

*Negotiations for a Free Trade Agreement
between Australia and the
United States of America*

Submission
to the
Department of Foreign Affairs and Trade's
Office of Trade Negotiations

by the
Music Council of Australia (MCA)

January 28, 2003

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This Music Council of Australia is appreciative of the invitation from the Department of Foreign Affairs and Trade's Office of Trade Negotiations to offer comment on issues relevant to the negotiations for a Free Trade Agreement (FTA) between Australia and the United States. It offers the Department its full cooperation in exploring issues as they may relate to its sphere of competence, the music sector.

The Music Council would welcome your comment on this submission, since we too seek to learn from the exchange and would be pleased to reconsider or further develop our position in the light of the Department's observations. We draw to your attention that the Music Council is active in international NGOs (the International Network for Cultural Diversity and the International Music Council) and that its formulations could contribute to those of other organisations and consequently, even other countries.

EXECUTIVE SUMMARY

1. INTRODUCTION

The Music Council is a signatory to the submission of the Australian Coalition for Cultural Diversity and supports its arguments and recommendations for Australian culture overall.

In this submission, the Music Council describes in some detail the possible damage to the music sector should the government's right to support and foster culture be constrained by terms of an Australia/US FTA.

With the ACCD, the Music Council recognises and appreciates the Australian Government's long support of Australian cultural life and those who contribute to it. However, it is aware that the USA publicly opposes many of these measures as contrary to free trade principles and to what it sees as its trading interests. The MCA is concerned that in the negotiations between such unequal trading partners, heavy pressure will be brought on the Australian Government to abandon measures seen by the Music Council as critical to the continued existence and development of Australia's musical life.

The Music Council shares the ACCD's view that the Australian Government's prerogatives for the support of Australian culture simply should not be on the negotiating table for the Australia/US FTA.

MCA is advocating that within the total realm of cultural activity in Australia, there is an area pegged out by government intervention to ensure a space for Australian culture. Within the space, no governmental prerogatives should be surrendered. In the larger realm, beyond that space, there may be room for negotiation under an FTA. However, MCA has found it difficult to discover problems for Australian culture that might be resolved by removal of official trade impediments by foreign governments. Our trade problems seem generally to result from our geographical isolation and an insufficiency of resources to address the enormous international marketplace.

The larger context for this discussion is the need to maintain and foster cultural diversity. The rationale for trade liberalisation depends on the doctrine of comparative advantage which, in the cultural sphere, leads to cultural homogeneity. The two objectives are basically opposed. But in the cultural sphere, cultural diversity is more important than economic efficiency.

While accession to some US requests may advantage Australian culture, there are three serious problems in reaching agreement on such issues in the context of an FTA:

- It breaches the position that culture should not be on the negotiating table.

- It could be extremely difficult to reverse any agreement reached under the FTA since this could happen only with the consent of the USA and would require some compensating concession from Australia.
- Should a dispute arise related to an agreement under the FTA, Australia could be subjected to massive retaliation by the USA in unrelated areas of the economy.

2. US CONCERNS

The US Trade Representative has named its concerns with aspects of Australian trade policy and practices. These give some suggestion of the nature of its negotiating position from which can be implied the dangers to Australian culture.

3. VALUING AND SUPPORTING THE ARTS

Decades of submissions to governments have enumerated the reasons that we value and governments support the arts. We make only a few observations pertinent to subsequent sections of this submission.

Musical diversity. As befits and modern, democratic, multicultural nation, Australian governments support the creation and performance of music in a great variety of styles and forms.

National identity. Government entities such as the ABC, ABA, Australia Council are charged with nurturing national identity.

The arts give shape to national identity by *articulating our circumstances and values and helping us to know ourselves*, feel our spirit and community, perceive our problems and strengths.

Discussion of national identity tends to circle around ethnically based issues. But there are others that are relevant in the present context.

National identity can embrace a sense of worth, of competence, of possibility and this can be directly related to national achievement in the arts.

National identity through music has two aspects: exceptional achievement in musical forms of international currency, and the development of music of distinctive local character.

Is “entertainment” “culture”? The US has characterised film and television as “entertainment” as opposed to “arts” or “culture”. Australia supports all as culture. The US distinction in this context cannot be taken seriously.

Equality of access. If the arts are a good thing, in a democracy they should be equally accessible to all. Governments take action to make this more possible, through subsidies, regulations, special provisions of one sort or another.

CULTURAL SUBSIDIES

Government procurements, investments and subsidies directed to Australian artists, cultural organisations, products, services, are anticompetitive from the free trade perspective, since ‘national treatment’ is not afforded to non-nationals.

Arts subsidies are provided by all three levels of government to make possible arts activity, adjudged to be of cultural value to the populace, but unable to cover costs from earnings. If activities were able to cover costs, there would be no need for subsidy. The economic term embracing most such situations is “market failure”.

Market failure. We describe forms of market failure in the music sector which subsidies are intended to counter.

National treatment. One objection to cultural subsidies is that they do not afford national treatment to nationals of the treaty partner. A solution, therefore, could be to offer such national treatment rather than eliminate subsidies. But this is a bizarre proposition.

Tax incentives as subsidies. Tax incentives to encourage private donations to the arts represent tax income foregone by a government. They therefore are a form of subsidy. Should the US seek the termination of cultural subsidies in Australia, a reciprocal agreement should include termination of tax incentives for private subsidies in the USA.

LOCAL CONTENT STANDARDS (QUOTAS) ON COMMERCIAL RADIO

Local content standards are imposed on *commercial* radio broadcasters to ensure that the population has access to musical performances by Australians on radio. Also, by ensuring that Australian music received exposure by radio broadcast, it is possible to build record sales, and thereby create cause for increased production of recordings of performances and works by Australian musicians and composers. Further, the increased production of these recordings and the greater exposure of Australian audiences to Australian music creates the conditions in which Australian identity can be clarified and confirmed, in this case through music.

It was only after introduction of these quotas that Australian “popular” musicians began consistently to capture any substantial market share on a continuing basis, or to achieve significant popularity and exports internationally.

There is a background to the operation of local content standards for radio which is not self-evident. The Music Council fears that without local content standards, some basic forces in the industry could unravel the present support for broadcast and recording of Australian music and its promotion on the international market.

6. PUBLIC BROADCASTING

The ABC

Through its realisation of the requirements of its Charter, the ABC gives crucial support to Australian music which in some instances is unavailable from any other source. For instance:

- it broadcasts various styles of music that simply are not to be found on commercial radio
- it does maintain its own local content standards
- its activities lead to the production of music master tapes which then can be used to produce recordings for public release

Government support to the ABC could be in conflict with US concerns about free trade.

SBS

SBS has a very different brief from the ABC and believes that quantified local content objectives are not relevant. However, it does encourage broadcast of Australian artists, and has a special provision for production of television programs in which music is of course an element. Obviously, its activities are dependent upon government subsidy or procurement policies.

7. THE COMMUNITY RADIO BROADCASTING SECTOR

Community radio would seem to be vulnerable to US concerns on two grounds: it is subject to a government invocation to meet local content standards, and secondly, the sector as a whole receives government subsidies.

Community radio is extremely supportive of and important to Australian music and musicians. Community radio stations overall have a commitment to Australian artists often far beyond that indicated by the local content standard. Loss of subsidies could have a serious impact.

8. NEW FORMS OF ELECTRONIC DISSEMINATION

The new forms of digital communication are engendering radical new practices for accessing and consuming music. Free to air radio may or may not survive. It is crucial that the government retains the prerogative to regulate or support as yet uninvented modes of musical production and dissemination.

9. TELEVISION BROADCASTING, FILM PRODUCTION

Local content standards for television, government subsidies for production, government investments in the film industry, government procurement policies in this sector, all potentially could be on the table in the negotiation of an FTA.

Music is not foreground in this area but nevertheless, composers and musicians are employed, contracts written, royalties earned. The Music Council opposes any concession of government prerogatives to support and regulate production and dissemination of Australian content by the television and film industries.

