



Productivity Commission Draft Report: Intellectual Property Arrangements

AIIA Response

June 2016

Ground Suite B
7-11 Barry Drive
Turner ACT 2612

GPO Box 573
Canberra ACT 2601

T 61 2 6281 9400
E info@aiia.com.au
W www.aiia.com.au



Introduction

About AIIA

The Australian Information Industry Association (AIIA) is Australia's peak representative body and advocacy group for those in the digital ecosystem. We are a not-for-profit organisation to benefit members, and AIIA membership fees are tax deductible.

Since 1978 the AIIA has pursued activities to stimulate and grow the digital ecosystem, to create a favourable business environment for our members and to contribute to Australia's economic prosperity.

We do this by delivering outstanding member value by providing a strong voice of influence; a sense of community through events and education; enabling a network for collaboration and inspiration; and through the development of compelling content and relevant and interesting information.

We represent organisations nationally, including global brands such as Apple, Adobe, Avanade, EMC, Deloitte, Gartner, Google, HP, IBM, Infosys, Intel, Lenovo, Microsoft and Oracle; international companies including Optus and Telstra; national companies including Ajilon, Data#3, SMS Management and Technology and Technology One; and a large number of ICT SMEs.

Our national board represents the diversity of the digital economy. There is more detailed information on our [web site](#).

Overview

AIIA appreciates the opportunity to comment on this important issue.

In summary AIIA supports draft recommendations:

- 5.3 to replace the current fair dealing exceptions with a broad exception for fair use
- 18.1 to expand the safe harbour scheme to cover the broader set of online service providers intended in the Copyright Act 1968 (Cth)
- 11.1 that business names should be linked to the trade mark register

Some members are concerned with draft recommendations:

- 7.1 to abolish the innovation patent system and
- 8.1 to exclude business methods and software from being patentable subject matter

Lastly, the AIIA is disappointed that there was no recommendation on stronger streamlining with international patent offices to address patent backlog and delays in processing times.



Comments

- AIIA strongly supports draft recommendation 5.3 on replacing the current fair dealing exceptions with a broad exception for fair use. We have consistently argued that copyright exceptions are not adaptive to technological change and should be broadened. It is heartening that the PC agrees.
- We also strongly support draft recommendations 18.1 on expanding the safe harbour scheme to cover the broader set of online service providers. We have argued that a safe harbour scheme that only applies to commercial ISPs puts Australia out of step with major trading partners such as the US, the EU, Singapore and Korea, and makes Australia a less attractive place to start up an internet company. This simple reform is long overdue and it is encouraging that the PC has come to the same finding.
- AIIA agrees that business names should be linked to the trade mark register to reduce the risk of unintentional infringement of trade marks by small business (part of draft recommendation 11.1).
- Some members are however concerned with draft recommendation 7.1 on abolishing the innovation patent system. As noted in our submission to the issues paper, while AIIA makes no recommendations on whether or not to abolish the system, we support all members in the market place including SMEs and start-ups having equal access to innovation and/or opportunities to innovate. SMEs make up the majority of Australian businesses and as such, policies to incentivise innovation among SMEs are crucial to Australia's prosperity.
- Our large members are concerned with draft recommendation 8.1 on excluding business methods and software from being patentable subject matter. In relation to the PC's information request 8.1: "what approaches or tests could be used to differentiate between inventions where the contribution of embedded software is trivial and inventions where the contribution of embedded software is genuinely deserving of patent protection? Should such tests be implemented in law or patent examination practices?":
 - The same members argue that there should be no new test or approaches. The concern is that, this will add undue expense and delay to the examination process. They argue patent examination tools already exist in law and the examination processes, such as novelty and obviousness tests.
- Lastly, the AIIA is disappointed that there was no recommendation on stronger streamlining with international patent offices to address patent backlog and delays in processing times.
 - Australia only has an official collaboration with the US Patent and Trademark Office under the Patent Cooperation Treaty. Stronger streamlining with the European and UK patent offices would further streamline the application process and reduce duplication of applications.

