



Submission No: ...214.....

25 May, 2004

BY: .....

Joint Standing Committee on Treaties  
Parliament House  
Canberra ACT 2600

Dear Sir/ Madam

#### PROPOSED AUSTRALIA – UNITED STATES FREE TRADE AGREEMENT

Viscopy considers that the Australian Copyright Council (ACC) has ably represented our position on the Free Trade Agreement (FTA) to date. However it has come to our attention that some of the proposed copyright provisions have generated debate, and in this light we lend our support to the submissions of the ACC and our sister collecting societies.

#### **Viscopy Background**

1. Viscopy is a copyright collecting society for the visual arts in Australia. We distribute royalties to 4500 members, including visual artists, cartoonists, illustrators, photographers, designers, graphic artists, sculptors, craftspeople and architects. Over 50% of members are indigenous artists.
2. Membership is free, but Viscopy can only distribute income to its members.
3. Royalty income consists of:
  - a) CAL publishing distributions to our members from educational and Government use (secondary rights);
  - b) Screenrights distributions to our members from broadcasting and film (secondary rights);
  - c) Voluntary blanket licensing arrangements with publishers, commercial galleries, public galleries and auction houses that cover digital reproduction;
  - d) Voluntary reproduction arrangements for commercial galleries, public galleries and auction houses covering reproductions made in the service of the art industry; and
  - e) the commercial business use of members works.

#### **Copyright Provisions**

4. Viscopy supports the FTA provisions in relation to copyright, in particular the extension of the copyright term. We note the commitment of the Attorney Generals Department to introduce these provisions.

5. The extension of copyright term will bring Australia in line with the standard in the US, EU and many other countries globally. This will benefit:
  - a) Professional copyright creators of all art forms and cultures in Australia, who have every right to expect their work will result in income for their estates. The benefits of a standard term will also be felt in ease of negotiation for global contracts with living copyright creators;
  - b) Our cultural industries, including copyright owners. These companies and individuals contribute to our national economy, and compete on a global scale against competitors from the US, EU and many other countries who already enjoy the longer copyright term; and
  - c) Members of collecting societies. Standardised copyright term arrangements will reduce the costs associated with processing royalties, thus increasing the proportion of royalties made available to the member.
6. While Viscopy is aware of the cost arguments made by educational and public institutions, who no doubt wish to minimize their future licence fees, Viscopy refers the committee to the submission made by Copyright Agency Limited. The independent research referred to on pp 2 and 3 concerns the negligible economic impact of copyright term extension.
7. The case of professional photographers is of particular concern to us, as their work is discriminated against under the current provisions of the Copyright Act. Currently photography does not enjoy the same term of copyright as that of other visual artists. We therefore support the more equitable approach contained in the FTA.
8. Viscopy supports the requirement that Australia accede to the WIPO Copyright Treaty and Performance and Phonograms treaty.

### **Enforcement**

9. Viscopy supports the requirement that Australia provide stronger measures to combat piracy and infringement.

### **Internet Service Providers**

10. Viscopy supports the introduction of procedures for notice and takedown of infringing copyright material by Internet Service Providers (ISPs). This will result in a greater protection of members works.

11. Regarding the industry code of conduct mentioned by the Australian Multimedia Industry Association (AMIA), this code of conduct did not develop from consultation with copyright owners or creators, and therefore does not represent an industry-wide perspective. A legislative approach following consultation with all parties could prove more effective.
12. The legal caching currently undertaken by Australian users is of concern to Viscopy – the lack of discrimination between the type of information that is cached is key.
13. Of course our ISP providers need to cache technical information and the duplication of technical service information, presuming prior contracts or permission has been obtained. But Viscopy is concerned regarding the future potential of caching to deny our members income from reproduction royalties that would otherwise have been generated by the appropriate digital licence.

#### **E- Commerce chapter**

14. Viscopy notes the increased vulnerability of our visual artist members in a digital climate. Once a work has been digitised then it is regarded as “content” by the FTA rather than a reproduction of the initial work, and it can be copied a countless number of times. Viscopy has already invested considerable energy into developing and implementing digital licenses for the royalty benefit of our members. These licences are active and current.
15. Viscopy has noticed, like our international counterparts, the trend that photocopying royalty income is decreasing as digital use rises. We have become involved in OLA, the joint project between all international visual arts collecting societies based in Brussels, that will apply a single tariff to any international use of a member’s image, and be accessible via portals in each visual arts collecting society’s website. We have 42 international affiliates, whose tariff system is similar.
16. We are anxious that the FTA does not interfere with any established international projects and protocols in this area, undertaken to preserve visual copyright in the new internet and digital circumstances.
17. Viscopy also supports the work Copyright Agency Limited has done in this arena with DOI.

#### **Different Systems**

The CEO has spent a number of years working in the United States and is concerned that a number of concepts that underlie the American legal system and market are entering our discourse over the Free Trade Agreement, without being relevant to our own copyright system.

18. One would be that Crown copyright in the United States is in the public domain. This has encouraged a proliferation of free access licenses to this public domain information, based on software models such as Creative Commons and various free for education licenses. It is the experience of this writer that such licenses are rarely enforceable, even in the US.
19. It is rare in America that such licenses would yield a positive result for a professional copyright creator or owner. Both groups are dependent upon income from their work to survive. Such licenses do not offer creators or owners enough protection over their works and subsequent uses. In Australia, where there is no body of Crown rights in the public domain, there is likely to be pressure on copyright creators to assign their rights for free. This has the potential to reduce income for our members.
20. Collecting society arrangements occur for the visual arts in 43 countries, but not the United States, where there is no current reprographic right that covers the visual arts. However, US visual artists are currently lobbying for these rights, and the resale royalty through their peak bodies. We are frequently in touch over these matters.
21. America is a very litigious society. There is a principle that the rough edges of legislation will be dealt with in litigation. In the area of copyright in Australia, few copyright creators are in the financial position to take a case to court.
22. The broader US concept of "fair use" is very different to the Australian concept of "fair dealing". To suddenly use the US concept, as has been proposed by some user groups interested in free access to works of Australian copyright, would have many additional implications for Australian law.
23. None of these factors are dealt with in a similar manner by the two countries, and Viscopy urges the committee to be mindful of our differences as well as our need for similar copyrights that can be legally enforced.
24. Copyright creator professionals who work in the US are protected more than their equivalents in Australia, for instance by the higher test of originality in their legislation, and stronger copyright provisions such as those in the FTA. They are generally paid much higher rates, and also more generously in terms of compensation for rights purchase by copyright owners. The average income of a visual artist in Australia is \$10,000 per annum.

**Cultural Content**

25. Like the Australian Copyright Council, collecting societies, media and arts organisations, Viscopy is concerned that the Australian Government's capacity to support culture is preserved under the FTA, including the capacity to alter future policy and cultural quotas. These are matters of domestic cultural policy, rather than international trade.

Yours sincerely

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CEO  
Viscopy