



6 July 2015

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Parliament House
CANBERRA
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JOINT COMMITTEE ON TRADE & INVESTMENT

Inquiry into Benefitting from Free Trade Agreements
SUBMISSION BY APRA AMCOS.

The Australasian Performing Right Association Limited

Australasian Performing Right Association (APRA) is a non-profit organisation, established in 1926, which represents over 85,000 Australasian composers, songwriters and music publishers. It administers the Performing Rights, including public performance, broadcast and communication to the public, in the music of its members and affiliated societies in Australia, New Zealand and much of the Pacific. It represents its members' interests around the world through reciprocal representation agreements.

Australasian Mechanical Copyright Owners Society

Australasian Mechanical Copyright Owners Society (AMCOS) is a non-profit company representing over 15,000 music publishers and composers in Australasia and administers certain reproduction rights in Australasia on behalf of its members and affiliated societies around the world. APRA administers the operations of AMCOS, under contract.

Our Submission

APRA AMCOS has made submissions on the major bi-lateral and regional trade agreements that Australia has entered into recently. In particular, the provisions and chapters of Intellectual Property and specifically copyright issues are of direct economic interest to our members in promoting the standards of protection, mechanisms for enforcement and harmonisation and transparency in administration of copyright. These factors are currently more critical in the digital era, with significant current changes in copyright delivery mechanisms and attendant structural changes in the copyright industries.

In the context of trade agreements generally, APRA AMCOS is also a member of the Music Council of Australia and we endorse their position in supporting the inclusion of cultural exceptions in such agreements, to reflect our commitments under the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions. APRA AMCOS also partners with the Australian Record Industry Association (ARIA) in Music Rights Australia, which seeks to protect the interests of creators in the music industry through research, anti-piracy initiatives, education and lobbying.

Copyright industries are a significant contributor to the Australian economy. The recent PWC report commissioned by the Australian Copyright Council "The Economic Contribution of Australian Copyright Industries 2002-2014" shows that copyright industries employ more



than 1 million Australians, generate the equivalent of 7.1% of GDP and \$4.8 billion in exports, around 1.8% of total exports¹. Australia enjoys a regulatory environment that facilitates legitimate use of copyright materials, where content is made available and rightsowners are fairly compensated. Such a regulatory environment fosters investment in local creation and provides export opportunities for our creative industries,

Multi-lateral agreements, such as the Berne Convention for the Protection of Literary and Artistic Works (1886) administered by the World Intellectual Property Organisation WIPO and the Trade Related Aspects of Intellectual Property (TRIPs) administered by the World Trade Organisation (WTO), set out the framework for international standards of copyright protection and enforcement. We believe that bi-lateral and regional trade agreements play an important role in supplementing these treaties through promoting development and harmonisation in copyright laws and their enforcement, particularly in our Asia Pacific region. These FTAs allow Australia to raise concerns over possible barriers to trade in countries with developing copyright law and infrastructure, on a regional or bi-lateral basis. For example, in some recent trade agreements, including the China Australia FTA, there is the following provision, which is not a substantive obligation under multilateral agreements –

“ARTICLE 11.19: COLLECTIVE MANAGEMENT OF COPYRIGHT

Each Party shall foster the establishment of appropriate bodies for the collective management of copyright and shall encourage such bodies to operate in a manner that is efficient, publicly transparent and accountable to their members.”

China has relatively recently commenced regulating and enforcing copyright law, over the last few decades. Collective management organisations provide an important platform for rights administration and national treatment in copyright licensing. Given the current third revision of the Copyright Law of the Peoples' Republic of China, provisions such as these in FTAs may provide guidance in ensuring transparency and efficiency in the development of copyright administration. ASEAN countries are currently looking at methods for supporting and harmonising copyright regulation. The Australia New Zealand ASEAN agreement (AANZFTA) may become an important instrument in ensuring such measures are implemented in a way to avoid trade distortion or diversion in the copyright industries.

As APRA AMCOS represents practically all Australasian rights owners in musical works and does so for the world, we rely on local legislation, enforcement measures and copyright administration infrastructure. Export revenues for APRA from copyright revenues from the exploitation of performing rights, broadcast and on-line have been growing significantly over the last few years – in this last financial year ending 30 June, APRA's overseas revenue will surpass AUD\$33 million. This represents mostly the composer share of performing right income; the publisher share would be a similar amount but is collected initially by sub-publishers in the relevant territory and on-remitted to the original publisher. This amount also does not include revenues from reproduction of musical works from the use of our

¹http://www.copyright.org.au/acc_prod/ACC/News_items/Copyright_Industries_continue_to_be_a_significant_contributor_to_the_Australian_Economy.aspx



repertoire, ie mechanical and synchronization licence revenue - these would also be significant.

