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AUSTRALIA-INDIA COMPREHENSIVE ECONOMIC COOPERATION AGREEMENT

SUBMISSION BY APRA|AMCOS.

Free Trade Agreement Division
Department of Foreign Affairs and Trade
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The Australasian Performing Right Association Limited

Australasian Performing Right Association (APRA) is a non-profit organisation, established in 1926, which represents over 65,000 Australasian composers, songwriters and music publishers. It administers the Performing Rights in music of its members and affiliated societies in Australia, New Zealand and much of the Pacific. It represents its members' interests around the world through its network of agreements.

Australasian Mechanical Copyright Owners Society

Australasian Mechanical Copyright Owners Society (AMCOS) is a non-profit company representing nearly 10,000 music publishers and composers in Australasia and administers certain reproduction rights on behalf of its members and affiliated societies. APRA administers the operations of AMCOS, under contract.

Our Submission

APRA and AMCOS thank the Department of Foreign Affairs and Trade for the opportunity to comment on the preparations for the Australia-India Comprehensive Economic Cooperation Agreement.

APRA, along with other representative bodies in the Australian cultural sector, supports the objectives of the UNESCO Draft Treaty of Cultural Diversity in ensuring governments preserve, in trade negotiations, the right to adopt or maintain any measure with respect to the creative arts, cultural heritage and other cultural industries. APRA is a member of the Music Council of Australia and we support the submissions on this point and note also the background analysis of the Indian music market in their submission.

APRA's rights are administered in India through the Indian Performing Right Society (IPRS – www.iprs.co.in) with which we have had a direct reciprocal representation agreement since 1996. Prior to that date, the rights of our composer and publisher members were administered indirectly via the UK society, the Performing Right Society Ltd (PRSformusic).

We note and agree with the comments on page 16 of the *Australia – India Joint Free Trade Agreement Feasibility Study Background Paper* 2008 that “Greater consistency and transparency in IP protection between jurisdictions facilitates IP-related trade and investment...FTAs also provide opportunities to build on these commitments and to address specific impediments to market access raised by stakeholders regarding the acquisition and enforcement of IP rights in partner countries.”

India is regarded as an emerging market in terms of export potential for Australian music. In terms of promotion of Australian repertoire, Sounds Australia, has participated in the regional music trade fair Music Matters Asia for the last 3 years and has forged relationships with Indian concert promoters, festival organizers and labels. In particular, with the massive growth of the middle class youth market in India, the live music sector will become an important gateway and should see significant returns if and when structural impediments to effective copyright enforcement are removed.

The organiser of one of the largest contemporary music festivals in India, Vijay Nair (Only Much Louder), was on a panel with Sounds Australia¹ in 2009 and the One Movement Conference with a view to facilitating the participation of Australian artists in Indian music festivals such as the Invasion Festival in Bangalore². Sounds Australia has set up numerous meetings between Vijay and Australian artist managers/ agents / promoters to facilitate dialogue with the view to Australian artists touring in India. Clearly, the importance of supporting any such cultural exchange for the Indian student demographic would be a significant and targeted soft diplomatic measure towards overcoming the recent difficulties Australia has had in the Indian overseas student market.

Another example of cross cultural collaboration between Australia and India which was aimed at the youth market, was an album written and produced by APRA member Ohad Rein (“Old Man River”)³ supported by their Australia publisher J Albert and Sons. His second album “Trust” was a collaboration album Indian musicians and the Indian producer Damaan Sood. Ohad performed the hit song “Shanti Aaye” at the opening of the Music Matters conference in Mumbai in 2010⁴.

However, given that India is such a large and rapidly developing market, with an enormous middle class demanding international product, for the Australian music industry to invest in and benefit from such activities, the requisite copyright laws enacted and enforced to treaty standards, through effective regulations and administrative infrastructure. It is only through ensuring

¹ <http://www.soundsaustralia.com.au/> **SOUNDS AUSTRALIA** is Australia’s national music export initiative, supported through a financial partnership between both Federal and State governments, along with peak music industry bodies, including APRA/AMCOS.

² <http://www.invasionfestival.in>

³ <http://albertmusic.com/music/artists/old-man-river>

⁴ <http://www.radioandmusic.com/content/editorial/news/indian-music-industry-desires-innovation-nokia-music-connects> “82% Indian youth being hardcore music fans (As per research conducted by Synovate), music scene in the country is on the path to becoming more open minded towards every genre of music. Exploring the hidden potential, making its maximum utilization and a great deal of innovation are the keys that will propel the Indian industry to pinnacles of success. Nokia Music Connects is a joint initiative between Hong Kong-based Branded which organises music forum called Music Matters and Mumbai headquartered Indiantelevision.com Group’s Radioandmusic.com. The lavish musical affair commenced with a soothing performance by popular Australian singer-songwriter Old Man River who has toured his show across the globe to India, Japan, Italy, Germany, Israel, UK and the US. He was backed by Mumbai-based singer Hamiska Iyer and a few Indian classical musicians. The duo beautifully crooned the track ‘Shanti Aaye’ which was a blend of eastern and western influences. <http://www.youtube.com/watch?v=Hc1OXumyJi8>

