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SUBMISSION TO THE PRODUCTIVITY COMMISSION INQUIRY INTO INTELLECTUAL PROPERTY
ARRANGEMENTS

RESPONSE TO THE DRAFT REPORT PUBLISHED APRIL 2016

Introduction

The position we outlined in our submission in response to the issues paper has not changed, however the Design Institute of Australia (DIA) has the following questions or responses to the draft report.

Essentially we ask PC to re-examine the underlying assumptions of their economic model of what constitutes a consumer benefit, or at least recommend the Government undertake economic research into design-driven innovation.

In some of the arguments below we use the example of a chair, but these arguments apply across all registerable design types represented by the DIA.

Economic Utility

What is the utility value to a consumer of being able to obtain a cheaper version of a particular design, as opposed to another design, given the almost infinite number of product designs available?

- If the utility is status, for example having a particular design of chair will make people think the consumer is fabulous, then will allowing cheaper copies of a design undermine the status of that design thereby negating the utility benefit?
- If the utility is simply to provide seating, can that not be satisfied by any of the diverse range of genuine designs available at any price point

Lower Prices

If the aim is simply to provide cheaper prices for consumers, allowing copies of designs may not achieve this because:

- Unauthorised copies of the David Trubridge Coral Light have been found in retail stores for more than the price of the original. This is not typical of retailers such as Matt Blatt, but high quality copies typically offer only small savings over original product. Low priced copies come with quality compromises that can harm consumers, for example the copied Tolix Chairs sold by Fantastic Furniture that amputated toes.
- DIA member Design By Them advises that they deliberately avoid designing low-cost products (even when manufactured offshore), because the lower margins, combined with the relatively short period of protection in the market, mean that they cannot make a reasonable return on a low cost product. Therefore, a short registration period may actually create a perverse incentive for Australian designers to avoid designing innovative low cost products, which may not be in the interests of all consumers.

Competition in the marketplace

What form of competition is most beneficial to Australia overall? The draft report of the PC states that increasing designs (and other) protection can reduce competition in the market by effectively granting monopolies. The implication of this is that allowing manufacturers to copy a successful product after a shorter period of time drives down costs for the consumer.

But does this logic follow in a mature market, for example furniture, where there is already an enormous variety of products to choose from? Is there a greater benefit to Australia overall if competition in the market is encouraged between different designs? In this way, design rights are

different to other IP, as there is more scope for competition between different designs that offer similar utility. For example, consumers cannot just choose another cancer drug, but can easily choose another chair that will deliver the same utility.

- If design protection is reduced or kept at the current level then, as stated above, designers have a disincentive to create low-cost innovative products. Then the only route to reducing costs is by copying other designs, avoiding design and development costs, or by reducing quality. In the long term, how does it benefit society if new and innovative designs, which may be produced at reasonable quality for low cost, are not being created?
- An economic question is: should there be competition between the same design based purely on price, or does competition between different designs result in more creativity in the market – ultimately leading to greater consumer choice, more innovation and more value creation.

Conclusion

The DIA proposes that it is competition between different designs in the market that leads to design driven innovation, as there is an economic incentive to invest in design in order to compete in the market. In this way a greater variety of designs are created and tested in the market, leading to greater consumer choice and lower prices (and /or higher value). After all, surely the design that is cheaper and more beautiful will be successful in the market.

We note that, as a membership based organisation the DIA does not have the wherewithal to conduct the sort of economic study required to prove this hypothesis. We request that, as a minimum, the PC recommend that this study into the economics of design driven innovation is undertaken by the government, to better inform decisions regarding design rights.

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