While Australia is a net importing country overall with respect to most copyright materials, music copyright societies such as APRA AMCOS play an important role in achieving improvements in the balance of payments and terms of trade for music copyright royalties through local industry support and export initiatives. By way of example, APRA AMCOS supports and hosts Sounds Australia,² which is Australia's national music export initiative, established to deliver a cohesive and unified approach to improving our terms of trade in music. Sounds Australia is supported through a financial partnership between both Federal and State governments, along with peak music industry bodies. APRA AMCOS and Sounds Australia have been active in promoting Australian music in our important developed markets, as well as organising showcases, tours and co-writing opportunities³ in Asian countries. This also provides an important avenue for soft diplomacy, for example touring Australian bands in Indian music festivals to share contemporary youth culture to indirectly assist the promotion of the overseas student market in Australia.

Over the last few years, Australian music and songwriters have enjoyed increasing success internationally, with an unprecedented level of success in the US Billboard charts. Billboard magazine recently ran a feature of the international success of Australian electronic and dance music and another on the international reach of Hillsong music. This is reflected in APRA AMCOS' significant growth in export revenues. Such growth in future will depend on on-line services and revenue, requiring careful development of copyright regulation in maintaining the copyright balance.

Realising the benefits of success is through the export revenue generated by effective copyright laws and enforcement in these territories, as well as rights administration infrastructure. To those ends, regional and bi-lateral trade agreements refer to and supplement existing minimum standards as well as obligations to assist developing nations through capacity building.

APRA is the oldest and most developed collecting society for musical works in the region and therefore we assist in complying with Australia's capacity building obligations through the establishment, training and technology transfer to music collecting societies in the region. We regularly advise, assist and host training sessions for societies in the region, including Korea, China, Vietnam, Thailand, Philippines, Malaysia and Indonesia. We play a leading role in the Asia Pacific Committee of the International Confederation of Authors and Composers Societies (CISAC) as well as working with the Copyright Development Division of the World Intellectual Property Organisation (WIPO) to support regional harmonisation and development of copyright laws and administration.

This is particularly important in the digital era, in cooperating and elaborating regional approaches and regimes for cross border licensing and enforcement. The efficiencies and level of development of copyright administration in Australia provides us with a competitive advantage in the region. The growing young middle class in our significant trading partners

² <http://soundsaustralia.com.au/>

³ <http://apraamcos.com.au/songhubs/>



in the region such as India and China, with stated preferences for international repertoire in music and use of evolving digital music services⁴, will provide Australia with potential new markets for our content and opportunities for service provision in administration. Global digital service providers often roll out new services on a regional basis and APRA AMCOS has partnered with rightsowners to develop and Pan Asian Licensing initiative to offer multi-territory digital licenses for music services. Licensees in certain Asian territories include the Chinese company Tencent – the fourth largest DSP in the world. APRA AMCOS has made significant investments in its technology to be able to process 'big data' from digital services, as well as modifying our systems to accommodate Asian character scripts and capturing multi-territory ownership information.

In the area of intellectual property, we are not aware of any increased barriers to competition flowing from IP chapters in regional and bi-lateral trade agreements, on the contrary, they provide mechanisms for improving copyright regimes in developing countries, encouraging national treatment and facilitating access to copyright works on just terms. Regional and bi-lateral agreements also provide a forum to raise non-compliant measures and regulations in domestic copyright laws in direct negotiation. These may be regarded as barriers to effective administration even though it is often difficult to quantify the impairment in trade terms, in many cases. As Australia is now playing a leading role in providing digital copyright licensing services to the region, Australia's bi-lateral and regional trade agreements may become very important in raising issues of any regulatory barriers to implementing such services.

Thank you for this opportunity to express our views and experiences with Free Trade Agreements.

Scot Morris
Director International

⁴ CISAC in its Sustaining Creativity Report for 2014, identified that the Asia Pacific contribution to growth in performance/communication rights was by far the most significant – 46.3%. www.cisac.org