10. INTELLECTUAL PROPERTY RIGHTS

There are indications that the US will seek certain actions regarding IPR. Generally speaking, the Music Council would support those proposals. They may include the following:

Parallel importation

The MCA opposes parallel importation legislation and supports its repeal or withdrawal.

Piracy

The MCA supports the implementation of stronger measures to deal with piracy of copyright products.

Copyright period

The MCA is informed that the US may seek an extension of the term of music and other copyright to 70 years after the death of the creator. The MCA on balance would not oppose this.

Enforcement of copyright

The Music Council supports the House of Representatives Committee on Legal and Constitutional Affairs' recommendations to bring about more effective enforcement of copyright.

Performers' rights

The Government has long promised to introduce effective legislation for performers' rights. The MCA looks to the Government to take action in this matter, and also to accede to the 1996 WIPO Performances and Phonograms Treaty.

Private copying

The Music Council supports the imposition of a legally acceptable levy on materials or equipment used for the private copying of copyright recorded musical works.

Home-style performances of music in the USA

The WTO has found that current US legislation is in breach of its obligations in this area. The MCA urges the government to require the US to comply with the WTO finding, amend its copyright act and pay fair compensation to Australian composers.

11. EXPORT DEVELOPMENT

The music sector has had some benefit from government subsidies through Austrade and the Australia Council to build exports of recordings and support international touring by Australian musicians. The unaided capabilities of small Australian companies to build export markets are modest. It is important

that with respect to the cultural sector, the Australian government retains the prerogative to offer export assistance.

12. STATISTICS FOR THE MUSIC SECTOR

The Music Council of Australia has assembled some 70 tables of statistics relating to the Australian music sector. While some of these tables are a little out of date, for instance in the rapidly changing area of record sales, they are very informative and may be of use to the Department. Go to www.mca.org.au, Click on Resources and then on Music Databases. Other statistics show export royalty income from music has increased 245% in the six years to 2001, suggesting potential for further increases if the Australian industry is sustained.

SUBMISSION

1. INTRODUCTION

1.1 The Music Council of Australia is a peak music sector council of 50 persons. Currently, seventeen are nominees of national music. The others are distinguished individuals elected to positions assigned to different aspects of the art form or subsectors of the music industry such as education, or the production, presentation and dissemination of music. The Council develops policy, undertakes research and advocacy, creates and/or collects and distributes information digitally and in print, represents music in various Australian forums and represents Australian music in the International Music Council, and manages certain projects.

1.2 The Music Council is a signatory to the submission of the Australian Coalition for Cultural Diversity (ACCD) and supports its arguments and recommendations. They address the overall concerns of the cultural sector, with recommendations that the government should ensure that in the context of an FTA with the USA, or any other international trade agreement, it retains all rights to support and develop Australian culture. The arguments advanced by the ACCD will not be repeated in this submission.

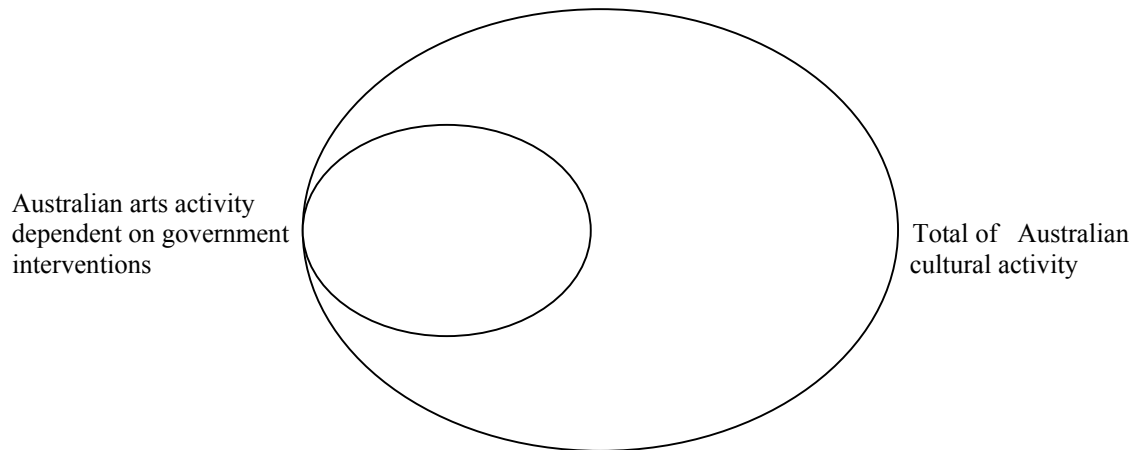
1.3 In this submission, the Music Council describes in some detail the possible implications for the music sector should the government's right to support and foster culture be constrained by terms of an Australia/US FTA.

1.4 With the ACCD, the Music Council recognises and appreciates the Australian Government's long support of Australian cultural life and those who contribute to it. The Music Council notes the present Government's various statements in the international arena. They demonstrate the Government's understanding that its subventions through subsidies, regulation, tax measures and other means are necessary to the *existence* of much of our professional cultural activity of government. This paper might be read as echoing the Government's own policies, adding detail about the particular situation of music, musicians and musical life in Australia.

1.5 Nevertheless, the MCA is aware that the USA publicly opposes many of these measures as contrary to free trade principles and to what it sees as its trading interests. The MCA is concerned that in the negotiations between such unequal trading partners, heavy pressure will be brought on the Australian Government to abandon its right to support Australian culture through such devices as local content standards on broadcasters, seen by the Music Council as crucial to the continued existence and development of Australia's musical life.

1.6 The Music Council shares the ACCD's view that the Australian Government's prerogatives for the support of Australian culture simply should not be on the negotiating table for the Australia/US FTA.

1.7 These prerogatives might be conceived as addressing an area within the total realm of cultural activity in Australia. This is an area pegged out to ensure that within that realm, there is a space for the Australian voice, the Australian vision, the Australian story, the Australian artist. Although, in the illustration below, the space is shown as contained by a continuous line, that is in one sense a misrepresentation. The activity within the smaller area is not sealed off from the world. Australian artists are aware of and influenced by the cultures of other countries and many have a direct exchange with them. It is a permeable and fuzzy border. But all the arts within the smaller area are enabled in one way or another by the support of governments – even those involving international exchange. Without such government intervention, the activity would not be viable.



1.8 Outside of that area is the much larger arena of Australian cultural activity. This includes, by extrapolation, cultural activity that is self-sustaining, some of it commercial, some of it embedded in community customs and rituals with no commercial aspect. Within the larger realm, but excluding the smaller, lie most of the activities of, for instance, the recording and broadcast industries, the touring of arena music shows, the export of recordings of Australian pop artists.

1.9 Of course, it can be pointed out that the recording and broadcast of Australian musicians might collapse were it not for local content quotas, and the latter fall in the small circle. We are not attempting here to set up a simple and infallible model where everything obligingly falls totally into the inner circle or the outer, so much as to put across a concept: that we do not want our cultural sovereignty, insofar as it is dependent upon the government's rights to intervene on its behalf, put on the negotiating table, BUT that there is a larger area of cultural activity where negotiation may be possible.

1.10 That said, we are at somewhat of a loss to find proposals for such negotiation. The proposal by Dr Milton Church in a meeting this week that Australia should not be always put in the position of defending its cultural paradigms but rather might propose some changes in the US paradigms is fascinating, although it perhaps is an offensive strategy to defend our small circle prerogatives.

1.11 So far as we are aware, the problems for Australia in exporting the artefacts of its musical culture have more to do with the costs of successfully registering a presence in the huge international marketplace than with official foreign impediments to trade. The cost and marketing consequences of our geographical isolation also are a factor. If there is a solution to such problems, it probably involves application of more resources and they, ironically, might have to come from government. The only impediments of which we are aware are visa and related requirements in the US for touring Australian musicians. Australia has similar requirements of US musicians. Some exploration might be made of whether the two sets of requirements are sufficiently in balance. At the time of submission, MCA had not been able to gather the necessary information but should it offer the opportunity for negotiation, we will send it as a supplement to this paper.

