

2 June 2016

Intellectual Property Rights
Productivity Commission
GPO Box 1428
CANBERRA ACT 2601



Business SA
Chamber of Commerce
and Industry South Australia

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Working for your business.
Working for South Australia

Dear Sir/Madam

I write in response to your request for submissions on the Productivity Commission's Draft Report on Australia's intellectual property (IP) arrangements.

Executive Summary

- In line with the National Innovation and Science Agenda, Australia's IP laws must foster home grown creativity and innovation.
- Australia's IP arrangements must reflect that it is often small businesses which are most in need of protection in relation to their IP rights.
- The introduction of a 'fair use' provision for schools to allow them to duplicate commercially available published copyright materials without payment to the rights holder will not only jeopardise the future of local publishing, particularly South Australian book exporters, it will also establish a dangerous precedent for how the law values copyright more broadly.
- In consideration of Australia's strong and continued push to liberalise international trade, our IP arrangements must support businesses taking advantage of new free-trade agreements.
- Considering South Australia's precarious economic situation, Business SA is concerned with any changes to IP laws which unnecessarily disadvantage small business, particularly export orientated businesses which are vital to our future economic growth in a State with an ageing population and low labour force participation rate.

Should you require any further information or have questions, please contact Andrew McKenna, Senior Policy Adviser,

Yours sincerely,

Nigel McBride

Chief Executive Officer





Why this matter is important to South Australian businesses

As South Australia's Chamber of Commerce and Industry, Business SA is the peak business membership organisation in the State. Our members are affected by this matter in the following ways:

- While it may not be the majority of businesses which rely on IP protection, it is our experience that in recent years when the broader economy has struggled, the businesses still succeeding tend to have niche products which are sold into export markets thus reducing reliance on lackluster local demand.
- Any legal compliance arrangements for small business need to be structured in a manner which reflects the resources and ability of small business to protect their IP rights.
- South Australia currently has the highest unemployment rate of any State or Territory and with an economic growth rate approximately one third of the national average, local business needs a legal framework which supports innovation to foster economic growth.
- As the South Australian economy progresses through its transition away from traditional auto-manufacturing, it is more important than ever that manufacturers looking to diversify their product offering can easily access suitable IP protections.

Key Policy Points

1. Business SA has received strong feedback from book publishing members about the impact the proposed 'fair use' exemption for schools would have on their ability to compete with larger publishing houses as evidenced by the outcomes of similar legislation in Canada.

While fair use legislation may have been broadly accepted in the US, the PC needs to consider that other IP related issues are of a higher priority to major US businesses such as Disney which has subsequently framed the agenda of business in relation to IP laws.

2. Australia currently gives schools easy access to the wealth of copyright educational content through Copyright Agency at per student rates that are quite reasonable considering the extent of use made by schools. The proposal to deny payment for that access introduces a sense of entitlement to free use of the intellectual property of the nation's authors.

Any argument around the needs of schools to have access to inexpensive education materials should be addressed in the education budget, not through Australia's IP arrangements. We are not aware of any concerns about the level of competition to provide schools education material and subsequently there is no need for further regulatory intervention in the interests of consumers. If anything, the Productivity Commission should be looking at whether or not small publishers are on a level playing field with large publishers who give away books to schools for free.

3. Local book publishing businesses operate in a sophisticated environment which enables them to trade digital content across international borders. These businesses are far from traditional in their structures and are exactly the types of enterprises that Governments at all levels should be encouraging to grow.



4. Locally owned SME publishers invest heavily in the development of creative content to support the Australian school curriculum, relevant to the multiple learning levels of students and addressing teachers' needs for assessing and guiding the learning of individuals.

These businesses encourage and cultivate creative talent in the form of independent authors, illustrators, photographers, audio-engineers, voice artists and the like. Individuals then receive ongoing royalty payments or contracted fees for their work and rely on copyright for their income.

5. Business SA is mindful that IP protection in the form of patents is often unaffordable for small business and the PC should consider how its recommendations can reduce such costs.