



AUSTRALIAN COPYRIGHT COUNCIL

**Submission to the Joint Standing Committee on Treaties in relation to
the Anti-Counterfeiting Trade Agreement**

February 2012

ABOUT THE COPYRIGHT COUNCIL

The Australian Copyright Council (Copyright Council) is an independent, non-profit organisation partly funded by the Australia Council for the Arts. We support a creative Australia by providing information and legal advice on copyright.

The 24 organisations affiliated to the Copyright Council (a full list is attached at Appendix 1) include:

- the peak bodies for professional artists and content creators working in Australia's creative industries (e.g. the Australian Writers Guild, the Screen Producers Association of Australia, the Australian Society of Authors and the Media Entertainment and Arts Alliance); and
- Australia's major copyright collecting societies (e.g. APRA-AMCOS, Copyright Agency, Screenrights, PPCA, Viscopy).

The Copyright Council's website hosts hundreds of user-friendly information sheets and FAQs about copyright. Our other services include:

- an annual, national seminar program on Australian copyright law for copyright creators and users
- free legal advice for professional artists and creators, educational institutions and libraries
- latest online news and commentary on copyright-related issues
- online bookstore offering practical, user-friendly guides for copyright creators and users

The Copyright Council is grateful to the Committee for the opportunity to make a submission on Australia's accession to the Anti-Counterfeiting Trade Agreement (ACTA).

The Copyright Council is supportive of ACTA. Our support is based on the following considerations:

Transparency

The Copyright Council notes that ACTA was developed over a significant period of time, with discussions beginning as early as 2005 and has involved significant consultation. Furthermore, a commitment to transparency is included in the treaty itself, with article 30 of ACTA promoting transparency in the administration of intellectual property enforcement.

Enforcement of intellectual property is a global problem requiring a global solution

Infringement of intellectual property rights is a global issue, requiring international cooperation. The World Intellectual Property Organisation does not have an enforcement role and there has been a lack of progress in the World Trade Organisation in recent years. Against that background, the Copyright Council believes that ACTA has a significant role to play in bringing about a multilateral approach to intellectual property enforcement. In the Copyright Council's submission ACTA will enhance the ability of Australian creators and intellectual property owners to enforce their intellectual property rights by promoting international standards for intellectual property enforcement. This is an important initiative.

Cooperation

The Copyright Council notes that an important aspect of ACTA is its promotion of cooperation, information sharing and capacity building (see articles 33,34,35). In our submission, building links with our trading partners in this way is a positive and important step in tackling intellectual property enforcement issues.

Individual Freedom

Much has been made of the potential of ACTA to impact on individual freedoms. The Copyright Council does not equate an international framework for intellectual property enforcement with a diminution in individual freedoms. Indeed, we note that article 4 of ACTA specifically preserves the right of privacy, while article 6.3 requires proportionality between the seriousness of the infringement, the rights of third parties and the applicable remedies.

Flexibility

The Copyright Council observes that article 2 of ACTA gives parties a great deal of flexibility in their implementation of the treaty. This is reflected in the substantive provisions of ACTA which afford parties a high level of discretion in their domestic implementation of ACTA obligations. The Copyright Council believes that this lack of prescription will encourage broad membership, thus furthering the objective of

establishing an international framework for intellectual property enforcement. In our submission, it is important that Australia be part of this framework.

Australia's existing intellectual property enforcement regime

Australia has a strong intellectual property enforcement regime. The law in relation to copyright enforcement was comprehensively amended in the *Copyright Amendment Act 2006* in order to meet obligations under the Australia-United States Free Trade Agreement, bring the criminal offence provisions into line with the *Criminal Code Act 1995* and to meet the concerns of domestic stakeholders. In the Copyright Council's submission, these amendments have enhanced the ability of copyright owners to pursue infringements and have not led to an incursion into the rights and freedoms of consumers and ordinary citizens.

The Copyright Council notes that a Bill is currently before Parliament which will bring the enforcement regime for trade marks more into line with that for copyright and will close loopholes that exist in the border protection regime (*Intellectual Property Laws Amendment (Raising the Bar) Bill 2011*).

Given Australia's existing intellectual property enforcement regime, membership of ACTA will not require any further amendment of our existing regime. In the Copyright Council's submission, this is a powerful reason in favour of Australia's membership of ACTA. In our submission the JSCOT process is not the vehicle to debate the appropriateness of Australia's existing intellectual property enforcement laws. Any such debate is better suited to a statutory review of the relevant provisions.

In conclusion, the Copyright Council supports ACTA as an important initiative in harmonising international intellectual property enforcement and thereby promoting trade in the intellectual property of Australian creators and access by Australian consumers to the intellectual property of our trading partners.

The Copyright Council would be happy to respond to any questions the Committee may have.

Fiona Phillips
Acting Chief Executive
Australian Copyright Council
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Appendix 1: **Australian Copyright Council Affiliates**

The Copyright Council's views on issues of policy and law are independent, however we seek comment from the 24 organisations affiliated to the Council when developing policy positions and making submissions to government. These affiliates are:

Aboriginal Artist Agency
Ausdance
Australian Commercial & Media Photographers
Australian Directors Guild
Australian Institute of Architects
Australian Institute of Professional Photography
Australian Music Centre
Australasian Music Publishers Association
Australian Publishers Association
APRA / AMCOS
Australian Recording Industry Association
Australian Screen Directors Authorship Collecting Society
The Australian Society of Authors Ltd
Australian Writer's Guild
Christian Copyright Licensing International
Copyright Agency
Media Entertainment & Arts Alliance
Musicians Union of Australia
National Association For Visual Arts Ltd
National Tertiary Education Industry Union
Phonographic Performance Company of Australia
Screen Producers Association of Australia
Screenrights
Viscopy