1.12 Considering all of the above, the main concern of this submission is to reinforce the arguments for complete retention of government prerogatives with regard to culture as proposed by the ACCD, by showing possible consequences on music should they not be retained.

1.13 The larger context for the ACCD and the MCA position is the need to maintain cultural diversity. The ACCD submission noted the individual's right to participate in his or her own culture, as stated in various global agreements. An argument for cultural diversity is made as a parallel to the argument for biological diversity. There are demonstrable benefits to social cohesion and vitality that follow from cultural diversity. MCA is arguing firstly the benefits of cultural diversity within Australia, which is fostered through the cultural programs of Australian governments. MCA argues secondly the benefits of maintaining the forms of Australian cultural life as viable and often distinctive when compared with those of other countries – in the present instance, the USA.

1.14 In this international sphere, trade liberalisation objectives depend upon the doctrine of comparative advantage. The US obviously has a comparative advantage in the production of films through, for instance, the size, wealth and measure of cultural homogeneity in its population, and its ownership of international channels of distribution. It follows, under that doctrine, that the US should supply the word with film and that less efficient producers will terminate their film-making activities.

1.15 The objective of cultural diversity and the doctrine of comparative advantage are therefore in direct opposition. We claim that despite the economic inefficiencies, governments should act to foster cultural diversity and should contest the cultural homogeneity that would follow from pursuit of comparative advantage. In this area, cultural values are more important than economic values.

1.16 Parenthetically, it might be noted in passing that some programs of economic development that have not taken into account the values and processes of local cultures have failed. Comparative advantage cannot be assessed only in terms of inanimate resources and logical systems.

1.17 We conclude this introduction by noting that negotiation of cultural issues in the context of an FTA, even issues such as those in the copyright area where we might support the general thrust of US requests of Australia, carries three potentially serious problems:

1.17.1 It may breach the position that culture should not be on the negotiating table, held not only by the ACCD and the MCA, but also, as evidenced by some of its policy statements, by the Government

1.17.2 It could be extremely difficult to reverse any agreement reached under the FTA since this could happen only through negotiation with and the consent of the USA and would require some compensating concession from Australia. (*MCA certainly would urge that the possibility of such negotiation be included in the Australian/US FTA!*) This is a little like the death penalty: execution is final even should it later be discovered from new evidence that it was a mistake. The US may not agree to any modification, or it may require such a load of compensation that the cure is worse than the affliction. The issue is especially pertinent in music since some aspects of the music industry are in great flux at the moment, and the government needs the greatest possible flexibility in responding in the national interest.

1.17.3 Should a dispute arise related to an agreement under the FTA, Australia could be threatened by or subjected to retaliation by the USA. Canada took actions during the "magazine wars" which displeased the US. The US took massive retaliation through quite unrelated industries, targeted to two electorates held by key Canadian parliamentarians with the responsibility for advocating the Canadian position. (One was the Canadian minister for culture, Sheila Kopps.)

2. US CONCERNS

2.1 At the direction of the President of the United States of America, Robert Zoellick has written a letter to the President Pro Tempore of the US Senate informing him of the President's intention to negotiate an FTA with Australia. In this letter, Robert Zoellick lists specific areas of concern to the USA. Although important detail is lacking, satisfaction of some of these US concerns would potentially have a negative impact on the Australian music sector. The list includes:

Certain intellectual property rights, including some pertaining to performances, phonographs, and piracy

Trade in services, including telecommunications

Investment

Electronic commerce

Government procurement

Anticompetitive business conduct, state monopolies, and state enterprises

2.2 Indications of which of these US concerns may affect local cultural provision follow the headings of each section of this paper from section 4 onwards.

3. VALUING AND SUPPORTING THE ARTS

3.1 Decades of submissions to governments have described the value of the arts to individuals and societies, and rationales for government support to the arts. We hope that it is unnecessary to recapitulate, and confine ourselves to a few comments pertinent in the present context.

3.2 Musical diversity. As befits a modern, democratic, multicultural nation, Australian governments support the creation and performance of music and the arts in a great variety of styles and forms.

3.3 The Australia Council structure, for instance, includes departments for all major art forms existing and yet to be invented, an Aboriginal arts department, and a policy for support to multicultural arts. Its Annual Report reveals that the Music Board has funded classical music, computer and experimental music, jazz, folk, rock, Aboriginal, and music from many non-Western cultures. Due to market failure (see section 4), much of this activity depends upon subsidy.

3.4 National identity. We will spend a little time on this issue because it is a recurring presence in the charters of relevant government entities such as the ABC, ABA, the Australia Council and because it is very pertinent to the need to protect local cultures from trade liberalisation.

3.5 The arts give shape to national identity by articulating our circumstances and values and helping us to know ourselves, feel our spirit and community, perceive our problems and strengths. That is the larger context for discussion of the arts' contribution to national identity.

3.6 National identity is not simply resolved in the notion that we are all happy ockers together. Sixty or seventy years ago, the families on our street might have fitted roughly into a single view of national character and beliefs. No longer. Almost the most important characteristic of our national identity is the fact that we are very diverse. One would hope that we also are pleased with this diversity. Alas, we also are diverse in our attitudes towards diversity. Diversity can go too far!

3.7 Our diversity is further enriched, prospectively, by exposure to the arts of other countries. However, the diversity of imports is impoverished if it succumbs to the dominance of the most powerful cultural trading partner – in our case, the USA. (Although we do not propose it here, a case could be made for some sort of regulation of cultural imports to assist access for cultural products and services from other than the dominant trader.)

3.8 Often, discussions of national identity tend to circle around diversity in ethnically based values. But there are others that are relevant, especially in the present context.

3.9 *National identity can embrace a sense of worth, of competence, of possibility and this can be directly related to national achievement in the arts.* Before the 70s, hardly any plays were being written in Australia. Consequently, theatres did not present Australian plays, and the plays presented came from ‘overseas’. Australian actors were obliged to use English accents on stage. Australians living in this situation would not have been encouraged to believe that we were capable of creating or presenting plays and unless of strong and independent mind, would not have had a sense of possibility for themselves as playwrights. When plays such as *The Summer of the Seventeenth Doll*, or *The One Day of the Year* finally appeared, reflected the Australia of the time, and were performed with Aussie accents, there was some sense of wonder and excitement that Australians could dare to attempt such a thing.

3.10 Post WW2, we made hardly any films. The music on the radio almost all originated elsewhere, whether classical music or popular. There were a few Australian books, the painting renaissance was yet to begin. It was a rarity for an Australian artist to have a success overseas, and those who did, mostly lived there.

3.11 Now, all this has changed. With and in part, due to government support, we are prolific in production of visual arts, literature, plays, musical compositions, and are at least in the game of producing films.

3.12 This happens in a larger context where, at the street level, we seem increasingly to be owned by foreigners. McDonalds, the Colonel, Coke, Starbucks, cars (we know we don’t own Holden), petrol stations, white goods, computers... What does this do for our sense of identity and possibility? We might own a few bits and pieces overseas, but your average Australian probably has no idea that Westfield owns shopping malls in the USA, or that the National Australia Bank owns a bank in the UK.

3.13 But everyone knows about Kylie in London, Nicole Kidman and Russell Crowe in Hollywood. And many know about Cate Blanchett, Geoffrey Rush, Baz Luhrmann, Peter Carey, silverchair, Simone Young, Phil Noyce, Peter Weir and what is becoming a quite extended list of Australian artists who have risen to the top of the tree internationally.

3.14 So whom does that make *us*? Why, we are a people with a great competence in the arts. I might yet write the great symphony, you might write the great novel, or your child might make a great film. We come from a country where others have done this and it could be possible for us too. And if we are sophisticated enough to do that, perhaps our kids can run a great laboratory or a high tech firm.

3.15 (The Europeans understand this implication very well. They invest heavily in the arts, but also in international exposure for their best artists and artistic works, on the basis that if they are seen to have achieved such excellence in e.g. orchestral performance, friendly assumptions will be made about their capabilities in other sophisticated industries. Parenthetically, the US also has an agenda for international promotion of its arts (or perhaps, “entertainment” – see below). One might believe that the global success of the US entertainment industry is simply the consequence of high-spirited entrepreneurialism. But as those closer to the action know, there is also purposeful US government policy aimed, yes, at export earnings, but also at winning hearts and minds so that their national identity becomes to some extent our national identity. This adds to our concern about protecting Australian culture.)

