

AUSFTA: New Opportunities and Impacts

AUSFTA: Copyright

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Overview: Copyright

- Australia already has strong copyright laws
- Excellent basis to retain and attract IP related investment
- Legislative changes, particularly re digital material, & some flexibility to implement
 - Notice and take down scheme in re liability of ISPs for copyright infringement,
 - extending term of copyright,
 - Widening some aspects of offence provisions of the Copyright Act and
 - in the area of technological protection and the use of copyright material on networks.

In the beginning. . .

Australia's Negotiating Objectives

- Reaffirm the standards in TRIPs and other multilateral IP treaties
- Ensure adequate protection for Australian holders of intellectual property in the US
- Freedom to determine the appropriate legal regime for implementing IP standards; maintaining balance
- Deepen cooperation

Template

USFTA with others:

- Chile
- Singapore
- Central American Countries (CAFTA – subregional)
 - El Salvador, Costa Rica, Guatemala, Honduras
- Morocco (not completed)
- Jordan (not completed)
- FTA of the Americas (regional – not completed)

Template

ACTPN (US Advisory Committee on trade policy & negotiation)

- Section 2104 (e) of the US Trade Act of 2002
- senior trade advisory panel
- representative of key economic sectors affected by trade.
business, industry, labor, agriculture, small business, service industries, retailers, and consumer interests

■ Re Singapore

- “The ACTPN strongly endorses this part of the agreement. We urge the U.S. government to seek similar protections in other agreements, and to build even further protections against piracy and counterfeiting.”

Copyright: key issues

- Endorsement of multilateral treaties & system
- parallel importation
- Protection of material in digital form and especially on networks
 - Notice and takedown (ISP Liability)
 - Enforcement
 - Detailed undertakings about Court powers and processes, border arrangements, wider applicability
 - Technological protection measures
 - Different approach – specific reference to access control & narrower exceptions
 - Criminal sanctions for circumvention as well as manufacture etc.
 - 2-year delay –specific exceptions to address adverse impact
 - Digital Agenda Review
- national treatment
- term

Macaulay on Johnson

“Now, would the knowledge, that this copyright would exist in 1841, have been a source of gratification to Johnson? Would it have stimulated his exertions? Would it have once drawn him out of his bed before noon? Would it have once cheered him under a fit of the spleen? Would it have induced him to give us one more allegory, one more life of a poet, one more imitation of Juvenal? I firmly believe not. I firmly believe that a hundred years ago when he was writing our debates for the Gentleman’s Magazine, he would very much rather have had twopence to buy a plate of shin of beef at a cook’s shop underground. Considered as a reward to him, the difference between a twenty years’ term and a sixty years’ term of posthumous copyright, would have been nothing or next to nothing.”

● *House of Commons Debates*, 5 February 1841, p 350

Life plus 70

● Berne:

- 50 y *pma* mandatory from 1948 Brussels revision of Berne Convention maintained in Stockholm and Paris revisions
- Provision for comparison of terms: article 7(8); countries may give longer: art 7(6)
- Special terms:
 - films (art 7(2))
 - anon & pseud (art 7(3))
 - photographs & works of applied art (art 7(4))

Life + 70: works

- Eg EU countries (UK, France Germany, Spain, Italy etc), Albania, Argentina, Austria, Switzerland, Brazil, Bulgaria, Costa Rica, Croatia Czech Republic, Denmark, Ecuador, Finland, Ghana, Israel, Iceland, Hungary, Latvia, Nigeria, Norway Paraguay, Peru, Poland, Romania, Slovenia, and Turkey. Life plus seventy years is also the standard duration of copyright in the United States for many works first published after 1977
- Life + 60 – India and Venezuela
- 70 years for films - Japan
- (50 years : Japan, Thailand, Canada, NZ)
[Negotiating process](#)

Affected interests

● Copyright industries

- Publishers
- Music industry
- Film industry
- Software industry

● Creators

● Education sector

● ISPs

● Pirates

● Investors

AUSFTA & Copyright: what's next?

● Domestic approval process:

- publication of the Agreement on the DFAT database (www.austlii.edu.au/dfat);
- legal vetting to ensure that the text is accurate and legally appropriate;
- Cabinet approval of the final terms of the AUSFTA;
- a proposal for authorisation to sign the draft treaty to the Executive Council;
- signature of the Agreement;
- tabling of the Agreement in both houses of Parliament (20 sitting days);
- Joint Standing Committee review of the draft treaty
- passage of required implementing legislation;

Thank You

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