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Trade Commitments Branch
Department of Foreign Affairs and Trade
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Barton ACT 0221

By email: tpp@dfat.gov.au

Dear Sirs

Trans-Pacific Partnership Initiative

Thank you for the opportunity to comment on whether Australia should participate in the Trans-Pacific Strategic Economic Partnership Agreement (the ***Trans-Pacific Agreement***).

1. Who are we?

The Australian Recording Industry Association (***ARIA***) is the peak trade body for the recorded music industry in Australia. We have over 100 members ranging from the local affiliates of the four major international record companies through to significant Australian independent record labels and a substantial number of smaller Australian record labels.

Music Industry Piracy Investigations Pty Limited (***MIPI***) is the anti-piracy organisation for the Australian music industry. It is a joint venture between the Australian recorded music sector (represented by ARIA) and the Australian music publishers (represented by the Australasian Mechanical Copyright Owners' Society Limited, ***AMCOS***).

2. Support for Australia's involvement in the Trans-Pacific Agreement

We understand that Australia is actively considering participation in the Trans-Pacific Agreement. Current signatories are Brunei Darussalam, Chile, New Zealand and Singapore and the Trans-Pacific Agreement entered into force in 2006. The United States has recently announced that it will launch negotiations to join an expanded Trans-Pacific Agreement with the aim of advancing broader Asia-Pacific regional economic integration.

ARIA and MIPI support Australia's involvement in the Trans-Pacific Agreement for the reasons set out in this submission. Given the nature of our organisations, we have limited our comments to intellectual

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property (*IP*) protection and enforcement which are currently addressed in Chapter 10 of the Trans-Pacific Agreement.

In short, we support Australia's involvement in the Trans-Pacific Agreement on the basis that:

1. The Trans-Pacific Agreement covers IP protection, a critical issue in many countries in the Asian and South American regions;
2. Australia's active participation in the Trans-Pacific Agreement could potentially lead to a strengthening or reinforcement of its current IP Chapter;
3. The Trans-Pacific Agreement may also harmonise current Australian Free Trade Agreements (*FTAs*) in the relevant regions; and
4. The Trans-Pacific Agreement is a potential building block for a larger Free Trade Area of the Asia Pacific and may provide a broader basis for negotiating an Asia-Pacific regional trade agreement which deals with IP issues (among other things).

These are discussed in more detail below.

3. Trans-Pacific Agreement – IP Chapter

Chapter 10 of the Trans-Pacific Agreement addresses the issue of IP.¹ In summary it provides that:

- The parties recognise the importance of IP in promoting economic and social development;
- The parties are committed to the maintenance of IP rights regimes and systems;
- The parties affirm their existing rights and obligations with respect to each other under the Agreement on Trade-Related Aspects of Intellectual Property Rights (the *TRIPS Agreement*);
- There are specific articles with respect to trade marks, geographical indications and country names; and
- The parties agree to broadly cooperate with respect to IP systems, exchange of information, policy dialogue, IP awareness initiatives and other related activities.

4. IP protection critical in Asia and South America

We believe that the Trans-Pacific Agreement presents a unique opportunity for Australia and countries in Asia and South America more broadly to address issues of IP protection and enforcement both in the physical and digital spaces.

IP is a critical issue in many countries in the Asian and South American regions. For example, the following countries in the respective regions are among the "priority countries" indicated by the International Federation of the Phonographic Industry (*IFPI*) in light of their physical music piracy rates and in some cases the exportation of pirate music discs to Australia:

| Country | Physical Piracy Level in 2006 ² | Physical Piracy Value in 2006 ³ | Physical Piracy Level in 2008 ⁴ |
|---------|--|--|--|
| Brazil | 40 per cent | \$US 85m | 48 per cent |
| China | 85 per cent | \$US 410m | 90 per cent |

¹ For the full text of the Trans-Pacific Agreement see: <http://www.mfat.govt.nz/downloads/trade-agreement/transpacific/main-agreement.pdf>.

² IFPI, *The Recording Industry 2006 Piracy Report*, 2006, page 11 (the *IFPI Piracy Report*).

³ The IFPI Piracy report, page 11.

⁴ Information obtained directly from IFPI. Should you require any further information on these figures, please let us know.

