



RESEARCH NOTE

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The Price of CDs: Parallel Imports

On 20 April 1995, the Government announced its decision to maintain the restriction on parallel imports of sound recordings. The practical effect of the decision is that the price of CDs in Australia will remain high particularly when compared to the United States. The Government has proposed that price movements in sound recordings will be monitored, and agreements finalised with industry to provide \$270 million as investment in Australian artists.

This decision of April 1995 reverses an earlier Cabinet decision (1992) which, if implemented, would have allowed parallel imports of CDs from mid-1994. Shortly after the Cabinet decision in 1992, the Government decided to revisit the issue and had deferred its review.

Copyright: Performers' Rights: The Concept of Parallel Imports

In terms of copyright, a sound recording contains several copyrights. There is copyright in the music and copyright in the lyrics, as well as the sound recording itself. The 'parallel import' restrictions are found in sections 37 and 38 (for musical and literary works) and section 102 and 103 (for sound recordings) of the *Copyright Act 1968*.

A singing artist may be both the author and performer of a musical work. The singer may assign his or her copyright in the musical composition to a record company under a contract. The performance of that piece of work may be closely identified with a particular singer. Because a performance or style is not in a 'material form' it is not strictly a copyright. It is a 'neighbouring right' to copyright. There is a reservation as to whether the plain words in our Constitution, which empower the Commonwealth to make laws with respect to copyright, extend to neighbouring rights. Australia is, however, a signatory to the Rome Convention of 1961 which deals with performers' rights. Thus the 'external affairs' power in the Constitution is also relevant. The *Copyright Act 1968* deals with performers' right as a limited independent right.

The importance of performers' rights arises in the unauthorised recording of live performances. In accordance with its obligations under GATT/TRIPS (Trade Related Aspects of Intellectual Property Rights), Australia re-

cently amended its *Copyright Act 1968* to extend performers' rights from 20 to 50 years from the date of the live performance. In doing so, Australia also closed a loophole in its *Copyright Act 1968* which allowed the sale of certain unauthorised live performances on CD and cassette.

The following is a simple illustration of the interaction of copyright law and parallel imports: XYZ Inc is a multi-national record company based in the USA. XYZ (Australia) Pty Ltd is a local subsidiary. XYZ Inc has a catalogue of 100 recording artists. XYZ Inc holds the copyright for the sound recordings issued in the name of those artists. XYZ (Australia) Pty Ltd assess the Australian market and decides that it will import and release recordings by the first 50 artists on the parent company's catalogue. Because XYZ (Australia) Pty Ltd has the legal right to assert a claim of copyright over the whole of the catalogue, no other importer can import the remainder of the catalogue, nor import cheaper copies of those already released, unless that importer has the permission ('licence') of XYZ (Australia) Pty Ltd.

It can be seen that XYZ (Australia) Pty Ltd has no real competitor in terms of the price it can charge for the sound recordings of its own artists. The only competition is the general market for CDs. In December 1990, the Prices Surveillance Authority (PSA) in its report *Inquiry Into The Prices of Sound Recordings* concluded that three main factors contributed to the comparatively high price of sound recordings in Australia. These factors were:

- price inelastic demand;
- the absence of domestic price competition; and
- the parallel import restrictions in the *Copyright Act 1968*.

The PSA argued for the removal of the parallel import restrictions. The main counter argument for retaining the restrictions is that it is a useful measure to combat the illegal importation of pirate copies. It is argued that combating piracy of sound recordings is consistent with Australia's obligations under international trade agreements. While this may be so, it is difficult to reconcile the separate issue of how concentration in the market benefits consumers in terms of more open competition. It is also argued by the industry that the higher price for CDs allows investment in Aus-

<i>Country</i>	<i>Retail Price in \$A</i>	
	<i>(1995)</i>	<i>(1989)</i>
Australia	\$30-31	\$25.67
New Zealand	\$35 av.	\$24.21
United Kingdom	\$29	\$23.77
United States	\$19-21 ¹	\$18.04

tralian artists. A counter-argument is that lower prices may stimulate a larger volume of sales and maintain profitability levels for the industry.

Similar issues arise in relation to the parallel importation of books. In 1991, however, the Government amended the *Copyright Act 1968* to modify the restriction on imported books.

The Structure of the Australian Industry

The Australian sound recording industry is comprised of 5 multinationals (EMI (Thorn-EMI), Sony Music, Polygram (N.V.Philips), Warners Music, Bertelsman Music Group (BMG)), and one major national (Festival Records - owned by News Ltd) which control 90% of the market. The remaining 10% is shared by 45 independents, including Mushroom Records.²

Comparative Prices of CDs

A comparison of the price of popular CDs in Australia with

overseas countries varies with currency fluctuations and over time.

The above table is *indicative* only (the more specific 1989 figures are taken from Table 6.1 of the PSA report, *supra*).

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1. The 1995 figures are a composite of a variety of sources including Ramsey (footnote 2), a retail outlet and informal comments of foreign nationals.
 2. Ramsey, A. 'Multinationals still enjoy record profits', *The Sydney Morning Herald*, 29 April 1995.