



# Inquiry into IT Pricing

SUBMISSION TO THE INQUIRY FROM CHARLES GUTJAHR

JULY 2012

Dear members of the Committee

I wish to identify two recent software purchases which cost me more due to being in Australia. I would also like to suggest some actions which might reduce the disadvantages Australians have when purchasing software. This submission is about my personal experience and I have no involvement in any business listed here or their competitors.

## Summary

- Some software products are significantly more expensive when purchased from Australia, and it is easy to confirm this by comparing prices published on the internet.
- Some publishers are using licensing rules that appear to restrict the rights of purchasers and allow price discrimination against Australians.
- It appears that some publishers or distributors are putting pressure on retailers to restrict sales to Australia, or to charge extra for Australians.
- Action should be taken to strike out anti-competitive terms in contacts, licenses, terms & conditions, etc, which restrict our rights to purchase legitimate software overseas.
- Action should be taken to stop publishers and distributors from putting pressure on retailers to restrict sales from, or charge extra to, Australians.

## Examples of higher prices for Australian customers

The following are two pieces of software that I have recently purchased which cost me extra because I am located in Australia. They are both worth highlighting because each purchase illustrates a different problem.

### Adobe Photoshop Lightroom 4

Adobe Photoshop Lightroom is a software tool for managing and adjusting photographs. I use it for professional photography work.

In April 2012 I decided to upgrade to the most recent version, Lightroom 4. Adobe sells downloadable versions of their software directly over the internet, however they have different online stores for the USA and Australia. The price for Adobe Photoshop Lightroom 4 (Upgrade edition) in each store was:

- Australia: AU\$98.75<sup>1</sup>
- USA: AU\$76.64 (US\$79.00)<sup>2</sup>

---

<sup>1</sup> From <http://www.adobe.com/au/products/photoshop-lightroom.html>

<sup>2</sup> From <http://www.adobe.com/products/photoshop-lightroom.html>  
Australian dollar price calculated based on exchange rates at 7 April 2012

To the best of my knowledge there is no difference between the two products other than the price. Both are downloaded over the internet with no physical component. Neither price includes GST. However the price for Australians is 29% higher.

It is not possible for Australians to purchase the cheaper copy from the USA store. One reason is that the USA store requires a North American address, as illustrated by this screenshot of the store<sup>3</sup>:

## Checkout

The screenshot shows the checkout page for Adobe. On the left, under 'My cart', there is an item: Adobe Photoshop Lightroom 4 Upgrade, Mac/Win, English, Download. The quantity is 1 and the price is US \$79.00. Below this, a summary shows Subtotal US \$79.00, Shipping US \$0.00, Tax --, and Total US \$79.00. There is also a 'Help via phone' section with the number 1-800-585-0774. On the right, under 'Billing', there are input fields for First name, Last name, Company or Institution (optional), and Address. Below these are dropdown menus for City, State/Province, and Country. The Country dropdown is open, showing options: Select, Canada, Mexico, and United States (which is highlighted). There is also a Phone field.

Another reason is that the Software License Agreement that purchasers are required to accept contains the following statements<sup>4</sup>:

*2.1.1 License Grant. Subject to Customer's continuous compliance with this Agreement and payment of the applicable license fees, Adobe grants Customer a non-exclusive and limited license to install and use the Software (a) in the territory or region where Customer obtains the Software from Adobe or Adobe's authorized reseller or as otherwise stated in the Documentation ("Territory")*

