



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

**Reference: Copyright Amendment (Parallel Importation) Bill 2001**

WEDNESDAY, 9 MAY 2001

MELBOURNE

BY AUTHORITY OF THE SENATE

**WITNESSES**

**ANDERSEN, Mr Philip Duncan, National Director, Printing Industries Association of Australia ..... 24**

**DONALDSON, Mr Alex, Managing Director, Griffin Press, Printing Industries Association of Australia..... 24**

**FEGAN, Mr Michael Thomas, Managing Director, Acclaim Entertainment Pty Ltd ..... 2**

**FISHER, Mr Ronald Claude, Economic Consultant, Printing Industries Association of Australia ..... 24**

**FLYNN, Mr Patrick William, Solicitor, Mallesons Stephen Jaques ..... 12**

**MACNAMARA, Mr Jim, Chairman, Business Software Association of Australia ..... 12**

**SIMES, Ms Megan Mary Barry, Chief Executive, Australian Visual Software Distributors Association ..... 2**

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**SENATE**  
**LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE**  
**Wednesday, 9 May 2001**

**Members:** Senator Payne (*Chair*), Senators Coonan, Cooney, Greig, Mason and McKiernan

**Participating members:** Senators Abetz, Bartlett, Bolkus, Brandis, Brown, Calvert, Chapman, Collins, Crane, Eggleston, Faulkner, Ferguson, Ferris, Forshaw, Gibson, Harradine, Harris, Knowles, Lightfoot, Ludwig, McGauran, Stott Despoja, Tchen, Tierney and Watson

**Senators in attendance:** Senators Coonan, Cooney, Mason, McKiernan and Payne

**Terms of reference for the inquiry:**

Copyright Amendment (Parallel Importation) Bill 2001

**Committee met at 9.04 a.m.**

**CHAIR**—Welcome to the public hearing for the Copyright Amendment (Parallel Importation) Bill 2001. As stated in the explanatory memorandum, the bill is intended to amend the Copyright Act 1968 to enable the legal parallel importation and subsequent commercial distribution of computer software products including interactive computer games, books, periodical publications such as journals and magazines, and sheet music. It also contains some minor amendments to correct drafting errors in the Copyright Amendment (Digital Agenda) Act 2000.

The committee has been asked to consider the impact on consumers and copyright owners of allowing parallel importation and the subsequent commercial distribution of these items. The Senate referred the bill to this committee on 28 March 2001 for inquiry and report by 23 May 2001. The committee advertised the inquiry on 7 and 8 April 2001 in the *Australian* newspaper. The committee has received 18 submissions to date, including supplementaries, all of which have been made public, although some attachments to one submission will remain confidential. This is the first public hearing for this bill, and I expect it to carry over into a total of three hearings.

[9.05 a.m.]

**FEGAN, Mr Michael Thomas, Managing Director, Acclaim Entertainment Pty Ltd**

**SIMES, Ms Megan Mary Barry, Chief Executive, Australian Visual Software Distributors Association**

**CHAIR**—Welcome. The Australian Visual Software Distributors Association has lodged submissions, which we have numbered 11 and 11A, with the committee. Are there any amendments or alterations that you wish to make to those submissions, Ms Simes?

**Ms Simes**—No, there are not.

**CHAIR**—I now invite you to make a short opening statement and, at the conclusion of that, I will ask members of the committee if they wish to address questions to either of you.

**Ms Simes**—I thank the committee for the opportunity to talk to you about this bill. I will briefly summarise what our submission is about. We do not believe that allowing parallel importation of video games would achieve the stated aim of lower prices, and we do not believe that there is a lack of competition in the market in this industry at the moment. We believe that our submission has demonstrated that wholesale prices in Australia are very competitive by world standards. We think that the data that has been supplied to argue that prices are high is invalid. It is based on retail prices, and parallel imports do not target, in the first instance, retail prices; they target wholesale prices, which we believe we have demonstrated are quite low.

On the issue of availability, computer games are released on the same day throughout the world. Australia gets pretty well all computer games that are released. In the odd instance where one is not distributed by the existing companies in Australia, the legislation already allows people to privately import them for their own use. We think there would be major negative impacts for Australia in allowing parallel imports. Basically we think there would be a significant increase in piracy, which is already high. It is sometimes argued that piracy is not high by world standards, but we think 25 per cent is high, and that is about the level that it is.

We also think there would be a significant negative impact on the classification regime. We think that the reason it works so well is because a number of companies are very solidly committed to it working and, if you allow parallel imports, you will lose that and the Australian public will lose confidence in the classification regime.

**CHAIR**—Mr Fegan, did you wish to add anything at this stage?

**Mr Fegan**—No.

**CHAIR**—We will begin with questions, then, from the Deputy Chair, Senator McKiernan.

**Senator McKIERNAN**—The matter of pricing: on reading the government's submission, it seems to me that they are leaning very heavily on the ACCC to justify the proposal to change policy and allow parallel importation. The ACCC are relying on figures which I believe are dated, and we will be talking with them tomorrow. Does your industry have a view on the pricing issues—and pricing in today's terms rather than five, 10 or even 12 years ago?

**Ms Simes**—The prices of computer games have been coming down over time. In 1998, we had Access Economics—which is a fairly reputable organisation—do a pricing comparison between the UK and the US. The data that they looked at represented about 97 per cent of games sold in Australia over the whole of 1998, taking out the odd game that might have an exceptionally low or an exceptionally high price. We thought that that was a very thorough

pricing comparison—and that was when the dollar was at US62c—and it showed that games here were over 30 per cent cheaper than in the UK and only a little bit higher than in the US.

It also looked at the wholesale prices, and I think that is fairly important to do because—as I said before—it is the distributors that are being targeted. It is their wholesale prices that should theoretically drop to enable retail price to drop. But we believe that we have shown that those wholesale prices are lower.

What the ACCC did at that time was look at nine games at the retail level on the Internet, so it was a pretty random and not very scientific way of pricing. They have recently done the same thing for 11 games but again it was just a random spot check, as they call it. I do not think that it in any way compares to the study that we had Access do. We are getting another one done at the moment for the year 2000 and as soon as that is available we will let you have a copy of it.

**Senator McKIERNAN**—I am looking at the Access Economics document. It talks about the dollar and its value against the pound and the US dollar. I was in the US the week before last and I know that what we have got in front of us is a fiction, in today's terms of the Australian dollar. That is obviously got to have an impact and a mark on your industry and the products that your industry is selling. Is it not possible to have more up-to-date statistics and direct comparisons as to the impact that parallel importation might have on the industry?

**Ms Simes**—It is actually quite difficult for us to gather information that we do, because, while some of the bigger companies—like Sony or Nintendo—have a parent company in the US who can just say to them, 'This is what the wholesale price is here,' a lot of the companies are what are called third party distributors. They buy the product from a company who sells it to different distributors in different countries around the world. It is quite difficult for them to get that information and to get the full range of product—which we think is the best way to give a good picture, rather than just picking out odd titles as the ACCC did. We want to make sure that the information that we are providing is as accurate and comprehensive as it can be.

Looking at the games that the ACCC looked at, I have provided a couple of attachments which are commercial in confidence information that companies gave me. It is very clear from those that the wholesale prices are extremely competitive with the US. Mike might be able to talk more on that.

**Mr Fegan**—As far as Acclaim is concerned, we are a major publisher and distributor in over 20 different countries. Looking at the international pricing matrix for Acclaim's business, Australia has actually the lowest pricing at a wholesale level. The reason for that is that it is a very competitive market and, as a publisher, we obviously want to generate as much revenue as possible. With the situation with the Australian dollar, we are actually absorbing the exchange rate variation because we want to keep the pricing competitive so we can do volumes. But in general, when you look at the pricing structure, we are actually the lowest of all the international group and have been for a couple of years now.

**CHAIR**—Australia?

**Mr Fegan**—Australia is, yes, and New Zealand.

**Senator McKIERNAN**—That is not evident. That is not coming through in the submission we have from the Attorney-General's Department, who—without me seeking to misrepresent the department—are very reliant on what the ACCC is saying. It seems to me that there is a direct contradiction here between the evidence that the industry is offering on the one hand, with the software products and the books—and we are hearing from those

people at a later time during the course of the inquiry—and what the department and the ACCC are saying.

**Mr Fegan**—It does not add up from my personal point of view, either, because—as you know—we get information from PC Data, which is the US research company that gives us weekly sales. We get Chartrack from the UK. Inform, which is a local research data company, gives us all the sell through figures and all the retail price points and average street prices. That information shows that Australia is competitive. Australia is much cheaper than the UK and, in most instances, lower than the US now because of the Australian dollar. The ACCC figures do not stack up. We can provide all this information.

**Senator McKIERNAN**—We will be hearing from the ACCC tomorrow afternoon. I wonder if you could monitor and respond to us on what the ACCC say in regard to your sector of the industry rather than appear with them tomorrow. We have a short time frame for reporting on this piece of legislation. Could I ask you to do that? I will be asking others to do something similar. It seems to me that we have a great difference in views between the major submissions on the subject matter we are inquiring into.

**Mr Fegan**—Yes.

**Senator McKIERNAN**—My final question I want to put to you, Ms Simes, is about the manner of distribution. I think I heard you correctly this morning say that whenever a new product is released it is released simultaneously in Australia to everywhere else. There is nothing being held back that would in any way seek to manage the pricing policies that have been put in place by the multinationals. I think the multinationals get a good run in this from the department's point of view—even in the explanatory memorandum, which is a little extraordinary. That is the way things are, and I will not question that. Can you just say a little about the distribution. Are products being held back in order to manage or in some way to distort the pricing and make the Australian consumer pay more for a product than they would perhaps pay if it were freely available through a system of parallel importation.

