COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Reference: Enforcement of copyright

THURSDAY, 2 SEPTEMBER 1999

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HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Thursday, 2 September 1999

Members: Mr Andrews *(Chair)*, Ms Julie Bishop, Mr Cadman, Mr Kerr, Ms Livermore, Mr Murphy, Mr Ronaldson, Ms Roxon, Mr St Clair and Mrs Vale

Members in attendance: Mr Andrews, Mr Cadman, Mr Kerr, Ms Livermore, Ms Roxon and Mrs Vale

Terms of reference for the inquiry:

(1) The Committee will inquire into and report on issues relevant to the effective enforcement of copyright in Australia and, in particular, on:

(a) evidence of the types and scale of copyright infringement in Australia including:

(i) the availability and accuracy of data on copyright infringement;
(ii) the scale of infringement in Australia in comparison with countries in our region and Australia's major trading partners;
(iii) the geographical spread of copyright infringement in Australia;
(iv) the cost of infringement and impact on Australian business;
(v) whether there is evidence of the involvement of organised crime groups in copyright infringement in Australia, and if so, to what extent;
(vi) likely future trends in the scale and nature of copyright infringement.

(b) options for copyright owners to protect their copyright against infringement, including:

(i) actions and expenditure undertaken, and that could be undertaken, by copyright owners to defend their copyright;
(ii) use of existing provisions of the *Copyright Act 1968*;
(iii) use of legislative provisions other than those of the *Copyright Act 1968*;
(iv) technological or other non-legislative measures for copyright protection.

(c) the adequacy of criminal sanctions against copyright infringement, including in respect of the forfeiture of infringing copies or devices used to make such copies, and the desirability or otherwise of amending the law to provide procedural or evidential assistance in criminal actions against copyright infringement;

(d) the adequacy of civil actions in protecting the interests of plaintiffs and defendants in actions for copyright infringement including the adequacy of provisions for costs and remedies;

(e) the desirability or otherwise of amending the law to provide further procedural, evidential or other assistance to copyright owners in civil actions for copyright infringement;

(f) whether the provisions for border seizure in Division 7 of Part V of the *Copyright Act 1968* are effective in the detention, apprehension and deterrence of the importation of infringing goods, including counterfeit goods; and

(g) the effectiveness of existing institutional arrangements and guidelines for the enforcement of copyright, including:

(i) the role and function of the Australian Federal Police, and State Police exercising Federal jurisdiction, in detecting and policing copyright infringement;

(ii) the relationship between enforcement authorities and copyright owners;
(iii) the role and function of the Australian Customs Service at the border in detecting and policing copyright infringement; and
(iv) coordination of copyright enforcement.

(2) In undertaking the inquiry and framing its recommendations, the Committee will have regard to:

(a) Australia's obligations under relevant international treaties, in particular under the World Trade Organisation *Agreement on Trade Related Aspects of Intellectual Property Rights*;

(b) the provisions of the *Copyright Act 1968* and any amendments to that Act that have been introduced or have been publicly proposed by the Government, to be introduced into Parliament;

(c) established principles of criminal and civil procedure which apply in cases generally;

(d) Commonwealth criminal law policy;

(e) enforcement regimes for other forms of intellectual property;

(f) existing resources and operational priorities of Government enforcement agencies; and

(g) the possible effect of any proposed changes on the operation of Government and private sector organisations.

WITNESSES

Committee met at 9.46 a.m.

BRAID, Mr Rodger Steven, Acting Assistant Director, Development and Legislation Section, Corporate Strategy Business Unit, IP Australia, Department of Industry, Science and Resources

GOULD, Mr Rick Baxter, Deputy Director General, Corporate Strategy Business Unit, IP Australia, Department of Industry, Science and Resources

McCARTHY, Ms Caroline Anne, Acting Director, Development and Legislation Section, Corporate Strategy Business Unit, IP Australia, Department of Industry, Science and Resources

CHAIR—I declare open the hearing of the Legal and Constitutional Reference Committee's inquiry into the enforcement of copyright. I welcome Mr Gould, Ms McCarthy and Mr Braid. I advise you that, although the committee does not require you to give evidence under oath, the hearings today are legal proceedings of the parliament and warrant the same respect as the proceedings of the houses themselves. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. We are in receipt of your submission to the inquiry. I invite you to make some opening comments.

Mr Gould—To give you some background, IP Australia is a government body which is responsible for implementing the industrial property program of the government. It primarily issues patents, trade marks and design rights. We are a self-funding agency, although we are a division of the Department of Industry, Science and Resources. We operate under a reserve account. We have an annual turnover of around $70 million, and we employ around 700 people. We also have policy responsibility in the area of industrial property.

The purpose of our submission was primarily to give the committee some factual background on our experiences in the industrial property system as they may relate to your inquiry and also to look at some common enforcement issues and overlap between the copyright system and the industrial property system. For example, trademarks and copyright could coexist in the software area, patents and copyright can also coexist, and there is also an issue of overlap in the copyright and designs area. The other point was that we wanted to clarify a few issues that have come up from other submissions, where we thought there was some confusion. It is also worth commenting on some of the differences between the industrial property system and the copyright system. Is that of interest to the committee? I do not want to go on if it is wasting time.

CHAIR—Yes, I would like that clarification.

Mr Gould—In a broad sense, industrial property—which is primarily patents, trademarks and industrial design rights—has what I would call economic objectives; it does not have any moral rights objectives, whereas the area of copyright does. For example, in the area of patents the aim of the system is to encourage innovation for economic purposes and, as part of that process, to disseminate information, in that when you apply for a patent you are also required to publicly disclose that information so others can use it. By being a registration

system, it provides a property right which can be traded—either licensed or sold—so in that way it helps the operations of the market.

Trademarks have commercial economic objectives. They are primarily there to help consumers distinguish the ownership of particular goods—in other words, which particular trader is responsible for producing those goods. The industrial design system is a little akin to patents; however, it is primarily there to encourage innovation in the area of industrial design. It covers the appearance of the article concerned, whereas the patent system covers the workings of that article.

A couple of other points worth noting are that the rights that we give in the industrial property system are exclusive rights to exploit that particular invention. It is not an anticopying right, as is the case with copyright. The second point, which is self-evident from what I have said, is that our system is a registration system, so you do not automatically accrue the right as you would with copyright; you physically have to go out and apply for it.

Moving onto the enforcement side of the industrial property system, again reflecting the commercial economic nature of the system, it is primarily up to the owner of that industrial right to look after that right in all senses, including taking action to protect their right. So the bulk of enforcement action in the industrial property system would be civil action, although there are some criminal penalties. The biggest one would be in trademarks, where there are criminal penalties for intentional or reckless action. The other criminal penalties are, largely, fairly minor fines for things like false representation of ownership or representing yourself as a patent attorney without qualification. There are fairly small fines for those. It is worth quickly commenting that, under the Trade Marks Act, there are border inception provisions, and these are very similar to the copyright system.

Moving further on, given that we as an organisation are responsible for granting the rights, we do not have a lot to do with the enforcement system once the right is granted. Most of our information is from putting on our policy hats, in that we do get involved in the enforcement issues, largely when we are looking at policy issues. The most recent example was a major review of enforcement conducted by our Advisory Council on Industrial Property, which particularly focused on patents. When we undertake those reviews, we do look at enforcement issues, and we have collected some data. I understand that we have given you a copy of the advisory council's report. If you look in the areas of patents and trademarks, perhaps it is worth noting from the report that the number of rights in the system compared with the number of cases entering court is about 0.03 per cent to 0.04 per cent. Typically there would be around 30 patent cases going to court and a similar number in trademarks.

The survey that we conducted for ACIP indicated that fewer than 10 per cent of those were settled in court, so most of the enforcement action that we are aware of in the industrial property system is largely out-of-court commercial transaction—in particular, the first warning-off letter seems to clear up the bulk of the issues. Where there is a lot of money involved, particularly in the patent system, there can be long and involved court cases, and players will take it to the hilt. That has raised a number of issues, including cost, equity and timeliness in enforcement actions, which, again, are very similar to some of the issues that have been raised in the copyright arena.

I want to comment a little further on the ACIP review, given that it is our most recent foray into this area. The council decided deliberately to focus on patents because that is the major area of focus in industrial property, particularly as it involves some complex interactions between issues of technology and law and that raises some significant issues of cost in courts. For example, a typical cost of patent litigation seems to be from about $A50,000 to $A250,000, although I understand cases in Australia have gone up and over a million dollars. These costs, I should say, are fairly small compared with other jurisdictions such as the US, where we would probably be moving towards the bottom end of the market.

The other issue the council decided deliberately to stay away from was that of looking at the court system. It basically believed it would be more fruitful to look at other areas of improving enforceability of rights and, in particular, it focused on educating the community so that people in business understand what their rights are—that they understand the enforcement system and where they stand. I know that, from our other experience in the market surveys that we undertake as an organisation, it is pretty clear to us that there is a very poor understanding in the business community of the whole intellectual property system. That is one area the council focused on.

The other area they looked at was improving the strength and presumption of validity of a patent right. Again, within the patent system, usually when an infringement action is commenced there are also counter claims contesting the validity of the patent. The view was taken that if we could have a stronger patent right with a stronger presumption of validity, it would hopefully reduce enforcement costs and make the outcome more certain. Other areas looked at were the capacity of the courts and also the expertise of judges. That, really, is more a patent issue in terms of their ability to handle some complex areas of technology and science. Basically, those are the sorts of issues covered and the direction in which that review went. That should be enough for my opening remarks.

