bit 'out of sight out of mind' for the universities.

The price of textbooks is set knowing that we will have to supply (without these academics will not even consider a publisher's textbook) varying levels of teaching and learning support to academics depending on the subject, the lecturers' own needs and the size of the class. That means the price of the text is the same price whether lecturers utilize the resources or not. While it is true that the price must reflect a component of these costs, it is also true that publishers have been supplying an increasing amount and sophistication of support material to lecturers to win business from competitors. If you don't have a suite of teaching and learning resources, a publisher hasn't a chance of winning any business. Publishers have been able to invest in teaching and learning resources so long as they gain market share. However, growth in university enrolments has been very sluggish over the last 5 years, with any real growth coming from international students. This has meant publishers have operated in a highly competitive market-share business and to win the adoptions we have needed to provide innovative teaching and learning solutions to lecturers.

13: Page 5.9 2nd para. 'Little scope for consumers to choose between texts'. This statement shows a lack of understanding of how the textbook market works. Lecturers do not want consumers (students) to choose between texts….if they did they would list down the alternative texts from which a student could choose. Lecturers want students to use the text they think best suits the topics they will cover in their course. The lecturer's textbook decision can be based on a number of things; the general approach of the text; the currency of the text; a closer matching of topics in the book against the course outline; the text being written by the expert in the area or someone the lecturer really admires; it having better teaching and learning resources - or it could be the price is cheaper. A lecturer will base their decision on a few of these things or all of these things. Additionally if a lecturer chooses a text that is not closely aligned to the course, students get very annoyed and will not buy the text and they just photocopy the relevant sections. So to say that students have little scope to choose between texts is not wrong but lecturers have a broad and competitive array of titles available to them, and they prescribe a text book based on a number of reasons. Students do have a choice however, and that choice is either to buy or not to buy the prescribed text. There are many cheaper or free alternatives to choose from as outlined previously.

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