**Ms Simes**—No, they are not. I think perhaps Mike can talk more about this. One of the main reasons to release titles throughout the world is to control piracy so that there is not the incentive for somebody to bring a product in because it is not available here. What has happened is that the products that were brought in to beat later release in Australia were pirated products, and so that is why they are released simultaneously throughout the world.

**Mr Fegan**—To give you an indication: if we release a product in the US, within four days a full retail sample will be sent from the US into Asia. The code will be broken, and they will start duplicating and even replicating all the artwork. The quality of the pirated copies is improving year after year. So, within four days, they are actually shipping pirated copies of that product out of Asia into various different territories. It is becoming a major issue on different formats. We have currently got a problem with console business because the format for console, particularly with Sony and Nintendo, is split between NTSC and PAL territories. NTSC generally gets developed and completed first, and so is released first; and then, usually within about four weeks, the PAL version is released. That is a contentious issue because what happens is that, if we cannot bring those two releases closer together, we get a huge pirated problem on the PAL versions of things. But the bottom line is that pirates move very quickly, and it is a major concern to us. The figures out of Asia are staggering as far as piracy is concerned. So, in our opinion, we are opening the floodgates to that sort of problem, which is currently not a major issue, but it is a growing issue as far as we are concerned.

**Ms Simes**—Can I just ask if PAL and NTSC need any explanation for you.

**Senator McKIERNAN**—They do.

**Ms Simes**—Our TV system is PAL; in the US, it is NTSC. The Playstations and the Nintendo machines plug into your television, so you have to have compatible hardware and compatible software so that you can play it here. What they are selling in the US would not work on our machines here and would not work through our televisions. So it is a slightly different product.

**CHAIR**—Before I turn to Senator Mason, there is a comment in your submission, Ms Simes, at about page 3 or 4, in which you refer to Australia's comparatively low level of piracy and counterfeiting of video games. You describe the current regime as 'the most cost effective way of ensuring that piracy and counterfeiting are kept at an acceptably low level', which I acknowledge is your view. You then say that, if the restrictions on parallel importing are changed, 'the industry would have neither the will nor the ability to police illegal activity'. I am not going to question you on the matter of 'ability'; but, on the question of 'will', wouldn't it still be in the industry's interests to continue to try to police illegal activity to the extent that you already have as an organisation, which you refer to in the previous paragraph?

**Ms Simes**—The situation is that there are companies in Australia that, through their parent companies—for example, Sony or Nintendo—have either the distribution right for product or, for example, Acclaim which buys the right to distribute the product in Australia. If parallel imports are allowed, those companies will not make as much money out of selling those titles, particularly, we strongly believe, because the level of piracy will increase as well. The companies that are making money out of selling the products in Australia at the moment and are paying over \$1 million a year to fight piracy will not have the resources to do that because they will not have the income, and they will not have an interest in protecting their market.

**CHAIR**—So there is a commercial aspect to this which is not actually referred to in your submission in any substantial way, in terms of your members—the companies you have referred to as not making as much money as they currently do?

**Ms Simes**—Yes. I have made an assumption in the submission, but that is the reasoning—that is, they will not make the same money and they will not have a vested interest in pursuing the pirates to the level they do now.

**CHAIR**—When you refer to the expenditure of \$1 million in this area, that is not per company but a combination of moneys they contribute to some sort of fighting fund?

**Ms Simes**—Yes. In fact, most of that is just fighting one product, and that is PlayStation. Microsoft does its own anti-piracy work.

**CHAIR**—We are aware of that.

**Ms Simes**—I do not know what their budget is. Some other companies contribute to the Sony PlayStation one, and then individual companies—for example, Nintendo or companies doing a PC product—do a degree of anti-piracy work as well.

**Senator MASON**—The Chair has put her finger on a very interesting point—

**CHAIR**—So early in the morning!

**Senator MASON**—so early in the morning—and it is that in your submission you have attempted to link the issues with respect to competition policy, law enforcement and piracy. To my mind—I am not an expert—those issues are not necessarily linked. I understand that the bill proposes changes to the onus of proof and so forth. I just want to hear your argument again: why do you think that issues of piracy are important—no-one is quibbling with that—and that issues of competition policy are separate, yet your submission, in a sense, says that

nd that issues of competition policy are separate, yet your submission, in a sense, says that they merge?

**Ms Simes**—We believe they do.

**Senator MASON**—Could you explain that?

**Ms Simes**—Basically, we are saying that we do not believe that there is a lack of competition; we do not believe that price is an issue; we do not believe that availability is an issue; therefore, we cannot see good reasons to change the law as it stands. We see the law as it stands as providing side benefits. We believe that the current system means that those side benefits are provided in a cost-effective way so that piracy is kept as low as it can be kept, given current technologies, and that the classification regime is effective and not high-cost to the government. There are only two people in Australia who police censorship—that is for the whole of Australia—and they are funded by the Commonwealth government, although enforcement is a state government responsibility. But you do not need a lot of policing when the people who are responsible are being responsible.

**Senator MASON**—So it is fortuitous that this regulated market produces optimum law enforcement and competition outcomes?

**Ms Simes**—We believe so.

**Senator MASON**—Regulated markets often do not do that, Mr Deputy Chair. I ask another question—Senator McKiernan touched on this before—and it is about the interests of distributors on the one hand and the creators of the copyright or the intellectual property on the other hand. Let us call it the regulated market for the moment. Is there any distinction between the interests of the distributors and the creators of the intellectual property in the first case, or are they both the same?

**Mr Fegan**—They are distinctly different. First of all, the distributors in Australia are a combination of major publishers and distributors. They basically buy finished goods, manufacture locally or import, whatever the case may be. On the other hand, there are what we call the developers who are the creators.

**Senator MASON**—The authors or whatever.

**Mr Fegan**—Yes. The development community in Australia is building, particularly here in Melbourne. Speaking from a company standpoint, we have invested quite heavily in the local development community. Over the last 12 months, we have commissioned three major projects based on high profile licences like *South Park* et cetera, which have been international successes, and we have also just entered into a major deal with the AFL to produce AFL products for the next four years which will be developed here in Melbourne. From a company standpoint, we are investing heavily in developers. I work a lot with developers so I understand, from their point of view, that royalties are paramount because they obviously fuel the business. They get an advance from us and they count on the royalties heavily to make their profit. The advance just covers the cost of development. When they are losing royalties, particularly through piracy, that obviously hurts them.

**Senator MASON**—I suppose that was my point. You would argue that authors or creators lose money because of piracy, but they would not necessarily be losing money through parallel importation per se, would they?

**Mr Fegan**—No.

**Senator MASON**—So the interests are different.

**Mr Fegan**—Yes.

**Ms Simes**—The number of companies distributing product in Australia has increased significantly in the last 10 years. Over time, if a company can no longer justify a presence in Australia, it would just ship in product without a distribution operation and there would not be people like Mark here, looking for Australian developers out there and investing in them.

**Senator MASON**—Okay. So it could have some impact on domestic developers?

**Mr Fegan**—Yes. The company is based in New York, but we decided three years ago to set up our regional base here. We had 60 locations to choose from in the Australasian region, as we call it, and we chose to set up in Melbourne. I came over from New York and fortunately I am Australian so that helped a lot. The Victorian government was very proactive in getting us to set up here. Now that we are here, we are investing heavily in infrastructure, and particularly in development, because Australia is a great place to develop product and there are many very good skill sets here. However, we are about making money for our shareholders. If we start losing profits—

**Senator MASON**—You will go elsewhere.

**Mr Fegan**—Exactly. When we release a major product, we spend a lot of money on marketing—national TV and radio campaigns, point-of-sale materials, all of which are produced locally. Obviously, if we do not have exclusive rights to that product, we would be very hesitant to spend quite significant sums of money on marketing it. That is an issue from us and it would obviously affect the local economy in respect of the advertising agencies, PR people, printers and replicators we work with. We would have to reconsider the whole scenario there.

**Senator MASON**—When there are regulated markets and people say that there are optimum outcomes in terms of law enforcement or prices, to be honest, I am always sceptical about that so I will listen carefully to the evidence.

**Senator COONEY**—Following on from what you were saying, Mr Fegan, how much local intellectual property do you provide for? You provide a vehicle for talent and development. How much of that is local, in terms of it originating in Australia?

**Mr Fegan**—Since we established ourselves here in November 1998, we have invested over \$US4 million in local development.

**Senator COONEY**—Could you give us an idea of what that means? What sort of things have you done?

**Mr Fegan**—We have commissioned local development teams to create a product for us. A good example of that is *South Park Rally*. That had a \$US2.5 million budget and the local development team created that product from scratch. It took 26 people almost 18 months to complete, and that product was released internationally and went on to sell over half a million units.

**Senator COONEY**—I know that, but what was involved in the production?

**Mr Fegan**—As far as that particular product is concerned, all we provided to that particular team was the licensing rights. They created everything from their own tools and technology that they had here in Melbourne.

**Senator COONEY**—What was involved in that? I am trying to get a picture of what the people who do the creating in fact do.

**Mr Fegan**—There was a team of 28 people—primarily programmers and graphic artists, and one sound person. They had a basic game engine that is the core technology for the product. They came to us initially and said, ‘We have got this game—’

**Senator COONEY**—They approached you?

**Mr Fegan**—Yes. They said, ‘We have this game engine, and it is basically a driving game.’ We looked at it, and it was a completely different concept that they offered us initially, and we said, ‘We like your core technology and we like your engine, but we want to adapt it and add the *South Park* licence to it.’ Basically what we did was to give them all the support, from a libraries point of view, for the art that they required to meet Comedy Central’s approval for *South Park*. So there was a combination of quite a number of people involved in that.