effective enforcement of TRIPs and Berne standards that APRA's membership will be able to realise an improvement in the balance of trade in copyright revenues from the exploitation of our music in India. Action to improve the situation should be taken now, to ensure improvements over the long term. To those ends, APRA has worked through the Asia Pacific Committee of the International Confederation of Authors and Composers Societies (CISAC) to improve the legislative and regulatory environment and structural capabilities of IPRS to administer the copyrights in local and international repertoire of musical works. APRA has also hosted training sessions for IPRS senior staff in all areas of copyright administration many times over the last decade.

As noted in the submission by the Music Council of Australia, the domestic music market in India is completely dominated by songs in films coming from 'Bollywood' and other language group production companies. In practice, film production companies acquire all the rights in music in films, resulting in Indian composers not receiving economic returns for the exploitation of their music on radio, in concerts or in mobile applications. Indian composers are not effectively represented by IPRS and due to such structural barriers which inhibit the administration of such rights on behalf of foreign rightsowners as well. For example, there is no effective administration of mechanical reproduction rights in India, nor do composers or publishers share in mobile revenues, especially 'Ring Back Tones' which are the largest market sector of legitimate music consumption in India⁵.

“Mobile industry for digital music

The mobile industry continues to drive the music industry. As projected by PwC in its last publication, the digital sales of music comprising mobile and internet have overtaken physical sales in 2010. The mobile VAS segment alone is projected to be INR 4.4 billion in 2010 as compared to INR 2.1 billion in 2009 registering a healthy growth of 110%. This segment alone is estimated to be more than the physical sales revenues. While CRBT has been the largest revenue contributor in the past and remains so this year too, with better telecom infrastructure and the launch of 3G services, we can expect other forms of music to grow. This may include audio and video music which can be either provided by telecom players at a certain charge or direct live streaming of music to mobile phones.”

For many years, CISAC has lobbied the Indian Government to amend the copyright law to fix this structural barrier to trade in music copyright royalties. Finally in 2010, after many years of meetings with the Indian Copyright Office, local composers and IPRS, the Indian Government conducted a review of provisions of the Copyright Act and proposed amendments aimed at redressing this situation, which were referred to a Parliamentary Standing Committee, subject to public hearings and approved by Cabinet in 2010. These amendments were scheduled to pass into law this month, (both the houses of the Parliament i.e. Rajya Sabha and the Lok Sabha will have to pass the bill) however it seems, on advice from IPRS, that it has now been postponed until the winter session.

While IPRS was having some success in licensing new FM music stations for the broadcast of musical works, in 2010, the Indian Copyright Board handed down a decision reducing the rate paid by radio stations to all “Music Providers” to 2% of net advertising revenues, in an action concerning the compulsory license for the broadcast of sound recording rights controlled by PPL India. The order has not defined the term “Music Providers” and the radio industry is using the

⁵ PwC India Entertainment and Media Outlook, July 2011. Page 84:

decision to say that the order also includes the broadcast of underlying musical works. This is also noted in the PwC report under the title “Copyright Resolution in Limbo”

“The Copyright Board, which was given powers by the Supreme Court of India to decide in the matter of radio companies versus music rights owners on the issue of royalty payment, has decided to reduce the royalty payment to two per cent of net advertising revenues. Previously, the same was around 18 to 20% in favour of the radio companies. This did not go down well with music companies and the decision had gone into a legal tangle.”⁶

The difficulties surrounding effective copyright enforcement in India, and the barriers facing Indian and international songwriters, were highlighted at the CISAC World Copyright Summit which took place in Brussels in June this year, through a key note speech by the renowned Indian creator Javed Akhtar⁷. While quantifying the value of the trade impairment due to such barriers to Australian songwriters and publishers is very difficult, if we look at some of the national hits by APRA members in India over the last few years, ie which have gone to the top of the Indian charts, the royalty returns to APRA members have been negligible. Even though India is an emerging economy, if it had an effective copyright regime in compliance with Treaty standards and was properly regulated, the returns to songwriters, publishers and APRA from such radio hits should have been very significant, given the size of their music and broadcast market.

However, since the World Copyright Summit in June, there have been a number of Indian High Court Rulings on the broadcast rights of musical works for songwriters and publishers. These are *Music Broadcast Pvt. Ltd v Indian Performing Right Society* (Decided July 25, 2011) and the *Indian Performing Right Society v Aditya Pandey* (decided July 28, 2011) following an earlier case *Mathrubhumi Printing and Publishing v The Indian Performing Right Society* (High Court of Kerala on 8 February, 2011)⁸.

