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Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

Reference: Copyright Amendment (Parallel Importation) Bill 2001

THURSDAY, 10 MAY 2001

MELBOURNE

BY AUTHORITY OF THE SENATE

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SENATE
LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
Thursday, 10 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 2.28 p.m.

CHAIR—I welcome those attending the hearing this afternoon. The Copyright Amendment (Parallel Importation) Bill 2001 as stated in the explanatory memorandum 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 second public hearing on this bill, the first being held in this room yesterday morning. I call the committee to order and welcome Mr Peter Ford and Mr Stephen Fox from the Commonwealth Attorney-General's Department.

FORD, Mr Peter Malcolm, First Assistant Secretary, Information and Security Law Division, Attorney-General's Department

FOX, Mr Stephen William, Acting Assistant Secretary, Intellectual Property Branch, Information and Security Law Division, Attorney-General's Department

CHAIR—The Attorney-General's Department has lodged a submission with the committee, which we have numbered 12. Are there any amendments or alterations that you wish to have made to that submission?

Mr Ford—No, Senator.

CHAIR—I invite you to make a brief opening statement, at the conclusion of which I will ask members of the committee to direct questions to you. I note at this stage that you will not be asked your views on matters of policy or reasons for policy decisions. If necessary, we will give you the opportunity to refer those matters to the appropriate minister.

Mr Ford—We do not have an opening statement, we are happy just to respond to questions that the committee may have.

CHAIR—Thank you. I know that Senator Cooney had some issues which he wished to raise with the department, so maybe he would like to begin.

Senator COONEY—This is an amendment to the copyright law. Copyright, by its very nature, is restrictive in the sense that it tries to restrict the use that can be made of intellectual property, and you would be familiar with that. That is one concept in the law of copyright. This bill really seeks to impinge upon and modify that by saying that there can be parallel importation, which contains the outcomes of intellectual property. Indeed, the objectives set out in the information package talk about balancing the interests of the creators and owners with those of the users. Do you have this little bundle from our committee?

Mr Ford—No, I do not think we have.

CHAIR—You are referring to our information pack, Senator Cooney. It is largely the explanatory memorandum and the bill.

Mr Ford—We have it now.

Senator COONEY—I have to make a smart point here. I do not mean to, but I cannot resist the temptation. On page 8 there are the objectives. Do you know who produced this?

Mr Ford—Is this on page 8 of the bill?

Senator COONEY—I am referring to the Copyright Amendment (Parallel Importation) Bill 2001.

CHAIR—It is on page 27 in the document you now have.

Mr Fox—That is a copy of the explanatory memorandum.

Senator COONEY—I wonder whether it is a true copy.

Mr Fox—I have the explanatory memorandum so I can check it.

Senator COONEY—Can you see 2.1?

Mr Fox—Yes.

The objective is to prevent international price discrimination—

Senator COONEY—No. It reads:

The Copyright Act is an instrument for balancing the interests of creators and owners with those of users.

I do not want to make too much of this.

Mr Ford—Yes, Senator.

Senator COONEY—The second paragraph here is the one that has me interested. What does that mean?

Mr Fox—Do you mean, ‘The objective is to achieve a more competitive market for computer software products’?

Senator COONEY—Where is the word ‘to’? Does the word ‘to’ appear in there?

Mr Ford—The word ‘to’ is missing.

Senator COONEY—As I said, I had to make the smart point.

Mr Ford—Thank you, Senator.

Senator COONEY—So it is a balance between, as it were, the rights of the creator and the things for the user. The whole of the copyright law is not only a very important one but also a very emotional one. I have been on about this before. Have you read Charles Dickens’s speeches when he went to America and he said that copyright was the go?

What research was done to form a basis for that balancing act between the interests of the user and the creator? What we have got here is just a statement that it is going to be better, it is going to be cheaper, that what is going to happen is going to be fair. But I do not think there is any sort of material on which the committee itself can make a decision. Could you go through what has been done?

Mr Fox—I guess we had not wanted to burden the committee with too much of the precursor reports that have been done on this issue, but we have referred to them in the footnotes in our submission. They range from the 1988 report on parallel importation by the Copyright Law Review Committee to a number of reports on book prices in relation to which key questions were addressed on importation rights under the Copyright Act. Those reports were: an interim report and a final report in 1989 by the Prices Surveillance Authority; a 1992 report by the Prices Surveillance Authority on computer software prices; a review of books pricing, subsequent to the 1991 amendments, by the Prices Surveillance Authority in a report in 1995; and then a further computer software report, which also addressed the question of parallel importation, by the Copyright Law Review Committee, an interim report which recommended that parallel importation of computer software should be allowed and a final report that recommended against changing the law to allow parallel importation of computer software, but with a recommendation that that issue be reviewed in three years. Finally, there was the report of the Intellectual Property and Competition Review Committee, the Ergas committee, in 2000; and prior to that—in March 1999—a report on pricing by the Australian Competition and Consumer Commission and then the update this year. So there were all of these reports, and I have missed out a couple—

Senator COONEY—That is fine. Would it be fair to say that people who made up those committees, particularly the Prices Surveillance Authority, looked at this only in terms of price and the economic effect the present law might have, and how that can be improved by introducing competition? Would it be a fair statement that the research that has underpinned

this legislation has come mainly from those holding economic degrees and that, in contrast, there would not be too many Charles Dickens or his descendants amongst the people who provided the underpinning for this legislation?

Mr Fox—I do not think that is a fair characterisation, in the sense that we have had two reports by the Copyright Law Review Committee and in both cases they have recommended retaining the import controls, but in both cases they also recommended that there be some economic analysis of the impact of that retention. Secondly, in all of the cases where the reports have been examined by those particular committees or review bodies, they have accepted and received a significant amount of submissions from all of the affected industries. To the extent that, yes, a number of those were specifically directed at pricing, then that has certainly been some of the focus; but there was considerable discursive and, if you like, philosophical discussion in virtually all of the PSA and certainly in the ACCC reports about the balancing issues in relation to the impact upon the industries and the question of competition.

Mr Ford—If I could just add to that, there are various references in the explanatory memorandum to these things being considered and, if I could just draw your attention to the bottom of page 23 of the document you referred us to or page 4 of the EM, it says:

The PSA also considered investment and employment, competition and efficiency and the implications of parallel importation for resource allocation and Australia's international competitiveness and piracy.

Senator COONEY—I remember in the old days, many years ago, that I used to go around police courts, as they were then called. The stipendiary magistrate would say, 'I find you guilty on the basis of all the evidence,' and bang, that was it. Later on the higher court would say, 'Oh well, you have got to do a bit better than that.' Aren't you really saying that, on all the evidence, we ought to introduce parallel importation, without really teasing it out? How many creators of intellectual property have you heard from, I wonder, in the preparation of this bill? You would not know, would you?

Mr Fox—I could not give you a number right now but, as we note in the explanatory memorandum to the bill, each of the reports that were the basis of the lead-up to this decision by the government were public inquiries, except for the pricing updates that were undertaken by the ACCC. Each of those received a significant number of public submissions. We could extract that data on the very considerable number of submissions received from industry bodies and interested individuals and supply it to the committee.

Senator COONEY—You have relied a lot on the ACCC reports, I think, haven't you?

Mr Fox—They have certainly been the latest in the series of reports that provide an analysis of whether or not the concern about price discrimination is borne out by the actual market behaviour.

Senator COONEY—Have you had any worries about ACCC reporting though? I say that specifically in the light of the fact that the ACCC is given, as far as I can see, to issuing press releases and things like that? The Attorney-General's Department never issues press releases, does it?

Mr Ford—No. Of course, as a department of state it is in a different position from that of a statutory authority.

Senator COONEY—But, in the Attorney-General's Department, you and Mr Fox go about your work for the community in a way dedicated to establishing what the correct position is, not looking for profile—

Mr Ford—That is correct, yes.

Senator COONEY—whereas the ACCC does search for profile. I am looking particularly here at a press release we have been given, *ACCC report points way to cheaper books and software* and I put it to you that not only is it a press release but it is a press release to obtain profile. If that is so, do you feel that that in some way might impinge upon the credibility of the evidence in so far as you might think that this evidence may be—unconsciously of course, never consciously—infected by the desire to get a good and dramatic result? I wonder if that has ever occurred to you in the preparation of this legislation?

Mr Ford—We have not considered that sort of thing, no.

Senator COONEY—The department itself has done no research as I understand it; it has all be done by other bodies from outside?

Mr Ford—That is correct.

Senator COONEY—There has been a policy decision made by cabinet and you have prepared the legislation on that basis. I suppose what you would say is, ‘That is the policy that has been declared by government. We have been given certain facts and figures. If they are true then what we say in the preparation of the explanatory memorandum must be correct.’ Would that be the approach that you took?

Mr Ford—Part of our duty is to evaluate the material before us in preparing advice for the Attorney-General.

Mr Fox—We noted in our submission to this committee that the material produced by the ACCC has had evaluation by those who are experienced within government to evaluate it. I mentioned that this was an issue that was considered within government, not just by this department but by the Treasury and the department of communications and the arts. It was not simply our analysis that was relied upon by government—and that is so with every matter that comes before the cabinet.

Senator COONEY—If the ACCC were preparing material to go before a court, it would prepare that in a particular way, wouldn’t it? Presumably it would prepare it in the usual sort of way. You would get the evidence and search through and anticipate what questions might be asked and what matters had to be proved and what issues of credibility would arise. That has not been done in this case in the preparation of material that has come before the Attorney-General’s Department, has it?

You were here yesterday and you heard a lot of the evidence given. We as a committee have got to try to balance that evidence. People yesterday told us that books are cheaper overseas for a variety of reasons. We have got all that material before us, and then you come along and say what you say. And it is proper that you should do so—I am not criticising you in any way; in fact, quite the opposite. But, as a committee, we have got to try to balance that evidence. And when you hear that the evidence comes from instruments of economic regulation, in a way, like the ACCC—which are introducing competition as a means of regulating things—and the Prices Surveillance Authority and what have you, then you realise it may come from an ideological point of view. That term was used yesterday, as you remember. So what we have got to try to do is to assess this evidence to see just how strong it is. You are probably not able to help there, are you?

Mr Fox—It is something where, in a sense, you are in a position much like a judge. You hear the evidence from one side and then the other and you have to assess the credibility of it.

What I would say, from a layman's perspective on the data that has been provided, is that it seems to me that the ACCC has laid its cards on the table and has provided the evidence for an assessment to be made of its accuracy and its veracity and so on. As I say, this is a layman's view and I have only had a quick look at the material provided in a couple of the other submissions, but I was a bit puzzled by and unclear about the meaning of some of the data provided in those submissions.

Senator COONEY—It is important, I suppose, to protect intellectual property. As people said yesterday, stealing intellectual property is just as bad as stealing anything else. I suppose that an illustration of that would be Dickens's *Oliver Twist* character Fagin, who reduced the prices of handkerchiefs and watches around London by stealing them. The ACCC might say that that was good because it reduced the prices of watches and handkerchiefs and all sorts of other things around London, but it is not the sort of thing we would necessarily tolerate, because it is based on theft. Would that be a reasonable proposition?

