

Submission No. 10

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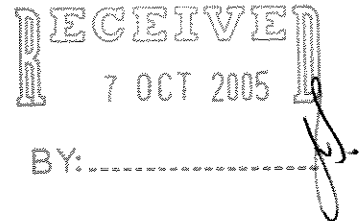
INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE®



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October 6, 2005

Secretary
Standing Committee on Legal and Constitutional Affairs
House of Representatives
Parliament House,
Canberra ACT 2600
AUSTRALIA



Re: Inquiry into technological protection measures (TPM) exceptions

Dear Madam or Sir:

The International Intellectual Property Alliance (IIPA) appreciates this opportunity to participate in the inquiry of the House Standing Committee on Legal and Constitutional Affairs into exceptions to the protection accorded technological protection measures (TPMs).

I. About IIPA and this submission

IIPA is a coalition of seven trade associations representing the U.S. copyright-based industries – including the business and entertainment software, audio-visual, sound recording, music publishing and book publishing industries – in bilateral and multilateral efforts to improve international protection of copyrighted works. (A list and summary description of our member associations appears at the end of this submission.) Both directly and through our member associations, IIPA has a long history of involvement in the development of copyright law and enforcement policy in Australia, including testimony before this committee when it was reviewing the Digital Agenda Act.

In this submission, IIPA offers its views on the general approach the committee should take to the task before it. Our views are based in large part on the extensive experience of IIPA members with the two triennial rulemaking proceedings that have been held in the United States under the Digital Millennium Copyright Act (DMCA), which closely parallel the subject matter of this proceeding.¹ While of course there are important factual differences between the situation in the US and in Australia with respect to the issues under inquiry, nonetheless we believe that the experience of the US Copyright Office (USCO) in the US proceeding is highly instructive for this committee, both in the approach taken and in the conclusions reached.

¹ See 17 USC § 1201(a)(1)(B)-(D). For information on the rulemaking proceedings see <http://www.copyright.gov/1201/index.html>.

The first rulemaking proceeding in the US resulted in the recognition of two time-limited exceptions² to the statutory prohibition on circumvention of access controls.³ The second proceeding resulted in four such exceptions.⁴ In all cases the exceptions applied only to a narrowly defined class of works. IIPA believes that this is because, on the whole, the impact of access control technologies on the public's ability to gain access to, as well as to make non-infringing uses of, copyright works has been overwhelmingly positive. More people have more access to more copyright material in more ways than ever before; and the use of access controls to manage this access is a key reason why. The areas where the use of access controls has, on balance, significantly impeded non-infringing uses of these works have been isolated and rare. We believe that the outcomes of the US rulemaking proceedings largely reflect these facts, and that the situation is not likely to be dramatically different in the Australian market.

II. Context of this inquiry

The committee should be commended for its efforts, in the information paper circulated in conjunction with the initiation of this inquiry, to place its inquiry into the broader context of changes that will be needed to Australian law in order to bring its protection of TPMs into compliance with its obligations under the Australia –United States Free Trade Agreement (AUSFTA). It may be useful, at the outset of its comments, for IIPA to underscore the strictly limited focus of this proceeding.

Article 17.4.7.a.i requires Australia to impose civil, and in some circumstances criminal, liability on one who “knowingly, or having reasonable grounds to know, circumvents without authority any effective technological measure that controls access to a protected work, performance, phonogram or other subject matter.”⁵ Current Australian copyright law achieves this obligation only to a very limited degree, in the context of unauthorized use of a broadcast decoding device.⁶ Other provisions of the AUSFTA authorize the recognition of exceptions in seven specified areas to the prohibition on the act of circumvention of access controls.⁷ The entire inquiry referred to this committee consists solely of recommending which additional

² The exemptions recognized in the rulemaking proceeding expire automatically after three years. See 17 USC § 1201(a)(1)(D).

³ See Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, Final Rule, 65 Fed. Reg. 64,555 (October 27, 2000) (codified at 37 C.F.R. pt. 201) (hereinafter 2000 Recommendation).

⁴ See Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, Final Rule, 68 Fed. Reg. 2,011 (Oct. 31, 2003) (codified at 37 C.F.R. pt. 201); see also Recommendation of the Register of Copyrights in RM 2002-4; Rulemaking on Exemptions from Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies (2003) (hereinafter 2003 Recommendation) available at <http://www.copyright.gov/1201/2003/index.html>.

