



AFACT

AUSTRALIAN FEDERATION AGAINST COPYRIGHT THEFT



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Mr. Andrew L Stoler,
Associate Commissioner,
Review of Bilateral and Regional Trade Agreements,
Productivity Commission,
Canberra, ACT, 2601

Request for submissions on the Productivity Commission Review of Bilateral and Regional Trade Agreements

Dear Mr Stoler,

The Australian Federation Against Copyright Theft (AFACT) is grateful for the opportunity to put forward this submission in response to the review by the Productivity Commission of Bilateral and Regional Trade Agreements.

The motion picture entertainment industry plays an important role in the Australian economy and is a major source of employment for Australians. A report on the Australian film and television industry found that in 2006-2007 the industry accounted for nearly 50,000 full time equivalent positions, generated total gross output of \$16.8 billion, adding enough value to the Australian economy to contribute 0.43 per cent to the nation's GDP and contributing \$1.8 billion in taxes paid to government.

Many Australians are employed directly in the local film and television industry, in studios, production companies, or in core industry suppliers, such as film labs, special effects and digital studios, location services companies, prop and wardrobe houses, research services and film stock houses, video duplicating service companies and stage rental facilities. The industry also employs actors, directors, writers, and technical or craft specialists and many more people involved in the distribution of the final local or imported product through cinemas, rental/retail stores, online and television broadcast.

The digital era has meant that illegal copies of copyright material could readily enter an unprotected Australian market. In earlier decades, when VHS tapes dominated the home video market and were smuggled internationally by the shipping container, protection of the local industry was something that could happen here, on our wharfs. In the modern era, servers located in countries in our region and beyond can make illegal copies of movies readily available to Australian consumers sitting in front of their home computers. Courier companies can unwittingly transport vast quantities of DVDs in multiple small shipments. Camcorder films can be brought into or out of Australia over the internet or on the hard disc of a laptop to distribute widely once jurisdictional borders are breached.

To protect the local market, Australia's vibrant and creative local production industry and the many people employed in the filmed entertainment industry, regional laws and their enforcement agencies must line up with the efforts made by the Australian government. If not, we risk that our efforts to ensure digital and online content protection will be in vain and the local industry undermined. Bilateral and regional agreements are an effective tool available to the government to bring harmony to regional efforts to protect copyright content and control theft across jurisdictions.

Moreover, to enhance any potential for growth for the Australian television and motion picture industry, overseas markets must be open, non-discriminatory, and secure. AFACT strongly supports the negotiation of trade agreements that protect intellectual property, lower market access barriers to Australian audiovisual products and services, and promote legitimate electronic commerce.

Australia's completed trade agreements should serve as the foundation for those currently being negotiated. It is imperative that any market opening achieved by these existing agreements not be lost when synthesizing agreements into the new FTAs, the Trans Pacific Partnership or other regional agreements that may be contemplated.

Rather, the current negotiations should serve as an opportunity for Australia to determine if any limitations on Australia's market access can be eliminated and, specifically, to introduce new measures to address digital content protection. AFACT specifically seeks that bilateral agreements include anti-camcording provisions, addressing one of the most troublesome challenges confronting the motion picture and television industry.

AFACT's interests in the bilateral and plurilateral agreements currently being negotiated cut across several areas including goods, customs, transparency, electronic commerce, and intellectual property. Below are AFACT's specific comments on some of these elements.

Goods

The Australian film and television industry already exports filmed entertainment products to free and pay television operators and also theatres, video rental stores, airlines and hotels. Although international demand is growing from a modest base, the export market contributes significantly to the profitability of many Australian productions and disproportionately to the technical strength and creative vibrancy of the local industry as a whole.

AFACT seeks the elimination of tariffs on products exported by the industry, including the elimination of tariffs on all tangible digital products.

