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Australia's representative to the International Music Council



Music Council of Australia

Committee Secretary
Joint Standing Committee on Treaties
Department of House of Representatives
Parliament House
CANBERRA ACT 2600
By email

March 5, 2009

Dear Sir/Madam

Thank you for the opportunity to make this submission to the Committee's study for Australia's possible accession to the *UNESCO Convention for the Protection and Promotion of the Diversity of Cultural Expressions* (henceforth referred to as "the Convention").

This submission is formulated from the perspective of a cultural organisation, the national peak body for music. While the Convention is concerned with many forms of "cultural expression", and so also, in principle, is the Music Council of Australia, many of our arguments are made from music as our own area of expertise.

EXECUTIVE SUMMARY

1. This submission comes from the national peak body for the music sector, a broadly representative organisation which contributed internationally during the gestation of the Convention and has maintained an interest in its subsequent progress and, in particular, the potential benefits of Australian accession.

Cultural sovereignty

2. In the Music Council's perception, the primary motivation for the Convention was the need for an international agreement that would give normative support to a nation's assertion of cultural sovereignty in the negotiation of free trade agreements.

3. Free trade is based on the concept of comparative advantage: we are best served by the most efficient producers; market access for the most efficient producers should not be impeded by protective measures e.g. for culture, local content quotas on broadcast media.

4. However, cultural production from the USA, for instance, is sold to Australian broadcasters at say, one sixth of local production costs. Without some reservation of the market for local production, there would not be any, and to that extent, there would be no Australian culture. We cannot pay the USA to produce Australian culture.

The exercise of comparative advantage can be antithetical to the survival of local culture.

5. The Convention exists to support the proposition that the rules of free trade are not appropriate in every situation. If the Convention had been adopted by the time of the negotiation of the FTA with the USA, Australia would have had a widely supported international instrument as a normative reference to support its failed attempts at a cultural carve-out.

6. The Music Council supports accession to the Convention because it will give the Australian government the right (but not the obligation) to assert cultural sovereignty in the negotiation of international treaties, and so protect and promote Australian culture.

Support to cultural diversity within national borders

7. The Convention has many non-binding clauses that encourage certain actions. These are concerned in particular with support to a diversity of cultural expressions within national borders, and through cross-border cultural exchanges, especially with developing countries.

8. *Within borders*, the Convention reminds us of the need to support the *cultures of indigenous people*, especially where those cultures are at risk of extinction. This is indeed the case with a number of indigenous music practices in Australia which will die with the last of the now elderly bearers. While there is some NGO and university action, government support would enable its extension.

9. Australia is now home to a plethora of *immigrant cultures*. While there have been some attempts by governments to support these cultural expressions, “world music” activity has sat on a plateau for some years. There is a great lost opportunity here to bring this music before the broader public and encourage experimentation and the emergence of new forms and blends. Australia is still a musical colony. Where is our counterpart of the tango, reggae, calypso, the blues? Government support to musical diversity within our borders could lift Australia’s “world music” activity to critical mass and even, possibly, deliver a new musical identity for Australia.

10. Australia awakes to the challenge of the times with an *innovations agenda*. Promotion of a diversity of cultural expressions is one way to enrich the environment for innovation.

11. As stated in the Preamble, the Convention affirms *values* such as democracy, tolerance, social justice and mutual respect between peoples and cultures; full realization of human rights and fundamental freedoms; the status and role of women in society; the importance of the vitality of cultures, especially for persons belonging to minorities and indigenous peoples. In short, the Convention affirms values with which Australia wishes to be, and to be seen to be, associated.

12. Accession to the Convention would contribute to a reassertion of Australia’s commitment to multilateralism, through the most important and strongly supported international cultural agreement yet promulgated. In particular, it would contribute to Australia’s good standing in UNESCO.

Cultural diversity across borders and partnerships with developing countries

13. The Convention states that “Parties shall encourage the development of partnerships, between and within the public and private sectors and non-profit organizations, in order to cooperate with developing countries in the enhancement of their capacities in the protection and promotion of the diversity of cultural expressions.”

14. An Australian aid program to meet these requirements of the Convention can be an aspect of its larger international aid program, bringing such benefits to Australia as are usually attributed to the program. In particular, it could serve to create greater mutual understanding between Australia and its neighbours. This clearly is a most

important issue with our closest giant neighbour, Indonesia, with 21 times our population and mutual cultural incomprehension.

15. *Australia could assist on the supply side* by aiding the development of local cultural industries. Many of our neighbours do not have a repertoire of sophisticated products and services but their own cultures have evolved over centuries and are very sophisticated. They can be the starting point for broader developments and in due course, important contributors to community identity, social cohesion and the economy, including exports. (Extended detail is offered about factors around music development.)

16. *Demand can be assisted* by building the Australian audience. To this end, it is proposed that there be active facilitation of the issuance of short-term visas to artists from developing countries for the purpose of displaying their art in Australia, provision of financial assistance towards travel costs for such artists, routed through touring organizations and festivals, and support offered towards audience building, probably in association with the proposals for support to the development of diverse arts within Australia proposed above.

THE SUBMISSION

THE MUSIC COUNCIL OF AUSTRALIA (MCA)

17. The Music Council of Australia is comprised of 50 persons, filling positions either as nominees of national music organisations or as members elected to positions assigned to various sub-sections of the very diverse music sector. These range from the various levels of music education through performance in a range of musical genres, to support activities such as music recording, broadcasting and copyright; they thus cross the breadth of the very complex and diverse sector. Two of these positions are explicitly concerned with musical diversity, and it is of strong interest to a number of others.

18. Through its Councillors, the Music Council gives voice to the interests of tens of thousands of music professionals – but it also is concerned with the musical opportunities available to the general public. It has a network of some 6,000 members and in 2008, somewhere short of half a million people were directly involved in its activities.

19. So **the purpose** of the Music Council of Australia (MCA) is to bring together all sections of the music community in order to advance a diverse and vibrant musical life throughout Australia.

To achieve this, MCA, independently and in partnership

- (a) gathers and provides information
- (b) conducts research
- (c) undertakes advocacy and ensures representation in relevant forums and
- (d) initiates and realises projects that advance musical life.

