3 May 2005

Australia-UAE FTA
Trade Development Division
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Dear Members of the Australia-UAE Trade Development Division

PROPOSED AUSTRALIA-UNITED ARAB EMIRATES 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. CAL welcomes the recognition of the importance of intellectual property evident in the respective Ministers responsible for the oversight of negotiations of the FTA stating the commitment of Australia and the United Arab Emirates (UAE) to international agreements connected to intellectual property rights, and the necessity of abiding by them.

International Trade Agreements

8. The reason for entering into cross border agreements such as the proposed Australia- UAE 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 globally, including the UAE.

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.\(^1\)

Collective Licensing of Copyright works

14. 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 2003/2004 financial year\(^2\).

16. CAL notes that Chapter 6 of the UAE’s 2002 Copyright law provides for collective management of copyright interests by a professional association. However a Reproduction Rights Organisation (RRO) or formal collecting society is not, to CAL’s knowledge, in existence. CAL would support the development of an RRO in the UAE for literary works as a practical method of encouraging copyright compliance.

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Multi-Lateral Agreements

17. 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.

18. However, where bi-lateral agreements are all that is on offer, such as with the proposed Australia-UAE 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 the WTO’s Trade Related aspects of Intellectual Property Rights agreement (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 which 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, TRIPS 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. The UAE is a signatory to the Berne Convention, TRIPS, and WIPO Copyright Treaty.

Protection of Copyright Works in the Digital Environment

25. 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.

26. CAL believes that adequate legislative protection of DRM in the UAE and Australia can be used to facilitate the development of digital markets. Such protection is crucial to encouraging creators to invest in digital markets for their works, and for enhancing digital trade in works and copyright based services between jurisdictions.
27. 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. Similarly, the scope of exceptions to the prohibition on the use of circumvention devices must be limited appropriately to protect copyright owners’ interests.

28. CAL notes that the general copyright duration currently in place in the UAE is the life of the author plus 50 years. To create greater consistency with Australian and other laws, CAL would recommend that the UAE be encouraged to adopt a copyright duration of copyright of the life of the author plus 70 years. CAL’s reasons for this are primarily to reduce differences between the laws of copyright trading partners.

29. 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.

**Countering Piracy**

30. Formerly the UAE was noted for high levels of piracy of copyright works. In its recent testimony on the US-UAE FTA, the International Intellectual Property Alliance (the IIPA) notes that recent amendments to the Copyright law of the UAE contained in its *Federal Law No. 7 (2002) Concerning Copyright and Neighbouring Rights* have seen a vast improvement in copyright protection afforded to creators – and has also resulted in decreased rates of piracy in all sectors of the copyright industries. This shows a clear commitment from the UAE to reform their copyright laws and ensure that they are compliant with international treaties. In particular, CAL notes that the UAE acceded to the *WIPO Copyright Treaty* in 2004.

31. CAL agrees with the insistence of the IIPA, that while the UAE has limited the amount of pirate copies made in its territory, it must implement satisfactory customs law and practice to prevent the importation of pirated works, which is still a matter of concern as related by the IIPA in its testimony of March 2005 on the US-UAE FTA.

**Internet Service Providers**

32. To ensure the piracy and infringement are avoided, the UAE must clarify the liability of ISPs and other carriage service providers for infringements which occur on their networks with their knowledge or constructive knowledge.

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33. CAL recommends that a system similar to that contained in the USDMCA and required by the Australia-USA FTA would be desirable as the notice and take down provisions contained in it create certainty for ISPs about how to avoid liability and also create security for creators whose works are susceptible to infringement without such measures.

Dispute Resolution

34. 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.

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.

Yours sincerely

Michael Fraser
Chief Executive