

26 January 2007

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

Dear Members of the Japan FTA Task Force,

RE: PROPOSED AUSTRALIA – JAPAN FREE TRADE AGREEMENT

1. Many thanks for giving Viscopy the opportunity to provide a submission to the Japan Free Trade Agreement (FTA) Task Force.
2. This follows our previous submission, concerning the *Proposed Australia-Japan Free Trade Agreement Feasibility Study* to Dr. Raby, at the Japan Section of the Department of Foreign Affairs and Trade (DFAT), dated 26 August, 2005.

Introduction to Viscopy Ltd, Our Membership and Operations

3. Viscopy Ltd. is a copyright royalty collecting society for the visual arts in Australia and New Zealand, owned by 6678 professional visual creators. Viscopy is a non-profit company that represents rights for fine artists, illustrators, cartoonists, textile designers, photographers, crafts workers, sculptors and architects. Over 40% of Viscopy members are Aboriginal and Torres Strait Islander artists.
4. Membership of Viscopy is voluntary, and free. Like all collecting societies, Viscopy is funded by a commission on the royalties we collect for members.
5. Viscopy is a member of the International Confederation of Societies of Authors and Composers (CISAC). We represent 250,000 international visual artists through our 43 affiliates, including 2 Japanese affiliates, with which we enjoy reciprocal distribution collection arrangements.
6. Like many of our visual arts collecting society peers, Viscopy has also elected to be an associate member of the International Reprographic Rights Organisation (IFRRO), the global body for reprographic rights linked with publications.
7. Both CISAC and IFRRO are closely linked to the World Intellectual Property Organisation (WIPO).
8. Viscopy members elect which of two sets of rights they wish to be represented:
 - (a) Primary rights are represented for 60% of Viscopy membership, and include royalties resulting from the direct licensing of images. Viscopy provides direct licensing services for Licensees, including: auction houses, cultural institutions, commercial galleries, film makers, public art galleries, libraries, manufacturers, publishers and other users of direct licensing image services, such as retail; and

(b) Statutory rights refer to Government and Educational use and these royalties can be received on behalf of 96% Viscopy members. The remaining 4% are represented by other collecting societies for statutory rights only.

9. While Viscopy members can receive statutory royalties, they are collected by the two collecting societies declared for these rights under the *Copyright Act 1968*, the Copyright Agency Limited and Screenrights. Viscopy members receive income from both these collecting societies.

10. Viscopy supports legislative provisions in relation to copyright and reprography, for the resulting global benefits to creators and copyright owners.

11. In addition to managing the rights of our members, Viscopy provides services for them including Indigenous services, educational services, information, non-legal advice, infringement services and moral rights services.

12. Where legal advice is required for members, our officers and legal advisor Virginia Morrison work with the Arts Law Centre of Australia, the Australian Copyright Council and pro bono lawyers, to ensure members have representation.

13. Viscopy provides licensing services for our licensees which include auction houses, commercial galleries, film makers, public art galleries, manufacturers, Government, the corporate sector, publishers and other users of the primary licensing of artworks, such as retail.

Accountability

14. Viscopy is a non-profit company that operates under the Australian Corporations Law. In addition we are covered by our Constitution and accountable to members. We also adhere to a voluntary Code of Conduct for Collecting Societies, a review of which is carried out annually by Justice Burchett, QC.

15. Viscopy is a voluntary collecting society. We are neither declared for particular legislated rights, nor do we report to the Attorney-General.

Background - Inclusion of Intellectual Property in an FTA Arrangement

16. The *Proposed Australia-Japan Free Trade Agreement Feasibility Study* recommended the inclusion of Intellectual Property in an FTA as a benefit for both Australia and Japan [p15, 2005]. It also recommended that such IP obligations should go beyond those contained in TRIPS to achieve maximum benefit for both nations. Viscopy supports these recommendations.

Background – Australian/ Japanese Visual Art Royalty Reciprocal Collection Arrangements

17. Viscopy has collection arrangements with two Japanese collecting societies, Art Photograph and Graphic Design (APG) and Japan Artists Association (JAA). Both are members of CISAC. It is unusual to have more than one reciprocal agreement with a country. As a result, collection exchange arrangements are hindered. Viscopy understands that the Asia Pacific office of CISAC is playing a role to hopefully bring the two societies together later this year.

18. Japan and Australia are the only nations in the Asia Pacific with developed collection arrangements for visual artists. Japan is a nation with richly visual traditions including fine art, Manga cartoons, etching, painting, pottery, design textile manufacture and publications.

19. Viscopy notes that the strength of the publishing industry in Japan is such that many visual arts royalties are passed on via private contract, to the publisher, which has implications for the income of visual artist members of APG and JAA. Like Viscopy, the Japanese visual arts collecting societies appear to focus on direct licensing in a range of market sectors rather than purely repographic income from publishing royalties.

20. Viscopy also notes that many tariff rates for collecting societies in Japan are set by the Commissioner of the Agency for Cultural Affairs of Japan^[1], rather than by the reciprocal market rates, or a legal body such as the Australian Copyright Tribunal.

21. Recent negotiations with our Japanese sister society have highlighted the large discrepancies between APG-Japan JAA and Viscopy direct licensing rates. Corresponding fees are between 30 and 50% cheaper than those in Australia and our other affiliates. Taking into account currency fluctuations, commissions and population size the Japanese rates are extremely low and are clearly not set by what the market will bear.

22. In another instance, an Australian member's work was licensed by an Australian publisher for Japanese schools, and JAA required payment for the Australian artist member at the Japanese set rate, not the Australian rate. This is unusual because most CISAC members are guided by the reciprocal membership agreements in the setting of rates.

23. APG and JAA do a terrific job in very complex market circumstances, and it is Viscopy's aim to work with both these two societies to better streamline existing relationships, and to establish visual arts royalty collection throughout the Asia Pacific region.

24. CISAC Asia Pacific, based in Singapore, is working hard to assist with this process.

Term of Copyright

25. Australia extended the term of copyright to seventy years after the death of the author, and Viscopy suggests that this term be included in any FTA to harmonize terms with the US and Europe.

26.Viscopy understands that Japanese copyright law currently contains both terms of fifty and seventy years after the death of the author for different cultural products.

Resale Royalty

27. Viscopy supports the inclusion of a resale royalty for visual artists in a potential FTA, to expand the visual rights market in both Australia and Japan. This right, introduced to cover the whole EU in January 2006, operates with respect to the fine art market, rather than publications.

Role of Copyright in International Trade Agreements

28.Viscopy believes an Australia-Japan FTA must concern matters of copyright and intellectual property, for the economic and trade benefit of creators, rights holders and business in Australia and Japan.

29.Viscopy notes that Australia is a signatory to the Berne Convention and other agreements such as TRIPS and WIPO Internet Treaties. These agreements must be respected by the FTA, for the benefit of cultural industries in Australia and Japan.

30.Copyright compliance is of importance to both nations at the hard copy and digital level, particularly with regard to reciprocal agreements.

31.With the visualisation of the internet, works of visual copyright as commodities are of increasing importance in the global economy. Recent surveys by Bild-Kunst the German visual arts collecting society suggest that up to 48% of copyright works on the internet are visual artworks.

32.The FTA should detail how the Japanese copyright system can best interact with those in Australia and the Asia Pacific region. The agreement should refer to both digital and hard copy licensing for the visual arts, and reprographic use. This will result in better livelihoods for creators, copyright owners and industry working in Australia and Japan.

Maintenance of Rights with the Artist

33.Viscopy supports the maintenance of all rights with the visual artist, according to Article 9 of the *Berne Convention* and international treaty. If the artist does not have ownership of the rights in their own work, they cannot be licensed to achieve a stream of income for the artist.

34.It is critical that any international initiatives made by Governments do not encourage creators to assign their rights to third parties. This interferes with the collection of royalties for these creators by international affiliates.

Countering Piracy

35. Under the umbrella of CISAC, it is the responsibility of Viscopy, APG and JAA to consider the best mechanisms to counter piracy for visual artists in the Asia Pacific region. Many countries in this region are recent signatories to the Berne Convention and WIPO Treaties: others have yet to sign.

36. The FTA should also cover Digital Rights Management and Technological Protection Measures, as well as acceptable exceptions.

37. Viscopy argues that the only counter-argument to copyright piracy in the Asia Pacific is the development of efficient rights systems and collecting societies in all countries. This will extend the economic umbrella of global copyright, both to protect the rights of creators, and facilitate their appropriate exploitation.

Dispute Resolution

38. Viscopy suggests that prior to the commencement of an Australia-Japan FTA, that both nations should agree on dispute resolution procedures, in the event of a potential dispute.

Development of Royalty Collection in the Asia Pacific Region

39. Japan has collecting society members of both CISAC and IFRRO.

40. Viscopy is a member of CISAC and an associate member of IFRRO.

41. Viscopy supports the development activities being carried out by CISAC and IFRRO in the Asia Pacific region, with regard to establishing reciprocal agreements between international collecting societies.

42. Viscopy acknowledges the pioneering work of Brett Cottle (APRA) with CISAC, and Michael Fraser (CAL) with IFRRO, in the copyright development of the region.

43. Viscopy supports the provision of regional education services concerning copyright collections. Such services could utilize CISAC, IFRRO and Government resources.

Traditional Knowledge and Viscopy Indigenous Artist Members

44. Viscopy has a total of 3117 Aboriginal and Torres Strait Islander (ATSI) member visual artists who are located in every state and territory. This is 40% of Viscopy's 6678 total membership. The proportion reflects the large numbers of professional Indigenous visual artists in Australia.

45. Indigenous Viscopy members speak 38 languages.

46. Viscopy recommends the inclusion of Traditional Knowledge protection provisions in the FTA to protect the livelihoods and cultural products of Indigenous creators and copyright owners in Australia, Japan and the Asia Pacific region.

Conclusion

47.Viscopy suggests that the proposed Australia-Japan Free Trade Agreement consider how best Australia and Japan can work together, both to streamline existing trade and copyright relationships, and establish efficient copyright systems in the Asia Pacific region.

Please do not hesitate to contact Viscopy, should we be of further assistance.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Chryssy Tintner', with a long horizontal flourish extending to the right.

Chryssy Tintner MBA MFA
CEO, Viscopy

[1] "Copyright Law of Japan establishes in Article 33 that a person who makes reproduction works in school textbooks (school textbooks means textbooks authorized by the Minister of Education and Science to be used for the education of children or pupils in primary schools, junior or senior high schools or other similar schools) shall pay to the copyright owner compensation, the amount of which is fixed by the Commissioner of the Agency for Cultural Affairs".