**Senator COONEY**—If you were not here providing that technology—which, I suppose, is what you do—what would they have to do?

**Mr Fegan**—They would have to jump on a plane and come to New York and get in line with everybody else to try and have their company acknowledged by our company. To give you an indication of the process, over a period of four years working in New York for Acclaim, I have seen many young people particularly come to the company with ideas and concepts and so forth. We have four full-time people who spend all day evaluating companies. We would get, on average, 30 submissions a week from new development companies. So just to get acknowledgment is a very difficult process. Obviously, the more successful you become, the easier it becomes, but just to break through is very difficult. And when you come from the other side of the world—we have the tyranny of distance and so forth—it is a hard process for local development teams here to be acknowledged and do business with the Northern Hemisphere, particularly the US and the UK.

**Senator COONEY**—What happens to the writers, the developers? What is your relationship with them in respect of that work? Have they got property rights over the development?

**Mr Fegan**—Yes. They hold intellectual property rights until we recoup against the advance, and then the IP reverts to Acclaim in normal terms.

**Senator COONEY**—And you are here to see if you can develop more of that. Is that it?

**Mr Fegan**—Yes. One of the major functions of the regional office here in Australia is to seek out new development teams and work with local development teams.

**Senator COONEY**—In terms of the range of products, is it only games that you develop?

**Mr Fegan**—Yes, it is only games. We are an entertainment company, so we are mainly interested in high-profile licence games, either connected to a major movie licence or, in the case of the US, where we are very strong, sporting licences—NFL, MLB. We cover all the major sporting codes.

**Senator COONEY**—So what you are doing in Melbourne is looking for the development of intellectual property that may develop not only in Melbourne but throughout Australia?

**Mr Fegan**—Yes. As I said, we are just investing in local development in the form of AFL, which will be a localised product, because the potential of the product is just for Australia. We will be working with local teams to develop that.

**Senator COONEY**—I notice in the submission it was stated that rights to intellectual property were not heavily enforced. Is that right? Were you saying that?

**Ms Simes**—Yes. I think that was very clear from all the information that was provided to the Andrews committee, which looked at enforcement of copyrights. The committee acknowledged that there is not a high level of enforcement. We do not largely challenge that the police, both federal and state, have it as a low priority.

**Senator COONEY**—Are you saying that intellectual property laws in Australia are not vigorously enforced?

**Ms Simes**—Yes.

**Senator COONEY**—Have you told the ACCC about that?

**Ms Simes**—I think the view of the ACCC is that it is the responsibility of the industries to enforce their copyrights.

**Senator COONEY**—Even the criminal law? Did the ACCC say that?

**Ms Simes**—I am not sure if it specifically commented on the criminal side. There are very few criminal cases.

**Senator COONEY**—So the ACCC in any event—or the government, more broadly—just told you that it is your duty to enforce the law?

**Ms Simes**—Generally, I think that is the view of the Attorney-General's Department and the government, to a certain extent. As I said, we do not have a major problem with intellectual property being a low priority for the police, for example, but we do have problems—

**Senator COONEY**—What about the owners of the intellectual property? What do they say about that?

**Ms Simes**—The onus of establishing it?

**Senator COONEY**—No, the owners of the intellectual property itself—the creators.

**Ms Simes**—I do not think the law is inadequate, but its enforcement is inadequate. The courts do not impose severe enough penalties to be a significant deterrent. Most of the actions which are taken are civil actions. The penalties are very low; they are very expensive to carry out. Establishing chain of title to the intellectual property is often very difficult. So there are a lot of obstacles in the way of enforcing your copyright.

**Senator COONEY**—That is your experience?

**Ms Simes**—Absolutely.

**Senator COONEY**—If you have got a copyright which you want to enforce, it is going to be very difficult?

**Ms Simes**—Extremely difficult for most companies.

**Mr Fegan**—We have had instances where we have tried to take action against people here who have blatantly pirated our product, where we clearly own the IP. But to go through the legal process to do that, we have basically got to get every single person who worked on that product—it could be literally dozens of people over a two-year period—to sign off, so that we have clearly identified that we own that intellectual property before we can proceed. Obviously, that is a very time consuming and costly process to go through. Then, at the end of the day, if we do get to court, the fines imposed are minimal, anyway. From our point of view as a publisher, half the time it is very difficult to enforce IP because at the end of the day it is too costly. The guys get a rap over the knuckles, walk away and within weeks are doing it

again. We have had a lot of instances of that through the markets. I know Sony have spent a considerable amount of money trying to police the Sunday markets et cetera for pirated copies of Playstation products, with limited success. They spent over a million dollars last year alone, trying to do that.

**Senator COONEY**—What sort of penalties would be imposed?

**Mr Fegan**—A \$500 fine. I think the maximum that they have ever derived from a court action is about \$15,000, with expenditure of well over a million dollars.

**Senator COONAN**—Are any other courses of action available to you? Do you ever seek damages? Do you ever do anything on holding out or anything under the Trade Practices Act for breaches?

**Mr Fegan**—Our legal advice in instances like that is that once again it is too costly to go through that process.

**Senator COONAN**—It would be a bit more likely to succeed if you were suing for damages and getting some account of profits, wouldn't it, than trying to chase a penalty?

**Ms Simes**—Certainly, damages have been awarded but generally they are fairly low as well. They are nowhere near covering the cost of the actions.

**Senator COONAN**—Isn't there an account of profits and all the usual panoply of things available for breach of copyright?

**Ms Simes**—They go bankrupt. They have nothing.

**Senator COONEY**—What about the issue of piracy? You are saying that that is not a big issue at the moment, but insofar as it is, can you do anything about it? Is anything done about piracy?

**Ms Simes**—We think it is a big issue, but many would argue that it is not by world standards. We estimate it is around 25 per cent. In Russia, it is about 97 per cent. In a lot of Asia, it is well over 90 per cent. So by world standards, it is not considered high. However, we consider that it is still unacceptably high.

**Senator COONEY**—Can you do anything about that or is it the same sort of thing?

**Ms Simes**—That it is exactly what it is. It is spending only \$1 million a year just to tread water, basically. That is all they are doing. It might be edging up a tiny bit, but it is not going down.

**Senator COONEY**—So the system as set out in the statute book is not really enforced as far as you are concerned?

**Ms Simes**—No it is not, not adequately to bring it down.

**Senator COONAN**—In the ACCC submission, there is an assertion that piracy should be tackled through specific sanctions and through international agreements such as TRIPS. You have said that there is a false assumption built in there that these methods will work. Is that the point you were just making or is there some other point?

**Ms Simes**—No, that is the point. Even though our laws are sufficient to enable us to comply with TRIPS, their enforcement is very limited. As I said, while we have difficulties at the moment, the problems we see arising with parallel importation would vastly increase the difficulties—there would be a lot more piracy. The issue of piracy with music CDs started from the very low base—maybe three or four per cent. At the time of the Ergas committee, ARIA gave evidence that it had gone to around seven per cent. Recently I have seen reports

that it has gone to nine per cent. Compared with 25 per cent or over 90 per cent, nine per cent is not a lot but it is double what it was before parallel imports were introduced for music CDs. That is the sort of problem we see and we are starting from a much higher base.

**Senator COONAN**—If I understand your submission correctly, you are saying that penalties are not imposed anywhere near the level which the legislation has permitted. You then say that simply raising penalties would not be sufficient. Is that once again the same point?

**Ms Simes**—That is because courts will not impose high penalties. They are not even imposing to the level that exists now. Throughout the world and certainly in Australia, there is a schizophrenic attitude to intellectual property theft. If somebody went into the local store and stole a CD, they would be arrested and taken to trial, but you can pirate 1,000 copies, declare yourself bankrupt and get fined nothing. For a start, it would not be a police matter; it would be a civil matter.

**Senator COONAN**—That would apply whether penalties were low, high, or indifferent if somebody is going to vanish or be almost impossible to detect.

**Ms Simes**—Yes.

**Senator COONAN**—The thrust of your point, then, is that this is as cost-effective as it can get for the industry. Is that right?

**Ms Simes**—We believe so, yes.

**Senator COONAN**—Thank you. I understand the point.

**CHAIR**—Thank you very much for coming this morning and assisting the committee with its deliberations. As I said, we have a reporting date of 23 May. You will be able to see that report when it is produced. We appreciate your assistance.

[9.46 a.m.]

**FLYNN, Mr Patrick William, Solicitor, Mallesons Stephen Jaques**

**MACNAMARA, Mr Jim, Chairman, Business Software Association of Australia**

**CHAIR**—Welcome, gentlemen. Do you have any comment on the capacity in which you appear before the committee?

**Mr Flynn**—Yes. Mallesons Stephen Jaques are solicitors for the Business Software Association of Australia.

**CHAIR**—Thank you. The BSA has lodged a submission with the committee which we have as No.7. Are there any amendments or alterations that you would like to make to the submission at this stage?

**Mr Macnamara**—No, there are not.

**CHAIR**—I ask you to make a brief opening statement and, at the conclusion of that, I will ask members of the committee if they wish to address questions to you.

**Mr Macnamara**—Thank you. We would certainly like to commend the Senate on this inquiry. We think there are very important issues that have not yet been adequately dealt with. I have a few brief opening remarks. The core of our argument is that, firstly, we point out that illegal software copying in Australia is worse than in other equivalent markets in the world, and we think this is an important part of the environment. Australia has a business software piracy rate of, on average, 32 per cent: one-third of all our products are stolen. That compares with 25 per cent or 26 per cent in the US and the UK, for example. The second point is that, as well as the corporate piracy that we are concerned about—copying in the workplace—counterfeit software is a key problem in Australia, particularly because of our proximity to Asia, where a lot of counterfeit software originates. We work very closely currently with the Australian Customs Service to intercept counterfeit software at our borders.

