1. Do the provisions in the FTA regarding the protection of intellectual property supersede any recommendations arising from the Phillips Fox review of Australian legislation?

a. Were the Phillips Fox recommendations taken into account in the FTA negotiations?

Response:

Phillips Fox conducted their research and analysis of the copyright Digital Agenda reforms independently of the FTA process being undertaken by the Government. The Phillips Fox report was received by the Attorney-General's Department in February 2004 by which time the bulk of the FTA negotiations had been concluded. Where possible, the Government is taking the Phillips Fox report into consideration in its implementation of the FTA obligations.

In some areas, the copyright provisions of the AUSFTA supersede the recommendations made in the Phillips Fox report. For example, technological protection measures are dealt with in both the Phillips Fox report and the AUSFTA. In the event of inconsistencies between the Phillips Fox report recommendations and obligations under the FTA in relation to technological protection measures, the FTA will prevail.

2. Is it the case that, under Chapter 17 of the FTA, Australia has basically been required to adopt US standards, but only when it broadens rather than narrows the scope of IP protection?

a. Is this adoption of US standards of IP protection setting an important precedent?

Response:

Australia is not required under the AUSFTA to adopt legislation identical to that of the US. Australia has agreed to strengthen its IP regime in some respects. Importantly, the FTA provides Australia with some flexibility to make exceptions. For example, in relation to copyright and patents the text explicitly preserves the internationally agreed standard, contained in the TRIPS Agreement, to make exceptions to owners' rights. This flexibility will allow Australia to reflect AUSFTA commitments in ways that are suitable for the Australian market.

3. How do the IP protection provisions of the Aust-US FTA compare with the corresponding provisions in other FTAs that Australia is party to?

Response:

The AUSFTA provides more comprehensive coverage of IP rights than both the Singapore-Australia Free Trade Agreement and the Thailand-Australia Free Trade Agreement.

4. To what extent is the wording and intent of the US *Digital Millennium Copyright Act* of 1998 incorporated in the FTA Chapter 17.

Response:

The AUSFTA is similar to areas of the US Digital Millennium Copyright Act 1998, particularly in relation to elements of technological protection measures and ISP liability.

Importantly the AUSFTA does not require Australia to implement the US DMCA into Australian law word for word. Australia will implement its Chapter 17 obligations in a manner appropriate to our own legal and regulatory environment.

5. What is the significance of Article 17.1.6 not applying to procedures provided in multilateral agreements concluded under the auspices of *WIPO*.

Response:

The language of Article 17.1.8, which exempts the provisions of Article 17.1.6 from these procedures, reflects Article 5 of the TRIPS Agreement. The Article operates to exclude those aspects of WIPO treaties that deal with procedural issues relating to acquisition or maintenance of intellectual property rights. The provision makes no change to our existing international rights or obligations.

6. Concerning Article 17.2.7, can you elaborate on the mechanisms for resolving disputes over a refusal by a Party to register a mark, or to cancel a registered mark opposed by interested parties?

Response:

The existing procedures are set out in the *Trade Marks Act 1995*.

In summary, to be registrable a trade mark must meet certain conditions that are set out in the Trade Marks Act. If an application does not meet these criteria, the trade mark applicant is notified of this and is given an opportunity to address the problems. A decision by the Registrar of Trade Marks to reject an application to

register a trade mark at this point may be appealed to the Federal Court, then to the High Court.

Once the application is assessed as meeting the criteria it is accepted and details of this acceptance are advertised in the *Official Journal of Trade Marks*. Third parties then have 3 months to oppose the registration. The grounds on which a registration can be opposed are set out in the Trade Marks Act. A decision by the Registrar of Trade Marks to refuse to register a trade mark that has been successfully opposed may be appealed to the Federal Court, then to the High Court.

If no opposition is filed, or if opposition is unsuccessful, the trade mark can be registered. Once a trade mark is registered, third parties can apply to the Registrar of Trade Marks or the court to seek removal for non-use or cancellation of the mark. Again, the grounds upon which a mark can be removed or cancelled are set out in the Trade Marks Act. Interested parties who seek to cancel a registered mark may only apply to do this through the court. A decision by the Registrar to remove a trade mark registration because it has not been used may be appealed through the courts.

7. Article 17.2.11 requires the Parties to 'reduce differences in law and practice between their respective systems'. Is this essentially a requirement that Australia moves closer to the US position?

