

20 April 2009

Jill Irvine
Parallel Importation of Books Study
Productivity Commission
GPO Box 1428
CANBERRA CITY ACT 2601

By email to books@pc.gov.au

Dear Ms Irvine

Parallel Importation of Books Study

The Law Institute of Victoria (LIV) welcomes the opportunity to comment on the Productivity Commission *Restrictions on the Parallel Importation of Books* Discussion Draft (the Study).

The LIV represents over 14,500 Victorian members and has an extensive history of involvement with Australia's free trade agenda. This involvement includes:

- (a) provision of submissions in respect of completed and prospective FTAs with countries such as Singapore, the United States, Thailand, China, Mexico, South Korea, Indonesia, Chile, UAE, GCC and India;
- (b) engagement in meetings with representatives of the Department of Foreign Affairs and Trade (DFAT), regarding negotiations on various FTAs; and
- (c) participation in the "China Working Group" conducted by the International Legal Services Advisory Council, regarding negotiations for the Australia - China FTA.

The LIV recognises that there are both costs and benefits arising from Parallel Importation Restrictions (PIR) on Books, including both economic and cultural factors. The Study notes that measuring the magnitude of any actual price effects caused by Australia's PIRs is problematic and that the cultural value of books may be greater than the market value. We consider that the Study has undertaken a comprehensive and fair assessment of these costs and benefits.

The current PIR arrangements provide that Australian rights holder must release the book in Australia within 30 days of it being published elsewhere in the world, and must maintain a capacity to resupply it within 90 days, to qualify for PIR protection. In Part 7 of the Study, the Productivity Commission proposes that Australia's PIRs for books should be modified as follows:

- PIRs should apply for 12 months from the date of first publication of a book in Australia. Thereafter, parallel importation should be freely permitted;
- If a PIR-protected book becomes unavailable during this 12 month period, then parallel importation should be freely permitted until local supply is re-established, or the expiry of the 12 month period allows for generalised parallel importation.

- Booksellers should be allowed to overtly offer an aggregation service for individual orders of imported books under the single use provisions.
- New arrangements should be reviewed five years after implementation
- All other aspects of the current PIR arrangements should continue unchanged, including the 30 day rule.¹

The LIV supports these draft recommendations.

We note that the draft recommendations do not detract from basic intellectual property (IP) protections. The Study assumes that publication is undertaken with the consent of the IP right-holder and that the IP right-holder receives financial benefit. We consider that the draft recommendations constitute a useful and fair balance by retaining rights for IP rights-holders against breaches whilst facilitating the supply of the books.

The Study notes that other industries that have had their PIR removed, such as music, computer software and clothing, do not appear to have suffered major detriment due to the removal of the PIRs.²

The LIV notes concern that removal of PIRs for books might increase scope for piracy, by reducing a publisher's control over the supply chain. We agree that better enforcement of core copyright provisions is the appropriate policy to deal with this risk. However, we stress that government must provide adequate resources to Customs to improve its capacity to administer the Notice of Objection scheme, established under the *Copyright Act 1968*,³ which allows for seizure of imported goods by Customs and assists IP rights-holders to enforce their rights. We would also recommend that additional resources also be provided to the Australian Federal Police who also have a responsibility and role in terms of intervention against pirated goods.

We note that the draft recommendations might require changes to the Notice of Objection Scheme and we recommend that the Productivity Commission consider further its relationship with PIRs.

Please contact Laura Helm, Policy Adviser, International Law Section on (03) 9607 9380 or lhelm@liv.asn.au in connection with this matter.

Yours sincerely,

Steven Stevens
Acting President
Law Institute of Victoria

¹ Draft recommendations 7.1 and 7.2, Productivity Commission *Restrictions on the Parallel Importation of Books* Discussion Draft, p148.

² Discussion Draft, p91.

³ *Copyright Act 1968*, Div 7.