We note that the recent copyright enforcement report also agreed that the lifting of parallel importation restrictions will lead to an increase in imports of counterfeit software and a reduced capability to detect those. We note that the ACCC disputes this and we fully expect some questions on this today and would be very happy to talk in more detail on why we hold that view. While we note that this committee has a very clear focus on parallel importation, we believe that it is important to look at the current importation measures in the context of the Australian marketplace. Two key characteristics are the very low level of criminal enforcement of copyright in Australia, which has already been alluded to. We are not blaming the Australian Federal Police—it is a question of resources—but we are aware of only six criminal actions for software piracy in this country, ever; and that is a very low level.

Secondly, we point to anomalies in legislation and procedures relating to civil action. We do not dispute the adequacy of the legislation that has already been alluded to in other places. There are some areas, such as proof of ownership, sentencing guidelines, statutory damages—a number of measures—that we believe would increase our members' capability to civilly defend our copyright. We believe that taking such an initiative as lifting the importation provisions, which would risk increasing the level of illegal software, in the absence of a regime of active criminal enforcement and in the absence of adequate civil measures, would be very damaging to Australia's vital IT industries. We also point out in our submission that the current enforcement does not provide a deterrent, as required under TRIPs. We are saying, in simple terms, that there are some very real downsides. We note and support Senator

Mason's comments about a competitive environment but we do not believe you can look at this in the absence of a localised study of our environment, our marketplace, and the state of theft in our marketplace. That is the downside that we believe is there.

In terms of an upside, as far as we understand the debate, the only real upside to possibly lifting the parallel importation restrictions is the ACCC's claim that it will lead to reduced prices. We have conducted our own research, quite extensively and very recently. It strongly disputes the ACCC's findings, and we also have some very serious questions over the ACCC's methodology, which we are more than happy to discuss in detail.

On the other aspect of upside, we believe that in fact there is a very real upside to taking additional measures to support IT industries in Australia. The thing that we would again draw this committee's attention to is that, in terms of growth industries, if you look at Australia's IT industries, it is not just the rich multinational companies that are involved in this industry. We did a 1999 study that found that Australian software distributors and retailers lose \$286 million a year through piracy—more than our manufacturers lose—because obviously they are losing sales that they would otherwise have made. PricewaterhouseCoopers, an independent company, was commissioned to do a study in 1999 also, and they found that software piracy costs Australia—not just our members—in excess of \$1 billion a year. Interestingly, they found that, if Australia reduced its piracy rate in business software just from its current level to the US level—not to zero, just to the US level—it would lead to the creation of in excess of 7,000 jobs a year and contribute around a billion dollars a year additional to the Australian economy. So we would advocate a visionary approach to this and looking forward rather than looking back, which the ACCC seems to have done with some of its 1989 price comparisons.

I conclude my comments by not only talking about the potential of our members and the local industry to create jobs and grow this economy but also pointing to a year 2000 study by the Gartner Group that estimated that e-commerce will be worth \$6 trillion a year by 2004 and pointing out that it is widely recognised that we are emerging from an industrial age into an information age. Intellectual property, of course, is the cornerstone of the information age and software, in particular, is the engine that drives the e-economy. We believe very much that Australia is an IT advanced country. The tyranny of distance and the time zones that affect our other commodities do not affect the IT industries. We in fact could play a very real part and be at the forefront in the e-economy of the future. But, of course, we can do so only if we have an environment that protects and fosters intellectual property development. So we would commend the focus on the parallel importation issue but also urge the committee to look at the wider issues of the marketplace, the lack of criminal enforcement, the difficulties of civil legal action and our environment, which already has a very high level of theft of intellectual property—an inescapable fact of our marketplace in which we currently have to operate. We would be very happy to answer questions on those or other matters.

**Senator McKIERNAN**—The ACCC in a media release dated 3 April 2001 said:

Australian consumers of packaged business software have paid, on average, 27 per cent more over the decade to December 1998 than consumers in the US.

That is pretty damning on the industry if what the ACCC is saying is correct—if factual. You mentioned that you are going to question the ACCC's methodology in your opening statement, Mr Macnamara. Can you bring your thoughts on the methodology to the fore now and perhaps refute, contradict or question what the ACCC said in that media release dated 3 April?

**Mr Macnamara**—Yes, I will endeavour to be brief. We did an analysis of the ACCC's methodology from their own documents and there are five issues that I would raise, albeit briefly. Firstly, the ACCC has focused most of its comparisons on Australia versus the US only. It has not looked at any other marketplaces such as the UK or New Zealand. We believe that is a factor that makes it narrow to start with. More importantly, as you will read on page 29 of the ACCC report, it has collected software prices from 1989—some 12 years ago—until 2001.

In the IT industry, 1989 is a bit like 1789 in agriculture or manufacturing. The industry now bears no resemblance to the industry as it was in 1989. In 1989, a mobile telephone cost in excess of \$4000 and a personal computer cost in excess of \$10,000. These bear no resemblance to anything needed for understanding the industry today. We believe that the continual retention of that old data has contaminated any comparison today.

A third point is this: in the ACCC's recent research—that is, 1998-2000—you will notice that they have used only four Australian magazines and four US magazines in their comparison. That is a very narrow research base on which to establish a view on worldwide pricing. In our own research, we accessed a much wider sample of products, vendors and advertised prices.

The fourth point is a puzzling one. On page 66, the ACCC discusses a methodology whereby they applied a weighting based on the circulation of the magazines that advertised the software and the amount of advertising that they had. I have to ask whether you understand that methodology. I am very puzzled by it: when you're looking at the US market, with a population of 250 million plus and large circulation publications, to apply a weighting appears to further skew any US advertised prices for software.

So there are a number of anomalies. The fifth one I will briefly mention is the fact that there seems to be a fundamental confusion between wholesale and retail prices. Under current provisions, our members import their software. Currently, the price at which Microsoft sells to the retailer here is below its US price. Perhaps Adobe, as one of the companies that the ACCC has singled out for criticism, is a better example. Adobe has a worldwide price: it sells in Australia for exactly the same price as it does in the US. If a retailer marks that price up differently, it is not something that Adobe can address. If it did, in fact, it would be in breach of trade practices regulations. So the software industry finds itself in somewhat of a dilemma. Bear in mind that we are talking about importation provisions here: Adobe is importing and selling at a uniform price; Microsoft is selling below the price it sells at in the US.

So we find some real anomalies with the methodology: old data; strange weightings; a narrow research base; blaming importation provisions when, in fact, our members are importing and selling at uniform or lower prices than they are in other markets.

**Senator McKIERNAN**—Thank you, Mr Macnamara. That was pretty damning of the ACCC, I would say. It would, in turn, have to be taken to be pretty damning of the government because, in bringing forward this legislation, the government has relied almost exclusively, I would argue, on the findings that the ACCC has brought to bear. Would you agree with that assertion?

**Mr Macnamara**—We are very concerned, and we find the accusation that our prices are, on average, 27 percent higher than those in the US very damning of our industry, and very untrue.

**Senator McKIERNAN**—In the process of developing the legislation, was your organisation consulted by the Attorney General's Department?

**Mr Flynn**—Not until this stage. We have made submissions to other inquiries: for example we made a submission to the Ergas committee, which dealt with it in the competition context. We have also made submissions to the Andrews enforcement inquiry, which has some overlap on the enforcement side.

**Senator McKIERNAN**—I just want to make sure that we are talking about the same documents: the document I quoted from was the media release of 3 April 2001. As an attachment to that, I have the summary of the commission's March 1999 report on the potential consumer benefits of repealing the importation provisions of the Copyright Act 1968 as they applied to books and computer software, including price updates for books, computer software and sound recording. Are we talking about the same documents? I thought I had a problem when you mentioned page 29 of this one. I was not able to follow you.

**Mr Macnamara**—Regarding methodology, I was referring to an earlier document. This document, I understand, says that they have continued to use their methodologies, referring back to the Prices Surveillance Authority and so on.

**Mr Flynn**—The April 2001 report by the ACCC, which I think is the precipitant for that release, purports to update a March 1999 report of the ACCC, but we say the errors that infected the March 1999 report continued to infect the April 2001 report.

**Senator McKIERNAN**—There was a question in regard to table 6, which is in the April 2001 document on page 15 and purports to give a differential on 15 packaged business software products between Australia and the United States. I make the point that we will be talking to the ACCC tomorrow, and we will be putting similar questions to them, but do you know why these particular products should be compared just exclusively with the US market and why a comparison is not done with the New Zealand or United Kingdom markets?

**Mr Flynn**—There is no good reason why they should not be compared with the UK and New Zealand. To compare Australia with the US is, in fact, comparing like with unlike. To compare Australia with the UK and New Zealand is a far better comparison because they are similar markets. Most business software is created in the US and the US do not have any associated export costs, including where necessary customisation for local markets. So we say that the UK and New Zealand are a far better comparison with the Australian situation.

**Senator McKIERNAN**—Am I correct in saying that parallel importation is allowed currently in New Zealand?

**Mr Flynn**—Yes, that is correct. There has been a recent change, and one of the reasons that the members of the BSAA are concerned is that there has seemed to be an increase in the amount of counterfeit material being imported into New Zealand since those restrictions were lifted. People dealing with that counterfeit software assert, 'Well, I did not know it was counterfeit. I just thought it was cheaper because it has been parallel imported.' That is one of the real difficulties that we have because, even though the current provision does not allow you to import counterfeit, we still have to prove that the person knew, or ought reasonably to have known, that the software was counterfeit. What is happening in New Zealand is that people are using the lifting of the parallel importation restrictions as an excuse for saying, 'Well, if that is counterfeit, I did not know about it. I assumed that the lower price was due to it being parallel imported.'