BACKGROUND

20. The MCA has been established to bring together a great range of interests, including multicultural interests, from the music sector. So musical/cultural diversity is in MCA's DNA. It is fundamental to the MCA's role that it honours and supports this diversity and at the same time identifies shared interests and beliefs and attempts to act for the benefit of the whole.

21. The MCA is associated with international organisations with similar agendas. It is Australia's affiliate to the International Music Council (IMC), based in UNESCO, Paris (the MCA Executive Director is currently the President) and the International Network for Cultural Diversity (INCD), based in Ottawa.

22. Through membership in the INCD Executive Committee, the MCA was involved as a civil society player in the gestation of the Convention – e.g. the drafting of a demonstration treaty, the annual representations to the conference of the International Network for Cultural Policy (a network of cultural ministers of which Australia was not a member), and the representations that finally saw UNESCO agree to auspice a convention for cultural diversity.

THE "SOVEREIGN RIGHT" TO PROTECT AND PROMOTE THE COUNTRY'S CULTURE

Comparative Advantage and the Cultural Carve-Out

23. The Convention puts forward a broad agenda in support of cultural diversity. However, it is our perception that the initial motivation for its creation was a perceived need to defend countries' rights to protect and promote their own cultures, in the face of an opposing agenda of the World Trade Organisation and some parties to bilateral or multilateral free trade agreements, and most especially, the United States. Interestingly, the JSCOT National Interest Analysis makes no clear statement on this matter. As an NGO, we are less bound to be tactful and so begin by offering some relevant thoughts and experiences. We recognise that the government's thinking may

be well advanced and our comments therefore somewhat redundant, in which case we risk being boring as well as tactless.

24. An important underlying concept for the advancement of the free trade agenda is that of 'comparative advantage': essentially that our interests are best served by the most efficient producers. 'Free trade' removes impediments, in the form of national protection or preferential treatment for less efficient domestic producers, to domestic market access for foreign producers with comparative advantages.

25. So, in film production, it could be said that the USA has a comparative advantage for reasons given in the next paragraph. (It is not necessarily the most "efficient" producer, though certainly the most successful in the marketplace.) Under a doctrine of comparative advantage, the films of the USA therefore should supply the world and should be allowed unfettered access to the film market in all other countries, regardless of the effects on less "efficient" local production.

26. A major reason for the financial success of US film and television industry is that production costs can be met totally from the very large and inward-looking domestic market. As a consequence, US television productions are offered to foreign networks at a very low price. Australian television stations can rent a successful US sitcom for say one sixth of the cost of producing one locally – and they have the advantage of assessing existing products rather than risking new local production with unknown success. In a totally free market, why would they venture into local production at all?

27. But in the cultural area, the issue is not simply one of comparative advantage and efficiency of production. The Preamble to the Convention states that

...cultural activities, goods and services have both an economic and a cultural nature, because they convey identities, values and meanings, and must therefore not be treated as solely having commercial value.

28. Article 1 states the Objectives of the Convention, among them para (g):

to give recognition to the distinctive nature of cultural activities, goods and services as vehicles of identity, values and meaning.

29. Australian television productions tell Australian stories embodying Australian identity, values and meanings, and are accessible to all Australians and watched by many. It is important to citizens of any country, including ours, that they are confirmed in these values and meanings. It is not so long ago that we had few of our own books, listened almost exclusively to American pop music. We still watch mainly foreign films and television productions. What does that do to our sense of identity and *possibility*? That we do now have in reasonable measure our own "cultural expressions" is a result of government interventions that have reserved at least a portion of the Australian market for Australian cultural productions, even though they may have been produced less "efficiently".

30. For instance, commercial television must meet local content requirements in drama, commercial radio must devote up to 25% of music broadcast time to Australian music. In the latter case, there are fairly clear correlations between the Australian music quotas on radio and sales of Australian recordings.¹

31. The Australian experience is shared by other countries. The consequence is a principle invented by the French, going by a number of titles such as the "cultural exception", the "cultural exemption", the "cultural carve-out".² This asserts that culture

¹ Mason, Paul: *Assessing the impact of Australian music requirements for radio*.
<http://www.mca.org.au/web/content/view/104/6>

² For instance, as elaborated in advance of the declaration of the Convention in the "Paris Declaration" from a conference of civil society organisations hosted by the French government:

should not be put on the table in the negotiation of free trade agreements. The principle of comparative advantage is antagonistic to the survival of local cultures. Governments have the right to refuse to negotiate the weakening of their own cultures.

32. The Convention embodies this idea in the:

Principle of sovereignty

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to adopt measures and policies to protect and promote the diversity of cultural expressions within their territory.'

33. Objective (h) of Article 1 is

to reaffirm the sovereign rights of States to maintain, adopt and implement policies and measures that they deem appropriate for the protection and promotion of the diversity of cultural expressions on their territory.

34. Under *Article 5 – General rule regarding rights and obligation* and *Article 6 – Rights of parties at the national level*, the Parties affirm that right, conditional on the consistency of their relevant policies and measure with the provisions of the Convention.

35. *The Music Council asserts that the healthy survival of a local culture should not be contingent on the trade ambitions of another country.*³ *Each government should have the right to support all and any aspects of its country's culture.*

A Demonstration of Australia's Need for the Convention in International Trade Negotiations

36. During 2003, Australia and the USA negotiated a free trade agreement. The experience of those negotiations demonstrates from our own immediate past the need for this Convention.

37. The Music Council participated as a key music sector representative in a series of consultations organised by the Department of Foreign Affairs and Trade.

"Cultural professional organisations from over 30 countries, representing all aspects of artistic creation, met in Paris from 2nd to 4th February 2003. They agreed on the following principles:

... works of the human spirit must not be reduced solely to their market value;

... the right of all peoples to cultural diversity is a fundamental human right;

... diversity of expression cannot exist without freedom of expression;

... cultural and economic domination of any kind threatens the intellectual and artistic expression of this diversity;

... countries have the right and the duty to pursue the cultural policies of their choice, free from external constraints, providing they respect human rights and freedom of expression.

"Considering that culture is guardian of the collective memory of all peoples, the participants call on each country to:

... oppose liberalisation commitments of any kind relating to goods and services in all fields of culture;

... pursue an ambitious policy of supporting its own culture;

... promote the balanced international circulation of all creative works;

... implement an active program of solidarity with developing countries through policies of cooperation;

... participate in the development of a binding international convention, independent of the World Trade Organization (WTO) or any other international trade body, whose purpose will be to maintain and develop cultural diversity."

