

Productivity Commission inquiry into Intellectual Property Arrangements

SUBMISSION by the OFFICE OF THE AUSTRALIAN SMALL BUSINESS COMMISSIONER

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INTRODUCTION

This is a submission by the Office of the Australian Small Business Commissioner (ASBC) to the Productivity Commission's inquiry into Australia's intellectual property system.

The role of the ASBC is to provide information and assistance to small businesses, represent small business interests and concerns to the Australian Government, and work with industry and government to promote a consistent and coordinated approach to small business matters. The Australian Government has committed to transforming the ASBC into the Australian Small Business and Family Enterprise Ombudsman consistent with the *Australian Small Business and Family Enterprise Ombudsman Act 2015*, which received Royal Assent on 10 September 2015 and which will commence operation shortly.

This submission provides general comments about small business and intellectual property and responds to key matters raised by the Productivity Commission in its Issues Paper published in October 2015. It is informed by our ongoing engagement with the business community, including dealings with individual small businesses and their representatives.

We would welcome the opportunity to be involved in further consultation with the Productivity Commission on how Australia's intellectual property system can best support small business.

GENERAL OBSERVATIONS

WHY WE NEED AN INTELLECTUAL PROPERTY REGIME THAT WORKS FOR SMALL BUSINESS

The ASBC is supportive of a broad review of Australia's intellectual property arrangements. The Terms of Reference for the Productivity Commission's inquiry highlight the need to ensure that the appropriate balance exists between incentives for innovation and investment in the interests of both individuals and businesses, including small businesses, in accessing ideas and products.

Any changes to Australia's intellectual property system need to cater appropriately for the majority of businesses that are affected by the system – small businesses. Individuals using the intellectual property system should also be regarded as tomorrow's small businesses, with the potential to commercialise their intellectual property.

Small businesses are a vital part of our economy and are particularly important in the context of innovation and creativity where intellectual property has a critical role to play.

- Small businesses make up 97.38 per cent of all businesses.¹
- Small businesses employed around 4.5 million people in 2012-13, approximately 43 per cent of private sector employment.²
- Young SME's contribute disproportionately to job creation. According to research published by the Chief Economist for the Department of Industry, '[a]lthough employing a small fraction of the Australian workforce (15 per cent), young SMEs generated the largest share of total job creation (40 per cent) in the economy'.³
- There is a stronger relationship between innovation and export for SMEs than for larger businesses.⁴

At the same time, it is more difficult for small businesses to engage with the complex regulatory regime governing intellectual property than it is for larger firms with specialist expertise and systems to support the creation and safeguarding of their intellectual property.

All of this highlights that a system which works for small business is not just in the interests of small business, it is in the interests of the economy as a whole. The ASBC encourages the Productivity Commission to keep this overarching consideration front of mind when examining Australia's intellectual property system.

Recommendation 1

The ASBC recommends the Productivity Commission ensure small business considerations are a key focus during its examination of Australia's intellectual property system.

¹ Commonwealth Treasury, *Small Business Data Card*, December 2014 (<http://www.treasury.gov.au/PublicationsAndMedia/Publications/2012/sml-bus-data>).

² Commonwealth Treasury, *Small Business Data Card*, December 2014 (<http://www.treasury.gov.au/PublicationsAndMedia/Publications/2012/sml-bus-data>).

³ See Department of Industry, Office of the Chief Economist, Research Paper 4/2015, *The employment dynamics of Australian entrepreneurship*.

⁴ See Department of Industry, Office of the Chief Economist, *Australian Innovation System Report 2014*, page 45.

CONCURRENT PROCESSES TO EXAMINE AUSTRALIA'S INTELLECTUAL PROPERTY REGIME

There have been a number of recent reviews of specific forms of intellectual property. While these reviews may be important in informing the Productivity Commission in its current task, the ASBC supports the broad review set out in the Terms of Reference. In practice, many small businesses are unlikely to distinguish between one form of intellectual property and another. It makes sense to consider the bigger picture with a view to a system that is internally cohesive and consistent.

As the Productivity Commission is no doubt aware, earlier this year IP Australia consulted on a number of proposals to streamline IP processes and support small business across a number of different forms of intellectual property.⁵ The ASBC understands that these processes are ongoing notwithstanding the Productivity Commission's inquiry, with the intention that draft legislation be published in 2016.

