4 February 2005

The Asia Trade Task Force
Department of Foreign Affairs and Trade
RG Casey Building
John McEwen Crescent
BARTON ACT 0221

Dear Members of the Asia Trade Task Force

PROPOSED AUSTRALIA-ASEAN-NEW ZEALAND FREE TRADE AGREEMENT

Introduction

1. The Copyright Agency Limited (CAL) is a copyright collecting society that administers, on a non-exclusive basis, the copyright controlled by its members.

2. CAL is a not for profit company limited by guarantee.

3. CAL currently represents the reproduction rights of over 8000 direct “author” and “publisher” members who, in turn, represent many thousands of authors and publishers. CAL also represents thousands of other copyright owners through reciprocal agreements with overseas collecting societies.

4. CAL has been declared by the Attorney-General to be the collecting society for the reproduction and communication of works by educational institutions under Part VB of the Copyright Act 1968 (the Act). CAL has also been declared by the Copyright Tribunal to be the collecting society for government copying for the purposes of Part 2 of Division VII of the Act.

5. Pursuant to these declarations, CAL administers statutory licences through which educational institutions and Commonwealth, State and Territory governments remunerate copyright owners for the copying of their works.

6. In addition, CAL offers voluntary licences to the public and corporations for the right to copy and communicate published works. As a single resource, CAL can provide copyright clearances for hundreds of thousands of books, articles and artistic works through its licences to copy.

7. CAL strongly supports legislative provisions in relation to copyright, which will benefit all copyright owners in Australia and internationally.
8. CAL notes that there is no specific detail about the ambit of the proposed Australia-ASEAN-New Zealand Free Trade Agreement (FTA). However, we assume that as the combination of copyright and intellectual property industries is of increasing value to all the countries that would be involved in the proposed FTA, that these aspects will form part of any agreed FTA.

International Trade Agreements

9. The reason for entering into cross border agreements such as the proposed FTA is to facilitate international trade between the countries that are parties to the agreement. This is achieved by lowering barriers to trade through reducing domestic trade subsidies and import tariffs and ensuring economic cooperation.

11. Intellectual property and in particular copyright goods are assuming a greater importance in economies not only in Australia but around the region, including ASEAN. For example, recent studies in Singapore showed that the contribution of the copyright industries to the Singaporean economy is approximately 5%. The definition of the copyright industries is, in this example, is based on the WIPO guide to the valuation.¹

12. The book publishing industry in Australia generated income of around AU$1.5 billion in the 2002/2003 financial year to the Australian economy.

13. The most recent study of the contribution of the copyright industries to the Australian economy was conducted prior to 2001 and showed that the percentage was approximately 3.3%, but growing at over 5% per year.²

14. In addition to the trading of copyright goods, the licensing of copyright works through collecting societies is an important component of the trade in copyright goods, both within economies, and across international borders.

15. Collecting societies were formed by copyright owners when the individual management of their copyright was not practical due to mass use. Collective management of copyright creates efficiency and lowers cost to all parties through the economy of scale it offers. The major collecting societies in Australia had a combined income of $240,000,000 in the 2004 financial year ³.

16. One concern that copyright owners have in relation to trading in their copyright goods with ASEAN countries is the poor standard of enforcement of copyright laws in those countries due to wide exceptions to copyright law and inadequate enforcement of rights through either judicial action, education of users, court officials, and the lack of any collective administration infrastructure in those countries. We comment about these issues later in this submission.

¹ WIPO, Guide On Surveying The Economic Contribution Of The Copyright-Based Industries, Geneva, 2003
17. CAL is concerned to ensure that the entry into the FTA between Australia/New Zealand and the ASEAN countries does not lead to an increase in the unremunerated use of Australian copyright owners’ materials in the ASEAN countries.

18. Of particular interest to CAL’s members in this context is the growth in the export of Australian educational services across the Asia Pacific region including the ASEAN countries. As a natural consequence of this, the demand for Australian educational and literary texts is increasing in those countries. Managing the trade in those copyright works is of great interest and importance to Australian copyright owners.

19. This is even more so the case as a consequence of the move by the copyright industries to the digital delivery of copyright works and the adoption of this technology by educational institutions. The particular circumstances and particular nature of the use of copyright works in a digital environment, such as perfect reproduction and ease of copying make copyright owners even more concerned that their rights will be protected when trading in their copyright goods with the ASEAN countries.

Multi-Lateral Agreements

20. CAL supports Australia entering into multi-lateral agreements which contain appropriate copyright provisions, on the basis that they set benchmarks for signatory countries. CAL has a preference for multi-lateral agreements, such as the proposed Australia-ASEAN-NZ FTA, over bi-lateral agreements on the basis that they lead to greater harmonization of laws and standards across regions. Greater harmonization of laws relevant to commerce simplifies business dealings across borders which in turn makes trade between signatories more efficient.

21. However, where bi-lateral agreements are all that is on offer, such as with the recent Australia-US FTA, CAL will support their implementation if they contain copyright provisions consistent with the terms of international treaties to which Australia has acceded, such as the Berne Convention, and also enforcement provisions, such as those contained in TRIPS.

Consistent Copyright Laws

22. Australia is a signatory to the Berne Convention and any trade agreement which it enters into must comply with the terms contained in it. As a consequence of this, Australia can only enter into trade agreements which cover copyright with countries who have copyright laws in place which are compliant with the Berne Convention, or which are progressing towards compliance.