In these decisions, the Courts held that the exclusive broadcast (public performance) rights in the underlying musical works on sound recordings are not able to be exercised against radio and other broadcasters in India. Under these decisions, radio stations are no longer obliged to pay licence fees to IPRS for the broadcast of musical works. IPRS then distributes to songwriters, publishers in India and to APRA and elsewhere. IPRS has advised APRA that revenue from radio broadcasts (which was already paltry given the size of the broadcast industry) has immediately dropped by 90%. We have serious concerns that these decisions compromise India’s compliance with its Berne Convention obligations to recognise the exclusive rights of authors to communicate their musical works to the public, as incorporated in Article 9(1) of TRIPs⁹.

We are advised that IPRS has appealed these decisions, however, we note the well publicised backlog of cases in India which means that these decisions cannot stand¹⁰ and we call on our government to request the Indian government to take necessary steps to ensure APRA songwriters and publishers are remunerated sufficiently from the exploitation of their music on Indian radio. The discussions on the IP provisions in the Australia-India Comprehensive Economic Cooperation Agreement would be a good vehicle to raise these serious concerns.

⁶ PwC India Entertainment and Media Outlook, July 2011. Page 85

⁷ <http://www.copyrightsummit.com/2011/06/08/javed-akhtar-recoit-du-soutien-pour-defendre-lavenir-du-droit-d%E2%80%99auteur-en-inde/>

⁸ Copies of judgements can be supplied on request.

⁹ Press release by Robin Gibb, President of CISAC follows page 6.

¹⁰ http://www.msnbc.msn.com/id/29164027/ns/world_news-south_and_central_asia/t/report-india-court-years-behind-schedule/

Thank you for the opportunity to make submissions and I remain at your disposal for any further questions or information required.

A handwritten signature in black ink, appearing to read 'Scot Morris', with a long, sweeping horizontal stroke extending to the right.

Scot Morris

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PRESS RELEASE FOR IMMEDIATE RELEASE



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“Authors’ and Composers’ rights once again at stake in India”

CISAC President Robin Gibb reacts to recent Court decisions in India which are incompatible with international laws and treaties on Intellectual Property and artistic works

Paris, August 2, 2011 – Statement of **Robin Gibb, singer-songwriter and President of CISAC, the International Confederation of Societies of Authors and Composers**, in reaction to two recent High Court decisions in India:

“About a year ago, I had issued a statement in support of draft changes being proposed to the Indian Copyright Act that would explicitly enshrine and better protect the rights of authors and composers. I am extremely pleased to see that some of our proposals have been incorporated into the amendments being sent for approval by the Indian Parliament in the coming seating.

I am now compelled once again, to react to recent developments in India; this time to express my deep concern and dismay at being informed of two just published Bombay¹ and New Delhi² High Court decisions. The Court decisions effectively held that when a composer or author agrees to have his musical work included onto a sound recording, he thereafter loses his exclusive right of public performance or broadcast to the producer when the sound recording is used for those purposes.

As an example of the consequences of these judgements, an FM radio station would thus have to pay royalties only to the collecting society representing the sound recording companies but not to the society representing the authors, composers and music publishers.

The court decisions represent a major and unacceptable regression in the copyright protection being granted to authors and composers of musical works. They also represent a serious breach of India’s obligations under the Berne Convention. The implications are that the millions of dollars that foreign copyright societies have collected and distributed to Indian authors and composers would now be stopped by these two judgements.

On behalf of CISAC, I strenuously urge the Indian government to take immediate remedial measures to correct the wrong that will result from the outcome of these judgements.”

About CISAC – www.cisac.org

Presided over by Robin Gibb of the legendary Bee Gees and French visual artist Hervé Di Rosa, CISAC – the International Confederation of Societies of Authors and Composers – aims at increasing both the recognition and protection of creators’ rights worldwide. As an international not-for-profit organisation, CISAC’s fundamental role is to enable authors’ societies to seamlessly represent creators across the globe and, in particular, to assist them in ensuring that royalties flow to authors for the use of their works anywhere in the world. CISAC’s main missions are to reinforce the international network of copyright societies, to be their spokesperson in all international debates and to reassert authors’ inalienable right to live by their creative work. Through the 231 authors’ societies from 121 countries that it counts as members, CISAC indirectly represents around 3 million creators and publishers of artistic works in all artistic genres (music, drama, literature, audiovisual, photography and the visual arts). In 2009 the royalties collected by CISAC’s member societies in their respective territories topped €7.152bn.

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¹ Music Broadcast Private Limited vs Indian Performing Right Society Limited, Suit No. 2401 of 2006; date of judgement 25th July 2011

² IPRS vs Aditya Pandey & Anr; CS(OS) 1185/2006 & I.A. Nos. 6486/2006, 6487/2006 & 7027/2006; 28 July 2011