CHAIR—Thank you, Mr Gould. I note that on pages 6 and 7 of your submission you refer to 'registrations not being compulsory for the use of a trademark', and you go on to say, 'The advantage of registration is that it establishes ownership.' Do you have any views, or does IP Australia have views, about the suggestion made that there should be a formal system of registration introduced for copyright in Australia?

Mr Gould—I guess we do not have a formal organisational view. We could give some comments. It would seem to me to depend on the parameters of such a system, bearing in mind—and I think the issue has been raised elsewhere—the potential administrative complexity of such a system. Again, it is a difficult judgment in terms of the costs and benefits of having that system. If it were heavily used, if it were a deposit system, there would clearly be heavy administrative costs. Again, we as an organisation operate on a cost recovery basis, and it may be possible to pitch a fee that would make the system effective so that only those articles or items that were worth protecting from a commercial viewpoint were registered and that others were not. In terms of the registration system in any case, the issue of ownership still does stand. In our particular case—and my colleagues may want to elaborate—we would usually accept the name of the applicant when they register. There are two ways that could be contested. One would be an opposition hearing before we could give our final registration. If it goes beyond that, it is an issue for the courts. What I am saying is that, in some respects, the issue of ownership could still be there.

CHAIR—Another suggestion has been made that there should be some way of accepting into evidence certificates of registration from foreign jurisdictions where such registration applies—for example, in the United States.

Mr Gould—Unless there were some reciprocal rights which may imply that we would have to have a registration system, at a quick guess, it would seem to me that that may well disadvantage Australians vis-a-vis the overseas residents in that they would not have access to the same system unless they physically went to the other country and registered. My colleagues may have some other comments on that.

Mr Braid—One of the problems with that sort of approach is that, if there is a registration system overseas and there is not a reciprocal registration system in Australia, an Australian copyright owner may have a piece of work that was actually developed earlier than the registered overseas work. It would then have to go into some sort of proceedings, and the ownership issue of the particular work would still remain unresolved.

CHAIR—That is a question of where there are competing claims to copyright in effect but, leaving aside those cases, where there is simply a claim of a breach of copyright, the scenario you are putting forward would not arise, would it?

Mr Braid—No, in that instance it would not. But the scenario I described could still arise.

CHAIR—Yes.

Mr Gould—I think it comes back to the potential disadvantaging of Australians versus overseas people.

CHAIR—One of the other things you say on page 6 is that:

The common law and Trade Practices Act require the aggrieved party to prove ownership, which usually involves demonstrating that person's reputation in the mark. This can be a difficult and very expensive exercise.

Do you have any suggestions as to how we can overcome some of those difficulties and streamline the procedural or evidential problems which are shared by copyright owners in court proceedings?

Mr Gould—I guess the simple answer to that is that I do not think we do, other than the obvious one we have already touched on, which is a registration system of some sort. Caroline, do you have any comments to make?

Ms McCarthy—I do not think we have much that we can comment on for that one.

Mr CADMAN—Mrs Vale and I are about the only non-lawyers here, and so you must forgive us for asking dumb questions. What about a jingle attached to a particular product, say, a sales jingle? How is that covered? Is it by copyright? It has not got a brand on it, but is it covered by a trademark? It cannot be covered by a patent; I understand that. But surely

a jingle that becomes very synonymous with a particular product is the same as the product itself.

Ms McCarthy—Yes. Under the new Trade Marks Act, which came into force on 1 January 1996, sound trademarks can be registered. So you could actually register a jingle as a trademark under the new act.

Mr KERR—These are, essentially, overlapping.

Ms McCarthy—Yes. But it could also be subject to copyright.

Mr KERR—You would have copyright protection. You could have trademark protection.

Mr CADMAN—I understand that, but you have not clarified things; you have just made things more difficult for me.

Ms McCarthy—I am sorry.

Mr CADMAN—Not in your remarks just now, but in your submission. For instance, I found fascinating the way in which the coverage of copyright was dissected from brand in the Baileys case. Could you go into that in a little more detail? Where are the boundaries? Is the Baileys concept the idea that comes into your head when you think of that rich Irish liqueur, or is it the vision that comes into your mind when you think of the label; what is it? Where are the lines between the two of them?

Ms McCarthy—It is very much dependent on circumstances as to where that line is drawn. The two examples there were the Baileys label, which had an artistic rural scene, which made it a copyrightable material.

Mr CADMAN—Why is it copyrightable any more than, say, Riverland oranges, with the flowing orange paddocks? That would be a brand and you are saying this is copyrighted.

Ms McCarthy—I am saying that, in the Baileys case, it was a trademark and it was also covered by copyright because it happened to meet the requirements of the Copyright Act as well.

Mr CADMAN—What aspects met the copyright?

Ms McCarthy—The artistic rural scene met the requirements for copyright as an artistic work whereas, for example, the single—

Mr CADMAN—So my calligraphy in writing, say, ‘eternity,’ or the name of a doll is copyrightable?

Ms McCarthy—Not necessarily. The other example given there was the Exxon case, which was just a single word as a trade mark. That was said not to be copyright material. It did not meet the requirements of the Copyright Act because that was just a single word

which, as put in the judgment, did not have any real meaning or did not give any sort of effect.

Mr CADMAN—Under the new proposals, if I am an importer of toys and I find somebody else springing up who is importing the same toys and I say that I have an agreement with the manufacturer on this, that I have his brand, his copyright and everything else, I cannot tell that other joker to get out of the market. Why?

Ms McCarthy—Are you talking about the parallel importing provisions?

Mr CADMAN—Yes.

Ms McCarthy—Currently, the toy maker could protect their product from parallel importation because their brand or whatever will incorporate artistic material or material that is subject to copyright. Therefore, under the current copyright provisions they cannot parallel import or import those toys. But under the new provisions that will disappear.

Mr CADMAN—I notice you say that parallel importing can occur under trade marks—

Ms McCarthy—That is right.

Mr CADMAN—because there is an exhaustion of control. Is that right?

Ms McCarthy—That is right.

Mr CADMAN—As I understand it, my exhaustion of control of that product is, provided people do not distort my product—take the label off and shove it on something else or manipulate the label—and provided it is my product, I can only go to a certain point of saying who can handle it.

Ms McCarthy—That is right. If you are the registered owner in Australia you have the right to say who uses it in Australia. If you own the right in Australia but you have applied the mark in, say, Singapore or somewhere, there is nothing to stop somebody importing that good no matter who they are.

Mr CADMAN—Buying from one of my wholesalers perhaps and shipping it to Singapore.

Ms McCarthy—Yes, even though they are not the authorised distributor in Australia.

Ms ROXON—I want to ask a bureaucratic question. How much difficulty does it cause you as an organisation dealing with the industrial property areas that copyright is really not an area that you have responsibility for?

Mr Gould—I guess that has been an age old question. There have been a number of calls at various times to put all IP administration into the one box. There are a number of fairly vocal people out in the marketplace and in academia who have said that. From a real perspective, it has not caused us great a deal of problem. There are clearly areas of

crossover, and I mentioned a few of those in my opening remarks. By working very closely with the Attorney-General's Department, which administers copyright, we seem to get along fine.

The issue itself is not a cut and dried one. Clearly, if you put all the IP administration into one box, there are some issues as to where the other linkages back into other areas of the bureaucracy would be. For example, if you look very closely at DCITA, you see that they have a very big interest—- with their arts, communications and information technology hat on right—across the copyright area and they have some interest in patents in the software side of things. If you look at our home department—the Department of Industry, Science and Resources—which has responsibility for innovation policy, they have a very strong interest in the patent system. From their other industry policy aspects they have interests in trademarks and industrial design registration.

The other big crossover area is the Department of Foreign Affairs and Trade. It takes the leading role in our international negotiations. In fact, the whole Australian system is driven by the TRIPS agreement, which came out of the last WTO round of trade talks. It is a major trade issue. The system is clearly international, and the way the world is moving it is becoming more and more so. You really have a whole series of crossovers.

Mr CADMAN—Is that a sort of non-bid for copyright?

Mr Gould—I would not say that. I do not want to start a bureaucratic bunfight.

Ms ROXON—It is just entirely consistent with everyone else—he has told us that it is somebody else's problem.

Mr Gould—All I want to point out is that it is superficially attractive to just bung it all together. I think, no matter how you cut the cake, there are some issues to think about. Clearly, with the way of the world—

Ms ROXON—It is particularly superficially attractive because we are finding it difficult to find anyone in the bureaucracy who will answer our questions.

CHAIR—I an wondering whether if Mr Fox left the room we might get a different answer, Mr Gould.

Mr Gould—As the committee is probably aware, there is a competition policy review on intellectual property currently under way, and I would be very surprised if that issue of administration does not come up in that review. But I would say it is an issue. I guess as an agency we have not traditionally gone out trying to take over copyright. There are some arguments for putting it together and again there are arguments as to how you would actually link it to other agencies.

Mr CADMAN—It seems to me that, in the digital area, copyright, trade and brand become even more confused because you have an interface between the artistic and the creative, which has a commercial value in the graphic arts, design and transmissibility of

ideas so quickly—they are not on paper. Does that not start to bring some of these things more closely together?

Mr Gould—I think that is one of the key areas that will tend to force it together—the crossover of basically all the electronic communications type areas.

