

From the office of the  
CHIEF EXECUTIVE OFFICER

21 April 2004

Ms Julia Morris  
Inquiry Secretary  
Joint Standing Committee on Treaties  
Parliament House  
Canberra ACT 2600



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Dear Ms Morris

Thank you for your correspondence of 11 March 2004, concerning the Australia-United States Free Trade Agreement (AUSFTA) inquiry being conducted by the Commonwealth Parliament's Treaties Committee. The Australia Council is pleased to respond to the call for submissions.

#### Introduction

The Australia Council has supported a free trade agreement, seeing it as offering both countries potential benefits. The Australia Council lobbied to ensure the retention of an Australian culture that is dynamic, adaptive and open to foreign input, ideas and expression, but one that also preserves the distinctiveness of Australian art and culture, and the ability to tell uniquely Australian stories. Our cultural industries provide a powerful symbol of who we are. They speak of a nation that is diverse and adaptive, and fully engaged with the wider world.

The Australia Council's two main areas of interest regarding the AUSFTA provisions are: intellectual property (IP) rights and audiovisual services. These main issues in each of these areas are outlined below.

#### IP rights

The AUSFTA IP provisions will strengthen Australia's IP protections, with both positive and negative consequences. On the positive side, strengthened IP rights will increase artists' income. For example, the AUSFTA will grant performers additional IP rights in relation to broadcasting, recording, reproduction, rental and distribution of authorised recordings of performances.

Under the AUSFTA, the term of copyright protection in Australia will be extended, requiring legislative change. While the main benefit of term extension will be harmonisation with the laws of some of our major trading partners, the Australia Council considers that overall this move will reduce public access to, and engagement with, the arts. In 2000 the Australian Government's Intellectual Property and Competition Review Committee considered the implications of term extension and recommended that the current term should not be extended. The Australia Council agrees with the Committee's assessment.

The IP provisions will also apply to future forms of IP and the extent of this change cannot yet be fully gauged. For example, it is unclear how this will affect emerging Indigenous IP rights. This issue should be monitored.

### Audiovisual services

Over the course of the negotiations, the Australia Council and the Australian Film Commission (AFC) worked together to ensure that the Australian Government and the Australian negotiators were informed of important issues regarding the cultural and audiovisual industries within the context of the AUSFTA.

To hold this position, the Australia Council lobbied hard with the AFC to retain Australia's regulatory flexibility in regard to future audiovisual services, where many Australian artists will earn their living. This basic position, as expected, was strongly opposed by the American negotiators.

The final text struck a reasonable balance between these positions. Examination of the AUSFTA confirms that the Australians, led by Chief Negotiator Stephen Deady, managed to retain existing local content levels in the audiovisual area, despite immense pressure from the giant American entertainment industry.

The outcome, however, was by no means entirely favourable to the Australian arts sector, or to the growth of Australian culture, particularly regarding future options based on digital delivery. Many impacts on the cultural sector arising from the AUSFTA will not become apparent until as-yet-unconceived technologies come into play. By 2010, virtually all entertainment and media is expected to be in digital formats, easily fed via satellite to cinemas and homes from sources outside Australia. As a result, many of the existing broadcasting rules governing local content will become irrelevant, and new forces will come into play.

It is worth noting that Australia is a net importer of cultural goods and services. Australia's balance of trade in audiovisual goods and services runs at more than four to one against us, and with respect to the United States, the figure is 10 to one. Australian governments of all persuasions have accepted that government intervention enables our small nation to produce cultural product of a high enough quality and volume to express our distinct stories and ideas. Without regulation and subsidy, access by Australians to Australian content would be in severe jeopardy. The concluded AUSFTA in no way alters that reality.

### Conclusion

The Australia Council, while accepting what it regards as the reasonable outcomes of the AUSFTA, will turn attention to keeping the Australian Government informed and focused on future needs in the cultural sector, to ensure that Australian content (and identity) is maintained and is able to compete on the global stage.

Yours sincerely



**Jennifer Bott**  
Chief Executive Officer