⁵ Criminal liability must attach only where the conduct described is carried out willfully and for the purposes of commercial advantage or financial gain.

⁶ See Section 135ANA(1), Copyright Act of 1968, and Part VAA of that Act generally.

⁷ See Article 17.4.7.e.i.-vii; see also Standing Committee on Legal and Constitutional Affairs, Review of Exceptions for Circumventing technological Protection Measures, available at <http://www.aph.gov.au/house/committee/laca/protection/infopaper.pdf>.

exceptions, if any, should apply temporarily to the more comprehensive prohibition on the act of circumvention of access controls that Australia must bring into force.⁸

Notably, nothing in this proceeding should affect Australia's regime for controlling the manufacture, importation or distribution of circumvention devices, or the offering or provision of circumvention services, even though this regime will also need some changes in order to achieve FTA compliance. Nor has the committee been asked to inquire into which of the five categories of exceptions authorized by the FTA to this anti-trafficking regime should be incorporated into Australian law. Accordingly, we offer no comments in this submission on either of these issues.

The adequacy of Australia's adoption of the FTA-required comprehensive prohibition on the act of circumvention of access controls depends upon the enactment of other changes to Australia's current law regarding TPMs. For example, the current definition of "technological protection measure" in § 10 of the Copyright Act does not appear to be coextensive with the definition of "effective technological measure" provided in Art. 17.4.7.b of the AUSFTA. A change to this definition may be needed if Australia's new prohibition is to meet its FTA obligations.⁹ Simply put, Australia does not currently protect a broad enough category of access controls to be able to comply simply by prohibiting circumvention of those access controls. This issue, too, is beyond the scope of these proceedings.

Thus, the committee faces three difficult problems at the outset of its inquiry:

- First, the prohibition on the act of circumventing access controls has not been enacted yet, so the committee is in the dark about the exact scope of the provision for which it has been asked to recommend exceptions.
- Second, the terms of reference do not advise the committee about whether the statute is expected to contain an exception in any of the seven specified areas in which the FTA authorizes the recognition of a permanent exception to the prohibition.
- Third, it seems to be the intention of the government to bring the new prohibition into force simultaneously with any exceptions that might be enacted, including any that might be based on this committee's recommendations. Thus, the committee will have to base its recommendations upon its prediction about the impact of the new prohibition, rather than upon any actual experience with it.

With regard to the first problem, IIPA suggests that the committee proceed on the assumption that a prohibition fully compliant with Art. 17.4.7.a.1 – that is, covering all access controls that meet the definition of "effective technological control" in the FTA -- will be enacted. On the second issue, we believe the committee should assume that exceptions will be recognized by statute in all seven areas, so that it need not concern itself with recommending any

⁸ Because Art. 17.4.7.e.viii requires that any such exemptions must be reviewed at least once every four years, in this submission we will sometimes refer to these exceptions as "time-limited," in contrast to the other exceptions authorized under the preceding seven subparagraph of Art. 17.4.7.e, which may be enacted on a permanent basis.

⁹ Today's decision of the High Court in *Stevens v. K.K. Sony Computer Entertainment*, [2005] HCA 68 (6 October 2005), underscores the need for change.

further exceptions on a short-term basis in any of these areas. IIPA's submission will be based on these assumptions.

Regarding the third problem area, besides pointing out that this fact counsels that the committee err on the side of caution in recommending exceptions, IIPA notes that in this regard the committee is facing the same question that faced the U.S. Copyright Office (USCO) six years ago when it undertook the first triennial rulemaking under the Digital Millennium Copyright Act. Because the experience of the USCO may be instructive to the committee in a number of respects, we now turn to a brief description of its mandate and how it has discharged it.

III. Experience of the USCO

The role of the USCO in the triennial rulemaking proceedings under 17 USC § 1201(a)(1) of U.S. law is very similar to the role delegated to this Committee in the Attorney General's terms of reference.

