

SUBMISSION BY
MEDIA, ENTERTAINMENT & ARTS ALLIANCE
TO
JOINT STANDING COMMITTEE ON TREATIES
REGARDING
NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY
UNESCO CONVENTION ON THE PROTECTION AND PROMOTION OF THE DIVERSITY
OF CULTURAL EXPRESSIONS
MARCH 2009



The Media, Entertainment & Arts Alliance

The Media, Entertainment & Arts Alliance (Alliance) is the industrial and professional organisation representing the people who work in Australia's media and entertainment industries. Its membership includes journalists, artists, photographers, performers, symphony orchestra musicians and film, television and performing arts technicians.

The Media, Entertainment & Arts Alliance welcomes the opportunity to make a submission to the Joint Standing Committee on Treaties regarding the National Interest Analysis: Category 1 Treaty – UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (Convention).

Consistent with long standing policy in respect of trade agreements and Australia’s cultural industries – including its audiovisual and broadcasting industries – the Alliance is pleased that the Rudd Labor Government is committed to becoming a party to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions and that the Government is now moving to give effect to this welcome election commitment.

The Alliance is further pleased to see that the NIA recommends that Australia accede to the Convention by depositing an instrument of accession with the Director-General of UNESCO.

Since the time of the Menzies Federal Government, the position of successive governments in respect of international bi-lateral, plurilateral and multilateral trade agreements has been to make no offers and accede to no requests in respect of the audiovisual sector nor in respect of Australia’s cultural industries more broadly.

To date, Australia has never acceded to requests in this regard in relation to the General Agreement of Trade in Services, despite regular requests for it to do so.

Australia has long recognised the essential role of creative artists and cultural organisations in reflecting the intrinsic values and characteristics of our society, and is committed to sustaining our cultural policy objectives within the context of multilateral trade agreements.¹

Other than an unfortunate oversight in the drafting of the Closer Economic Relations Agreement with New Zealand which saw a successful High Court challenge allow New Zealand television programs to be treated as Australian for the purposes of the Australian Content Standard administered by the Australian Communications and Media Authority for free-to-air commercial broadcasters, Australia had consistently resisted making commitments in the context of bi-lateral and plurilateral trade agreements.

The second bi-lateral trade agreement to which Australia became party, the Singapore Australia Free Trade Agreement (SAFTA) contains a comprehensive reservation for the entirety of Australia’s cultural industries. A similar reservation is contained in the more recent Chile Australia Free Trade Agreement.²

Whilst remaining government policy, the position was most severely compromised during the negotiations for the Australia United States Free Trade Agreement (AUSFTA). Most regrettably, that Agreement includes a much diluted version of the SAFTA reservation that had been intended as the precedent for all negatively listed trade agreements.

In the wake of the negotiations for the AUSFTA, the Alliance was keen that Australia, consistent with long-standing policy commitments, accede to the UNESCO Convention.

On 20 October 2005, the 154 countries represented at the UNESCO General Conference meeting in Paris voted on the Convention. 148 countries voted in favour, two against – the United States and Israel – and Australia was one of the four countries to abstain along with Nicaragua, Liberia and Honduras.

At the time it was argued that Australia abstained for technical reasons, specifically that by voting in favour might have placed Australia in conflict with some of its domestic policies or international treaty obligations. However, as David Throsby noted at the time, the so-called technical impediments were hardly credible. “Indeed, government after government lined up to say that their positive vote was based on an assumption that their domestic and international obligations would not be compromised. New

¹ Australian Intervention on Negotiating Proposal on Audiovisual Services, CTS Special Session, July 2001, Geneva

² See online at <http://www.austlii.edu.au/au/other/dfat/treaties/notinforce/2008/6/25.html>

Zealand, for example, said that it assumed the provision promoting international movements of artists would not conflict with their own migration laws.”³ New Zealand went on to ratify the Convention on 5 October 2007 and duly dealt with the concerns about immigration legislation in their reservation.

Requiring ratification by no less than 30 countries, the Convention entered into force on 18 March 2007. Today, a total of 95 countries have either acceded to or ratified the Convention, along with the European Community which acceded to the Convention on 18 December 2006 – see attached. To overcome the kind of technical impediments that resulted in Australia abstaining in 2005, a number of countries have taken out reservations.⁴

The Alliance strongly supports the findings of the NIA, namely that acceding to the Convention is in the national interest and consistent with policy objectives in respect of Australia’s cultural industries. Further, the Alliance considers acceding to the Convention is long overdue.