The ASBC strongly supports a number of proposals put forward by IP Australia to streamline IP processes and support small business, and commends IP Australia for its efforts in this regard. In particular, the ASBC supports efforts to streamline and improve protection in the context of unjustified threats of infringement.⁶ The ASBC considers it would be useful if the Productivity Commission was to lend its support to IP Australia's proposals as a matter of principle.

Recommendation 2

The Productivity Commission should support existing proposals by IP Australia to streamline intellectual property laws and processes to support small business.

IMPROVING ARRANGEMENTS FOR SPECIFIC FORMS OF INTELLECTUAL PROPERTY

GENERAL COMMENTS

The greatest gains for small business will come from efforts to streamline processes across all forms of intellectual property, such as was foreshadowed in the IP Australia proposals put

⁵ See, IP Australia, *Proposals to streamline IP processes and support small business*, February 2015 <http://www.ipaustralia.gov.au/pdfs/streamline-IP-process-consultation-PDF>

⁶ For further details, see the ASBC's submission to IP Australia, April 2015 http://www.ipaustralia.gov.au/about-us/public-consultations/Consulting_on_proposals_to_streamline_IP_processes_and_support_small_business/

forward earlier this year and mentioned above. The ASBC recommends that the Productivity Commission examines proposals for individual forms of intellectual property with a view to the 'bigger picture' and the navigability of the system as a whole.

Small businesses and individuals who are looking to commercialise their ideas will benefit from a system in which it is simple to establish ownership of intellectual property. Of all the individual forms of intellectual property, copyright is the most simple for small business since it attracts without the need to be registered, pay any fees, and also without the need for the owner of the copyrighted idea to turn their mind to whether they need to take any measures to safeguard their intellectual property. Small businesses would benefit if other forms of intellectual property were similar to copyright in this way.

For example, as with the grace period for renewal of some forms of intellectual property, perhaps a small business could be given a 'grace period' in which to establish their intellectual property, which protected against reckless, wilful or knowing infringement. This would help to protect a small business who found themselves in the position of not being protected due to being in a relatively lower state of business sophistication and inadvertently failing to establish their rights in intellectual property prior to careless, wilful or knowing infringement by a third party (while still protecting third parties acting in good faith). This idea would appear to be most practical in the context of designs, and protection for unregistered designs is discussed further below. However it may also be possible with respect to other forms of intellectual property and should be an aspirational goal of Australia's intellectual property system.

Recommendation 3

The ASBC recommends that Australia's intellectual property system should aspire to provide protection to small businesses without the need for small businesses to engage with complex legal frameworks and regulatory mechanisms.

PATENTS

The abolition of the Innovation Patent system is currently under consideration, following a recommendation by the Advisory Council on Intellectual Property (ACIP).⁷ IP Australia has recently consulted on ACIP's recommendation.

⁷ The Advisory Council on Intellectual Property (ACIP) has issued a statement recommending that the Innovation Patent system be abolished, and IP Australia has consulted publicly on ACIP's recommendation.

The intention of the Innovation Patent system was to stimulate innovation in Australian SMEs.⁸ To this end, 'innovation patents provide a second-tier patent protection system at a lower cost and with easier access than standard patents'.⁹

We note two relevant processes which preceded the ACIP recommendation that the Innovation Patent system be abolished:

- A two year review and report by ACIP titled *Review of the Innovation Patent System*, which concluded in 2014 and found that there was insufficient evidence to recommend retaining or abolishing the Innovation Patent system; and
- A report by IP Australia titled *The economic impact of innovation patents*, published on 25 May 2015.

Subsequent to the publication of IP Australia's most recent report, the ACIP changed its position and issued a statement recommending that the Innovation System be abolished, notwithstanding that it was a 'clear theme' from consultations conducted during its earlier review that the innovation patent system is widely seen as being useful.¹⁰

In its 2013 paper, ACIP stated that:

...it is clear from the written submissions and roundtable discussions that a significant number of individuals and SMEs are generally ill-informed of the advantages and disadvantages of using the innovation patent system.

IP Australia's website has a lot of information about filing for the appropriate IP right. This information outlines some of the benefits and limitations of the innovation patent system. It is arguable whether this information is being accessed/understood by Australian individuals/SMEs. Perhaps other communication channels may be needed to get the information disseminated to this audience or use group.¹¹

⁸ Explanatory Memorandum for the legislation establishing the Innovation Patent system. <https://www.comlaw.gov.au/Details/C2004B00764/Explanatory%20Memorandum/Text>

⁹ IP Australia, *The Economic impact of innovation patents*, page 8.