3.16 *National identity through music has two aspects.* Both are important in music’s contribution to national identity. There are musical forms of international currency such as classical music and various forms of popular music. National identity here is about success in an international arena where the rules are fairly inflexible. Too much originality, too much difference, can put you out of the game. (It might be compared with success in, say, tennis; you win playing by the rules, not by rewriting them.) Is ours the best performance of the Beethoven *Fifth Symphony*? Is this rock song so good that it rises to the top of the global Top 40?

3.17 The other musical contribution to national identity is through the development of music of distinctive local character. The bush song is a traditional example. But in parts of this realm, there is an emphasis on originality and creativity. It is only from many attempts to produce something different that a different identity can emerge. To the extent that it is local and distinctive, this music may lose the possibility for international currency.

3.18 Is “entertainment” “culture”? The US has characterised film and television as “entertainment” as opposed to “arts” or “culture”. It is less troubled if a country wishes to subsidise its poets than if it subsidises “entertainment”. But Australia supports all as culture.

3.19 The entertainment vs. culture argument is a now ageing internal debate in the cultural sector. Proponents of the ‘high arts’ might deride examples of popular arts like a popular musical, or a rock song, as “mere entertainment”. But the times have moved on. In a post-modern world it is accepted that there are different strokes for different folks. Governments have a concern for and give support to arts of all persuasions. The Australian Government through the FFC was perfectly happy to invest in the film *The Castle*, an entertaining comedy that at the same time was articulate about national circumstances and character. The US distinction in this context is mere special pleading and cannot be taken seriously.

3.20 Equality of access. If the arts are a good thing, in a democracy they should be equally accessible to all. Governments take action to make this more possible, through subsidies, regulations, special provisions of one sort or another.

3.21 It is noted in the next section that the need for cultural subsidies can be explained in economic terms through the concept of “market failure”. It might be suggested that the operation of the market is rather peripheral to provision of access to the arts in for people who are disadvantaged (whether by physical or mental handicap), living in poverty, or in remote or rural areas. Without government instigation and support, such services often would not get beyond the involvement of volunteers and would be unlikely to register in the marketplace.

4. CULTURAL SUBSIDIES

Government procurement, anticompetitive business conduct

4.1 Government procurements, investments and subsidies directed to Australian artists, cultural organisations, products, services, are anticompetitive from the free trade perspective, since ‘national treatment’ is not afforded to non-nationals.

Arts subsidies are provided by all three levels of government. At Federal and State level, the subsidies are routed mainly through arts ministries, but some also arrive through departments of education, social services, health, trade and foreign affairs.

Arts subsidies are provided to make possible arts activity, (i) adjudged to be of cultural value to the populace, but (ii) unable to cover costs from earnings. If activities were able to cover costs, there would be no need for subsidy. The economic term embracing most such situations is “market failure”.

Due to market failure, some of the most culturally important musical activity in Australia is dependent upon subsidy or procurement policies directed to Australian nationals. Because the market fails these activities, they are not possible without other support. In Australia, that support comes primarily from government, with in some cases some assistance also from private sources, and from the free contribution of artists and volunteer administrators.

4.2 It may be useful to clarify forms of market failure in the music sector which subsidies are intended to counter.

4.3 It may be that in the context of an FTA, some of these are not of immediate concern to the US Government. However, should private organisations in the USA be able to bring complaints against Australian Government practices, it cannot safely be predicted where their future interests may lie.

Examples of market failure in the music sector

4.4 It is a given in all the following examples that the government or its delegates have adjudged an activity to be sufficiently culturally valuable to merit subsidy.

4.5 An activity unable to attract a sufficient audience at high enough ticket prices to cover the costs of presentation, including payments to artists. If a particular style of music is not one that is promoted by the mass media it will tend to have a modest audience. There are many such styles, of great musical richness or inventiveness and of special interest to particular audiences within the general population. Public presentation of the music has to meet audience demands for the location and attractiveness of the venue; simply to meet venue costs may already consume a substantial part of the box office. For instance, to hire The Studio, effectively a 230 seat venue at the Sydney Opera House, can cost presenters of the order of \$35 or more per seat. This alone is equal to or greater than the feasible ticket price for some musics/audiences. Still to be added are marketing costs, production costs, fees to the artists, management. This venue is expensive. However, the general principle applies in other, more modest circumstances.

4.6 The large music organisation such as an orchestra or opera company is a particular instance of the same issue. These organisations present music that is acknowledged as the peak of Western musical achievement to audiences often numbering in the thousands. However, they are labour-intensive forms originating in previous centuries and economic structures. The ratio of performers to audience, and production, venue and marketing costs, rehearsal requirements, the necessity to achieve high performance standards and so on mean that without subsidy, the activity cannot be sustained.

4.7 Subsidy may be needed to achieve high performance standards; such standards may be necessary for survival. Our first example showed the common situations where presentation costs consume or exceed earned income, leaving little or nothing for the actual performers. This means that performers, even if they are paid a modest fee to perform, are unlikely to be paid to rehearse. But without rehearsal, it is impossible to achieve high performance standards. And without those standards, success and indeed in some case, survival, is unlikely. (Survival, because the audience has become familiar with international standards through the media, recordings, and occasional live performances by touring artists, and attaches its box office dollar to higher expectations.) To achieve international standards, we are speaking of weeks or possibly even months of rehearsal; indeed, years may be necessary, depending upon the form, the prevailing baseline standard and so on. Such extended rehearsal requires employment of a stable ensemble of musicians over a long period, and that can only be paid for by subsidy.

4.8 Touring can face market failure. Without touring of live performances, each city becomes inward, knowing only its own artists, its own standards for better or worse; stimulation is lacking. Without touring, regional and rural citizens have little opportunity to see artists of professional quality. Without touring, Australian artists cannot be seen by the rest of the world, nor can they gain the direct contact with foreign artists and standards that will stimulate their imaginations and their level of achievement. Touring can leverage off production and rehearsal costs undertaken for a home season and already paid, but involves most of the other presentation costs of the city, plus travel and accommodation costs. It often incurs a deficit.

4.9 Subsidies to performing venues. Subsidies are often required to make it possible for venues to charge affordable rentals. (The Sydney Opera House is subsidised!) These can therefore be regarded as an indirect subsidy to renters, including presenters of musical performances. If the presenter cannot afford the rent, the performance cannot take place.

4.10 *Market failure can constrain the production of recordings.* The costs of manufacturing the recording – the disc, artwork, printing and packaging – are not onerous compared to the price that can be charged, and can be covered by sale of a modest run. However, the costs associated with production of a master tape can be high and unretrievable through sales. Save money on the master tape, lose quality and sell even fewer discs. This can be so whether the recording is of a pop band of less than star status, or a star status classical, jazz or world music group.

4.11 *Composer commissions almost invariably incur a financial loss.* Other than in the popular music or advertising areas, their costs can be covered only through government subsidy or through cross subsidy from the commissioning body. Except in rare and exceptional circumstances, there is no prospect that earnings from performances will cover a composer commission.

4.12 *Subsidies to community music or arts activities.* Typically, these activities are the hardest pressed financially, often dependent on predominantly free volunteer labour. The objectives may have as much to do with health, education or social welfare as with music. Often, they are services provided to clients below the poverty line, or disadvantaged in some other way. The subsidy may be the main or only cash income, meeting costs that cannot be covered by volunteer labour. But some community activities fit more the mainstream of music activity as described above.