- Both USCO (in the US) and this committee (in Australia) are assigned to recommend exceptions that should be recognized, on a time-limited basis, to a comprehensive prohibition on the circumvention of access control measures: 17 USC § 1201(a)(1)(A) (in the US), and the as-yet unenacted prohibition required by the FTA (in Australia). Neither USCO nor this committee have any mandate with respect to exceptions to the prohibitions on trafficking in circumvention devices or services.
- Both USCO and this committee are tasked with developing a record of proposed exceptions and making recommendations based upon that record. In both cases, the ultimate decision is made by another entity (in the US, the Librarian of Congress; in Australia, the government initially, and finally the parliament as a whole).
- Most significantly, the question that is posed for decision is nearly the same in both cases. Under the US statute, the USCO proceeding is aimed at identifying "particular classes of works [whose users] are, or are likely to be in the succeeding three-year period, adversely affected by virtue of [the] prohibition [on circumvention of access controls] in their ability to make non-infringing uses of that particular class of work." 17 USC § 1201(a)(1)(B). This committee's terms of reference are limited to Article 17.4.7.e.viii of the FTA, which deals with "a particular class of works, performances or phonograms, when an actual or likely adverse impact on ... non-infringing uses is credibly demonstrated."
- Both the US statutory mandate for the triennial rulemaking proceeding and this committee's terms of reference identify certain issues that should be taken into consideration. The US statute phrases these as issues to be examined, while the terms of reference speaks of "particular activities which the Committee may examine." Despite this difference, however, there is considerable overlap between the two lists. For example, this committee is to examine "the activities of libraries, archives and other cultural institutions" and of "educational and research institutions," while the US statute directs the USCO to examine "the availability for use of works for nonprofit archival,

preservation and educational purposes” and “the impact that the prohibition ... has on ... teaching, scholarship or research.” 17 USC § 1201(a)(1)(C)(iii).

Because of this substantial overlap in mission and context, IIPA urges the committee to examine closely the experience of the USCO in carrying out the two DMCA triennial rulemakings that have been completed thus far. In particular, the following general approaches developed by USCO and documented in its 2000 and 2003 Recommendations should be applied, with appropriate adaptations, to this committee’s inquiry:

1. Evidentiary burden. The quantity and quality of evidence needed to support a recommended exception in the US rulemaking is well summarized in the 2003 Recommendation at 10-11: “In order to make a prima facie case for an exemption, proponents must show by a preponderance of the evidence that there has been or is likely to be a substantial adverse effect on noninfringing uses by users of copyrighted works.... [D]e minimis problems, isolated harm or mere inconvenience would not suffice to provide the necessary showing.... [There is a] requirement of showing a causal nexus between the prohibition on circumvention and the alleged harm. Adverse impacts that are the result of factors other than the prohibition are not within the scope of this rulemaking.” Similarly, this committee, in deciding whether the criteria set out in the FTA provision have been “credibly demonstrated,” should not recommend any exceptions in the absence of specific evidence of verifiable adverse impacts on non-infringing uses that would be cured, or at least substantially ameliorated, if the new prohibition on circumvention of access controls did not apply to a specific class of works.

2. Evaluating claimed future impacts. In its initial proceeding in 1999-2000, the USCO faced the same problem that this committee encounters: since the prohibition of the act of circumvention had not come into force¹⁰, there could be no evidence of its current adverse effects, and thus any recommended exception had to be based upon predictions of “likely” future adverse effects once the prohibition became operative. The USCO recommendation in 2000 stressed the need for “highly specific, strong and persuasive evidence” of the likelihood of such future impacts, 2000 Recommendation at 64559, and reiterated in its 2003 recommendation that “for proof of ‘likely’ adverse effects on noninfringing uses ... a proponent [of an exception] must prove by a preponderance of the evidence that the harm alleged is more likely than not; a proponent may not rely on speculation alone to sustain a prima facie case of likely adverse effects on noninfringing uses.” 2003 Recommendation at 11. This committee should be guided by a similar standard.

3. Non-infringing use. This critical term should be understood to embrace not only uses carried out without the consent of the copyright owner pursuant to statutory exceptions to protection, but also (and perhaps more significantly) uses carried out with the consent of the copyright owner pursuant to license. To use the terminology in the committee’s information paper, a licensee is in no way “locked out of accessing copyright material,” and the prevalence

¹⁰ § 1201(a)(1)(A) did not become effective until two years after enactment of the DMCA, or October 28, 2000. See Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, Notice of Inquiry, 64 Fed. Reg. 66139, 66140 (Nov. 24, 1999).

and availability of licensed access should be taken into account in assessing whether the case for an exception has been sustained. Similarly, a proponent of an exception cannot establish a sufficient “adverse impact” on non-infringing use simply by asserting that the prohibition would make some such uses less convenient or would be limited to copies of works in certain formats: “there is no unqualified right to access works on any particular machine or device of the user’s choosing.” 2000 Recommendation at 64569. The continued availability of copies in formats that are not protected by access controls should be sufficient to refute a claimed exception, absent a showing of “verifiable need for the [protected] format” in order to carry out a particular non-infringing use. 2003 Recommendation at 118. Furthermore, “the fact that every noninfringing use is not available in every format is not, in and of itself, a basis for an exemption.” *Id.* at 135.

