



1 July 2002

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

BY FACSIMILE: 02 6263 3939

Dear Sir

**TRADE PRACTICES ACT REVIEW
SUBMISSION BY AUSTRALIAN TOY ASSOCIATION**

The Australian Toy Association (ATA) wishes to make a submission to the Trade Practices Act Review Committee (TPA Review) in relation to the impact of the Trade Practices Act (TPA) on the businesses in Australia of a number of members of the ATA.

Australian Toy Association

The ATA is an independent industry body representing and servicing Australian industries specialising in products for kids & family leisure, learning and entertainment – a sector worth \$1.4billion at retail.

ATA members include manufacturers, distributors, importers, retailers, agents and licensors AND these account for the vast majority of total industry sales. ATA members are involved in a large variety of children's products ranging across toys, hobbies, nursery, clothing, confectionary, games (board, electronic & video), CDs, books, collectibles, car safety, furniture, sports, lifestyle & licensed products. Also while children's products are the initial focus, this often diversifies into the wider life style & licensed product ranges for adults.

AOL Time Warner Submission

The ATA has seen the submission to the Review by AOL Time Warner. The issues raised in that submission, in particular the focus on the relationship between intellectual property and competition law as set out in the Trade Practices Act, are of concern to the ATA and its members.

The central issue, as seen by the ATA, is the uncertainties for its members in their day-to-day business decisions relating to the exercise of their rights as a copyright licensee in situations where the exercise of those rights has the effect, or the potential effect, of being seen to lessen competition in the marketplace.

It is of value to recognise that the toy industry extends beyond traditional products such as dolls and toy cars. The industry is market (or 'fad') driven with high profile marketing and theme products linked to film and TV productions. Technology has delivered sophisticated toys and games. In fact parallels can be made to music with successful products being in popular demand.



Kids Day.

An initiative of the ATA.

Australian Toy Association Limited

ABN 92 002 682 493

Member of International Council of Toy Industries.

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The key consideration is that many products are covered by copyright. Australian companies and overseas affiliates need to secure copyright licenses to market the products in Australia.

In applying the ACCC interpretation to the business practices of copyright licensees, the suppliers of these products are likely to 'possess' a degree of market power for any popular product they sell. As a result, there is a high possibility that businesses in these industries, whether small or large, would be exposed to the risk that everyday business decisions - acceptable in other business sectors - could result in prosecution by the ACCC with the resulting significant legal costs and the possibility of the imposition of very substantial financial penalties and the disruption to business caused through such action.

For instance, any selection by members of the ATA between customers or adjustments to terms of trade in the wholesale supply of these products could attract the attention of the ACCC on the grounds that this could represent a misuse of market power.

The ATA is concerned that any move to interpret the TPA in a way which restricts the copyright owner (and licensee's) rights to appropriately exploit that copyright, may lead to a situation where international copyright holders may refuse to agree to Australian companies distributing their intellectual property products in Australia, effectively disengaging Australian business from global commercial opportunities.

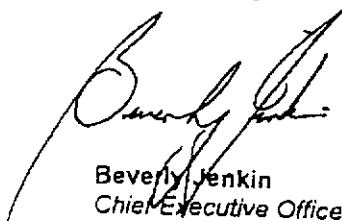
Clarification of TPA

The ATA strongly believes that clarification is needed of the types of behavior that are likely to result in a breach of the Trade Practices Act. It is suggested the most appropriate course of action to meet this need is for the Review Committee to propose suggested guidelines in this area, or if necessary, recommend legislative change.

Conclusion

The ATA, in conclusion, supports the submission of AOL Time Warner and its recommendation. If the Committee requires any further information, the ATA would be happy to assist.

Yours faithfully



Beverly Jenkin
Chief Executive Officer