³ We can speculate that active US disagreement with this proposition caused such resentment around the world that when the Convention was brought to a vote in the General Assembly of UNESCO in 2005, 148 countries voted in support, two (the USA and Israel) voted against, and four, regrettably including Australia, abstained. Through our network, MCA was informed that this occurred in the face of vigorous lobbying, arm-twisting and game-playing from the US. We have some supporting documentary evidence.

The Convention was subsequently ratified in what we are told was record time for such an instrument, and at the time of writing 93 countries plus the European Community have signed.

38. Initially, Australian negotiators sought a *total cultural carve-out* from the FTA, on the model negotiated by Australia in its FTA with Singapore, and followed in its offers and responses under GATS. This position was consistent with Australian government statements of cultural policy at international fora for some time before the US negotiations commenced.

39. For instance, the Australian Government acknowledged that

"Market forces alone are rarely sufficient to allow cultural organisations and individuals to be fully self-supporting. This is true for the cultural sector worldwide, but in Australia's demographic and geographic circumstances it is particularly the case... The important mix of subsidy, regulation and tax concessions ...(is) a necessary subvention in the national interest to sustain Australian creative resources..." (Australian Intervention on Negotiating Proposal on Audiovisual Services, CTS Special Session, Geneva, July 2001)

40. And

"Australia remains committed to preserving our right to regulate audiovisual media to achieve our cultural and social objectives and to maintain the broad matrix of support measures for the audiovisual sector that underpin our cultural policy; including retaining the flexibility to introduce new measures in response to the rapidly changing nature of the sector." (Ibid)

41. This was a policy supported whole-heartedly by the cultural sector. Australia can contract with China to supply it with shoes and clothing, with Japan and Korea to provide automobiles, with the USA to make our aircraft. *But we cannot pay another country to produce an Australian culture.*

42. We had meetings with the negotiators in November and then December 2003. In the first of these, we were informed that it was clear that the USA would not accept the proposed total cultural exemption. The Australian negotiators outlined a revision to their position. They would continue to seek a total cultural exemption, but then would make some concessions to the US demands in the audiovisual area. In a sense, the agreement on culture would be a *positive list agreement*, sitting within a negative list agreement for the FTA overall.⁴

43. The cultural representatives were opposed to any weakening of the cultural exemption. However, we agreed that if we must face some concessions to the US, this was an elegant formula.

44. Our next meetings with the negotiators came after completion of the negotiations in January. We were informed that the cultural exemption had been abandoned and we were given an approximate description of the concessions to the USA

45. The December formulation offered a positive list of concessions to the US, outside of which the government's prerogatives to intervene in support of culture were unconstrained. But the loss of the cultural exemption meant that what had been positive list **concessions** became the only regulatory **rights** remaining to the Australian government. Everything else in the cultural sector becomes subject to the FTA.

46. It appears that the interests of the cultural sector, and the government's previously firm position on the carve-out, were sacrificed to US pressure that basically

⁴ "Negative list" agreement: all aspects of trade are included except those specifically subtracted. "Positive list" agreement: only those aspects of trade are included which are specifically added. Free trade advocates prefer negative list agreements. The cultural sector is happy for other sectors to do what they believe is in their best interests but it generally agrees that its interests are served by total exclusion through a cultural carve-out or failing that, by positive list agreements where there is some possibility of specifying the concessions and monitoring outcomes.

threatened to abandon already weak US concessions on agriculture if Australia did not give way on its cultural position. The upending of the position on culture occurred only in the final days of negotiations and was never discussed with the cultural sector. The negotiators offered little evidence that they had considered its possible effects.

47. Because the FTA no longer includes a general cultural exemption, it deprives the Australian government of the prerogative to respond through regulation to any cultural circumstance not specifically covered by the language of the agreement. The future is unknown, and as it arrives the government will have lost important rights to regulate in support of Australian culture. It should be noted that Australian rights to regulate in the area of digital production and distribution of culture – the primary target of US policy in the cultural area – are constrained to the point of impotence.

48. *Had the Convention been in force at the time of these negotiations, had it then, as now, been ratified by 95 countries plus the European Community, and had the Australian government been a signatory, Australia would have been in a better position to pursue its original policy, better able to resist pressure from the USA to include culture and make cultural concessions in the AUSFTA.*

49. Australia is currently involved in the Doha round of talks in the WTO, has just signed, with New Zealand, an FTA with ASEAN, and is negotiating FTAs with Chile, China, the Gulf Cooperation Council, India, Indonesia, Japan, Malaysia and South Korea. While at this time these countries do not pose any threat culturally and excepting for Japan, are not seeking cultural concessions from Australia, the fact remains that Australia is very active in establishing trade agreements and it is important that it again asserts its commitment to the cultural exemption and has international support in so doing.

50. *The Music Council of Australia therefore supports Australian accession to the UNESCO Convention for the Protection and Promotion of the Diversity of Cultural Expressions because it will offer a normative instrument and international consensus in support of any assertion by the Australian government of its sovereign right to “to maintain, adopt and implement policies and measures that [it deems] appropriate for the protection and promotion of the diversity of cultural expressions on [its] territory.”*

51. The Convention gives the right but does not impose a formal obligation to assert cultural sovereignty. The Music Council recognizes that political opinions may differ on the circumstances for exercising the right. The Convention accommodates these differences.

REQUIREMENTS VS OPTIONS

52. As noted by the JSCOT discussion paper, this convention requires the action of Parties on only a very few of the Articles, those concerning the claim to cultural sovereignty being notable. Otherwise, for the most part, signatories agree that they “may” take certain actions, or will exercise their “best endeavours”... The Convention lays out a set of desirable objectives, principles and actions to which Parties in some sense make a commitment without being specifically obligated to take action.

53. For our purposes, we could summarise these commitments as follows: to protect and promote the diversity of cultural expressions within their own borders, through cross-border interactions with other countries, and through support to diversity within other countries, especially developing countries. Parties also agree that there are preconditions for a healthy diversity of cultural expressions, such as freedom of thought and expression, and that in turn a diversity of cultural expressions provides opportunities for expression, creativity, social cohesion and other societal benefits.

