

29 August 2002

The Secretary
Trade Practices Act Review
C/- Department of Treasury
Langton Crescent
PARKES ACT 2600

BY FACSIMILE: 02 6263 3939 (no. of pages: 2)
BY EMAIL: TPAReview@treasury.gov.au

Dear Sir

Trade Practices Act Review

Roadshow Film Distributors Pty Ltd ("Roadshow") is pleased to make a submission to the Committee in relation to a particular aspect of the Trade Practices Act which potentially affects the way in which Roadshow carries out its business in Australia. Roadshow would like this submission to remain confidential.

Background to Roadshow

Roadshow is the exclusive theatrical distributor in Australia of feature films made by Warner Bros. In addition, Roadshow is the largest distributor of independent films (those not made by major Hollywood studios) and is the largest distributor of Australian made theatrical films.

Australian films distributed by Roadshow include *MURIEL'S WEDDING*, *PRISCILLA QUEEN OF THE DESERT*, *THE CASTLE*, *THE DISH* and *THE HARD WORD*. International films include blockbusters such as *THE MATRIX* films (made in Australia), *AUSTIN POWERS*, *HARRY POTTER* and *THE LORD OF THE RINGS*.

Roadshow is jointly owned by two publicly listed Australian companies, Village Roadshow Limited and Amalgamated Holdings Limited.

ROADSHOW FILM DISTRIBUTORS PTY LTD ABN 84 000 025 123

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AOL Time Warner Submission

Roadshow has seen the submission by AOL Time Warner to the Committee. Roadshow believes that it can supplement that submission from the perspective of an Australian distributor of intellectual property with a particular focus on the relationship between intellectual property and competition law as set out in the Trade Practices Act.

Roadshow, in its daily business activities, is affected by the uncertainties referred to in the AOL Time Warner submission. These uncertainties relate to the exercise of its rights as a copyright licensee in situations where the exercise of those rights has the effect, or the potential effect, of lessening competition in a market.

Clarification of TPA

Roadshow strongly supports a clarification of the types of behaviour which are likely to result in a breach of the Trade Practices Act. Roadshow supports the issue of guidelines by the ACCC in this area, or legislative change. In particular, Roadshow supports the position that market power does not arise because of the ownership of intellectual property rights per se and that intellectual property rights do not in themselves constitute a single market.

Roadshow is concerned that, in its particular case, it might be thought that holding the exclusive rights to a popular film may, of itself, constitute Roadshow having a substantial degree of market power, with the corresponding consequences if Roadshow exercises that power in a particular way.

Roadshow is of the view that when an intellectual property right is granted (such as to the exclusive rights to a film) the holder of that right (the distributor) should be permitted to act within the scope of that right being granted. This should be the case, regardless of the popularity of the film to which rights attach. When Parliament legislated for the exercise and granting of intellectual property rights, it was presumably aware that certain products attracting intellectual property rights would be more popular than others. Indeed, holders of intellectual property rights are afforded certain protection in order to encourage innovation and the development of new products and ideas, thus necessarily recognising that not all would be successful and that some would be very successful in the market place.

Roadshow is concerned that any move to interpret the Trade Practices Act in a way which restricts the copyright owner (and licensee's) rights to exploit appropriately that copyright, may lead to a situation where international copyright holders discriminate against Australia when considering whether and how to distribute their intellectual property products around the world. Any such action by international copyright holders is likely to adversely affect Roadshow's business and the businesses of Roadshow's customers.

Conclusion

In conclusion, Roadshow supports the submission of AOL Time Warner and its recommendation.

Roadshow is willing to provide additional information to the Committee in relation to this area if the Committee so desires. Please contact me if the Committee seeks further information.

Yours faithfully

Ian Sands
Chairman
Roadshow Film Distributors
