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QUESTIONNAIRE:

PARALLEL IMPORTING OF COPYRIGHT GOODS FOR CREATIVE INDUSTRIES

2010?

What is copyright and parallel importing?

1 Copyright aims to protect creative expression in a particular work by granting the copyright holder control over the use or reproduction of that work, subject to certain prescribed uses or exceptions. This control enables the copyright holder to capture the returns for their creative expression over a specified period of time, which acts as a reward and incentive for creativity and innovation. However, copyright may also confer upon the holder a degree of market power. Significant and sustained market power may create inefficiencies in a market, particularly if it results in the supplier being able to restrict the quantity supplied for sale at higher prices to consumers. There is, therefore, an underlying tension with copyright between encouraging innovation and enabling consumers to purchase goods at least cost.

2 Parallel importing involves the selling of goods subject to intellectual property rights through channels of distribution that are not authorised by the intellectual property right holder. Unlike pirated goods, parallel imported goods have generally been made by or with the consent of the copyright holder.

3 Parallel importing restrictions can enhance the value of the copyright. It enables the copyright holder responsible for global distribution of the product to differentiate the world market by quality or price and thereby increase returns. A restriction on parallel importing will be socially desirable where the higher returns are necessary to encourage the original innovation and the subsequent distribution and marketing of that product.

Parallel importing in New Zealand

4 Copyright in New Zealand is provided for under the Copyright Act 1994. The Copyright Act 1994, and its predecessors of 1913 and 1962, all dealt with the issue of importation of "infringing copies" in broadly the same way. Parallel imported products subject to copyright protection were covered by the definition of infringing copies.

5 In May 1998, as part of its Budget legislation, the previous Government amended the Copyright Act 1994 to remove prohibitions against parallel importing of copyright goods. The objective of the reforms was to make New Zealand consumers better off through increased competition in New Zealand goods markets.

6 This Government rejects this blanket approach to reform and proposes to review the impacts of parallel importing on an industry by industry basis

taking into account the characteristics of each market. A key part of this review is consultation with stakeholders in each of the industries.


A proposed ban on parallel importing in the creative industries

7 The first sector for investigation is the creative industries. The promotion of New Zealand arts and culture, as an industry and as a source of enjoyment and identity for all New Zealanders, is a priority for the Government.

8 The strengthening of copyright protection fits within this overriding objective for the creative sector. By this means, the Government wants to encourage overseas investment in, and overseas marketing of, New Zealand talent.

9 In the Speech from the Throne, the Government outlined its initiative in respect of parallel importing of CDs, videos, films, books and software and its view that any ban would be for up to two years after first release.

10 The Ministry has subsequently clarified with Ministers the creative goods that are under consideration. These are:

- a Musical works or sound recordings in any media (e.g. CDs, MCDs¹, cassette tapes, vinyl records);
- b Films, programmes and performances, stored on VHS, DVD or VCD² formats;
-  c Books, magazines and journals, stored in printed or electronic form; and
- d Consumer software products (e.g. home and business operating systems, computer games, "off the shelf" products).

11 Any ban would only apply where the creative goods are imported for commercial use or sale. That is, it is not intended to review the right of any person to import such goods into New Zealand for private and domestic use. *e commerce*

12 The proposed ban would apply to certain creative works regardless of whether they have New Zealand or overseas origins, although the coverage of the ban is one of the issues that will be covered in the review on a product by product basis.

13 The term of the ban is a further issue for consideration on a product by product basis. The term should accommodate the period of highest value of the copyright while taking into account the interests of consumers. In any case, it shall not exceed two years from the date of release.

Questions for submissions

¹ Compact discs, mini compact discs

² "Very high speed" videos, digital versatile discs, video compact discs or laser discs

14 The following questions are designed to gather information to assist the Ministry in advising the Government on the need for, and possible specification of, a ban on parallel importing in the creative industries.

15 Please answer those questions that relate to your particular interest in the creative products and, wherever possible, provide quantifiable evidence or examples to support your views.

16 If you have an interest in more than one of the creative products, please qualify your responses so that it is clear which product is being discussed in each case.

Nature of the problem

Q1 To what extent do copyright holders for the product differentiate the New Zealand market from other international markets? Please explain the nature and extent of that market segmentation.

Q2 Will the extent of market segmentation increase if a ban on parallel importing for the product is introduced?

Q3 To what extent has parallel importing of the product occurred since the removal of the ban in 1998?

