

Ms Kay Collins
Director Intellectual Property
And Competition Committee Secretariat
Attorney General's Department
Robert Garran Offices
National Circuit
Barton ACT 2600

Mr Neville Ford
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Re: Submission on Interim Report April 2000

Nothing in this submission should be interpreted as an argument that the Nation State is always right.

Some people have a belief that the import of Intellectual Property Products (IPP) into a country without the knowledge or permission or consent of the owner/supplier is desirable and should be legal under Australian Law. They make this judgement on the view that the competition merit grounds are superior and outweigh the consideration of rewarding innovations by Intellectual Property Owners/Suppliers (IPO/S).

They, in my view, use the upside down language of "grey" imports, "parallel" imports, "goods legally marketed" and refer to the imported IPP as "genuine", all emotionally and value charged terms. Refer to letter 16/3/2000 to Prof. Henry Ergas from Prof. Allen Fells/Jeremy Coghlan of ACCC. I believe the use of this upside down language by these people is misleading and deceptive and would amount to unconscionable conduct if carried out by an Australian Business. The upside down language is seen as superior to International and National laws.

I believe that from the correct (value free) language of a Nation States point of view and from a lawmaking point of view that the term "IPP imported without clearance by owner/supplier" should be included in agreements. This language would mean that if, as a Nation State, Australia were to approve and make legal such importing then we would use a decriminalising language thus leaving it up to Nations and Traders to comply with our laws.

Note, The so called Trips agreement did not agree on the terms, parallel/grey imports.

If your committee were to urge a law change to Parliament and they agreed then Australian IPO/S would be able to take the Federal Government's legislation to the High Court and oppose it because the law change would appear to take away a "property" from an Australian without just compensation which could be unconstitutional. The Commonwealth does not have exclusive power over patents and IP, but it does have exclusive power imports. Should such a law change be made I would urge the Victorian Government to make a law on I.P.

I urge the committee NOT to make legal such "importing without IPO/S clearance" and will submit evidence as to why I think this is good Public Policy. I believe the use of upside down language is an issue that must be resolved first before we can sensibly confront the issue in a transparent and understandable manner for all concerned.

Other people use emotive language make unjustified assertions and assume that there is some intrinsic conflict between the fostering of IP and IPO/S being rewarded, then take one side of the argument re IPO/S interests and consumer interests.

These two false views would not be so important if not for the fact that Australia is one of the leading players in the TRIPS Agreement.

Neville Ford
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