4. “Class of works.” In both of the proceedings thus far under the DMCA, the USCO has devoted considerable effort to defining the key concept of “particular class of works,” which also appears in the FTA provision upon which this inquiry is based. USCO’s conclusion – that the term should be defined narrowly and “primarily, if not exclusively, by reference to attributes of the works themselves,” 2003 Recommendation at 11 – should be seriously considered in this proceeding as well. We also encourage the committee to review the USCO’s practice of tailoring the “particular class of works” for which an exception is recommended to ensure “that the scope of the class addresses the scope of the harm to noninfringing uses.” 2003 Recommendation at 12. Finally, the USCO’s conclusion that “it is not permissible to classify a work by reference to the type of user or use,” is critically important in keeping this proceeding within the bounds set out for it in the FTA and the terms of reference. *Id.* at 13.

5. Impact of specific exemption. The USCO has approached with particular caution any proposal for an exception that overlaps with one of the specific exemptions already recognized in the DMCA itself.¹¹ “Where a statutory scheme exists for particular activity, persons must utilize such statutory exemptions to accomplish their goals or provide evidence why the statutory exemption is unavailable to accomplish a non-infringing use.” 2003 Recommendation at 181. As noted above, Australia has the flexibility, under the FTA, to craft exceptions to the prohibition on circumvention of access controls (and in some cases, to other prohibitions relating to trafficking in TPMs) in seven specific areas, ranging from reverse engineering to security testing to law enforcement to library acquisitions decisions. Decisions on how to take advantage of this flexibility are outside the scope of this inquiry, and thus proposed time-limited exceptions in any of the subject matter areas covered by these FTA provisions should generally be excluded from this proceeding.

6. “Use-enhancing TPMs.” One of the most critical aspects of the USCO rulemakings has been the findings on the role of TPMs in encouraging and facilitating non-infringing uses (including uses carried out under license) of an ever-widening range of copyright material. To the extent that the use of access controls has enabled public access to more material, on more flexible terms, than was ever achieved without them, this consequence must be taken into account in evaluating any proposal to undermine the usefulness of these controls by allowing

¹¹ See generally 17 U.S.C. § 1201(d)-(j).

their unauthorized circumvention. Thus, in its initial DMCA rulemaking, USCO concluded that “the advent of access control protections has increased the availability of databases and compilations,” 2000 Recommendation at 64567, and that “technological measures on DVDs have increased the availability of audiovisual works to the general public,” *id.* at 64569. Similarly, for any proposal to permit the circumvention of access controls on works falling in a particular class, the committee should inquire into whether the use of such TPMs has increased public access to and ability to use the works in question, or whether it is likely to do so in the future, and if so what would be the impact on public access of allowing these controls to be circumvented.

7. The “net calculation.” It follows from the previous point that the committee’s task is not simply to identify instances in which the prohibition on circumventing access controls is likely to interfere with noninfringing uses of the classes of works in question. It must also identify the extent to which use of the same access controls has enhanced the public’s ability to access and use copyright materials, and seek to calculate the net impact were these controls to be made subject to circumvention through an exception. In other words, the committee is asked to perform a net calculation regarding noninfringing uses, not just to measure the verifiable, concrete items on the debit side of the ledger. Or, as the USCO put it in its 2000 recommendation, “ultimately, the task ... is to balance the benefits of technological measures that control access to copyrighted works against the harm caused to users of those works.” 2000 Recommendation at 64563.