and

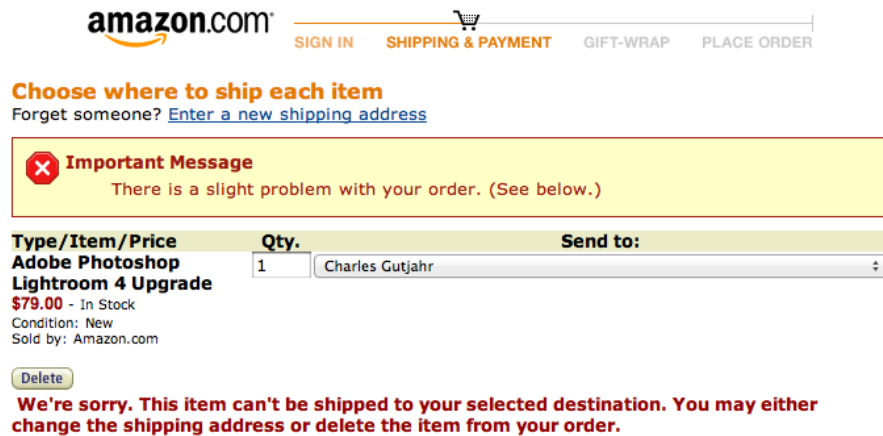
*4.9 Territory. Customer shall only use the Software and access the Adobe Online Services in the Territory and in a manner consistent with the activation policy described at <http://www.adobe.com/go/activation>. Adobe may terminate the license granted herein or suspend the Membership or access to the Adobe Online Services if Adobe determines that Customer is using the Software or Adobe Online Services outside the Territory.*

This appears to disallow Australians from using software that they have purchased in the United States, though the word 'territory' is not clearly defined and I do not feel I have sufficient legal knowledge to be sure.

<sup>3</sup> From <https://store1.adobe.com/cart/checkout.html>

<sup>4</sup> From [http://www.adobe.com/products/eulas/pdfs/gen\\_wvcombined-en\\_us-20120119\\_1426.pdf](http://www.adobe.com/products/eulas/pdfs/gen_wvcombined-en_us-20120119_1426.pdf)

I found a number of online retailers in the USA selling Lightroom 4 for the same price of US\$79. However they did not allow Lightroom 4 to be downloaded to or shipped to Australia, thus preventing Australians from purchasing at the cheaper price. For example, when I tried to purchase from Amazon.com I was shown the following<sup>5</sup>:

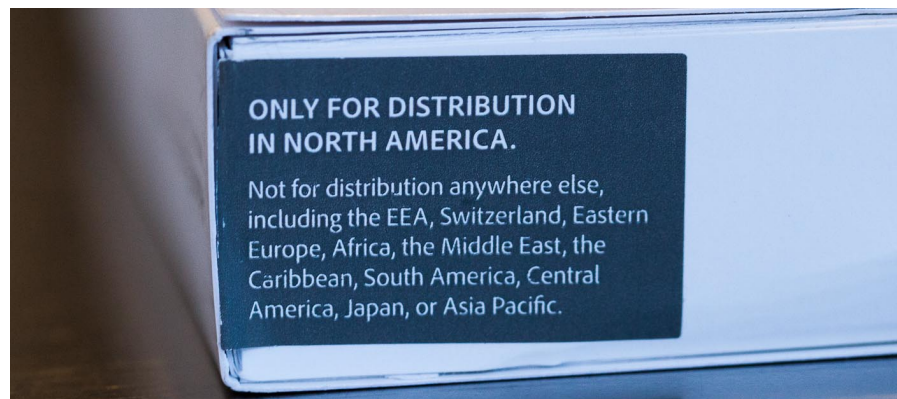


The screenshot shows the Amazon.com checkout process. At the top, the Amazon logo is on the left, and navigation links for 'SIGN IN', 'SHIPPING & PAYMENT', 'GIFT-WRAP', and 'PLACE ORDER' are on the right. Below the navigation is a section titled 'Choose where to ship each item' with a link to 'Enter a new shipping address'. A yellow box with a red 'X' icon contains an 'Important Message' stating: 'There is a slight problem with your order. (See below.)'. Below this is a table with columns for 'Type/Item/Price', 'Qty.', and 'Send to:'. The table contains one row for 'Adobe Photoshop Lightroom 4 Upgrade' with a quantity of 1 and a shipping address of 'Charles Gutjahr'. Below the table is a 'Delete' button and a red error message: 'We're sorry. This item can't be shipped to your selected destination. You may either change the shipping address or delete the item from your order.'

