

Wednesday 1 June 2016

The Productivity Commission  
Email: [intellectual.property@pc.gov.au](mailto:intellectual.property@pc.gov.au)

Dear Secretariat,

*RE: Productivity Commission Draft Report on the Review of Intellectual Property Arrangements*

I write regarding the recommendations made in the Productivity Commission (PC) Draft Report on Intellectual Property Arrangements (Draft Report). CHOICE is not able to comment on the Draft Report in its entirety as it covers a tremendous scope, but there are a number of specific recommendations that we strongly support.

In its submission on the Issues Paper, CHOICE stressed the need for Australia to have an intellectual property framework that allows users to access the full benefits of copyrighted works while supporting creators' rights to be rewarded for their work. CHOICE's submission focused on three key reform options:

- Reforming copyright law to allow for more flexible, reasonable uses of copyrighted materials through a fair use system;
- Addressing geoblocking and consumers' access to digital goods and services, either through a re-imagining of the current practice of carving up copyright into different regions or through an amendment to the *Copyright Act 1968* assuring consumers' legal rights to circumvent digital barriers; and
- Reforming the treaty-making process to promote transparency and effective consultation, particularly in relation to intellectual property provisions.

We agree with the PC's comments that a new system of user rights is needed to help address the existing imbalance between rights holders and consumers' rights. More accessible content is the key to reducing online copyright infringement, as CHOICE research has consistently shown.

As the Draft Report acknowledges, Australia's existing 'fair dealing' exceptions are too narrow, fail to reflect the way people actually consume and use content, and are insufficiently flexible to

account for legitimate uses of copyright material. For these reasons, CHOICE strongly supports the recommendation that a US-style fair use exception be introduced.<sup>1</sup>

Better access to legal content is the most effective way to reduce rates of piracy. In November 2014, CHOICE found that expensive prices and wanting content sooner than legally available were the main reasons for piracy. In our follow-up survey conducted in September 2015, we found the drivers of piracy remained the same. However, following the introduction of new legal streaming services such as Stan and Netflix, piracy rates among regular pirates dropped by a quarter. The results are clear; increasing legal options for consumers to access content is the best way to reduce piracy.<sup>2</sup> CHOICE strongly supports the Draft Report's recommendation that 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<sup>3</sup>. We also support the recommendation to repeal some parallel import restrictions.<sup>4</sup>

Finally, CHOICE notes the PC's recommendations regarding intellectual property provisions in international trade agreements. Promoting global cooperation on intellectual property policy does not go far enough to address the concerns that the Trans-Pacific Partnership negotiations put into focus. CHOICE reiterates the importance of transparency in international trade negotiations, particularly for agreements that include detailed, prescriptive rules on intellectual property. CHOICE recommends that:

- An independent review should assess the Australian Government processes for establishing negotiating mandates to incorporate intellectual property provisions in international trade agreements.
- Trade negotiations should be informed by an independent, transparent analysis of the costs and benefits to Australia of any proposed intellectual property provisions.
- The full negotiating texts of international trade agreements should be made public, and be accompanied by plain-English explanatory documents. If it is not possible to release full texts, redacted versions that anonymise proposals and exclude sections relating to tariff reductions should be made available. As a priority, sections that have the potential to

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<sup>1</sup> Productivity Commission, April 2016, Draft Report on Intellectual Property Arrangements, recommendation 5.3.

<sup>2</sup> CHOICE, November 2014, *CHOICE digital consumers paying for content behaviour and attitudes*. And CHOICE, September 2015, *Desperately Seeking Streaming - Research update: CHOICE digital consumers paying for content behaviour and attitudes*.

<sup>3</sup> Productivity Commission, April 2016, Draft Report on Intellectual Property Arrangements, recommendation 5.1.

<sup>4</sup> Productivity Commission, April 2016, Draft Report on Intellectual Property Arrangements, recommendation 5.2.

substantially affect domestic regulatory arrangements (e.g. sections on intellectual property) should be made public.

- Explanatory documents and position statements should be published, particularly in relation to intellectual property.
- An expert advisory group should be established to assist negotiators by providing advice on the impact the agreement may have on health, environment, consumer and business interests. The minutes of meetings held by this group should be made public.

For further information please contact CHOICE

Yours sincerely,

Alan Kirkland,  
Chief Executive Officer