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**US Free Trade Agreement – The New Opportunities and Impacts**

**Address by**
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# Cultural Impacts of the Aust/US Free Trade Agreement

This afternoon I have been asked to comment on the impacts for the cultural industries and more specifically, the audiovisual industries, of the Aust/US FTA.

The AFC aims to enrich Australia's cultural identity by fostering an internationally competitive audiovisual industry, developing and preserving a national collection of sound and moving images, and making Australia's audiovisual heritage available to all Australians.

The AFC is a statutory authority with a specific role to advise government on audiovisual issues and has a long history of internationally recognised research, analysis and policy development.

The AFC has also had a long history advising on audiovisual issues in international trade agreements, bi-lateral and multilateral. Those of you who followed the Marrakesh round will recall that the audiovisual provisions became a significant issue for the round and that hasn't changed. The AFC is working with the government on the current Doha round (our Chair, Maureen Barron, is a member of Minister Vaile's WTO Advisory Committee) and the AFC was an active participant in the drafting of the relevant Annex to the Australia/Singapore FTA.

The AFC began working on the Aust/US FTA as soon as the negotiations were announced and has remained closely involved throughout the process.

As a relatively small industry in Australia some of you may be wondering why audiovisual became one of the key areas of contention in the US FTA negotiations. The Australian government's negotiating objective was to:

> *Ensure that the negotiations take account of Australia's cultural and social policy objectives, and the need for appropriate regulation and support measures to achieve these objectives in areas such as audiovisual media.*

The US government's objectives were not as clearly articulated. They sought to*:*

> *Pursue disciplines to address discriminatory and other barriers to trade in Australia's services market. … [Also they sought] improved transparency and predictability of Australia's regulatory procedures, … and additional disciplines for telecommunications services and other sectors as necessary.*

The Motion Picture Association of America (MPAA), which represents Hollywood's largest seven studios however, was far more forthcoming in its objectives:

> *MPAA seeks services and investment commitments that will provide certainty and predictability to ensure market access, national treatment, and an open investment environment in the following areas:*
>
> - *All forms of television transmission services…*
> - *Film and home video entertainment production and distribution services…*
> - *Motion picture exhibition services*

- *Retail and wholesale services…*
- *Home video entertainment leasing and rental services; and*
- *Advertising services*

The Australian audiovisual industry and the Australian government understood that US ambitions were high in this area and this was quickly confirmed as negotiations began. Stephen Deady, Australia's Chief Negotiator, once described to me the variance in each country's ambitions as being one of the most difficult elements of the negotiations to resolve. Why was this the case and why has the concluded agreement been described by the Australian government as having:

> *Protected our right to ensure local content on Australian media and ensured that there can be Australian voices and stories on audiovisual and broadcasting services, now and in the future.*

whilst at the same time being described by the US government as containing:

> *important and unprecedented provisions to improve market access for U.S. films and television programs over a variety of media including cable, satellite, and the Internet.*

The concluded agreement does do both and represents compromises by both sides. Australia has maintained its ability to ensure local content on Australian television screens into the future while at the same time giving unprecedented commitments over its future ability to regulate in this area, moving considerably from its WTO position and that adopted in the FTA with Singapore.

In order to understand this outcome better, I will briefly outline the government's current support for Australian content and its rationale.

It is important to note that forty years of government support for Australia's audiovisual industries has not been to support the industry per se. Rather, the purpose of support measures – regulation, subsidy and some taxation measures – is to ensure that when Australian audiences go to the cinema or turn on their televisions, they have a choice to see films and programs which reflect Australian experiences and an Australian reality.

The fundamental purpose of these government interventions is in fact cultural and it is impossible to assess the value of culture, the value of the outcomes of these interventions, based solely in economic terms. Benefits fall broadly under those that are tangible and easily quantifiable, and benefits which are intangible. Economic theory acknowledges these but cannot measure them. In the preparation for negotiations, the AFC and the Australia Council jointly commissioned advice from both Allens Consulting and the International Centre for Economics and both consultants acknowledge the shortcomings in economic theory/practice for measuring intangible benefits and returns.