Type/Item/Price	Qty.	Send to:
Adobe Photoshop Lightroom 4 Upgrade \$79.00 - In Stock Condition: New Sold by: Amazon.com	1	Charles Gutjahr

Ultimately I discovered a way to purchase a physical copy from a US retailer, though I surmise that the technique is not permitted by Adobe so I would prefer not to disclose exactly how I did so in this submission. I can state, though, that the cost was more than the minimum \$76.64 US price but less than the Australian online price of \$98.75.

The box that I received from the USA has the following sticker on it:



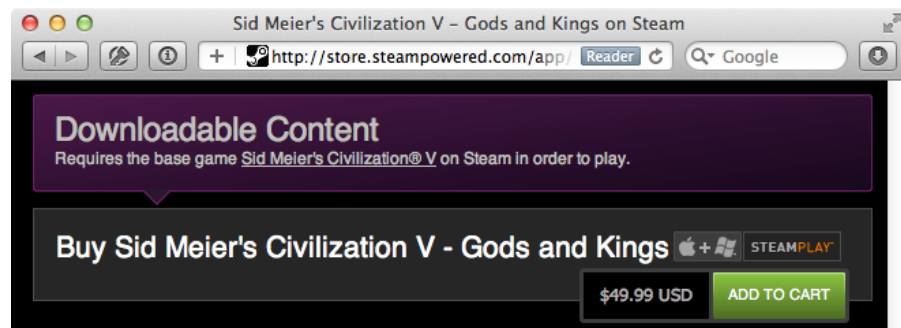
The sticker suggests that Adobe is attempting to restrict where the software is sold, and it seems a likely reason why US retailers would not allow me to purchase at the lower US price.

<sup>5</sup> From <https://www.amazon.com/Adobe-Photoshop-Lightroom-4-Upgrade/dp/B007BG9X3Q>

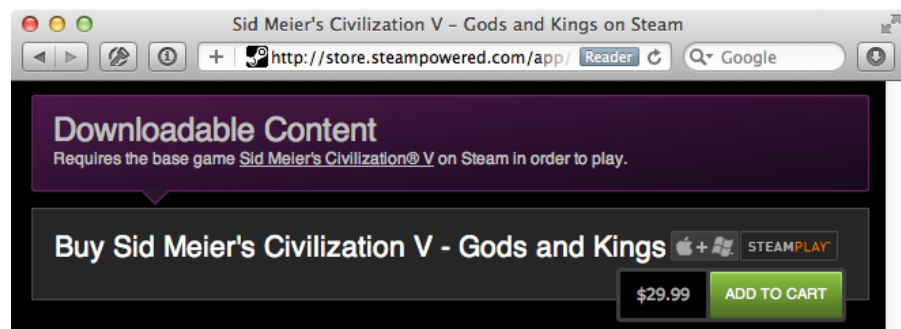
## Civilization V – Gods and Kings

Gods and Kings is a recently-released ‘expansion pack’ for Civilization V, a computer game for Windows and Mac PCs. It builds upon the original Civilization V game that was released in 2010, which means that you must purchase both the original Civilization V game and the Gods and Kings expansion to play Gods and Kings.

I purchased the original Civilization V game from a popular US-based online store and gaming service called Steam<sup>6</sup>. Therefore when I purchased the Gods and Kings expansion pack I did so from Steam too, because the expansion requires that I own the original on Steam. This screenshot from the Steam website shows what I purchased<sup>7</sup>:



The US\$49.95 price shown above is specific to Australia. Although the price is charged in US dollars, it is much higher than the US\$29.95 price in the US store as shown below<sup>8</sup>:



Similar to the example of Adobe Photoshop Lightroom 4 above, this is downloadable software that is purchased over the internet with no physical component. There is no GST included in either the US or the Australian price. The same website serves both USA and Australia. There does not seem to be any difference in the game or the way it is purchased that would justify a higher price for Australia.

