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# COPYRIGHT REFORM:

## PARALLEL IMPORTATION OF SOFTWARE PRODUCTS

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On 27 June 2000 the Government announced that it will amend the Copyright Act to allow legitimate software (including computer-based games), books, printed music and periodical publications to be parallel imported. This information sheet deals specifically with software products. A separate information sheet is available on books and related publications.

### **WHY HAS THE GOVERNMENT MADE THIS DECISION?**

The proposed amendments will create the potential for lower prices and greater availability of software products.

The current restrictions on parallel importation are anti-competitive and disadvantageous for business and consumers. They restrict competition at the wholesale and distribution sectors of the market. This is because retailers are currently prevented from sourcing their inventory from alternate wholesalers or distributors who may be able to provide legitimate copyright products cheaper and faster than existing licensed suppliers. This lack of competition allows the copyright owner and their licensee(s) to set prices above those that could be achieved in a fully competitive market.

The Australian Competition and Consumer Commission (ACCC) in a 1999 study found that Australian consumers were paying substantially more for software than consumers in other countries. The price gap is particularly prevalent in relation to specialist business software and popular PC games.

The Government's proposed amendments, in particular, will eliminate the import monopoly of a small number of multinational software companies that assisted them to set prices rather than prices being set by market forces. The change will provide Australian consumers with greater product choice and potentially lower prices. Retailers will be free to source their inventory from the most advantageous source according to customer needs, price and service.

The proposed amendments will also enable Australian e-commerce to become more competitive internationally. Removing parallel

importation restrictions will allow Australian online retailers to use and offer software products at internationally competitive prices. This environment will further encourage the growth of Australian online industries.

The Intellectual Property and Competition Review Committee (IPCRC) conducted an independent review of intellectual property and competition. The IPCRC concluded in its final report on parallel importation (June 2000 - available at [www.ipcr.gov.au](http://www.ipcr.gov.au)), that the repeal of the parallel importation provisions is an effective way of ensuring that Australians do not pay more for copyrighted works than is being charged overseas.

### **WHAT IS 'PARALLEL IMPORTATION'?**

Software products are 'parallel imported' when they are imported by someone other than the owner of copyright in the product or their authorised distributor. Currently, the copyright owner can control who is allowed to import for commercial purposes software products that have been produced overseas with the copyright owner's approval. Parallel importing provides an alternative distribution channel for legitimate software, not dependent on the Australian copyright owner's permission for that distribution.

In 1998, the Copyright Act was amended to allow the parallel importation of legitimate sound recordings into Australia. The legislation was also amended to prevent the use of copyright in works contained in packaging and labelling to restrict the parallel importation of non-copyright products. The packaging and labelling amendments came into effect in January 2000. A separate fact sheet is available in relation to the packaging and labelling amendments.

## **WHAT WILL BE THE EFFECT OF THESE CHANGES?**

The proposed changes will allow the parallel importation of published software products. A range of products will be affected by these changes, including popular computer games, pay-per-play video arcade games, and popular applications for word processing, database management, graphics and design packaged software.

The proposed changes are specifically directed at software products including those that include film elements. However, the changes will not affect the importation of films for cinema or broadcast release.

## **DOES THE DECISION MEAN THAT ANY SOFTWARE PRODUCTS CAN NOW BE PARALLEL IMPORTED?**

No. While an announcement has been made, amendments to the Copyright Act are necessary to give effect to the Government's decision. These are intended to be put forward as soon as possible, but it may be some time before the amending legislation is passed. It must be introduced into the Federal Parliament and passed by both the House of Representatives (where the Government has a majority) and the Senate (where the Government does not have a majority).

## **WILL SOFTWARE BE CHEAPER?**

Many software products will be cheaper. When it comes into effect, this decision will ensure that competitive market behaviour will determine prices, as it does with a huge range of other goods. That is, the possibility of alternative commercial supply will push software producers to provide to consumers a range of software products that are priced in line with the prices of products for sale in other major markets.

Price reductions and greater availability of imported software products will stimulate a more internationally competitive environment for Australian e-commerce. Retailers will be able to provide a wider range of software that is more competitively priced to both Australian and international markets.