4.13 *Australia's small and widely dispersed population is a contributor to market failure, especially when compared to large, densely populated countries like the USA.* This is a factor in a number of the above categories. For instance, the large musical organisations such as the symphony orchestras are able to generate much greater earned income in Sydney or Melbourne than the smaller capitals, and would be better placed again in the even larger US cities. The distance between major Australian cities requires that if the population of a smaller city such as Adelaide is to have continuing access to high quality and diverse musical performances, they must be provided by resident musicians even though the population base may not be sufficient to sustain the activity in a way that would be normal in a larger centre. The thousand kilometre or more separation between major population centres in Australia means that touring is less viable than in the USA, where a tour of 1,000 kilometres might take in and generate income from six or eight major cities. In recording, as in film, US companies can totally recover high production costs from a domestic market of 270 million; this is a much more difficult feat in Australia.

4.14 Without the subsidy, the above activities cannot take place – except, to the degree possible, by donation of the artists and their management and production colleagues and, perhaps, private donations. The former is much more common than the latter. Artist 'donation' can produce a painting or a song, but it cannot sustain a Melbourne Symphony, a Song Company, an Opera Queensland, a Lion Arts Centre, an Orange Regional Music Centre...

National treatment

4.14 One objection to cultural subsidies is that they do not afford national treatment to nationals of the treaty partner. A solution, therefore, could be to offer such national treatment rather than eliminate subsidies.

4.15 This is a bizarre proposition which would not be mentioned here were it not for a sort of precedent as a variant on the Blue Sky case where, under the CER with New Zealand, the court decided that New Zealand television productions must be treated as Australian in satisfaction of the Australian content standard for television – even though the principal reason for the content standard was the reinforcement of Australian identity.

4.16 To offer national treatment is hardly a satisfactory solution, especially in the case of an FTA with the USA where Australia would be greatly disadvantaged. Artists from a country with a population base 15 times greater than our own would be eligible for Australian arts subsidies. Australian artists would be eligible for US subsidies, but the pool of government arts subsidies in the US is small on a

per capita basis compared to that in Australia. And of course, the purposes of the subsidies in both countries would mostly not be met if they were directed to nationals of the other.

Tax incentives as subsidies

4.17 Tax incentives to encourage private donations to the arts represent tax income foregone by a government. They therefore are, indirectly, a form of public subsidy.

4.18 The merits of the two methods – direct and indirect subsidy -- can be debated. Decisions about what is to be subsidised are made in the one case by governments and in the other by private donors. In practical terms, a foreground aspect of private funding is that funds tend to go predominantly to large-scale high profile arts organisations rather than to smaller scale endeavours no matter how accomplished, or than to innovative arts or community-based arts. This is the case both in Australia and the USA, especially in the case of corporate support.

4.19 Taxation-encouraged arts subsidies from private sources in the USA – individuals, private foundations, businesses, corporations – far exceed direct subsidies from government sources. This is related to philosophies of government in the USA which are at variance with our own.

4.20 Should the US seek the termination of cultural subsidies in Australia, MCA argues strongly that a reciprocal agreement would include termination of tax incentives for private subsidies in the USA.

5. LOCAL CONTENT STANDARDS (QUOTAS) ON RADIO

Anticompetitive business conduct, trade in services, including telecommunications, investment

5.1 Local content standards are imposed on *commercial* radio broadcasters to ensure that the population has access to musical performances by Australians on radio. Also, by ensuring that Australian music receives exposure by radio broadcast, it is possible to build record sales, and thereby create cause for increased production of recordings of performances and works by Australian musicians and composers. Further, the increased production of these recordings and the greater exposure of Australian audiences to Australian music creates the conditions in which Australian identity can be clarified and confirmed, in this case through music. This latter has been continually stated as a rationale for the operations of relevant government bodies such as the Australian Broadcasting Authority and specifically for local content standards (see above).

5.2 It was only after introduction of these quotas that Australian “popular” musicians began consistently to capture any substantial market share on a continuing basis, or to achieve significant popularity internationally.

5.3 Australian radio broadcasting companies, through their industry association, the Federation of Australian Radio Broadcasters (FARB), vigorously resisted the imposition of local content standards, asserting that they should be unfettered in serving the market and providing the music they believed audiences wanted to hear. The problem is that if radio stations believe broadcasting Australian music puts them at risk with audience ratings and advertising revenue, none would volunteer to relatively disadvantage themselves to take that risk. The imposition of quotas put all stations equally at risk. Within that risk they could experiment to find a successful response.

5.4 The current Act introduced self-regulation of content quotas by the broadcast industry. The quotas must be accepted by the ABA, and public objections may be lodged to the proposals made by the industry. The quotas vary by musical style, to fit the adequacy or inadequacy of supply of Australian recordings as asserted by the relevant radio stations. So there is a 25% quota for rock music, which is in plentiful supply, and a 5% requirement for jazz which, it is claimed, is not. (There is in any case no commercial station broadcasting jazz.) More recently, the broadcasters have accepted initiatives by the recording industry to boost the number of new recordings being broadcast. The Australian local content standard as determined in 1999 can be found in Appendix 1.

5.5 Some Australian radio networks are said now to be buying in complete formats from US networks – i.e. the playlist is decided and compiled in the US presumably according to the preferences of the American market. The need to rejig the formats to meet Australian content standards might be seen as a major inconvenience. (It might be noted that the Clear Channel network in the US has bought up local radio stations and now has 1200 stations across the country broadcasting a single playlist. American musicians complain that whereas their music had some access to local stations in the past, they are now completely excluded unless they figure in the top national sellers. But at least Clear Channel in the USA does not *import* its playlist!)

5.6 There are local content quotas for broadcasters in other countries. The Canadians have a more elaborate system, a top quota requirement of 35%, and a scheme by which a percentage of funds realised from sale of a broadcasting station go to a fund to promote Canadian artists. *It is worth noting that the Canadians have retained the right to impose these local content requirements under the North American Free Trade Agreement.* The French have a quota requirement of 40%. Since its introduction, income generated by French musicians, including export income, has burgeoned. Other countries see the need for quotas and would support Australia in its position. It might be noted that because other countries use quotas to create sustainable local industries, they potentially have an export capacity in a market in which Australia is a competitor.

5.7 Under its previous CEO, the Australian Record Industry Association (ARIA) was a very active advocate of higher Australian content requirements. It pressed also for the special requirements for broadcast of new recordings and attempted to persuade the stations to record and promote Australian musicians. While on the face of it, the broadcasting industry must have been responsive to these arguments, MCA has it on good authority that behind the scenes it offered considerable resistance.

5.8 It should be noted that while the ARIA membership includes small independent record labels, it is dominated by the major transnational recording companies whose CEOs occupy most of the seats on the Board. (The smaller companies found the ARIA agenda unsatisfactory and formed their own Association of Independent Record Labels (AIR).) It is paradoxical, then, that ARIA has been a strong advocate of local content requirements (although current advocacy seems subdued). Presumably the transnational companies could do better financially by abandoning their support for local musicians and importing all of their product (instead of most of it).

5.9 The major labels, which dominate the Australian record market, are responsible for approximately 40% of the titles by Australian musicians over a year. By and large, the major labels depend upon small independent Australian labels to play the role of talent scout and to establish new artists in the Australian market. They then capitalise on this work by offering the prospect of international release. It is the major labels that make it possible for a few Australian musicians to reach the international market and even achieve best-seller ranking.

5.10 Touring is regarded as essential to the marketing of a recording. Recently, with the decline of the Australian dollar, the majors have found it too expensive to tour foreign artists in Australia and so have given more attention to Australian artists. If the dollar continues to rise, the current interest in Australian artists may dissipate.

5.11 It is important to note that even with support from local content quotas and some subsidies to production of recordings of Australian artists, only 15.6% of Australian record sales in 2002 were of recordings of Australian performers. 84.4% were of recordings by foreigners, almost all released on foreign labels. Over 90% of Australian record sales are on foreign labels, dominated by the major transnational corporations.

5.12 This background is necessary to understand the situation potentially if local content standards were abandoned. The apparent circumstances where both recording industry and broadcasters support local content requirements may conceal motivations that in changing circumstances could lead in the opposite direction.