Response:

This provision requires both Parties to "endeavour to reduce differences in laws and practices that affect costs to users". This is a best endeavours clause, rather than an obligation to move closer to one another.

This provision reflects an international trend to work cooperatively to reduce differences in law and practice which Australia has actively supported in international fora, including the World Intellectual Property Organization.

8. Can you describe the mechanism required under Article 17.2.12(a) that will deliver a system whereby owners can assert, and interested parties can challenge, rights associated with marks?

Response:

There are a number of ways in which this can be done in Australia. These are

- the Trade Marks Act which applies to registered trade marks;
- Common law - which allows owners to assert rights in relation to unregistered marks and bring an action for passing off and

- the provisions of the Trade Practices Act and equivalent state legislation

9. Several witnesses have complained about how under Article 17.4.1 there is provision for the prohibition of 'temporary storage in material form' of works, performances or phonograms. I understand that this goes to the issue of 'caching' content and how people browse on the internet. Can you explain why a prohibition on temporary storage is NOT a problem?

Response:

The AUSFTA requires Australia to extend the definition of reproduction to cover all reproductions in any manner or form, permanent or temporary (including temporary storage in material form). Australia retains its ability to include specific exceptions to allow reproductions in certain circumstances. The AUSFTA will not limit the scope of the caching exception in the Copyright Act, which will continue to apply to temporary reproductions.

10. Article 17.4.7 provides that the Parties SHALL provide for criminal procedures and penalties against persons circumventing, for commercial gain or profit, technological protection measures. It says that the Parties MAY provide that such penalties DO NOT APPLY to non-profit libraries, educational institutions, archives etc. Does this mean that unless the Parties so provide specifically to exempt not-for-profit use, that non-profit users could face criminal procedures for circumventing TPMs?

a. Are there cases where this has happened under US domestic law?

Response:

To attract criminal penalties a person must circumvent, without authority, a technological protection measure wilfully and for the purpose of commercial advantage or financial gain. Consequently, it does not require criminal procedures and penalties to be applied where there is no intention of obtaining a commercial advantage or financial gain.

Further, the AUSFTA provides that each party may provide that such criminal procedures and penalties do not apply to a non-profit library, archive, educational institution, or public non commercial broadcasting entity. The Government can therefore consider the implementation of such an exception.

It is important to note that under the Agreement Australia can also implement certain public interest exceptions to the anti-circumvention provisions that are considereded necessary.

This issue also needs to be looked at in the context that the overall focus in the FTA is on infringements that are wilful and significant, or that have a commercial element. The Government will implement changes in a way that meets Australia's general approach to criminal law, with all its protections and safeguards.

We do not know of US cases where a non-profit library, archive, education institution or public non-commercial broadcasting entity has been found criminally liable for copyright activities relating to circumvention provisions in the US.

11. Are the exceptions outlined in 17.4.7(e)-(f) adequate to allow people with a legitimate interest (such as ensuring interoperability of systems, and other 'non-infringing good faith' activities) to do what they need to do without fear of prosecution?
b. And how does this sit with the confining of exceptions as provided in 17.4.10?

Response:

The provisions of Article 17.4.7 provide a list of specific exceptions that allow people to circumvent technological protection measures for specific purposes. One of these is interoperability. In addition the provision requires the Parties to undertake a review at least every four years through which Australia can put in place further exceptions for additional uses where circumvention is permitted, where the actual or likely adverse impact on those non-infringing uses is credibly demonstrated in such a legislative or administrative review.

The domestic implementation of these provisions will be a matter of consultation during the two year period from entry into force of the AUSFTA as permitted under the Agreement.

Article 17.4.10 provides for exceptions to the exclusive rights of the copyright owner, whereas Article 17.4.7 more specifically relates to exceptions for circumvention of an effective technological protection measure. The language in Article 17.4.10(a) mirrors TRIPS language and Article 17.4.10(c) preserves the scope of limitations and exceptions permitted under other international copyright agreements, unless otherwise specifically provided in the Chapter.

12. Article 17.8 deals with designs, and requires each Party to 'endeavour to reduce differences in law and practice between their industrial design systems.' Will such harmonisation draw Australia closer to the US than vice versa?

Response:

Please refer to response to question 7.

13. Article 17.9.14 dealing with patents requires the Parties to 'reduce differences in law and practice between their respective systems'. Will such harmonisation draw Australia closer to the US than vice versa?