Mr Ford—The approach we have taken is one of reading the ACCC report closely and reading other reports and trying to arrive at a considered view on the basis of all that information—evaluating one against the other.

Senator COONEY—Was there an interdepartmental committee on this? Did we have Attorney-General's, Treasury and communications and the arts having an interdepartmental meeting on all of this?

Mr Fox—There was no committee as such, but certainly those three departments were closely involved in looking at this material.

Senator COONEY—Did communications and the arts have anything to say about preserving copyright?

Mr Fox—I am not sure what your question is, Senator.

Senator COONEY—Let me put it this way. I suppose, in addition to the economic issues that are involved in this, what was put to us yesterday was that they are issues of the heart, the soul and the spirit. Since we are dealing with the Centenary of Federation it is probably the right time to talk about that. Did the Department of Communications, Information Technology and the Arts say anything like, 'When you draw on this legislation it is important to remember that we are dealing with matters which impinge on expressing the culture, the spirit, the heart and soul of the nation, the country, and all sorts of groups'? Was that taken into account at all?

Mr Ford—They would have had a view. I do not recollect what it was, but both departments would have put a view to ministers.

Senator McKIERNAN—Is it notated anywhere in the explanatory memorandum, which is a very extensively detailed explanatory memorandum? Is there anything in that EM that came other than from the Attorney-General's Department or the ACCC?

Mr Fox—The matters were brought to the cabinet jointly by the three ministers of the departments that I have referred to.

Senator McKIERNAN—Are we dealing now with a cabinet document, in the EM, or is this a document from the Attorney-General's Department that is submitted to the parliament? If it has a cabinet protection to it puts us, as a committee, in a difficult position.

Mr Ford—No, we are conflating the two things. We are treating the EM as representing government policy. Just trying to work back as to who contributed what to this, I am not too

sure. Both departments would have made contributions to this document—the explanatory memorandum—but I cannot say who did what, because I simply do not know.

Senator COONEY—You do not know whether there was any loading given to those concepts of the need to express the soul, heart and mind of a nation and the importance that art and intellectual property of this nature play in that regard?

Mr Fox—There is a loading and it is perhaps represented in part, for example, under discussion of option 1 in item 3.2 on page 29 of the explanatory memorandum where it talks about the rationale for granting a right of distribution of copyright. In a general sense, I guess, the whole of the Copyright Act seeks to represent the proper balancing of the protection afforded to copyright owners and to those who utilise copyright works. To the extent that this forms part of the balance, that issue of the appropriate level of protection and ensuring that owners have a proper ability to exploit their rights and to be encouraged to create and to invest in these kinds of creative endeavours was certainly part of the whole corpus of material that formed the government's consideration of this.

Senator COONEY—I was just wondering what that was. The economic and competition aspects are fairly easily ascertained, and clearly they have been dealt with by the ACCC, the Prices Surveillance Authority and what have you. But what I cannot quite get as a member of this committee is how much and what sort of weight was given to the element of wanting a situation where Australia can look at itself and reflect what it is that it likes about itself or does not like about itself and the need to make efforts to encourage that. So if all that has happened here is that we have had economic issues taken into account and not the other matters that I speak of, then we have an unbalanced approach to this whole thing.

Mr Fox—Perhaps it is worth mentioning that in the last year we have in fact had three copyright bills become law. Two of them have involved an extensive increase in the range of rights that can be exercised by copyright owners; one was to provide for a new right of communication to the public, which was the digital agenda legislation, and the second one was the moral rights amendment. I think my answer to you is still that, while there is some reflection in this bill of perhaps a more strongly honed view about competition, that comes within a context of a broad range of developments within the copyright sphere generally.

Senator COONEY—Mr Fox, were you there when the 30-day rule came in? Michael Duffy was the Attorney at the time.

Mr Fox—I was not working within the Intellectual Property Branch at that time.

Senator COONEY—It was good but not as good as it is now, Mr Fox.

CHAIR—Does anybody else wish to raise any further questions with the department at this stage, bearing in mind they are appearing again next week?

Senator McKIERNAN—I want to clarify while Senator Cooney is here those responses to questions when he was asking about the national psyche and the national identity and where it could be established within the EM that it has been taken into account. Mr Fox, I think you referred to 3.2 on page 28 or 29 on the options.

Mr Fox—Yes.

Senator McKIERNAN—The options, if I am reading them right, are in regard to the objectives of the bill, and 2.1 spells out what the objective is. It states:

The objective is to prevent international price discrimination that exists under present arrangements to the detriment of Australian consumers—

Where does the national psyche and national identity fit into that? If the Department of Communications, Information Technology and the Arts had a specific point to make in regard to the national psyche, where can I see that expressed in the explanatory memorandum, if indeed at all?

Mr Fox—The particular paragraph to which I was referring may not have been a direct reference, but the paragraph in the middle of the page says:

The rationale for granting a right of distribution of copyright ... is the right to exploit the property in the work—

It goes on to say:

This right may thus be fashioned, shaped or negated according to the desired outcome.

Senator McKIERNAN—So neither the A-G's Department nor the arts department were looking at the protection of the national psyche as such? That was the question that Senator Cooney was directing to you.

Mr Fox—The specific answer to that question—the protection of the national psyche—no, I do not see it reflected in the material that this was a specific objective.

Senator McKIERNAN—Thank you for the clarification on that. I note you are coming back on Tuesday, and in anticipation of that, can I draw your attention to your disclaimer in the submission that you are not experts on price authority? At point 43 on page 8 of your submission you say, 'This department does not have pricing expertise.' That is your disclaimer. You then go on to talk quite extensively about pricing policies. Between now and Tuesday, can you say whether or not you are going to try to wipe that particular section from your submission or whether as a department you will be in a position to respond to questions, particularly on the words you have in your submission? I know we have the ACCC appearing this afternoon, and I know that you are reliant on their material. I know that you have also told the committee this afternoon that the ACCC's material has been evaluated. When we meet again in Sydney on Tuesday, I hope you will be in a position to respond to the questions, particularly on what the A-G's Department put in their submission, or if you choose to you can withdraw it.

Mr Ford—Yes, we are happy to take that on notice. Perhaps I should explain that the reason we went on to say something about pricing, having put in that disclaimer, was purely for transparency—to assist the committee in terms of exposing material on which we placed some reliance. So, yes, we are happy to respond to that.

Senator McKIERNAN—If you have the reliance on the ACCC and the ACCC appear here this afternoon but will not attend on Tuesday, we could be in some difficulty if we ask questions which you are not able to respond to because it is ACCC material. But if you are going to accept all of the ACCC material, on Tuesday you ought to be in a position to respond to that material that you have accepted as such. Otherwise, if you are not going to accept it or anticipate that you may not be in a position to accept it, you need to let us know before we ask the questions on Tuesday. I am trying to be fair to you as well.

Mr Ford—We do not seek to back away from things we have put in the submission, but on the other hand I think there are limits to what we can respond to. In responding before to what we did in terms of evaluating the material before us, I tried to explain that we did look at the ACCC material and also at other material, and we tried to make a judgment in terms of putting advice to government. But that judgment is on the basis of generalist expertise rather

than specialist expertise. Without taking up your time, I will just make it a little clearer: I would liken it to a non-lawyer evaluating conflicting legal advice before him.

Senator McKIERNAN—You are not trying to give us legal advice now, are you?

Mr Ford—No.

Senator McKIERNAN—We wouldn't ask you for it.

Mr Ford—That was an analogy.

Senator COONAN—The ACCC have identified that in their view the fight against piracy—dealing of course with computer software—is best tackled by 'education and improving the likelihood of detection and conviction, rather than closing the market to competition from legitimate imports'. We heard yesterday from various representatives, particularly from the computer software industry, who certainly to my way of thinking gave some fairly convincing evidence about how difficult it is to obtain enforcement in relation to pirated material. The AFP, for one reason or another, be it lack of resources, low priorities or whatever, just do not undertake prosecutions—it may be that there are not good cases; I do not know what the reason is—and civil prosecutions seem almost prohibitive. You do not need to answer this now, but I would like to get some indication about what view the Attorney-General's Department takes about how difficult or otherwise it is to enforce piracy.

Mr Ford—Perhaps the first thing I should say is that we do have under consideration the report of the House of Representatives committee on copycats and so on, but Mr Fox might be able to add to it.

Senator MASON—It sounds like something for the law enforcement division. It was a great division. I remember it very well.

Mr Fox—I refer to one of the things that is consistent in most jurisdictions around the world that I am aware of. Hong Kong would be an exception but, by and large, in jurisdictions like Australia, where there are fairly low piracy rates, criminal enforcement is generally brought to the attention of criminal authorities by referral of matters to law enforcement areas. Subsequent to the evidence yesterday, I made some inquiries in relation to that. I was given the information that, of the 16 matters referred to the Australian Federal Police that clearly involved copyright matters in the year 2000, 11 were accepted and five were rejected. Of that 11, four—or possibly six, because a number involved DVD or VCD—involved software. Those four have all been pursued and there are now briefs with the Director of Public Prosecutions. Three were rejected. So, in total, out of the 11 that were accepted, seven or possibly nine involved software and four of those have been proceeded with to the point of consideration of a prosecution. I am not sure of the basis upon which the industry is claiming the level of concern that they have.

I would note that prosecutions are also undertaken in relation to intellectual property in state courts. I was provided with some material, which I can in no way say is complete, which indicated a number of prosecutions in 1999. A number of people have been convicted and fined substantial sums of money—\$30,000 in one case; and forfeiture of copying equipment to the value of \$200,000. In relation to the question of enforcement generally, I am not sure that the concern that the industry has is necessarily reflected in the particularities of the information that we have been able to obtain. There is a second issue, which is the extent to which there is a link between actual criminal activity and parallel importation. I do not want to take up the committee's time with a detailed elaboration of that.

Senator COONAN—You say there is not much evidence of any link between it; I suppose that would be your answer.

Mr Fox—The information that we have available at the moment does not suggest a strong link. There is some information that suggests there is some importation of pirated material, but with respect to whether or not that is linked to parallel importation, it is difficult to see any evidence of that.

Senator COONAN—In any event, your assessment is that there is an adequate level of protection by way of prosecutions, if need be?

Mr Fox—I guess what we are saying is that at the moment there is a more significant level of prosecutions than the industry appears to know about.

Senator MASON—That is not the same thing, Mr Fox, is it?

Mr Fox—Senator, we are still evaluating—

Senator MASON—You sound like a politician!

CHAIR—There is no need to be rude to Mr Fox. Senator Mason, can I suggest that we pursue this in further detail next week.

Senator MASON—Yes.

CHAIR—Senator, can we conclude now?