5.13 The Music Council believes that continuation of local content standards for music broadcast on radio is crucial to the ongoing access of the Australian public to popular music created by Australian musicians and the continuing success of Australian musicians nationally and internationally. Without the pressure from government to maintain these standards:

- it is possible that the broadcast industry would revert to its former public position, oppose the standards and terminate them
- it is possible that the major companies, lacking the need to compete for radio time reserved for Australian performers, and facing very uncertain times financially with a dwindling global market and wholesale piracy through unlicensed production of hard copy recordings and unrecompensed private copying on the internet (see Appendix 3), would terminate or severely reduce their investment in the production of recordings by Australians in favour of increased importation of recordings, mostly from the USA. We do not question the integrity of the interest of the Australian managers in the promotion of Australian artists, but note that the decision may not be theirs to make.
- it is possible that the major companies, having abandoned any investment in Australian artists, would lose interest in international promotion of Australian artists; the international market could effectively close to Australian artists, and income from export and from import substitution would be lost.

5.14 In radio broadcasting, at least one network is now owned by a US network. Local content regulation may not suffice. Any review of the need for regulation of foreign ownership of media needs to include consideration of the situation in radio and possibly web broadcasting. There may also be advantage in exploring the use of competition policy to contest dominance of content by the strongest international trader(s).

6. PUBLIC BROADCASTING

The ABC

Anticompetitive business conduct; state enterprises; government procurement

6.1 The Charter of the ABC (Australian Broadcasting Corporation Act 1983 - Sect 6) stipulates, inter alia, the following functions affecting Australian music and musical life:

(1) (to provide)

(a) (i) broadcasting programs that contribute to a sense of national identity and inform and entertain, and reflect the cultural diversity of, the Australian community; and

(ii) broadcasting programs of an educational nature; ...

(c) to encourage and promote the musical, dramatic and other performing arts in Australia.

(2) In the provision by the Corporation of its broadcasting services within Australia:

(a) the Corporation shall take account of:

(i) the broadcasting services provided by the commercial and public sectors of the Australian broadcasting system; ...

(iii) the responsibility of the Corporation as the provider of an independent national broadcasting service to provide a balance between broadcasting programs of wide appeal and specialized broadcasting programs;

(iv) the multicultural character of the Australian community; ...

6.2 Through its realisation of the requirements of its Charter, the ABC gives crucial support to Australian music which in some instances is unavailable from any other source:

- it broadcasts various styles of music that simply are not to be found on commercial radio, some of interest to fairly substantial audiences
- these include innovative and experimental styles of interest only to a small audience, but essential for the development of the art form – a sort of R&D
- it also includes a great deal of world music, some of it performed by Australians
- it broadcasts performances by Australian concert orchestras, which otherwise would not be heard by many Australians
- it does maintain its own local content standards; for instance, in the mid 1980s, ABC Classic FM committed itself to matching or exceeding the local content standards for commercial radio, even though it is not bound by those regulations, and it has more than met the commitment ever since. Triple J has very high local content, and in addition takes responsibility for discovering and recording new talent in cities and regions nationally
- its activities lead to the production of music master tapes which then can be used to produce recordings for public release, some on its own label and others released to commercial or non-profit labels. Without this activity, a great proportion of current record production, especially in other than popular music styles but also of unknown Australian artists performing in popular styles, would not be achieved and *would not be available for broadcast*, thus lowering the achievable local content standard on public and commercial radio.

6.3 Government support to the ABC could be in conflict with US concerns about free trade. To begin, the ABC is a state enterprise. (MCA is informed that under the current WTO round, requests have been received which could affect funding of the BBC.) Government procurement favours Australian music and musicians. Local content standards exclude non-Australian artists from some proportion of broadcast time and so are anti-competitive.

6.4 We note that funding of the ABC could be subject to challenge under the GATT SCM Agreement. We do not pretend to expertise in this area, but it seems that any impediment to the ABC under a bilateral treaty could then extend globally through MFN treatment under GATT. If the cost of an FTA with the USA is damage to the ABC, the government could face enormous and vocal opposition.

SBS

6.5 SBS has a very different brief from the ABC and believes that quantified local content objectives are not appropriate in its circumstances. However, it does encourage broadcast of Australian artists, and has a special provision for production of television programs in which music is of course an element. Obviously, its activities are dependent upon government subsidy or procurement policies.

7. THE COMMUNITY RADIO BROADCASTING SECTOR

Anticompetitive business conduct

7.1 We quote from the relevant ABA document.

The BSA does not require community broadcasters to maintain minimum content levels of Australian music. However, given the nature of the community broadcasting sector and its commitment to reflecting the diversity of Australian culture and the interests of local

communities, it is crucial for a significant proportion of local and Australian music, including indigenous Australian music, to continue to be broadcast by community stations.

In selecting Australian musical items, community broadcasting stations should have regard for the make-up of the community served by the licensee.

3.1 Community broadcasters will ensure a proportion of the total number of musical items broadcast consist of:

- a. not less than 25% Australian music items for all community broadcasting licensees except ethnic and classical stations as cited Clause 3.1(b) below;*
- b. not less than 10% Australian musical items for ethnic and classical stations.*
- c. (a) and (b) to be determined over one month*

7.2 (“The BSA does not require broadcasters to maintain minimum content levels of Australian music” but “Community broadcasters will ensure...?”)

7.3 Community radio would seem to be vulnerable to US concerns on two grounds. Firstly, while, like the commercial sector, it is self-regulatory in its local content standards, the self-regulation comes at the behest of government via the ABA. We have had legal opinion that the self-regulatory regime therefore might be challengeable as a form of government regulation. Secondly, the sector as a whole receives government subsidies.

7.4 Like the ABC, the Community Radio sector broadcasts a wide range of specialist music, much of which struggles for airplay elsewhere. The sector also has a significant reputation for providing the first broadcast support for new and emerging artists. Community radio stations overall have a commitment to Australian artists often far beyond that indicated by the local content standard. Loss of subsidies could have a serious impact.

7.5 Indeed, it is altogether possible that were local content standards not established for this sector, the amount of Australian music broadcast on community radio would *not* diminish.

7.6 However, loss of subsidies could have a serious impact. The entire sector is marginal financially and reduced resources could translate directly into reduced services.

8. NEW FORMS OF ELECTRONIC DISSEMINATION

Electronic commerce, anticompetitive business practices (subsidy of content production)

8.1 The new forms of digital communication are engendering radical new practices for accessing and consuming music. Free to air radio may or may not survive. It will be possible for consumers to receive a continuous stream of music selected exactly to fit individual taste, possibly free or by subscription to a service.

8.2 It seems only slightly possible that government could intervene to ensure that this flow addressed a local content standard, since firstly, it could be sourced anywhere on the globe and, secondly, it may be the result of a choice by a paying consumer. There may be a need for the government to take action to ensure that Australian music has access to digital distribution channels. If local content standards are possible in this context, then MCA favours their introduction. If not, there is a need to ensure that local recordings are made to the highest possible standard, to address the interest of all musical taste groups, and then made available on the relevant digital networks.

8.3 The government therefore needs to retain the prerogative to act. It is crucial that this prerogative is retained for future and as yet uninvented modes of musical production and dissemination, as well as those current.

9. TELEVISION BROADCASTING, FILM PRODUCTION

Anticompetitive business conduct, government procurement, investment

9.1 Local content standards for television, government subsidies for production, government investments in the film industry, government procurement policies in this sector, all potentially could be on the table in the negotiation of an FTA.

9.2 Music of course is not foreground in this area. Nevertheless, composers and musicians are employed, contracts written, royalties earned. As current beneficiaries of the audiovisual industry, music workers in many categories are potential losers should the current support mechanisms be proscribed.

9.3 In 1997, two thirds of the films shown in Australian cinemas originated in the United States. Only 10% of films shown were Australian, generating only 5% of the box office. 92% of the box office went to American films. Production of the Australian films depended upon government subsidies, both Federal and State. Removal of the subsidies or investment funds, leading to collapse of the film industry (if it can be so designated) brings little financial advantage to the US and considerable cultural damage to Australia. It has been suggested that the US would not indeed pursue liberalisation in this area simply to add minimally to its potential profit, but rather, to set a precedent in negotiations with other countries. For the Australian industry to be lost as a pawn in this larger play would be unconscionable.