Response:

Please refer to response to question 7.

14. Article 17.9.8 deals with unreasonable delays in the issuance of patents. Is there a corresponding article dealing with unreasonable delays in the release of patents once their time has expired?

Response:

A corresponding Article in relation to expiration of patents is unnecessary. There is no "release" of a patent upon expiry. The exclusive rights granted to a patent owner under the *Patents Act* cease automatically upon expiration of that patent.

15. The sense I have from the evidence on IP matters before the Committee yesterday, is that there are significant implications for domestic copyright and IP and patent law that flow from the FTA. How much work has been done on drafting the domestic legislation that would be needed to give effect to the FTA?

Response:

The legislation needed to address the IP aspects of the FTA was highlighted in the Regulation Impact Statement tabled in Parliament on 30 March, in Annex 8. Amendments are needed to the Copyright Act of 1968, the Australian Wine and Brandy Corporation Act 1980, the Therapeutic Goods Act 1989, the Agricultural and Veterinary Chemicals Act 1994 and the Patents Act 1990. This is elaborated in more detail in the RIS Annex and the NIA.

With the exception of the Article 17.4.7 amendments, these amendments are set out in the US Free Trade Agreement Implementation Bill 2004.

16. The Chair of the Australian Libraries Copyright Committee said yesterday : ***What we would see with the FTA and the possible changes to Australian law that might be embraced if one followed the chapter 17 provisions, I think, would be an environment in which litigation and action around a number of issues would develop rapidly*****. Why should we disbelieve him?**

Response:

Australia's obligations under Chapter 17 of the AUSFTA will be implemented in a manner appropriate to Australia's legal and regulatory environment. There is no reason to expect that implementation of these obligations will result in uncertainty and increased litigation. It is expected that rights owners will seek to use the notice and take down procedure in relation to ISPs and to this degree there will be increased activity in this area. This would not necessarily be litigious activity. Indeed, part of the underlying rationale for the notice and take down scheme is to avoid litigation.

17. **Dr Cochrane also said:** ***In Australia, I know a great deal of thought went into what we should do about circumvention devices, and that found expression in the 2000 act. The provisions that are in chapter 17, if followed, would change the approach that we have had. There are a number of drafting difficulties and ambiguities in relation to anticircumvention which I think present some significant problems, not just to legislators <u>but also to people who are subsequently charged with having to administer on the ground, as it were, copyright law</u>.*** **(emphasis added) What is DFAT's response?**

Response:

The Government will be implementing its obligations under Chapter 17 in a manner consistent with Australia's legislative and regulatory framework . While representing a departure from aspects of the regime put in place in 2000 there will be close consultation with stakeholders so as to minimise implementation problems, including any ambiguities that would make compliance problematic in practical terms.

18. **A lawyer with expertise in opensource matters told the Committee yesterday that:** ***The main issue I see for the open source industry in Australia is that the chapter 17 provisions are likely to create or increase compliance costs that these small enterprises are going to incur in the development of their software. ... The other issue that is keenly on the radar of the open source industry is the provisions in relation to technological protection measures and the potential that they can be used to prevent the interoperability of data or the creation of software programs which can access other people's data. I think the***

open source industry would see the inability to manipulate data that has been saved by other people acting as a barrier to competition to those people trying to put forward competitive products. . In short, the concern is that the chapter 17 provisions will substantially increase compliance costs and that means the engine that is used for the development of open source, which is a low compliance cost environment, may be gummed up and potentially stopped. **Did you consult with the open source business sector during the negotiations? And how would you respond to these claims?**

Response:

The government consulted extensively in developing and negotiating the the AUSFTA, and the negotiating team had meetings with over 200 industry groups, businesses, state government departments, consumer groups, unions and NGOs. We understand that the open source software industry concerns relate to two issues (1) the possibility that Australia will adopt US style laws concerning business method patents and (2) anti-circumvention.

In relation to the patentability issue, it is not envisaged that there will be any changes to our laws concerning what can be patented in Australia as a result of the Free Trade Agreement. Nor is it considered that the FTA requires or will lead to any change to Australian practice regarding the grant of patents in relation to business methods or software. Business methods and computer software inventions are already patentable in Australia provided they meet the patentability requirements set out in the Australian Patents Act. Nothing in the Free Trade Agreement requires Australia to adopt a US approach to the grant of such patents.