23. CAL supports the implementation of national copyright laws which are consistent with world treaties, such as the Berne Convention and the WIPO Internet Treaties, in all regions. This is premised on the argument that copyright owners’ interests must be sufficiently protected to guarantee future production of copyright works, which is obviously in the public interest of all nations.
24. Of particular importance is the protection of works in the digital environment. In this regard, CAL considers the FTA should require the protection of Digital Rights Management (DRM) measures comparable with the provisions contained in the WIPO Copyright Treaty. Without such provisions, creators do not have sufficient security or confidence to invest in the creation of digital works. This was a requirement contained in the recently adopted Australia-US FTA.

25. Any exceptions in national laws to the authors’ exclusive copyright rights should be limited in accordance with the three step test contained in Article 9 of the Berne Convention so that they are limited to certain special cases which do not conflict with normal exploitation of the work or the author’s legitimate interests in the work.

26. This is of particular concern to several countries in the ASEAN region where exceptions for educational use are not in compliance with the three step test. Copyright owners’ organisations in ASEAN countries have reported that the educational exceptions that operate in their counties impede the development of educational publishing, and also in the establishment and operation of collective management of copyright. This will require close scrutiny in the development of the terms of the FTA.

27. CAL submits that strong copyright law and practice are a requisite for the development of local writing and publishing in each country. A strong copyright framework will benefit individual creators. In turn it will promote the growth of local creative industries and also the trade in cultural productions. This will serve to increase the cultural awareness and wealth of each nation and of the region.

**Countering Piracy**

28. Some of the countries which are part of ASEAN are noted for their mass piracy of copyright works. Several are recent signatories of the Berne Convention and the WIPO Internet Treaties. This shows a clear commitment from these countries to reform their copyright laws and enforcement to support their local creative industries.

29. CAL believes the adoption of more robust copyright laws in this region are crucial not only for the local creative industries, but also to avoid these countries becoming pirate territories which undermine the economic interests of all copyright creators.

30. CAL believes that it is a priority that these countries be assisted and urged to implement satisfactory enforcement measures such as customs, training of judicial officers and in practice implementation of remedies for infringement of copyright.

**Dispute Resolution**

31. Where a dispute arises between signatories to the FTA in relation to compliance with the provisions contained in the FTA, there must be an adequate mechanism for the resolution of the dispute.
IFRRO’s Development Fund and the Asia-Pacific region

32. The International Federation of Reproduction Rights Organisations (IFRRO) is an international organisation of collective management organisations, such as CAL, which acts as an umbrella between its members through bi-lateral agreements. It is also active in establishing Reproduction Rights Organisations (RROs), and promoting awareness of copyright and the role of RROs.

33. Part of IFRRO’s work is in the field of assisting in the establishment of RROs through IFRRO’s Development Fund.

34. I am the chair of IFRRO’s Asia-Pacific committee which is dedicated to monitoring copyright practices, and assisting in the establishment and operation of RROs in the region. It has been a region of significant growth and success for IFRRO.

IFRRO and ASEAN

35. Some of the key developments for IFRRO have occurred in ASEAN countries. For example, recently, IFRRO has been active through its Development Fund in assisting development of copyright laws and frameworks conducive to the establishment of RROs in Vietnam, and the Philippines.

36. In Singapore IFRRO has used its Development Fund to assist in establishing and operating the Singapore RRO, the Copyright Licensing and Administration Society of Singapore (CLASS). CLASS has entered into significant licence agreements in its educational and government sectors and expects to undertake its first distribution to Singaporean authors and publishers in the near future.

37. The philosophy behind the IFRRO Development Fund is that improving nations’ copyright laws, and working with the local rightsholders, governments and key stakeholders of countries to establish RROs and appropriate copyright laws, will assist in setting the groundwork for local publishing industries.

38. IFRRO has established procedures for assisting countries, and also has adopted measures to assist developing creative industries with funding and other economic measures to allow these areas to gain a more even footing.

IFRRO-WIPO cooperation in the Asia-Pacific

39. IFRRO has been working cooperatively with the World Intellectual Property Organisation (WIPO) in the Asia-Pacific Region to promote awareness of copyright issues and to assist the countries of this region to develop sustainable publishing industries through the development of copyright laws and RROs.

40. Some of the work included in WIPO-IFRRO cooperation in this region includes jointly held seminars on copyright law and the potential operation of RROs, and the translation of copyright statutes and related materials into relevant languages.
41. CAL, as an RRO and as a member of IFRRO, has also hosted visits from government representatives of the Asia-Pacific, such as Fiji, China, Korea, the Philippines etc.

**Traditional Knowledge**

42. CAL submits that any FTA should contain provisions which protect traditional knowledge. This is of particular concern to many of the members of ASEAN and should be included so that cultural productions’ use and exploitation can be rewarded.

43. Prompted by this time of significant cooperation and goodwill between nations of the Asia-Pacific in the aftermath of the catastrophic tsunami, CAL believes that an FTA is achievable and desirable for enhancing cultural and trade exchange between nations, and ultimately in playing a role in promoting and creating stability and peace in the region.

Yours sincerely

Michael Fraser
Chief Executive