¹⁰ ACIP, *Review of the Innovation Patent System*, page 20.

¹¹ http://www.acip.gov.au/pdfs/Options_Paper_Innovation_Patent_Review.pdf

Underutilisation of the Innovation Patent system in the context of an ill-informed SME community leads our office to have reservations about the abolition of the system altogether. At the ASBC, we have a saying:

“No small business should fail through lack of access to information.”

We think the system should be evaluated with regard to its *potential* to contribute to economic gain, which may be improved by efforts to provide further information and education to the SME community about the system, or by modifying rather than abolishing the system. We also note the presence of “second-tier” patent models in approximately 59 other countries,¹² and multiple submissions to IP Australia’s most recent consultation process arguing against the wholesale abolition of the system.

Recommendation 4

The ASBC recommends that the Productivity Commission consider the Innovation Patent system with a view to its potential contribution to the economy and SME sector, including the contribution it may be able to make if it was modified and there was greater effort to inform the SME community about the benefits of the system.

COPYRIGHT

Parallel imports

Changes to the law regulating parallel imports may receive a mixed reception among the business community. While some businesses will benefit, the ASBC expects that relaxation or removal of parallel import restrictions would also have a negative impact on some small businesses.

If the Productivity Commission recommends change, it should do so cognisant of the potential impact on small business, and it should recommend appropriate transitional arrangements to mitigate this impact.

We note that the Government announced on 24 November 2015 its intention to remove parallel import restrictions on books, following consultation with industry on appropriate transitional arrangements. The ASBC supports such consultation and believes this model is an appropriate one for any other changes to the law regarding parallel imports.

¹² IP Australia, *The economic impact of innovation patents*, page 5.

Recommendation 5

Any changes to provisions of copyright law relating to parallel imports should be accompanied by appropriate consultation and transitional arrangements for small business.

Collection of copyright fees from small businesses

The ASBC has been approached by small businesses concerned about copyright collection societies. We have addressed this issue below.

DESIGNS

There have been a number of allegations by small businesses that their designs have been copied and mass produced by larger businesses.¹³ Social media platforms on which small businesses may have promoted their designs are understood to be used by large businesses in identifying “trends” and developing product ranges.

If a small business has not registered its design, it is not clear what protection is afforded to a small business. Protection for unregistered designs exists in other jurisdictions such as Europe and the United Kingdom, and provides a more limited form of protection against copying than formal registered rights which are still available in those jurisdictions. Unregistered design rights in those jurisdictions do not prevent independent creation, ensuring that third parties acting in good faith are not exposed.

The ACIP raised the issue of unregistered design protection at the commencement of its recent inquiry into designs, however noted that ‘there was very little overall support’ for such a reform,¹⁴ and, as such, ACIP recommended against introducing protection for unregistered designs.

The ASBC considers there would be value in the Productivity Commission re-examining the value of a system for protection of unregistered designs.

¹³ For public reporting of such instances, see: <http://www.smartcompany.com.au/legal/intellectual-property/47639-country-road-accused-of-heinous-rip-off-of-melbourne-designer.html>, <http://www.smartcompany.com.au/legal/intellectual-property/47522-small-business-accuses-kmart-of-copying-designer-s-wooden-puppy-toy-it-s-pretty-soul-destroying.html>, <http://www.smartcompany.com.au/legal/intellectual-property/47534-copying-claims-snowball-small-business-accuses-target-of-exact-replica-rip-off-of-t-shirt-design.html>, <http://www.smartcompany.com.au/legal/intellectual-property/47483-second-melbourne-small-business-comes-forward-with-claims-target-ripped-off-its-designs.html>, <http://mobile.abc.net.au/news/2015-06-29/target-caught-ripping-off-peaches-and-keen-clothing-design/6581910>, <http://www.news.com.au/finance/business/retail/target-cotton-on-and-kmart-accused-of-copying-small-designers/news-story/c0a7bcb777fceddcead7446bf187f480>, <http://www.smartcompany.com.au/legal/intellectual-property/47668-cotton-on-defends-practice-of-trend-forecasting-following-copying-claims.html>

¹⁴ ACIP, Final Report, *Review of the Designs System*, March 2015, at page 41.

