

8 May, 2000

Ms Kay Collins
Director
Intellectual Property & Competition Review Secretariat
Attorney General's Department
Robert Garran Offices
National Circuit
BARTON ACT

Dear Ms Collins,

I will comment upon Interim Report of the Intellectual Property & Competition Review as it applies to the Digital Versatile Disc (DVD).

The Committee recommends that parallel importation in the Copyright Act should be repealed. If that should occur it would provide to the Australian consumer a greater choice to the Australian consumer of DVD materials from overseas. However it is not transparent that the Committee's recommendations with respect to s.51(3) of the Trade Practices Act would prevent the effective ban of parallel importation of DVD materials by the use of contractual arrangements between the overseas owner of the copyright on the artistic work and the makers of DVD players.

Currently major movie producing companies require under contract that the makers of DVD players to include a Region Coding facility within the DVD player. This facility is usually located within the copyrighted software contained within on-board 'chips'. In conjunction with the Region Coding within the DVD players, the movie companies place complementary Region Coding on DVD discs. Therefore the Region Coding of the DVD disc must equate to the Region Coding of the DVD player for the material contained within the disc to be played. Most Australian DVD players may only play Region 4 discs thus restricting the consumer from accessing equivalent DVD discs available on for example the American market, including a vast number of classic movies.

There is a thriving industry within Australia to the knowledgeable consumer, for on-board 'chips' to be either replaced or re-programmed so as to allow any Region Coded disc to be played back on PAL or NTSC capable television sets. This greatly expands the consumer's choice. However this is usually carried out without the DVD player maker's knowledge or consent. Not only do such modifications come at additional cost, there are unanswered questions about whether any such modified players are subsequently covered by manufacturer's warranties.

Where chip modifiers are legally prevented from 'reverse engineering' the software or hardware contained within the DVD player, because of the enforcement of IP rights such as contained in the *Copy Amendment (Digital Agenda) Bill 1999*, this will in effect circumvent the Committee's recommendation on the parallel importation provisions. That is because retailers or individual consumers would only be able to source Region 4 discs from Australian distributors. Whilst many Region 4 discs are produced overseas, the movie companies do not release Region 4 discs into the overseas market and thus there would not be an alternate source of Region 4 discs from overseas.

Where Australians are capable of being able to source American Region 1 coded discs under the repealed parallel importation provisions and are also able to legally playback said Region 1 discs, this will allow the intent of the repeal to be evidenced within the DVD market.

It is **recommended** that the Final Report include a statement that relevant IP statues be amended to allow DVD players and similar technologies, to be legally sold within Australia that allows all regions to be played.

Sincerely,

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