Australian films and Australian television programs interpret an Australian identity to us and project this to the world with flow-on benefits to tourism and business. Australian film and television have played a central role in establishing an international profile for our country and our culture and continue to do so.

Australian governments of all persuasions have accepted that without government intervention it is extremely difficult for small nations like ours to produce cultural goods that give full expression to our stories, ideas and images.

The current measures of audiovisual support are a mix of subsidy – to support public broadcasters, training and education, the production of some of the more expressive formats such as feature film, as well as the preservation of Australia's audiovisual heritage; some tax incentives to assist private investment; and most significantly in the context of the US FTA negotiations, regulated minimum quotas for Australian content on free-to-air and subscription TV.

Outside of the US and India, most local film and television industries exist because of a range of local content regulation and subsidy.

In markets as large as the US or UK, the significant costs of producing high quality audiovisual formats such as drama are substantially or fully recovered from the domestic market.  These are then sold into secondary markets, including Australia, at a fraction of the real costs of production. For any manufactured good, this would be dumping.

For example, a TV series costing several million dollars per hour to produce in the US is sold to an Australian broadcaster for between $30,0000–$100,000 per hour. In contrast, an Australian series, can cost up to half a million dollars per hour of which an Australian broadcaster may contribute around half.

Because of secondary market pricing it is cheaper for broadcasters to buy US or UK programs which have already rated well in their home markets than take a risk on new and untested Australian programs. Australian content quotas are therefore vital to maintaining a range of Australian programming on our screens.

Despite subsidy and quota measures, the Australian audiovisual market remains one of the most open in the world.  Australian audiences see the best the world offers.

In the US and UK, television is dominated overwhelmingly by local programming. In contrast, 75.9 per cent of new programs on Australian TV (70 per cent of hours) in 2002 were foreign (42 per cent of new hours were US).

Whereas, four per cent of new television programs are foreign-sourced in the US and 9.3 per cent in the UK.

Around 250 films are released into the Australian cinema market each year, of which around 70 per cent are from the US, 10 per cent are Australian, and the rest are from the UK, Europe, Asia or elsewhere.

Australia is a net importer of cultural goods and services. Australia's balance of trade in audiovisual goods and services runs at more than four to one against us, and with respect to the US, this is ten to one.

Without regulation and subsidy, Australian audiences' access to Australian content, would be severely affected.

Because of the critical mass and scale of the US industry and the size of its population, the market itself acts as a form of natural protection. For all intents and purposes it is 'closed'. The US exhibits negligible levels of audiovisual material from any other country, and with such a strong domestic industry, they are well placed to export audiovisual goods to other territories. In the case of television, this is frequently achieved at less than one-tenth of the cost of production.

Furthermore, the US supports its film and television industry through massive tax breaks – breaks that were deemed by the WTO to be illegal export subsidies and have since been repealed and replaced by tax breaks for US studios (of over half a billion US dollars over the next 10 years).

Some pro-free trade commentators in Australia appeared nervous that audiovisual issues might become a problem in the trade negotiations and seemed to side with the US studios against Australia, ignoring economic tenets long accepted by both Coalition and Labor governments. Alan Oxley was quoted in the *Australian* stressing that 'cultural campaigners are missing the point', that this is 'an economic agreement, not a cultural agreement'.

We have never lost sight of the economic arguments. There is a complex relationship between culture and economics which I have briefly referred to today. Alan was also quoted in the *Age* as saying 'these people know nothing about economics'. I disagree; our arguments for regulation have always been underpinned by economics, as have our representations and analysis of the industry.

Some commentators also like to hold up the international success of Australian actors, directors, and cinematographers to demonstrate our industry's strength and potential. Mark Day writing in the *Australian* boldly asked: 'Far from the Americans swamping Australian culture through rampant Hollywood imperialism, could it be that we are hijacking theirs?' Given the US last year took 89 percent of our cinema box office takings, Mark must have been joking!