Ms ROXON—I am interested in your thoughts on the adequacy of the criminal sanctions against copyright infringement. You have already actually articulated the cost, and it surprised me how expensive it was for anyone to actually bring any sort of legislation. On page 9 of the submission from the DPP, they stated that, under section 133 of the Copyright Act, only infringing copies or devices for making infringing copies possessed by the person charged can be forfeited. Where a person charged operates through a company, it will be the company that possesses these devices. There is no point in prosecuting a company if it goes into liquidation, and prosecution of the individual will not lead to forfeiture of devices possessed by the company involved. From your knowledge of similar experiences with industrial property owners, can you suggest any amendment to the Copyright Act which might close off this loophole?

Mr Gould—In short, I guess our answer to that is it is not an issue that we have really come across very much in the industrial property system. I can see the problem. In patent cases the situation is a bit different. Usually the stakes are a lot higher.

CHAIR—Do you have any comments on the adequacy of damages generally?

Mr Gould—Again, an issue that we have come across is the question of additional damages. I suspect that they would add some deterrent value for people who want to wilfully breach the legislation.

CHAIR—Some jurisdictions have statutory damages. Do you have a view about that?

Mr Gould—Again, I think I can see some potential advantages in doing that, and I think it is an area worth looking at a bit more closely. But we have not had a lot of experience with it in the industrial property area.

Ms LIVERMORE—In a lot of the submissions that we have received and in a lot of the discussions that we have had one of the issues that keeps coming up is the relative effectiveness of criminal versus civil remedies and sanctions. I just wondered whether there were criminal sanctions and remedies available under the three acts that you administer.

Mr Gould—As I mentioned earlier, the main area where we have criminal sanctions is in the trademarks area, and that is for wilful acts of breach of trademark. That is the only key area, but there are provisions in the other legislation. I forget how many points there are now, but they are typically fines of around $6,000 for misrepresenting different aspects, such as that you own a right when you do not. Another one is representing yourself as a patent attorney when you are not registered. Again, they are very small fines. Our experience with those is that we usually write people a warning-off letter if it is in the area of patent attorney registration, and that is all. DPP does not quite get down to that level of activity, as you would appreciate from what other people would have said to you.

CHAIR—Mr Gould and colleagues, thank you very much for your submission and for coming along and discussing it with us this morning.

[10.17 a.m.]

ALEXANDER, Mr Charles Delius Somerville, Motion Picture Association, External Legal Adviser (Minter Ellison)

BAKER, Mr William M., President and Chief Operating Officer, Motion Picture Association

HOWES, Mr Stephen Harold, Director, Australasian Film and Video Security Office, affiliated with Motion Picture Association

CHAIR—I welcome you to the inquiry. I advise you that, although the committee does not require you to give evidence under oath, the hearings today are legal proceedings of the parliament and warrant the same respect as proceedings of the houses themselves. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. We are in receipt of the submission from the Motion Picture Association. I invite you to make some opening comments, if you wish to.

Mr Baker—Thank you, Mr Chairman and members. The Motion Picture Association is the trade representative of the seven major Hollywood studios. Those members are outlined in our submission, so I will spare you from listening to me read them. As stated in our formal submission to this committee, we value the opportunity to make our views known to you, and we appreciate the consideration that you have given to them. I have spent a good part of my life addressing the rule of law and the elements of proof and evidentiary requirements for the prosecution of crime. For the past eight years I have been employed by the Motion Picture Association, and for the past three years I have been their president and chief operating officer. Previously I directed the worldwide antipiracy area for the Motion Picture Association.

My last major business trip to a foreign country, before I retired in 1991 after 26 years of service with the Federal Bureau of Investigation, was to Canberra where I met and had extensive dialogue with the Attorney-General, the Australian Federal Police and your intelligence agencies about organised crime, drugs and what they were doing in the Asia-Pacific region. I am pleased to be back here today to share with you my observations and to supplement our written submission on your inquiry into enforcement of copyright. One of the marvels of current day communications is the ability to extract quickly via facsimile or the Internet and to be able to review information on a timely basis. I was able to do that with the presentations made to your committee.

From written submissions and select oral remarks between the United States Justice department, its federal law enforcement agencies, the Australian Attorney-General's office and the Australian Federal Police, I found it interesting how they view copyright protection. I think that it may prove enlightening, or it will at least stimulate our discussion this morning, to share with you some of the contrasting thoughts which emerge from this comparison.

On July 23 1999 the US Justice Department, the FBI and the Customs Service held a press conference about combating intellectual property crime. Deputy US Attorney-General, Eric Holder said:

At the same time that our information economy is soaring, so is intellectual property theft. We are here to send the message that those who steal our intellectual property will be prosecuted. This is theft, pure and simple.

The Australian Attorney-General's submission to your committee said:

To the extent that the current provisions, procedures and arrangements do not address the types of infringements occurring, any proposals for change should be made bearing in mind the basic proposition that copyright owners should bear the primary responsibility for enforcement of their private rights. That is, public resources should not be expended in enforcing what are primarily commercial disputes.

FBI Assistant Director of the Criminal Investigative Division, Thomas J. Pickard, said:

To effectively protect the creativity and ingenuity of our citizens, and the trade secrets they develop through research and development, we need to outmatch the criminals. That means integrating our federal resources with the resources of our domestic industries that enjoy legal protection under our intellectual property laws.

The Australian Attorney-General's submission said:

Probably only a minority of all copyright infringements are criminal in nature. Industry figures and statements about the monetary value or economic impact of infringements seem to be overstated.

Our US trade representative, Charlene Barshefsky, said:

We strongly support the efforts of U.S. law enforcement agencies both here and, in cooperation with foreign law enforcement officials, abroad, to facilitate increased intellectual property protection and compliance by our trading partners.

The Australian Federal Police's said to the committee:

It could be said that copyright as a trespass will become decreasingly important as technological transfer of information and virtual printing become commonplace. The AFP's resources have to therefore reflect the reality of policing the problem. The provision of additional resources will not solve the problem.

The US Attorney, Bob Mueller, from the northern district of California, who represents our Silicon Valley, announced that three new prosecutors have been added to this district, and a fourth will be added shortly to address these types of violations. He said:

Those who would commit intellectual property crimes . . . should know that federal authorities can and will vigorously prosecute these crimes.

The Australian Attorney-General's submission to your committee states:

. . . the amount of resources needed to prosecute (even with such presumptions) and the scale of the alleged infringements are disproportionate to the problem and the public benefit derived from this change. . . . pressure to put forward a greater number of matters for prosecution might distort the Commonwealth's law enforcement priorities.

Finally, the Department of Justice press release of July 23, which I alluded to, states:

The FBI has elevated intellectual property crime to one of its white collar crime priorities.

To be fair, the remarks from the Australian testimony presented before this committee were extracted from volumes of testimony, much of which was supportive of strong copyright law.

Nevertheless, I believe that the juxtaposition does show that the United States and Australia appear at a juncture regarding the level and state commitment to protect intellectual property. The message which appears to currently be conveyed is that, in Australia, the law should place the burden of enforcing copyright on the private sector. In the United States, there exists a growing recognition that the economically strong information society requires state protection, including aggressive criminal prosecution.

We are very pleased that this committee has been convened at this critical time to examine ways that you might improve or change copyright protection and that we have been given an opportunity to contribute to that process. Our members—the seven major producers—have close connections with Australia. For example, Warner Brothers has had a long-term relationship with Village Roadshow and Fox has built a production studio here and, as your papers show this morning, is soon to open a large Fox back lot which will employ some 700 persons. Viacom also is poised to invest in a digitised production facility in Australia. Your actors, technicians and crews, which are highly adept, are hard at work both on your own productions and on US films here in Australia.

But we have found that copyright protection is derived from three distinct areas: technical safeguards, strict and strong legal platforms and a commitment towards enforcement. If one of those three antipiracy supporting legs is weak, then so is the whole program, and the legal underpinnings impact on the enforcement capabilities. So we urge you to consider adopting a method of overcoming some of the present obstacles towards enforcing copyright, including the addition of a presumption of ownership in the criminal provisions of the Copyright Act. This would strengthen the legal underpinnings and it would unbridle law enforcement efforts.

We suggest that it might not be wise to stand back with a low level of crime; ergo, a low resources approach to the protection of intellectual property. In the Asia Pacific region, law enforcement agencies last year seized almost 600,000 illegal video cassettes—the analog version of piracy. But in extreme contrast to that, in 1998 those same authorities seized almost 40 million illegal video compact discs and DVDs. If complacency is exhibited in a market, then an industry built on infringement will become established. Once this pirate industry of thieves is embedded in your culture and in your society, we have found that, in our worldwide experience, it is very difficult—such as today in Russia—to even address the problem or retrieve the situation.

There is no question that the digital age is upon us now. If we cannot protect what we own, we do not own anything at all. I hope that these opening remarks will be accepted by you in the constructive nature that they are offered. My colleagues and I are now available to answer any questions that you might have.

CHAIR—Thank you, Mr Baker. At the outset, I have two questions on piracy. You made reference to some figures on the level in the Asia-Pacific region. Firstly, to what extent

are you aware of piracy occurring or being aided and abetted in this country as distinct from some neighbouring countries? Secondly, is it possible to estimate the real lost value occasioned by piracy?

Mr Baker—I will ask Steve Howes, my colleague who is actually on the ground in enforcement efforts, to respond to you. But, clearly, the video discs that are prevalent in Asia are now finding their way to Australia. In the analog world, in which we were quite adept at fighting piracy, slave machines were hooked up to a master copy of a video cassette and, in real time, infringing copies were put out. So the process was time related. But with the new VCDs and the stamping machines for the digital video discs you are able to stamp out thousands of discs in a day and millions in a year, and this amplifies; therefore, the difference in my remarks of 600,000 analog cassettes were seized but there were 40 million illegal video discs. So the problem is exacerbated by the time and low cost involved in putting it out. But even more problematic is that each copy is as pristine and clear as the copy before it—there is no degradation. With that, I would like Steve to address the scope of the problem as it now exists in Australia and maybe predictions for the future.