As noted above, the ASBC considers that a situation where intellectual property rights arise automatically, such as in the field of copyright, are most advantageous to small businesses who are time poor, may lack expertise in navigating the ‘red tape’ associated with registration, and in some cases may lack the basic recognition of their work as intellectual property which may be capable of legal protection. Even a system of unregistered rights which are significantly more curtailed than registered rights may fill a ‘gap’ in the current intellectual property regime for small businesses.

Further, the cost of filing an application to register a design (noting that no enforceable protection is gained from registration alone) is \$250.¹⁵ This may be a significant impost on a small business – for example a small home based fashion business with a range of designs to coincide with seasonal product ranges, yet a relatively small overall level of production. It may be enough to significantly drive up the cost of that designer’s products relative to other businesses that have chosen to take the risk (as most appear to) not to register their designs.

Recommendation 6

The ASBC recommends that the Productivity Commission examine the issue of a limited form of protection for unregistered designs, particularly with a view to the benefits that such a system might have for small businesses with a design focus.

TRADE MARKS

Parallel imports

The ASBC notes that the issue of parallel imports is relevant to both copyright and trade marks. The general comments made above regarding parallel imports in relation to copyright are equally relevant to trade marks.

Business names

In relation to IP disputes involving a small business, trade mark infringement is the most likely situation, particularly where a small business unintentionally infringes an existing IP right and the owner enforces that right.

We are aware that the owner of IP is responsible for identifying infringements and enforcing its IP rights through legal avenues. Despite this, we believe that government has a role in

¹⁵ See <http://www.ipaustralia.gov.au/get-the-right-ip/designs/time-and-costs/fees/>

minimising the likelihood of business disputes occurring, particularly where laws and regulations create a situation in which a dispute may eventuate. This is currently the situation in regard to business name registration and trade marks.

For example, in 2013, a Melbourne café was able to register the business name “The Fat Duck” and commence operation despite that name already being trade marked.¹⁶ The café was forced to change its name, signage, advertising and marketing collateral – an expensive exercise. This situation was able to happen because the search on the business name register did not identify that the name, The Fat Duck, was trade marked and therefore its use would be an infringement under the *Trade Marks Act 1995*.

Linking the business name register and the trade mark database would help to streamline both processes, reduce the number of IP infringements, and provide greater certainty to new business entrants. There may also be some value in considering whether domain names could be captured within such a database given the issues that can arise with allocation of domain names and the interconnection between this and business names and trade marks, noting that it is possible if the relevant criteria are met to trade mark a domain name.

Recommendation 7

The ASBC recommends linking the trade mark database and business name register search functions (ie search on either website and both databases are searched). The ASBC also recommends considering whether there is scope for domain names to be brought within any streamlined search offering.

INDIGENOUS INTELLECTUAL PROPERTY

Australia’s intellectual property system does not always cater for indigenous forms of intellectual property and concepts such as community ownership of ideas and expression. It is possible this could have a flow on impact to indigenous small businesses, and we understand that intellectual property is one of the areas in which disputes often arise for indigenous small businesses.

¹⁶ See http://www.ipaustralia.gov.au/about-us/news-media-and-events/publications/publications-listing/IP_policing-enforcing_your_IP_rights/

Recommendation 8

The Productivity Commission should consider the issue of indigenous intellectual property and whether Australia's intellectual property arrangements are sufficiently well adapted to meet the needs indigenous small businesses who may be relying on such forms of intellectual property.

THE ADMINISTRATION OF AUSTRALIA'S INTELLECTUAL PROPERTY SYSTEM

IP AUSTRALIA

IP Australia is the key entity within Government responsible for the administration of Australia's intellectual property arrangements. The position of IP Australia is somewhat unique. Unlike other Commonwealth regulators, IP Australia does not 'police' infringement of intellectual property laws and, even in the context of systemic or blatant breach, intellectual property owners must take private action to enforce their intellectual property rights.

At this point in time it would not appear there is a need for IP Australia to step into a more regulatory role, however there are difficulties for small businesses which arise from the need to take private action against infringers (see below discussion regarding enforcement). The absence of a regulator to enforce intellectual property rights may operate as an incentive for infringers who appreciate that it will not be commercially possible for small businesses to take court action.

We suggest that the Productivity Commission keep this in mind when considering the question of enforcement, and whether the barriers to enforcement (or defence against infringement) are too high, particularly for small business.

The ASBC considers one of the key roles of a regulator is the provision of information to small businesses to assist them to navigate and engage with complex regulatory regimes. We work closely with IP Australia and have been impressed with the importance placed on the small business sector, including development of the *Intellectual Property 101* brochure, the launch of the *IP – Your Business Edge* magazine, and the production of educational videos.