IV. Specific Activities to be Studied by the Committee

With these general lessons from the voluminous record of DMCA rulemakings in mind, we now turn to the list of specific activities identified in the terms of reference as potential subjects for the committee’s scrutiny. Our observations are necessarily quite general at this point, since no specific proposal for recognition of a “particular class of works” is yet under consideration. (In this regard, we urge the committee to build into its agenda a reasonable opportunity for public response to specific proposals for exceptions, either those made by submitters, or those which the committee may craft after having reviewed the submissions but before rendering its recommendation to the Attorney General. We request the right to supplement this submission after any specific proposals have been formulated.)

1. Activities of libraries, archives and other cultural institutions. As a general matter, libraries and similar institutions have been among the chief beneficiaries of the expanded opportunities for licensed access to an increasing volume of research, reference, and other copyright material, a trend that has been substantially facilitated through the use of access controls. These technologies enable right holders to offer more granular access, so that institutions receive – and pay for – a menu of materials more closely suited to their specific needs. Access controls have also encouraged the digitization and networked availability of more information resources; have facilitated the development of new business models in this market; and, of course, have been heavily used by libraries and other institutions themselves to manage public access to their collections.

The FTA contemplates that Australia may provide a permanent exception to its prohibition on circumvention of access controls for the purpose of library acquisition decisions. FTA Art. 17.4.7.e.vii. Accordingly, as discussed above, the committee should approach with great caution any proposed time-limited exception that would overlap with what the government may decide to propose on this topic.

In both 2000 and 2003, the USCO rejected as unjustified proposals for broad exceptions that would have allowed libraries to circumvent access controls routinely. In its 2003 rulemaking, however, the USCO developed a record that indicated to it that the noninfringing activities of certain libraries and archives engaged in the preservation of certain works in obsolete formats was being impeded by the prohibition on circumvention of access control measures applied to these works. The USCO engaged in a careful and thoughtful analysis of the broad exceptions proposed to deal with this problem, and ultimately concluded that only a more narrowly defined "class of works" met the applicable criteria for recognition.¹² This class was defined in the USCO recommendation (ultimately endorsed by the Librarian of Congress) as:

Computer programs and video games distributed in formats that have become obsolete and which require the original media or hardware as a condition of access. A format shall be considered obsolete if the machine or system necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace.

Exemption to Prohibition Against Circumvention, 37 C.F.R. § 201.40(b)(3) (2005).

IIPA commends to the committee's consideration the USCO's analysis of this issue, although our member associations do not all fully endorse its outcome. We urge the committee to approach any exception proposed to it for the benefit of libraries, archives or similar institutions with similar care and attention, with the goal of crafting an exception that addresses – but does not expand beyond -- a specific proven adverse impact on clearly defined noninfringing activities.

2. Activities of educational and research institutions.

Educational and research institutions have also benefited from the more widespread dissemination of copyright materials that has been facilitated by the use of access controls. In some cases, the activities of these institutions may be addressed by exemptions from the prohibition on circumventing access controls that Australia may, consistent with the FTA, enact as permanent law. See, e.g., Art. 17.4.7.e.ii of the FTA (encryption research exception). Proposals for time-limited exceptions that cover similar ground should presumably be deferred until the scope of any permanent exemption is clarified.

One time-limited exemption which has been recognized under US law as a result of the DMCA rulemaking process is directed at a specific category of research and teaching activities:

¹² See 2003 Recommendation at 41-63.

those involving so-called “censorware” applications, which are aimed at restricting a computer user’s access to online locations where materials deemed inappropriate can be accessed. In its current form, as determined in the 2002-03 rulemaking, this exemption allows the circumvention of access controls governing the following particular class of works:

Compilations consisting of lists of Internet locations blocked by commercially marketed filtering software applications that are intended to prevent access to domains, websites or portions of websites, but not including lists of Internet locations blocked by software applications that operate exclusively to protect against damage to a computer or computer network or lists of Internet locations blocked by software applications that operate exclusively to prevent receipt of email.

37 C.F.R. §201.40 (b)(1).

The USCO found that “the impact of the prohibition [against circumvention of access controls] on criticism, comment, news reporting, teaching, scholarship or research in relation to these lists of blocked Internet locations is significant.” 2003 Recommendation at 33-34. At the same time, in fashioning an exception, USCO took care to narrow its focus so that it would not impact “spam filtering software, virus protection software, or other security software such as firewalls.” *Id.* at 31. IIPA commends the USCO analysis to the committee’s review.