Mr Howes—I think it is important to understand a little bit about where it all came from—and Mr Baker was talking about the earlier back copying. In 1986 piracy in Australia was at its highest, and it was estimated that about 20 per cent of what was in the market was counterfeit. I do not mean just a black and white copy. One of these CDs I am holding is genuine and one is counterfeit, and it is very difficult to tell the difference between the two. The government of the day saw fit to introduce new legislation which provided for the affidavit evidence and also made it easier to prove the knowledge question by introducing 'ought reasonably to know'.

As a result of those amendments the police became more active. From 1986 to 1989 there was a considerable number of activities, and this sort of counterfeiting was stopped. It was an organised operation. There were three organised operations in Australia, and the police stopped it. Piracy over that time was reduced from about 20 per cent down to less than 10 per cent. We continued to hammer away at that piracy until we got it down to about four per cent, which is its current rate.

As Mr Baker said, today we have this problem, which started off in Asia, called the video compact disc. I have here some samples of video compact discs. One is a pirated video compact disc which came from Asia. They sometimes come in packs of 10 discs, and that represents five films. So you can imagine that there are hundreds coming through Customs because they can be packaged like that. You will notice on this packaging that it says 'CD'. A lot come through as compact discs, and Customs think they are music compact discs. Consequently, they come into the country that way.

Once they are here, of course, there is then no difficulty for the local pirates to start making their own. They can make their own like this one, which is done on what they call a 'burner'—it is a 'burnt' copy—or they can make them on professional machines, as was seen last year when about $200,000 worth of machines were seized in the Cabramatta area in conjunction with the music industry. I think, on the figures for the first six months of this year, there were just less than 10,000 counterfeit—or pirated, I should say—VCDs seized by police in Australia, and another few thousand were intercepted by Customs. And that is a

little like drugs, as you know—it is only just scratching the surface. There are thousands and thousands more out in the marketplace in Australia. If that answers your question, it explains where we are today.

Mr Baker—Mr Howes made reference to the relatively high level of piracy you had a matter of 10 years ago. I would only add that three years ago in Hong Kong, through very effective Customs and police activity, antipiracy efforts reduced piracy to the 15 per cent level. That is a market that is endurable for commercial and legal rivals. But because of the impact of the video compact disc, the piracy level there today is estimated to be at the 50 per cent level, and it is eroding the legitimate marketplace. So it does not take long with this new technology for the safeguards of a good program to be eroded.

CHAIR—Can I just take this a step further. Tell me if I am wrong about this but what you are talking about in terms of piracy now involves somebody actually importing a CD, which is then pirated by various means here in Australia—either by 'burning' it or by using more up-market professional equipment and operations—and I presume that, with the development of digital technology currently, if the time has not already arrived it must be close to arriving where one can simply download a VCD over the Net rather than having to actually import one master copy into the country.

Mr Howes—Yes, that is correct. And that has actually already occurred in Australia. We had a case only a couple of months ago in Perth where a student downloaded from the Internet quite a number of films. He then made copies and was selling them at the markets over in Western Australia. So it is just around the corner. The basic offence, of course, is not just in the downloading but in the copying once it has been downloaded and the selling from there.

CHAIR—I suppose my question goes to the various ways in which one can deal with that. One is your border interception measures—your customs measures, et cetera. If you are bringing a master copy into Australia, or for that matter you are bringing already pirated CDs into Australia, border interception is one way of dealing with that. But in a borderless world, which the Internet effectively is, those measures are useless. So what measures do we take in a borderless world?

Mr Baker—Your point is very well taken. It is going to change the way we must address the problem, and the technology of instant distribution is going to be very challenging to the commercial market and to copyright owners. But what you alluded to is our nightmare—that is, the fact that if that technology level that I described is not sufficient and does not provide adequate protection to raise the barriers so that one who would steal the property has to go to some extremes in order to break the encryption and be able to illegally possess it, then all the more reason why your laws have to allow enforcement to go after and track the violator, because the damage will be much more than in today's situation, where illegal VCDs erode theatrical openings and your paper view and cable.

Steve mentioned that you have already had a case of pirating, and so have we in the United States—the first under our so-called No Electronic Theft (NET) Act 1997. It involved a graduate student at the University of Oregon. He was uploading movies, music and books and downloading to friends and colleagues. The university reported him. The problem clearly

is that more and more of us will have fibre-optic discs to our homes and more and more of us will have the bandwidth capable of doing this outside of industry and universities. So the time to address the problem is now and, not jumping ahead, that is why I am very pleased that like hurricanes stacked up before you are the digital questions that must be addressed in the near future.

In that act you have before you—hopefully, you will again come to the private sector and ask for some of our suggestions on what we see as major loopholes and why we must protect it, because clearly all you need is one equivalent of a Bekaa Valley of terrorism. As you said, Mr Chairman, there are no borders. The reason the World Intellectual Property Organisation, WIPO, is addressing this is also to see how we can ratchet up the copyright laws around the world so that they will enable copyright owners to be protected in the digital age—in the age of the Internet.

CHAIR—I would like to ask you one more general question, before the specific questions of my colleagues. You quoted in your opening remarks Mr Pickard from the FBI. I should say that I had a meeting with him about a month or so ago in which he talked in the same terms about this proposed integrated resources of business and enforcement agencies. What do you believe should be done in terms of integrating resources of the copyright owners, their representative bodies and the enforcement agencies? Are there some specific measures you have in mind?

Mr Baker—Rather than presume to tell you what I think you might do, I think it will be better to describe what was envisaged in the United States: the Attorney-General realised that we have a huge investment in the information age and she was convinced that, if we could not protect this both civilly and criminally, we would be losing tremendous resources. Our technology industries are driving our future, as they are around the world. There was a recognition that what was a bit of a backwater type of enforcement issue; that is, the theft, and in many cases what we call 'mom and pop' piracy—the little stores that were running off extra copies—all of that changed dramatically with the ability of mass distribution of this stolen product. Therefore, the government wanted to work with industry and, indeed, they have increased the size of their intellectual property unit at the Department of Justice in Washington. They have received commitments from Customs and the FBI to add more resources to it, and that is what is going on in the United States.

In addition, the President has set up a committee on the administrative side to also look at ways that technology and our legal structure can work. Several things we are looking at are watermarking and working very hard with the hardware and software people to reach agreements, with our antitrust lawyers at our sides, so that the technology will have adequate encryption to keep an honest person honest. The next step is, through the watermarking and other capabilities, going after those who invest more to steal this product but, hopefully, with what I have talked about, this watermarking and other safeguards will have left tracks which will allow us to go after them. The 'us' being the private sector working with the government, both state and federal. Again, I have to emphasise the difference with a strong emphasis on criminal prosecutions.

Ms ROXON—I have a couple of questions. One of the recommendations you make is that we recognise the US registration system in a way that is similar to the Canadians having

recognised the US system. Because we do not have a registration system for copyright, would we be disadvantaged compared to any American company wanting to enforce their rights? What sort of impact does that have on our local industry? It may be that the major issues are for American companies rather than our smaller production companies, but could you explain how that would work and whether it could disadvantage the local industry in some way because the costs for them taking a copyright action would still remain probably prohibitive.

Mr Baker—Firstly, I would like to say that that was one of several suggestions. Like you, we are confounded by the dilemma we find ourselves in now, and we are willing to search for all types of remedies that will be acceptable to all parties. I would like to turn this over, if I might, to our counsellor Mr Alexander, who helped write that.

Mr Alexander—There is generally a reluctance in Australia to start a registration system of our own, and that was reflected in some of the comments of the last witnesses. That is mainly because of cost. It is an expensive and difficult process, and we accept that. We started looking elsewhere and found that there are some systems which work. There are other registration systems in Europe which I do not think anyone would have a bar of because they do not prove anything. I think the US and Canadian systems are generally regarded as being fair systems of registration. We thought that, rather than reinvent the wheel and set up our own system, we could just rely on the US system.

Anyone can register their films in the US, so Australian film producers could register their films in the US and get the protection here. The cost of registration is $US30. You fill in a form, send in a copy of the film and answer some questions. We do not see it as disadvantaging the Australian film industry; indeed, we see it as advantaging the Australian film industry. It would not matter if you came from Australia, Britain or Swaziland; you could still rely on the US registration. That is why we see it as being a useful approach to take.

CHAIR—Are Australian film producers—I do not mean 'producer' in the person but in the general sense—or film companies registering in the US now? It would seem to me that there would be some advantage for them already, would there not, for a $US30 fee?

Mr Alexander—If they were wanting to prosecute in the US they probably would register.

CHAIR—If you were going to distribute your film in the US, you would register, would you not?

Mr Alexander—Indeed.

CHAIR—Do you know what the level of that registration is?

Mr Baker—I do not. I could seek to find that out for you. I do not know the level.

CHAIR—It may be useful, because if it is already occurring then—

Ms ROXON—Presumably, your comments, Mr Alexander, are that, even if you were not to distribute in the US—if there was a change in our laws which said that in Australia you could recognise the registration in the US—even if you were just going to sell within Australia and you wanted to protect your rights within Australia, you would register in the US and then use that to rely on?

