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Indonesia-Australia FTA Feasibility Study
Department of Foreign Affairs & Trade
RG Casey Building
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BARTON ACT 0221

Dear Members of the Indonesia-Australia FTA Feasibility Study Team

AUSTRALIA – Indonesia FREE TRADE AGREEMENT Feasibility Study

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 10,000 direct “author” and “publisher” members who, in turn, represent many thousands of 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 objective of international 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. Of particular interest to CAL's members is the growth in the export of Australian educational services across the Asia Pacific region, including to Indonesia. The demand for Australian educational and literary texts is increasing and managing the trade in those copyright works is of increasing importance to Australian copyright owners.
10. The book publishing industry in Australia generated income of around AU\$1.5 billion in the 2002/2003 financial year to the Australian economy. 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.¹
11. There is no reason to think this growth in the importance of the copyright industries has changed – especially as the demand for Australian content has been heightened by the increase in 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, make copyright owners even more concerned that their rights should be protected when trading in their copyright goods.
12. For these reasons it is CAL's view that robust intellectual property provisions which underpin and support creative industries, should be an element of any FTA CAL negotiates with Indonesia.
13. There are a number of elements of a robust intellectual property system: appropriate legislation to protect rights owners' and users' interests; effective enforcement procedures to uphold rights owners' rights; and efficient methods for managing rights owners' rights. To support each of these elements effective and targeted education of rights owners, users of copyright works and government is necessary.
14. CAL understands that Indonesia's legislation is drafted to comply with the WIPO Copyright Treaty and Berne Convention (though, as noted later in this submission, we are not certain that the exceptions for educational purposes in Indonesia's copyright law are three-step test compliant). It is therefore CAL's view that mechanisms to ensure the second and third above are present – IP enforcement and management provisions – must be contained in an FTA.
15. CAL's focus, as a collecting society, is on the efficient management of copyright. Where there are many users of many copyright works, collective licensing, supported in national legislation, is a method for managing this trade in copyright works as it is not practical or efficient in these circumstances for individual copyright owners to manage their own copyright.

¹ The Allen Consulting Group, The Economic Contribution of Australia's Copyright Industries, 2001, pp. ii-iii.

16. The organisations, like CAL, formed by copyright owners to undertake collective licensing of copyright works are called Reproduction Rights Organisations (RROs). The collective management of copyright undertaken by RROs creates efficiency and lowers cost to all parties through the economy of scale it offers. The major collecting societies in Australia had a combined licensing income of \$351,750,000 in the 2007 financial year.²
17. Over the last two years, CAL has been working with AKAPI the Indonesian publishers association to develop mechanisms for supporting management of collective rights in Indonesia.

Multi-Lateral Agreements

18. CAL supports Australia entering into multi-lateral agreements which contain appropriate copyright provisions, on the basis that they set benchmarks for signatory countries. CAL recognises the great value of multi-lateral agreements, such as the proposed Australia-ASEAN-NZ FTA 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 among signatories more efficient.
19. Nonetheless, where bilateral agreements are in prospect, such as with the recent Australia-US FTA, CAL supports bilateral agreements if they contain copyright provisions consistent with the terms of international treaties to which Australia has acceded, such as the Berne Convention, and also enforcement provisions, such as those contained in TRIPS, and more recently, the WIPO Internet Treaty.
20. If Australia and Indonesia enter into formal negotiations for a Free Trade Agreement, CAL submits that the obligations in terms of copyright should go beyond the standards set in a proposed Australia-ASEAN-NZ FTA.

IFRRO's Development Fund and the Asia-Pacific region

21. The International Federation of Reproduction Rights Organisations (IFRRO) is an international non-government organisation of copyright collective management organisations, such as CAL, and rights owner organisations. It promotes international bilateral agreements. It is also active in establishing Reproduction Rights Organisations (RROs), and promoting awareness of copyright and the role of RROs.
22. Part of IFRRO's work is in the field of assisting in the establishment of RROs in each country through IFRRO's Development Fund.
23. 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.

² From the 2006/07 annual reports of APRA, AMCOS, Screenrights, Viscopy and CAL, and advice from PPCA's licensing department.

24. IFRRO has set Indonesia as a priority country for assistance with the development of an RRO. IFRRO is collaborating with the Indonesian Book Publishers Association, IKAPI, which is highly motivated towards seeing appropriate amendments to Indonesia's copyright and related laws, and to bringing an RRO into existence. Terms of an FTA that support this development will be of great assistance to this process.

Consistent Copyright Laws

25. 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.
26. CAL supports the implementation of national copyright laws which are consistent with international treaties, such as the Berne Convention and the WIPO Internet Treaties, 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 and the commercial interest of all nations.