Senator COONEY—I was going to request that the question that Senator Coonan asked be put on notice. But she has asked it, and it has been answered. Could you take on notice the proposition that you heard yesterday, Mr Fox—that the last prosecution was in 1996, I think, that nothing has been done since then, and that it is very expensive. They are the two matters—that the prosecutorial and investigative authorities have not done anything for years and that the ability to take civil action is highly restricted by the cost. I think you said that you would look at both of those issues. Is that right?

Mr Fox—Yes, Senator. We can provide you with some information. I cannot say that we can detail everything that is available because the extraction of that kind of information is difficult.

Senator COONEY—Thank you.

CHAIR—Mr Ford and Mr Fox, thank you very much for assisting the committee. I know that there were some changes in plans for this afternoon so we appreciate your presence here—particularly Mr Ford—and we will see you again next Tuesday.

[3.11 p.m]

BRIDGE, Ms Susan, Chief Executive, Australian Publishers Association

GRANT, Mr Alexander Beresford, President, Australian Publishers Association

GALLAGHER, Mr Patrick Andrew, Managing Director, Allen and Unwin Pty Ltd

HEYWARD, Mr Michael John, Publisher and General Manager, The Text Publishing Company

MALONEY, Mr Shane Martin, (Private capacity)

CHAIR—Welcome. The Text Publishing Company has lodged a submission with the committee which we have numbered No. 3. Are there any amendments or alterations you wish to make to that?

Mr Heyward—There are none.

CHAIR—Thank you, Mr Heyward. The Australian Publishers Association has lodged a submission with the committee which we have numbered No. 9. Are there any amendments or alterations you wish to make to that submission?

Mr Grant—No.

CHAIR—Allen and Unwin has lodged a submission with the committee which we have numbered No. 4. Are there any amendments or alterations that you wish to make, Mr Gallagher?

Mr Gallagher—No.

CHAIR—Mr Maloney has lodged a submission with the committee which we have numbered No. 8. Are there any amendments or alterations that you wish to make?

Mr Maloney—No, there are not.

CHAIR—Thank you very much. We are very grateful for your assistance with our deliberations this afternoon and we are very pleased to have Mr Maloney here with us. I invite you to make brief opening statements and I would ask you to keep your statements very brief so that the members of the committee can ask you as many questions as possible.

Mr Grant—We will try to be brief but we do represent slightly different views and there are separate submissions—

CHAIR—I understand that.

Mr Grant—The views that I will be expressing are those of the APA. My own background is as an independent Australian publisher but also a former chief executive of a global conglomerate publishing group. I can speak on behalf of the APA and answer questions on behalf of the APA and, also, on behalf of the practices of international publishers.

Mr Gallagher runs Australia's largest independent Australian publishing company and he imports and exports books so he can speak generally about publishing experience and practice. Mr Heyward, particularly, is a publisher who publishes and will be talking to exporting and the value of Australian rights and to some of the cultural questions that Senator Cooney may be getting at. I have no idea what Mr Maloney will say but he usually says something entertaining.

CHAIR—He is more than able to do that.

Mr Grant—The first thing that we would want to do as the APA is reinforce our support for the current 30-day and 90-day legislation. We supported it at its introduction in 1991 because it reinforces territorial copyright which we think underpins investment in copyright material and investment in publishing in the country. We support it because we think it works. The ACCC report seems to me to have very little or no evidence that books are not freely available in Australia. I think we would support the 30-day and 90-day rules as making a great contribution—perhaps a particularly original contribution—ensuring that books are available quickly in this country.

We support the impact of the 30-90 day rules on prices. We do not believe the ACCC report has shown that book prices are more expensive. Our own evidence which we have submitted says that our best-selling lists and our major textbooks are in fact cheaper here in Australia than they are overseas. We have submitted that, and we have schedules available analysing all the current bestsellers which suggest that our prices are as low or lower than overseas. The evidence Professor Fels has given shows prices that have been on a downward trend from the time they started investigating this. So that is the first thing I would like to do: defend the current practice. The status quo works, and we support it.

The second thing I want to deal with is the question of industry domination. I am here representing today an association where no publisher holds more than 10 per cent of the market. If we were to read the ACCC report we would believe that the market was dominated by a small group of international publishers. Our membership includes 19 firms that hold more than one per cent of the market, and 80 per cent of our members, which is 126 members, have turnover under \$2 million, so it is quite a disparate industry spread over different sectors with a lot of niche players and other things in practice. The suggested change, we suggest, will not break international price discrimination. In fact, it will simply concentrate power in the hands of those that are capable of being global publishers. So, instead of giving the Australian public greater options, in our view it will encourage a concentration in the hands of the few true global multinational publishers.

We would also like to point out that Australian publishing does not really operate in a global market in perhaps the way music does. We operate in a market where there are four publishing centres—the UK, the US, Canada and Australia. The only other real English language publisher is the French, and the lucky Germans do not have to have this debate with you—they have natural territorial protection through their language. New Zealand and Singapore have open markets, but their markets are so insubstantial that there is very little local publishing. They cannot really be international publishers; they cannot be exporters of books. We can be. In fact what you are seeing is a burgeoning, strong Australian publishing industry, an industry that is on the edge of taking a real place as an exporter. And you are asking us to change our laws. The other three markets that we want to enter operate closed markets and have absolutely no intention of changing that. We would be an open market. It would significantly disadvantage us, in our view, and undermine what is a growing industry. It would take us back, perhaps, to when there was an open market. When I started in publishing there was little or no Australian publishing. Thomas Kenneally and Patrick White got their books edited in London and New York—the cultural question—and we really were a market, not a publishing centre. We are a publishing centre now; we are recognised as such and we want to be able to keep that right. Professor Fels and Henry Ergas think they have modelled the market on what a free and open market would work like. We would say that is just not true.

There are three corners in this market—as I say, Canada, the US and the UK—and they are not open markets. This is not a perfect economic model as he would have us believe it is. The serious downside that we have alluded to in our submission is that dumping and remaindering books have a particular characteristic related to production runs which means that there is at any time a large number of overstocks. Frankly, the level of stocks in the US and the UK that are overstocks or remainders could completely overtake this market if we were an open market. It is a lovely market for the US and the UK to dump into. It is a long way from home, a long way from their authors' bases; it is a rich and literate market, happy to buy books, and would prove to be a perfect dumping market for those other English language countries if we have no protection. That is really all I want to say, although I do want to go back to that cultural question that Senator Cooney was alluding to. Recently, at a major book fair in Paris, Gerhard Schröder and Jacques Chirac came together on a platform to talk of the importance of books in cultural discourse in their countries and to support book publishing and the value of it against international cultural influence.

Here, we are having a debate about what seem to be reasonably unproved marginal price improvements—and that is the debate. There is no debate about the strength of a burgeoning export industry and the cultural value of our local authors and developing local authors. We are arguing about what seems to me to be unproven price increases as the basis for legislation—and we do not think that is appropriate.

CHAIR—Thank you, Mr Grant. Mr Gallagher or Mr Heyward, do you wish to make an opening statement?

Mr Heyward—I will be very brief. I have read the explanatory memorandum and, as I understand it, the purpose of the changes to the law that are proposed are in the interests of competition. As a publisher at a middle sized Australian publishing company who has studied this in detail over the last few years, I am very clearly and passionately of the view that we would not be competitive in a global market were these changes to go forward. At the moment I publish books with exactly the same territorial copyrights—the same rights which uphold copyright itself—as my competitors in the US and the UK and my competitors who operate out of Australia. That is to say, once we publish a book, because of the way the 30-day rule works, we can effectively close the market. That allows me to go out confidently to the world and sell rights.

One of the things that inspires me about book publishing is that I can compete with companies that are immensely bigger than the company in which I am a publisher. I do not think there is any evidence of a vigorous publishing industry that does not have indigenously owned or independent publishing companies in it. This legislation will hand this territory to the multinationals; it will hand this territory to foreign publishers and wholesalers. It represents a transfer of revenue from Australian publishers and Australian writers to those companies and, once you take away that competitive fairness that we have now, you can expect a withering of Australian publishing. Right now, if I publish a book and then sell the rights overseas, the Australian market is closed. The foreign publisher cannot enter the market. If the law is changed, they can enter the market; however, I will not be able to enter their market even though the books I publish here are cheaper than their editions of our books. How you would expect any exporter to be able to compete fairly on a level playing field under such a regime I do not know.

I also think it is my duty and my responsibility as an entrepreneurial Australian publisher to sell rights overseas. I take extraordinary pride in working closely with our Australian authors,

getting their books right for this market to world's best practice and then taking them overseas. Our company is now seven or eight years old and in that time our success in selling foreign rights of profoundly Australian books has grown dramatically and now about a quarter of our revenue comes from foreign rights. Most of that revenue flows through to our authors. I take considerable pride that I am licensing our rights to foreign publishers in order to underwrite the efforts of Australian writers to contribute to the national literature.

If the law were to be changed, as soon as I sell rights under this regime I set a time bomb ticking because those books will be reimported. They will be reimported either in end-of-run export editions, from which the Australian writer will derive minuscule royalties or they will be dumped here as remainders. The author will derive absolutely no income from the sale of that book in an Australian bookstore and the market which I have cultivated as an Australian publisher will be eroded by a free rider who has made absolutely no investment in that market.

I have two choices under that kind of possibility. One is that I can put my head in the sand and say that I am not going to export my rights. The 1995 PSA report actually thought that this would be a good thing—it would encourage the production of Australian literature because the competitive response of Australian publishers would be to produce books which were not exportable. I regard that as an economic and cultural nonsense and I was ashamed when I read those sentences. Or I could continue to behave entrepreneurially and just wait for that time bomb to blow up in my face when I walk into bookstores in Melbourne and Sydney and see dumped remainders of book which have, in some cases, required years of effort on the part of the writer and considerable effort on our part to create the market to launch the new writer. That is not fair; it is not equitable.

I also want to say something on behalf of Australian writers. This amendment to the law proposes to strip Australian writers of a right—a right which upholds copyright—to control where their editions are sold. Stephen King will still have that right; J.K. Rowling will still have that right but no Australian writer will have that right. That means—and not just if you are an Australian writer with access currently to international markets or an Australian writer who hopes to get access to international markets or someone who hopes to be an Australian writer—that no Australian writer will have the right to control where editions of their books are sold when they are exported, because they can be reimported without any hindrance at all.

In its writings on this, the ACCC has said that there are few authors in Australia with international markets. Comparatively that may be true, but it is those Australian authors, the best selling Australian authors—who most Australians want to read—who have access to international markets and, in my view, we ought not be legislating to encourage a situation where few Australian writers have access to international markets. I cannot understand how such a view can be regarded as being in the national cultural interest of this country.

CHAIR—Thank you. Mr Gallagher and then Mr Maloney.