**Senator COONEY**—They might be genuine in that.

**Mr Flynn**—Some people might, but the price is—

**Senator COONEY**—But isn't that your problem? It is not so much that they use it as an excuse. It is a reasonable proposition to put forward. It becomes impossible to police; that is your problem.

**Mr Flynn**—I think there are two problems. For those who are genuine, there is an issue. For those who are not genuine, once they raise that in court and we have to get over that hurdle, it is difficult to deal with.

**Senator COONEY**—The court is always right; the court will decide what is true. Is that not right?

**Mr Flynn**—Having had some experience of the courts, Senator, I would not endorse that proposition unqualified.

**Senator COONEY**—You are on tape in *Hansard* now.

**Mr Macnamara**—We do not dispute that in some cases products in Australia are more expensive than in the US. Our own research found that on average Australian prices were about 3½ per cent higher than the US, but we found that Australian software prices are on average 22 per cent lower than those in the UK, for example, and also lower than New Zealand. There will always be price fluctuations and price differentials, but certainly we reject the 27 per cent because of the very contaminated average developed from old data and the narrow sample.

**Senator McKIERNAN**—The thrust of this legislation that is before us is that if parallel importation is going to be allowed and legalised the consumer will benefit because the products will be cheaper, and that the major multinational companies dominating the Australian markets will suffer the cost of it. There seems a bit of a political thrust in there somewhere along the line, but I was intrigued by table 4—that is in the ACCC's document of April 2001—which shows the differential between Australian and overseas spot prices for 11 PC games software products in Australia, the US, the UK and New Zealand for February and March of this year. I note from what you told me before that New Zealand has got parallel importation and Australia does not, and yet the product in Australia of those 11 software games that the ACCC has selected are actually on average 5.4 per cent cheaper.

**Mr Flynn**—Yes. That bears out our contention that the ACCC have not well thought out their submissions on pricing. It is a bit of a problem because the ACCC seem to be the only thing that has been relied on by anybody. I am not aware of any other figures which have been adduced by the proponents of the legislation.

**Senator McKIERNAN**—As I said to the earlier set of witnesses, we are hearing from the ACCC tomorrow. Could we ask you to monitor what they say. We will not have time to get the industry back for further hearings, but if you could give us a response, if there is anything that the ACCC says that is pertinent to your industry, at the earliest possible opportunity, that would be appreciated.

**Mr Macnamara**—No doubt they will have something to say. We would certainly accept your invitation.

**Senator MASON**—Listening to your oral evidence, Mr Macnamara and Mr Flynn, if I could speak generally for a moment, Australian trade history has been besmirched by people pleading for interests, by businesses pleading for special concessions and special interests, since the Second World War. Fortunately today, irrespective nearly of the government, the onus of proof has changed. Those seeking special interest now have to justify it. You have pointed out an interesting paradox this morning. You said that two things are important in any

system of liberal democracy. Free trade is important generally, and you also believe that property rights have to be protected. Where property rights are not protected, the investment in the domestic economy can go asunder. I understand that, but who is going in to bat for the consumer? Consistently—it does not matter whether it is in the area of books or previously in the area of cars—we always hear the same argument: if the cars or books are foreign, they are different and they may not be of the same standard.

The difference here, as I understand it, is that your argument primarily boils down to three things. Let us leave price aside for the moment. We are hearing from the ACCC tomorrow, so we will put price aside. There is a law enforcement aspect and you also mentioned it could have a deleterious effect on investment in the domestic economy. Let us look at law enforcement for a moment. Despite what the previous witnesses said, I am still not convinced that enforcement of the law is an issue that necessarily has to be considered at the same time effectively as trade policy. Why is it that your submission and the previous submission attempt to whack on a discussion about law enforcement in a detailed manner in an issue that is largely one, I think, of trade policy?

**Mr Macnamara**—You are absolutely correct, Senator. It should not be grouped together. We would argue that law enforcement should have preceded the discussion of trade matters. The reality is that it has not. What we are saying is that we are an industry that has one-third of our products stolen. If we were the car industry or the grocery industry and we were sitting here saying that one-third of all the products on our shelves are shoplifted, I think we would get a very sympathetic hearing. The fact is that one-third of our products are stolen. It is affecting the authors, the owners, and it is also affecting the local distribution channel. I appreciate your concern that these matters are being grouped together, but we would argue very strongly that these are urgent, pressing concerns. We have been appearing before committees for 10 years, during my tenure in this position. Some of the issues such as proof of ownership and statutory damages already exist in other markets. They exist in the United States and in Canada—sentencing guidelines, statutory damages. So I guess in an act of desperation we are saying that if the government is going to contemplate these trade policy changes and still has not addressed a legal environment, then it appears to be insanity to continue with trade policy in the absence of a protected environment for legal product in this country.

**Senator MASON**—Speaking very generally, you would say that you cannot have your trade policy until you protect property rights?

**Mr Macnamara**—Yes.

**Senator MASON**—And speaking Economics I, but that is what you are saying?

**Mr Macnamara**—I understand.

**Mr Flynn**—My understanding of Senate committees functioning as part of the Senate as a house of review is that they are to determine whether a particular piece of legislation is in the interests of Australia. The scope of that is not as narrow as ‘should there be more competition?’, because that is like saying, ‘Who is in favour of motherhood?’—everyone is in favour of more competition—but the focus of this committee, on balance, ought to be—

**CHAIR**—Even one would agree with you.

**Mr Flynn**—I am playing devil’s advocate.

**CHAIR**—You are doing it very well!

**Mr Flynn**—The focus of this committee should not be ‘should we have more competition?’, it should be ‘is this proposed amendment in the public interest?’ and that inquiry cannot be held without reference to other matters that we are raising as necessary consequences of the legislation. It would not be the most diligent exercise of the power of the parliament to pass legislation in one area, knowing that it will have effects in another area, but saying, ‘Hang on, this is competition and that is piracy, so we will put our hands up.’

**Senator MASON**—That is a fair point. In the context of this discussion and in the context of broad trade policy, we in this country—you would know this, Mr MacNamara—have had special pleading from groups for years and years, and it has distorted our economy for years and years. Unless the arguments are very well made, I for one am not for protecting industries. And the arguments have to be very well made—why? Because the consumer—the average Australian—loses. Tariffs and protection are a tax on ordinary people, and you must really justify them—I am not saying that you have not; I am just saying that the onus is on you to prove it. Certainly, it is not enough to say, ‘It may be disadvantageous for some distributors.’

**Mr Macnamara**—That is true. The only point we make, of course, is that our industry is not asking for subsidies, tariffs or any form of protection.

**Senator MASON**—I know that.

**Mr Macnamara**—All we are really asking is that we uphold the law of the land, and that is inadequately being upheld.

**Senator MASON**—For property rights and intellectual rights, I understand that.

**Mr Macnamara**—We have good legislation, but it is not being enforced, and in some cases there are civil impediments. That is a reasonable request; it is not asking for the government in any way to subsidise or provide any benefit to our industry that is not applied to all other industries—legal protection.

**Mr Flynn**—And also in the same way that it is not proper for us to say, ‘There may be some disadvantages to distributors,’ it may equally be said that those proposing the change should not say, ‘It will have a deleterious effect on consumers.’ What does that mean? It could mean two things: price or availability. The ACCC have not made any submissions on availability; the software that is available in Australia is the same as that which is available overseas, within days or weeks of its being released, and the other issue is price.

**Senator MASON**—And you dispute that?

**Mr Flynn**—If we are talking about benefits to consumers, we cannot speak of the benefits in the abstract; we need to identify them concretely and test them.

**Senator COONEY**—This legislation will establish a regime that will encourage theft, and that is bad for the moral fabric of society in any event—is that what you are saying?

**Mr Macnamara**—It not so much encourages but provides further obstacles. The mechanism for intercepting counterfeit software at the moment is essentially, in simple terms, working with the Australian Customs Service. If Adobe or Microsoft is importing software, because they are the exclusive importer it is not easy but it is relatively easy for them to liaise with Customs and to identify a non-legal import. Under an unrestricted market it would be impossible, we believe, for Adobe, Microsoft, Semantic or any others—or for Customs—to easily identify that counterfeit import. We believe that it is going to provoke some confusion in the minds of consumers and it will increase the flood of counterfeit software into this country—

**Senator COONEY**—That is illegal software?

**Mr Macnamara**—Illegal software—at a time when we already have a very high level of illegal software, so it is simply travelling in the wrong direction. We should be reducing our counterfeit and our illegal product, not running any risk. It would be part of our argument that any action that has any risk of increasing it should not be taken until such time as we get this problem under some sort of reasonable control.

**Senator COONEY**—The breach of the law should not be used to reduce prices; there is some integrity in the legal system, and it should not be prejudiced just to get people cheaper commodities.

**Mr Macnamara**—Absolutely; we also do not believe that prices would on average and over the long term be cheaper. We have some of our members selling below the US prices at the moment, and with the way the Australian dollar is that is already biting. As for any speculation that prices would come down, I have no doubt that there will be some prices that will and that some importer will bring in something cheaper—in a fierce, competitive market there will be some products—but across the board, no, we strongly dispute that. The entire distribution channel would probably plunge into bankruptcy if per se we were to sell products more cheaply with the current Australian dollar.

**Senator COONEY**—There is no doubt that the Business Software Association of Australia deals with intellectual property—is that right?

**Mr Macnamara**—Yes, we are devoted specifically to intellectual property matters on behalf of the software industry.

**Senator COONEY**—I see. There have only been six criminal prosecutions, you say here. I note that the last one came before the local court in Sydney in September 1996. Do you know when that was actually launched? This is on pages 13 and 14 of your submission.