Term of Protection

27. CAL notes that under Indonesian law the duration of copyright in literary works is fifty years from the death of the author. CAL submits that for harmonization of provisions contained in Indonesian law with the laws in force in Australia and other nations, Indonesia should adopt a copyright duration for literary texts for the life of the author of the work plus seventy years. Greater harmonisation of this element in copyright laws minimises the barriers and costs to trade.

Exceptions

28. 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 so that they are limited to certain special cases which do not conflict with normal exploitation of the work or the author's legitimate interests in the work, restated in Article 13 of TRIPS and Article 10 of the WIPO Copyright Treaty.
29. CAL is concerned that the exceptions contained in Articles 15 and 16 of the Indonesian Copyright Law are open to a broad interpretation which could undermine the interests of copyright owners for educational purposes, and therefore mean that these provisions may not comply with the *Berne* three-step test. While expressly subject to the limitation that reliance on the exceptions should not prejudice the legitimate interests of copyright owners, CAL believes to ensure three-step test compliance, these exceptions need to be reviewed and refined. This could be achieved by recognising that multiple copying for classroom use has a significant impact on the copyright owner's market unless there is a provision requiring the payment of adequate remuneration to the copyright owner. CAL's view is that the inclusion of provisions requiring remuneration to be paid where there is a clear impact on owner's legitimate interests should be contained in the terms of the FTA.

Enforcement of Rights

30. Of particular importance to copyright owners is the protection of copyright works in the digital environment. In this regard, CAL considers any FTA should require the formal protection of Digital Rights Management (DRM) measures, including access and copy control technological protection measures, comparable with the minimum standards contained in the WIPO Copyright Treaty. In addition, it should contain adequate enforcement measures to ensure compliance with these obligations.
31. Effective enforcement of these DRMs will provide creators with sufficient security and confidence to invest in the creation of digital works. CAL is aware that Indonesia was one of the first countries to enter into the WIPO Copyright Treaty (WCT) – the WCT entered into force in Indonesia in March 2002. However, the high rates of piracy demonstrate that the Indonesian laws, which are WCT compliant, are not being adequately enforced.
32. For this reason, CAL recommends Indonesian enforcement authorities be appropriately trained and resourced to prosecute infringement cases – especially those which are on commercial scale. In conjunction with this, there must be sufficient penalties for unauthorised trafficking, manufacturing and use of circumventing TPMs as this will deter infringement of copyright owners’ rights.

Collective Licensing

33. Another method of minimising infringement of copyright owners’ rights, is to establish efficient and reasonably priced access to copyright materials through collective licensing of uses of copyright works, where this is seen to be in the public interest. As mentioned earlier in this submission, RROs are designed to enhance efficiency in the trade of copyright works – both domestically and across borders – by linking large numbers of users with a vast repertoire of works. This efficiency is maximised where operations of RROs are transparent and simple for users and owners alike to understand, and where duplication of operations is avoided
34. CAL suggests that any FTA set out provisions relating to the operations of RROs in the Indonesian Copyright Law. CAL suggests that regulations in relation to RROs ensure that duplication of activities of these organisations is minimised, and that the functions of different RROs are required to be clearly defined for any parties interacting with them.
35. CAL submits that strong copyright law and practice are a requisite for the development of local writing and publishing in each country. 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. This will serve to increase the cultural awareness and wealth of each nation and of the region.

Countering Piracy

36. Indonesia is a country in which piracy of copyright works is known to be endemic³. Book piracy is of concern in Indonesia – with large scale, systematised piracy of textbooks noted around educational campuses – and being so entrenched that legitimate bookshops trade in pirate versions of texts. IKAPI has notified IFRRO of these concerns, particularly in the university sector, and CAL submits that a combination of enforcement laws and training of relevant officials should occur in tandem with the development of collective licensing through an RRO to counter this piracy and ensure equitable returns to copyright owners where their works are used. These should be contained in the terms of any FTA negotiated with Indonesia.
37. CAL believes the adoption of more robust copyright laws in this regard in Indonesia is crucial for the development of local creative industries, and also to protect the economic interests of Australian and other copyright creators.
38. In addition, CAL's publisher members have voiced concern at doing business into Indonesia as they perceive it as a country where bribery and corruption exist. Transparent, clear, enforceable laws in relation to copyright and trade in copyright works would minimise the potential for corruption.

Dispute Resolution

39. 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.

Conclusion

40. I look forward to hearing of the outcomes of the Feasibility Study, and what plans Australia has for moving to formal negotiations of an FTA with Indonesia. I am very willing to provide any elaboration on the contents of this submission.

Yours sincerely

Caroline Morgan
General Manager Corporate Services

³ International Intellectual Property Alliance 2007 Special 301 Report, from <http://www.iipa.com/rbc/2007/2007SPEC301INDONESIA.pdf>