

13 April 2004

The Secretary
Joint Standing Committee on Treaties
Email: jsct@aph.gov.au

Dear Sir/Madam:

On behalf of the University of the Sunshine Coast, I welcome the opportunity to make a submission to the Joint Standing Committee on Treaties in respect of the Australian – United States (US) Free Trade Agreement. This submission expresses our concern with the copyright changes expressed in the FTA and the potential negative effects on Australia's education sector. It addresses Chapter 17: Intellectual Property Rights.

Along with most other universities and organisations such as the Australian Libraries' Copyright Committee and the Australian Digital Alliance, we believe that Australia's intellectual property laws must strike a balance between providing appropriate incentives for creativity, and reasonable and equitable access to knowledge. We are concerned about the impact of the differences between the 'fair use' provisions in the US law and the 'fair dealing' provisions in Australian law; the extension of the term of copyright; and the increased Internet Service Providers (ISP) liabilities for acts of copyright infringement.

If the provisions of the FTA in Chapter 17 are to be enacted in Australia, the result will be to destroy the current balance between the interests of copyright owners and users in favour of the owners. This will have disadvantageous effects on the Australian education industry. It is our submission that some balance can be restored by amending the fair dealing provisions in Australian law to accord more closely with the US model. Specifically we seek the extension of fair dealing to the use of protected works for educational purposes, limited only to the extent that applies in the US.

Under the educational licence provisions in the current law, the Australian education sector pays up to \$100 million per annum to the Copyright Agency Limited (CAL) as a levy for the use of copyrighted materials in teaching. US educational institutions pay no such impost. CAL does not disclose in detail how it distributes this income but it is reasonable to assume that most of it is remitted to overseas publishers, many in the US. For Australian universities the effect is that we will be paying levies to the US and other publishers when our counterparts in the US are not required to do so. This appears to be entirely contrary to the intention of the FTA. Australian universities competing with their US counterparts in the educational services market should not be so disadvantaged.

The effect of the extension of the copyright term from death plus 50 years to death plus 70 years will also increase costs imposed by the copyright collectives on Australian universities. CAL will argue to increase costs since they will have to pay copyright owners for a further 20 years. We are concerned that if the US continues to extend the copyright term, reacting to economic pressure exerted by copyright

owning corporations, this will severely limit material coming into the public domain. This will further upset the balance between rewarding the creativity and invention of copyright creators, and the public good of advancing society through the spread of knowledge and innovation.

The University of the Sunshine Coast is also concerned about the issues relating to ISP liability and the additional compliance burden that will be placed on ISPs. The US *Digital Millennium Copyright Act* is heavily influenced by the music and motion picture industries who have been very aggressive in the way that they have pursued ISPs, both within the US and in Australia. We are concerned that the balance for copyright owners and users as expressed in the Australian *Copyright Amendment (Digital Agenda) Act 2000* will be lost.

The University of the Sunshine Coast requests that these significant differences in legislation are taken into account before making any changes to the Australian *Copyright Act* as a result of the FTA. It is essential to maintain the balance between public and private interests in copyright, and to ensure that Australian education is treated no less favourably than education in the US.

Yours faithfully,

Professor Paul Thomas
Vice-Chancellor