Mr Gallagher—Most of the points I want to make are already covered in my submission or have been mentioned by my colleagues. The proposals put forward to change the existing law are put forward as deregulatory but in fact they are the reverse. It is attractive to call something deregulatory—it gives the image of price competition, et cetera—but, as Sandy was saying, this will only hasten the opportunities of the multinationals to dominate the world book market even more, as they would wish. There is a strong push, particularly in New York, to buy world rights to books. Therefore, the same book is published around the world and is

owned by the same publisher. Of course, that will be the multinationals' solution to an open market in Australia.

Another point about the explanatory memorandum is that it is noted at one stage that there are some less than efficient practices in Australian publishing—in particular, to excessive stockholding by publishers and to the practice of sale or return. Anyone in the business knows that these two things are essential for a wide range and supply of books—nothing could be more in the consumer's interest. Anyone working in publishing has to realise that, by nature, it is a business that cannot be ultra-efficient. Were it so, we would all publish nothing but best sellers. We would publish a few dozen books a year, all of which we would hope would sell 100,000 copies. Were we to do this, we would all be immensely profitable; the consumer would be thoroughly worse off.

Regarding Allen and Unwin's situation, we have built up a very strong company in Australia over the last 12 to 15 years. We have been able to do this by a twin effort in local publishing and representation of overseas titles. We have been able to do that in the surety that we have ownership and can fully maximise the promotion and sales of the overseas titles to which we have rights. In turn, that enables us to have a strong marketing, promotional, and editorial distribution network to get these books out there. For instance, in collaboration with one other publisher, we recently set up what I think is now the third largest book distribution operation—with over \$100 million turnover, on the Central Coast of New South Wales and with well over 100 people employed. We could not do this kind of investment without the certainty given to us by the current system.

I have a few words to say on rights trading—the buying and selling of copyrights, which Michael has waxed eloquent on. I would add to that that at the Frankfurt book fair, you will see on our stand for five days two people who have appointments every half an hour, who are doing nothing but selling rights. We are taken seriously by all our overseas markets. This is a comparatively recent development: overseas publishers want to buy Australian books and they want to know about Australia. We are beginning to build up a very strong base there. Of course, if you are going to sell, you need to be able to buy. The trading in rights is essential. We are taken seriously by the world now. And we need to have a market which can both sell Australian rights and also buy in rights to overseas titles, confident in the knowledge that we can then invest time and resources to promote these and get them out to the public.

There has been a huge growth within the publishing industry in the last decade of expenditure of time, resources and people in marketing and promotion so that we can compete with all the other competition for the leisure dollar. This, again, can only be done if we have the surety of the current legislation.

I would endorse the comments of both my colleagues about remaindering. The ACCC seems to be remarkably naïve to me in assuming that remaindering back of Australian books into this territory would not be a problem. We can take the example of a small company like UQP who publish Peter Carey. If Peter Carey's splendid book on Ned Kelly had been a flop in New York, and in the US, under the proposed changes, there would be nothing to stop tens of thousands of \$9.99 Ned Kelly American editions from flooding back here, with absolutely no benefit to the author and probably putting an entrepreneurial little Australian publisher out of business.

The final point I would make is that we have not mentioned the word 'consumer' yet. Every point in my submission, and I would be confident in my colleagues, can be shown to be of direct benefit to the Australian consumer. The Australian consumer has a good, or better,

choice of books, access to books, promotion of books and affordability of books than any other consumer in the world. It is through the current system, which I heartily endorse, and my colleagues should continue.

CHAIR—Thank you, Mr Gallagher. Mr Maloney, would you like to make a statement?

Mr Maloney—Thank you for the opportunity to speak with you this afternoon. As a novelist, I spend much of my time bending and shaping words. Various critics have made remarks about what I do with words, but nobody has ever accused me of mincing them, so I am not going to do that today. It seems to me that what the legislature is currently considering will deliver a kick in the guts to Australian writers. If you are going to kick Australian writers in the guts, I think it is only fair enough that you look one in the face before you do it.

CHAIR—Mr Maloney, we are a Senate committee and not the enemy.

Mr Maloney—I am merely putting to you that what you are considering will, in fact, have considerable consequences for me and, I think, for contemporary Australian cultural activity. In particular, my concerns centre around those two facts. Yesterday, during the Centenary of Federation celebration, there were various references made to the way in which Australian governments have supported Australian culture to the world. I think it is a pity if currently an Australian government should be considering reversing that process or putting a halt to it. The involvement and participation of the Australian government, of whatever political stripe, in supporting, enhancing, pushing and developing Australian cultural practitioners and their work has been substantial over the last 30 years. I would hope that that would continue because it is certainly something that the Australian community as a whole has accepted as a very worthwhile task of government.

My specific concern in this matter is, of course, about my livelihood. I am currently sold in a number of overseas markets. I doubt very much whether the Finnish editions of my book, if exported back here, would find much of a market. Maybe someone would buy a copy of the German hardback. But what I would primarily be concerned about is the way that this legislation, if it moves forward, would allow British and American editions of my work to be dumped here. At the moment I have a good relationship with my overseas publishers. But it is a highly volatile international industry in which we have seen in the US and in Europe a number of big takeovers; the environment can change very rapidly. If a major publisher does take over one of my publishers and decides to in some way rationalise the list of authors, then I could very easily find myself not only losing overseas income out of this, but losing it also at the expense of Australian income.

My work is the result of my intellectual activity; it is my intellectual property. It might not be much, but it is all I have got to sell. If I can find a buyer for it and establish a contractual basis on which I sell it to that buyer, I am really at a loss to understand why the Australian government would see it as its right to intervene in that contractual relationship. If this legislation advances, it means that a writer in Castro's Cuba would have more control over their intellectual property rights than a writer in Australia. So it is quite unusual to find an Australian Liberal government pursuing a line like this.

I want to add a couple of other points. One is that Australian literature is currently supported by an arm of the Australian government, the Australia Council, through a program of grants. Those grants have been useful to a wide range of authors. I have been at various times a recipient of Australia Council grants. The net effect of this legislation going through would be to put the pressure on the grants system to make up the shortfall in writers' incomes.

Many more writers would have their hands up who otherwise would be able to make a living selling their work on a commercial basis. They would go from being commercially viable exporters to mendicants in their own country.

Finally, I make a point about this from the consumer point of view. After all, it is not as though these are separate compartments: I am a consumer of books. I had a look at my tax return last night and found that I had spent approximately 10 per cent of my taxable income last year on books, which was about equal to what had come in from overseas royalty rights. It seems to me that whoever has conceived this legislation at the ACCC is not a book buyer, or even a book reader, by the look of it, except possibly for works of action, fantasy and magic.

Senator COONAN—Or maybe book burners?

Mr Maloney—Book burners possibly.

CHAIR—I think they will be here in a moment!

Mr Maloney—When I make a decision about buying a book, price may well be a component, but certainly it is not the overwhelming and driving component of my decision. If I walked into a bookshop with the intention of buying *Stravinsky's Lunch*, then I am certainly not going to decide that I am not going to buy a \$40 paperback but buy a \$19.95 Judith Krantz because it is cheaper. Not that I have got anything against Judith Krantz—it is just that I am unlikely to make that decision driven by price. If this committee is besieged by consumers of Australian books demanding that you bring down the price of paperbacks, nobody will be more surprised than me. That is all I would like to say at this point.

CHAIR—Thank you. The committee is rarely besieged, but today may be the day. I will ask Senator McKiernan to begin the questions, bearing in mind that, in the time available, I would like to extend the opportunity to ask questions to all members of the committee who wish to do so.

Senator McKIERNAN—I appreciate that, Chair, and I will be mindful of giving my colleagues an opportunity for questions. The explanatory memorandum to the bill identifies, at page 31, who will be impacted by the legislation. Some of those it mentions are book publishers, authors, book retailers, book purchasers and wholesalers. It goes on, on page 39, to talk about consultation and who are the main parties affected. Has the Attorney General's Department, or any other government departments, consulted with any of you in the development of this particular legislation; or is it, as I said yesterday on the public record, totally reliant on the findings of the ACCC?

Mr Grant—We did make submissions to the ACCC and the Ergas report, but there has been no consultation with the Attorney-General's Department regarding the explanatory memorandum.

Senator McKIERNAN—Or the specific legislation?

Mr Grant—Or the specific legislation—absolutely no consultation.

Senator McKIERNAN—Mr Heyward, you shook your head, but Hansard cannot record that.

Mr Heyward—There has been no consultation at all.

Mr Gallagher—No consultation.

Senator McKIERNAN—In its media release of April this year, the ACCC had this to say in the second paragraph, quoting Professor Fels:

On average, Australians paid around 44 per cent more for fiction paperbacks than United States readers did in the 12½ years from July 1998 to December 2000.

Is that an accurate statement? Have you—collectively to the witnesses at the table—been ripping off the public over the last 12½ years, as stated by Professor Fels?

Mr Grant—Australian publishers obviously would not say that. The answer is that we do not agree with that analysis. We think it is a very selective analysis and that it does not represent current practice. Over that period, there is a downward trend which is recognisable in his document, to the point that his own statistics for last year show prices below the overseas markets. We also looked at other open markets—New Zealand and Singapore—and found that, despite their copyright legislation having been changed, the prices there are either the same or higher than in Australia. So we do not accept his analysis. We also say that not only is it selective but also it relates to quite a small part of the total book market. Mass market paperbacks from America count for a very small part of the total book market in Australia.

Mr Gallagher—And there is a very steady downward path in prices, as shown by those figures.

Mr Grant—Another analysis we would like to offer is that he has not attempted to compare new release fiction. Generally in Australia now, new release fiction is done in the form of a trade paperback. In America and the UK, it is generally done as a hardback. This now means that Australians buy new release fiction substantially cheaper. Professor Fels has made no attempt to include trade paperbacks. He has made a comparison: he has compared hardback to hardback. Very few hardbacks are now imported for original release in Australia. So we think these figures are distorted and not of substantial value. We would also like to point out that, on the educational front, it is a very small sample and that, if you did the analysis we did of the 100 best selling textbooks—as we do with the 100 best selling general novels and so on—you would find again that Australian textbooks are cheaper than the US and UK textbooks.

Mr Gallagher—On the subject of price, the 30-day rule has enabled and encouraged the growth of this almost unique Australian thing—the trade paperback. There have now been a number of local printings of overseas published titles simultaneously with their hardback publication overseas. They have been published in trade paperback here at a price which can be as little as half of the overseas price. This has been a whole new initiative over the last five years or so which is of great benefit to the consumer. In fact, a New Zealand comment on that from possibly New Zealand's leading independent bookseller says:

Unity Books does not support the Australian Government's drive towards an open market. We like the Australian Copyright Act 1991 the way it is. The NZ book trade has been greatly advantaged by it. If Australia becomes an open market, what will happen to all those delicious Australasian trade paperbacks?

So we have created an almost unique product there.

Senator McKIERNAN—This committee is in a very difficult position at the moment because we have before us a piece of legislation upon in the Attorney-General's Department, which is generally responsible for the legislation, has relied upon the information supplied by the ACCC and indeed, as they told us earlier, has evaluated that material. Yet you come along

here as witnesses representative of your individual organisations and discredit the information from Professor Fels and the Australian Competition and Consumer Commission. Whom do we believe?