In relation to anti-circumvention, the AUSFTA contains strengthened provisions in relation to the circumvention of controls that copyright owners place on their copyright material to assist them protect their copyright. The provisions are designed to assist copyright owners to enforce their rights and target piracy. These obligations do not stifle innovation or require that Australia must prevent consumers and industry from engaging in legitimate activity, including obtaining appropriate access to copyright material. The AUSFTA also allows for the continued development of innovative software products, including Australia's burgeoning open source software development industry.

The Agreement provides for a specific exception to the anti-circumvention provisions which allows reverse engineering of computer software for the purposes of achieving interoperability. Further, the Agreement provides for a review process to be undertaken at least every four years for additional exceptions to those listed, to permit circumvention where the adverse impact or

likely adverse impact on certain non-infringing uses is credibly demonstrated in a legislative or administrative review. This would allow the government to assess what other exceptions may be appropriate to put in place to allow interested parties, including the open source software industry to circumvent an access control measure.

Finally, the IP Chapter does not alter competition law in Australia which can be used to address anti-competitive conduct.

19. **On extension of copyright, ANU lawyer Dr Matt Rimmer stressed that there were major problems. Dr Rimmer noted that, in the US: ...** ***there has been quite a bit of economic debate in relation to the Sonny Bono Copyright Term Extension Act. Five Noble laureates and a number of leading economists put forward a submission .. that the copyright term extension in the United States would have very serious impacts on consumers and provide very few benefits for creators….That has been reinforced by the (Australian) Ergas intellectual property competition review and its comments. Those particular reports are much more credible and plausible than some of the other evidence presented, for example, by the Allen Consulting report and the Centre for International Economics, whose analysis of the intellectual property chapter is utterly implausible. ...*** **Dr Rimmer says elsewhere:** ***The section that deals with intellectual property is seven pages long. My main problem in terms of dealing with the legal matters is that it fails to contextualise the major changes that have taken place and fails to grapple with some of the main economic studies that have been done in relation to particular areas. For instance, in relation to the question of the copyright term extension, they do not really grapple very well with the report by Milton Friedman and Ken Arrow and the other economists who made a submission to the Eldred case. Similarly, they do not look at the Productivity Commission's report on the extension of patents back in 1996 and draw upon that in their analysis of the impact upon intellectual property. That is a real problem in their efforts to try to quantify the benefits or costs of the intellectual property chapter.*** **How much work was done on the economic impacts of Chapter 17 before the negotiation on it was settled?**

a. **Is there any economic analysis being done currently on the impacts of Chapter 17.**

Response:

Economic considerations in relation to copyright issues, as has been stated in the published reports, are difficult to assess. The Government was conscious of the potential impact of taking on commitments that would require changes to current Australian law and practice, and also had regard to the degree of conjecture in relation to possible economic impacts of these commitments. The Government was guided by its objectives on IP, specifically the objective to

ensure that Australia remains free to determine the appropriate legal regime for implementing internationally agreed intellectual property standards.

20. **Dr Rimmer also stressed that:** ***I think the FTA is making it worse because there are strong interactions between technological protection measures and fair use. There are many arguments that the ability to engage in, say, fair dealing or fair use is cut down once you have technological protection measures happening and once you have contracts that try to do things like contract out of exceptions, which is also a very controversial matter. The Copyright Law Review Committee recommended that you should not be able to contract out of the defence of fair dealing. They provide lots of evidence that publishers were including in their contracts clauses which cut down what people could do legitimately in terms of the defence of fair dealing. It is such a fundamental doctrine that affects all the different areas of intellectual property, and its absence from the free trade agreement is very significant.*** **What is DFAT's response to those concerns?**

Response:

The interaction of copyright rights, exceptions to those rights and the extent to which those exceptions may be affected by contract, remains an on-going policy issue extending beyond the AUSFTA.

There would be scope for the Government to consider introducing a 'fair use' style exception if it wished to do so. The AUSFTA allows for the introduction of new exceptions provided the exceptions are in accordance with long standing international law as reflected in the Berne Convention and TRIPs agreement.

It is also important to bear in mind that the IP Chapter allows some flexibility in the implementation of the anti-circumvention provisions. The agreement provides for a 2 year transitional period to implement these provisions, which will present the opportunity for public submissions in this area. This will allow the Government to assess what exceptions may be appropriate to the anti-circumvention provisions.

