

US-Australia trade deal threatens Australian culture, creativity and research

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Australians should resist attempts to include our cultural heritage and to diminish our information access in the trade agreement currently being negotiated between Australia and the United States.

The history and process of these agreements have for the last twenty-five years consistently favoured the interests of US corporations. The US Secretary of State Colin Powell frankly describes trade deals as a tool in the armoury of American diplomacy to stimulate the domestic economy. When the US has a huge budget deficit and when the fastest growth sector is in the film, television, music and other content/entertainment industries, US negotiators seek to limit the capacity of other nations to encourage their own film, music and television production. We already have legislation to punish copyright piracy where commercial profit is made from illegal use of copyright material. We now face a US regime where home copying for personal use is criminalised, where researchers are jailed for testing software and revealing their research results (the Dmitry Skalarov case) and where the music industry scares children downloading digital music for their own enjoyment, because it is also in the interests of a music industry which is reluctant to update a business model to suit new customers and new technology.

If you think that this is rhetorical, Australian academics Peter Drahos and John Braithwaite (in their book *Information feudalism: who owns the knowledge economy?* and *Global intellectual property rights: knowledge, access and development*, co-edited by Drahos and Ruth Mayne) have charted, in documented detail, the success of powerful US corporate lobbying in multinational and regional trade deals since the 1980s. Countries have been persuaded to drop cultural protections and to accept intellectual property in return for promises of greater access to US markets. The promised market access is then diluted or opposed by a US Congress sensitive to local voters and lobbyists.

The US negotiators want Australia to sign up to the secret agreement before the next presidential elections. Concurrently, the US is also negotiating with Central America and South American countries. Australia is a domino in the US game to embed its own corporate interests in a series of trade agreements so that Japan, China and that recalcitrant political entity,

the European Union, will be presented with a list of American values which they will be expected to harmonise with.

Harmonise is a 'buzzword' in trade negotiation which produces its own Orwell-speak in which black is white, free trade is at best preferential and at worst protection, and harmony is fine when it extends a copyright period but not wanted when it involves protecting the moral rights of creators. The right of creators to protect their identification and the integrity of their work is a part of the international intellectual property regime, but Hollywood does not want to know about it.

One example of trade language is Colin Powell's article in the *Wall Street Journal* in 2001, in which he stated:

'America flourishes in a world that welcomes American values. And America's values flourish in a world where a vibrant international trading system reinforces democracy, growth and the free flow of ideas.' The article called for US Congress to give the president fast-track authority in trade agreements, that is to hand over power from the democratic arm of government to the executive.

Another example of Orwell-speak is the latest AUSTFA briefing (n° 4 on the Department of Foreign Affairs and Trade website) justifying the inclusion of Australian film, television and cultural industries in the trade agreement — against all the advice of Australian performers, writers, actors, musicians, directors and producers who participate in that industry.

'Trade agreements ... provide Australian industries with a predictable and certain trading environment. Securing such an environment is as important to Australia's media, entertainment and arts industries as it is to other sectors of the economy.'

Oh, really? So the United States has committed itself to taking five per cent of our television programs in return for the ninety-six per cent share they have of our screens. Front-page news, if that happens.

The way for our government to guarantee any trading environment for our cultural industries is at least to guarantee their healthy existence, by reserving space for them now and in the future through local content regulation and by keeping open any options for sustainable funding, remembering that when Mexico tried to give its film industry an investment boost

through a small levy on cinema tickets, it was prevented from doing so by US corporations under the terms of its US trade agreement.

The DFAT brief illustrates the absurdity of treating our film, television, books, scripts and music as though they were beef, cheese, wine and sugar. Without action from Australian voters, our cultural concessions will be made as trade-offs for our agricultural commodities.