Australia has Migration Regulations that adequately and appropriately deal with the temporary entry of cultural workers that balance protection of employment with the Australians’ right to see a diverse range of artistic output from around the world. However, for certainty, the Alliance considers that a reservation in similar wording to that of the second paragraph of New Zealand’s declaration should be made. New Zealand’s declaration is attached.

³ *Does Australia Need a Cultural Policy?* David Throsby, Platform Papers, Currency Press, January 2006, page 31

⁴ See list of reservations at http://portal.unesco.org/en/ev.php-URL_ID=31038&URL_DO=DO_TOPIC&URL_SECTION=201.html#RESERVES

Singapore Australia Free Trade Agreement – Schedule II reservation

See online at http://www.dfat.gov.au/trade/negotiations/safta/annex_4_ii_a.pdf

Sector	Communication Services, and Recreational, Cultural and Sporting Services
Sub-sector	Broadcasting and audiovisual, entertainment and cultural services
Industry classification	-
Type of Reservation	Market Access National Treatment
Description of Reservation	Australia reserves the right to adopt or maintain any measure with respect to: <ul style="list-style-type: none"> - the creative arts,¹ cultural heritage² and other cultural industries, including audiovisual services, entertainment services and libraries, archives, museums and other cultural services; - broadcasting and audiovisual services, including measures with respect to planning, licensing and spectrum management, and including: <ul style="list-style-type: none"> . services offered in Australia; . international services originating from Australia.
Existing Measures	<i>Broadcasting Services Act 1992</i> (Cth) <i>Radiocommunications Act 1992</i> (Cth) There are minimum Australian content requirements for commercial television.

¹ 'Creative arts' include: the performing arts – including theatre, dance and music – visual arts and craft, literature, film, television, video, radio, creative on-line content, indigenous traditional practice and contemporary cultural expression, and digital interactive media and hybrid arts work which uses new technologies to transcend discrete artform divisions.

² 'Cultural heritage' includes: ethnological, archaeological, historical, literary, artistic, scientific or technological moveable or built heritage, including the collections which are documented, preserved and exhibited by museums, galleries, libraries, archives and other heritage collecting institutions.

Convention on the Protection and Promotion of the Diversity of Cultural Expressions. Paris, 20 October 2005¹

States	Date of deposit of instrument	Type of instrument
1 Canada	28/11/2005	Acceptance
2 Mauritius	29/03/2006	Ratification
3 Mexico	05/07/2006	Ratification
4 Romania	20/07/2006	Accession
5 Monaco	31/07/2006	Ratification
6 Bolivia	04/08/2006	Ratification
7 Djibouti	09/08/2006	Ratification
8 Croatia	31/08/2006	Approval
9 Togo	05/09/2006	Ratification
10 Belarus	06/09/2006	Approval
11 Madagascar	11/09/2006	Ratification
12 Burkina Faso	15/09/2006	Ratification
13 Republic of Moldova	05/10/2006	Ratification
14 Peru	16/10/2006	Accession
15 Guatemala	25/10/2006	Ratification
16 Senegal	07/11/2006	Ratification
17 Ecuador	08/11/2006	Accession
18 Mali	09/11/2006	Ratification
19 Albania	17/11/2006	Accession
20 Cameroon	22/11/2006	Accession
21 Namibia	29/11/2006	Ratification
22 India	15/12/2006	Ratification
23 Finland	18/12/2006	Acceptance
24 Austria	18/12/2006	Ratification
25 France	18/12/2006	Accession
26 Spain	18/12/2006	Ratification
27 Sweden	18/12/2006	Ratification
28 Denmark	18/12/2006	Ratification
29 Slovenia	18/12/2006	Ratification
30 Estonia	18/12/2006	Approval
31 Slovakia	18/12/2006	Ratification
32 Luxembourg	18/12/2006	Ratification
33 Lithuania	18/12/2006	Accession
34 Malta	18/12/2006	Accession
35 Bulgaria	18/12/2006	Ratification
36 Cyprus	19/12/2006	Ratification
37 South Africa	21/12/2006	Ratification
38 Ireland	22/12/2006	Ratification
39 Greece	03/01/2007	Ratification
40 Brazil	16/01/2007	Ratification
41 Norway	17/01/2007	Ratification
42 Uruguay	18/01/2007	Ratification
43 Panama	22/01/2007	Ratification
44 China	30/01/2007	Ratification
45 Saint Lucia	01/02/2007	Ratification
46 Iceland	01/02/2007	Acceptance
47 Andorra	06/02/2007	Accession
48 Tunisia	15/02/2007	Ratification
49 Jordan	16/02/2007	Ratification
50 Italy	19/02/2007	Ratification
51 Armenia	27/02/2007	Accession