## **WHAT IMPACT WILL THERE BE ON AUSTRALIAN SOFTWARE DEVELOPERS?**

The Australian software industry is not a large producer of packaged software products and has concentrated on the development of specialist domestic software. Evidence provided to the IPCRC in its review conducted in 1999/2000 suggests that independent Australian software producers face higher costs in software development. This is because parallel importation restrictions increase the prices Australian software developers must pay for the imported software used to assist in the development of their products. This change will therefore assist such developers.

## **WILL THE REMOVAL OF PARALLEL IMPORTATION RESTRICTIONS INCREASE SOFTWARE PIRACY IN AUSTRALIA?**

There is no evidence to suggest that parallel importation will increase software piracy in Australia. In a report commissioned by the IPCRC for its consideration of parallel importation and copyright, the Australian Institute of Criminology (AIC) found no substantial evidence of an increase in CD piracy as a consequence of the removal of parallel importation restrictions on sound recordings in July 1998. There is also a 'paucity of statistical data' to suggest that parallel imports have increased piracy in New Zealand (which recently permitted parallel importation), according to a report prepared by the New Zealand Institute of Economic Research.

Both the ACCC 1999 report and the AIC report concluded that piracy exists independently of parallel importation and has become predominantly a domestic and electronic distribution (Internet downloading) issue.

The Government recognises that piracy is a concern for the software industry. Accordingly, the proposed amendments will also place the onus of establishing the copyright legitimacy of imported software products upon a defendant in civil legal proceedings.

## **WILL PARALLEL IMPORTS WEAKEN CENSORSHIP REQUIREMENTS IN AUSTRALIA?**

The reforms will not affect the requirement for films and video games to be classified by the Office of Film and Literature Classification, regardless of their origin. Censorship is a different issue from parallel imports and as such, any issues that may emerge should be resolved within that context.

## **WILL PARALLEL IMPORTED SOFTWARE PRODUCTS STILL BE TECHNICALLY SUPPORTED?**

Opponents of the removal of parallel import restrictions claim that if parallel importation became legal, this would reduce the incentive for exclusive agents and manufacturers to offer technical support for their software. However, the ACCC has noted that most after-sales and technical support services are paid for by the user of the service regardless of the origin of the product. Retailers can also arrange such services with local companies if required. This has been an observed outcome in New Zealand.

## **HAVE THESE ISSUES BEEN CONSIDERED PREVIOUSLY?**

Review of restrictions on parallel importation have been under consideration for many years. In 1988, the Copyright Law Review Committee (CLRC) reviewed the operation of the parallel import provisions and recommended a range of amendments. A report by the then Prices Surveillance Authority (PSA) into the prices of books in 1989 recommended repeal of the parallel importation provisions for books. Legislation was passed in 1991 to provide a limited form of parallel importation of books (These provisions are known as the 30 day and 7/90 day rules.)

Since then, the parallel importation provisions for software have been reviewed again by the PSA in 1995, the CLRC in 1996, the Industry Commission (IC) in 1995, the ACCC in 1999, and the IPCRC in 2000.

All of these reports, with the exception of the CLRC review, concluded that the current restrictions were anti-competitive without

delivering sufficient countervailing benefits and that the provisions allowing the restriction of parallel imports should be repealed. Although the CLRC recommended that the restrictions on parallel imports should be retained, the review also recommended that the issue be revisited after 3 years.

## **ARE THE PROPOSALS CONSISTENT WITH AUSTRALIA'S INTERNATIONAL OBLIGATIONS?**

Australia will not contravene any international treaties or conventions by allowing parallel imports as proposed. Australia is acknowledged internationally as having a sound intellectual property regime and is a signatory to both the Berne Convention for the Protection of Literary and Artistic Works and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Other countries that allow parallel importing of various kinds include New Zealand, Malaysia, Japan and Singapore which are also members of these international agreements. The European Union also permits parallel imports between member states.

The international community has consistently refused to impose restrictions on parallel importation. In fact, TRIPS expressly excludes the issue of parallel imports from its coverage (see Article 6 of TRIPS).

### **Glossary of terms**

ACCC	Australian Competition and Consumer Commission
AIC	Australian Institute of Criminology
Berne Convention	International Convention for the Protection of Literary and Artistic Works concluded at Berne in 1886, as revised.
CD	compact disc
CLRC	Copyright Law Review Committee
IC	Industry Commission
IPCRC	Intellectual Property and Competition Review Committee
PSA	Prices Surveillance Authority
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights 1994 - one of the agreements administered by the World Trade Organization resulting from the Uruguay round of the General Agreement on Tariffs and Trade.