The ASBC has been working with IP Australia to disseminate easy to understand information about intellectual property to small businesses. Recent activities include guest posts on the ASBC Blog, newsletter articles and link on the ASBC Government News page:

- Blog, November 2015: Only 1 in 7 understand basics of IP
- Blog, April 2015: IP Australia busts the jargon
- Blog, March 2015: From fat duck to loose goose, a lesson in IP
- Blog, January 2015: IP Australia and your small business in 2015
- Newsletter, Issue 18: Snap shot of IP Australia's priorities in 2015
- Newsletter, Issue 16: Intellectual Property 101
- Blog, November 2014: Trade mark to avoid copy cats.

Recommendation 9

Given that intellectual property is an area of confusion for many small businesses, the ASBC recommends that the Productivity Commission give careful consideration to the best mechanisms to educate and inform small businesses about intellectual property, and whether there is scope for the importance of education for business to be embedded into the framework of Australia's intellectual property system.

COPYRIGHT COLLECTION SOCIETIES

Copyright collection societies have a unique role in Australia's intellectual property system. Both their members and their licensees may be small businesses. There are a number of such organisations with a varying public profile. Most of these organisations are wholly independent industry bodies with no affiliation or funding from the Government.¹⁷ Notwithstanding this, they appear to have a quasi-regulatory function. For example, one copyright collection society without any Government affiliation, notes on its website that it 'operates a nation-wide inspection and enforcement program' with 'teams of inspectors visiting venues and premises all around Australia'.¹⁸ In many cases small businesses misunderstand copyright collecting societies to be Government bodies.

¹⁷ A list of copyright collecting societies can be found at <http://www.artslaw.com.au/info-sheets/info-sheet/copyright-collecting-societies/>

¹⁸ See <http://www.pcca.com.au/music-users-/national-enforcement-program/>

The existence of multiple copyright collecting societies is confusing for small businesses. For example, in the context of a small business playing a CD for background music in a shop, they may require a licence from the Australasian Performing Rights Association (APRA) (which provides licences covering the copyright in the song and represents the interests of composers and publishers), and the Phonographic Performance Company of Australia (PPCA), which provides licences covering the recording and represents the interests of recording artists and record labels. Appreciating the differences in such forms of copyright, and the need to engage with separate entities to ensure the one simple activity is done ‘by the book’, diverts small business owners away from more productive business activities and adds to the already disproportionate compliance burden faced by small businesses. It may be worthwhile for the industry to consider a single entry point for businesses in relation to copyright licensing, even if structurally the organisations remain distinct. In effect, this would be like the way that APRA and AMCOS are already functioning (only it would also incorporate other collection societies).

Concerns have also been raised with the ASBC about the high cost of licensing copyright material. We understand that in respect of some venues, including night clubs, there have been significant recent increases in copyright fees. Small businesses may be in a poor bargaining position to negotiate license fees or terms and conditions with such societies. We note the existence of the Copyright Tribunal, and provisions in the *Competition and Consumer Act 2010* (CCA) which provide for collective bargaining may be useful to small business in this regard. We also note the existence of a Code of Conduct for Copyright Collecting Societies.¹⁹

Recommendation 10

We recommend that the Productivity Commission consider the unique role of copyright collections societies and consider whether there is scope to encourage industry to simplify copyright collection arrangements with a view to reducing the administrative burden placed on small businesses.

¹⁹ A copy of the Code of Conduct can be found at <http://copyright.com.au/about-us/governance/code-of-conduct/>

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

GENERAL COMMENTS

The PC's Issues Paper raises the question of whether the current enforcement arrangements for intellectual property are sufficient.

As the Productivity Commission notes in its Issues Paper, 'enforcement mechanisms weighted too far in favour of rights holders may increase the value of IP rights over and above what is necessary to incentivise creative or innovative works. Conversely, enforcement mechanisms that are too costly or lengthy, or have rules of evidence or procedure that are too stringent, can unduly lower the value of IP' (at page 27).

If questioning whether IP rights are too easy or too hard to enforce in Australia, the answer will necessarily differ (at least in degree) depending on whether you are a small or large business. There will be a direct relationship between the size and financial capacity of a business, and their ability and willingness to engage with enforcement mechanisms. Hence a system that designs an enforcement regime for the "average business" is likely to lower the value of IP for small business, and increase the value of IP for large business.

