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20 January 2009

Parallel Importation of Books
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

Dear Productivity Commissioners

Review of Parallel Importation Laws for Books

Australia has developed a vibrant local publishing industry. The book publishing industry and copyright collecting societies' contributions to the Australian economy are growing annually, in turn contributing to GDP and providing increased employment.

As outlined in the recent PWC report: 'The economic Contribution of Australia's Copyright Industries':

In the most recent year for which data is available (2006/07), Australia's copyright industries:

- employed 837,507 people, which constituted 8.0% of the Australian workforce
- generated economic value equal to 10.3% of gross domestic product (\$97.7 billion)
- generated \$6.873 billion in exports, equal to 4.1% of total exports.¹

The position of the Australian publishing and copyright industries is based on a number of factors:

- Australia is a developed nation which has a small and highly urbanised population with high educational aspirations. This is a combination which means we can and want to invest in intellectual capital.

¹Price Waterhouse Coopers, November 2008, *Making the Intangible Tangible: The Economic Contribution of Australia's Copyright Industries*, p. 3.

- Innovation, in the form of digital developments, has removed historical impediments relating to the 'tyranny of distance' that rendered Australia somewhat uncompetitive, even as recently as the last decade.

The service and technology industries are therefore highly attractive and increasingly sensible areas for Australia to invest in, now and into the future. Australia has sought to devise regulatory frameworks which support both access to, and the creation of content – ensuring the incentive for Australian authors and publishers to create works.

- The Part VB statutory licence framework of the *Copyright Act 1968* for the educational sector allows teachers to copy and communicate from all works, on the proviso that creators are remunerated for this use. The basis for this payment is that the copying has such an impact on the copyright owner's market for their works that compensation is necessary.
- The current parallel import laws create certainty for publishers and authors that their market will not be eroded by dumped, remaindered works from the larger markets of the US and UK, but insist that to rely on these provisions, versions must be available in Australia within 30 days – to ensure Australian consumers have access to works.

The publishing industry, like other copyright industries, is in a transitional phase from analogue/ hardcopy to digital provision of works. It is important, however, to recognise that digital developments are in their infancy – and that publishing markets are still analysing and responding to the opportunities and threats they pose.

CAL believes the regulatory framework, including parallel import laws which are a form of territorial copyright, should be framed in a way which takes into account this stage of development of the digital economy. Undue or ill-considered disruption to the laws surrounding the provision of copyright works may have unintended consequences which could be detrimental to the local publishing industry both now and in the future.

CAL's member trade publishers and authors are responding to the Productivity Commission in relation to the effect of copyright laws on the publication of Australian literary content generally.

CAL's focus in this submission is on educational publishing, as most of our licence fees are derived from use of educational publications in the educational sector under the Part VB licence scheme.

In 2007-08, licensing revenue from Australian schools accounted for \$52.3 million of the \$106.8 million CAL collected from all licence schemes. This licence revenue was based on data from copying records processed under

CAL licences from business, education and government surveys during 2007-08. These surveys provided estimates of nearly 2 billion pages of copying nationally, with more than one billion pages being copied in schools alone.

CAL's major licence scheme, the statutory licence contained in Part VB of the *Copyright Act*, was borne in direct response to analogue copying technology, photocopiers, which threatened publishers' traditional markets for their works. The technological development of photocopiers had a marked impact on educational publishing in Australia – disrupting the traditional business models of authors and publishers, triggering this legislative intervention to ensure that Australian publishers continued to invest in the production of local content. Lengthy consultation and negotiation between copyright owners, the educational sector and government resulted in the establishment of the scheme.

With Part VB, the Australian government devised a licence scheme which balanced the requirement of the educational sector to access works, with the needs of publishers and authors to derive an income from their creative capital. This licence scheme has led to the development of a thriving local educational publishing industry and indeed, to a burgeoning export trade. The beauty of the scheme is that surveys of usage determine licence fees payable and distributions to individual copyright owners. It rewards those publishers whose works are used.

The economic returns to creators of works are therefore responding to the educational sector– and encouraging the creation of texts which educators consider of a quality and relevance appropriate to the courses they are teaching. In this way a cycle emerges, and the educational market place for texts is developed and refined. This 'pay for use' approach, we believe, is a direct and efficient mechanism to provide support to the publishing industries, and preferable to a system of government patronage through grants.

CAL is now a critical part of Australian publishers' business models. CAL distributions can account for a significant component of publishers' profits, and enable them to invest in the development of new titles and products. For educational publishers this means the development of Australian content for Australian students.

The solid state of the Australian educational publishing industry has been reached through the establishment of a regulatory framework publishers believe is secure enough for them to have the confidence to invest in the development of new works. The regulatory framework important for educational publishers has been reached through a variety of measures, the two key ones being parallel import laws and the statutory licence scheme for educational use of works.

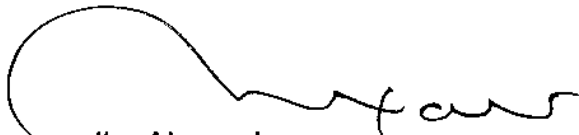
Prior to the legislative intervention that established the statutory licence scheme, foreign, perhaps cheaper texts were more prevalent as a local industry did not have the necessary framework to confidently invest in local content.

A change to importation laws, reducing the confidence Australian publishers have to invest in the production of new Australian titles, means that it is possible that texts will be imported from overseas, and the market for Australian content would be eroded. This would place Australia at risk of its educational market being again affected by the importation of texts from English speaking countries like the UK, US and Canada. Given that each of these countries has well-developed publishing industries and established parallel import laws to support their local creators, they could sell those works at a discount in the Australian market.

Apart from the potential negative impact on local sales of Australian content, Australian publishers would continue to face restrictions on their ability to export into these markets due to their domestic parallel import laws, if Australian parallel import laws were relaxed. In this way Australian publishers could be doubly disadvantaged.

CAL advocates taking a long-term view of the impact of these laws which takes into account the interests of all participants in the publishing sector – publishers, authors, students and other consumers of content. The long-term future of Australia's multi-million dollar publishing industry should be considered when thinking about what could turn out to be short-term gains if these laws are relaxed. This long-term view should take into account the current context of significant technological change and increasingly globalised markets. CAL's position is, therefore, that the current importation rules should be retained, as they exist in competitive markets where minimal disruption to the local industry is desirable, particularly in the educational publishing sector.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jim Alexander', with a large, sweeping flourish at the beginning.

Jim Alexander
Chief Executive