Copyright

Australians are importers and consumers of information and our interests are not the interests of US and European content producers. Australian library users will be disadvantaged by harnessing our copyright law to US laws which protect large entertainment and content producers, at the expense of information consumers and creators, who are also consumers. Extension of the copyright term, criminalisation of private copying and the refusal to allow circumvention of technological barriers to otherwise lawful information access are some of the consequences of signing up to a US copyright agenda which will not benefit Australians. Extension of copyright protection is opposed by American researchers, academics, lawyers, librarians and scientists as unnecessarily privileging corporate interests at the expense of creativity and innovation.

Extension of the term of copyright protection

Library and information workers should be active in ensuring that intellectual property, also high on the trade agenda, will not be manipulated to serve US corporate interests, at the expense of Australian creators, students, researchers, library users and information technology developers.

The agenda of the American movie and publishing industries is to extend the copyright term until protection is perpetual. This is a distortion of the historical balance of copyright. Seventeen economists, including the father of economic rationalism Milton Friedman, stated in a brief before the United States Supreme Court (in *Eldred v Ashcroft*) that there was no economic value to creative effort in continuing to extend the period of copyright protection and that the practice inhibited creativity and innovation and was anti-competitive. Australia's Ergas report came to similar conclusions. The recent Allen report, commissioned by the various Australian copyright collecting

agencies, has argued against this position but produced no evidence to the contrary. When the period of US copyright was extended, non-US works were pulled back from the public domain to the detriment of Australian and American creators and performers. Richard Tognetti was unable to perform his variation of a Bartok suite in the United States. Jane Scott, producer of *Shine*, found just before the release of the film that Rachmaninov had suddenly become 'off-limits' without permission and amateur musicians in the United States found that the cost of renting early 20th century music increased ten-fold.

Domestic copyright reform at the mercy of trade agreements

Last year the Canadian Supreme Court outlined the balance between protecting and rewarding copyright owners and encouraging creativity and innovation longterm, a balance which we should also strive for.

'The proper balance [in copyright] lies not only in recognizing the creator's rights but in giving due weight to their limited nature... excessive control by holders of copyrights and other forms of intellectual property may unduly limit the ability of the public domain to incorporate and embellish creative innovation in the long-term interests of society as a whole...'

Théberge v Galerie d'Art du PetitCh-amplain inc. (2002) 210 DLR (4th)

385 (SCC) at para 30.

Canada, like Australia, is reviewing its copyright law. Our review of the digital agenda amendments is being conducted concurrently but formally separate from the trade negotiations. The comments of Canadian law professor Michael Geist are relevant to us.

'Developed countries such as Australia may recognise the importance of a balanced copyright policy to both their cultural and economic policies, but they are increasingly willing to treat intellectual property as little more than a bargaining chip as part of broader negotiation... Current drafts of the Free Trade Area of the Americas Agreement mandate stronger copyright protections... copyright policy may be altered not through the traditional policy making process but rather via international trade negotiations.' Geist, 'Why we must stand over copyright', Toronto Star 20 October 2003.

Unintended consequences

When Mexico signed a trade agreement with the US, it did not anticipate the cultural problem. When Canada signed NAFTA, it was not aware that it was giving up its right to regulate environmental protection if a US company thought that was interfering with their profits. Workers in Central America claim that the trade terms of their agreement with the United States are endangering labour standards

mandated in the Clinton era.

And while the American continent bargains, the sugar producers of Louisiana and Florida (the state which delivered the Bush presidency) are already lobbying to protect their industry against cheaper imports. No wonder the Australian Farmers' Federation is sceptical about the trade agreement that we are negotiating.

Why the rush?

Both the Australian and the United States governments want to sign this agreement in December. What is the advantage to us? In the past, countries have capitulated to US negotiations through economic desperation. Because of our economic reforms, our economy has been sound through various international crises. We should take time to finalise this agreement and we should accept no term which has a negative impact on any part of our economy or on our sovereign right to legislate in our own interests.

Those who want to find out more about trade agreements and library interests will find many sites on the internet and might start with the American Library Association, Lawrence Lessig (the Stanford law professor who assisted in the Eldred copyright extension case) and Michael Geist, the Canada Research Chair in Internet and E-commerce Law at the University of Ottawa. ■



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