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27 May 2016

TO: Productivity Commission
RE: Draft Report: Intellectual Property Arrangements April 2016

Cengage Learning Australia Pty Ltd (CLA) has a long history in publishing local textbooks, digital materials and student & teacher resource materials in Australia. CLA specific serves the Education market, with strong annual frontlist publishing each for the primary, secondary and tertiary market segments.

We directly employ over 200 fulltime staff, generate annual revenues in the \$50m to \$100m, range and have over 1,000 current independent authors and illustrators to which we periodically pay royalties to.

CLA is a member of the Australian Publishers Association and fully supports the stance of the APA in seeking to maintain current parallel importation rules and a rejection to introduce US style "fair Use" exceptions.

We are concerned that the push for an open market to import and the debate is too narrowly focused on the writing, publishing and bookselling of Trade books with too little thought on the impact on the Australian education publishing industry – a subset of the Australian book industry.

Secondly, proposed changes to move away from the current Australian "fair dealing" to a US style "fair Use" exception framework will have a number of negative impacts on the Australian education sector.

CLA wishes to make a number of contentions:

First, in our experience, and having regard to how we view the changing nature of educational materials and delivery mechanisms, any relaxation or removal of the parallel import restrictions will: -

- a. ***Transfer profits and therefore ongoing investment away from Australian education publishing to overseas.*** A negative impact of some significance for our tertiary education business by placing at risk the number of Australian education titles published, and the level of important support materials that are made available. There is substantial time and investment (staff & marketing costs) to maintain ongoing contacts with teachers and lecturers necessary to secure continuation of school and tertiary textbook adoptions. Across primary / secondary / tertiary, over 70% of our entire business is completely local publishing by Cengage Learning Australia. Thus the impact (whilst difficult to quantify) can only logically be negative to the overall education outcome for students studying at tertiary institutions, lead to a reduction in overall royalties flowing to local authors, and at best constrain, or at worst reduce, the level of publishing & sales employment positions CLA maintains in Australia.

- b. **Reduce the extra non-textbook resources that add to study enjoyment and improve academic results.** The current debate appears heavily weighted on the printed trade book. For education publishers whilst the book is core, it is far from the only publishing we provide to our customers as a combined package of resources for a specific purpose. We risk losing a great deal of the enrichment of total resources offered in both our tertiary and secondary school publishing business units. Yes, the printed textbook currently generates a significant percentage of revenue and core publishing profit. But for both these sectors, CLA (as do our local peers) provide considerably more to win and maintain adoptions – teacher materials, lesson plans, videos, dedicated website of extra material for each textbook, interactive learning objects, downloadable templates, up-to-date web links for further research, and similar. Purchasing the textbook is the key transaction, but it is not, by a long way, the full experience and range of material provided to the student (*to learn*) and the teacher/lecturer (*to teach*). There is no incentive for importers of just the textbook separately to develop, maintain and promote all the important ancillary resources and learning aids that reflect specific Australian conditions that a local publisher offers and willingly invests in. Providing support for these services would become a cost to the Australian publisher without any offset of income which is an unreasonable burden for a business.

For the education market there is a huge investment in local authors and development of local intellectual property across a variety of media platforms. We believe the Federal government's - strong focus on digital innovation in education implicitly assumes a continuation of the rich and varied local content being available to students from primary through to tertiary. Removal of parallel import restrictions will only negatively impact ability of publishers to take risks and invest in the sector however unwitting a consequence it might be.

- c. **Dumb down our position in pedagogical leadership particularly in primary literacy.** We see a real risk of erosion of our Australian culture and an acceleration of subservience to overseas sociological, linguistic and moral norms that applies quite prescriptively for primary and secondary school education delivery in other countries (and in the main – the USA). Most commentators tend to focus on the obvious linguistic examples such as “Mom” and “color” instead of “Mum” and “colour”. This occurs, but they probably don't represent the main cultural concern – certainly not for CLA and nor, I suggest, for the primary education publishing industry in Australia.