At Unity Books, we have not increased our parallel imports more than what we did before.

Returns to the innovators

Q4 Will the proposed ban facilitate increased investment in, and marketing of, New Zealand arts and culture? If so, how?

No.

Local relationships are important to us.

Q5 Will the proposed ban increase the returns to New Zealand innovators of the creative product? If so, how?

Q6 Are copyright holders in the product able to contract exclusive dealing arrangements to protect their interests in the absence of a legislative ban? Has this occurred over the last two years?

Not in the book trade as we understand it.

Q7 What is the extent of piracy for the product? How would you expect this to change if a ban on parallel importing of the product is introduced?

V little piracy in western book market.

Q8 What impact has direct purchasing via the internet had on the returns to copyright in the product? *Ambiguous question. Amazon etc are*

our competitors. We are affected by our customers buying ebooks cheaply (without tax etc).

Consumer impacts

Q9 Would prices change if there was an imposition of a ban on parallel importing for the product? If so, explain how. ~~prices would increase~~

Possibly books would increase in price. Distributors' choice based on many factors.

Q10 What impact, if any, would a ban on parallel importing have on the quality of the product? *service.*

Lack of choice. Huge delays recurring in supply from local distributors. we don't want to return to this.

Q11 Can consumers easily identify differences in quality, if any, in parallel imports from goods imported by the copyright holder or the licensees?

Not unless they recognise imprints. American editions preferred by many customers at Auckland branch.

Q12 How, if at all, would the market change if a ban on parallel importing for the product was reintroduced? ~~turnover would suffer~~

Our selection ~~would~~ suffer our turnover could fall, customers would ↑ e book buying. Nothing positive.

Q13 How would you expect the market to change if the parallel importing restrictions were not changed? That is, what is the counterfactual?

We would expect it to remain in its current stable position. The e-commerce factor is the big variable. It's impossible

Q14 Have imports for personal or private use through the internet had an impact on the market structure? Will this have an impact in the future?

*Hugely.
Yes "
And no copyright or
GST law prevails.*

*to quantify
the effect
of
Borders
in Auckland
let alone
e-commerce*

Distribution

Q15 How would access to new products change if the ban was introduced?

Would be ~~delayed~~ ^{cases and} certain books and not be sold in early enough.

Q16 Would distribution channels be altered? If so, how?

No. It has been business as usual for distributors + book sellers despite

Q17 Would pre or after sales support be different?

Service doesn't increase when in a monop. ~~lay~~.

panic + dire predictions by ~~existing~~ distributors.

Q18 How might the players in the market change? Would existing players leave? New players enter?

Only at the same rate as usual.

Implementation of any ban on parallel importing

Q19 What should be the period of any ban on parallel importing for the product from the date of release? Please give reasons.

0 days. See Q16

Q20 Should the period of the ban run from the date of first release anywhere in the world, or first release in New Zealand? Please give reasons.

NIL or anywhere - the world.

Q21 What, if any, exemptions should apply to the ban? Examples of possible exemptions are:

- Products produced by non-New Zealand innovators;
- Products imported for educational uses, or for use in libraries or archives;
- Where the copyright good is intermingled with another and its essential character has changed;
- Where the product is not otherwise available in New Zealand in a reasonable period of time.

Please give reasons for any exemptions.

All books ~~products~~ should be exempted except books by NZ authors published + distributed + remaindered off-shore - these should not be permitted because it undermines + cooperative book stores like ours

Q22 Please provide any comments on issues not addressed in this questionnaire. (e.g. the issue of reversing the onus of proof so that importers and copiers are required to demonstrate that their actions are not contravening intellectual property laws?)

Official Information Act 1982 and Privacy Act 1992

It should be noted that the contents of submissions provided to the Ministry in response to this letter will be subject to the Official Information Act 1982 and the Privacy Act 1993. If the Ministry receives a request for information contained in a submission, we would be required to consider release of the submission, in whole or part, in terms of the criteria set out in these Acts.

In providing your response, please advise us if you have any objections to the release of any information contained in your submission, and, if you do object, the parts of your submission you would wish withheld, and grounds for withholding.

My personal view:

~~*~~ This is the only piece of National party legislation that I have ever liked. We are aghast that the Labour Govt wants to limit people's freedom. We do want the Govt to address the anomalous issues re ~~e-book~~ ^{offline} buying - no GST, no tax, no rights etc. These are our customers and some of them are frustrated by the ^(copyright) limitations of some of our suppliers.