54. The Convention has the clear benefit to Australia of supporting its assertion of cultural sovereignty. What benefits can these other aspects of the Convention confer?

PROMOTING CULTURAL DIVERSITY WITHIN BORDERS

The Convention and the indigenous community

55. The Convention makes special mention of indigenous peoples, twice in the Preamble, and in Articles 2.3 (Principle of equal dignity of and respect for all cultures) and 7.1(a):

Parties shall endeavour to create in their territory an environment which encourages individuals and social groups:

- (a) to create, produce, disseminate, distribute and have access to their own cultural expressions, paying due attention to the special circumstances and needs of women as well as various social groups, including persons belonging to minorities and **indigenous peoples**;

56. The Preamble points to “the need to take measures to protect the diversity of cultural expressions, including their contents, especially in situations where cultural expressions may be threatened by the possibility of extinction or serious impairment.”

57. Australian governments have given support to the protection and promotion of Aboriginal culture. Aboriginal visual arts have become an important contributor economically, as well as culturally, to both Aboriginal and mainstream Australian society. In the world of visual arts, Australia is best known internationally for the contribution of its Aboriginal artists.

58. In music, the situation is mixed. Aboriginal musicians have adopted Western popular music genres, in particular rock music and country music, with modest success in the marketplace. There are Aboriginal sub-genres recognizable not so much through the music itself as through the content of the lyrics, which often are political, and the particular timbre of many Aboriginal male singing voices.

59. But it is the traditional music that is of special concern. In many communities, it is “threatened by the possibility of extinction or serious impairment” (Article 8.2). A special recording project funded by the Australasian Performing Right Association (APRA) and with university collaboration is collecting and archiving the traditional music. However, MCA is informed that this worthy project may not reach some traditions in time. There, the last bearers are old and the traditions will die with them. It is a familiar story around a globalising and technologising world. Parenthetically, while the failure of a tradition signifies a lack of interest in the younger generation in sustaining it, this may be due to circumstances that are reversible within that generation. It is also a common phenomenon that a later generation regains interest in its traditions and can restore them if they have been documented.

60. The Queensland Conservatorium Research Centre has won a large ARC grant and in collaboration with the International Music Council, the Music Council of Australia and a consortium of universities internationally, is embarking on a research project, *Sustainable Futures*, to discover successful strategies for the revitalization of endangered traditional musics. One study will look at Aboriginal music in a location to be confirmed.

61. Article 8.2 requires governments to report to the Intergovernmental Committee all measures taken to protect cultural expressions at serious risk of extinction. We urge the Australian government to take the measures that could then be reported. One way to do so would be to build upon and expand the success of the current projects.

62. *The Australian government would be encouraged by accession to the Convention to intervene in support of the protection, preservation and promotion of Australian indigenous cultural expressions including traditional music, and especially those forms in danger of extinction.*

The lost opportunity: cultural diversity from the immigrant community

63. There are many sources of cultural diversity in Australia. In the musical world, a bewildering succession of new sub-genres propagates within mainstream culture, fed by fashions especially in the USA and supported by internet access to niche audiences. Audiences identify with their favoured genres and so this exercise of musical taste and preference offers some basis for distinctive personal identities.

64. A special opportunity arises in Australia from the great diversity of cultural expressions within immigrant groups. Past governments have had policies with respect to immigrant communities in support of cultural diversity. But so far as bringing into daily life a diversity of *cultural expressions* is concerned, Australia's record is mixed. We eat diversely, but we do not much talk, look or listen diversely. There is here a major lost opportunity. Our example comes from the music world.⁵

65. Musical Australia is still more or less a colony. There is no distinctive Australian musical genre. Broadly speaking, our popular music genres come from the USA and UK. Our classical music comes from Europe. Even our folk music is a rough and ready version of Anglo-Celtic traditions. This is not to denigrate individual Australian artists who develop a voice within various international genres; that is both admirable and useful and some achieve to world standards. But where is our reggae, our samba, our tango? How can a distinctive Australian music develop in the face of the marketing force of the popular music industry? What would be its sources?

66. New forms can evolve from old forms. But the creation of new forms is especially stimulated when sufficiently unlike genres rub against each other.

67. Millions of immigrants have brought with them a wealth of musical cultures. The majority population is not necessarily curious about these unfamiliar musical forms and there is reason to believe that many zithers, pipas, kotos, ouds arrived on these shores, went into cupboards, and never re-emerged. There have been programs, with modest government assistance, to encourage the practice of music and other arts brought by the immigrants and to put them before the broader public. Musicians of curiosity and good heart have worked together to produce hybrid forms by combining ethnic musics or an ethnic music with mainstream genres. But looking at the results after these decades, the best we can say is that there are some wonderful but mostly unknown successes musically but that we seem to have reached a plateau – a low level plateau – in terms of progress, public awareness and support. The financial resources behind this music are tiny compared with the promotional budgets of the music industry. It is consequently almost ignored by broadcasters and others. It has hardly been given a chance.

68. Australian governments could offer the support that would build such activity to critical mass. The Convention for cultural diversity offers a detailed rationale for such action, and would put the Australian government into mutually supportive relationship with other countries with a similar agenda. It should be noted, for instance, that there is a great deal of support to programs of intercultural dialogue and cultural diversity in Europe at the moment, with substantial financial support from the EU as well as individual countries.⁶ Indeed, in an area in which Australia has much greater reason to shine, Europe is outstripping us.⁷

⁵ Note that the music of an ethnic culture is distinctive in itself – and yet can be understood to an extent by those from other cultures. It is not in that sense like spoken language, which is distinctive but incomprehensible. Nor like poems written in English by non-English-speaking immigrants, which may be distinctive in what they say or describe but not in their form. So we have the phenomenon of world music, but not of world drama.

⁶ For instance, the European Commission's Year of Intercultural Dialogue 2008.
http://ec.europa.eu/culture/our-programmes-and-actions/doc415_en.htm

⁷At the 2008 WOMEX, the World Music Expo, the marketplace and showcase for traditional and world musics, countries like the Netherlands had large stands even though their own traditional cultures are but memories.

69. The Preamble reminds us that

cultural diversity creates a rich and varied world, which increases the range of choices and nurtures human capacities and values, and therefore is a mainspring for sustainable development for communities, peoples and nations.