9.4 The Music Council opposes any concession of government prerogatives to support and regulate production and dissemination of Australian content by the television and film industries.

10. INTELLECTUAL PROPERTY RIGHTS

Certain intellectual property rights, including some pertaining to performances, phonographs, and piracy; trade in services, including telecommunications. It is noted again that while the MCA supports action in some of these matters, consideration should be given to whether the action can be taken outside of the FTA.

Parallel importation

10.1 The USA opposes the existing Australian legislation that allows parallel importation of sound recordings (the 1998 amendments to the Copyright Act), and the proposed legislation that would allow parallel importation of musical scores and CD-ROMs, *inter alia* (Copyright Amendment (Parallel Importation) Bill of 2002).

10.2 A study for DFAT has shown a decrease in prices for sound recordings since the passage of the parallel importation legislation. While it is possible that the legislation has been a factor in this change, there are many other pressures in the recording industry during that quite chaotic period that also could be contributory. A thorough analysis would go beyond that provided to DFAT, to look more broadly at causation. It would assess the negative outcomes predicted by many in the music sector; testimony has been provided to the government in other contexts that they have indeed come to pass.

10.3 The MCA opposes parallel importation legislation and supports its repeal or withdrawal.

Piracy

10.4 It was predicted that the legislation to allow parallel importation of recordings would facilitate piracy. The organisation, Music Industry Piracy Investigations, has produced evidence to Parliament, some of it confidential, that this greater vulnerability has coincided with a move into CD piracy by transnational crime organisations. (See, for instance, the hearings of the House of Representatives Legal and Constitutional Legislation Committee, May 15, 2001.)

10.5 The MCA supports the implementation of stronger measures to deal with piracy of copyright products.

10.6 Included among these measures are those designed to outlaw hacking tools that seek to overcome technological protection devices intended to deter unauthorised copying. Australian legislation in this area is weak.

10.7 These matters are on the US agenda.

10.7 File swapping is a major concern for copyright holders. While acknowledging the practical difficulties, MCA suggests exploration of the possibility for an agreement short-circuiting the legal complications of prosecuting copyright infringements of this nature that occur when the source is outside jurisdiction.

Copyright period

10.8 The MCA is informed that the US may seek an extension of the term of music and other copyright to 70 years after the death of the creator.

10.9 The MCA on balance would not oppose this. However, since the balance of trade in music copyright is strongly against Australia, it is fair to note that while extension would benefit Australian copyright owners, overall there would probably be an economic loss to Australia.

Enforcement of copyright

10.9 Two years ago, the House of Representatives Committee on Legal and Constitutional Affairs made recommendations to bring about more effective enforcement of copyright. It is puzzling that the Government still has not acted on these recommendations. There may be benefit in considering such action in the context of the negotiation of the Australian/US FTA.

Performers' rights

10.10 The Government has long promised to introduce effective legislation for performers' rights. The MCA looks to the Government to take action in this matter, and also to accede to the 1996 WIPO Performances and Phonograms Treaty.

Private copying

10.11 With the availability of recordable CDs and internet file swapping, private copying of copyright recorded musical works and performances is burgeoning. At the same time, sales of physical recordings are declining. It is reasonable to assume causation. The Labor government introduced legislation in 1989 to provide compensation to copyright owners for private copying of audio recordings. Although that particular formulation was found to be unconstitutional, constitutionally acceptable alternatives must be possible. Many countries, including the USA, have legislated for such compensation. It may be that the US will urge this on Australia.

10.12 The Australasian Performing Right Association and Screenrights are putting a proposal to the Government. It has been reported in the press that the Australian Consumers' Association supports the initiative on certain conditions. MCA urges the most sympathetic consideration.

Home-style performances of music in the USA

10.13 Section 110(5) of the US Copyright Act includes an exemption for venues under a certain size to perform music without permissions from the copyright owners. Although, following a complaint from the EU, a WTO Panel found the US legislation to be in breach of its treaty obligations, the US has refused to amend it. Australian composers have been denied fair compensation for use of their works in this context.

10.14 The MCA urges the government to require the US to comply with the WTO finding and amend the provision and to pay Australian composer equitable compensation for damages flowing from the exception.

11. EXPORT DEVELOPMENT

11.1 The music sector has had some benefit from government subsidies through Austrade and the Australia Council to build exports of recordings and support international touring by Australian musicians. Combined with the sector's own investments, these measures have seen an increase in export income from Australian music and a greater international projection of Australian musical accomplishments and a sense of Australia as a sophisticated creator of music and therefore, by implication, of other goods and services.

11.2 Export royalty income from music shows rapid growth in the period 1995 to 2001.

	Value of exports	Value of imports
1995	\$29m	\$166m
1996	35	165
1997	40	203
1998	42	167
1999	46	171
2000	57	209
2001	71	229

(ABS Balance of payments and international investment position)

11.3 The nominal increase in the value of exports over these six years was 245%, while imports increased 38%. The net outflow was \$137m in 1995 and \$158m in 2001, but would have been \$200m had not there been increased import earnings. There seems to be potential for further increases in exports, although the present chaotic circumstances of the record industry makes any prediction problematic.

11.4 The USA, which is not in a strong position generally to condemn export assistance, may nevertheless seek to do so. It might be noted that the size of the US market is such that it can support major global marketing campaigns for audio and audiovisual products, unaided by government. By comparison, the capabilities of small Australian companies are minimal or absent.

11.5 It is important that with respect to the cultural sector, the Australian government retains the prerogative to offer export assistance.

12. STATISTICS FOR THE MUSIC SECTOR

12.1 The Music Council of Australia has assembled some 70 tables of statistics relating to the Australian music sector. While some of these tables are a little out of date, for instance in the rapidly changing area of record sales, they are very informative and may be of use to the Department. Go to www.mca.org.au, Click on Resources and then on Music Databases. Also see Appendix 3 for current Australian figures for record sales.

Thank you once again for the opportunity to make this submission.

Richard Letts
Executive Director
Music Council of Australia
January 30, 2003

Organisational Members, Music Council of Australia

Australasian Performing Right Association
Australasian Sound Recordings Association
Australian Music Centre
Australian Music Examinations Board
Australian Music Industry Network
Australian Music Therapy Association
Australian National Choral Association
Australian Society for Music Education
International Association of Music Libraries (Australian Branch)
Media Entertainment and Arts Alliance including Symphony Orchestra Musicians' Association
Musica Viva Australia
Musicians' Union of Australia
National Band Council of Australia
National Council of Tertiary Music Schools
National Jazz Development Office
Opera Conference
Symphony Australia
The Orchestras of Australia Network

PLUS individuals elected to 33 designated positions, among whom are senior officers of these national organisations:

Australian Broadcasting Corporation
Australian Music Association
Australian Youth Orchestra
Community Broadcasting Association of Australia
Folk Alliance Australia
Musicological Society of Australia
New Music Network
OzOpera
Phonographic Performance Copyright Association

APPENDIX 1

**AUSTRALIAN BROADCASTING AUTHORITY
CODE OF PRACTICE 4: AUSTRALIAN MUSIC**

[Applies only to commercial radio stations]

Purpose

4.1 The purpose of this Code is to implement the object, set forth in the *Broadcasting Services Act 1992*, of promoting the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity, by prescribing minimum content levels of Australian music.

The commercial radio industry is committed to supporting the music of Australian artists and composers. The quotas adopted by the industry depend upon the availability of Australian music to suit station formats. The commercial radio industry will continue to encourage the increased production by the record industry of Australian music relevant to stations formats and the preferences of the Australian listening public.

Broadcast of Australian Music

4.2 Subject to this Code, a licensee must ensure that during the Australian Performance Period, either:

- (a) the applicable proportion of the total time occupied by the broadcasting of music by the radio service consists of music performed by Australians; or
- (b) in the case of a licensee which broadcasts musical items of a reasonably similar duration, the applicable proportion of the total number of musical items broadcast by the radio service consists of musical items performed by Australians.