Australia has a strong multicultural history with high understanding and acceptance of world cultures. It may not be that obvious in the volumes of pedagogically based levelled literacy readers that are used in schools throughout a child's primary school years, but any reduction in Australian authorship and publishing of primary education readers in favour of imported (mainly US created and low cost Asian country exported) can only alter this balance to our country's disadvantage. Some examples, provided at appendix A may illustrate this contention better.

- d. **Provide unintentional impetus to increase imports of US higher education titles from foreign suppliers (not being the originating US publisher).** Many US titles are sold either as finished stock or rights to many countries at prices that reflect the relatively low cost of living and overall capacity to pay of the students in those specific territories, not to support a re-export operation where the business model doesn't have to pay royalties (or at a substantially reduced amount) to copyright owners, nor has to provide the ancillary support materials that are created around the core textbooks.

Over the last 20 years the Cengage Australia publishing operation has consistently grown and expanded, mostly organically rather than by acquisition. The clear hallmarks have been a

commitment to local publishing, close customer relationships, and a long term commitment to providing a local context for educational resources for students and teachers/lecturers.

- e. ***Unlikely have any price advantage effect and certainly not the same to all customers.*** The argument that the existing restrictions on parallel importation keeps prices higher to the detriment of the book customer is shallow and simplistic when viewed for the education publishing market. In fact, recent benchmarking of tertiary textbooks across the APA in 2016 indicate that Australian textbooks are competitively priced and in many instances lower in cost than any over English language market.

For the education publishing market – the books are to *educate first*, are strongly mandated (secondary) to be purchased or at least highly expected to be purchased (tertiary), and the customer is much more complex. Nearly all primary school book sales are to Schools (which recover 100% of the GST price component) or by teachers for their own reference (fully tax deductible to them personally). Secondary school books are purchased by schools (no GST ultimately paid) or by parents of students (education rebate available to many under their personal tax return lodgement). Tertiary textbooks are mainly purchased by students, some who may obtain a tax rebate under self-education expenses and in any event have an excellent opportunity (and do) frequently sell second-hand one year later.

So there can be no automatic assumption that lower prices, even if capable as a consequence to removing the restrictions on parallel importation, will give a similar advantage to all customers within the education publishing market.

- f. ***Threaten our vibrant primary literacy publishing industry.*** Australian education publishers (comprising small locally owned and subsidiaries of multi-nationals) have a long history of very successful development and export of literacy content worldwide. Australian literacy development is superbly represented across North America, Asia and Europe and translated into many other languages. The pedagogy is extremely well respected and the design is purposely relevant for all countries. This is a purposeful reflection that US and UK publishers have sufficiently large local markets to develop stories and use pictures and illustrations that strongly reflect their specific culture alone. Australian literacy publishers develop with a worldwide selling canvass in mind which means we understand the cultural nuances, idioms and correct ethnic depictions in illustrations and photography.

The industry is very concerned that we be “held hostage to our success” with Australian developed content rights sold widely across the world be reprinted cheaply and sold back into Australia at a lower cost purely because of the lack of development and author fees that were incurred by the original Australian publisher which needs to be recouped over time in the selling price

Secondly the Productivity Commissions draft report recommending a number of changes to the *Copyright Act 1968* including reduction in the terms of copyright and introduction of a US style “fair use” framework will have a number of negative effects within the industry.

- a. ***Current Copyright law has been working and provides certainty for creators and users.*** In publishing, copyright is the key principle by which creators, authors and publishers are compensated for their creative ideas and their investment. They take the risk with their inputs of time and effort and should be rewarded and protected for their investment.

The current legislative framework is built upon a solid foundation of copyright principles and has proven to be flexible and usable with the introduction of digital requirements. There are always new challenges but to literally throw out good, well working legislation and risk the introduction of greater uncertainty for all stakeholders is unnecessary.

The current fair dealing exceptions of work adequately cover areas including criticism, research, parody, news reporting and judicial proceedings.

b. *The removal or dilution of statutory licences will create a substantial level of administrative burden and also reduce investment capacity for content creators*

The Productivity Commission claims that statutory licences have a substantial regulatory cost burden and their demise would be inevitable with the introduction of US –style fair use provisions. The result of rights holders having to negotiate licencing on a one to one basis or disputing usage would be a highly disruptive costly exercise benefiting only legal practices and creating high administrative costs to both creators and users. Content creators in the education market rely on the income for investing back into new frontlist products and to encourage authors and creators to contribute to works. The profits from these licences inevitably goes back into the publishing environment creating new products and providing employment and building skills in the Australian publishing environment.

Statutory licencing provisions in place provide educators with multiple benefits including:

1. Access to a vast range of text and images from any source in multiple formats to be copied, shared or modified and incorporated for other uses. Over 1.5 billion pages of copyrighted material are photocopied or used digitally in some format across the educational sector each year.
2. Simple efficient sampling process limit any significant compliance costs for institutions to bear.
3. It is an efficient system and provides value for money with the 2014/15 stats licencing fees representing 0.12% of the governments education spend. These licences are simply just not a burden.
4. Statutory licencing provides some compensation to the authors and creators for the lost revenue due to copying whilst providing a balanced safe and clear legal method for people to access and disseminate copyright content. It is important to understand that because school texts follow a set curriculum (as opposed to a general course), that no-one buys a school text as a gift or as an impulse buy. Clear sequential sections of the text match exactly what a teacher needs to teach in any one period or a week or so of classroom time. Consequentially if extracts are continually used throughout the year under 'fair use' then the textbook purchase decision is clearly compromised and neither the publisher nor the author (creator) receives any commercial return for their professional endeavours. That is simply "*unfair use*".

c. *US "fair use" creates uncertainty compared to current Australian "fair dealing"*

The uncertainty and application of fair use has in the US led to increased litigation which has both unnecessarily added costs to publishers and content creators and wasted time and focus. Experience in the US demonstrates that despite over 40 years since its introduction legal cases continue and fair use is no clearer, simpler or better for striking a balance between creators and users rights. It is a regressive step to move from greater clarity to a place of uncertainty where the courts are employed and lawyers are hired to prosecute what is rightful use.

d. The US “fair use” proposed changes will stifle innovation and creativity threatening a world class education system.

1. Creators as a result of devaluing their copyright will have less control over how their creative works and used, have less income and incentive to create new works and often may have limited funds to protect their works pursuing them through the courts.
2. Educational publishers receiving less revenue from statutory licences have less incentive to invest and take risks in developing new products, reducing the diversity of offerings into the market and reducing jobs and skills within the publishing sector. Ultimately there will less high quality specific Australian content for Australian students and educators to use.
3. Educators will have fewer Australian resources to teach with and increased uncertainty on what they are allowed to copy under US style fair use provisions. This could lead to less valuable preparation and teaching time as educators prepare their own resources or scour through international content struggling to find appropriate content.

Conclusion:

We are unequivocal that the Australian educational publishing industry is under threat if the PC proceeds with its draft recommendations around fair use and removal of the existing parallel importation rules.

The introduction of US style fair use can only create greater uncertainty, reduce the sectors capacity to invest and innovate ultimately reducing the diversity of resources for both learners and educators

The Australian education system relies upon quality Australian content for our quality system and Australians will be left to work with imported overseas product designed for other curriculums and markets. The current copyright legislation has proven to be robust and flexible to cater for emerging technologies and sector continues to engage on initiatives such as access to content with disabilities, changes to the treatment of unpublished works and sustainable open access.

Yours sincerely
Cengage Learning Australia

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Appendix A

Background to the Education market in Australia – key dynamics:

The below information is provided by Cengage Learning Australia which operates in each of the three market segments in Australia and reflect the personal views and understanding of the writers.

PRIMARY

- The Primary published books and digital materials market is estimated at \$A95m per annum retail spend by schools.
- Around 50% of the entire money spent on books in this sector is for literacy series, which are very carefully crafted for reading level, word counts, visual cues, phonemic awareness, high frequency words, repetition and progression, comprehension, and carefully structured pedagogical development for reading / writing / speaking / listening.
- Around 40% of the spend is on consumable (the student writes in the book) textbooks covering Maths, Handwriting and Spelling and subscriptions to digital platforms / content in particular – Maths.
- The remainder of money spent on books in Primary is on teacher reference materials including blackline masters, and classroom reference material (dictionaries, Atlases, etc.).
- The majority of literacy series book sales are sourced from the sales forces of the local publishers. Consumables tend to be purchased from specialist education booksellers, though the adoption in the schools is often secured by the publisher sales force.
- Irrespective of the Australian Curriculum, most States have still developed and follow their own State based curricula (for which they incorporated the key elements of the Australian Curriculum). This is particularly manifest for Maths and Handwriting, and separate books must be developed for each of the States.
- There are 8 multi-national and a further 20+ primary school education book publishers of varying sizes operating within the estimated \$95m pa primary school market segment.
- Primary literacy publishing industry has a long history of successful export of Australian developed content throughout the world by separate versioning to suit local conditions overseas or by licencing for other languages and co-editions.
- The majority of content is contracted to Australian external authors for a royalty based on net sales.
- Publishers in the Primary market segment travel to each school and visit teachers at their worksite to secure book adoptions and sales orders. Only a relative fraction of the total sales turnover is undertaken from retail sites of the booksellers, and nothing from the offices of publishers.

SECONDARY

- The Secondary published books market is estimated at \$A130m per annum.
- The significant majority of all secondary school textbook sales are purchased from specialist education booksellers, though the adoption in the schools is mostly secured by the publisher sales forces. Only a very small part of the market spend is from general “high street” booksellers.
- Irrespective of the Australian Curriculum, most States have still developed and follow their own State based curricula (for which they incorporated the key elements of the Australian Curriculum). Separate textbooks

are commonly developed by specialist education publishers for 5 key States and for each syllabus subject and each year level within each State.

- There remain diverse starting ages for school children across the States, - there are 5 years of secondary schooling in Qld and WA and 6 years in the remaining States.
- In Victoria the distribution of secondary school textbooks is almost wholly by student (parent) purchase from a school directed booklist for subjects undertaken by each student. This is also common practice across private & independent schools in States outside of Victoria. In government schools across the rest of Australia (i.e. excluding Vic), secondary school textbooks are mostly purchased by schools direct from booksellers and are then provided to students for their year of study (either free or by an annual hire charge levied to the parents). In these instances, the books are purchased once and used for many years by a large number of students.
- Where books are purchased directly by each student, there is a corresponding strong second-hand market which erodes sales to publishers.
- There are 8 multi-national and a further 20+ secondary school education book publishers of varying sizes operating within the estimated \$130m pa secondary school market segment.
- The majority of content is contracted to Australian external authors for a royalty based on net sales.
- For the Secondary school segment, publishers and booksellers provide a raft of add on services to the customers – schools, teachers and students. Widespread examples by publishers include extra teacher lesson plans and classroom activities provided for free download from websites; professional development workshops (free or modest cost recovery only) to explain how to use classroom resources effectively; mostly offer free delivery to schools; displays provided to teachers at their schools to review products available; strong membership subscription to virtually all teacher associations for each subject and in each State, without which many of the associations support work would be constrained.
- Widespread examples by specialist education booksellers include providing volume rebates for business to schools; organising second-hand school book sales for students to reduce the overall cost burden for parents; undertaking pre-pack of all required books per student; plastic covering of books for greater durability.
- Publishers in the Secondary market segment travel to each school and visit teachers at their worksite to secure book adoptions and sales orders

TERTIARY (HIGHER EDUCATION)

- The Tertiary published books market is estimated at \$A160m per annum.
- The significant majority of all tertiary textbooks sales are purchased from campus booksellers largely dominated by a single retail chain - Coop and some specialist tertiary booksellers. The adoption in each tertiary institution is solely secured by the publisher sales forces. Only a small part of the market spend is from general “high street” booksellers.
- Tertiary books are nearly always purchased directly by each student, from the campus bookseller for convenience but increasingly from the internet. There is also a strong second-hand market which erodes sales to publishers.