Mr Alexander—Exactly. That is what we are suggesting. We have raised that with the Attorney-General's Department, and they have suggested there could be a problem with equal treatment under the Berne Convention. Frankly, I have some difficulty with that, but I raise it as a potential issue. I would have thought that all nationals of all countries would be treated equally. All we are doing is saying we are accepting a registration system over here which anyone can use.

Ms ROXON—So you have problems with the suggestion that it would be unequal to say that we recognise the US but we do not recognise the Italian registration system?

Mr Alexander—Exactly.

Ms ROXON—Why is that? Why don't you think that is an issue?

Mr Alexander—I will perhaps elaborate a little further. If one was drafting the act one might say that, under the regulations, the Attorney can declare a registration system as being one which is acceptable for enforcement in Australia. That would mean that, if the Italian system came up to scratch—it requiring requisite proof—you could include the Italian system as well, but it would not stop an Italian film-maker registering in the US—if you had not accepted Italian registration—and relying on that.

Ms ROXON—I hope the other committee members do not mind if we just explore this a bit further. I am not really clear why you are suggesting that the American system is necessarily one of the best ones, given your comments earlier that it costs $US30 and you send off a copy of the film and it is done. What systems have a lower standard than that?

Mr Alexander—Perhaps that was not a very good way of putting it. I think there are enquiries made by the US as to what they require within it. Presumably, if it looks dangerous to register, they no doubt make further enquiries. Frankly, in practice, I am not sure how it works. But I think it is accepted basically throughout the world that it is not a bad system. Indeed, the Attorney-General's own submission said they thought it was basically all right.

Mr Baker—There are safeguards built in to screen for false registration of title, which is a problem in any registration that is set up, and there are methods for extracting a title if it is challenged. In other words, if someone claims *The Lion King* from Poland, there are ways that you would go about having that challenged, and those provisions are in the system at Congress.

Mr Alexander—We are not suggesting it would be a non-rebuttable presumption. What we are saying is that it would provide prima facie evidence. If someone came up with good evidence that it was a false registration, it could be overturned.

Mr CADMAN—But you base part of your case, though, on presumption. These are your own words. You base on the presumption of ownership and subsistence. You have got to have some absolutes in what you are saying. You are saying now that maybe you would just deny that presumption.

Mr Alexander—Perhaps it has been badly put. Firstly, there would be a presumption of subsistence and a presumption that the person who is registered as the owner is the owner. That is what one would refer to as a rebuttable presumption. So that if Bill Smith had gone along and registered *The Lion King* and it had somehow got through, the owner of the copyright of *The Lion King* could go to the court and provide all sorts of documents which would show that as a false registration.

Mr KERR—Why couldn't we just have a simple averment system where, if the prosecution avers ownership to a particular person for the point of a prosecution, unless some colourable claim to the contrary is raised the averment stands? An averment is again not difficult to knock over from the point of view of a legitimate claim to the contrary and it would avoid the necessity for a registration system.

Mr Alexander—Mr Kerr, that is another alternative we put up, and we would certainly be happy with that as well. But we are trying to provide alternatives for the committee to consider, rather than saying, 'This is the only one that will work.' But registration has been raised throughout these hearings, so we thought we should address it.

CHAIR—I want to just follow up on the matter which Ms Roxon raised with respect to the suggestion of unequal treatment if Australia were to recognise the US. What is the situation of the US vis-a-vis Canada? Has any question of unequal treatment been raised?

Mr Alexander—Not that I am aware of.

Mr Baker—Nor am I.

Ms ROXON—I was interested in your comments that you made about the different approach in America and Australia to these issues. I was wondering whether you can confirm what I think is the flavour of your submission. Despite obviously encouraging us and wanting Australia to take the firmer line, if you like, that America is taking in this area, most of your recommendations still seem to focus on our regulatory system rather than recommendations that go to putting more money into Customs or the Federal Police—the resource type issues. I wonder if you could confirm for me that that is a fair summary—I know it is a little bit simplistic? If it is not a fair summary, I am interested—particularly with your background, Mr Baker, having worked with other illicit drug issues and those sorts of things—in whether you have some comments for us as to why we would give preference to this area if we have limited resources, particularly for Customs and the Federal Police.

Mr Baker—Firstly, under the existing situation—where, from our perspective, proof of ownership is extremely difficult—I would not necessarily encourage a large increase in resources. I think you have to take it in steps and look at the legal structure, which, in my view, serves to bridle the department of prosecution and the Australian Federal Police because they too must deal with what we must deal with. That is the very difficult task,

especially in the film industry and the music industry, where copyright is dispersed and sold around the world and it is difficult to put it together in a timely fashion such as to meet Customs' 10-day rules here in Australia.

It is very difficult to work within the current structure, but I did not want to give the opinion that I did not think the addition of resources was warranted. I think that training is a key issue beforehand so that a small group of prosecutors and investigators—whatever agency they might come from—might be upgraded in their ability to completely understand the international copyright problem and how Australian law applies to it.

In many countries where they have attempted to address a flagrant copyright theft problem, they have started in that fashion. You are well beyond that—you already have antipiracy down to a single digit number—but I am cautioning that all that could change and that this is the right time to look at your laws. Addressing the idea of the difficulty of proof of ownership, and some accommodation that would ease that, would open up the next steps for the police to say, 'Okay, now we can go after this,' and for the prosecutor to then say, 'Now we can make our case. We can get to the actual elements of the crime, not just to the barrier of proof of ownership,' which is a large hurdle at the beginning of the process.

Mr CADMAN—Mr Alexander, would you regard IP Australia as the appropriate body in which to build that team of experts, or would you think that another agency of government would be more appropriate?

Mr Alexander—Traditionally, copyright—and this is what we are dealing with—has been administered by the Attorney-General's Department, but I would have thought that, when we talk about enforcement, it would probably mean getting a specialist group within the Australian Federal Police to be aware of what is going on and how to do it—a sort of FBI equivalent of the intellectual property enforcement branch.

Mr CADMAN—So the administrative process you are not offering an opinion about, but the policing process you are?

Mr Alexander—Yes.

Mr CADMAN—Is that your opinion, Mr Howes? Do you think that is fair enough? I do not want to play one off against the other, but we are seeking personal opinions at this point.

Mr Howes—That is exactly right. The Federal Police also need training; they do not understand what intellectual property is, unfortunately. I am ex-Federal Police myself, and I can speak from experience. There needs to be a nucleus of trained people in the Federal Police and within the DPP as well. At the moment we have three jobs in Sydney DPP, each with a different officer and none of whom have handled IP matters before. So there is a lot of training to be done within the prosecution and enforcement areas.

Mr Baker—Another reason to accelerate interest in such a committee or a group is that you are confronted with the Olympics. There are going to be tremendous knock-offs—counterfeiting of your product for sale. Wouldn't it be wise to have a small cadre of trained investigators and prosecutors who would know immediately how to deal with the trademark

counterfeiting and intellectual property aspects of what will happen? I have seen it happen at every Olympics. The lucrative market of the thievery of the legitimate logo and the distribution of that is going to erode the legitimate profit which you hope to make during the Olympics. That is coming right at you.

ACTING CHAIR (Ms Roxon)—Do you have a view about whether that training would be appropriately provided within the Federal Police's ranks or whether it is something that would have to be put together by industry in conjunction, perhaps, with other interested departments?

Mr Baker—I would say that industry has to be a player. When I asked for more state involvement, I was not talking about any diminished involvement from the private sector.

Mr CADMAN—I did not quite understand that.

ACTING CHAIR—I know that you can speak only for your own industry, but is it fair to assume that there would be an interest from industry itself to provide the people with either the expertise or some of the resources for doing that training?

Mr Baker—The short answer is yes, we would provide that. In fact, through agreements in two places that really need it around the world—in Bangkok, Thailand and in Budapest, Hungary—the State Department of the United States, the Justice Department and the FBI have set up training programs. On their curriculum is intellectual property recognition, so officers are coming in from countries of the former Soviet Union, all of Eastern Europe and South-East Asia to Bangkok. In their training there are segments for intellectual property recognition.

To be more specific, I talked with the FBI before coming down here, and there are also international programs that I am sure Australia would be welcome to be a part of. Our industry is a member of the World Customs Organisation in Brussels. We are the first private sector industry to be welcomed into that. We are also the first to have signed an agreement with China's customs department, where we provide training on mainland China to their customs officials on how to recognise illegal property. It is an immense problem there, as you can imagine.

Mr Howes—Adding on to that, we have over the past few years offered such training to the Federal Police upon a number of occasions, and we have outlined a program as to what should be included in that training. Both ourselves and the music industry have offered to undertake that.

It is also important to understand that from our side of it—I cannot speak for the music industry—we are not looking at training the police to do the investigation of intellectual property matters. The industry is prepared—and has done so all this time—to carry out its own investigative work up to the stage of police search warrant status. So there are no extra resources required for that investigation work; it is just search warrant status and then prosecution status.

ACTING CHAIR—When the Federal Police made submissions, it was apparent that the small number of successful cases were the ones where industry had done the necessary investigative work first and had been able to assist and work closely with the police. So that certainly seems to support what you are saying.

Mr Alexander—Mr Cadman, I want to draw to your attention that we did suggest in our submission, and it has been partly echoed in another submission, that a committee should be established with industry and the AFP, under the auspices of the Attorney-General's Department, to discuss these issues and to talk about ongoing surveillance of how the system is working. That is a positive step.

Mr CADMAN—That is good. I have a further query along the lines that you just mentioned. In trying to speculate a little on which are the creative nations, it seems to me empirically that there is a creative group and there is a stealing group—the stealers are not the creators and vice versa. Is that too broad a description?