Would you have any objections—and I ask the Australian Publishers Association and Mr Gallagher's organisation—if the information and the data supplied to us were supplied to the ACCC and they were asked to do a comparison on it? What is concerning me—and I have not had the time to do it myself—is to compare the information that you have supplied with the information the ACCC has got. I only came back to the country in recent times and among the places I visited was Castro's Cuba. Most certainly I agree with all that you have said, Mr Maloney, in regard to that but that is a matter for a different day. Where do we reach a proper medium on this? We will have the ACCC appearing with us shortly and we will be addressing questions to them. I do not know what they will be saying, but you are saying something that is in direct contradiction to what the ACCC has said and what the government has relied upon in developing the legislation.

Mr Grant—We would stand behind the statistics we have got and we would be happy for them to look at it, but what we have done is fairly simple. Our members supply their best-selling books and we compile every year a best-selling list. We examined that best-selling list, which under the 80-20 rule of analysis of books obviously gives us a strong view of what is happening in the market, and that list gave us a figure that showed that Australian prices were lower than the US and the UK. We could give you those statistics and we would be happy for the ACCC to look at them.

Mr Gallagher—We provided a list for the ACCC.

CHAIR—Mr Gallagher, do you mean you have provided figures to the ACCC?

Mr Gallagher—I believe so, to them, yes.

CHAIR—The association has or Allen and Unwin has?

Mr Gallagher—The association has.

Mr Grant—There are pockets where certain types of books are more expensive in Australia than overseas. What we are standing by is a general statement that if you look at the best-selling textbooks or the best-selling books in the Australian community in the last year, the prices here were lower. I am sure you could reverse the analysis and look in the UK and the US and find certain niches where prices are more expensive.

Senator McKIERNAN—Mr Gallagher has said by way of interjection that you supplied the information to the ACCC.

Mr Grant—I am not sure if we supplied that document or were asked to, but we certainly submitted a document like that.

Ms Bridge—Yes, these particular figures are up-to-date ones that have been done last month, but previously figures like this doing price comparisons have been supplied to the ACCC and regulators at the various inquiries, as I understand it.

Senator McKIERNAN—But have those been taken into account in that most recent media release that I quoted from, which, really, castigates your industry as a whole for ripping off the consumers?

Mr Grant—I think it is overstated. Really, the press release and the 44 per cent relates very clearly to what is called a US mass market paperback which, I would say, accounts for

perhaps five per cent of the book market—perhaps less than that—and even within that category you would find some that are cheaper and some that are more expensive. We would suggest that their analysis is not comprehensive and could not be taken as representative of the total book market. They are not even arguing that. They are saying 44 per cent higher over mass market paperbacks which, as I say, does not account for a substantial part of the book market.

Ms Bridge—The two price comparisons can be mathematically correct, but nonetheless draw different conclusions for the reasons that we have pointed out. I think the first thing to say is that the government formulated its policy looking at price comparisons up until the 1998 financial year. When the ACCC have updated those figures we see that more recently the price comparisons are favourable to Australia. They can also be reconciled by—

Senator McKIERNAN—Sorry to interrupt, but I read the rest of what the ACCC said in that document and I can see that, in actual fact, when in table 1 you do a comparison between Australia and the UK, the prices are actually lower. Professor Fels is not saying that in the second paragraph of his letter. I am just wondering what particular agenda is being run by Professor Fels which has been so heavily relied upon by government.

Mr Gallagher—That if I may say so is a good question: the issue of the professor's agenda.

CHAIR—We will leave that to Professor Fels, shall we, Senator McKiernan, and turn to Senator Mason.

Senator MASON—Mr Heyward, I read your submission and I must say I enjoyed it immensely. I know you are a publisher; are you an author as well? A beautifully written piece; I thought it was terrific.

Mr Heyward—I have written the odd thing.

Mr Gallagher—He is an author—he is too modest to say so.

Senator MASON—It was wonderful, so thank you so much. I will ask you a question but I will leave pricing to Senator McKiernan and the ACCC. You have discussed briefly the protection of authors' rights in Australia. Let me pick up a point that Senator Cooney mentioned to previous witnesses; it is about cultural heritage. Mr Gallagher mentioned that, and I think Mr Grant and Mr Heyward also mentioned cultural heritage and the importance of it. When you decide to publish a book, do you believe you have a social or cultural obligation to publish it irrespective of the commercial reality? If not, why shouldn't we simply look at the outcome for consumers and leave it at that?

Mr Heyward—There are some books that come across a publisher's desk that you want to publish at all costs. I do not publish books with a rear view mirror strapped to my forehead while I am trying to see what the market has wanted in the past. I like to think that we are an innovative publisher and that we can go out and create a market for the books that we publish. There are certain books that we publish where we are passionate about doing that but I operate in a commercial environment, and if I were to publish books only because there was something imperative about them that demanded that they be published I would not be serving the interests of all of my authors truly or correctly. It is also part of my job, because I do believe very clearly that as a publisher you want to find as many readers as possible, to price those books in a way that is affordable. It is not serving the author's interest or the publishing company's interest if the book is published at a price which will make it unaffordable for those consumers whom we want to reach.

Mr Grant—Having been involved in publishing from the other end as well, do we want to put ourselves in a position where our major authors need to be managed and published from New York? Tom Kenneally used to be. Do we want his work edited in New York, as it used to be to take out anachronistic words, to change things that we do not understand, to simplify it for the American market? It is of real cultural importance. If you do shift the balance, you will be introducing that type of intrusion into Australian cultural contributions.

Senator MASON—I understand that but my point is that the protection of cultural heritage seems to me to be perhaps a fortuitous by-product of current arrangements rather than a decision based on the economic realities of publishing a certain book.

Mr Grant—That is revealed when the Australian government itself makes a decision to contribute culturally to publishing by a series of grants to both publishers and authors to make sure books of cultural value are published.

Senator MASON—I understand that.

Mr Grant—What we are wanting is a publishing infrastructure that is skilful enough to take those books out into an international market without threat.

Mr Gallagher—Could I answer your question from the point of view not of cultural heritage but looking at it the other way—the consumer’s interest in books published overseas?

Senator MASON—Sure.

Mr Gallagher—As for the aforementioned shed up at Tuggerah with a hundred million dollars worth of books in it, we represent several major overseas publishers. Just as Michael decides whether to publish an Australian book, we have to decide whether we are going to buy 10,000, 100,000 or 100 copies of a book. Many books we bring in in quantities of 100, 250 or 500 and I suspect Professor Fels would say, ‘Why do we bother?’ We bother because we have a commitment to the overseas publisher and, at the other end, to the consumer to have the widest possible range of titles available. That we would find very hard to do in an open market situation because those titles could be creamed from outside.

Senator MASON—I suppose what you are saying is that the equation is not simple: I do understand that. I am always scared that in many other contexts, and we are talking here about trade, of course—I said this yesterday, perhaps to the dismay of some of my colleagues—people who want to be protected hide behind the argument of cultural heritage. They say, ‘We need to be protected, otherwise Australia’s cultural heritage is at risk.’ I understand that it is slightly more complex than that.

Mr Heyward—If I understand you correctly, what you are saying is, ‘Let’s get on with our business and let our children’s children decide whether we were creating a cultural heritage anyway.’ Cultural heritage is probably an interchangeable term in this context with the word ‘infrastructure’, because books do not land on our doorstep, or the doorstep of any publisher, in a form where you simply slap them between covers and give them to the consumer. A significant part of our job is to work diligently and intelligently with our authors, some of whom walk in the door with an idea in their head, to create a product that is going to at once allow them to fulfil their literary potential and also provide them with the beginnings of something—a promise I try to make to a lot of our authors—from which they may derive a middle-class income.

I read a book last year by a man named Michael Korda who was the editor-in-chief at Simon and Schuster in the US for many years. He has a throwaway sentence in that book in

which he says: ‘In any given year, for Simon and Schuster, profitability could depend on our rights income for that year.’ If you take away the infrastructure, if you erode the infrastructure by cheapening rights and allowing sales in the domestic territory to be eroded by unfair competition, you can expect that the cultural heritage, or the infrastructure, will be diminished and that the people who are aspiring to do what we are doing will be less able to do it. There are quite measurable, I believe, cultural-infrastructure consequences of this legislation if it is passed. That is precisely why the Canadians, the British and the Americans do not have this kind of legislative amendment on their books.

Senator MASON—I understand.

Mr Grant—In terms of the infrastructure, one of the shifts—the 30-day rule was introduced—was to impose a duty on Australian publishers to print the books in a territory, which meant they could be on the market within 30 days of being published overseas. This meant that Australian publishers needed to have available to them the printing infrastructure, and within their own companies the publishing infrastructure, to bring books to market within 30 days. This has created a benefit to the community. The fact that the books are available faster has also created a large number of jobs in printing and has created a large number of more skilled people in the Australian publishing industry in how to present and produce books for the market.

Mr Gallagher—We have printed over two million copies of *Harry Potter* in Australia. Without this legislation, we would be very nervous about taking on a gamble like that.

Mr Grant—There is no doubt that some of the two million would have been imported if the legislation was as it was.

Senator COONEY—I turn to this cultural heritage line that you heard me running before. I was just looking at appendix A. Do you know whether it is Readings throughout or Readings up in Carlton that this is taken from?

Mr Gallagher—It would be, I imagine, from Readings collectively, of which there are four shops.

CHAIR—This is in the Text Publishing submission.

Mr Heyward—That is based on sales across the Readings group—not just Readings in Carlton.

Senator COONEY—*Nice try*, an outstanding novel, set in Melbourne. *Romulus, My Father* was set in Victoria and *The Sound of One Hand Clapping* was set in the state of my birth—Tasmania.

CHAIR—Senator Cooney, we will run out of time if you go through all of them.

Senator COONEY—This is the last one: *Three Dollars*. This was not only set in Melbourne but also written by a barrister, may I say.

CHAIR—Then that is certainly worthy of note.

Senator COONEY—Yes. I could go on, but I will not, since the chairperson has quite properly brought me to order. Did the ACCC come to you and ask about those books, and about the depiction of the particular matters that were shown there? Take *The Sound of One Hand Clapping*—and I am going to come to *Nice Try* after that, Mr Maloney: that was made into a film, wasn’t it? Do you know whether the ACCC ever looked at that aspect of publishing and creative writing and creative development? Did they ask you about it?

Mr Heyward—In 1999, when the ACCC announced that it was going to hold a brief 30-day inquiry into prices in Australia and that it was not to be a public inquiry as such, I phoned the officers of the ACCC and said that I wanted to make a submission to that inquiry. The person who answered the phone said to me, ‘So you want to come and tell us about the benefits of opening the market,’ to which I said, ‘I have a lot of doubt about that, and I actually think that it is going to be a very bad idea.’ I did go along and make a submission to the ACCC. At no point did the ACCC inquire into the cultural values of the books that we were publishing.