21. Can I draw your attention to a concern raised by a researcher and lawyer in the IP area, Ms Kim Weatherall . She said:
There is one significant point which bears on the particular discussion that we have had today about exceptions to the technological protection measures and the anticircumvention provisions…. **It is 17.4.7(f).** ***It comes at the end of that long list of exceptions that we have been dealing with. Under parts (i), (ii) and (iii) of that section, it tells you how you may implement the exceptions and what those exceptions and activities may apply to. You will notice that the review which has been discussed at some length today, where we can find out***

whether there has been an actual or a likely adverse impact and create an exception for those circumstances, is at No. 8. It is on the same page. You will notice that No. 8 is only allowed to be an exception under (i)—that is, (f)(i). The other ones do not mention No. 8.
... . So you can only create the exception to apply to the activities listed in (i), (ii), (iii). No. 8 is only allowed to be an exception to the act of circumvention and not to the distribution of devices, it seems to me, on my reading of that text—and I am perfectly willing to be corrected if I am wrong. What that would mean is that, say we were to decide to create an exception for people to home tape video movies and there is some technological protection measure which prevents that, there would be no ability under this treaty text to allow someone to sell the devices that would enable ordinary members of the public to do that. In that review process we cannot create an exception, except to the act of circumvention. So people would be allowed to circumvent if they were able to find a way. I am willing to be corrected if I am wrong, but that is my reading.
Can anyone correct Ms Weatherall's reading?

Response:

It is correct that Article 17.4.7(f) sets out which of the exceptions listed in Article 17.4.7(e) apply to the activities proscribed in Article 17.4.7(a). For example, the review mechanism under which a Party can make additional exceptions applies to permit persons to circumvent an effective technological protection measure (ETPM). It is also important to note that the provisions do not prevent the manufacture, distribution, sale or importation of **all** circumvention devices or services, nor do they necessarily restrict **all** commercial activities in relation to those devices or services. Factors relevant to the determination of these issues include whether:

- the device is advertised for the purpose of circumvention;
- it has only a limited commercially significant purpose other than circumvention;
- or it is primarily designed, produced or performed for the purpose of enabling circumvention.

These issues will be considered during the 2 year transitional period to implement the provisions, which will present the opportunity for public submissions in this area.

22. Dr Rimmer noted, amongst other things that: ***We should also note that the patent section of the intellectual property chapter makes some very important changes in practice and law to patent criteria and the ability of pharmaceutical drug companies to get evergreening of very important patented drugs under the proposed provisions. Those changes need to be subject to***

rigorous economic analysis, which so far has not really taken place in relation to the IP chapter of the free trade agreement. **DFAT's response?**

Response:

No, none of the changes that Australia will make under the AUSFTA will prolong the term of pharmaceutical patents or enable pharmaceutical companies to keep generics out of the market**.**

The AUSFTA does not require us to make any change to our patent extension regime. It will not provide patentees with any opportunity to extend the term of their patents beyond what they can do now

The AUSFTA does not require us to make any change to our regime for the protection of pharmaceutical test data. Pharmaceutical companies will not get any more data protection that they get now

The changes that we have agreed with respect to the pharmaceutical marketing approval process do not provide any extension of either the patent term or the period of test data protection for pharmaceutical companies. They do not give pharmaceutical companies any new rights to intervene in the marketing approval process

23. This question from Senator Ferris does not relate to intellectual property issues and will be answered separately.

24. The following is a chain of argument that may lead one to think that Australia is bound to a position that the manufacture, import, distribution or sale of a region free DVD player must remain illegal in Australia, if Australia is to conform with the terms of the Free Trade Agreement with the United States of America:

A. Article 17.4.7 (a) (i) outlaws the act of circumventing any 'effective technological measure'.

B. Article 17.4.7 (a) (ii) outlaws the manufacture, importation, distribution or sale of a device or the provision of services that circumvent any 'effective technological measure'

C. Articles 17.4.7 (e) (i) – (vii) form a list of specific exceptions to the ban on circumvention devices. None of the specifically listed exceptions would allow the use of a circumvention device to watch legally purchased DVDs from a different region.

D. Article 17.4.7 (e) (viii) allows both Parties to introduce new exceptions through a legislative or administrative review process.

E. Article 17.4.7 (f) describes the subparagraphs of 17.4.7 (a) that each of the exceptions listed in 17.4.7 (e) apply to.

