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INTELLECTUAL PROPERTY ENFORCEMENT IN AUSTRALIA –  
AN EVOLVING APPROACH\*

*Document prepared by Ms. Fiona Phillips,  
Principal Legal Officer, Copyright Law Branch, Australian Government,  
Attorney-General's Department*

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\* The views and opinions expressed in this paper are those of the author and not necessarily those of the World Intellectual Property Organization (WIPO) or its Member States.

## INTRODUCTION

1. Thank you to the International Bureau for providing this opportunity to outline the Australian Government's approach to intellectual property enforcement. This is the first time that the Australian Government has participated in a meeting of the Advisory Committee on Enforcement and we look forward to a fruitful engagement on these issues.

2. The enforcement of intellectual property (IP) is an issue which the Australian Government has been addressing over a number of years. No doubt this is also the case in many other countries. For example, in 2000 an Australian Parliamentary committee produced a report '*Cracking down on copycats: enforcement of copyright in Australia*'. This report made a series of recommendations, many of which have been implemented by either legislative or administrative action.

3. In recent times, IP enforcement issues have attained an even higher level of prominence in Australia. In part this has been due to representations by industry stakeholders whose businesses are being adversely affected by IP infringements and who are seeking further enforcement options. It has also been due to recognition that the digital environment poses new challenges for effective IP enforcement.

4. The Australian Government has responded to these changes with legal and other measures. It has also established mechanisms for the ongoing development of strategies to address the enforcement of IP rights. The Government considers appropriate criminal enforcement measures together with the range of civil remedies as important for a strong and fully effective IP framework.

5. Before moving on to discuss in detail Australia's experience with IP enforcement, I should say something of our legal and governmental framework.

## FRAMEWORK

6. If I can turn firstly to Australian constitutional arrangements and intellectual property. The *Commonwealth of Australia Constitution Act 1900* establishes a federal system of government for Australia. Under this system, law-making powers are distributed between the Australian Government (ie the Federal Government) and the six States. Intellectual property laws are the province of the Australian Government rather than the States.

7. Responsibility for IP is shared by two different Australian Government Ministers. The Attorney-General has responsibility for copyright law and policy and is advised on these matters by the Attorney-General's Department. The Minister for Tourism, Industry and Resources has responsibility for industrial property law and policy and is advised by IP Australia. The Attorney-General's Department and IP Australia work closely on a range of IP issues, including appropriate enforcement mechanisms. I come from the Attorney-General's Department so my focus today will be primarily on copyright enforcement. The Department also has responsibility for criminal law policy.

8. The Australian Federal Police (AFP) is the principal law enforcement agency through which the Australian Government pursues its operational law enforcement interests. Its role is to enforce Federal criminal law and protect Federal and national interests from crime in Australia and overseas. The AFP is Australia's international law enforcement and

policing representative and source of advice to the Australian Government on operational policing issues.

9. The AFP is the chief law enforcement body in relation to IP crime. However, enforcement is also carried out by the various State police services who are authorised to exercise investigative powers in relation to IP offences. State and Federal police often work together and with industry organisations in investigating IP crime.

10. The Federal Director of Public Prosecutions is an independent office holder and is responsible for the prosecution of federal offences, including IP offences.

11. The Australian Customs Service has the power to enforce intellectual property rights in respect of counterfeit trade marks and pirated copyright goods at the border. Customs' powers at the border are set out in the *Copyright Act 1968* and the *Trade Marks Act 1995*. These are governed by Notice of Objection provisions, that is generally, Customs can only seize infringing goods imported for trade/commercial purposes if the copyright and trade mark owners have lodged a Notice of Objection identifying their intellectual property rights with Customs.

12. Enforcement action can be pursued in a range of courts in Australia at both the State and Federal Level.

13. Australia's federated system of government poses some challenges for IP enforcement. This will be discussed in more detail below.

## LEGISLATION

14. Civil remedies are available under all Australian IP legislation and are the key way private rights are enforced by IP rights holders. There are also a number of criminal sanctions in both the *Copyright Act 1968* and the *Trade Marks Act 1995*. The *Plant Breeders Rights Act 1994* also has criminal provisions for enforcement.

### Copyright Act

15. Australia's copyright legislation has included criminal offence provisions since the earliest times.<sup>1</sup> The range and type of criminal offences has developed over time.<sup>2</sup> The current Copyright Act contains a range of criminal offences aimed at deterring copyright piracy and related activities. Among other things, the more recent provisions include offences relating to: the misuse of circumvention devices or services; abuse of rights management information and broadcast decoding devices.

16. These offences were originally inserted into the Copyright Act as part of our implementation of the WIPO Copyright Treaty. They have since been (or will be in the case

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<sup>1</sup> See for example, s 14(1) *Copyright Act 1912*.