Mr Grant—The ACCC did take a one-hour submission from a group of Australian publishers—which you and I were both involved in, Mr Gallagher, I think.

Senator COONEY—What happens with books such as *Robbery Under Arms* and *For the Term of His Natural Life*? Are they still published?

Mr Grant—They are published. Some of them are in fact out of copyright.

Mr Heyward—Both of those works are.

Mr Grant—Both of those works are out of copyright and can be printed by anyone.

Senator COONEY—And the same goes for Henry Lawson, I suppose: anyone can publish him.

Mr Grant—Henry Lawson is also out of copyright now, I believe. Copyright persists until 50 years after the death of the author.

Mr Heyward—Henry Lawson is out of copyright.

Senator COONEY—Maybe the ACCC have never heard of Henry Lawson: we will find out.

Mr Maloney—To pick up a little on the point you were making about the way the work of writers published in book form then contributes to other cultural industries: I was having a look at the list submitted to you by the Society of Australian Authors of the names of those who would be affected by this. I saw the name John Bryson, the author of *Evil Angels*: that became a full-scale Hollywood movie with Meryl Streep and you name it.

Senator COONEY—I also know that he was a barrister in his time.

Mr Maloney—He was a barrister, in his time, indeed. There is a lot of it going on, I understand.

CHAIR—This is possibly more information than we needed.

Mr Maloney—I will try to stick to the facts, then—but I am a fiction writer!

Senator McKIERNAN—Don’t mince your words.

Mr Maloney—If you reckon these publishers rip off the consumer, wait until you hear what they do to the authors. No—that was a really cruel and unnecessary remark. I guess that is a good example of the way of work about a particularly Australian subject matter by an Australian author finds its way into a broader international cultural context and generates work as a result. Every Australian author who finds a successful market internationally in a sense prepares the way for the authors who will come after them and generally reinforces in the minds of readers overseas that Australian authors are active; and it also acquaints them with the usage of the Australian language and even with our institutions of political life, in some instances. So the broader knock-on effect of authors selling their work creates

opportunities for the development of film and a whole range of other kinds of projects to remove in Australia's international cultural relations.

Senator COONEY—Not that this is of any relevance, but I cannot help pointing out that John Bryson did his articles at Galballys, who were quite famous here. Do you remember the Galbally trials in the fifties, sixties and seventies?

CHAIR—You were right, Senator Cooney: it was not. Senator Coonan has questions.

Senator COONAN—I will be very brief. I understand the broader arguments that have been advanced. I accept that this whole proposal is velcroed onto the ACCC report, and what I would like to know from you is: are your criticisms of the report to do with the accuracy of the data, the methodology that has been adopted, the underlying assumptions or all three? Really, I would like to hear how that is addressed. If you cannot do it today, perhaps you could give us a note.

Mr Grant—We would be happy to follow it up, but we could make some comments. Perhaps Susan Bridge could comment.

CHAIR—Perhaps you could make some initial comments, and then if you wish to you could take it on notice.

Ms Bridge—Yes. Very briefly, no-one quibbles with the ACCC's mathematics. Simply, the government in introducing the legislation said that its stated objective was to overcome the problem of international price discrimination, and the evidence of international price discrimination was the ACCC's pricing comparisons. We say that the ACCC's pricing comparisons do not provide that evidence, for two very important reasons. One is that they are not up to date. The current figures that the ACCC have provided show that the average price comparisons are favourable, that books are cheaper in Australia than in either the US or the UK. Therefore, there can be no price discrimination that is disadvantaging the Australian consumer. There is only one area in which the ACCC found an unfavourable price comparison, and we say that in that respect we quibble with their methodology in excluding trade paperbacks, in excluding a very significant part of the market in which Australian consumers are getting much cheaper books than they are getting in the US or the UK.

CHAIR—What proportion of the market do you say that is?

Ms Bridge—In appendices 1 to 4 in our submission we have corrected that methodology and put those books back in.

CHAIR—I am asking for a percentage, though. Do you have one?

Mr Grant—Their figures are probably relating to five per cent now, and ours are relating to 10 per cent. But it is still not the total book market. Could I just answer two other points relating to the ACCC report. The success of their projected changes depend on the rise of a wholesaling network that just does not exist, and it is hard to imagine how and when it would come into existence. But Professor Fels has assumed this will happen and will create a competitive environment. We do not believe it would be possible under the structure of the industry, internationally and here. Secondly, he has suggested we can contract dumping away. Again, we would say that would be extraordinarily difficult. An understanding of the number of publishing contracts—about 100,000 books were published in America last year—and the nature of those contracts, both current and historical, would suggest contracting away the dumping problem would be virtually impossible.

CHAIR—As you may be aware, the next witnesses are from the Australian Competition and Consumer Commission. My colleagues, Senator McKiernan and other members of the committee, would be interested in any remarks you may have following their evidence. You may wish to follow that by examining the *Hansard*, or perhaps if you are going to remain you can do it more readily. We have a reporting date, as you know, of 23 May. Our turnaround time is relatively speedy, but any assistance you can give in that regard would be appreciated.

Mr Grant—Are you suggesting that we stay and give a written response to what we hear?

CHAIR—If you wish to. Or you can examine it in the *Hansard* when the *Hansard* is available, hopefully as soon as possible.

Senator McKIERNAN—We would like to fully inform ourselves and not just accept one particular viewpoint. We would like to have them balanced against one another, so that we ensure that apples are compared with apples.

Mr Gallagher—We in the publishing industry certainly feel that the 30-day rule has brought about some terrific improvements in Australian publishing and Australian book retailing, all to the benefit of the consumer. There seems to be little to no acknowledgment of this by the ACCC, which I have always found very disappointing and do not really understand. I can only put it down to some agenda.

Mr Heyward—Quite a few publishers internationally have praised to me the 30- and 90-day rule. They have talked about how innovative it is; they have talked about how it balances the rights of the consumer and the creator. When that law was introduced in 1991 I do not think things looked much bleaker for Australian publishing. One of the major Australian publishers of the 1980s, McPhee Gribble, had just been sold to Penguin Books, and the work that it had done in the eighties was to come to an end. Since that time—and with a couple of the publishers who have been part of that—we have seen from, I think, a disgracefully low base a flowering of Australian publishing. The efficiency of that law—which was a brave law, and I think a shrewd attempt to solve the problem—has been demonstrated over and over. We should be really proud of what we have been able to do in the last decade.

CHAIR—On behalf of the committee, I thank Mr Maloney, Mr Grant, Ms Bridge, Mr Gallagher and Mr Heyward for their assistance with our deliberations this afternoon. We look forward to receiving any further information you may wish to give us.

[4.12 p.m.]

ARBLASTER, Ms Margaret Peta, General Manager, Transport and Prices Oversight, Australian Competition and Consumer Commission

FELS, Professor Allan Herbert Miller, Chairman, Australian Competition and Consumer Commission

JOHNSON, Ms Linley Evelyn, Director, Compliance, Australian Competition and Consumer Commission

JONES, Mr Ross, Commissioner, Australian Competition and Consumer Commission

CHAIR—Welcome. I understand that we do not have a submission from the Australian Competition and Consumer Commission. Professor Fels, I invite you to make a brief opening statement, at the conclusion of which I am sure the committee will have questions to direct to you. I note at this stage that you will not be asked to give your views on matters of policy or reasons for policy decisions. If there is requirement for you to refer matters to the appropriate minister, that time will be available to you.

Prof. Fels—Because the commission recommended these changes in reports some time ago, we are available to discuss policy questions. We support the proposed changes in the legislation. They are based on recommendations we made in a 1989 report on books and in a report around 1992 on computer software. In our view, the arguments for change have not changed a great deal over time. We believe that, pursuant to the Copyright Act, a system of import monopoly arrangements exists. We believe that that system operates against Australia's interests. The system operates in the interests of countries that are net exporters of intellectual property, most particularly the United States.

The system operates by preventing retailers, whether they be booksellers or computer retailers, from directly importing products available in other countries at much lower prices. The system creates the possibility of price exploitation and of restricted availability of product in Australia and, from time to time, there is in fact price exploitation and restricted product availability. Over many years the system has operated to the substantial disadvantage of Australia, on any view. The extent of the price differences depends particularly on exchange rates at any one time. But, over the long term, there have been quite substantial price differences between Australia and the rest of the world.

I have a couple of comments on the issue of culture. We believe there is some danger in this debate of a one-sided view being taken—that is, the producer side. From the point of view of the promotion of culture, it is important that Australians have access to it at reasonable prices. So the interests of the public and of culture itself are very much in its being available on reasonable terms and conditions. In the case of computer software, there are substantial benefits to business users. At the present time, with the exchange rate being what it is, the price differences are narrower than they have been at other times. This means it is quite a good time to bring in the reforms.

I will just spend a couple of minutes talking about what we have been asked to do by the government in relation to its consideration of these reforms. We were asked to provide more recent price comparisons than those contained in our 1989 and 1992 reports. We did a report to the government in March 1999 that compared prices, and I believe that was considered when the government made its decision. People now want more updated information, so we have done a few more comparisons as time has passed. The main findings of our updates, which are published in our April 2001 report, are that the price comparisons for the best-

selling books in Australia, the US and the UK have been updated to December 2000 and, of course, we have corrected for the GST. From 1988-89 to December 2000, which is 12½ years, Australians were paying around 44 per cent more for best-selling fiction paperbacks than US readers and, on average, 8.9 per cent more for best-selling fiction paperbacks than UK readers. For the 6½ years to December 2000, Australians paid, on average, 18 per cent more than US readers for bestsellers other than hardback fiction. We did some updates for technical and professional book prices, and Australian consumers paid, on average, 23.2 per cent more than US readers and 18.4 per cent more than UK readers in March 2001.

In June 2000 and February-March 2001 we did spot price comparisons of leading business software and computer games with the US, the UK and New Zealand. The key findings are that, in February-March 2001, the GST exclusive prices of 14 popular business software products on a selection of Australian web sites were, on average, 11½ per cent higher than prices advertised on US web sites. Australian prices were similar, on average, with those in the UK and New Zealand. In February-March 2001, the GST exclusive prices of 11 popular PC games on a selection of Australian web sites were, on average, 19½ per cent higher in Australia than on comparable UK web sites and 5.4 per cent higher than in New Zealand. On 26 June 2000, nine of the top-selling personal computer games in Australia were, on average, 15.8 per cent more expensive than in the US. Also, users of popular PC computer games paid, on average, 33 per cent more than users in the US during 1998. There were considerable variations in the differentials of some individual products.

So they are a few updates. However, the commission's consistent argument for many years is that, over the longer term, these arrangements appear to operate to the detriment of consumers. We see them as bringing relatively few benefits to Australia. We also believe that, to the extent that one has cultural concerns, they should be addressed directly by open and specific subsidies to writers and to any publishing interests that one may be concerned about, rather than by using a system that mainly rewards overseas companies and asks us all to pay higher prices for many products, for the benefit of a few Australian beneficiaries.