52 Germany	12/03/2007	Ratification
53 Chile	13/03/2007	Ratification
54 Niger	14/03/2007	Ratification
55 Portugal	16/03/2007	Ratification
56 Oman	16/03/2007	Ratification
57 Côte d'Ivoire	16/04/2007	Ratification
58 Jamaica	04/05/2007	Ratification
59 Gabon	15/05/2007	Ratification
60 The former Yugoslav Republic of Macedonia	22/05/2007	Ratification
61 Cuba	29/05/2007	Ratification
62 Bangladesh	31/05/2007	Ratification
63 Latvia	06/07/2007	Accession
64 Kuwait	03/08/2007	Accession
65 Viet Nam	07/08/2007	Ratification
66 Poland	17/08/2007	Accession
67 Egypt	23/08/2007	Ratification
68 Cambodia	19/09/2007	Accession
69 New Zealand	05/10/2007	Accession
70 Mongolia	15/10/2007	Accession
71 Mozambique	18/10/2007	Ratification
72 Tajikistan	24/10/2007	Ratification
73 Kenya	24/10/2007	Ratification
74 Paraguay	30/10/2007	Ratification
75 Lao People's Democratic Republic	05/11/2007	Accession
76 United Kingdom of Great Britain and Northern Ireland	07/12/2007	Ratification
77 Benin	20/12/2007	Ratification
78 Nigeria	21/01/2008	Ratification
79 Syrian Arab Republic	05/02/2008	Accession
80 Guinea	20/02/2008	Ratification
81 Argentina	07/05/2008	Ratification
82 Hungary	09/05/2008	Ratification
83 Zimbabwe	15/05/2008	Ratification
84 Chad	17/06/2008	Ratification
85 Sudan	19/06/2008	Ratification
86 Seychelles	20/06/2008	Accession
87 Montenegro	24/06/2008	Ratification
88 Georgia	01/07/2008	Approval
89 Switzerland	16/07/2008	Ratification
90 Ethiopia	02/09/2008	Ratification
91 Barbados	02/10/2008	Accession
92 Burundi	14/10/2008	Ratification
93 Congo	22/10/2008	Ratification
94 Grenada	15/01/2009	Ratification
95 Bosnia and Herzegovina	27/01/2009	Ratification

Regional economic integration organizations	Date of deposit of instrument	Type of instrument
1 European Community	18/12/2006	Accession

¹In accordance with its Article 29, this Convention entered into force on 18 March 2007 with respect to those States or regional economic integration organizations that have deposited their respective instruments of ratification, acceptance, approval, or accession on or before 18 December 2006. It shall enter into force with respect to any other Party three months after the deposit of its instrument of ratification, acceptance, approval or accession.

See online at <http://portal.unesco.org/la/convention.asp?KO=31038&language=E>

Declaration by New Zealand made in acceding to the Convention on the Protection and Promotion of the Diversity of Cultural Expressions

New Zealand

"AND DECLARES that, consistent with the constitutional status of Tokelau and taking into account the commitment of the Government of New Zealand to the development of self-government for Tokelau through an act of self-determination under the Charter of the United Nations, this accession shall not extend to Tokelau unless and until a Declaration to this effect is lodged by the Government of New Zealand with the Depositary on the basis of appropriate consultation with that territory;

AND DECLARES that it considers that the obligation in Article 16 on developed countries to "facilitate cultural exchanges with developing countries by granting, through the appropriate institutional and legal frameworks, preferential treatments to artists and other cultural professionals and practitioners as well as cultural goods and services from developing countries" is not intended to affect the content or interpretation of domestic legislation, or rules or criteria relating to eligibility for immigration visas or permits, or the exercise of discretion under legislation, or in respect of rules or criteria, but is intended to reflect the way in which the entry of those eligible for visas or permits may be facilitated, such as through special procedures for processing applications;

AND DECLARES that it considers the clear legal effect of Article 20 is to ensure the provisions of the Convention do not modify in any way the rights and obligations of the Parties under other treaties to which they are also parties;" [Original : English]

See online at <http://portal.unesco.org/en/ev.php->

URL_ID=31038&URL_DO=DO_TOPIC&URL_SECTION=201.html#STATE_PARTIES