4.3 (a) For the purposes of clause 4.2, the applicable proportion of total time or total number of musical items (as the case may be) in respect of a radio service must be determined based upon the predominant format of the service in accordance with the following scale:

Category	Format of Service	Applicable Proportion
A	Mainstream Rock Album Oriented Rock Contemporary Hits Top 40 Alternative	Not less than 25%
B	Hot/Mainstream Adult Contemporary Country Classic Rock	Not less than 20%
C	Soft Adult Contemporary Hits & Memories Gold – encompassing Classic Hits News Talk/Sports Talk	Not less than 15%

D	Oldies Easy Listening Easy Gold Country Gold	Not less than 10%
E	Nostalgia Jazz NAC (smooth jazz)	Not less than 5%

Note: All formats subject to review as set out in Attachment "A"

- (b) In the case of a radio service whose format is within categories A, B or C of clause 4.3(a), the broadcast of New Australian Performances as a proportion of total Australian Performances prescribed by this clause shall be in accordance with the following table, when calculated across all Australian Performance Periods occurring in any financial year, subject to clause 4.3(d).

Category	New Australian Performances As a Proportion of Total Australian Performances
A	Not less than 25%
B	Not less than 20%
C	Not less than 15%

- (c) The commitment on the part of licensees to play a minimum level of New Australian Performances in accordance with sub-clause 4.3(b) is subject to the release of such Performances by the Australian record industry in numbers that are substantially the same as those released in the financial year ending 30 June, 1998.
If, in any financial year during the time that this Code is in force, there is a substantial decrease in the release of New Australian Performances, FARB may revise the proportions of New Australian Performances as a proportion of total Australian Performances, contained at clause 4.3(b), after discussion with AMPCOM, provided that any change that may eventuate will not affect the licensees obligations under clause 4.2 and 4.3(a).
- (d) Clause 4.3(b) does not apply to a licensee that does not include New Releases in its weekly play lists, having regard to its format.
- 4.4 For the purposes of clause 4.3, the category into which a radio service falls must be nominated by the licensee and if any dispute arises as to the appropriateness of any such nomination the category will be determined by AMPCOM, on the basis of the predominant format of the service.
- 4.5 For the purposes of clause 4.2, where more than one performer is involved in a musical performance, the musical items concerned shall be regarded as being performed by an Australian if the performance is predominantly by one or more Australians.

APPENDIX 2

Community broadcasting codes of practice

The Code covers the matters prescribed in section 123 of the Broadcasting Services Act 1992, and other matters relating to program content that are of concern to the community. The Code is intended to operate alongside the ABA's Standards which regulate programs for children and the Australian content of programs and advertisements.

The Code is the result of an extensive consultation in 2002 with government advisory bodies, community interest groups and the public generally. The ABA registered the revised code on the October 24, 2002.

Code 3 - Australian music content

'Australian Music' is defined as any music composed or performed by a citizen or ordinary resident of Australia.

This Code reinforces the community broadcasting sector's reputation as a medium committed to developing and recognising Australian composers and/or performers by providing opportunities to have their material broadcast on a regular basis.

The BSA does not require community broadcasters to maintain minimum content levels of Australian music. However, given the nature of the community broadcasting sector and its commitment to reflecting the diversity of Australian culture and the interests of local communities, it is crucial for a significant proportion of local and Australian music, including indigenous Australian music, to continue to be broadcast by community stations.

In selecting Australian musical items, community broadcasting stations should have regard for the make-up of the community served by the licensee.

- 3.1 Community broadcasters will ensure a proportion of the total number of musical items broadcast consist of:
 - d. not less than 25% Australian music items for all community broadcasting licensees except ethnic and classical stations as cited Clause 3.1(b) below;
 - e. not less than 10% Australian musical items for ethnic and classical stations.(a) and (b) to be determined over one month
- 3.2 The music requirements cited (3.1 above) exclude the use of music in sponsorship announcements and program or station promotions.

APPENDIX 3

2002 ARIA Yearly Statistics						
Australian Record Industry Association Ltd.						
January – December 2001 vs January - December 2002						
Net Wholesale Sales of Sound Recordings & Music Videos						
	January - December 2002		January - December 2001		Percentage Change	
Configuration	Units	Dollar Value	Units	Dollar Value	Units	Dollar Value
Vinyl Singles	7,507	66,698	8,869	69,920	-15.36%	-4.61%
Cassette Singles	(20)	(58)	33	1,404	-160.61%	104.13%
CD Singles	11,343,343	37,460,009	12,367,011	46,658,994	-8.28%	-19.72%
DVD Singles	(356)	(3,539)	4,088	51,414	-108.71%	-106.88%
Vinyl	32,154	425,599	30,556	394,351	5.23%	7.92%
Cassette	597,721	4,317,915	811,562	4,738,516	-26.35%	-8.88%
CD	46,954,486	528,400,947	49,669,557	576,484,308	-5.47%	-8.34%
DVD Albums	105,911	1,925,808	8,189	193,968	1193.33%	892.85%
Other *	784	12,079	1,981	32,218	-60.42%	-62.51%
Music Video/DVD	2,453,425	36,929,116	954,840	18,994,817	156.95%	94.42%
Totals	61,494,955	609,534,574	63,856,686	647,619,910	-3.70%	-5.88%
* "Other" includes sales of Mini Disks						

EXCERPTS FROM ARIA MEDIA RELEASE – January 23, 2003

Despite *'bucking the trend'* internationally in 2001, the last year has witnessed a decline in recorded music sales in the Australian market - the first drop in several years. However, the overall decline was not as severe as in other markets, particularly the USA.

2002 saw a **4.4%** fall in volume in the Australian market and an overall 4.5% average wholesale price reduction. The dollar value of the audio market (i.e. excluding music video and DVD) is down by **8.9%** (from \$629 million to \$573 million).

The **Australian Record Industry Association (ARIA)** cites this decrease as reflective of a number of factors including unsettled economic conditions and a tough retail environment, the widespread proliferation of unauthorized copying via CD burning and downloading, emerging competition from new leisure products such as DVD video, and continuing competition from mobile technologies and computer games.

Recorded music sales continued to be hit adversely by online and offline piracy, a problem that is of increased concern to the local market with the emergence of “backyard” CD-R piracy. Though expected, and in line with worldwide trends, ARIA is disappointed by this decline. The music industry, both here and internationally, remains committed to continuing its efforts against online and CD piracy. We are also seeing the continued development of legitimate online business models, particularly in the US, with many companies, including all the majors, now engaged in online distribution of their catalogues.

A positive movement in the Australian market was the growth of music DVD sales, which has more than trebled. The DVD format is clearly proving to be a popular key carrier for music and is expected to continue to drive market growth for record companies.

In short:

- *Record companies shipped over 61 million audio and music video DVD units (2001, over 63 million units).*
- *New release titles declined by only 0.7% in unit sales demonstrating a continued strong interest in new music.*
- *Singles declined 8.3% in unit sales.*
- *Local repertoire – in a market continuing to be dominated by US repertoire, local repertoire fell slightly from 17.2% to 15.6% as a share of the overall market. Notably though, there were outstanding performances from Kylie Minogue, Kasey Chambers, George, Silverchair and John Farnham, with these five acts representing 26% of the total volume of the top 20 selling albums for 2002.*

➤ **2002 Product Highlights**

New albums contributed the most to sales during the year with a couple of very strong international performers. Both Eminem – *The Eminem Show* and latin sensation Shakira – *Laundry Service* had combined single & album sales of over ½ million each during 2002. One of the strongest genres that saw increased sales was in the area of R&B and Urban music with the sales of Australian country music albums also proving to be a winner. This is directly in line with the worldwide trends of increased demand for these musical genres, both of which have encroached further into the pop/mainstream market.

- **Local repertoire** – In a testament to the success and potential of local repertoire, Kasey Chambers -*Barricades & Brickwalls* - was the third (3rd) highest selling album in 2002, marginally behind the international top sellers Eminem and Shakira. Also demonstrating further evidence of the strength and diversity of local Australian repertoire, are those artists listed below who achieved both sales success and critical acclaim for the period: