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**Music Council of Australia**

*Australia's representative to the International Music Council*

**Secretary**

Services Trade and Negotiations Section  
Department of Foreign Affairs and Trade  
Government of Australia  
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Dear Sir/Madam

RE: Trade in Services Agreement

The Music Council of Australia is the national peak organisation for the music sector. The Council of 50 includes representatives of all important interests in music, including music creation, music education, performance, media and documentation.

Negotiating partners in international trade agreements can seek Australia's acquiescence to terms which could be deleterious to Australian culture, usually by limiting the government's prerogatives to regulate to ensure its vitality. Most commonly in present times, the negotiating partner seeks complete market access in the electronic media for its cultural product, thus requiring abandonment of regulations in support of Australian content.

As is so often said, it is important that Australian audiences and artists hear Australian 'stories' – whether in music, performing arts more broadly, visual arts, literature, or screen culture. Through these expressions we understand ourselves and our national identity strengthens and evolves; Australians have knowledge that we are a sophisticated country where everyone has the potential and opportunity to create. That confidence has been gained only in recent decades and is not beyond assault.

Because of Australia's particular circumstances, there are important aspects of its culture that can survive only with financial or regulatory support. Without such assistance, we would not have these cultural activities and productions. Australia's circumstances include, for instance: a small population widely dispersed, meaning that the audiences for live production are relatively small and local and touring costs to additional audiences are very high (compared with Europe, Asia, the Americas); geographical distance from major foreign markets, making export of live or physical product very expensive; a competitive disadvantage for media productions compared to wealthy countries with large populations.

In the particular case of music, it is to the commercial advantage of Australian commercial radio broadcasters to prefer a playlist that has already proven popular in foreign markets, rather than to have to discover which untested tracks will be popular

among the many Australian releases. Also, there is no broadcast royalty on recordings from the USA so, unregulated, it would be to the advantage of Australian commercial radio to broadcast US, not Australian, recordings. Australian content regulations ensure that Australian and community radio must reserve a percentage of broadcast time for Australian recordings. Since all stations must comply, those that do so are not thereby commercially disadvantaged.

In television, Australian productions are at a commercial disadvantage with products from the USA in particular, which are amortised on the US market without reliance on revenues from overseas markets. Even though some Australian productions are the most popular television offerings with Australian audiences, their cost to television broadcasters – commonly, six to ten times the cost of renting productions from the USA – could result in termination of local production were it not for content regulations.

The Convergence Review anticipated the obsolescence of Australian content regulations on broadcast media as the media themselves are overtaken by online transmissions. However, the terrestrial media has so far survived and for as long as they do, Australian content regulations must be sustained.

Indeed, into the future, whatever it may be, in whatever media, it is crucial that the Australian government continue to give appropriate support to the sustainability and vitality of our culture. This may entail a mixture of innovative regulation, incentives and funding support. To do this the government must retain all its prerogatives in the cultural sphere.

Australian culture can be created only by Australians. We cannot pay commercial producers outside Australia to create Australian culture. Australian culture should not be conditional on the trade ambitions of other countries.

The Music Council has been pleased that the Australian Government has essentially adopted a policy in favour of the 'cultural carve-out': that culture should not be on the table in international trade negotiations. This position has faltered only in the final stage of the negotiation of the FTA with the USA, when important concessions were made under pressure. The Australian agreement with Singapore, on the other hand, took culture off the table and in so doing, set out a definition of culture which, in the view of the Music Council, is very satisfactory and should be sustained in all subsequent international trade agreements.

Australia has become a signatory to the UNESCO Convention for the Protection and Promotion of the Diversity of Cultural Expressions. This Convention was motivated by nations' desire to establish an instrumental instrument in support of the carve-out, and was passed by the General Assembly of UNESCO by a vote of 148 to 2, with 4 abstentions.

It is notable that in the recent negotiation of an FTA between Europe and the USA, the Europeans insisted upon and gained a cultural carve-out. The EU position was driven by France which, along with Canada, has been vigorous in defending local culture and cultural diversity more generally from the incursions of trade agreements. They also were key instigators in the creation of the UNESCO Convention.

The Music Council requests DFAT and the Australian government to continue to refuse to include the regulation or support of culture in the negotiation of the Trade in Services Agreement. There may be particular aspects of cultural trade and exchange that would be beneficial to Australia and international partners, but it is better that they are negotiated outside the very broad embrace and the trading off of special interests in international trade agreements.

Thank you for your consideration of this submission.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Chris Bowen', written in a light grey or blue ink.

Christopher Bowen  
CEO  
Music Council of Australia

August 29, 2013