CHAIR—Thank you, Professor Fels. Do any other witnesses wish to make a contribution at this stage?

Mr Jones—No, not at this stage.

CHAIR—The committee has primarily received evidence today in relation to books and yesterday in relation to software, from a range of witnesses. Professor Fels, I would like to start with a couple of comments made by some of our witnesses today, to which I seek your response. One is that the endeavour under way through this legislation is the pursuit of, I think the Australian Publishers Association said, unproved marginal price improvements. From one of our other witnesses was the suggestion that really the only benefit that will flow from this at the end of the day will in fact be to the large multinationals, to whom you referred at the end of your comments. I would be interested in your responses to those comments.

Prof. Fels—On the question of proof, for any change you cannot test what the results are or prove them until the changes have occurred. So that is a necessary feature of any reform, and I imagine that is the daily dilemma of legislators: if someone proposes a change, you can put forward strong arguments as to what their changes may be, but you do not have evidence of what the changes will be until they occur. So I would regard it as merely a debating point to say that the changes are unproven.

The more general knowledge that we have from numerous areas of commercial life is that, where import restrictions are removed and there is a history of large price differences, on the whole the price differences will be narrowed and removed if the costs of transport are not especially high and if there are no anticompetitive or unlawful obstacles to the price changes going into place in the market—for example, provided there is no unlawful monopolistic behaviour. I do think that one of the oldest dilemmas in the debate for the critics of the reforms is that, time and again, they have wanted to have it both ways: they have wanted to say that there will be no price benefit but that there is a major threat to Australian industry. They cannot have it both ways. If the price changes are marginal, it is not possible that there will be serious damage to the Australian industry.

On the claim that the multinationals are the only ones that would benefit from the reforms, I view that with the utmost scepticism. The fact is that multinational companies around the world—publishers, recording companies and computer software companies—have fought tigerishly against reforms of this sort. In a number of areas of reform, they have particularly fought Australia not because the economics of Australia are important to them but because of the precedent effect for other countries. If there is one thing that is very clear about the system—I know there is a debate about the effect on the local industry and so on, on which we have views—it is that very few people contest that the system does bring major benefits for multinationals. I grant you that some people say, ‘I’m prepared to have some benefits for multinationals as the price of having this system that brings some benefits to local writers and culture and so on,’ but I have heard relatively few people claim that multinationals will benefit.

The whole system was introduced in Australia around 1912 by British book publishers, who used their leverage to get the import restrictions applied. We used to have an open market for books in the last century. It worked against the interests of British publishers because, whenever they tried to get prices up in Australia, they were bypassed by Australian bookshops, who went to London and got far cheaper prices and brought the books out here far more cheaply. So they got the system introduced. The British publishers and the American record companies and American software companies have all been resisting these changes.

CHAIR—This will be an interesting process.

Senator McKIERNAN—I have asked this question of other witnesses. If we could go to your April media release ‘ACCC report points way to cheaper books and software’, the second paragraph says—and you repeated it here today—that on average Australians paid around 44 per cent more for fiction paperbacks than United States readers did in the 12½ years from 1988. What other product does the ACCC examine and do an average pricing of over a period of 12½ or 20 years or 50 years? Is there another product that you use that methodology of analysis upon?

Prof. Fels—Have we done systematic price comparisons for other types of products compared with the US? We have done a few on compact discs and things of that sort, but we do not do them generally. We do not compare supermarket prices.

Senator McKIERNAN—You do not do it in petrol or butter or anything like that?

Prof. Fels—We occasionally do petrol.

Senator McKIERNAN—Over 12½ years?

Prof. Fels—No, but prices are about the same on petrol, or after you correct for tax.

Senator McKIERNAN—I am not an avid reader of all of your reports, but I have never noticed that particular methodology coming through in any of the ACCC's reports in the past. I have done a quick analysis of your media releases but not of all your reports.

Prof. Fels—That is right, because there are not import monopolies on other products. This has import monopolies. It makes sense to compare it with other countries.

Senator McKIERNAN—The assertion was made to the committee yesterday that there is an ideological point behind this particular piece of legislation, so you would be supportive that there is indeed some political motive?

Prof. Fels—Any legislation is the product of parliamentary consideration. You would know better than I the influences that are brought to bear.

Senator McKIERNAN—I did not write this media release.

Prof. Fels—No, and I have never talked about ideology, but I do not mind saying that there has been strong pressure for many years from producer interests for establishing and now continuing the legislation. There are major interest groups involved. They have an import monopoly. Are you surprised that the Competition Commission is opposed to import monopoly arrangements?

Senator McKIERNAN—I am surprised that in one section of that April report you describe one set of findings in one way, that is, the findings on books if you use a 12½-year average, and when you get to software you use a more contemporary analysis in reaching a conclusion. Part of the difficulty we have had in this inquiry is comparing apples with apples. I find when I am looking at your report that we have got apples and oranges in the different findings. I am wondering why that is so. Before you respond, I also refer to table 1 of your publication which, as you said to me—and I do not put myself in the same role as you, Professor—shows that the price of books is actually falling this summer, in the contemporary period.

Prof. Fels—Yes.

Senator McKIERNAN—I can understand the Minister for Communications, Information Technology and the Arts putting a political spin on things, but I am not so sure that it should necessarily be your role to put a political spin on things.

Prof. Fels—No, but we were given a reference in 1989 to come up with recommendations on this, and we were given another reference in 1992. We came up with the recommendations. That is why we have taken a position on this. We were asked by the Labor government and we have been asked by the present government to take a position on it. We have a clear position on it, and we are acting within the terms we were asked to. On the apples and oranges, I will give one word of explanation for a start. We have been asked slightly different things at different times. In the 1989 books report and the 1992 computer software report we were basically asked to do long-term comparisons of book prices. We produced those reports, we made them very public and transparent, and we subjected them to debate and so on. We did draft reports, incidentally, and then we considered the criticisms of them. We were asked in about 1999, I think, to update, so we did an extended update covering the time period from the early reports to now using the same methodology. The report then disappeared into being considered by the government and so on, and by the time the government brought this legislation in the comparisons were not fully up to date. The government realised we needed some more up-to-date figures, so we have given those up-to-date figures. Our view has

always been that you look at the long-term impact. This legislation is of long-term importance.

Senator McKIERNAN—If it is true what you are telling me, Professor Fels, that your finding in the April update is not that book prices are actually falling, why didn't your media release explain that finding rather than have the political spin—my words—you put on it about the 44 per cent for fiction and hardback?

Prof. Fels—The simple answer is that we publish the report in full for everyone to explain. Everyone has had a look at it. There have been extensive comment and criticisms. A media release is a summary. We are quite happy with the summary.

Senator McKIERNAN—Obviously you are very happy with it, and I suggest Senator Alston is probably happy with it, too, but I am not so certain that that should be the role of a commission such as yours to do the political work of the government.

Prof. Fels—Well, don't give us references on policy and we won't come up with policy findings.

Senator McKIERNAN—We didn't. In that April report you are reliant to some extent—and it is also mentioned in the media release—with what happened to CDs, and you give us some figures on that. This committee was involved in the inquiry surrounding that particular legislation for the parallel importation of CDs. Part of the promises made in preparing for the parallel importation of CDs was that the price would fall by some \$7 per unit.

Prof. Fels—Yes.

Senator McKIERNAN—And you are now monitoring the prices. Have the prices indeed fallen by \$7 per unit?

Prof. Fels—I will make a few comments on that. If I do not answer your question, just repeat it in a second. I will not talk about the government, either this government or the previous one. When the previous government introduced the legislation on CDs into parliament in 1992, I think it said that they would fall by \$7 at the time.

Senator COONEY—It was Michael Duffy, wasn't it?

Prof. Fels—Yes, perhaps it was Mr Duffy. I have been interviewed a lot on this subject and I frequently have said, and I particularly said it in the period from 1991 to 1996, that there was on average a \$6 to \$7 gap between US and Australian prices and that, if the reforms were introduced, prices would fall, and I normally said by several dollars. I never, ever said \$7. I was reported once or twice.

Senator McKIERNAN—I was talking about a reference to the Prime Minister saying it, not you.

Prof. Fels—I just mention that about our position. The next point is that, if you were making public comments on these things, obviously you cannot set out every assumption. You cannot say, 'This will happen assuming the following 18 things do not happen: assuming there are no earthquakes and floods, assuming the exchange rate does not fall 20 or 30 per cent, et cetera.' So the point we were really making was that, generally speaking, the average was about \$7, having regard to what the exchange rate was. Our earlier studies showed that sometimes the gap was bigger—for example, \$10—and sometimes it was narrower. When these reforms on CDs came in, they occurred about the same time as the dollar went down sharply. Always, at that time, you do not get falls in prices, but if you extrapolated the prices

at the time of the change for the exchange rate and for inflation, they would be about \$7 higher than they are now.

Senator McKIERNAN—So the response to me is, ‘Yes, prices have fallen \$7.’

Prof. Fels—Prices have not fallen \$7 in general, but of course they have—am I not right?—at major discount shops.

Mr Jones—With the opportunity for imports that parallel import opportunities provided, we have seen an enormous increase in discounting of the most popular titles, such that if you go to most major retailers now, you are seeing \$21 or \$22 titles in the top 40 or top 50 CDs, which is something that was not occurring prior to the parallel import legislation.

Senator McKIERNAN—I want to return to that apples and pears argument I was using. We have been provided with submissions from the industry—the computer software, book publishing and publishing industry generally—which actually take exception to some of the comments contained in your report. I admit here in the public record that I am not in a position to do an analysis and comparison between what the industry has provided to us in the way of submissions and what is in your report. Have you looked at the submissions that have been provided to this committee? Have you got anything to say about those submissions? Can you take those submissions and provide the committee with a comparison so we can compare apples with apples and pears with pears on the way through? We have asked the industry to do likewise.

Prof. Fels—We would be happy to do that. We have quickly got together some comments, but they might be pretty technical and boring.

Senator McKIERNAN—If you want to make a political comment, Professor Fels, by all means. Do not feel constrained, because I think some of the industry yesterday were not constrained in some of the comments they were making about your organisation.

Prof. Fels—I am delighted to have that invitation. The methodology of comparisons was hammered out at public inquiries. Full reports were done on the methodology. A lot of experts got involved in the debate about the best way of doing comparisons, and we decided that such and such was the best methodology and we have generally stuck to that methodology in doing the comparisons. In the updating, we have generally followed that. Obviously you have to make a few changes here and there. For example, we have not had the time to get the same sample sizes in some instances.

Having regard to your invitation, I would just like to make a more general point. I actually believe there is little doubt that over the many years these laws have applied—it has been since 1912—Australian prices have been much higher than overseas usually, although it does depend on the exchange rate at any one time, and that there is every likelihood that this will continue for the next hundred years until the reforms occur, whatever the short-term price variations may be.

