25 August 2005

Japan Section  
Department of Foreign Affairs and Trade  
John McEwen Crescent  
Barton ACT 0221

Dear Members of the Japan Section of DFAT

PROPOSED AUSTRALIA–JAPAN 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 24,000 Australian 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.

International Trade Agreements

8. 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.

9. Intellectual property and in particular copyright goods are assuming a greater importance in economies globally – including Australia and Japan.

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

11. 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.¹

12. 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.

13. 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 year².

14. Of particular interest to CAL’s members is the growth in the export of Australian educational services across the Asia Pacific region including to China. 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.

15. 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 and communication, make copyright owners even more concerned that their rights should be protected when trading in their copyright goods with Japan.

Multi-Lateral Agreements

16. 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.

17. However, where bi-lateral agreements are all that is on offer, such as for the proposed Australia-Japan, 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, the WIPO Copyright Treaty and also enforcement provisions, such as those contained in TRIPS.

**Consistent Copyright Laws and International Treaties**

18. 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 which have copyright laws in place which are compliant with the Berne Convention, or which are progressing towards compliance.

19. CAL supports the implementation of national copyright laws which are consistent with world treaties, such as the Berne Convention and the WIPO Copyright Treaty, 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.

20. 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.

21. 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.

22. CAL is concerned at potential amendments to Japanese Copyright legislation which would mean that the pharmaceutical sector would be granted an exception from copyright infringement for copying of journal articles for corporate purposes. This is contrary to obligations contained in the Berne Convention, and therefore contrary to the rights of copyright owners. It would undermine markets for copyright works where there is no public policy reason to do so.

23. CAL urges negotiators to require that the terms of any FTA entered into between Japan and Australia require that copyright exceptions under Japanese law are consistent with obligations under international copyright treaties.

24. CAL submits that strong copyright law and practice are a requisite for the development of local writing and publishing in any nation. 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.

25. CAL is concerned about rates applied for copying of science, technology and medical journals in Japan which are disproportionately low when compared with countries of similar size and economic prosperity. This acts as a practical barrier
to trade, and diminishes the potential for markets to develop which are beneficial to both local and foreign publishing industries.

Dispute Resolution

26. 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 and the Asia-Pacific region

27. 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.

28. 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.

29. Part of IFRRO’s charter is to make copyright owners’ works accessible through bilateral agreements between RROs of member nations. An undertaking in IFRRO’s principles for model bilateral agreements is to abide by the principle of national treatment whereby an RRO treats the rights of foreign copyright owners with whom they have a bilateral agreement in place at least as well as those of local copyright owners.

30. IFRRO’s principles for model bilateral agreements recognise that there are variations in the terms of administration of licensing undertaken by different RROs which reflect the different copyright environments of their respective countries. CAL adheres to IFRRO’s principles for model bilateral agreements when entering into bilateral agreements with foreign RROs.

31. Concerns have been expressed by rightsholders about rates applied for copying of works in Japan, particularly in relation to science, technology and medical journals. The rates set for this class of works are disproportionately low when compared with countries of similar size and economic development. This diminishes the potential for markets to develop which are beneficial to both local and foreign publishing industries, and therefore represents a practical barrier to trade in this area.

32. CAL seeks to ensure that provisions of any FTA entered into between Japan and Australia require that such practical barriers to trade are prohibited where they can be proved to have an unfair effect on foreign enterprise in Japan. This would benefit both Australian and Japanese publishing industries which would derive appropriate fees for the use of their works which would in turn encourage further investment in new works.
33. The 1999 amendments to Japan’s copyright laws introduced provisions relating to intermediary businesses concerning copyright, which therefore cover RROs. These provisions require registration of such organisations with the relevant government ministry in Japan, and also the registration and approval of royalty rates set by the RRO with the same government body.

34. CAL urges that this process of regulation of collective management of copyright is required under the terms of an FTA to be transparent, clear and consistent. This would assist Australians doing business in Japan to ensure that their trade with RROs is efficient and simple.

Conclusion

35. 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