<sup>2</sup> For example, the *Copyright Amendment Act 1980* amended the penalties in the *Copyright Act 1968*. Four years later the *Copyright Amendment Act 1984* made distribution of a computer program a criminal offence.

of effective technological measures) amended to comply with obligations Australia has under its Free Trade Agreement with the United States.

17. There are also offences addressing copyright piracy of books, computer software, sound recordings and films. These provisions deal with copyright piracy on a commercial scale as required by Australia's WTO TRIPs obligations.

18. In addition, significant infringements on a commercial scale and other actions that prejudice the economic rights of the copyright owner are criminalised under the Copyright Act.

19. These offences maintain the commercial scale element of TRIPs but address situations that occur in the digital environment as it has evolved since TRIPs.

20. These provisions are supplemented by evidential presumptions that make it easier for the prosecution in criminal matters or applicants in civil proceedings, to establish certain matters such as ownership or subsistence of copyright.

21. Penalties have steadily increased since the enactment of the Copyright Act. There are now very high penalties. For example, for offences relating to certain commercial uses of infringing copies, the maximum penalty is \$AUD 93,500 and/or 5 years imprisonment. In determining a penalty, a court may impose higher penalties in certain circumstances for offences involving the conversion of hardcopy material into digital form.

22. The Government's 2004 election policy *Strengthening Australian Arts* included a commitment to maintain a rigorous copyright regime to combat online piracy. The Government believes it is important to continuously review the Act to ensure that it contains strong and effective provisions to protect against copyright piracy. The Government has responded by making substantive changes to ensure that we comply fully with multilateral and bilateral obligations, as well as changes to assist the litigation process. For example, to ensure that prosecutors and investigators have simplified and streamlined provisions that enable them to more effectively pursue successful copyright actions.

23. The Australian Government has Free Trade Agreements with Thailand, Singapore and the United States. A number of amendments were made to Australia's copyright law in late 2004 to meet particular obligations under the Australia – United States Free Trade Agreement. For example, the scope of offences in the Act to criminalise certain activity involving copyright piracy where the activity is committed 'with the intention of obtaining a commercial advantage or profit' has been broadened.

24. The scope of the copyright piracy offences are wide enough to criminalise the making of infringing copies of computer software in a business for internal commercial use (ie activity commonly known as 'business end user piracy').

25. A new provision has been created making it an offence to engage in conduct that results in the infringement of copyright on a commercial scale, and that has a substantial prejudicial impact on the owner of the copyright. This offence is intended to capture activity undertaken for a non-commercial purpose (eg a person distributing free infringing copies over the Internet) but where it occurs on such a scale that it warrants criminal liability because of its adverse impact on the copyright owner.

26. There has been a substantial strengthening of the provisions relating to the use of devices that decode TV broadcasts (in most cases Pay TV broadcasts) without authorisation. For example, it is now an offence where a person uses a broadcast decoding device to gain access to an encoded broadcast without the authorisation of the broadcaster. It is also an offence to distribute a decoded broadcast without authorisation irrespective of whether the distribution is for commercial advantage or profit. In addition, we have now criminalised the use of an encoded broadcast for the purpose of trade or commercial advantage, where the initial decoding of the encoded broadcast was done by another person without the authorisation of the broadcaster. There were also a series of changes to enable civil actions to be brought for the misuse of broadcast decoding devices in a wider range of circumstances.

27. The Government announced last year that dishonestly accessing a Pay TV service will also become a criminal offence. It will be an offence for a Pay TV subscriber to distribute a subscription broadcast to other premises, or for a subscriber to use the broadcast for commercial purposes, if the appropriate subscription fee has not been paid. These measures are as a result of a Government review and are intended to address the growing problem of Pay TV signal theft in Australia.

28. The Government is currently undertaking a further technical review of the Act to ensure that the criminal law provisions accord with federal criminal law policy and are consistent with the *Criminal Code Act 1995*. It is also considering a number of further amendments to the criminal law provisions in the Copyright Act. It is likely that legislation dealing with these matters and the Pay TV amendments will be introduced into Parliament in the coming months.

#### Trade Marks Act

29. Australian Trade Marks legislation has included criminal offence provisions since it commenced. These provisions are aimed at deterring counterfeiting of trade marks and the importation of goods bearing 'false' trade marks. For example, the *Trade Marks Act 1905* contained provisions which included the offence of importing goods with a forgery of a registered trade mark (penalty 100 pounds) and also falsely applying or selling a registered trade mark to goods (imprisonment for up to 3 years). Similar provisions are contained in the *Trade Marks Act 1995* and the penalties now include fines of up to \$55,000 for an individual, imprisonment for up to 2 years or both a fine and imprisonment.

