

Dear Sir / Madam,

Thank you for the invitation to make a written submission for the draft report of the Intellectual Property Arrangements inquiry.

I refer specifically to section 4 of the draft report: Copyright.

The Commission notes:

‘The Australian Government should make clear that it is not an infringement of Australia’s copyright system for consumers to circumvent geoblocking technology and should seek to avoid international obligations that would preclude such practices.’

The Trans-Pacific Partnership makes it illegal to circumvent geoblocking technological protection measures – so ratifying the TPP is a backwards step. The current Copyright Act allows you to circumvent a TPM that protects geoblocking; this would no longer be possible under the TPP – the wording is deliberately different between the TPP and Australia’s Copyright Act (a significant oversight by DFAT).

TPP Article 16.68 - Technological Protection Measures (TPMs):

*‘Nothing in this Agreement requires a Party to restrict the importation or domestic sale of a device that does not render effective a technological measure **the only purpose of which** is to control market segmentation for legitimate physical copies of a cinematographic film, and is not otherwise a violation of its law.’*

The Australian Copyright Act on the other hand makes no such ‘*only purpose*’ requirement – if a TPM is protecting a geoblock (which is always the case), then it is currently legal to circumvent that TPM in Australia... until the TPP is ratified – then it will be illegal.

The TPP cannot be ratified in its current form, or consumers will become criminals purely by continuing to own devices that, whilst legal now, will be illegal under the provisions of the TPP.

The Commission also notes:

‘Parallel import restrictions on books are the analogue equivalent of geoblocking.’

I would add that the parallel import restriction on video (cinematograph film) equally impede competition, investment and access to goods and services. For example no Australian company can currently compete with Netflix or any other such video-streaming service providers purely because it is illegal to parallel import video. Therefore parallel import restrictions on video do not merely adversely impact consumers – they also prevent entire Australian business from operating. Some of the economy-wide consequences of this are: reduced employment, reduced tax revenue, and a worsened foreign trade deficit. As the Copyright Act was amended twice previously to remove the restrictions on parallel imports for music (Copyright Amendment Act, No. 2, 1998), computer software, and sheet music (Copyright Amendment, Parallel Importation, Act 2003), it does not make any sense to consumers why video should still be restricted. Consumers lose respect for Copyright laws when they contravene their moral sense.

The commission concludes:

‘Australia’s copyright arrangements are weighed too heavily in favour of copyright owners, to the detriment of the long term interests of both consumers and intermediate users.’

Solving the two related issues above would go a long way toward restoring the balance between copyright owners and consumers as well as restoring consumer respect for copyright in general. I believe these two recommend changes to the current system would allow access to an increased range of quality goods and services and would also provide greater certainty to individuals and businesses as to whether they are likely to infringe the intellectual property rights of others.

Kind regards,
Richard Bourke