'Shooting to stardom' is a fairytale. Every Australian actor, director, producer or technician who has succeeded internationally, learned their craft, and cut their teeth, in local TV drama, theatre, television commercials or feature films, before they stepped onto the global stage. Paddy McGuinness wrote in the *Sydney Morning Herald* that 'film stars are notoriously ill-educated and ignorant – their opinions are worthless, regardless of their talents'. This offensive comment prompts me to quote the highly intelligent Geoffrey Rush, who has appeared in films that last year alone, grossed over US$1.6 billion:

*'My professional life as an actor started in 1971 because an act of Parliament founded the Queensland Theatre Company. Whatever success I'm perceived to have in Hollywood springs from that reality. I have always been the fortuitous product of Government subsidy. It trained me for twenty-five years before my 'overnight' success with Shine in 1996.'*

The presence of studios like Fox and foreign productions like *The Matrix* also do very little to deliver Australian programs. The Australian industry welcomes foreign production because of their wider economic and employment benefits. But such productions film here and go home, as do the profits. Foreign production is usually a US off-shoot and must be distinguished from the local industry.

Ongoing levels of foreign production can only be sustained where indigenous film industries have reached a high level of sophistication. Without a thriving indigenous industry, foreign productions will not take advantage of Australia's skill-base and lower dollar.

So, to come back to the recent agreement with the US and its outcome. The Australian industry's view was that a 'carve-out' from treaty obligations should be agreed for specified cultural services, as had been agreed in Australia's treaty with Singapore.

As was expected, the US quickly indicated that this would be unacceptable and that significant concessions would be required to conclude the treaty.

Alan Oxley was quoted in the *Sydney Morning Herald* in August 2003, as saying that we were 'freaking about a threat that doesn't exist' and in July, Martin Cox accused us in the *Financial Review* of 'mad, bad and dangerous' protectionist arguments.

At around this time, AFC representatives, including myself travelled to Washington and LA to meet US representatives, to further explore US ambitions and Australia's interests.

It was very clear from that visit that the Motion Picture Association of America saw the negotiations with Australia as a defining moment in their long fight against local content measures worldwide, which so far, at a WTO level, they had not won – Australia has been on the US trade watch list since 1991 because of its local content quotas.

The precedent of allowing Australia to retain the right to support its local content without restraint was totally unacceptable to the US.

It quickly became the case that both the US and Australian industries focussed their attention on the future – the rapid technological change to digital delivery that continues to change delivery platforms for audiovisual content, in time periods which will astonish us.  Consider some of the new technologies which most of us now consider part of our daily lives such as the Internet, mobile phones and DVDs which weren't available a decade ago.

The MPAA has commented openly on the significance of technological change for content delivery. Its President, Jack Valenti, said in September last year:

> *'The Internet, without doubt, is the greatest delivery system yet known to this planet. It has the potential to reshape how we communicate, how we buy and how to enlarge the dispatch of knowledge on a scale never before exhibited. The movie industry is eager to use the Internet to deploy our movies, thousands of titles of every genre, to homes in this country and around the world'.'*

Digital subscription television has just been launched in Australia and most commentators agree that within a relatively short period – say 10 years, the balance between the free-to-air broadcasters and subscription broadcasters share of the market will swing towards the latter.

Price Waterhouse Coopers New York released a report last year stating that by 2010, virtually all entertainment and media will be in a digital format. Digital delivery will allow us to download movies via the Internet or our mobile phones and watch these on our choice of screen – television, laptop or home cinema.

It will certainly be technically possible to feed films digitally via satellite to cinemas in Australia direct from source – a potentially cheaper option and certainly one which could assist with on-going concerns of piracy.

It is sometimes postulated that these kinds of technologies are impossible to regulate. The AFC has undertaken an examination of future audiovisual services and the possible regulatory options to provide space for local content, to assist Australia's negotiators to assess this. This paper entitled *Flexible Visions: A snapshot of emerging audiovisual technologies and services, and options for supporting Australian content* revealed that governments throughout the world are facing similar challenges, and are undertaking reviews of regulatory options for content on digital and interactive delivery systems.

