



January 21, 2003

Ms. Carmen Suro-Bredie
Chairman
Trade Policy Staff Committee
Office of the U.S. Trade Representative
1724 F Street, 5th Floor
Washington, DC 20508

RE: Request for Comments ... Concerning Proposed United States-Australia Free Trade Agreement, 67 Fed. Reg. 76431 (Dec. 12, 2002)

Dear Ms. Suro-Bredie:

This submission on behalf of the International Intellectual Property Alliance (IIPA) is made in response to the above-referenced Federal Register notice. It focuses upon the issue identified in paragraph 2 (g) of the notice, “relevant trade-related intellectual property rights issues that should be addressed in the negotiations.”

About IIPA

The International Intellectual Property Alliance (IIPA) is a private sector coalition formed in 1984 to represent the U.S. copyright-based industries in bilateral and multilateral efforts to improve international protection of copyrighted materials. IIPA is comprised of six trade associations, each representing a significant segment of the U.S. copyright community. These member associations represent over 1,100 U.S. companies producing and distributing materials protected by copyright laws throughout the world – all types of computer software including business applications software and entertainment software (such as videogame CDs and cartridges, personal computer CD-ROMs and multimedia products); theatrical films, television programs, home videos and digital representations of audiovisual works; music, records, CDs, and audiocassettes; and textbooks, tradebooks, reference and professional publications and journals (in both electronic and print media).

Key IPR Issues for Australia FTA

Australia is an important market for the U.S. copyright industries. Australia has a modern copyright law and relatively low piracy rates for copyrighted products. However, significant shortcomings in copyright protection and enforcement in Australia continue to impede the full entry of U.S. copyright owners into that market. Inclusion of strong provisions in the FTA

regarding intellectual property rights are essential in order to advance the objective of promoting greater access to the Australian market and a wide range of U.S.-Australian trade and commercial relationships.

Additionally, Australia is an influential player in global copyright policy fora. Its intellectual property laws and policies are often regarded as models by other countries, especially in its region. A Free Trade Agreement between Australia and the United States offers an unparalleled opportunity to ensure that this model is a positive one that embodies world-class levels of protection for copyright and meaningful, concrete commitments regarding enforcement of those rights.

Accordingly, U.S. negotiators should seek to embody in the IPR chapter of the Australia FTA provisions that advance at least the following copyright law and enforcement objectives:

(1) Full compliance with the World Intellectual Property Organization Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). Now that the WCT and WPPT have come into force, they represent the current globally accepted minimum standards for protection of copyrighted works in the digital networked environment. We should ensure that Australia's laws fully meet this standard, as well as fully complying with previous expressions of global minima such as the Berne Convention and the TRIPS Agreement.

(2) Removal of impediments to effective enforcement against piracy in Australia. Among the needed reforms are: (a) easing the costly and cumbersome procedural burden of proving ownership and subsistence of copyright in criminal cases, by strengthening applicable presumptions; (b) making commercial end-user software piracy a criminal offense; (c) ensuring that adequate legal incentives are in place to encourage cooperation by Internet Service Providers (ISPs) in dealing with online piracy; and (d) making fully compensatory and deterrent damage awards available in civil infringement cases, including through adoption of a system of pre-set statutory damages.

(3) Establishing enforcement performance standards to improve the low priority currently assigned by Australian enforcement agencies to copyright piracy matters, and to remedy the current inability of Australia's criminal justice system to produce deterrent sentences for those engaged in piracy.

(4) Extending the term of protection for all works and products covered by the copyright law to match the applicable duration under U.S. law. Such a move would reflect the accelerating international trend toward longer terms of protection, and would prevent trade distortions caused by inconsistent terms.

(5) Government legalization through the issuance of appropriate regulations or orders mandating that all government agencies use and procure only properly licensed computer software, and that they take steps to prevent the use of their networks for infringing activity.

IIPA looks forward to working with USTR and the other agencies represented in the TPSC toward achieving these critical objectives in the IPR chapter of any U.S.-Australia Free Trade Agreement. Thank you for this opportunity to express the views of the U.S. copyright industries.

Respectfully submitted,

Steven J. Metalitz
Senior Vice President