70. It notes that culture can be a means to economic development and that

the diversity of cultural expressions, including traditional cultural expressions, is an important factor that allows individuals and peoples to express and to share with others their ideas and values.

71. There are multiple reasons, cultural, societal and economic, to bring to the mainstream audience the diversity of expressions half locked up in our immigrant settlers.

72. The artists give the lead:

7.2 Parties shall also endeavour to recognize the important contribution of artists, others involved in the creative process, cultural communities, and organizations that support their work, and their central role in nurturing the diversity of cultural expressions.

73. Article 6.2 lists a number of measures that could be taken to promote a diversity of musical and other expressions, including regulatory measures, provision of opportunities for creation, production, dissemination, provision of financial assistance and so on.

74. Article 7 says that

7.1 Parties shall endeavour to create in their territory an environment which encourages individuals and social groups:

- a) to create, produce, disseminate, distribute and have access to **their own** [our emphasis] cultural expressions, paying due attention to the special circumstances and needs of women as well as various social groups, including persons belonging to minorities and indigenous peoples.

75. There is here an issue also of cultural equity, cultural inclusion. People **are** their culture. To engender a sense of inclusion, let it be seen that their culture is recognized, allowed a voice, that the larger community makes room for it.

76. Encouraged by accession to the Convention, the Australian government could act more decisively in support of the music and arts of immigrant cultures, the creation of works in traditional and innovative forms, their wider dissemination, and the expansion of public interest and support.

The Convention and the creativity agenda

77. The Preamble emphasizes

the vital role of cultural interaction and creativity, which nurture and renew cultural expressions and enhance the role played by those involved in the development of culture for the progress of society at large.

78. Evolution depends upon old forms confronting new circumstances. Creativity is stimulated by the conjunction of connected but disparate ideas. The more diverse an environment, the greater the store of possibility.

79. *Australia awakes to the challenge of the times with an innovations agenda. Promotion of a diversity of cultural expressions is one way to enrich the environment for innovation.*

The Convention and values

80. As stated in the Preamble, the Convention affirms these values:

- democracy, tolerance, social justice and mutual respect between peoples and cultures
- full realization of human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and other universally recognized instruments
- enhancement of the status and role of women in society
- enhancement of the status and role of women in society
- importance of the vitality of cultures, including for persons belonging to minorities and indigenous peoples, as manifested in their freedom to create, disseminate and distribute their traditional cultural expressions and to have access thereto...

81. *The Convention affirms values with which Australia wishes to be, and to be seen to be, associated.*

The Convention and multilateralism

82. *Accession to the Convention would contribute to a reassertion of Australia's commitment to multilateralism, through the most important and strongly supported international cultural agreement yet promulgated. In particular, it would contribute to Australia's good standing in UNESCO.*

83. *Through the Convention, Australia also confirms its commitment to the Universal Declaration of Human Rights and to instruments such as the United Nations Millennium Declaration (2000) with its special emphasis on poverty eradication.*

THE CONVENTION AND THE DEVELOPING WORLD

84. In a statement to the Intergovernmental Committee for the Convention, Garry Neil, Executive Director of the International Network for Cultural Diversity observed⁸ that "Article 16 is differentiated from most others in the Convention by its use of the mandatory language 'shall facilitate,' as the Assistant Director General has pointed out. This is significant because it creates a positive obligation on developed country parties to the Convention, in favour of the developing country parties. As someone who witnessed all of the negotiating sessions, I know that parties carefully selected these words. This was the key trade-off between developed and developing countries.

85. "Developed countries would get what they needed in Articles 5, 6, 7, 20, 21, etc., and in other Articles dealing with international cooperation, they would be under only a modest obligation to 'endeavour to' do the various things. In others words, for these international cooperation Articles, developed countries just have to make best efforts.

86. "In return, parties agreed to mandatory language in Article 16 which obligates developed countries to provide preferential treatment, in concrete and measurable ways."

87. *Article 16 – Preferential treatment for developing countries*

⁸ Neil, Garry, Executive Director, INCD: NGO Statement to the Second Ordinary Session of the Intergovernmental Committee on Article 16 – Preferential Treatment, 11 December 2008

Developed countries shall facilitate cultural exchanges with developing countries by granting, through the appropriate institutional and legal frameworks, preferential treatment to artists and other cultural professionals and practitioners, as well as cultural goods and services from developing countries.

88. The language of Article 16 is constrained and hardly suggests the array of possibilities set forth in Article 12, "Promotion of International Cooperation", Article 13, which notes that culture can contribute to sustainable development and should be integrated into development policies, Article 14, which proposes the involvement of a dynamic cultural sector in contributing to poverty reduction along with various mechanisms for strengthening cultural industries, capacity building, technology transfer and financial support; and Article 15, which says that "Parties **shall** (our emphasis) encourage the development of partnerships, between and within the public and private sectors and non-profit organizations, in order to cooperate with developing countries in the enhancement of their capacities in the protection and promotion of the diversity of cultural expressions."⁹

What are the benefits to Australia?

89. An Australian aid program to meet these requirements of the Convention can be an aspect of its larger international aid program, bringing such benefits to Australia as are usually attributed to the program.

90. In particular, it could serve to create greater mutual understanding between Australia and its neighbours. This clearly is a most important issue with our closest giant neighbour, Indonesia, with 21 times our population and mutual cultural incomprehension.

91. Australia has a priority list of state recipients of aid. The cultural aid program could conform to these priorities. However, among the prioritised countries are those in our neighbourhood – Indonesia and the countries of the South Pacific. There could be good arguments for concentrating in particular on those countries.

92. Among the South Pacific countries are a number that are said to be in danger of failing. Their repertoire of resources is small and in many cases their people too few to provide a critical mass for development of advanced industries. In some cases there is damaging internal division and conflict and a loss of social cohesion.

93. But their cultural expressions, developed over centuries, can be sophisticated and could be the basis for a level of economic development and for building cohesion by reminding citizens of what they value in common.

94. As an example of the latter, recently the MCA met the Minister for Education of East Timor. It is facing serious problems of social division. A possibility that greatly interested the Minister was the development of a national festival of music and dance.

