Submission to the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America

Presented by the

Victorian Film and Television Industry Working Party

Representing Screen Production Organisations in Victoria.

VFTIWP C/O 277 Highett Street Richmond Victoria 3121

INTRODUCTION

The Victorian Film and Television Working Party (VFTWP) is a coalition of representatives of all sectors of the film, television and new media industries in Victoria. It was formed in 1998, following a perceived need to regenerate the local production industry and lobby the State government for increased funding in order to assist the industry regain a larger percentage of national market share.

The VFTWP was instrumental in preparing data and providing information to the then Liberal State Government in Victoria and then to the new Labor Government, which in turn led to the establishment of a Task Force to look into the state of the Victorian screen production industry and make appropriate recommendations. This led, among other significant initiatives, to the delivery of increased state funding to the sector, $31.9m over four years, beginning in 2001.

The VFTWP continues to provide strategic advice to state and federal entities on behalf of the consolidated film, television and new media industries in Victoria.

We welcome the opportunity to submit our views to the Senate Select Committee.

SCOPE OF THE SUBMISSION

The VFTWP endorses the comments made in submissions by the Australian Coalition for Cultural Diversity and those made by the Screen Producers Association of Australia, the Australian Writers Guild, and the Australian Screen Directors Association. We will not revisit the arguments put forward therein in detail, but rather we will comment on the FTA as it relates to the Victorian film, television and new media sector.

KEY ISSUES

1. We believe that the Commonwealth Government is commissioning economic modelling studies to identify the impact of the FTA on State and Territory economies. It is disappointing that this is only being undertaken at this late stage, rather than in advance of and at the outset of negotiations. Economic modelling should include the impact on state and territory audio-visual sectors, particularly as a state like Victoria has a greater proportion of new media industries. Given that the FTA will clearly disadvantage the total audio visual sector, the government should consider what compensation mechanisms could be put in place to correct the balance.

2. Many of the provisions relating to the audio-visual industries are unclear and ambiguously drafted, in particular those in Chapters 10 and 11, 16, 17, 22 and Annexe II.

3. Victoria has a particularly strong practitioner base in children's television programming, documentary filmmaking and digital media companies covering a wide range of genres from artistic installations to international game and design companies. Seed funding, small business infrastructure loans, technology and post-production grants, research and development grants, and

Accords with national broadcasters for the digital media industry, amongst many other proactive schemes, has been provided to this burgeoning industry by Multimedia Victoria over many years. Film Victoria gained a significant increase in its funding in 2001 for the film and television sector. These and similar commitments could be jeopardised and future assistance may be undermined - or even prevented - by the FTA.

4. The Commonwealth Government, through the Film and Digital Content Branch of the Department of Communications, Information Technology and the Arts, as part of their Creative Industries Cluster Study, commissioned a report focussing on access to overseas markets for the creative digital industry[1]. The report estimates that exports could grow from 3 billion dollars to 10 billion dollars over the next ten years. The findings of this report, albeit commissioned and endorsed by the Commonwealth, will be jeopardised by the current provisions of the FTA as it relates to e-commerce, intellectual property and copyright, and will significantly reduce Australian penetration of the global digital market. The penalty for not doing this effectively will be a massive balance of payments problem as Australia continues to be a net importer of digital content. In particular:

    - In the past ten years, there has been a digital revolution – the Internet, Digital TV, Interactive TV, Broadband, Mobile Services, DVD, Digital Film and Music. All of these delivery mechanisms are driven by content. Content provides employment, creates business opportunities, and grows industries. Placing limitations on future support mechanisms available to all the Australian governments will severely limit growth in this sector.

    - Film, Television and New Media industries are made up of many small producers, usually undercapitalised, often highly dependent on government direct and indirect subsidies, which largely operate in areas of potential market failure. However, the depth of talent and innovative creative content providers in Australia are more than would be expected, given the general lack of sustainable infrastructure. This applies to writers, performers, directors, technicians, crew, producers, electronic game production companies and animators, all of whom are regularly recognised as among the world's best. Industries in nations with very large populations, such as the United Kingdom[2] and France, depend upon substantial support mechanisms. With Australia's relatively small population (equals domestic audience) such mechanisms are even more essential, yet the FTA restricts our nation's future capacity to remain outstanding in an area where technology is developing more rapidly than in any other.

[1] From Cottages to Corporations: Access to Overseas Markets for Australia's Creative Digital Industry. www.cultureandrecreation.gov.au/CICS

[2] See page 4 of submission number 39, by David Muir, to the House of Representatives 2003 Inquiry into the future opportunities for Australia's film, animation, special effects and electronic games industries.