- In terms of portfolio it is estimated that around 50% of texts are locally originated titles and/or local adaptations of overseas edition with the other 50% being imported textbooks, principally from the USA, UK and Asia.
- The creation of local product is designed to meet the needs of culturally specific course requirements particularly in the areas where cultural background is important for the student experience and learning. Subjects such as education, psychology, law and business are areas where having correct culturally specific examples and context enriches learning.
- The majority of local book content is contracted to Australian external authors for a royalty based on net sales.
- Publishers provide academics with a wealth of resources and services designed to assist in the teaching and learning of students. These range from the sourcing and creation of on line content and platforms to extend learning opportunities as well as assisting assessment. Local publishing provides a package of learning including instructors teaching manuals, solutions, cases analysis, PowerPoint presentation managers and the like. These resources are locally produced and specific for the products we publish and also provide writing experience for new authors.
- The skills in developing Publishing programs, marketing, production and sales of local content take years to build and employ significant staff within a publishing group. This skill set cannot be quickly duplicated or increased in scale.
- Cengage employs in house designers, local publishers; marketing, technical and sales staff to support the creation of local product. In addition multiple free lancers are employed to handle the bigger projects as they come on stream.
- The Tertiary textbook market is highly competitive and individual institutions are working hard to differentiate their courses to gain competitive advantage. A diverse offering of content produced for local conditions provides diversity of content to fulfil that need.
- Consequently, an emerging trend is to provide custom publishing options whereby specific content is sourced across a variety of standalone textbooks and customised for the course content of a specific tertiary institution and provided in either print or digital or both formats. This involves author royalty and digital rights clearances to be managed by the publisher.
- Many Vocational courses require local content to meet the needs of local safety and operational standards in building, plumbing and electrical standards.
- Income derived from the territorial copyright for international titles provides the basis on which to invest in local products.
- Many US books are strongly culturally specific using US language / spelling and contextual examples which do not reflect the Australian culture and environment.

Pricing of local products also indicates a highly competitive environment compared to pricing in the US and Canada for similar products.

Appendix A

Some examples of the prescriptive nature of primary school education publishing for the US market that does not apply to the Australian market.

Purpose: To highlight some of the type of differences that pedagogically based materials (not being trade books) need to be authored & illustrated for the USA market *that do not apply* to the Australian market. [No inference or comment is made or should be construed on the relative merits of how materials are provided and used in each of the countries]

The contention is simply that any action by the Government that encourages (meaningfully or unintentionally) the importation of cheaper US developed primary education materials that had been sold via rights into lower cost jurisdictions may lead to an unintentional and quite subtle shift in how and what Australian school children learn in their formative years.

| Content and picture/illustration depiction – Australian market suitable | Content and picture/illustration depiction – US market requirement | Rationale |
|---|---|--|
| Where does milk come from? Illustrated reader with line drawing of “Daisy the cow”. Depiction of an udder is fine | Depiction of udder would be removed | Primary schoolchildren are not to be exposed to any images or suggestions of genitalia – either photo or illustration |
| A non-fiction reader on the jobs involved in building dams (such as the Hoover Dam) | Best to remove the word “Dam” from book title | Whilst ok in many US States, some States would deem the pronunciation of the word is too close to a blasphemy – “damn” |
| A story that involves / explains the purported sightings or mysteries involving UFOs | Would not be released into the education market for school use | Content maybe seen by some States as being at odds with the State view of God as creator |
| Non-fiction book on Ancient Egypt – with line drawing of an Egyptian worker in a loin cloth. Use of two dots on chest to denote no upper clothing worn | Digitally add a top to the man – now wears a toga type garment (Historically inaccurate) | Image of nipples in a line drawing is not deemed appropriate |
| Non-fiction book dealing with maps and basic Geography for oceans which includes the position and labelling of the Southern Ocean | Southern Ocean label would be removed for any readers levelled for classroom use by students up to US grade 4 | US primary literacy is very prescriptive and introduction of Southern Ocean is not taught until grade 5 |