F. Article 17.4.7 (f) prescribes that 17.4.7 (e) (viii) only applies to article 17.4.7 (a) (i).

The conclusion to be drawn from F above is that any Party to the agreement can only make new exceptions in relation to the use of circumvention devices, but not to their manufacture, importation, distribution or sale.

This leads one to conclude that if Australia were to legislate to specifically allow:

- **the sale of region-free DVD players;**
- **the commercial modification of DVD players;**
- **or the sale of 'modification kits' for DVD players**

to allow DVD players to play discs from any region, that Australia would then be in breach of its commitments under the agreement, and may leave itself open to action under the dispute resolution procedures of the agreement.

I would be grateful if departmental officials were able to assess the validity of each point of this argument and the overall conclusion.

Response:

A. Article 17.4.7(a)(i) does not prohibit the circumvention of <u>any</u> effective technological protection measure (ETPM). In order to contravene the obligation contained in the provision, a person would need to know or have reasonable grounds to know that they are circumventing without authority. Further the ETPM would need to control access to a protected work or other subject matter.

B. While Article 17.4.7 (a) (ii) prohibits certain forms of conduct which relate to the manufacture, distribution, sale or importation of circumvention devices or services, it does not impose an outright prohibition on all such forms of conduct, nor on all such devices or services. Factors relevant to the determination of this issue include whether:

- The device is promoted advertised, or marketed for purposes of circumvention of any ETPM;
- The device has only a limited commercially significant purpose/use other than to circumvent any ETPM;
- The device is primarily designed, produced or performed for the purpose of enabling or facilitating the circumvention of any ETPM.

C. Articles 17.4.7 (e) (i) – (vii) contain a number of exceptions to the general prohibition on certain acts related to circumvention devices (as set out in 17.4.7(a)). These exceptions are specific and do not relate to the viewing of DVDs.

D. Correct. The Article allows both parties to introduce certain exceptions through a legislative or administrative review process provided there is a

'credible demonstration' in that process of an actual or likely adverse impact on non-infringing uses. The review process must be conducted at least once every four years.

E. Correct

F. The viewing of non-infringing material from other countries is a legitimate activity and the obligations of the FTA target piracy. We do not agree that permitting the sale of region-free DVD players in Australia would contravene the provisions of the AUSFTA provided that the legislation is implemented in a manner consistent with the FTA.

The issue of multizone DVD players will be considered as part of the implementation process. The agreement also provides for a 2 year transitional period to implement these provisions, which will present the opportunity for public submissions in this area. It is also important to bear in mind that the IP Chapter does not alter competition law in Australia and competition law can be used to address anti-competitive conduct.

25. Another way that copyright holders are already attempting to restrict the ways in which consumers use purchased media is through the use of rights management information embedded within media files. The agreement under 17.4.8 requires that criminal sanctions must attach to any attempt to modify or remove this rights management information. There are specific exceptions listed for limited purposes, but no review mechanism as in article 17.4.7. Is there any way Australia could legislate to allow people to modify this type of information?

Response:

The obligations in 17.4.8 provide for remedies in relation to any use of rights management information (RMI) that might induce, enable, facilitate, or conceal an infringement of any copyright or related right. The obligation does not prevent Australia from permitting the modification of RMI in other circumstances.

The AUSFTA provides for an exception for authorised activities carried out by government employees, agents or contractors for the purpose of law enforcement, intelligence, essential security or similar government activities.

In addition, exceptions to criminal provisions concerning use of RMI apply to non-profit libraries, archives, educational institutions and public non commercial broadcasting entities.

We note that our copyright law already includes offences for certain activities involving removal or alteration of RMI. While some changes to our law will be required to fully comply with the AUSFTA, in general, these obligations are not new to our law.

26. Does the FTA restrict the Australian Government against introducing legislation or regulation governing the use of such rights management information?

Response:

Provided the Australian government implements the obligations in the FTA relating to any use of RMI that might induce, enable, facilitate, or conceal an infringement of any copyright or related right, there are no provisions in the Agreement which restrict the Australian Government's ability to legislate or regulate the use of RMI.

27. Is the Government able to legislate against the introduction of rights management information on TV broadcasts?

Response:

Article 17.4.8 does not obligate a Party to require that an owner attach RMI to a copy of its work. It does not touch upon the issue of whether the Government could legislate against the introduction of RMI on TV broadcasts.