⁹ Neil continues (ibid): "Some ideas for the preferential treatment toolkit include:

1. **Developed countries should provide funding support.** For example, to translate published works, to sub-title movies or television programs, or to mount a visual arts exhibit or live performing arts presentation. In this way, these works from developing country parties can be distributed in markets of the developed countries. We also need direct funding to support cultural production activities in the developing country parties as contemplated by Article 14.
2. **Developed countries could provide targeted National Treatment.** For example, it could extend a benefit which is currently available only to residents, or provided only on a reciprocal basis. An example is audiovisual co-production treaties where a movie or television program produced collaboratively in the two countries enjoys full status as a domestic work. More robust measures are also possible if you look at how TV-5, the French-language network, already provides access for some works from developing countries...
3. A key element in this equation is the importance of developing **Fair Trade principles for imported works.** It is essential that the rights of the artists and the producers of those works be treated fairly, including receiving compensation. Fair Trade principles are well understood and supported and the Convention parties should initiate and support their development for cultural goods and services... "

Each community would send performers of its own traditions to a central festival and its culture could be shown to the representatives of other communities. We are told that these communities have almost no experience of each other's cultures and indeed, that the traditional cultures are weakening, even in the remote regions. It is intrinsic to the activity that a value is placed on each local tradition but that all participants discover also what they share.

95. Assistance in the revitalisation and development of their culture, and presentation of their cultural expressions to the world at large – assistance to the people of these various countries to be most deeply themselves, is a compliment, an admiration. It is in a sense a very unselfish gesture because it helps them to be what they are rather than what we would want them to be. It also assists in economic development and poverty alleviation.

96. It would be valuable to Australia also in establishing us in a more three-dimensional way as a cultural centre of the region. We would support the development of a diversity of cultures and then showcase them in Australia. Just as Australians have become an enthusiastic audience for Aboriginal art, so could they become aficionados of the arts of the region. (Why abdicate this role to Paris and the Musée de quai Branly?)

97. There is the more hard-nosed issue of state disintegration. Our assistance to cultures and economies may contribute to maintaining an orderly neighbourhood.

98. Because the issues of cultural expression and diversity do depend importantly on the values incorporated into the Convention, the Australian assistance program can help to engender these attributes of free expression, democracy, openness etc in the partner countries – attributes that make our dealings with them more constructive, dependable and transparent.

What actions could Australia take?

99. Australian actions can address issues of both supply and demand.

SUPPLY: assistance to the development of local cultural industries

100. We offer some details for a rationale for assisting musical development in developing countries. It may be possible for the Committee to generalise from some of these points.

101. International organisations including the World Bank, the United Nations Conference on Trade and Development, UNESCO, as well as a number of national music sectors and governments, have engaged with the potential of music as a contributor to national economies. Conferences have been held, some research has been undertaken, developmental projects organised.

102. From the resulting reports and other investigations, it can be observed that music, as an important element of all cultures and as an industry, can contribute to the solution of problems and the satisfaction of needs in many, sometimes surprising ways.

103. Since the Music Council has explored these issues in some depth, we take this opportunity to direct the government's attention to the following considerations:

- a) Many governments have not considered the economic role of the music sector. If it has been mainly an aspect of traditional life, more custom than business or profession, the music sector may well **lack the business, regulatory and technological structures and professional organisations** that could make it financially sustainable, even though the music itself may be highly developed and highly valued culturally. These are deficiencies that can be overcome with appropriate expert support.^{10 11}

¹⁰ Wallis, Roger and Kozul-Wright, Zeljka: *Best practice cases in the music industry and their relevance for government policies in developing countries*. http://www.wipo.int/about-ip/en/studies/pdf/study_r_wallis.pdf

- b) A **lack of finance** is also usually a problem in the development of an industry that, project by project, involves financial risk. Wallis and Kozul-Wright point to the need for an array of financial instruments, especially including public/private partnerships.¹²
- c) This lack of development also carries opportunities because such sectors are not burdened with structures that are becoming obsolete in the developed world and can **leapfrog to new structures** that are more serviceable. To do so, they need expert advice.¹³
- d) The opportunity for economic development of music sectors in developing countries can be placed in the context of the current focus on the **creative industries**. Music is a component of the creative industries, especially important because of its early and comprehensive involvement in the digital world from creation through to production and distribution. A 2004 UNCTAD report observes that, because the world's creative industry sector lies at the crossroads between the arts, business and technology, creative industries are forecast to grow, on average, by 10 percent a year. "Creativity, more than labour and capital, or even traditional technologies, is deeply embedded in every country's cultural context" yet sector players, states the Executive Summary, are often marginalized by a "combination of domestic policy weaknesses and global systemic biases."¹⁴ For a developing country, music can be an important entrée into the development of the creative industries.¹⁵ While it is unlikely that a developing country will be well advanced in the design of software, for instance, in music the content will already be highly developed and possibly unique, and engagement with the digital realm relatively well advanced through use of the internet for distribution and perhaps through use of digital technologies in other areas such as record production. The music sector therefore can lay the pathway for a move into the creative industries by other sectors in the country.
- e) The United Nations Millennium Goals focus on **poverty reduction**. Music activity can create income for musicians and a range of related occupational groups if the sector is organised and developed.
- f) **Musicians often have little understanding of their own industry** and lack the skills to develop their own role within it, especially in the absence of professional organisations, unions and specialised agencies. For instance, they may undermine copyright laws intended for their benefit through the nature of the contracts they sign or their complicity in pirating.^{16 17} This is a

¹¹ Kozul-Wright, Zeljka et al: *Music Industry Workshop, Proceedings of the Youth Forum*. Third United Nations Conference on the Least Developed Countries. Especially the Introduction by Kozul-Wright: 'Challenges and Prospects in the Music Industry in Developing Countries.' UNCTAD, Geneva http://www.unctad.org/en/docs/ldcmisc82_en.pdf

¹² Wallis, Roger and Kozul-Wright, Zeljka: Ibid.

¹³ Bach, Dagfinn: 'Too many players on the ground? The painful transition from CD sales to online music sales.' In *Music Forum*, Vol 13 No 2, December 2006, Music Council of Australia, Sydney.