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| Country | Physical Piracy Level in 2006 ² | Physical Piracy Value in 2006 ³ | Physical Piracy Level in 2008 ⁴ |
|-----------|--|--|--|
| Indonesia | 88 per cent | \$US 70m | 92 per cent |
| Mexico | 65 per cent | \$US 180m | 71 per cent |

Furthermore, in respect to online copyright theft, IFPI states that:⁵

Digital piracy in Latin America has expanded rapidly. It is estimated that 2.6 billion illegal music files are downloaded in Mexico and another 1.8 billion in Brazil per year (Ipsos research). Online piracy has hit the core music buying population in the region – research in Mexico shows that 64 per cent of music downloading is carried out by consumers in the wealthier ABC economic categories, with similar findings in Brazil. In 2007 the Mexican market dropped by an estimated 25 per cent and Brazil fell by an alarming 50 per cent in the first half of 2007.

China, with nearly as many broadband users as the US and little effective enforcement, is one of the biggest source of illegal downloads in the world. A legitimate music market of only US\$74 million – less than one per cent of global sales – is choked by a digital piracy rate of over 99 per cent.

While we note that none of these countries are currently parties to the Trans-Pacific Agreement, as stated below, there is potential for an expanded Trans-Pacific Agreement to provide a basis for a regional Asia-Pacific trade agreement which may incorporate these territories. Thus we believe that it is important for Australia to view the existing Trans-Pacific Agreement in this context.

5. Consequences of piracy for Australian trade and commercial interests

The exceedingly high levels of music piracy in countries in Asia and South America, have real and dire consequences for the Australian music industry both in respect to the physical market for CDs and the legitimate digital music market.

In 1998, the Australian *Copyright Act 1968* (Cth) was amended to allow for the importation of CDs from other jurisdictions, on the condition that those CDs had been legitimately manufactured in the country of origin. Over the last ten years, the Australian Bureau of Statistics suggests that close to 150 million CDs have been imported into Australia.⁶ Of these, a large proportion has been originated directly from Asia and South America (for example 3 million from Indonesia alone) and thus due to the high piracy rates in these countries we suspect a large number may be counterfeit or manufactured outside of licence terms. Furthermore, MIPI is of the view that this severely underestimates the total number of discs imported into Australia from these countries. This is because a large proportion of discs from suspect territories are transhipped through other jurisdictions such as Singapore and even New Zealand in an effort to mask their origin.

MIPI is aware of increasing numbers of counterfeit CDs being imported into Australia, particularly from China. However, due to the high quality counterfeit nature of these discs, it is extremely difficult for importers, retailers and consumers to detect pirate discs. Counterfeit discs are being sold in Australian retail stores (both non traditional and traditional music retailers) and by individuals including on online auction sites such as eBay. Similarly territories such as China provide a huge source of illegal downloads to individuals in Australia.

⁵ IFPI, *IFPI Digital Music Report 2008*, page 18.

⁶ This does not however include shipments of value less than \$1,000.

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While it is inherently difficult to estimate the financial impact of any black market, IP theft in Asia and South America are of great concern and have a large financial impact on the Australian music industry. Therefore we believe that Australia's involvement in the Trans-Pacific Agreement is particularly important in the context of IP protection and enforcement.

6. Additional benefits for Australia

The United States has recently announced that it will launch negotiations to join an expanded comprehensive Trans-Pacific Agreement. In our view it is imperative that Australia participate in these discussions to ensure that key issues for Australia are addressed, including IP protection and enforcement.

Furthermore, given that Australia already has FTAs with a number of the countries in the Asian and South American regions, we agree that its participation in the Trans-Pacific Agreement provides scope for harmonisation and rationalisation of some of the "complexity inherent in the existing suits of FTAs in the region".⁷

Finally, as stated in the *Review of Export Policies and Programs*, released on 22 September 2008, Australia's participation in the Trans-Pacific Agreement will also provide a basis for negotiating an Asia-Pacific regional trade agreement, one where no doubt IP will play an important role.

7. Conclusion

Australia's involvement in the Trans-Pacific Agreement will allow for dialogue with countries such as the United States in negotiations on an expanded comprehensive Trans-Pacific Agreement. This is extremely important with respect to IP matters, where piracy rates in countries in Asia and South America are negatively affecting Australia's trade and commercial interests. In time, when the Trans-Pacific Agreement attracts additional country participants then it may provide a building block for a larger Asian regional cooperation. A strong IP Chapter in such an expanded agreement is in our view of essence.

ARIA and MIPI therefore support Australia's participation in the Trans-Pacific Agreement.

If you need further information, please contact Stephen Peach of ARIA or Sabiene Heindl of MIPI.

Yours sincerely



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⁷ DFAT, *Possible Australian Participation in a Trans-Pacific Partnership Agreement*.