Customs

Customs officers quite often assess ad valorem duties based on potential royalties generated rather than solely on the value of the carrier medium, i.e. the physical materials which are being imported. The economic consequence of such policies can be significant and AFACT believes that this trade barrier can be effectively addressed in bilateral agreements.

AFACT supports the Asia Pacific Economic Cooperation's 2008 Digital Prosperity Checklist and APEC's 2004 Statement on Trade and Digital Economy, which noted the benefits of eliminating duties on digital products and the benefits of a customs duties moratorium on the electronic delivery of digital products. AFACT supports a prohibition on assessment of duties on electronic commerce, which should be negotiated in all bilateral agreements to which Australia is a party.

Transparency and Anti-Corruption

AFACT supports the inclusion in bilateral agreements of institutional transparency provisions.

Robust transparency provisions would provide the industry with some recourse should discriminatory practices arise. We submit FTAs should include a requirement to publish new final regulations prior to their effective date, allowing the industry the opportunity to make its case to regulators.

Finally, the anti-corruption principles included in FTAs can usefully address industry's ability to conduct business openly and fairly.

E-Commerce

Integral to the business models of AFACT's member companies is electronic commerce, which continues to transform member companies' production and distribution processes. AFACT places high priority on ensuring that this critical means of distribution and production is not jeopardized by discriminatory regulations.

AFACT submits that bilateral agreements could include a stand-alone e-commerce chapter that prevents the application of customs duties on electronically delivered digital products, assures non-discriminatory treatment of digital products, and addresses the valuation of physically delivered digital products to ensure that customs duties are applied on the basis of the value of the carrier medium.

Intellectual Property Rights

AFACT and its member companies place the highest priority in securing both the legal and practical tools necessary to protect intellectual property rights in the digital age. Copyright theft over the internet has emerged as the fastest growing threat to the filmed entertainment industry.

The entertainment industry is working with consumer electronics companies, software developers, and computer manufacturers to create an environment that will provide creators technological protection of their content. Tens of millions of dollars are invested each year to investigate copyright theft of filmed entertainment.

At the same time, AFACT continues to believe that government has an important role to play and Australia should encourage others to establish adequate legal protections for copyright owners, and to enforce those laws in an effective manner, including:

- adequate notice and takedown provisions to address online content protection,
- clearly defined Internet service provider (ISP) liability guidelines,
- protection of temporary copies,
- availability of deterrent damages,
- full and effective implementation of the global minimum standards embodied in the WCT and WPPT,
- extended term of protection for copyrights to match Australian law,
- "making available" right, and
- provisions against circumvention of technological protection measures.

These protections are essential elements of a legal framework capable of responding to the demands of the digital environment. Without these protections, the industry's viability will be undermined, no matter what steps it might take on its own to protect its interests. These protections serve both to protect the Australian industry and to deter harmful activity in host countries.

Bilateral agreements should in our submission also include an anti-camcording measure. In addition, IPR chapters should include legal incentives to facilitate cross-sectoral cooperation to combat copyright theft, especially between customs and enforcement bodies.

Conclusion

The member companies of AFACT generate billions of dollars annually from filmed entertainment and distribute much of that product in our region and beyond. Many Australians are employed in that work. If the industry is to be protected and its export potential fully realized, it faces multiple trade barriers and relentless challenges to the integrity of its markets both here and abroad.

Over the medium term, the economic and cultural vitality of our creative industries can best be protected by targeted change in our region made possible through bilateral agreements. AFACT supports negotiation of the bilateral and regional agreements in principle and all those already completed or currently under negotiation by the Australian government. These agreements have the potential to open and secure market access for the Australian filmed entertainment industry as it seeks to grow and develop in the decades ahead. Moreover, bilateral and regional agreements can help to improve the effectiveness, both at home and abroad, of the framework of intellectual property rights already securing the success of our vibrant industry.

AFACT appreciates the opportunity to comment on Australia's engagement in bilateral agreements and is ready to provide further information or answer questions as required.

Yours faithfully,


Neil Gane

Executive Director