3. Use of databases by researchers.

The remarks in the previous section are applicable here as well. We have already called the committee’s attention to the findings of the USCO in 2000 regarding the role of access controls in enhancing public access to “databases and compilations,” and we would expect that a similar phenomenon can be observed in Australia.

4. Activities conduct by, or on behalf of, people with disabilities.

While some of the permanent exemptions authorized by the FTA (notably Art. 17.4.7.e.i, dealing with development of interoperable computer programs) may inure directly to the benefit of persons with disabilities, the committee may wish to review with particular care the consideration of this issue by the USCO in the 2003 rulemaking. Unquestionably the access of many disabled people to copyright material has been enhanced by the distribution of this material in digital formats, including those formats which employ access control mechanisms. However, based on the record before it, the USCO determined that noninfringing uses of certain electronic books by blind or visually impaired persons were being adversely affected because of the prohibition against circumventing access controls that governed whether the book could be automatically read aloud by a computer or other device. In fashioning an exception responsive to this concern, the USCO was careful to limit it to those titles for which no digital edition was available in which the “read aloud” or similar capability was enabled. The USCO ultimately concluded (and the Librarian of Congress agreed) that a time-limited exception should be recognized to permit the circumvention of access controls on the following “particular class of works”:

Literary works distributed in ebook format when all existing ebook editions of the work (including digital text editions made available by authorized entities) contain access controls that prevent the enabling of the ebook's read-aloud function and that prevent the enabling of screen readers to render the text into a specialized format.

37 C.F.R. § 201.40 (b)(4).

5. Activities of open source software developers.

IIPA believes that the impact of access controls on the legitimate interests of such developers to engage in noninfringing uses of copyright material is most likely fully addressed by Art. 17.4.7.e.1 of the FTA. This provision authorizes Australia to enact a permanent exemption from certain anti-circumvention provisions dealing with access controls in the case of non-infringing reverse engineering activities necessary to achieve interoperability of computer programs. Assuming that Australia chooses to adopt a provision in its law dealing with this topic, there should be no further need to consider a time-limited exception falling within the scope of the committee's terms of reference.

6. Activities conducted in relation to regional coding of digital technologies.

The DMCA rulemaking proceedings have developed an extensive record on the issue of regional coding of DVDs containing audio-visual works.¹³ The USCO reached the following conclusions regarding this issue:

(a) "Region coding of audiovisual works on DVDs serves legitimate purposes as an access control," and the use of region coding "encourages the distribution and availability of digital audiovisual works." 2000 Recommendation at 64569.¹⁴

(b) In 2000, the USCO concluded that the prohibition on circumventing region coding (so that a DVD sold in one region could be played on a player purchased in another region) had only a de minimis adverse impact on noninfringing use, "because there are numerous options available to individuals seeking access to this foreign content." *Id.*

(c) In the 2003 proceeding, USCO delved much further into this issue, having received more than 100 comments on it from members of the public. In the end it reaffirmed its earlier conclusion, citing the "relatively inexpensive options" other than circumvention through which

¹³ USCO has also considered proposals to allow circumvention of region coding of videogames, but rejected them both in 2000 and 2003 as unsupported by any evidence. See 2000 Recommendation at 64569; 2003 Recommendation at 123.

¹⁴ USCO noted that "among other purposes, [region coding] prevents the marketing of DVDs of a motion picture in a region of the world where the motion picture has not yet been released in theaters, or is still being exhibited in theaters." 2000 Recommendation at 64569, n. 15.

members of the public may access and view out-of-region DVDs.¹⁵ 2003 Recommendation at 120-24.

IIPA anticipates that all these findings would be generally applicable to Australia as well, and that accordingly the outcome should be the same.

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IIPA thanks the committee in advance for considering its perspectives, and stands ready to answer any questions that the committee may have concerning this submission.

Respectfully submitted,

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IIPA Member Associations:

Association of American Publishers (AAP)

AAP is the principal trade association of the American book and journal publishing industry and has approximately 310 members. AAP members publish hardcover and paperback books in every field, including general fiction and non-fiction, textbooks, reference works, religious books, scientific, medical, technical, professional and scholarly books and journals, poetry and children's literature. AAP members also produce audio and videotapes, computer software, loose leaf materials, electronic products and services (including on-line databases), CD-ROMs, and a range of educational materials, including classroom instructional and testing materials. AAP's primary functions are to promote the status of publishing around the world, to assist in protecting its members' copyrights at home and abroad, and to defend intellectual freedom at home and the freedom of written expression worldwide. For more information, please visit www.publishers.org.

