



18 May 2004

The Honourable Robert B. Zoellick
United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Dear Ambassador Zoellick

In connection with the signing on this date of the Australia-United States Free Trade Agreement (the "Agreement"), I have the honour to confirm the following understanding reached by the Governments of Australia and the United States during the course of negotiation of Article 17.1.6 (National Treatment) regarding secondary uses of phonograms.

Notwithstanding Article 17.1.6, where, at the date of entry into force of this Agreement, a Party provides for the right of remuneration in a phonogram in respect of free over-the-air television broadcasting of a cinematographic film or other audiovisual work incorporating a phonogram, that is in addition to and separate from the exclusive right to authorize or prohibit the reproduction of the phonogram and the right of broadcasting in the cinematographic film or other audiovisual work, the Party may limit the rights of the performers and producers of the other Party in respect of the separate right of remuneration in the phonogram to the rights its persons are accorded within the jurisdiction of the other Party.

I have the honour to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Agreement.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mark Vaile'.

Mark Vaile
Minister for Trade

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

May 18, 2004

The Honorable Mark Vaile
Minister for Trade
Parliament House
Canberra ACT 2660

Dear Minister Vaile:

I have the honour to acknowledge receipt of your letter of this date, which reads as follows:

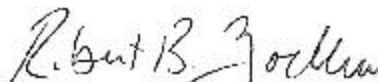
"In connection with the signing on this date of the Australia-United States Free Trade Agreement (the "Agreement"), I have the honour to confirm the following understanding reached by the Governments of Australia and the United States during the course of negotiation of Article 17.1.6 (National Treatment) regarding secondary uses of phonograms.

Notwithstanding Article 17.1.6, where, at the date of entry into force of this Agreement, a Party provides for the right of remuneration in a phonogram in respect of free over-the-air television broadcasting of a cinematographic film or other audiovisual work incorporating a phonogram, that is in addition to and separate from the exclusive right to authorise or prohibit the reproduction of the phonogram and the right of broadcasting in the cinematographic film or other audiovisual work, the Party may limit the rights of the performers and producers of the other Party in respect of the separate right of remuneration in the phonogram to the rights its persons are accorded within the jurisdiction of the other Party.

I have the honour to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Agreement."

I have the further honor to confirm that my Government shares this understanding and that your letter and this reply constitute an integral part of the United States—Australia Free Trade Agreement.

Sincerely,


Robert B. Zoellick