Mr Alexander—They might be creative stealers.

Mr CADMAN—I do not want to put brands or labels on people but where does Australia sit—on the creativity side or on the stealing side? It seems to me that we are on the creative side, but where do we stand in our hierarchy?

Mr Baker—Clearly the creative side. The content providers want to have a system where they can distribute their product and be reimbursed by agreement so that they can continue to be creative.

Mr CADMAN—That is true.

Mr Baker—What you have is a highly trained skill base of computer hackers. While I have been travelling, I have been reading about the breakdowns of some of the strongest systems yet devised—Microsoft's Hotmail system was cracked. In my experience in government and in intelligence I have never seen a code that was not cracked, and so you do have a merging, unfortunately, of highly skilled people who, for whatever reason, might apply their skills to cracking into and stealing product in the digital environment, which is all the more reason why laws and enforcement have to be present to serve as a deterrent to those bright minds that are going on the wrong track.

ACTING CHAIR—Can I ask you another unrelated question. Do you have any views about the possibility of introducing some system of statutory damages and whether that would have an effective deterrent impact?

Mr Baker—I would like to defer to my two colleagues on that. I do not know that it necessarily would. Perhaps you have experience of that here.

Mr Alexander—With statutory damages you are looking at civil proceedings anyhow. It would be helpful to some extent. We certainly would not reject it, but we are really talking about a civil remedy rather than a criminal remedy. It does lead on to the other issue of the penalties that are being imposed by the courts at the moment, and that is our real difficulty.

ACTING CHAIR—It also leads on to the other issue of should you separate out every instance of a copyright breach and have penalties for that or should you have it for the whole activity. You might want to deal with all of them together. I would be interested in your comments on those issues. You might like to bear in mind that you might have a wish list that is hierarchical here. It is probably useful for us to know what your ideal is and what other options there might be, particularly if we were not—and I am not prejudging any decisions the committee is going to make—to recommend an introduction of criminal penalties, which may be your preferred position. We would like to understand the hierarchy, if you like, of your views.

Mr Howes—The recent legislative changes on penalties, which we feel need a further explanation because they were not as clear as the earlier legislation, brought together whether an offence includes one title or a whole action of titles seized in one raid, if you like, which may be what you are referring to. We feel that each copyright owner deserves to be protected in his own right, and therefore each film title, no matter how many copies, should be one offence—the penalty being $60,500 and/or five years imprisonment—and the next title should be another offence. I do not think the legislation is all that clear on that particular matter.

I think there was an example of a civil case in our submission, which was a matter in Melbourne. Whilst that case was going on involving the titles that were taken aboard, that person continued to trade in all other titles, apart from the 12 or so. His business expanded, and when that matter was finalised three years later in the Federal Court, he had just expanded beyond belief. Therefore, the Federal Police took it on as a criminal inquiry. Within two days of that criminal action being taken, the whole area around his location in Melbourne ceased activity. In other words, the civil action did not have any deterrent effect whatsoever. The damages and costs awarded against him have never been paid; he went bankrupt. Whereas, in the criminal action—and that is still going through the courts—the initial search warrant status was so good as to have that deterrent effect, which is what we are all looking for in the long run.

ACTING CHAIR—Do you have any experience of the use of Anton Pillar orders or any other prehearing remedies that might still be available in civil proceedings and which would have that sort of impact? Or do you still have the view that that would not have been effective and that it is actually the criminal nature of proceedings which is the real deterrent?

Mr Howes—The Anton Pillar is so restrictive in what you can do, as are civil proceedings. You are taking action in relation to exactly what product you already know is there, and that is why the person can continue to trade in everything else that is around, whereas the criminal proceedings encompass everything.

Mr Baker—But I think the message I would take out is that this is all the more reason why we ask that you and the Attorney-General look towards criminal provisions to give them an equal leg here. I can assure you: we are active in 72 countries around the world with antipiracy programs, and the criminal actions that we bring, using the laws of each country, greatly outnumber the civil actions that we bring.

Mr Alexander—But it does again lead back to this question of proof of ownership. One of the things is that there have only been prosecutions in relation to a small number of titles, and even more so since the Searle case, which was referred to. The theory is that if you seize 100 titles and have to prove every one of them, which we have to do at the moment in relation to proof of ownership, that is thousands of hours of time. So you are restricted to six titles, which might be manageable in proving ownership, and then, of course, you have got penalties in respect of only six titles.

Mr CADMAN—I do not understand that, Mr Alexander. Say you have seized 100 titles, do you have to prove every one of them before the case will stick?

Mr Alexander—Yes. In the Searle case, a number of titles, I think four, were successful.

Mr Howes—Yes, in the end.

Mr Alexander—Four were successful in the end, out of about 15 which were proceeded on. The court held that in the other cases, for one reason or another, we had not proved ownership of the copyright of the films.

Mrs VALE—Would you see that registration has alleviated that problem?

Mr Alexander—It would have, certainly, because then Mr Searle's legal advisers would have had to produce some evidence that we did not own it before they could displace it.

ACTING CHAIR—Do committee members have any final questions?

Mrs VALE—I do not have any other questions. I just want to thank you very much for coming. You have certainly cleared a lot up for me. I found your presence and your contribution very valuable.

ACTING CHAIR—Thank you very much for your time. It sounds like we may see you again, no doubt, in our future inquiries.

Mr Baker—I hope so; I enjoy being here in Australia. Thank you.

ACTING CHAIR—Thank you very much.

Proceedings suspended from 11.12 a.m. to 11.20 a.m.

ARBLASTER, Ms Margaret Peta, General Manager, Transport and Price Oversight, Regulatory Affairs Division, Australian Competition and Consumer Commission

SPIER, Mr Hank, Chief Executive Officer, Australian Competition and Consumer Commission

CHAIR—I welcome the representatives of the ACCC. Although the committee does not require you to give evidence under oath, the hearings today are legal proceedings of the parliament and warrant the same respect as proceedings of the houses themselves. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. We are in receipt of a letter of discussion points which you kindly provided to us and we thank you for that. Did you wish to make some opening statement, Mr Spier or Ms Arblaster?

Mr Spier—Not all that much—I thought it was more that perhaps members would like to explore certain issues with us—except to say that our involvement in the copyright issue is not extensive, at least not in the piracy issue, although it became a very important factor when we were looking at the parallel importation of copyright goods and the various work done by the commission into books, CDs and computer software. There was always a concern that a ban on parallel imports was not seen as a surrogate for the piracy law and various other provisions which would stop piracy. That is really the reason why we are here, apart from any other issues the committee may wish to discuss.

CHAIR—In paragraph 2 of your letter you say:

> The evidence available is that most piracy is domestically produced. The importation provisions of the Copyright Act do not address the problem of domestic piracy, and there is no evidence that piracy would increase in the relevant markets if they were repealed.

Can you elucidate on what basis you make those observations?

Ms Arblaster—That was drawing on the Attorney-General's submission to you.

Mr CADMAN—You just repeated that it is contentious.

Ms Arblaster—Our knowledge is based on looking at the submissions that were presented to the committee, and we footnoted it there.

CHAIR—So is it your view that, with the relaxation in restrictions on parallel imports, effectively, there is not going to be any change in the level of piracy?

Ms Arblaster—We would not expect so. In fact, you could argue that, because of the extent to which the restriction on parallel importation leads to higher prices in a domestic market and reduced availability of product, there is an incentive for piracy to increase because the rewards are potentially greater.

Ms ROXON—So the ACCC does not have any sort of independent information or view about the level of domestic piracy or the potential impact of the parallel importing changes?

Am I right in saying that you basically said before that you were just basing that on the Attorney-General's views that were put to you?

Ms Arblaster—We are basing it on other people's perceptions and information and not on our own because that is not the field in which we operate.

CHAIR—One of the matters put to us, as I recall, in the Melbourne hearings with respect to parallel importing was that, where it would not be reasonable for a retailer to be responsible for any defects in an item that had been imported, the authorised importer should be responsible for after sales service and therefore any defects. As I recall—and I do not have the transcript before me at the moment—it was suggested that you had some view about that. Are you able to elucidate on that?

Mr Spier—I am not totally clear as to the context of that statement, but—

CHAIR—Perhaps I could explain a bit more, Mr Spier. I think one of the toy manufacturers said, 'If we as the authorised importer bring in toys under that authorisation which are then retailed through shops in Australia and there is a defect, under the existing arrangements we would be responsible for those defects whereas, under parallel importing, if somebody brings in something from Hong Kong or China or wherever, which nonetheless carries the brand name for which we are the authorised importer, if there is a defect we as the authorised importer are going to be held responsible even though we have nothing to do with that importer.'

Mr Spier—I fully understand their point. Under the Trade Practices Act—in fact, since 1986—there has been the manufacturer's liability legislation, which is a private right of action. It is certainly not something that we can enforce, but it does say that, if your label is on a product and that product is brought into the Australian market, you are liable for defects even if it is not brought in by you. But it would not extend to pirated products. It would extend to your own product being manufactured anywhere in the world and brought into Australia, and not necessarily by you.

Mr CADMAN—When is the responsibility extinguished for the manufacturer? Surely there is an extinguishment point for the manufacturer where the importer then becomes liable.

Mr Spier—In fact, they are both liable. In many cases, the importer would be liable and also the manufacturer. In fact, in most cases, if you buy something from a retailer, the retailer is liable, the manufacturer is liable and perhaps the importer is liable. They sort out who bears the cost between themselves, but there is a liability on the purchaser somewhere in the chain.