¹⁵ Some of these options include: (1) purchasing a DVD player whose coding corresponds to the region of the DVD to be played; (2) switching the regional coding on the DVD-ROM drive of a computer, which can be done up to 25 times; (3) where available, viewing the audio-visual work in VHS format.

Business Software Alliance (BSA)

The Business Software Alliance is the foremost organization dedicated to promoting a safe and legal digital world. BSA is the voice of the world's commercial software industry and its hardware partners before governments and in the international marketplace. Its members represent one of the fastest growing industries in the world. BSA programs foster technology innovation through education and policy initiatives that promote copyright protection, cyber security, trade and e-commerce. BSA members include Adobe, Apple, Autodesk, Avid, Bentley Systems, Borland, Cisco Systems, CNC Software/Mastercam, Dell, Entrust, HP, IBM, Intel, Internet Security Systems, Intuit, Macromedia, McAfee, Microsoft, RSA Security, SAP America, SolidWorks, Sybase, Symantec, UGS and VERITAS Software. For more information, please visit www.bsa.org.

Entertainment Software Association (ESA)

The ESA is the U.S. association dedicated to serving the business and public affairs needs of the companies publishing interactive games for video game consoles, handheld devices, personal computers, and the Internet. ESA members collectively account for more than 90 percent of the \$7.3 billion in entertainment software sales in the U.S. in 2004, and billions more in export sales of American-made entertainment software. The ESA offers services to interactive entertainment software publishers including a global anti-piracy program, owning the Electronic Entertainment Expo trade show, business and consumer research, government relations and First Amendment and intellectual property protection efforts. For more information, please visit www.theesa.com.

Independent Film & Television Alliance (IFTA)

The Independent Film & Television Alliance (formerly AFMA) is the global trade association of the independent motion picture and television programming industry. Headquartered in Los Angeles, the organization represents and provides significant entertainment industry services to more than 170 member companies from 17 countries, consisting of independent production and distribution companies, sales agents, television companies, studio-affiliated companies, and financial institutions engaged in film finance. Forty percent of the Independent Film & Television Alliance's membership and thirty percent of the association's board of directors are from outside the U.S. Collectively, the Independent Film & Television Alliance's members produce more than 400 independent films and countless hours of television programming each year and generate more than \$4 billion in distribution revenues annually. For more information, please visit www.ifta-online.org.

Motion Picture Association of America (MPAA)

The Motion Picture Association of America, along with its international counterpart the Motion Picture Association (MPA), serves as the voice and advocate of seven of the largest producers and distributors of filmed entertainment. Founded in 1922 as the trade association for

the American film industry, the MPAA/MPA has broadened its mandate over the years to represent a diverse and expanding motion picture industry. Today, the association represents not only the world of theatrical film, but also major producers and distributors of entertainment programming for television, cable, satellite, home video, Internet and looking into the future, for delivery systems not yet imagined. Among its principal missions, the MPAA/MPA directs an anti-piracy program to protect U.S. films from infringement throughout the world. The MPAA/MPA also works to eliminate unfair trade barriers and increase competition in the international marketplace. For more information, please visit www.mpaa.org.

National Music Publishers' Association (NMPA)

Founded in 1917, NMPA is the leading U.S. trade association in its field, representing almost 600 American music publishers, who in turn administer the catalogs of over 27,000 publishers. NMPA's mandate is to protect and advance the interests of music publishers and their songwriter partners in matters relating to the domestic and global protection of copyrights. Visit www.nmpa.org.

Recording Industry Association of America (RIAA)

RIAA is a trade association, founded in 1952, which represents several hundred companies that create, manufacture and/or distribute approximately 90 percent of all legitimate sound recordings in the U.S. The U.S. recording industry employs hundreds of thousands of workers at a variety of levels and produces a foreign trade surplus. RIAA maintains a legal and investigative staff to fight against all forms of music piracy and is associated with local recording industry groups around the world to extend this fight. One of its principal missions is to ensure that copyright legislation remains adequate in light of a rapidly changing technological environment, and that appropriate conditions exist to foster creativity in music through increased investment, production, and distribution. For more information, please visit www.riaa.com.