

## PRODUCTIVITY COMMISSION

### SUBMISSION BY APRA|AMCOS.

#### *Review of Bilateral and Regional Trade Agreements*

Productivity Commission  
GPO Box 1428  
Canberra City ACT 2601

#### *The Australasian Performing Right Association Limited*

Australasian Performing Right Association (APRA) is a non-profit organisation, established in 1926, which represents over 60,000 Australasian composers, songwriters and music publishers. It administers the Performing Rights in music of its members and affiliated societies in Australia, New Zealand and much of the Pacific. It represents its members' interests around the world through reciprocal representation agreements.

#### *Australasian Mechanical Copyright Owners Society*

Australasian Mechanical Copyright Owners Society (AMCOS) is a non-profit company representing over 2000 music publishers and composers in Australasia and administers certain reproduction rights on behalf of its members and affiliated societies around the world. APRA administers the operations of AMCOS, under contract.

#### *Our Submission*

APRA|AMCOS is a member of the Music Council of Australia and we endorse the sentiments expressed in their submission. APRA|AMCOS also partners with the Australian Record Industry Association (ARIA) in supporting the Music Industry Privacy Investigations organisation (MIPI) and we fully support their observations on the role of trade agreements in promoting harmonisation in copyright laws and their enforcement. We wish to comment further on the questions raised in the Productivity Commission report regarding Intellectual Property and specifically copyright issues in negotiation and conclusion of Intellectual Property Chapters in such Trade Agreements.

APRA|AMCOS has an interest in our Government's approach to pursuing and negotiating bi-lateral and regional trade agreements. In particular, export revenues for APRA from copyright revenues from the exploitation of performing rights, broadcast and on-line have been growing significantly over the last few years – in the last financial year APRA's overseas revenue surpassed AUD\$20.5 million. This represents mostly the composer share of performing right income; the publisher share would be a similar amount but collected initially by sub-publishers in the relevant territory. It also does not include revenues from reproduction of musical works from the use of our repertoire, ie mechanical and synchronization licence revenue - these would also be significant.

While Australia is a net importing country overall with respect to most copyright materials, music copyright societies such as APRA|AMCOS play an important role in achieving improvements in balance of payments for music copyright royalties through local industry support and export initiatives. This is also highlighted in the key objectives of the Contemporary Music Working

Group and the Indigenous Contemporary Music Action Plan<sup>1</sup>. APRA also host the position of Producer – Export Music Services of Sounds Australia. Sounds Australia<sup>2</sup> is Australia's national export initiative, established to deliver a cohesive and unified platform at international showcase market events, supported through a financial partnership between both Federal and State governments, along with peak music industry bodies. APRA and Sounds Australia are currently working with Austrade offices in Osaka and Shanghai on strategies to improve market access and success of Australian music in the Japanese and Chinese markets.

Realising the benefits of success of such initiatives is through the export revenue generated by effective copyright laws and enforcement in these territories, as well as rights administration infrastructure. To those ends, regional and bi-lateral trade agreements refer to and supplement existing minimum standards as well as obligations to assist developing nations through capacity building. There are also requirements for technical cooperation activities in copyright under TRIPs and APEC.

APRA is the oldest and most developed collecting society for musical works in the region and therefore we assist in complying with Australia's capacity building obligations through the establishment, training and technology transfer to music collecting societies in the region. We regularly advise, assist and host training sessions for societies in China, Vietnam, Thailand, Philippines, Malaysia, Indonesia, etc. We play a leading role in the Asia Pacific Committee of the International Confederation of Authors and Composers Societies (CISAC) as well as working with the World Intellectual Property Organisation (WIPO) to achieve regional harmonisation and development of copyright laws. This is particularly important in the digital era, in cooperating and elaborating regional approaches and regimes for cross border licensing and enforcement.

In the area of intellectual property, we are not aware of any increased barriers to competition flowing from IP chapters in regional and bi-lateral trade agreements; on the contrary, they provide mechanisms for improving copyright regimes in developing countries and facilitate access to copyright works on just terms. Regional and bilateral agreements also provide a forum to raise non-compliant measures and regulations in domestic copyright laws in direct negotiation. These may be regarded as barriers to effective administration even though it is often difficult to quantify the impairment in trade terms for current and future losses, in many cases.

To raise issues of non-compliance at the WTO level is a more costly and complex endeavour. There may be statutory and regulatory issues in the copyright regimes of trading partners where it is not possible, appropriate or justifiable to raise in the context of multi-lateral agreements. To illustrate, Australia became a third party to a dispute initiated by the European Union regarding certain non-compliant provisions in the United States Copyright law which was introduced in 1998<sup>3</sup>. A Disputes Panel of the WTO found the provision to be in breach of the USA's obligations under TRIPS<sup>4</sup>. Under a subsequent ruling in WTO arbitration to determine the value of trade impairment by EC rightsowners<sup>5</sup>, Australian rightsowners did not share in the award of damages as Australia was not a complainant but merely a third party, despite registering an expectation that any award should be non-discriminatory.

---

<sup>1</sup> 2008, Cultural Ministers Council

<sup>2</sup> <http://www.apra-amcos.com.au/musiccreators/soundsaustralia.aspx>

<sup>3</sup> s110(5) Copyright Act introduced by the "Fairness in Music Licensing Act" 1998

<sup>4</sup> July 2000 (*WT/DS160*)

<sup>5</sup> Under the WTO Dispute Settlement Understanding (Article 25)

In the field of copyright, we do not believe that bi-lateral or regional trade agreements undermine the principle of non-discrimination underpinning multilateral IP agreements nor could they be construed as causing trade diversion in that field of commerce. Rather, they provide an important avenue to raise non-compliant measures in copyright and to offer capacity building, technical cooperation and technology transfer to our developing markets for musical works. This is particularly the case for many of our important emerging markets in the territories that Australia has concluded, or is considering, agreements with such as China, Japan, Korea, ASEAN, India Gulf States, etc.

The submission by the Music Council of Australia highlighted the importance of the 2009 accession of Australia to the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions. We believe that the establishment of effective music copyright societies ensures the participation of creators from developing countries in the equitable commercial exploitation of their works in the digital age.

Thank you for this opportunity to express our views. We remain at your disposal if you have any questions.

Scot Morris  
Director International