

14 April 2004

The Secretary
Joint Standing Committee on Treaties
R1-109
Parliament House
Canberra ACT 2600

Cc
The Secretary
Senate Foreign Affairs, Defence and Trade References Committee
S1-57
Parliament House
CANBERRA ACT 2600

This is a submission from Macquarie University, Sydney, in relation to the proposed United States - Australia Free Trade Agreement, Chapter 17: Intellectual Property Rights (FTA).

It is felt that the Higher Education sector in Australia stands to have certain rights eroded with the implementation of the FTA in its current form. In particular, the value of the 'Fair Dealing' provisions of the Australian Copyright Act would be adversely affected.

Under Fair Dealing, Australian institutions have access to a defined amount of intellectual property (IP) for free, and pay a licence fee for use of material in excess of that amount. Australian Universities currently pay in excess of 18 million AUD annually for this licence.

US institutions, in contrast, have greater access to IP under their equivalent of our Fair Dealing provisions. The net effect is that Australian universities would be at a great disadvantage in a common marketplace of providing teaching and learning services. Compounding the issue, much of the money paid by Australian universities for the licence flows into the US, due to the weight of cited scholarship.

A solution to this issue would be found in an alteration of the Fair Dealing provisions of the Australian Copyright Act, a renegotiation of the existing licence with the licence provider, or in an adjustment to the FTA to retain an appropriate balance regarding use of copyright materials.

In the spirit of the FTA, we need to find an arrangement that is not only equitable between copyright holders and users, but also provides equity between countries.

Sincerely

Professor John Loxton
Deputy Vice Chancellor (Academic)