



Response to Productivity Commission Issues paper: Bilateral and Regional Trade Agreements

1 March 2010

Copyright Agency Limited

1. Copyright Agency Limited (CAL) is a copyright collecting society – a non-profit company that manages access to, and use of, copyright content. CAL's members include more than 15,000 Australian writers, illustrators, photographers and publishers. Through agreements with similar collecting societies in other countries, CAL manages overseas content as well as Australian content. CAL is the government-authorised collecting society for collection and distribution of copyright payments for the use of text, images and notated music under Part VB of the Copyright Act (educational use) and Part VII Division 2 (for government use).
2. CAL has made a number of submissions in the past on multilateral, plurilateral and bilateral treaties, including the free trade agreements with the US, Malaysia and ASEAN, and the proposed Anti-Counterfeiting Trade Agreement (ACTA).

Summary of CAL's position

3. CAL's view is that bilateral trade agreements can assist to bring about an environment that facilitates legitimate use of copyright content, whereby copyright content is accessible and content creators are fairly recompensed.
4. Such an environment both fosters the production of local content, which provides confidence in the intellectual property regime, and provides export opportunities for Australian content producers.
5. These outcomes are achieved through the combination of a regulatory environment that encourages authorised use of content and discourages piracy and other unauthorised use, and assistance with establishing the necessary infrastructure for efficient licensing of content.
6. CAL's view is that, ideally, improvements to intellectual property regimes should be achieved through multilateral treaties and the international organisations that administer them, such as the treaties administered by the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO). CAL acknowledges, however, that for various reasons the development of new standards for the protection and administration of intellectual property through those organisations has been difficult in recent years. For this reason, many countries, including Australia, have sought to address issues surrounding intellectual property through bilateral and plurilateral agreements.

Questions relating to IP in Productivity Commission Issues Paper

Have the trade agreements' provisions dealing with IP been liberalising or have they increased barriers to competition in certain markets

7. As far as CAL is aware, trade agreements have resulted in an improved environment for the production of, and legitimate access to, copyright content. Outcomes from trade agreements that have contributed to this improved environment include obligations to accede to multilateral treaties such as the Agreement on Trade Related Aspects of Intellectual Property (TRIPS), standards or obligations that exceed those required by multilateral treaties, such as border controls, and assistance with capacity building.
8. We are not aware of any barriers to competition in the copyright field that have arisen from trade agreements.

How do trade agreements' provisions dealing with IP interact with Australia's commitments and obligations under the WTO 'Trade-Related Aspects of Intellectual Property Rights' agreement and other multilateral agreements on IP?

9. The major treaties for copyright, apart from TRIPS, are the WIPO treaties: the Berne Convention, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).
10. The intellectual property provisions in trade agreements reinforce, and build upon, the provisions in multilateral treaties. The trade agreements usually require adherence to one or more multilateral treaties, thus extending the standards and obligations in those treaties to additional countries.
11. Most trade agreements also require additional standards and obligations. These vary from treaty to treaty, depending on factors such as whether one or more parties is a developing country.

Regulatory regime and capacity building

12. Important obligations in trade agreements are those relating to capacity building and technology transfer. These are essential to ensuring that the regulatory regime results in practical benefits to both producers and consumers of intellectual property.
13. CAL is actively involved in capacity building by assisting with the establishment and support of collective administration of rights in developing countries, both in its own right and through the International Reproduction Rights Organisation (IFRRO). From CAL's point of view, efficient collective licensing of rights provides legitimate access to content and copyright royalties to local content producers, as well as export opportunities for Australian producers.
14. IFRRO has a Development Fund, which is used to help establish copyright licensing systems in developing countries. For example, IFRRO helped establish the Copyright Licensing and Administration Society of Singapore (CLASS), which has gone on to establish licences for educational and government use of copyright content. CAL provides ongoing technical and other

assistance to CLASS and other collecting societies, such as those in the Philippines, Indonesia and Hong Kong.

15. The effectiveness of the capacity building efforts of CAL and IFRRO is dependent upon the regulatory environment. If piracy is rife and there are no moves to curtail it, it is very difficult to establish collective licensing systems for the legitimate use of content.
16. CAL is happy to provide further information about any of the issues raised in this submission.

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