**Mr Flynn**—I do not know that we have the details to hand. Were you inquiring as to the lag between when we actually—

**Senator COONEY**—Yes, I suppose in a certain sense it is a political point. I just want to know—and perhaps I should not ask you because you do not want to be political—whether or not any prosecutions have been launched since the present government originally came in.

**Mr Flynn**—Certainly not that we are aware of. As the external solicitors for the BSAA who do most of the BSAA's enforcement work in the civil sphere, we work closely with the enforcement authorities in the event that there is to be one and we are not aware of any recent ones.

**Senator COONEY**—Who instituted those six criminal prosecutions? What body was it? Was it the DPP, the Director of Public Prosecutions? Do you know? You can check this if you like.

**Mr Macnamara**—No, I do not have those details to hand at the moment.

**Senator COONEY**—I just want to see if there is any real enforcement going on at the moment. So there has certainly not been a case since September 1996?

**Mr Flynn**—Not that we are aware of.

**Mr Macnamara**—Like the previous people who appeared, we are not criticising the Australian Federal Police. We have a close relationship and we believe it is a question of resources and priorities. We do not for a moment suggest that they reduce their focus on

murder or other matters but the fact is they do not have the resources to implement it, and that is a concern. Equally, we have some issues on the civil side as well and the two factors together are most alarming.

**Senator COONEY**—Except that it is something of an alarming situation if our intellectual property is just flying out of the country, isn't it?

**Mr Macnamara**—It is. Your point about it flying out of the country is a good one in the sense that the focus is often on the multinationals importing software. We have members who are Australian companies trying to get established. There have not been extensive studies done on Australia's potential to export software but, as I mentioned earlier, the tyranny of distance and the time zone problems that affect physical properties do not affect intellectual property and Australia does have potential to be an exporter of products, and we may well suffer and probably will suffer the same fate to our own product as we are inflicting on imported product.

**Senator COONEY**—Mr Flynn, can you give us any idea of what it would cost to bring a civil case?. That is a very broad question, I know, but suggestions were made that it could be up to a million dollars.

**Mr Flynn**—I think that million-dollar figure was the total spent on all civil cases in that year.

**Senator COONEY**—What would it cost to bring a case?

**Mr Flynn**—For a normal corporate end-user case, it would be at least \$10,000.

**Senator COONEY**—What happens if it runs for a while?

**Mr Flynn**—If it goes all the way to a final hearing, it would be \$50,000. The absolute minimum is \$10,000.

**Senator COONEY**—The sum of \$50,000 would be a moderate figure, wouldn't it?

**Mr Flynn**—Yes, it would be a conservative estimate. But \$10,000 is your starting point to even do the necessary investigations and commence court proceedings. It depends on how far the proceedings go but, if it goes to final hearing, it is at least \$50,000.

**Senator COONEY**—Mr Macnamara, who is in the association? Are they all big and powerful people, or do you have some people who are developing in this area?

**Mr Macnamara**—There is often this focus on the big multinationals, and certainly our most prominent members are the large multinational software companies: they fund in excess of 90 per cent of our budget. But we have all kinds of members. One case study example is a company called MMS, which is an Australian company that develops manufacturing software. That software sells manufacturing systems for \$30,000 to \$40,000. They have joined because they have piracy. They say that, if they lose even 10 copies, they are talking \$300,000 or \$400,000 lost revenue. As this is a sub-\$10 million company, it is a very real problem.

Patrick's point about the cost of legal action means that it is only, in fact, the multinational software companies that can currently afford to defend their copyright through the civil system, because effectively it is a loss making exercise. You spend about \$50,000 and sometimes get \$10,000 or \$20,000 in damages. So let me be very clear: we lose money, even when we go to court. We do it to try to arrest the problem, trying to make a point to the marketplace, and we heavily publicise our cases. As a small Australian developer, you really do not have any recourse. If the Federal Police will not or cannot take criminal action, you

probably cannot afford civil action. We have small companies saying that they literally have to let it go.

**Senator COONEY**—And the big multinationals are the only ones who can even raise protest in this area.

**Mr Macnamara**—Exactly. They are the only ones who can afford to protect their copyright. To go back to my opening comments, as I briefly said, if you look into the future, Australia's potential to be an exporter and a developer of intellectual property has to be seriously hampered in an environment where at home we have a serious problem, in our next-door neighbours we have a serious problem, and we have very limited ability to protect our own intellectual property. This is not just a problem for multinational companies.

**Senator COONAN**—I can accept the distorting effect of piracy on investment. But as a matter of policy, I suppose, should intellectual property rights really be enforced by a backdoor method through Customs? That is really what is being proposed here: that those whose copyright is infringed will access the criminal system and the civil system. Why should Customs be involved?

**Mr Flynn**—Customs have power under the current legislation.

**Senator COONAN**—Yes, I understand that.

**Mr Flynn**—The point is that, once parallel importation is allowed, there will be an increasing number of small shipments to consignees who are not necessarily known to Customs. So it will be more difficult for Customs, as a matter of course, to look at some software coming in and say, 'Well, hang on, this is going to a person we don't know. Why are they taking Microsoft software? This might be counterfeit'—which is what they do now. Once parallel importation is allowed, it will be coming in from many sources and being directed to many different consignees, and there will be no prima facie way that Customs will be alerted to investigating something. Customs already have that power under legislation; it is not something we are proposing that Customs do. But as a practical matter, concerning that power that Customs have to be effective, the current system allows it to be more effective.

**Senator COONAN**—But what you are really saying is that it will make it a lot more difficult for Customs to be able to carry out that function.

**Mr Flynn**—Exactly.

**Mr Macnamara**—Almost impossible.

**Mr Flynn**—The New Zealand experience bears that out. In talking about whether we can separate enforcement aspects from trade aspects, in the absence of others who seek to remove one effective enforcement measure that we have and are prepared to devote resources to another enforcement measure to compensate for the one they seek to remove, we do not see why it is necessarily invalid to speak of the enforcement aspects and the trade aspects together.

**Senator COONAN**—I understand what you are saying; this was Senator Mason's point. How would you normally become aware of a pirated product if it were not through Customs? Say that a product comes in; how would you be aware that through parallel importing there was a counterfeit or whatever?

**Mr Flynn**—The BSAA has its own piracy hotline and web site. Microsoft, one of our major members, has a similar thing. So our members resource methods of getting information about piracy. Mostly it depends on honest people in the community who say, 'Someone

offered to sell me Office 2000 for \$50. That's a bit suspicious.' They might ring up the hotline and say, 'Someone is selling this for \$50. Can you check this out?' Then our members, at their own cost, employ private investigators to go and purchase the product. It is tested to see whether it is authentic or not, and then we act on it.

**Mr Macnamara**—We have a very extensive industry funded campaign that has been running since 1989.

**Mr Flynn**—Since that campaign has been running, there have been over 200 civil proceedings taken in the Federal Court.

**Senator COONAN**—I was going to come to civil as opposed to criminal prosecutions. How many have there been?

**Mr Flynn**—Over 200.

**Senator COONAN**—What has been the rough record of success with those civil cases?

**Mr Flynn**—It depends on how you measure success.

**Senator COONAN**—When you have a verdict or you have damages.

**Mr Flynn**—It gets to a verdict in very, very few cases; I would say maybe 10 or 20.

**Senator COONAN**—They are the civil impediments of being able to bring action that you were referring to.

**Mr Macnamara**—It is partly because of those impediments, but it is also—

**Senator COONAN**—Do you want to tell us what they are?

**Mr Macnamara**—We have had cases, as I mentioned earlier, where to go all the way into court may cost us \$50,000 or more, and in Australia you have to prove the damages. That is a very difficult process with intellectual property, because the defendants will usually claim that they did not use it; it was just sitting on their computers. It is hard to disprove that. In the absence of statutory damages, such as exist in some overseas countries, we go through a very difficult process of proving damages. A lenient court may end up providing \$10,000 or \$20,000 in damages for a case that cost \$50,000 or more to bring. So it is not a particularly satisfactory exercise, other than we have made an example of somebody.

**Senator COONAN**—That assumes you have a solvent defendant or respondent.

**Mr Flynn**—Most of the time, it becomes apparent during the proceedings that the defendant will not have the wherewithal to meet the judgment, so we end up compromising our claim for much less than we say it is worth, because running it to trial will cost a lot of money, and we will not recover that at trial.

**Senator COONAN**—Have you had any discussions at all with the AFP about difficulties in the AFP of bringing a case? You have talked about a problem with lack of resources. Is that what it is, or does the AFP also have great difficulties in proving a case?

**Mr Flynn**—The AFP or the prosecuting authorities suffer the same difficulties as in a civil offence except it is worse because the onus of proof is reasonable doubt. We only have to meet balance of probabilities. It is not so much those factors as the lack of resource factor as to why the prosecutions are not brought. The AFP applies a case prioritisation model, and at the moment IP offences are low down.

I think it is important to make the point that both the explanatory memorandum and the second reading speech have asserted that, since lifting the parallel importation restrictions on

music CDs, the rate of piracy has not increased. The report on which that assertion is based, which is the report by Gregor Urbas, simply does not provide the basis for that conclusion. That report itself says on page 18 that it is difficult to estimate with any accuracy the changes in piracy. It states that, as far as anecdotal evidence can be obtained, operational reports of Customs' officers indicate continued and probably increasing flow of pirated and counterfeit material. That is on pages 28 and 29. It also states that relaxation of parallel importation provisions in relation to CDs makes it more difficult to determine the rate of imported material. What that report is focused on is the effect that lifting the parallel importation restrictions will have on the resources which the AFP is required to devote to enforcement. What it actually says is not that the rate of piracy will not increase, which is what is being put forward it is saying; it says it will not have any effect on the resources of the AFP because there is a case prioritisation model and it will remain low down on the scale.