- Australia has a fair and equitable attitude to intellectual property that includes 'fair dealing'; a way of providing access to copyright material for uses that benefit society or would be so small as to be not worth the expense of licensing. The FTA requires Australia to take a much harder line of enforcement at the expense of program makers, particularly for documentary and education usages, two of the sectors that are particularly active in Victoria.

- The proposed extension of copyright to 70 years is specifically designed to benefit US major studios and broadcasters with large repositories of back catalogue and library holdings. It is not designed to increase revenue to independent content creators. It is a mechanism whereby the US can exercise maximum control at the same time as widening their exploitation gate. This will disadvantage local documentary makers and online content providers in particular, who often rely on reasonable cost-effective access to archival material. It also calls into question the status of material collected by ScreenSound Australia (the national archive) and Victoria's unique Australian Centre for the Moving Image.

- Investment in R & D in digital content is essential if existing companies are to grow and maximise their potential – not necessarily traditional audio-visual. By adopting 'stand-still' provisions on e-commerce and digital content, the Commonwealth is inhibiting the development and growth of a vibrant and promising sector, particularly in Victoria.

- The proposed tests applicable to 'new media' services (Annexe II-6 – II-8) are confusing and contradictory in some cases, datacasting in particular. These provisions do not cover digital delivery to cinemas. The provision of Australian programs 'not to be unreasonably denied' to its audience is woolly and an almost impossible test to satisfy. It is reasonable to assume that e-cinema will be the preferred method of delivery sometime in the next 10 years. Indeed, there is already a coalition of the big seven major US studios to plan their collective expansion into this market. By excluding e-cinema, the Government has abandoned any right to regulate Australian content in cinemas. The US already has 89% of our cinema box office, and in the future, Australian films will find it even harder to obtain anything other than marginal niche releases in cinemas.

5. The retention of transmission quotas for commercial television require 80% of advertising and 55% of programs to be Australian, and sub quotas for adult and children's drama, and documentary programming. These quotas can be imposed on a maximum of two free to air commercial multichannel services. However, it is possible that were current policy to change to allow commercial

broadcasters to offer digital multichannel services, then 2 to 3 out of 4 to 5 services would have to be quota free. By pegging these quota arrangements at ‘stand-still’ level, the FTA is effectively discounting any progress or increase in the level of Australian content in emerging digital media systems, which is disturbing considering the levels of investment already applied to these areas, particularly by the Victorian State Government.

6. Other submissions go into detail about the impact of the proposed pay TV quotas, but it is worth reiterating that although this is being touted as a ‘win’ for the industry, it in fact means that because of the cost of Australian programs relative to acquisition of ready-made US product, the10% requirement is presently only delivering 3.8% of transmission time, a woeful statistic for local program makers. The FTA would curb future Australian content requirements for pay TV in the areas of documentary and children’s TV – areas which are particular Victorian strengths.

7. The exclusion of Australian government existing direct and indirect subsidy mechanisms like 10B and 10BA, and the existing tax offset scheme from the FTA is clearly advisable. However, the Agreement seems to preclude extension of such mechanisms to television series and electronic games production, as requested by the Victorian Government in its submission to the House of Representatives *Inquiry into the future opportunities for Australia’s film, animation, special effects and electronic games industries* last year.

8. There also seems to be some confusion in the clauses of Annexe II relating to subsidies, grants and tax concessions, which is to be hoped is a drafting error and not a deliberate inclusion. There is a potential problem with the fact that much of state and federal direct assistance to the film, television and multi-media industries are neither subsidies nor grants, but investments in intellectual property. Investments are, under the provisions of the FTA, subject to ‘performance requirements’ that may contradict the charters of the FFC and some State agencies, whose conditions of investment demand high levels of “Australianness” (Article 11.9.2a for example prohibits the imposition of local content tests). Given that the FTA agreement seems to specifically protect Commonwealth and State subsidy mechanisms from encroachment by the US, it would seem appropriate to look at re-wording this particular clause to allow for local content tests.

9. These ‘performance requirements’ could potentially include Melbourne’s Dockland Studios, which has had significant investment from the Victorian taxpayer, as well as Sydney’s Fox Studios, and the Warner Roadshow Studios on the Gold Coast. New measures in this type of investment will not impose any domestic content, local purchasing agreements nor export requirements on investors. It would appear that these provisions will be much more general for future investments, and once again, are not clear in the current Agreement.

We are concerned that many provisions of the FTA lack clarity and raise issues that are disturbing for the local content production industry.

There appear to be limitations on the ability for Australians to tell their own stories in new and already existing media, limitations imposed by a country that already has the lion’s share of our audio-visual market.

It is difficult to see that any compensating benefits would accrue to the Victorian and Australian film, television and digital media industries through the adoption of this Agreement.

Victorian Film and Television Working Party
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