21 June 2005

China FTA Task Force
Department of Foreign Affairs and Trade
RG Casey Building
John McEwen Crescent
Barton ACT 0221

Dear Members of the China FTA Trade Task Force

PROPOSED AUSTRALIA-CHINA FREE TRADE AGREEMENT

Introduction

1. The Copyright Agency Limited (CAL) is a copyright collecting society that administers, on a non-exclusive basis, the copyright controlled by its members.

2. CAL is a not for profit company limited by guarantee.

3. CAL currently represents the reproduction rights of over 24,000 Australian authors and publishers. CAL also represents thousands of other copyright owners through reciprocal agreements with overseas collecting societies.

4. CAL has been declared by the Attorney-General to be the collecting society for the reproduction and communication of works by educational institutions under Part VB of the *Copyright Act* 1968 (the Act). CAL has also been declared by the Copyright Tribunal to be the collecting society for government copying for the purposes of Part 2 of Division VII of the Act.

5. Pursuant to these declarations, CAL administers statutory licences through which educational institutions and Commonwealth, State and Territory governments remunerate copyright owners for the copying of their works.

6. In addition, CAL offers voluntary licences to the public and corporations for the right to copy and communicate published works. As a single resource, CAL can provide copyright clearances for hundreds of thousands of books, articles and artistic works through its licences to copy.

7. CAL strongly supports legislative provisions in relation to copyright, which will benefit all copyright owners in Australia and internationally.

International Trade Agreements

8. The reason for entering into cross border agreements such as the proposed FTA is to facilitate international trade between the countries that are parties to the agreement. This is achieved by lowering barriers to trade through reducing domestic trade subsidies and import tariffs and ensuring economic cooperation.

9. Intellectual property and in particular copyright goods are assuming a greater importance in economies globally – including Australia and China.

10. In a recent news report, copyright industry production was reported to account for 6% of China's GDP[1], which is estimated by the US CIA's World Factbook to total $US 7.262 trillion. This would mean that the copyright industry's value to China's economy is around $US 436 billion.

11. The book publishing industry in Australia generated income of around AU$1.5 billion in the 2002/2003 financial year to the Australian economy.

12. The most recent study of the contribution of the copyright industries to the Australian economy was conducted prior to 2001 and showed that the percentage was approximately 3.3%, but growing at over 5% per year.[2]

13. In addition to the trading of copyright goods, the licensing of copyright works through collecting societies is an important component of the trade in copyright goods, both within economies, and across international borders.

14. Collecting societies were formed by copyright owners when the individual management of their copyright was not practical due to mass use. Collective management of copyright creates efficiency and lowers cost to all parties through the economy of scale it offers. The major collecting societies in Australia had a combined income of $240,000,000 in the 2004 financial year[3].

15. One concern that copyright owners have in relation to trading in their copyright goods with Asian countries is the poor standard of enforcement of copyright laws in those countries due to wide exceptions to copyright law and inadequate enforcement of rights through either judicial action, education of users, court officials, and the lack of any collective administration infrastructure in those countries.

16. We comment about these issues later in this submission, and note that China has been making concerted efforts to bring its copyright law and practice into compliance with international treaties, and thereby to promote the development of its local publishing industries.

17. Of particular interest to CAL's members is the growth in the export of Australian educational services across the Asia Pacific region including to China. As a natural consequence of this, the demand for Australian educational and literary texts is increasing in those countries. Managing the trade in those copyright works is of great interest and importance to Australian copyright owners.

18. This is even more so the case as a consequence of the move by the copyright industries to the digital delivery of copyright works and the adoption of this technology by educational institutions. The particular circumstances and particular nature of the use of copyright works in a digital environment, such as perfect reproduction and ease of copying and communication, make copyright owners even more concerned that their rights should be protected when trading in their copyright goods with China.

---

[1] China People's Daily Online, 26 May 2005 at: http://english.people.com.cn/200505/25/eng20050525_186756.html

[2] The Allen Consulting Group, The Economic Contribution of Australia's Copyright Industries, 2001, pp. ii-iii.

[3] Zoe Rodriguez, *Australian Copyright Management Organisations,* Australian Intellectual Property Law Bulletin, Butterworths 2005, pp 138-9

Multi-Lateral Agreements

19. CAL supports Australia entering into multi-lateral agreements which contain appropriate copyright provisions, on the basis that they set benchmarks for signatory countries. CAL has a preference for multi-lateral agreements, such as the proposed Australia-ASEAN-NZ FTA, over bi-lateral agreements on the basis that they lead to greater harmonization of laws and standards across regions. Greater harmonization of laws relevant to commerce simplifies business dealings across borders which in turn makes trade between signatories more efficient.

20. However, where bi-lateral agreements are all that is on offer, such as for the proposed Australia-China FTA, CAL will support their implementation if they contain copyright provisions consistent with the terms of international treaties to which Australia has acceded, such as the Berne Convention, the WIPO Copyright Treaty and also enforcement provisions, such as those contained in TRIPS.