**Senator COONAN**—They are not going to enforce it anyway.

**Mr Flynn**—So it does not really conclude what it has been put forward as concluding.

**CHAIR**—Thank you both for your assistance with our deliberations this morning. As I said, we report on 23 May and the report will be made publicly available when it is tabled in the Senate.

[10.32 a.m.]

**ANDERSEN, Mr Philip Duncan, National Director, Printing Industries Association of Australia**

**DONALDSON, Mr Alex, Managing Director, Griffin Press, Printing Industries Association of Australia**

**FISHER, Mr Ronald Claude, Economic Consultant, Printing Industries Association of Australia**

**CHAIR**—The Printing Industries Association of Australia has lodged submissions which we have numbered 2 and 2A. Do you wish to make any amendments or alterations to those submissions at this stage?

**Mr Andersen**—No, there are no further amendments.

**CHAIR**—Thank you, Mr Andersen. I will invite you, as I have invited other witnesses, to make a short opening statement. Some of you will have experienced that before in front of this committee. At the conclusion of your statement, committee members will direct questions to you.

**Mr Andersen**—I will ask Ron Fisher to make our opening statement.

**Mr Fisher**—The Printing Industries Association of Australia—PIAA—finds it somewhat incongruous that the government, albeit only at the insistence of the Australian Democrats, would initiate a book industry assistance plan—BIAP—at a cost of \$240 million over four years, with \$48 million of that to be channelled into the enhanced printing industry competitiveness scheme—EPICS—and yet it introduces legislation which will defeat the objectives of EPICS which are to revitalise the Australian book production industry and make it more internationally competitive.

The Australian book printing industry has adopted world best practices in international technology. As the assistance afforded the industry through the book bounty was gradually reduced in accordance with successive governments' assistance policies, the industry adapted to the continuing import pressures. The advent of the 30-day rule gave a fillip to the industry and lifted its share of the Australian-initiated book work to an historic high of around 60 per cent, a share that it has maintained in the face of rapid technological change and cost pressures. The 1995 PSA *Inquiry into book prices and parallel imports* confirmed that, as is clear from page xiii of the report. The 30-day rule provided a window of opportunity. It did not insulate the book printing industry from international competition and it did not allow it to embrace pricing policies that would result in monopoly profits.

A book is also unique in that it is not a homogenous product. Every book is different—title, content, format, size, et cetera. This currently precludes the industry from benefiting from the Australian anti-dumping legislation. Establishing normal values for like product is impossible. This means that books can be remaindered in Australia with impunity, while books can be sold in Australia at a price that reflects marginal costing as the tail end of a long run. Predatory pricing is internationally condemned. However, it is a fact of life for the Australian book printer. Initiatives such as a 30-day rule do provide some safeguard against this practice, and the 'use it or lose it' principle has been invaluable to the survival of book printers in Australia. The Australian book printing industry is an efficient and, by world standards, economic industry. It is extremely competitive, and it provides the means of recording and preserving Australia's cultural heritage. The 30-day rule is invaluable to that process. That is the statement.

**CHAIR**—Thank you very much, Mr Fisher. Do Mr Donaldson or Mr Andersen wish to add anything at this stage?

**Mr Andersen**—Not at this stage, thank you.

**Senator McKIERNAN**—Perhaps for the benefit of the committee you might start by outlining how large the industry is—the size of it, how many people are employed in it, and where they are employed.

**Mr Andersen**—It is difficult to get a precise handle on the exact size of the industry. In fact, we are currently using some of the money that has been provided under the plan that Mr Fisher referred to to try and get a better handle on that exact question. What we do know, however, is that changes as are mooted here will have a dramatic impact on the structure of the industry in Australia. We know, from discussions with major book printers in this country, that we will be looking at a loss of book production of the order of \$35 million, and that will involve probably of the order of \$13 million worth of lost paper production. We estimate that will entail a loss of jobs in the order of up to 500, and the impact of that will be very largely felt in regional areas of Australia, most notably Maryborough in Victoria, Adelaide and parts of Tasmania where the paper production will be lost.

**Mr Fisher**—To embellish that a bit, if we talk of the book printing aspect of book production—and that is really what we are representing, the printing side—the output of that industry is currently around \$250 million per annum, with employment of around 5,500 people.

**Senator McKIERNAN**—Would you agree with what the explanatory memorandum to the bill says, that:

Australia has a publishing market that is dominated by subsidiaries of multinational publishers based in either the USA or the UK.

**Mr Fisher**—It is a question really for the publishers to answer tomorrow, I guess, but in the trade publication side that would be fairly true.

**Senator McKIERNAN**—What size would the Australian component of the industry be?

**Mr Fisher**—The publishing industry?

**Senator McKIERNAN**—Yes.

**Mr Fisher**—In aggregate I really do not know. You have to segment the industry, and again I think the publishers will do that for you, whether you are talking trade publications, educational publications or technical and professional publications. It varies enormously segment by segment.

**Senator McKIERNAN**—The point I am getting to is that in the explanatory memorandum, on page 24, the following comment is made:

Consequently, copyright holders are in a position to set Australian book prices at levels higher than prices charged for the same books available in other markets.

The submission you have provided to us gives us evidence that currently books can be purchased in Australia at prices cheaper than they can be purchased in some of the overseas places, and I witnessed this myself during the last couple of weeks.

**Mr Andersen**—That is true.

**Senator McKIERNAN**—How much can we rely on the statement that is contained in the explanatory memorandum to make recommendations on this particular piece of legislation to protect the consumers, who are indeed our constituents?

**Mr Fisher**—We do not believe you can rely on it at all. It is on a very selective basis. The information is taken over a period that falls inside and outside the advent of the 30-day rule. It uses, where it suits it, information on bestsellers, but in a paperback area. If we look at a further table, which is about the bestsellers segment—and that is again only part of the book market, but across the industry—then you will find that the ACCC's conclusions do not stand up.

**Senator McKIERNAN**—How important is the bestsellers segment of the market in providing us with a view on what is happening in the industry? The reason why I am asking that question—which I will be directing to the ACCC when they appear tomorrow—is that in the music industry market, which has faced parallel importation for a number of years now, the argument is that it has reduced prices in the bestseller, top 40 market. I did a little bit of research on that yesterday and the day before.

**CHAIR**—You went out shopping.

**Senator McKIERNAN**—I did not actually shop, because I am not so sure that the titles which suit my musical taste—

**CHAIR**—He got his latest Powderfinger. That is very impressive.

**Senator MASON**—Did you get Eminem and things like that?

**Senator McKIERNAN**—One of the things that I did find out is that in three different establishments there are three different top 40 markets. Does the same apply in the book industry? Is there a bestseller list that tells the consumer that a particular book indeed is the best seller for Australia, or for Adelaide or for a particular establishment?

**Mr Fisher**—That does happen. It is not like the top 40 or anything else. There are bestsellers put out. We had the kerfuffle last year of the new release of *Harry Potter*, which is a bestseller. People were queuing up to wait for the store to open. That book, incidentally, was sold far more cheaply here than in the UK and the USA.

**Senator COONEY**—The Australian price was \$19.95, and the US price was the equivalent of \$31.92 in Australian currency, according to this.

**Mr Fisher**—To get back to your first point, 'bestseller' is probably a little bit of a misnomer still in this industry. There is pretty much an even fifty-fifty split between trade publications for the bookshops, including novels for the general reading public, as opposed to education, professional and technical publications. The trade work, probably largely because of the operation of the 30-day rule, tends to be printed in Australia. The technical-cum-education publications tend to be printed overseas. If you look at two tables in that report you will find that, in the trade area, where publications are printed locally, the price to the consumer in Australia is lower than in the UK or USA. In attachments 4 and 5, you will find that for the professional books, where they are printed overseas, there is not a favourable comparison, and those books are cheaper in the UK and USA.

**Senator McKIERNAN**—How then can the ACCC get it so wrong—they are my words—in the advice that they are giving to government, to the Attorney-General's Department? As I said earlier, the government seems to be relying almost exclusively—but not exclusively—on what the ACCC is saying. How can it be that a body such as that headed by Professor Fels can get it so wrong?

**Mr Fisher**—Start from an ideological position and then selectively come up with information that supports that position.

**Senator McKIERNAN**—Do you believe that this is ideologically driven?

**Mr Fisher**—Yes.

**Mr Anderson**—It certainly would appear that some of the conclusions are not actually drawn from the evidence contained in their report. When you have them putting forward data showing that prices here are in fact lower than in the UK and in the US, certainly over the last three years, and when they are putting out data that includes the period 1988 through to 1990, which predates the introduction of the 30-day rule, surely it is almost intellectually dishonest to include that data and then attribute cause and effect to the 30-day rule.

**Senator McKIERNAN**—I have read what the ACCC has put out and I, too, am bothered by the conclusions being reached. On the one hand there is evidence that some books can be purchased more cheaply in Australia but, when we come to the overall analysis, it is averaged over 12 years. That does not make sense to me. Having recently been on an overseas trip, I balked at buying copies of some material over there because I can get it more cheaply over here. That just does not seem to be taken into account in Australia. We will be talking with the ACCC tomorrow. As I said to the previous witnesses, the ACCC will be asked questions. If you could monitor what they say and, if there is something that you or your industry can respond to with regard to their answers, I certainly would appreciate receiving some feedback from you. We have a very tight reporting deadline so, if you do have something to say after their appearance at the hearing tomorrow, it will have to be done very quickly.

