

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

4th June, 2005

Dear Sir/Madam

RE: AUSTRALIA-CHINA FREE TRADE AGREEMENT

I am writing with respect to the negotiation of a Free Trade Agreement with China.

1. Viscopy is a copyright collection society for the visual arts in Australia, owned by 5308 visual authors. Viscopy is a non profit company that represents rights for fine artists, illustrators, designers, cartoonists, photographers, graphic artists, textile designers, craft workers, sculptors and architects.
2. A number of these visual artist members have had their works reproduced in China, with or without a legal license. A number of uses have included the infringement of member artists rights, by the reproduction of their works without permission. This is particularly the case for indigenous artists, textile and ceramic designers.
3. Viscopy understands that a Free Trade Agreement with China is likely to increase the use, both licensed and unlicensed, of members works in China.

Background

4. Viscopy is a member of the International Confederation of Societies of Authors and Composers (CISAC) and an associate member of the International Reprographic Rights Organisation (IFRRO), both global bodies for copyright collecting societies closely linked to the World Intellectual Property Organisation (WIPO).
5. Viscopy membership is free, and we represent two different sets of copyrights for members.
6. Primary rights are represented for 60% of Viscopy membership, which includes the direct licensing of images.
7. Statutory income from Government and Educational use is received on behalf of 96% of Viscopy members. The remaining 4% are represented by other collecting societies for statutory rights only.
8. While Viscopy members can receive statutory income in Australia, this income is 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 through both these collecting societies, through Viscopy.

9. Over 40% of Viscopy members are Aboriginal and Torres Strait Islander artists. This percentage is set to increase in the coming months: in the past the rate has been as high as 54% of membership.
10. In addition to managing the copyright of our members and collecting royalty income for them, Viscopy provides services to members. These include educational services, information and non-legal advice, such as infringement services when their works are infringed, and moral rights services. Where the member requires legal advice, Viscopy refers them to the Australian Copyright Council, the Arts Law Centre or pro bono lawyers.
11. Viscopy provides licensing services for our licensees which include auction houses, commercial art galleries, public art galleries, manufacturers, film and television producers, publishers, advertisers and other users of primary licensing artworks, such as retail.
12. Viscopy operates in Australia under the accountability mechanisms provided by a voluntary Code of Conduct for Collecting Societies, carried out annually by Justice Burchett QC.

Copyright – International Agreements

13. Viscopy notes that Australia is a signatory to the Berne Convention and other copyright agreements such as TRIPS and WIPO internet treaties.
14. China will not have met its TRIPS obligations or redeemed its JCCT obligations until the Chinese Government:
 - a) implements World Trade Organisation market access commitments;
 - b) complies with TRIPS Article 61 to make criminal all acts of “copyright piracy on a commercial scale”;
 - c) clarifies the proper interpretation of Article 15 of the Chinese Copyright Law, as per CISAC request;
 - d) addresses the impact of censorship on the Chinese black market, such as the restriction of distribution mechanisms creating illegal demand;
 - e) legislates to enforce compliance from Internet Service Providers;
 - f) institutes effective polices to combat criminal piracy rings, including those with proven links to the Chinese Government;
 - g) enforces copying thresholds, including higher monetary and criminal penalties; and
 - h) enables foreign entities to undertake copyright and piracy related investigations in China.
15. Copyright compliance is a high priority for Viscopy in terms of Free Trade Agreements. It is only by securing the intellectual property and copyright of Australia’s business and creative industries, that we are able to preserve our nation’s economic export value over time.
16. Were our nation not able to guarantee the preservation of rights for Australian business and creative industries with our trading partners, trade has the potential to erode, as well as grow, the economic value of these rights, over time. This is the case regardless of the size of the prospective trading partner.

Piracy and Infringements in China

17. There are no statistics available on the piracy and infringement of visual artworks in China. However the International Intellectual Property Alliance (IIPA) has researched statistics on the value of piracy and infringement in China, and those works include visual art as a proportion of the total work.
18. It is reported by the IIPA that in the year 2004, motion pictures lost USD \$280 million in China (95% of market); Records and music lost USD\$203 million in China (85% of market); Business Software lost USD\$1465 million in China (90% of market); Entertainment Software lost USD\$510 million in China (no market estimate available) and Books lost USD\$50 million in China (no market estimate available).
19. The EU statistics on visual use put the proportion of visual art images in Books as between 8 and 15% of copyrightable materials; in Film and Broadcasting to be 2% of copyrightable materials; and on the Internet to be 48% of copyrightable materials. From this we can extrapolate that the piracy impacts the capacity of visual artists to earn copyright royalties in China.
20. Viscopy notes that while the volume and high economic growth accessible for some Australian markets in China are attractive trade propositions (for instance with minerals and raw materials), China's continued piracy and infringement rate in intellectual property, for both business and creative markets is estimated at an average of 90% for the total market by the IIPA.
21. This represents a significant potential risk to Australian business and creative industries in China, unless the relevant copyright issues are addressed.
22. There are also implications concerning the sale of Chinese products that infringe Australian visual artists in the global market. A good example of this is the Chinese mass production of fake indigenous artworks that are sold by the tourism industry in Australia.

Advantages of Copyright Compliance

23. CISAC reports that a visual arts collecting society has been formed in mainland China.
24. In addition the already established Chinese MCSC increased its collection of royalties by 75% last financial year, despite not being able to collect from Chinese broadcasters, airlines or Chinese Government organisations.
25. It has been proven many times over that where copyright collecting societies flourish, piracy is diminished, and the economic value of Intellectual Property and copyright are enhanced. This has a key value for international trade arrangements.
26. Where this is not the case, original products, processes and creative works are copied by secondary users in a manner that exploits the original item, without payment. There is also a lack of ability to collect royalties for the creator or copyright owner – often a business. None of these outcomes are desirable in a trade exchange.

27. Viscopy is concerned that the fledgling collecting societies in China are not adequately supported by Government, or provided with legislative mechanisms by which they can enforce the Copyright Law.
28. Viscopy is also concerned that visual artists and designers in China are able to derive a freelance income from the copyright in their works.
29. Viscopy feels there must be a real potential for Australian creators and creative industries to earn income in China when their works are licensed in that country. Otherwise the Free Trade Agreement will not be of benefit to them.
30. This is in contrast to facing the impossibility of legislative action in China when works are infringed, as was the case last October with an indigenous artist whose works were used by a Chinese manufacturer without payment. Australians have little recourse in this position.
31. Viscopy argues that the only counter argument to piracy and infringement is the development of efficient rights systems and collecting societies, as the mechanism to give effect to international copyright agreements. Collecting societies extend, through reciprocal rights agreements, the economic umbrella of global copyright. This umbrella will protect the rights of creators / copyright owners, and facilitate their exploitation, through commerce and trade.

Conclusion

Viscopy proposes that the Free Trade Agreement with China be subject to copyright compliance, and that the points listed under item 14 are adequately addressed.

It would also be desirable for Australia to co-develop training programs with the Chinese for their judges, Government officials, police and copyright collecting societies, regarding copyright compliance, policing and enforcement.

Finally Viscopy considers the support of the fledgling Chinese collecting societies to be of the highest priority. These entities face illegal piracy gangs and organized crime with little in the way of regulation or enforcement to defend their growing memberships.

We therefore encourage the Australian Government to include in the Free Trade Agreement, a requirement for China to support the collection and distribution of royalties with adequate legislation, enforcement and regulation. This would benefit the business and creative industries of China and Australia in terms of guaranteed reciprocal rights, protecting the long term value of goods and services traded in China.

Yours sincerely

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