

# WILEY

To whom it may concern,

John Wiley & Sons appreciates the opportunity to provide comments on the Draft Report (*Intellectual Property Arrangements*) of the Productivity Commission.

Wiley was founded in 1807 and is one of the world's leading publishers and solutions providers in the areas of research, education and professional practice. An investor in Australia since the 1960s – Wiley's second outpost after the UK – the company's local publishing operations expanded significantly with the acquisition of the education publisher Jacaranda in 1976. Today we have over 190 employees Australia wide with offices in Brisbane and Melbourne. We publish on average 138 book titles annually, and every year we publish well over 14,000 peer reviewed journal articles from Australian researchers. Wiley publishes 19% of all Australian ISI-indexed, peer-reviewed research articles (2015 data from Thompson-Reuters ISI). We are proud to support Australian students, professionals and researchers by providing them with the highest quality content and services, helping to improve outcomes and livelihoods and support national productivity and innovation.

Please find below comments with regard to three key areas of the Draft Report:

## Draft Recommendation 5.2 (Importation Rights)

Wiley operates around the world, and is committed to serving the needs of its customers and authors in every market. By using market-appropriate price differentials, we can ensure that students and other consumers (including underserved populations in the developing world) can legally access works at appropriate price points, that our authors and all other stakeholders on the value chain can be compensated for their efforts, and that we can continue to invest in developing high-quality content and content-enabled services.

The ability to deploy pricing strategies appropriate to local markets is based on territorial licensing of publication and distribution rights, including copyright holders' exclusive right to import works. Far from serving as a trade barrier, these copyright protections are essential for allowing publishers to effectively access new markets and sell their products at competitive prices. This right has also generated important benefits for Australian authors and consumers. It has helped Australian authors and supported exports by facilitating the sale of local works in markets around the world at appropriate price points, while also allowing publishers to contain price increases for consumers by extending production costs across a broader number of transactions.

Without this right, the threat of parallel imports greatly diminishes our ability to differentiate prices by market. This not only risks lessening the legal availability of works in many developing markets and encouraging piracy, but also threatens the ability of Australian authors to market their works at competitive price points around the world and places more of the burden of production costs on consumers in Australia and other developed markets. We would encourage the Commission to take into account these broader consequences in reconsidering the proposed repeal of parallel import restrictions for books.

### Draft Recommendation 5.3 (Fair Use)

Founded as a family publishing business in New York in the early 19<sup>th</sup> century, Wiley has had more experience than most publishers in operating under the American system of fair use. Although fair use creates inherent uncertainty for publishers and authors, the U.S. system is now supported by hundreds of years of case law and precedent, which combined with various voluntary licensing arrangements, has helped ensure a more predictable business environment for content creation.

The Draft Report's proposal for Australia to adopt a fair use statute that "should allow all uses of copyright material that do not materially reduce a right holder's commercial exploitation of their work at the time of use" raises significant concerns regarding the predictability of Australia's business environment. Unsupported by the centuries of case law and experience in the United States, adoption of a fair use system in Australia risks introducing significant uncertainty for publishers, authors and consumers as to what is and is not permissible. Not only could this risk leading to protracted disputes, but could simultaneously undermine the business and investment climate and upset a well-functioning market for educational and other content.

Furthermore, the Draft Report's proposal raises concerns about Australia's commitment to its international obligations. As written, the proposed fair use statute would appear to significantly hollow out the rights accorded by copyright in the first place, potentially even putting into question basic rights (e.g. exclusive translation right) that Australia has committed to under the Berne Convention, the World Trade Organization's Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement and other international agreements. Particularly as the Trans-Pacific Partnership (TPP) is nearing ratification and Australia undertakes additional negotiations around the world, pursuing such a policy could raise questions about Australia's commitment to its international copyright and trade obligations.

### Draft Recommendation 15.1 (Open Access)

Wiley is the world's largest publisher on behalf of non-profit scholarly and professional societies and publishes over 1,500 journals across all disciplines. We take seriously our commitment to assuring scientific integrity by managing the peer-review process and leveraging new technology and business models to disseminate our authors' research around the world. In recent years Wiley has been at the forefront of efforts to enable open science, including open access to publications reporting on government-funded research. Today we are one of the world's largest open access publishers and have contributed to building infrastructure and services to promote both open publications as well as open data. Our ability to continue to publish the highest-quality research and invest in new models to enable open access depends on an economically sustainable environment for scholarly publishing.

We applaud the Draft Report's interest in supporting open science and look forward to working with all stakeholders in the research community to support these efforts. However, we are concerned that the Draft Report's recommendations on open access to publications risk undermining key safeguards necessary for fostering a sustainable environment for publishing, particularly the need for variable embargo periods to allow publishers to recoup their substantial investments.

There is significant variation between disciplines in terms of journal usage and publishing cultures. An embargo period that is economically sustainable for a fast moving field like biomedicine may be inappropriate for another field of research. As such, in considering open access policies it is essential that Australia provide the flexibility to set appropriate and evidence-based embargo periods, and not

mandate a rigid, one-size-fits-all embargo period of 12 months for all journal articles. For instance, U.S. federal agencies were given a 12-month guideline but also provided the flexibility to adjust this period as appropriate, including in response to evidence-based petitions. Likewise, the Research Councils UK has allowed embargo periods of up to 24 months in certain cases where funds are not available for “gold” (author-pays) open access. We encourage the Commission to incorporate such flexibility into its recommendations and ensure that any open access policies are evidence-based and do not undermine the sustainability of the scholarly publishing enterprise.

Thank you for considering these views. Wiley is committed to working in partnership with the Australian government and all stakeholders to enhance knowledge and learning, improve productivity and economic opportunity, and promote research and innovation.

Sincerely,

**Mark Robertson**

Executive Director Wiley Australia

Vice President and Publishing Director, Research, Asia-Pacific