Senator MASON—We have heard arguments that the price differentials between overseas and Australian books are lessening and in the last few years it has got a lot smaller. If that is the case and the differential is becoming less, do we really need to change the law?

Prof. Fels—I would put it the other way. This is the best possible time to change the law, because the disruption which the opponents are concerned about would be least.

Senator MASON—That is a nice way of putting it. I see your point—because the market disparity is not so great.

Prof. Fels—Yes. I could offer some reasons for the narrowing of prices but I believe it is principally the exchange rate. There may be some slight effects from the 1991 changes in books—

Senator MASON—That has been the argument put: the 30-day rule.

CHAIR—You are referring to the 30-day rule, Professor Fels?

Prof. Fels—Yes. It was the clear intention of the government at that time to bring in a reform which would not alter prices much. The nature of the reform stops there being big price effects, because the 30-day rule protects the two main types of books that are being sold—that is, Australian books and best sellers—because the publishers get them out. So it is only at the edges of the market that you get many effects. In addition, the effects at the edge of the market would be a lot bigger if the main reform was made. The reason is that the business of importing books directly is not very profitable if you cannot tackle the main game. Therefore, it has caused some restrictions on importing of the books that are freed up.

Senator MASON—Thank you for that. Secondly, the argument has also been put to us that the protection that Australian publishers currently have is similar in, for example, the United States, Canada or the United Kingdom and that why shouldn't Australian publishers enjoy similar protections.

Prof. Fels—This is like all trade reform arguments. The question is: what is in Australia's interests? If other countries wish to damage themselves with these laws, that is their business. But if it is harmful to Australia, we should not persist.

Senator MASON—Thirdly—and you mentioned this in your opening comments about unfair practices and so forth—I think you would concede that dumping, for example, can distort markets.

Prof. Fels—Yes.

Senator MASON—An argument raised before was that one of the real problems might be that books might be remaindered overseas and brought back into Australia, thus destroying the local market and local publishing houses. That struck me as quite a strong argument.

Prof. Fels—We have always thought the argument is highly exaggerated. It may be that one in a thousand times this scenario would occur. I will outline some of the reasons why we think it should not occur on any great scale. If it started to become a regular practice, the books would be published in Australia ahead of overseas publication. Most of these products tend to be bought most heavily in the early months. So, if you are really worried about it, you get the book out in Australia a bit ahead of the rest of the world and make most of your sales then.

On the remainders, there are a whole lot of assumptions in that story which need to be exposed. First of all, this is telling a story where some publisher or seller overseas totally miscalculates the market and ends up with a whole lot of unsold books out there which, again, is not going to happen huge numbers of times because, more likely than not, they will do the right print size at the beginning. More often than not, they will make provision for quick reprinting if there is a rush on the book. So I do not know that this scenario—

Senator MASON—Because it is in their interests to do so?

Prof. Fels—Yes. It is only when they make a fairly bad mistake that this happens. There is this question of whether there can be contractual arrangements under which the books, if unsold, are returned to the publisher. Also, let us go back to the original evil, which is that, on

this scenario, Australians are being asked to pay high prices for books while foreigners are paying low prices, and they will be reimported. That is the story behind it.

CHAIR—Mr Jones, did you wish to add to that?

Mr Jones—I think that is the crucial point: for that to be a regular occurrence, you would have to assume that the local publishers, for example, never learned, because there is an inference to be drawn that the demand is significantly different overseas, so that they endlessly export the product overseas; they endlessly oversupply overseas; those products then get reimported back into Australia. Given the timing, it seems unlikely. Further, you would expect that even if it did occur it would be something that would be temporary and that publishers would learn very quickly that there was a significant difference. It is also a very expensive exercise from their perspective to export the product overseas, not sell it and then have it remaindered back into Australia.

Senator MASON—I have one last question. I am sure my colleague Senator Cooney will ask further questions on this. I refer to cultural problems and cultural heritage. The argument was put that if this legislation were to be passed it could see local publishing houses devastated and, with respect to their role in encouraging and, indeed, shepherding local authors, we could lose that base in Australia and that Australian literature could suffer.

Prof. Fels—We would regard those effects, if they occurred, as being marginal. We also think the industry has grown up and is able to stand on its own feet. It is not the sort of argument that we apply in many areas of Australia. If prices fall, sales will expand and books and reading will become more popular. It may even stimulate wider reading habits: books are available more cheaply; people are able to get more into the habit of reading them. I, myself, believe that the Australian publishing industry and the writers are able to stand on their own feet these days, and if they cannot do so then the best way of dealing with the problem is through direct targeted support aimed at Australian beneficiaries, rather than through a system where the main benefits go offshore to Jackie Collins, Wilbur Smith and a variety of other people who do not deserve support.

CHAIR—Judith Kranz had a guernsey earlier.

Senator MASON—Australia Council subsidies, as opposed to this legislation.

Prof. Fels—Yes.

CHAIR—Thank you, Senator Mason. I am acutely aware of the time, but I do want to give both Senator Cooney and Senator Coonan an opportunity to direct questions and I do want to finish as close as possible to 5 p.m.

Senator COONEY—I will put how things strike me, and then you can comment on that. It is following on from what Senator Mason has said about the cultural forces. This is not directed at you, Professor Fels, because I know you are a deeply spiritual man, so what I am about to say is in no way to be taken as directed at you. But, when you are asked about culture, the language that is used worries me a bit. Is the ACCC, even with the leader it has, able to think in terms of culture and things spiritual and things of the heart and the soul, because when you are asked about that you say, 'What they have got to do is learn to stand on their own feet. They have got to get in and have competition, and market forces have got to operate. They have got to be efficient'? What you are really saying is, 'They have got to have the cold shower regime. We cannot have a proper culture unless they are willing to undergo a cold shower.'

Before that you came in and the language you used was ‘price exploitation’ and ‘restricted property availabilities’ and things were operating to the ‘substantial detriment of Australia’—sort of a fairly arid economic sort of language—and you say to yourself: ‘Is this issue of culture really touching the ACCC, or is the market going to dominate no matter what? Are we going to give any weight to these cultural things?’ You get somebody like Mr Shane Maloney, whose excellent books about Melbourne you have no doubt read, who says, ‘I am very worried about all of this sort of thing,’ and then you come along and say, ‘Don’t worry, Shane. Take a cold shower. Get in there and be competitive.’

CHAIR—Perhaps we could give Professor Fels an opportunity to respond.

Senator COONEY—I was going to put this to him, and he can respond. The sort of language you use in reply to this is hardly the language of the King James Version of the Bible or the one I use, the Jerusalem bible, or Shakespeare or even Maloney; the language is the language of the hard neoclassical economist. And you say to yourself, ‘Is this body—and you are going to reassure me that it is—the ACCC, capable of taking into account issues such as culture, issues such as the soul, so that we get the feeling that when we have to get up to vote on this matter, whenever it is going to come on, we are voting for a bill in the preparation of which those matters have been taken into account?’ As I say, the problem is that the whole issue of the language worries me.

The other thing that worries me a little bit is that the ACCC has been at this since 1989 and, although they have been doing it quite brilliantly—the ACCC is a body I have the highest respect for—not only have they overlooked the issue of culture, heart and soul and things like that, but perhaps they have become obsessed with making sure that books and all these other things we are talking about are subject to the market. Sometimes people get obsessed with things and they want to see it through no matter what. Has the situation arisen where the argument has been guided by the objective of getting these books and all these other things we are talking about into the competitive market? This often happens and in no way is there any impropriety in this, but have we so arranged our arguments to justify that, rather than looking at the evidence and seeing whether the evidence itself justifies that conclusion? They are the problems and I am sure you will be able to reassure me about them.

CHAIR—Professor Fels, you may or may not be pleased to know that the committee is happy to give you equal time! The committee, however, is very limited in the time that it has available to provide to you in that regard, so please do your best.

Prof. Fels—When I have run into Senator Cooney at the football, I guess I have not mentioned to him while pursuing that bit of culture—I do not know if that was the culture that you had in mind—that I am the former editor of a leading literary magazine in Australia—*Westerly* magazine. I was the coeditor a while ago. Besides going to the football, I have been twice to the Opera House and once to the Bell Shakespeare Company in the last 10 days.

CHAIR—You have more time than we do then.

Prof. Fels—So cultural considerations are not absent from our life. What we are more aimed at is trying to say that if you are going to protect culture, do it in a more targeted way than subsidising Jackie Collins, because she is a much bigger beneficiary of this than any Australian writing.

Senator COONEY—They are just allegations you are making. There is no evidence of that.

Prof. Fels—Her book prices are higher in Australia and her reward is related to the price of books in Australia.

Senator COONEY—I should not have interrupted.

Prof. Fels—On the question of the obsession, I have actually changed my line and my opinion on quite a few topics over the years. Look at our changed line on quite a few mergers. It is just that, with this question, all the arguments I have heard over the years have not been terribly good. On the whole, I have formed the view that the problems of getting this legislation changed are more to do with the enormous pressure from some interest groups than the merits of the arguments. We are quite happy to change our minds. We do change our minds on quite a few things but, on this one, the arguments still seem extremely strong.

The other thing is that we are quite happy to keep bowling up the evidence. We have been very public about it. You may say we have been successful, but we have also been very public about it. Everything we have said and done on it has been very transparent. We have had a whole organised army of people and heaps of consultants and people in the industry trying to destroy our argument, and the basic problem is that they cannot, because the problems caused by the legislation are extremely visible and transparent to everyone.

Senator COONEY—I think we have run out of time!

CHAIR—Senator Cooney, I appreciate that. Professor Fels, there are a number of questions which were canvassed with our committee yesterday that we have not an opportunity to reach particularly in relation to software and computer video games. The committee is meeting again in Sydney next Tuesday and we have a reporting date, as I think I indicated at the beginning of the hearing, of 23 May so we are slightly constrained by time—as ever, the Senate sets us a challenging program. We would appreciate the ACCC's assistance on any of those issues. And, also, as I think Senator McKiernan raised with you earlier, there is the matter of whether the ACCC had had a look at—correct me, Senator McKiernan, if I am wrong—the other submissions and particularly the price comparisons and statements made in those. I understand that I am giving you a very short time frame but it is a frame in which we work and I would appreciate your assistance. Other witnesses have so indicated that they had some interest in the evidence given by the ACCC this afternoon and I expect that they will be making further comments to the committee in that regard. Once we make those comments public they will be provided appropriately to you. On behalf of the committee, Professor Fels and your colleagues, thank you very much for your assistance this afternoon. I want to thank all of the witnesses who have given evidence to the committee today. In particular I thank my colleagues for facilitating this series of committee hearings during the Centenary of Federation meetings in Melbourne. In declaring this meeting of the Legal and Constitutional Legislation Committee closed, I note that we will reconvene at approximately 8.30 a.m. next Tuesday 15 May in Sydney.

Committee adjourned at 5.01 p.m.