<sup>6</sup> See <http://store.steampowered.com/>

<sup>7</sup> From <http://store.steampowered.com/app/16870/?cc=au>

<sup>8</sup> From <http://store.steampowered.com/app/16870/?cc=us>

The price on the Steam store for Gods and Kings in major markets is as follows:

- Australia: AU\$48.78 (US\$49.95)<sup>9</sup>
- USA: AU\$29.25 (US\$29.95)<sup>10</sup>
- Europe: AU\$37.03 (€29.95)<sup>11</sup>
- UK: AU\$30.61 (£19.95)<sup>12</sup>

It is notable that Australia pays 67% more than the US price, and it also notable that other major markets like Europe and the UK do not pay as large a premium as we do.

Not all games sold by Steam have higher prices for Australians. The company that owns Steam — Valve Corporation — is also a game developer and they sell their games at the same price. For example Portal 2 costs US\$19.95 in both USA<sup>13</sup> and Australia<sup>14</sup>.

This suggests that it is not the retailer — Steam — who is setting the higher prices, but rather it is the developer, publisher or distributor who is doing it. I don't have any way to confirm that. However I note that the publisher of Civilization V Gods and Kings does have an Australian subsidiary<sup>15</sup> which may be able to answer that question for you.

---

<sup>9</sup> From <http://store.steampowered.com/app/16870/?cc=au>  
Australian dollar price calculated based on exchange rates at 1 July 2012

<sup>10</sup> From <http://store.steampowered.com/app/16870/?cc=us>

<sup>11</sup> From <http://store.steampowered.com/app/16870/?cc=de>

<sup>12</sup> From <http://store.steampowered.com/app/16870/?cc=uk>

<sup>13</sup> From <http://store.steampowered.com/app/620/?cc=us>

<sup>14</sup> From <http://store.steampowered.com/app/620/?cc=au>

<sup>15</sup> Take 2 Interactive Software Pty Ltd, ABN 34 082 795 337

## Potential actions

This inquiry has been asked to determine what actions might be taken to help address any differences that operate to the disadvantage to Australian consumers. There is obvious difficulty in taking action when purchases are done via US retailers and US publishers, as was the case in my two examples. However there are two actions that might have helped in my situation:

**First, license agreements should not be permitted to restrict our ability to purchase legitimate copies of software from overseas.** After I purchased Adobe Photoshop Lightroom 4, I was required to accept a license agreement which appears to restrict me from using the software anywhere other than where I purchased it. It is possible that I do not have a valid license to use Lightroom 4 simply because I purchased the software in the USA or, if I do have a license, it is possible that Adobe may revoke that license from me. I purchased the software in the USA just like any US resident is legally permitted to do so, and I think that it is wrong to stop Australians from doing the same.

Such terms should be struck out from license agreements. The terms are anti-competitive. Australians should be able to purchase from overseas retailers with confidence that they are complying with the law and that publishers cannot take legal action against them. There are already examples of legislation which strike out unfair provisions of software licenses. For example Section 47H of the Copyright Act 1968 (Cth) states that certain provisions of license agreements for computer programs have no effect when they conflict with the Act. I would like to see similar legislation clarifying that license agreements cannot restrict where Australians purchase or use software.

**Second, Australian publishers and distributors should not be permitted to prevent Australians from purchasing legitimate copies of software from overseas.** I do not object to local subsidiaries setting different wholesale or retail prices in Australia, because I understand that costs can be different in Australia. However I object to technological and legal measures being put in place to prevent us from purchasing overseas in order to get the best price.

I wish to make it clear that I have no evidence that any particular publisher or distributor is behind the restrictions Australian customers face. However it is fair to say that it is a common belief in the tech industry that certain publishers and distributors are responsible for such measures. In both my examples above there is an Australian subsidiary who has the incentive to ask the parent company to place restrictions on Australians, and therefore I think that they should be made to explain whether that is the case.

Sincerely,

Charles Gutjahr