¹⁴ http://www.unctad.org/en/docs//tdxibpd13_en.pdf

¹⁵ Cunningham, Stuart, et al: *Financing Creative Industries in Developing Country Contexts*. www.eprints.qut.edu.au/archive/00002504/01/2504.pdf
Creative Industries and Development. http://www.unctad.org/en/docs//tdxibpd13_en.pdf

¹⁶ *Creating opportunities for Cuban musicians to develop their professional capacities*. http://portal.unesco.org/culture/en/ev.php-URL_ID=28579&URL_DO=DO_TOPIC&URL_SECTION=201.html

¹⁷ For instance, Santosa Soewarlan from Indonesia notes that: 'Copyright law is new for Indonesian society. The government introduced it since 1980s and until at present many musicians do not really understand what the law really is. For that reason people do not know how to value intellectual rights. In addition, because law enforcement is weak in many aspects of life in Indonesia, even people who understand it would break the law for personal benefit. So, the practice of piracy is commonly done among people in music industry.' In the Indonesian Appendix to Richard Letts et al: *The Protection and Promotion of Musical Diversity*, 2006, International Music Council website at <http://www.unesco.org/imc/>

deficiency that can be remedied through training workshops¹⁸ and through the creation of specialised intermediate agencies.¹⁹

- g) Many countries lack adequate **copyright legislation** and many that have such legislation have not developed the means to enforce it. There may be no effective royalty collection societies.²⁰ This means essentially that musicians can earn money only by being present, performing live or selling their own cassettes. There is no firm basis for a recording industry, little likelihood of royalty payments from broadcasts or from use of music in films.
- h) Almost all countries have a **negative balance of payments** in international trade in music. Almost all countries have a need and could have an opportunity to ameliorate this situation by building music exports²¹ once the domestic sector is adequately developed.
- i) Music presents a special opportunity for developing countries in this regard. Many developing countries have very **limited opportunities for export development** due to a narrow repertoire of physical products and/or a low level of technological development. But all countries have at least one 'product' that has been highly developed over centuries: their culture. In many cases, the traditional music is suited to promotion on the international market for world music and this would be possible if the industry structures and mechanisms were in place.²²
- j) In this context, it should be noted that without an adequate and enforced copyright regime, there is no routine method of **repatriating foreign royalties**. In those circumstances, individual artists earning foreign royalties are probably signed to foreign royalty societies and earnings are never repatriated except by a special, personal decision.
- k) A number of international covenants, including the Convention, stipulate **cultural rights that very often are not realised**. For instance, the following rights have been adopted as key drivers for the International Music Council's activities: to participate actively in the music of one's own culture; to have the opportunity to gain the intrinsic benefits available from participation in music; to have the opportunity to experience and

¹⁸ For instance, at a more elevated level, there was a Professional training programme for promoters of the African music industry with the aim of increasing their participation in international markets. http://portal.unesco.org/culture/en/ev.php-URL_ID=28581&URL_DO=DO_TOPIC&URL_SECTION=201.html

¹⁹ Musicians are in large numbers self-employed and while they may be capable artistically, their ability to transcend poor circumstances will depend upon a better understanding of the business context and greater effectiveness in managing their professional lives. More broadly, a developmental program should be interested in assisting the development of increased capacities across the population through, for instance, the development of universal access to a music education in schools.

²⁰ A recent World Bank-sponsored project in Senegal has organised a collaboration between the musicians' association and the government to build the music sector. The manager of the project, Ismael Ouedraogo, has informed the IMC that it was necessary to completely rewrite the relevant copyright law and to restructure the collecting society. This has been accomplished through establishing a collaboration between the musicians' association and the government.

Many papers have been published on the role of copyright in developing countries, quite a number under the auspices of WIPO and UNCTAD and some from competing viewpoints. See for instance: Knopf, Howard, Macera and Jarzyna LLP: 'Towards a Positive Agenda for International Copyright Reform from a Developed Country's Perspective.' *UNCTAD-ICTSD Dialogues on IPRs and Sustainable Development: Intellectual Property and Sustainable Development: Revising the Agenda in a New Context*. 24-28 October 2005, Bellagio, Italy. UNCTAD.

²¹ The handful of exceptions includes Brazil, India, Ireland, Sweden, UK, USA.

²² 'At the practical level, the music industry has the potential to have a big impact on economic structure [in African states] precisely because these economies are so small. You only need one to two real successes...and you have transformed the export structure of an economy away from primary commodity dependence, and that will have major effect.' Paul Collier, Director of the Development Research Department of the World Bank at the *Workshop on the Development of the Music Industry in Africa*, sponsored by the World Bank and the Policy Sciences Center, Washington DC, July 2001.

understand music in a diversity of genres and from a diversity of cultures; to express one's self musically through new musical creations; and in the case of professional musical artists, to be justly acknowledged and remunerated for one's work.²³ The developmental program can assist in achievement of these rights.

- l) **Music can be a force for social cohesion and conflict prevention.** There are wonderful examples of the use of music to engender peace and understanding. There is an abundant use of musical activity also as a diversion from crime and social fragmentation and to support cultural cohesion and community building. Music can be used as a bridge between cultures.^{24 25}
- m) **Many traditional musics are being lost**, victims of change or collapse in rural cultures, urbanisation, new technologies, electronic entertainments and incursions of foreign musics marketed by the transnational music corporations. Local people may not care about the loss, in which case there may be no problem. If they do care, strategies can be implemented to capture and archive the musics, attempt to return them in some form to daily life, attempt to ensure that local music is not totally overrun by foreign commercial music interests.²⁶
- n) **Globalisation can come at the expense of cultural diversity.** As noted above, some powerful participants in the negotiation of international trade agreements seek to dismantle protections for local music and culture. More informally, the effects of the global spread of new technologies can weaken local cultures.
- o) **Music education is inadequate in or absent** from many school systems, despite an accumulation of research evidence of its power in stimulating brain development, its contribution to the whole child and a full life, and its contribution to the development of many skills including some academic skills, self-discipline, social skills and self-confidence. A study of the extraordinary export success of the Swedish music sector found four key causes. Music education accounted for two of them.
- p) **The aftermath of colonialism in music education** in many post-colonial countries is that the school music curriculum is based on western classical music, even if the local culture offers a rich palette of local musics. Although this situation is now perpetuated not by the colonists but by local authorities, many people resent it and it is divisive. Assistance in curriculum planning may enable desirable change and a stronger cultural identity built around local musical traditions.
- q) In many countries, **government involvement in the music sector may be weak or misguided.** It may be that the cultural, educational or economic potential of the music sector is not recognised, or that the possibilities for legislative and regulatory support, or indeed government investment perhaps through public/private partnerships, have never been addressed. It may even be that existing legislation or regulations are

²³ Letts, Richard et al: *The Protection and Promotion of Musical Diversity*, 2006, International Music Council website at <http://www.unesco.org/imc/> The key international conventions and declarations for cultural rights are cited in Appendix 3.