Mr CADMAN—Especially if I am the licensed importer?

Mr Spier—Yes.

CHAIR—Mr Spier, I will read from what was put to us. This evidence is from Mr McDonald from Mattel in Melbourne.

A lot of people would ask why we are concerned with a parallel imported good if it was manufactured by Mattel. There are a huge number of goods that Mattel manufactures that are not imported into Australia for a number of safety reasons and electronic reasons—some of which we modify that then become acceptable to Australian safety standards and some of which we do not. With parallel import changes that will occur early next year, the ability to stop that will change under the Copyright Act.

Why should Mattel Australia, or whatever their appropriate name is, be responsible for some good—which they would not bring into Australia because it does not meet safety standards here—that is brought into Australia by somebody else under parallel importing? Can you explain that to me?

Mr Spier—Firstly, I am not sure whether that is right in terms of safety standards. What is right in terms of manufacturers' liability—that is, whether the goods are fit for the purpose and whether the goods are merchantable—is that, if your label is on the product, you are assumed to be the manufacturer unless you can show otherwise; that is, that it has been pirated, that it has made by someone else, that it is a counterfeit. That is the law.

CHAIR—But one of the particulars that would be alleged in an action would be that it failed to meet the Australian safety standards or that it failed to meet some other regulatory requirements in Australia. What I am asking is: why should an Australian manufacturer be landed with that legal responsibility when that manufacturer has taken the decision not to import that product itself?

Mr Spier—I really cannot speak for the parliament. It is actually in the legislation.

Ms ROXON—As you would understand, part of our inquiry is to look at potential changes to that legislation. So we are asking for your input, where it is within your knowledge, about ways that perhaps the current law is inadequate. It is not an issue for us to have evidence from you particularly on what the existing law is—that therefore it must be defended and stay that way. We are actually trying to address some potential changes.

Mr Spier—I take the point. The difficulty we have is that particular legislation is enforced privately, if enforced at all. We do not do it. We can only say, 'This is what the law is.' How it operates, we really do not know. It is not an issue that we enforce.

Ms ROXON—If it is not your area, that is fine.

Mr Spier—I can tell you the reason why it is there. It was put there in 1986 to protect someone who bought a product because of the label—say, a Barbie doll or a Fisher and Price toy—and had assumed they had bought a sound product. A difficulty that arises is that the same manufacturer around the world will make product totally legitimately but at different standards. People have come to us in the recent times about this, and I must say I was a bit surprised that these things happen. Things as simple as liquid detergent are sold under very well-known names but are parallel imported into some of the different types of networks from the main retailers. It is of a quite lower strength, but the consumer thinks they are buying X brand detergent at X strength, but it is at X minus.

Ms ROXON—You are responsible for the administration of the Trade Practices Act, which is focused on protecting consumers. What protection is there for manufacturers'

reputations, or for the companies that do own particular brands, in exactly the sort of situation you are talking about? Clearly it could cause great damage to manufacturers within Australia if products are being sold under their name that are not at the standard that they would otherwise sell them here. Do you have any views about how the Trade Practices Act as it stands could be used to protect them?

Mr Spier—The Trade Practices Act does not help them directly. It is a double-edged sword, but they can allege that the X brand—which is their brand—that is sold by others is a lower standard of product. The lemon is that they are bagging their own brand and product, because the product is theirs—it is made by the same manufacturer in another country but at a lower standard. Perhaps one answer is that they have to raise the standard.

CHAIR—But when you say 'lower standard,' the standard for which it is made is the standard of that country.

Mr Spier—Sure, but it is also legitimate here.

CHAIR—But if a manufacturer makes a product which is for sale in country X, which has standards that are lower than Australia's, and that product is normally sold in country X but somebody is able to parallel import it into Australia, why should the manufacturer have to say, 'This product, which is normally sold in country X, does not meet the standards of Australia'?

Mr Spier—I agree with that. It depends on what you mean by 'standards.' There are safety standards and no-one can import products—

Mr CADMAN—Yes, they can. I can bring them in, and it depends on whether you as a consumer or a state health person spot those goods in the marketplace. It cannot be stopped at the boundary.

Mr Spier—It depends on whether or not that particular item is covered by the Customs regulations.

Mr CADMAN—There are some prohibited goods, but most of the things we are talking about are not prohibited goods.

Mr Spier—Your point is right, Mr Cadman, but they should not be selling things that do not meet Australian safety standards. There is a prohibition under either state law or federal law, so there is something that can be done. The issue that is more difficult is where they do not breach any safety standards but the product is of a different strength—it is a different type of product from what we are used to, but there is no breach of any law. The Australian consumer expects a certain strength, say, in the detergent, but what comes in from overseas is a lower strength—what is coming into the market is mainly water.

Ms ROXON—When you say that it is not the situation where there are safety standards that is the problem, because there is a breach of either state or federal laws—

Mr Spier—Or something to the point made by Mr Cadman of the enforcement of those laws, and that is right.

Ms ROXON—That was the question I was going to ask you. What capacity does the ACCC have to use section 65 of the Trade Practices Act prior to there being some injury or death or something that is caused by a faulty product?

Mr Spier—That provision applies only to standards that have been made mandatory by the government. If the government makes the standard mandatory, we enforce it. We enforce a number of standards now. Invariably they are complementary state and territory standards, and there used to be complementary customs regs. A lot of those have now gone, although some are still there. Yes, we do enforce product safety and product information standards, but it must be promulgated by the government. We do not have any power at large.

Mr CADMAN—Would labelling laws also fall within that range?

Mr Spier—Yes. For instance, there is mandatory care labelling of all clothes, and we enforce that.

Mr CADMAN—Would you see it as a consumer benefit if an importer were to declare to customs that their goods complied with Australian standards and labelling laws before it came in?

Mr Spier—I would say yes to that. In fact, a lot of the retailers would insist upon that kind of undertaking on imported goods.

Mr CADMAN—Yes. We know that Woolworths, Coles and other major retailers have their own safety and compliance inspection processes. They themselves check every product to make sure it does comply.

Mr Spier—They check, and they see it as an undertaking.

Mr CADMAN—They do not rely on the overseas manufacturer or the importer.

Mr Spier—That is right. The big retailers do two things: firstly, they have their own checking; and, secondly, they also seek an undertaking from the supplier that it meets various standards.

Mr CADMAN—I am talking about smaller level of things because that is where the piracy misleading can take place, whether it be on labelling or anything else. A declaration made to Customs would be a further deterrent.

Mr Spier—It would be a further deterrent, but how you then police that might be a bit hard. The stuff all comes in containers.

Mr CADMAN—It means that if it were sitting on the wharf or warehouse ready for release it could be left there if it is detected—say, a couple of consignments were coming through and you picked up one, you could say that everything stops where it is.

Mr Spier—There are two ways of doing it: you could make it a mandatory offence—that if you do not make such a declaration to Customs your goods do not leave the dock; or, if you make such a declaration and it is false, the Trade Practices Act will apply.

Mr CADMAN—That is not bad.

Mr Spier—That happens in some cases on standards now. In some of our cases, people say that they meet X standard, which is false.

Mr CADMAN—Absolutely right. Good on you. Not bad.

Ms ROXON—I will ask you another question which is not related to these points that we have already raised. In your experience in administering the Trade Practices Act you deal with a combination of civil and criminal penalties and—correct me if I am wrong—some sort of statutory penalties as well. We have received a number of submissions about whether or not the introduction of some statutory damages system or further criminal penalties would provide an additional deterrent. Would you like to give us some general comments about how civil and criminal remedies are effective in your area? It might perhaps inform our views in the copyright area.

Mr Spier—It is a mixed bag for us, and I heard some of the discussion earlier. Most of the cases we take are civil, be they in the consumer protection area or in the anticompetitive conduct area, for a couple of reasons. First, in the anticompetitive conduct area the only option is for civil, but with $10 million penalties. So they are a hybrid almost: they are said to be civil, but with very large penalties per offence. The court will never do $10 million per offence, but the potential is there. So on some cases, for the number of offences, you could conceivably have a billion dollars, if you went to the max. So that is a very high potential penalty. In the consumer protection area we can have civil without penalty or criminal with penalty. But we tend to take mainly civil because we are out to stop the conduct. We are out to get damages for those who are hurt. We are out to correct advertising and we are out to have a marketplace outcome. We do take a number of criminal cases, but they are by their very nature slower. In the economic type offence area, the criminal onus is difficult.

Ms ROXON—When you say your aim is to have a marketplace outcome, does that mean you have a view that the civil action is a sufficient deterrent or is prohibitive to the extent that it actually does stop the conduct?

Mr Spier—We say it does, but what has to go with it, of course, is effective enforcement. By itself, it is just a bit of paper; it is a law. But the fact that it is actually there as a real risk makes it a deterrent. You would be more than aware that our chairman is not exactly shy of the media, and publicity is used very effectively to get the message across in the marketplace.

Ms ROXON—Depending on which end of it you are on, I suppose.

Mr Spier—Of course. But if you are out after compliance, that is important.

CHAIR—One of the criticisms is that it is easy to hide behind the insolvency provisions of the Bankruptcy Act to effectively avoid the civil penalty and, not only that, to then have a phoenix company type of arrangement.

Mr Spier—There is a risk. That has happened to us in criminal cases as well, particularly because they take longer; you have more time to find other ways of doing your business. Having said that—and, again, I heard one of the earlier questions—we have powers in our act to freeze assets: we use Anton Pillar orders and we use Mareva injunctions. Again, it is a question of how fast you move and, I suppose, what type of enforcement culture you show to the marketplace.

