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Ms Sophie Dunstone  
Committee Secretary  
Legal and Constitutional Affairs Legislation Committee  
The Senate

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Dear Ms Dunstone

### **Inquiry into the Copyright Amendment (Online Infringement) Bill 2015**

Thank you for your letter 1 April 2015 inviting the Australian Competition and Consumer Commission (ACCC) to provide a submission to the Inquiry into the Copyright Amendment (Online Infringement) Bill 2015.

The ACCC would like to make the following comments in the context of our role in administering and enforcing the *Competition and Consumer Act 2010*.

The ACCC, in our submissions to both the Competition Policy Review<sup>1</sup> and the Australian Law Reform Commission review of copyright and the digital economy<sup>2</sup> has expressed a view that in some circumstances the exercise of intellectual property rights, including copyright, can have a negative impact on competition.

It is the ACCC's position that any policy or law reform must strike the right balance between providing incentives for innovation in the creation of intellectual property and removing barriers which inhibit competition and subsequent innovation in the market. The issue of access to intellectual property for subsequent innovation is especially important for the digital economy. The ACCC recognises that there is a need to protect ownership rights of intellectual property. However, this right must be balanced by appropriate protection for innovation and competition in the long-term interests of consumers.

The ACCC understands that the purpose of the Bill is to introduce reforms to reduce online copyright infringement. The ACCC supports the primary objective of the Bill to provide protection and incentives for copyright owners.

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<sup>1</sup> *Competition Policy Review – Final Report*, March 2015

<sup>2</sup> Australian Law Reform Commission 2013, *Copyright and the Digital Economy*, Report 122, Sydney

The process as set out in the Bill for a copyright owner to apply directly to the Federal Court for an injunction does involve a number of factors which must be taken into account before granting any injunction. These factors do set a high threshold and should ensure that the Courts will only grant an injunction when there is illegitimate use of copyright material.

It is important to note that intellectual property owners have in the past used threats of court action to prevent the legitimate sale of parallel imported goods. The ACCC would be concerned if copyright owners were able to inappropriately threaten use of the powers set out in this Bill to intimidate consumers and businesses and prevent them accessing legitimate goods from other jurisdictions. One way to address this is to ensure that a definition of infringing content does not apply to content authorised by owners in other jurisdictions.

The ACCC has previously called for all restrictions on parallel importing to be lifted to encourage competition in markets where there have been restrictions due to ownership of intellectual property. The Harper Report has similarly recommended that all remaining parallel imports restrictions should be lifted. The proposed Bill, from the ACCC's position, does not look to restrict legitimate competition and there seem to be appropriate safeguards in place to ensure that copyright owners can protect their legitimate interests and do not harm competition in the process. These safeguards include provisions of the Australian Consumer Law which prevent businesses from engaging in false, misleading or deceptive conduct, provisions preventing harassment and coercion.

Yours sincerely

Rod Sims  
Chairman