



**COPYRIGHT AGENCY LIMITED**

## **Submission to Joint Standing Committee on Treaties on the Anti-Counterfeiting Trade Agreement**

14 February 2012

### **Copyright Agency Limited**

1. Copyright Agency is a rights management company, whose members include more than 20,000 Australian writers, illustrators, photographers and publishers. Through agreements with similar collecting societies in other countries, we manage overseas content as well as Australian content, and enable the use of Australian content overseas. We are the government-authorised collecting society for collection and distribution of copyright payments for the use of text and images under Part VB of the Copyright Act (educational use) and Part VII Division 2 (for government use).

### **The role of trade agreements**

2. We believe that trade agreements such as the Anti-Counterfeiting Trade Agreement (ACTA) can assist to bring about an environment that facilitates legitimate use of copyright content, whereby content is accessible and content creators are fairly recompensed.
3. 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.
4. 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, and access to, content.
5. Our view is that, ideally, international standards for intellectual property 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). We acknowledge, however, that for various reasons the development of 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.

### **Capacity building**

6. 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. This issue is addressed in Article 35 of ACTA.

7. Our particular interest is the establishment and support of collective administration of rights in developing countries, which can provide legitimate access to content and copyright royalties to local content producers, as well as export opportunities for Australian producers. This is an area in which we are actively involved, both in our own right and through the International Reproduction Rights Organisation (IFRRO). The effectiveness of those capacity building efforts are, however, 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.

### **National interest**

8. We submit that it is clearly in the national interest for the Australian government to be pursuing opportunities for export of Australian cultural and other copyright-based products by removing barriers to market access. Unfettered unauthorised use of content is a barrier and ACTA aims to address that issue.
9. It was also in the national interest for the Australian government to participate in negotiating the text of the treaty, and thus have an opportunity to influence the outcome.

### **Implications for domestic law**

10. We note the government's view that no new legislative measures are required to implement ACTA obligation in Australia, and that Australia's interests lie in improving standards in other countries. We think that concerns raised by some that ACTA will require change to domestic law are thus likely to be unfounded.
11. We also note concerns raised by some that review of domestic policy may be impeded by Australia's ratification of ACTA. However, any country can withdraw from the treaty by giving written notice, and the withdrawal takes effect in 180 days (Article 41). This is an option should Australia find itself in the future wanting to implement a domestic policy inconsistent with ACTA. There is also provision for the amendment of ACTA (Article 42), which could be implemented if provisions became outdated over time.

### **Assessment of the impact of ACTA**

12. While we agree that there is a case for assessing benefits for Australia from ACTA, economic and otherwise, after it has been implemented for a period, we think that the government has conducted sufficient review to date to enable it, with confidence, to ratify ACTA now.<sup>1</sup>
13. We are happy to provide further information about any of the issues raised in this submission.

Libby Baulch  
Policy Director

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<sup>1</sup> We note that, in the past, estimates of the economic consequences of proposed trade agreements have sometimes been made on flawed premises. For example, Dr Philippa Dee in a report commissioned by the Senate Select Committee on the Free Trade Agreement between Australia and the United States estimated that extending the term of copyright protection 'could amount to up to \$88 million per year, or up to \$700 million in net present value terms'. But Dr Dee's analysis was based on an assumption that there is a constant flow of royalties to each author (i.e. the royalties in the first year remain the same for the author's life plus another 70 years). This is, of course, not borne out by any experience.