Ms ROXON—Why are the criminal proceedings slower than the civil proceedings? That would be unusual. Presumably you are in the Federal Court, are you, for the civil proceedings?

Mr Spier—Yes. The onus of proof makes things slower. The processes are generally slower.

Ms ROXON—Would that be the same in the copyright area?

Mr Spier—I cannot speak for that at all. We would have at any point in time 40 to 50 cases in court, of which six would be criminal cases. Part of the reason is that all of the competition cases must be civil, but even the bulk of our consumer protection cases are civil. Often, and this may be different in the copyright area, we are seeking damages on behalf of consumers rather than money for the Treasury.

Ms ROXON—At the moment in the copyright area there is not really any capacity to seek money on behalf of the Treasury anyway, unless it is the owner of the copyright.

Mr Spier—No. I mean in terms of, say, a penalty. In our criminal cases there might be a penalty of a couple of hundred thousand dollars, but we are often after a compensation and that couple of hundred thousand dollars might go better to those who have been injured.

Ms ROXON—I see what you are saying.

CHAIR—One of the criticisms made in this area generally is that penalties are much too lenient—that is, whilst you can talk about $10 million fines, the reality is that the most that ever happens is a slap on the wrist.

Mr Spier—Is this in copyright?

CHAIR—Yes.

Mr Spier—Perhaps that is a question of the way cases are run or even, perhaps, some guidance to the court by the parliament. We had a similar situation for many years where we thought penalties were too low. Eventually, parliament upped them dramatically. But, even there, you have to slowly bring the courts with you, too. You cannot just assume that suddenly they will go with the maximum penalty. You have to show the cases why you need

to increase penalties. Even before the penalties were going up, our penalties used to be a quarter of a million dollars maximum in the competition area, and that went up to $10 million in 1993. But even before they went up to $10 million we had one case with penalties of $6 million, but that was after many years of simply bringing up the courts to realise the issue.

CHAIR—This is always a delicate subject but, nonetheless, it probably should be raised: is it really a question of educating the judiciary?

Mr Spier—To some extent it is, and that is in most areas. It is one thing to educate, but you also have to put up a very good case to the court to say why the penalties should be high, not simply say, 'Look, Your Honour, we think the penalty should be a million dollars.' The judge must be convinced. You need to really put a lot of effort into showing that and not assuming, almost, that the judge will do what you want.

Ms ROXON—We have had a number of submissions about the copyright area and the need for anyone who would be prosecuting a case to work closely with the industry and the people who are affected by it to be able to have sufficient information to properly mount the case. How dependently or independently does the ACCC work on its cases where information is needed from the industry? Do you rely on your own investigators and prosecutors? It is a fairly general question, but I do not understand exactly how you work on that.

Mr Spier—It is a valid question. We do all our own investigations. We do not use the Federal Police or anyone like that. However, of course, the evidence you need for a case must come from the industry. The expertise, the technical information, must come from industry. You cannot run a case just on theory. But we have powers to get information. Of course, in many of our cases, there are two sides to every case, not just from the consumer perspective but from the industry perspective, and you often have people happy to help against their competitors. We use industry information, but we do our own investigations. All our cases are the commission against X. We do not in any way use outside bodies for our investigations. Obviously we use lawyers or counsel.

Ms ROXON—Presumably your investigations are very much assisted by your capacity to be able to compel people to give evidence within industry as well.

Mr Spier—Yes.

Ms ROXON—In the copyright area there are no real comparable powers.

Mr Spier—No. We have powers to seek information: we can demand information and we can bring people before the commission to be cross-examined. In the bulk of the cases we do not use those powers, we do not need to, but they are there. They are there as a backstop. We do not use them as a first order tool because they are also fairly onerous. They are a second order tool if the first ones, like talking to people, doing formal interviews or asking them in writing, do not work. If they do not work, then we use the second order tools.

Mr CADMAN—I guess my thoughts are moving along the lines of: at what point do you think it is bad for a consumer to be exposed to illegalities? Is it price, price, price that drives your philosophy, or are there other factors as well? For instance, we have already raised the safety issues, and you appear to say that safety is a factor.

Mr Spier—It certainly is.

Mr CADMAN—On intellectual property, if the Australian software industry was under threat because of a process of either piracy or parallel importing—where start-up industries could not maintain the uniqueness of their product; and the uniqueness must be a factor that retailers or manufacturers must be allowed to promulgate—do you take into account those sorts of things, or do you just say, 'Well, if the consumer can get a like product, we do not care where it comes from'?

Ms Arblaster—No, we would not say, 'If it is a like product; we do not care where it comes from.' We are putting a policy point of view that a restriction on parallel importing is a very indirect way of coping with some of the problems of piracy in the software industry and is not necessarily going to be effective. In fact, we understand that a lot of the piracy problems in the software industry are related to electronic means and that a lot of piracy occurs within a market domestically. Those sources of piracy cannot be assisted by parallel import restriction.

Mr CADMAN—But at point 7 of your discussion points you raise the conjecture that piracy is more likely to flourish where you have a restricted market. We have just heard from the film industry that piracy flourishes in an environment where you have a diverse market open to parallel imports and copying. Where there are few restrictions in the marketplace, piracy flourishes and where you have more restrictions, piracy does not flourish. I think you put the opposite proposition.

Ms Arblaster—Yes, that is right. We think that, where the market is restricted, because importers cannot parallel import, the prices will be higher and choice will be lower than is otherwise the case. Therefore, there will be a greater incentive for piracy. We have been reading recently in one of the papers in Hong Kong—where there is a restriction on parallel importation—that there has been a lot of enforcement activity recently in relation to piracy and that there is a real piracy problem in Hong Kong. So the restriction on parallel importing in Hong Kong has not led to any sort of improvement in the problem of piracy for the industry.

Mr CADMAN—But the evidence today was contrary to what you have just said; in that, where the use of the normal VCR technology was controlled tightly by Hong Kong, that remained under control. They had a piracy level of, I think, 15 per cent, which is broadly acceptable. If I can interpret what they said, 10 per cent to 15 per cent is what the industry basically expects. With the availability of digitalisation and electronic transfer, that piracy level has risen to 50 per cent, and there are now strong attempts to reduce that by enforcement procedures. It was the change of technology that brought that about in what seemed, prior to that, to be a well-managed marketplace.

Ms Arblaster—But, as I understand it, the parallel importation restriction relates to physical—

Mr CADMAN—No, the contention is that, when you allow a variety of avenues to flourish, that is the area that is most conducive to the piracy process. Where you have a controlled—and maybe 'controlled' is the wrong word to use—marketplace where everybody can say, 'Here is my seal of legitimacy', that is the place where piracy is least likely to flourish.

Ms Arblaster—We would see that parallel importation is a very indirect way of dealing with that problem, and some of the things that, for example, Mr Spier discussed earlier were much more direct ways of dealing with the problem of different standards of product being parallel imported.

Mr CADMAN—But could I say that you are almost in breach of copyright by making that statement yourself, because you have picked up a statement from the Attorney-General's Department and basically presented it as your own.

Ms Arblaster—I would have thought that our points have been fairly well footnoted.

Mr CADMAN—No, you have to prove it yourself. You cannot present somebody else's views as your own and say that they are your conclusions reached by your organisation. I do not think that is adequate.

Ms Arblaster—I think the ACCC has put other submissions forward related to the parallel importation issue where they have commented on parallel importing and—

Mr CADMAN—But we are talking about the ACCC; we are not talking about the AGs—we are talking about you. You present this in paragraph 2 as your own conclusions. I am sorry if I misread it, but the footnote applies to the sentence immediately preceding the footnote and not to the concluding sentence. I think I can be forgiven for thinking they were your conclusions reached after proper consideration.

CHAIR—We could probably spend more time on parallel importing, but I do not suspect we are going to get much further. I must say that I am not convinced by your argument that piracy will be reduced by parallel importing. On the evidence I have heard so far, I tend to be inclined to Mr Cadman's view that parallel importing will actually lead to an increase in piracy, not a decrease. I think I understand that your position is primarily motivated by the price of product in Australia rather than piracy considerations.

Mr Spier—That is a very important fact for us.

CHAIR—I am not usually in the habit of giving people gratuitous advice, Mr Spier, but I think you are best to stick to your predominant argument and not go down the track of piracy if that is where you are coming from, because I do not think the evidence is there, at least at this stage, to support the case which you are making out.

Ms Arblaster—I do not think I was saying that it was evidence. We have argued it in terms of incentives, and we saying that, where prices were higher because of a parallel import restriction, there is likely to be greater incentive to engage in piracy.

CHAIR—I think that is a pure argument that does not take account of the geopolitical environment in which Australia finds itself. If you can bring pirated goods across the border with virtually no interception—which is the evidence that we have been receiving—it seems to me that, once you open parallel importing, you are potentially opening the floodgates. I am not sure that that has been taken into account. But, as I said, I do not think this discussion is going to take us anywhere, so we should probably leave it there. I thank you for your submission by way of letter to us and also for coming along and discussing the matter with us this morning.

Mr CADMAN—Yes, it has clarified our concept much better. Thank you.

CHAIR—I thank all those for their attendance today and the secretariat and the parliamentary reporting service.

Resolved (on motion by **Mrs Vale**):

That this committee authorises publication of the proof transcript of the evidence given before it at public hearing this day.

Committee adjourned at 11.58 a.m.