The AFC examined 18 new forms of audiovisual content delivery: these included broadband websites, datacasting, digital film distribution and exhibition, video on demand, personal video recorders, interactive television and mobile telephony.

Out of these 18 new delivery technologies, seven are currently regulated for local content purposes in at least one country outside of Australia. A further seven technologies are currently being examined by regulatory authorities in Europe, North America and Asia. Only three technologies – 3rd generation (3G) phones, digital film distribution, and peer-to-peer (P2P) networks – are currently unregulated to support local content or have yet to be examined as to possible regulatory options.

The need to retain Australia's regulatory flexibility for future as yet unconceived audiovisual services was key to the negotiations in our area. It was equally critical to the US to exclude this.  The result is a balance between these conflicting interests achieved in the face of overwhelming pressure.

The Australian government will be able to take measures to ensure Australian content on “interactive audio and/or video services” is not unreasonably denied to Australian consumers, if it is determined that Australian material is not readily available.

The definition of new media as interactive audio and/or video services restricts it to media such as interactive television and mobile telephony rather than e-cinema – where movies are beamed directly into cinemas in Australia from Hollywood studio bases. This has implications for access by Australian feature films to Australian cinemas if, for example, the US no longer sees the need for local distribution agents. At the moment there is no regulatory intervention by the Australian government into film distribution and exhibition and, by excluding e-cinema from the new media definition, there will be no opportunity to do so in the future even if the number of Australian films being released in cinemas reaches an unacceptably low level.

However, the definition of interactive audio and/or video will cover the majority of possible new services that we identified.

In the meantime, current measures on free-to-air television have been ‘grandfathered,’ – that is, existing local content regulations will remain as they are and will not be able to be increased. There is some provision, within limits, to extend current measures if multi-channeling is introduced – the government will first consider multi-channeling after a review of the number of free-to-air television licences later this year.

On subscription television, the current form of support (expenditure quotas) has also been grandfathered with the ability to extend current drama expenditure requirements from 10 to 20 per cent and to introduce up to a 10 per cent expenditure requirement for documentary, children’s, educational and arts programs.

This is the area of most significant compromise. The current requirement for drama channels to spend 10 per cent of their expenditure on Australian drama has resulted in approximately three per cent of the drama available on pay TV being Australian. The AFC does not believe this provides an adequate choice for consumers and will be continuing to monitor performance to audiences with the introduction of digital delivery and advising government of the outcomes. The AFC is an industry partner with Murdoch University in an Australian Research Council funded project to assess the performance of pay TV in Australia in delivering Australian content.

It's still early days. We have not yet seen the final text for the audiovisual reservations and have yet to assess related chapters such as intellectual property, e-commerce and the dispute resolution provisions. However, it is clear that the government has maintained strong support for local content in the face of immense pressure, but that the measures by which it may support that content have been curtailed. This may mean a greater reliance in the future on subsidy and tax-based measures to deliver similar levels of Australian content on future services.

The shift to a digital multi-channel, interactive universe is changing the old rules in broadcasting and current business models will disappear. The future is in new media and Australia – with its wealth of creative talent and long history of film and TV production – has a GOLDEN opportunity to be a world leader in content for this new universe. The challenge for government will be to create an environment that will allow Australian content to flourish so that Australian stories and Australian voices will continue to be heard by Australian audiences well into the future.

The Australian audio-visual industry has worked closely with the government to conclude the Australia US FTA in the national interest. We will continue to advise government in future trade negotiations and a range of other policy matters which impact on content provision in broadcasting, telecommunications and new media. There is no doubt that over the last twelve months our area of commercial and cultural endeavour achieved a profile and significance on the national political agenda previously unknown. This was often with the assistance of the free trade proponents and journalists. While not always agreeing with their sentiments, nonetheless I would like to thank them for their interest in our industry. Please stay with us, please stay interested. We truly believe we are an industry of national significance. With the ongoing support of government we will continue to reflect the lives of Australians to ourselves and to project an image of Australia to the rest of the world, assisting business and cultural relationships in the process.