

**THE EXAMINATION BY THE PRODUCTIVITY COMMISSION OF THE PROVISIONS OF
THE *COPYRIGHT ACT* 1968 THAT RESTRICT THE PARALLEL IMPORTATION OF
BOOKS INTO AUSTRALIA**

SUBMISSION BY ZEPHYR MUSIC PTY LIMITED

INTRODUCTION

This submission to the Productivity Commission (“the Commission”) in respect of the examination of the provisions of the Copyright Act 1968 (“the Act”) is made by Zephyr Music Pty Limited [ACN 002 399 653] (“Zephyr”). That task to be undertaken by the Commission is referred to in this submission as “the Study”.

Zephyr is a major retailer and wholesaler of printed music in New South Wales. Printed music is the graphical notation of one or more musical works presented in book form. Zephyr’s customers include private and professional musicians, music students, music teachers, music shops, libraries, schools, P & C associations, universities, community bands, orchestras and other music organisations, professional orchestral and chamber groups, choirs, church music organisations and music conservatoriums. Zephyr imports printed music books for retail and wholesale sale, and also purchases printed music from other Australian importers for retail sale. Zephyr was founded in 1976.

**REQUEST TO THE COMMISSION TO INCLUDE BOOKS CONTAINING MUSICAL
WORKS IN THE STUDY.**

In its Issues Paper, the Commission stated that it intended to limit the Study by interpreting “*the term books to exclude books whose main content is a transcript of musical works, as well as computer software manuals or periodicals*”. This gave us the impression that the effects of the parallel import restriction in relation to books containing musical works would not form part of the Study.

In our Preliminary Submission dated 9th December 2008, we requested that the Commission not exclude from the Study, an examination of the public benefit or lack thereof of Section 44A(9)(a) of the Act. We made this request for the reason that the Terms of Reference appeared to us to require the Commission to examine **all** of the “present provisions” contained in Section 44A including that contained in Section 44A(9)(a) for the purpose of determining whether or not the benefits to the community from the exclusion of books “*whose main content is one or more musical works*” from the effect of Section 44A, outweigh any costs from restricting competition.

Obviously, our concern relating to the definition of the term “books” in Section 44A(9)(a) also applies to the similar definition of that term in Section 112A(9)(a) of the Act. Accordingly, we hope that the Commission will, as part of the Study, consider the appropriateness or otherwise of the existing definitions of “books” in Sections 44A and 112A and accept and consider this submission on that matter.

ESSENCE OF SUBMISSION

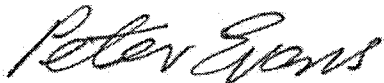
We submit that the current exclusions in respect of the definitions of the term “books” in Sections 44A(9)(a) and 112A(9)(a) of the Act give rise to no benefits to the community and should not be retained.

REASONS

1. The effect of the exclusions created by Sections 44A(9)(a) and 112A(9)(a) of the Act is that Australian printed music importers such as Zephyr, as well as their customers, cannot enjoy the exemption to the parallel import restrictions provided for in Sections 44A and 112A to importers and buyers of books containing literary works.
2. Although the term “book” is used in various contexts throughout the Act, it is only in Sections 44A (overseas works) and 112A (overseas editions) that the term is defined to exclude, *inter alia*, a book whose main content is one or more musical works, with or without any related literary, dramatic or artistic work. Sections 44A(9) and 112A(9) group books whose main content is one or more musical works with software manuals and periodicals and differentiate such books from those containing literary works. Books containing musical works share little in common with software manuals and periodicals. It is hard to imagine what elements these three categories do share in common that would justify excluding all three from the operation of Sections 44A and 112A of the Act. If anything, books containing musical works should more logically be grouped with books containing literary works. Musical and literary works both come within the definition of “works” under Section 10 of the Act and the nature of copyright subsisting in them is substantially the same (Section 31). Presumably, it is not a coincidence that Section 44A itself is to be found in Part III of the Act which deals with copyright in literary and musical works.
3. Whilst there may be special cases which could be made for excluding software manuals and/or periodicals from the definition of “books” in Sections 44A and 112A of the Act, we see no reason based on benefits to the community why Sections 44A and 112A should continue to more heavily restrict the parallel importation of books containing musical works than books containing literary works.
4. In practical terms, the present system of import copyright clearances and royalty accounting necessitated by the parallel import restrictions in Section 37 of the Act, is the same whether an imported book contains a literary work or a musical work. In fact, many imported books which contain musical works also contain literary works in the form of song lyrics.
5. Any artificially drawn distinction between “books containing musical works” and “books containing literary works” in the prosaic area of the commercial importation and distribution of legitimately published books, is not proper subject matter for copyright law in our view.

For the above reasons, we request that the Commission recommends to the Minister in its report on the Study that no benefits to the community are served by Sections 44A(9)(a) and 112A(9)(a) of the Act and that they be repealed.

DATED: 14th January 2009



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Peter Evans
Managing Director
Zephyr Music Pty Limited