**Mr Fisher**—Yes.

**Senator MASON**—Mr Fisher and Mr Anderson, in essence your argument is that jobs and expertise would be lost if the 30-day rule were to be abandoned. Secondly, you argue that in fact books published here are often cheaper than in the United States, and indeed in the United Kingdom. I do not understand why, particularly for hardback editions but also sometimes for paperback editions, books are cheaper to publish and print in Australia, with a market of 20 million people or so, as opposed to a market of some 250 or 260 million people in the United States? I would have thought it would stand to reason that it would be much cheaper in the United States, and if you simply had to pay the shipping out here they would be cheaper.

**Mr Donaldson**—At Griffin Press 40 per cent of our business is import replacement. We have proved to the UK publishers and American publishers that it is cheaper to produce the goods in Australia than it is to produce them in the UK and ship them out.

**Senator MASON**—Or in the United States?

**Mr Donaldson**—And in the United States. We have reversed this trend: we are actually exporting books into the United States more cheaply than they can produce them there.

**Senator MASON**—Why, then, can't we export books to the United States or to the United Kingdom?

**Mr Donaldson**—We do.

**Senator MASON**—A lot?

**Mr Donaldson**—Currently we have about \$1.2 million worth of books being exported to the United States.

**Senator MASON**—If the market is allowed to operate and your arguments are correct, we should be exporting books throughout the world. Forgive my ignorance, but I just cannot understand how this game works: one minute we are told books are cheaper to produce in Australia and, if you are right on that, we should be exporting, but we are not exporting very many. There seems to be some anomaly here that I am not grasping.

**Mr Fisher**—Copyright would probably have a little to do with that.

**Senator MASON**—Sure.

**Mr Fisher**—But the Australian printing industry in its wider sense and the book printing industry as a subset of that have never been export oriented industries. That is starting to emerge. A fair degree of this \$48 million in EPICS that we just talked about will be directed to encouraging that and to have a better information feed to look at export possibilities. Naturally enough, I suppose, New Zealand is our biggest export market at the present time. New Zealand does not have, to any great degree, a book printing industry. Part of that might be because they allow parallel importation, and that is of benefit to the Australian print industry. Again using the example of the *Harry Potter* series, the New Zealand run was printed in Australia. We are very thankful if their government wants to go down a different path.

The equipment we use here is the same as that in Germany, the USA and the UK, and the particular paper type will be. We have a disadvantage in paper prices but we have a scheme, EPICS, that offsets that and gets rid of the negative assistance to a degree. It does not quite bring us up to no assistance but it gets rid of most of the negative assistance. The disability vis-a-vis a printer overseas is the thing I alluded to there—the ability to dump, if you like, so that if you want to cost the tail end of a big run in the UK at marginal prices and send it in, you can. Of course it will be cheaper if you send it in and undercut the industry, but we say that that is predatory pricing. Unfortunately, the dumping legislation just does not cover that situation.

**Senator MASON**—We have a burgeoning export industry here. Perhaps tomorrow we could ask the publishers and Senator McKiernan's friend in the ACCC about this.

**Mr Fisher**—Senator, when you ask the publishers tomorrow you will find that some publishers—especially educational publishers—are very strong in export markets, and there are some publishers in Australia who are almost totally dependent on export markets.

**Mr Andersen**—I think it is interesting to also note that the Prices Surveillance Authority, in their 1995 report, made a comment on price differentials. They said:

The PSA's surveys also indicated that price differentials between Australia and the US and UK for bestsellers have fallen since 1988-89 and that such books are currently priced at similar levels to overseas.

It continues:

The price differentials have fallen for a number of reasons. The 1991 amendments have contributed by increasing the potential for competition and by providing an impetus to efficiency gains in the industry.

**Senator COONEY**—You have no objection to competition in Australia between the various printing firms.

**Mr Fisher**—No, and it is pretty intense.

**Senator COONEY**—You said that Australia could become a dumping ground for remaindered books that have been published overseas and—correct me if I am not putting

your propositions correctly—there is no law in Australia that you can see to stop that sort of dumping, as you called it. Is that right?

**Mr Fisher**—Yes. The dumping legislation, as much as it might try, does not have provision for two things: one, overcoming the problem of secondary dumping; and, two, overcoming the problem of primary dumping where it is impossible to have like product. The WTO, and the GATT before it, said that you must compare like with like, and like with like means exact in all respects, but the books are not exact in all respects; they are very different products. So it is enormously difficult.

**Senator COONEY**—This is a question best asked of the publishers, but you might know the answer. How many books written in Australia are printed here? Do you know? You may not know the exact numbers but do you have a general impression about whether or not there is a good deal of writing in Australia which is published here?

**Mr Fisher**—There is an enormous amount of writing that is published here. That is overwhelmingly so—if it is a local author it will tend to be published here. As to the split, if we go down the chain, what would actually be printed here as opposed to in China, Hong Kong, Singapore or wherever—and we tend to be competing in a print sense with the East and not with the UK, the USA and so on—I do not know. The publishers would have a far better idea about that, but there is a substantial amount of local author, local publishing, local printing. To put that into perspective: where I was before, around 60 per cent of Australian originating work would be printed in Australia. That also includes a lot of the educational material—which would not be the case in the author trade sense—where a very high proportion is printed in Australia.

**Senator COONEY**—I think you mentioned that a lot of publishing is done in the country—I think you mentioned Maryborough.

**Mr Fisher**—It has a lot of regional implications. Maryborough is almost reliant on book printing for its livelihood. Adelaide is another big centre of book printing—and not just Griffin Press. Griffin Press contractors in carton making and some pre-press and a whole host of ancillary activities are very much dependent on Griffin and the continuing health of Griffin. In the paper area, there is the supplier too—Tasmania and Marysville in Victoria are the major areas of supply of paper to the industry, so it does have fairly significant regional implications.

**Senator COONEY**—You have more or less suggested this already but I would like you to put it in this context: if it were said today or tomorrow that it would all survive in its present form and with its present vigour even if there were competition from overseas including competition in terms of remainders, what would you say to that?

**Mr Fisher**—It certainly would not survive in its current form, not in the short term. Another problem we have is that overseas competition tends to be able to overcome fluctuations in the exchange rate. It does not seem to have any bearing on it. Whether it is absorbed or recouped at other times, I do not know. But you will always have that level of competition and, despite the 50 cents or 70 cents exchange rate, the pressures and the costs are much the same.

The industry has gone through its ups and downs and has gone about as far as it can go in adopting new technology. It was properly forced into that. It could not be a slovenly industry because of the very correct government policies over time in reducing assistance. When there was a bounty of 30 and then it got down to 5 the industry had to constantly get better, and it did. You are now at a point where you might make a quantum jump. You have to look at how

much the electronic age will affect books. Part of the study that we are doing at the present time—thanks to the government for the money—is a full supply chain, value chain analysis. We go back to the author and forward to the customer and we chase through the material supplier, the publisher, the printer, the finisher, the distribution, the bookseller, and we will have a much better idea of where we are going. We are doing quite a bit of scenario planning trying to anticipate the future over five or 10 years at least and trying to make sure that we fit into that scenario and that we can make a proper contribution to the Australian economy.

**Senator COONEY**—Is that research going on now?

**Mr Fisher**—It is going on right now. The scenario planning and the supply and value chain analysis will be completed in 16 weeks from now.

**Senator COONEY**—Has anybody from the ACCC or from Attorney-General's or from the government, sat down and discuss this with you at all?

**Mr Andersen**—No. In fact, this has been a bone of contention. When the issue of possible changes to the 30-day rule was first mooted—in fact, when the ACCC came out with their report a year or so ago—our organisation wrote to the then minister and suggested that it might have been useful to have had some discussions with our organisation. Their reply was along the lines of: of course, if this matter progressed any further they would be making contact with our organisation. That has not occurred.

**Senator COONEY**—Up until now?

**Mr Andersen**—Not even now.

**Senator COONEY**—And you saw the current parliamentary inquiry advertised, did you? Or did somebody ask you about coming along?

**Mr Andersen**—No. We were aware that the legislation had been introduced into the lower house—

**Senator COONEY**—But you had to find out from your own resources?

**Mr Andersen**—Yes.

**Senator COONEY**—When you saw this advertised you decided to come along to make a submission—was that how it was?

**Mr Andersen**—As soon as we were aware that the legislation was being introduced we held further discussions with our major book printers to assist us in preparing a submission because we were aware that we would need to be making representations to relevant people in parliament. Consequent to that we became aware that the matter had been referred to committee in the Senate.

**Senator COONEY**—But it was not until after the legislation was brought into parliament that you knew about it?

**Mr Andersen**—Correct.

**CHAIR**—We have no more questions. Are there any final comments you wish to make?

**Mr Donaldson**—I would like to make the point that 40 per cent of our business in Adelaide is import replacement. We are now going through a large capital investment plan to upgrade our facilities in Adelaide, and my feeling is that, if the 30-day rule is repealed, it will have great effect on our business. Our business will not be the same in Adelaide. Indeed, it will cost us huge embarrassment with our parent company because we have said, 'Yes, there

is a viable business here, spend the money.’ They have honoured that; I would hate to go back now and tell them that we are going to have a different business some months down the track.

**CHAIR**—Do you think your view is replicated in other printers, like Griffin?

**Mr Donaldson**—Yes, they are in exactly the same position as we are. Large parts of their businesses are in import replacement.

**CHAIR**—Thank you. Any further comments?

**Mr Fisher**—Thank you for listening to us.

**CHAIR**—It is the committee’s pleasure to have your submission and your verbal submissions on these issues. I thank you all very much for appearing this morning and assisting the committee with its deliberations. The committee will resume at 2.30 p.m. tomorrow with other witnesses, many of whom have been referred to already in this morning’s discussions. I thank all the witnesses who have given evidence to the committee today. I declare this meeting of the Legal and Constitutional Legislation Committee closed.

**Committee adjourned at 11.02 a.m.**