²⁴ Sen, Amartya: 'What's the Use of Music? The Role of the Music Industry in Africa.' At the *Workshop on the Development of the Music Industry in Africa*, sponsored by the World Bank and the Policy Sciences Center, Washington DC, July 2001. Says Sen: 'Music ... can also assist in sustaining broad cultural solidarity and to some extent even help to resist the inter-group rivalries that cause so much bloodshed in Africa...'

²⁵ Music in some circumstances can play a part in conflict prevention or resolution. There are inspiring examples in Latin America, for instance.

²⁶ Letts, Richard et al: *ibid.* The study is full of examples of loss and some instances of reclamation. Note, for instance, the reports from Asian countries.

impediments to development.²⁷ A lack of data can be assumed, since this is normal even in developed economies including Australia; government data collection could provide a more solid basis for sectoral planning. There are some studies suggesting possibilities for fruitful government interventions.²⁸

104. These are but a selection of problems and needs. With each, there is an opportunity for action. Which are prioritised for action would depend upon on-the-ground analysis and local perceptions of the possibilities.

105. *The Australian international aid program could make funds available specifically to support cultural development programs in developing countries, or inform states to which we provide assistance that aid funds could be utilised for cultural development.*

106. *Expertise to advise on cultural development could be assembled by the appropriate government departments or, more efficiently where available, the services of an appropriate NGO could be contracted. For instance, in the case of music, the International Music Council has a "Music Sector Development Program" intended for exactly this type of intervention.*

107. *Additionally or alternatively, Australian funds can be provided to the Convention's International Fund for Cultural Diversity and from there disbursed according to whatever guidelines are developed.*

DEMAND: bringing the artists and the art to Australia and building the audience

108. Australian governments can encourage demand within Australia for the cultural expressions of developing countries.

109. The first requisite for the development of demand is the availability of supply. So far as is known to the Music Council, there are no special regulatory impediments to the entry of forms of cultural expression from developing or indeed developed countries excepting for the reservation of some broadcast time for Australian content.

110. Live artists must present appropriate Australian visas and any impediments to their access to visas should be minimised. The Music Council notes the government's reservation concerning the implications for immigration procedures, but these are visas for short term stay for the purpose of engaging in particular cultural activities. In the spirit of the Convention, artists should receive preferential treatment in receiving appropriate visas.

111. Consideration could be given to offering financial assistance for artists to reach Australia for artistic presentations; this might be routed through festivals or touring organisations. Similarly, assistance could be offered to galleries to import paintings and other visual artworks from developing countries.

²⁷ At the World Bank's Workshop on the Development of Music in Africa in 2001, John Collins of the University of Ghana, a country with remarkable and attractive music traditions, described a chain of events and misguided government interventions that takes the breath away. In the 1970's a high level of corruption caused the collapse of the economy. The major record companies pulled out of Ghana, as did many fine musicians. In the 1980s, a curfew closed down the live music scene for three years. When economic recovery began, the government taxed musical instruments at 160% and disallowed tax concessions for sponsorship of the arts. Sponsored arts events virtually disappeared, and 'it had become almost impossible to run live bands or clubs that cater for them'. The negative interventions continued. Collins, John: 'The Ghanaian Experience'. *Workshop on the Development of the Music Industry in Africa*. The World Bank and the Policy Sciences Center Inc., June 20-21. Published by the Development Economics Research Unit on International Trade, The World Bank 2001. We understand that more recently, a more constructive path has been taken.

http://siteresources.worldbank.org/INTCEERD/Resources/CWI_music_industry_in_Africa_synopsis.pdf

²⁸ For instance, Wallis, Roger and Kozul-Wright, Zeljka: *Best practice cases in the music industry and their relevance for government policies in developing countries*. http://www.wipo.int/about-ip/en/studies/pdf/study_r_wallis.pdf

112. For such importations to be beneficial they must reach an audience. On the evidence, there is a need for audience building. This could take place in parallel with efforts to build audiences for locally produced culturally diverse arts. Possibly this is a special project for realization by the Australia Council for the Arts. It would need to broaden its objectives to include, as now, support to the development of Australian arts, but as well, greater interaction with the arts of the region.

113. In summary, it is proposed that there be active facilitation of the issuance of short-term visas to artists from developing countries for the purpose of displaying their art in Australia, provision of financial assistance towards travel costs for such artists, routed through touring organizations and festivals, and support offered towards audience building, probably in association with the proposals for support to the development of diverse arts within Australia proposed above.

CONCLUSION

114. The members of UNESCO voted 148 to 2, with four abstentions, in favour of adoption of the Convention for the Protection and Promotion of the Diversity of Cultural Expressions. We are informed that subsequently, it was ratified in record time by the minimum number of countries necessary to bring it into force. Before its consideration by the UNESCO General Conference, it seemed agreed in informal discussion that in order to have weight as a normative instrument in international trade negotiations, the Convention needed to be ratified by around 80 countries. 95 countries plus the European Community have ratified, and the number is climbing. By ratifying, Australia is joining a strong global consensus and has the prospect of benefit, as a signatory, from a Convention that seems only to support its interests.

115. The Convention offers an instrument that can be brought to bear, when Australia so wishes, to protect Australian culture in the course of international trade negotiations. Through its discretionary provisions, the Convention can serve to guide and stimulate Australia to take the opportunities, cultural and economic, offered by the diverse possibilities within its own population. It also can be a means for strengthening our relationships with other countries, perhaps especially our neighbours in the Pacific and South East Asia.

116. The Music Council of Australia has interests in all aspects of the implementation of the Convention and would strongly welcome opportunities to assist the government in this work.

117. The Music Council of Australia cannot see a single aspect of this Convention that is contrary to Australia's interests. It finds only benefit. The Music Council urges the Commonwealth to ratify the Convention for the Protection and Promotion of the Diversity of Cultural Expressions.

Sincerely

Dr Richard Letts AM
Executive Director

For the Board of the Music Council of Australia

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