The ASBC is aware of energetic start-up businesses whose ability to go to market has been impeded by threats from larger businesses about litigation over infringement of intellectual property. In such cases, a letter containing a sternly worded threat has been all that was needed to enforce these larger businesses IP rights, causing smaller businesses to fold without the capacity to challenge the larger business. This is done to curtail potential losses and exposure to an award of damages and costs. A large business in this position may consider that IP rights are easy to enforce.

While existing legislation provides protection for businesses that face unjustified threats of litigation, as recognised by IP Australia:

The potential cost to businesses of unjustified threats can be significant, depending on the value of the products and services involved and whether the business agrees to withdraw products from the market and/or settle alleged damages out of court.

SMEs are particularly disadvantaged by this situation, as they have fewer resources to resist unjustified threats.²⁰

IP Australia proposed to improve protections for businesses facing unjustified threats of infringement. The ASBC supported this proposal but notes that in and of itself it will not address the difficulties faced by small businesses; a threat may not reach the threshold of being “unjustified” but may nonetheless be ultimately defeated were a small business capable of testing the threat in a court of law.

Small businesses not only face difficulties when in the position of being an alleged infringer, but may also themselves have their intellectual property infringed. The ASBC is aware of small businesses who allege their ideas and designs have been copied by large businesses.²¹ Small businesses in this position have reported the effort and expense involved in taking on a large business is too great. Accordingly for a small business in this position, intellectual property rights may be too hard to enforce.

In a similar vein, the ASBC is aware of instances of small businesses being reluctant to tender for government contracts out of a concern, or mistrust, that innovative ideas they propose may not be protected. A particular concern is that the small business’ ideas are passed on to the successful tenderer or taken up for use by the tendering government agency without awarding the tender contract. Outcomes of this nature have an undesirable chilling effect on small business innovation.

ALTERNATIVE DISPUTE RESOLUTION

It is the view of the ASBC that low cost alternative dispute resolution, such as mediation, is an effective mechanism for resolving business disputes at a lower cost and speed than is available through the more traditional approach of courts and tribunals. Alternative dispute resolution also allows for commercially realistic outcomes.

At present, under the laws governing intellectual property, the process for addressing intellectual property infringements are court-based and there is little mention of alternative dispute resolution as an option in the legislation. We are of the view that, where one of the parties is an individual or small business and the situation is appropriate, alternative dispute resolution should be required before litigation.

²⁰ IP Australia, *Public Consultation: Proposals to streamline IP processes and support small business*, at page 74.

²¹ See discussion under designs above.

Recommendation 11

The ASBC recommends that the Productivity Commission consider whether alternative dispute resolution should be identified in intellectual property legislation as a mechanism to address infringements. Where one of the parties is a small business and the situation is appropriate, alternative dispute resolution could be a mandatory step before litigation.

RESOLUTION THROUGH THE COURT SYSTEM

The ASBC supports the Productivity Commission's stated intent to look at the United Kingdom's Intellectual Property Enterprise Court (IPEC). There appears to be some important differences relating to access to IPEC and the Federal Circuit Court in Australia. For example, the filing fee for a case in the Federal Circuit Court of Australia is \$1445,²² whereas in IPEC the fee for starting a case depends on the amount claimed and can start at as little as £35 for a claim of up to £300. This is an indicator of IPEC's readiness and ability to deal with small claims related to intellectual property infringement.

Recommendation 12

The ASBC recommends consideration of the development of low cost forums in which disputes can be formally resolved if ADR has been unsuccessful.

SUMMARY AND CONCLUDING REMARKS

The Productivity Commission's task in reviewing Australia's intellectual property arrangements is a considerable one. We are very supportive of efforts to improve intellectual property arrangements in Australia and believe that there is significant scope to do so with the effect of enhancing the operating environment for small businesses with flow on benefits to the economy.

In summary, the ABSC considers that small businesses will be best supported by an intellectual property system which:

- is **simple**, providing protection with no or minimal need to engage with administrative frameworks;

²² This is for a corporation. The filing fee for a non-corporation is \$600. See: <http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/forms-and-fees/fees-and-costs/fees-gfl/>

- has a strong emphasis on providing well targeted **education and information** to small business; and
- addresses the power imbalance between small businesses and large businesses by promoting **alternative dispute resolution and low cost forums for formal enforcement.**

The ASBC looks forward to working with the Productivity Commission further on this important subject.