Consistent Copyright Laws and International Treaties

21. Australia is a signatory to the Berne Convention and any trade agreement which it enters into must comply with the terms contained in it. As a consequence of this, Australia can only enter into trade agreements which cover copyright with countries which have copyright laws in place which are compliant with the Berne Convention, or which are progressing towards compliance.

22. CAL supports the implementation of national copyright laws which are consistent with world treaties, such as the Berne Convention and the WIPO Copyright Treaty, in all regions. This is premised on the argument that copyright owners' interests must be sufficiently protected to guarantee future production of copyright works, which is obviously in the public interest of all nations.

23. Of particular importance is the protection of works in the digital environment. In this regard, CAL considers the FTA should require the protection of Digital Rights Management (DRM) measures comparable with the provisions contained in the WIPO Copyright Treaty. Without such provisions, creators do not have sufficient security or confidence to invest in the creation of digital works. This was a requirement contained in the recently adopted Australia-US FTA.

24. Any exceptions in national laws to the authors' exclusive copyright rights should be limited in accordance with the three step test contained in Article 9 of the Berne Convention.

25. CAL submits that strong copyright law and practice are a requisite for the development of local writing and publishing in any nation. A strong copyright framework will benefit individual creators. In turn it will promote the growth of local creative industries and also the trade in cultural productions.

Countering Piracy

26. In the past China has been considered a pirate territory – and it is still receiving attention on this basis from the International Publishers' Association. CAL recognises that the Chinese government has committed resources to countering piracy and has reformed its copyright laws and enforcement to support local creative industries.

27. CAL believes that it is a priority that China be assisted and urged to ensure that satisfactory enforcement measures such as customs, training of judicial officers and appropriate remedies for infringement of copyright are in place.

28. CAL considers recently implemented legislation to facilitate the operation of collective management organisations in China as a major potential contributor to decreasing piracy through offering simple copyright compliance through collective licensing. There is more comment on this development later in this submission

Dispute Resolution

29. Where a dispute arises between signatories to the FTA in relation to compliance with the provisions contained in the FTA, there must be an adequate mechanism for the resolution of the dispute.

IFRRO's Development Fund and the Asia-Pacific region

30. The International Federation of Reproduction Rights Organisations (IFRRO) is an international organisation of collective management organisations, such as CAL, which acts as an umbrella between its members through bi-lateral agreements. It is also active in establishing Reproduction Rights Organisations (RROs), and promoting awareness of copyright and the role of RROs.

31. Part of IFRRO's work is in the field of assisting in the establishment of RROs through IFRRO's Development Fund.

32. I am the chair of IFRRO's Asia-Pacific committee which is dedicated to monitoring copyright practices, and assisting in the establishment and operation of RROs in the region. It has been a region of significant growth and success for IFRRO.

IFRRO and China

33. China is of immense importance to IFRRO as one of the world's largest markets for copyright products. In particular, it is a significant market for English language educational, and science and technology and medical research materials.

34. IFRRO has been active in assisting Chinese rightsholders to lobby the Chinese government to establish legal frameworks conducive to the operation of collective licensing in China. In 2004, as the president of IFRRO's Asia-Pacific Committee, CAL's Chief Executive visited China along with an Australian government representative to discuss copyright law and collective licensing opportunities.

35. On 1 March 2005 regulations to facilitate the collective management of copyright rights came into force in China. This will permit copyright owners to allow collective management organisations to licence the use of copyright works. It is represented as a method of increasing copyright compliance and decreasing piracy. The model adopted by China has considered foreign collective management organisations' schemes from developed countries. The scheme has been developed by the Chinese National Copyright Administration, and details the reporting and other administrative requirements of RROs.

36. Following the implementation of these legislative amendments in China, IFRRO intends to play a role in offering local rightsholders and government representatives with support and advice based on its expertise in this area. A delegation of IFRRO board

members is due to visit China in September to progress this work which IFRRO believes will be beneficial to the formation of an effective Chinese literary RRO.

IFRRO-WIPO cooperation in the Asia-Pacific

37. IFRRO has been working cooperatively with the World Intellectual Property Organisation (WIPO) in the Asia-Pacific Region to promote awareness of copyright issues and to assist the countries of this region to develop sustainable publishing industries through the development of copyright laws and RROs.

38. Some of the work included in WIPO-IFRRO cooperation in this region includes jointly held seminars on copyright law and the potential operation of RROs, and the translation of copyright statutes and related materials into relevant languages.

39. Further WIPO – IFRRO collaboration in China is foreseeable as China develops its copyright framework and raises copyright awareness and compliance.

Conclusion

40. CAL believes that an FTA is achievable and desirable for enhancing cultural and trade exchange between nations, and ultimately in playing a role in promoting and creating stability and peace in the region.

Yours sincerely

Michael Fraser
Chief Executive