



16 April 2004

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

Australia-United States Free Trade Agreement: Arts Law Centre of Australia Submission

The Arts Law Centre of Australia (Arts Law) is the national community legal centre for arts practitioners. Arts Law provides advice, education and advocacy services each year to over 2000 Australian artists and arts organisations operating across the arts and entertainment industries.

Arts Law does not represent a particular group with specific interests. Rather, we support the broad interests of creators, the vast majority of whom are emerging or developing artists.

Arts Law advocates equitable remuneration for creators. However, we also support fair and reasonable access to copyright material. We believe that this is important not only in fostering creativity but as essential to the intellectual and cultural development of society.

Australian Coalition for Cultural Diversity (ACCD) submission.

Arts Law is a member of the ACCD. We support submissions made to the Joint Standing Committee on Treaties (JSCOT) for the Australia-United States Free Trade Agreement (FTA) by fellow ACCD members the Australian Writers Guild, Screen Producers Association of Australia, Australian Screen Directors Association and the Australian Music Council.

Additional comments.

The intellectual property provisions of the FTA were not addressed in detail by the above submissions. We feel it is important to make some general comments on these, as Arts Law believes, that if introduced, they will have a significant impact on Australian society particularly the creative community. We restrict our comments to those provisions we believe affect the use of copyright material. We do, however, acknowledge that there are important issues concerning other aspects of the intellectual property provisions in the FTA and trust that these will be addressed by organisations better placed to comment.

Many of the provisions included in the FTA relating to copyright are effectively imported from United States legislation, in particular from the *Digital Millennium Copyright Act* and the *Sonny Bono Copyright Term Extension Act*. Many aspects of this legislation came about as a direct result of intense lobbying by powerful copyright industry parties. We question whether it is appropriate to change Australian legislation under these circumstances without giving greater consideration to the broader domestic effects of the changes..

This is particularly relevant as many aspects of existing Australian copyright law have either been recently reviewed domestically or are currently under domestic review.

For example, copyright term extension was considered by the Intellectual Property and Competition Review Committee in its 2000 report (Ergas Report). After considering submissions by interested parties from both sides of the argument the Committee made the following comments:

The Committee is not convinced of the merit in proposals to extend the term of copyright protection, and recommends that the current term should not be extended.

We also recommend that no extension of the copyright term should be introduced in future without a prior thorough and independent review of the resulting costs and benefits.

The recent Myer Report supported the Ergas Report view that an independent review be conducted before the term is extended. Until such a review takes place and the benefits and costs to all Australians can be considered legislating to extend the term of copyright is premature.

In 2003 Phillips Fox Lawyers undertook a review of the *Copyright Amendment (Digital Agenda) Act 2000* (Cth) (the DGA). A number of the measures contained in the FTA copyright provisions (including ISP liability and the use of circumvention devices) were raised in the Issues Papers prepared by Phillips Fox as part of the DGA Review. The Attorney-General's department was currently unable to indicate when the DGA Review report would be made available. Any comments or recommendations it makes are yet to be considered. Entering into the FTA would seem to seriously undermine the review this domestic review process.

Arts Law acknowledges free trade agreements impose obligations on states parties that make it necessary for parties to amend their domestic law. We do not believe, however, that free trade agreements should be supported simply because of their ability change domestic law. If legislative change is the agenda sought it should be pursued and considered domestically and not indirectly as part of a free trade agreement.

Conclusion

To conclude, we restate our support for the position taken by the ACCD members referred to earlier. Additionally, we oppose the introduction of the copyright provisions in the FTA on the grounds that these are yet to be thoroughly and independently reviewed and the actual benefits and costs to Australians, in particular to the creative community, are unclear.

Yours faithfully

Robyn Ayres
Executive Director