30. The Advisory Council on Intellectual Property which is an independent committee that makes recommendations to Government has also conducted inquiries into the enforcement of both patents and trade marks. The Patent Report was released in 1999 and recommended changes to the patent system to address the problems of uncertainty regarding the outcomes of enforcement action. Changes were implemented in the *Patent Amendment Act 2001*, *Intellectual Property Laws Amendment Act 2003* and further changes are contained in the *Intellectual Property Laws Amendment Bill 2006*. The Trade Marks Report was released in 2004. It recommended ways of strengthening trade mark rights and providing more certainty about the validity of rights, thereby potentially reducing the need for enforcement action. Some recommendations have been implemented by changes to administrative procedures. Implementation of other recommendations is under consideration.

#### Other Legislation

31. Criminal offence provisions are also contained in other related legislation.

For example, the *Commerce (Trade Descriptions) Act 1905* contains criminal offences in relation to the import and export of goods bearing a false trade description.

32. Under the Plant Breeder's Rights Act infringement of a Plant Breeder's Right is a criminal offence with a maximum penalty of \$AUD 55 000. However, Customs does not have any power to seize infringing plants at the border.

33. Under the *Olympic Insignia Protection Act 1987*, Customs has the power to seize goods with unauthorised uses of protected Olympic expressions, such as 'Olympic', 'Olympic Games', etc. However, use of these expressions is not a criminal offence.

34. I would also like to point out that there are criminal penalties provided in some State legislation. For example under the *Australian Grand Prix Act 1994 (Vic)* there is a maximum penalty of \$AUD 110 000 for unauthorised use of the Grand Prix insignia.

## RESEARCH

35. As a developed economy in the Asia-Pacific region, most of our focus until recently has been on infringing material being imported into Australia and physical goods being sold at, for example, markets. Evidence suggests that the growth in online distribution of copyright and other IP material is creating a different kind of challenge for IP enforcement.

36. Scoping the nature and extent of IP crime is a threshold issue. Industry data and statistics on piracy and counterfeiting from groups such as the International Intellectual Property Association, the International Trademark Association, the International Federation of Phonographic Industries, the Business Software Association of Australia and the Australian Federation Against Copyright Theft among others are important barometers of what is occurring in the marketplace as well as observing trends over time. This data is important for the Government in its work but it does not give the whole picture. In Australia there is currently no central repository for this information. Furthermore, different interest groups apply different methodologies in collating and assessing data. This can make analysis and comparison difficult. This much has been recognised by WIPO and the OECD in the work that they are doing on measurements of counterfeiting and piracy.

37. In order to address some of these issues, the Government has recently commissioned the Australian Institute of Criminology to conduct a study into IP crime in Australia to determine the economic impact of IP crime and the effectiveness of the public law and enforcement response. An important component of the project will be consultation with industry. The study will look at:

What kind of IP crime is affecting Australia (ie what is the volume of counterfeit/pirated goods on the market) and what aspect of IP crime is impacting the most (eg small-scale market distribution, organised crime involvement, cross-border importation or domestic manufacture, online distribution of music, film, television and business software products)?

What official statistics are available on IP crime (ie how much infringing product is detected by Customs, what types and level of IP crime are reported to police, how is this classified, what proportion is acted on by police and referred to other agencies, how many prosecutions are undertaken, and what are the results)? What are the gaps in these statistics and what data needs to be collected?

Are there any verifiable links between IP crime and other organised crime activities (eg drug importation and trafficking, arms smuggling, financing of terrorism etc.) and groups known to be involved in such criminal enterprises?

What is the economic impact of IP crime on small business, industry and employment in Australia? (eg including perceptions of the illegality and seriousness of buying infringing or 'knock-off' products)?

How are calculations of the economic impact on industry made by industry and what is the veracity of these figures? Are there independent statistics available, and if so, how do they compare?

How does IP crime affect regional communities and Indigenous Australians? ( ie economic impact on local cinemas – social impact on community, artistic works and counterfeit goods)

What other research has been done in this area that is relevant to the present questions of inquiry both nationally and internationally (this would include an extensive literature search)?

What is known about the effectiveness of the Australian IP (and other) legislation in preventing IP crime (eg what effects do increased penalties, simpler proof provisions for subsistence and ownership, and changes to 'fair dealing' and other defences have, and what do international legislative comparisons suggest by way of promising legislative reform)?

38. The research is due to be completed by the end of October this year. In addition to reporting on their findings, the researchers have been asked to include recommendations in their final report. These may include options in relation to matters such as data collection, IP education and training, resourcing of enforcement activities and consultative mechanisms as well as legal and administrative changes. These findings and recommendations will be used to inform the Government's future approach to IP enforcement.

## COPYRIGHT ENFORCEMENT STRATEGY

39. The research is closely linked to the Government's continuing work on a number of enforcement initiatives. The Attorney-General has developed a strategy for copyright enforcement. At a speech to the Copyright Law and Practice Symposium in November last year, the Attorney-General spoke about elements of this strategy, noting his commitment to improving Australia's law enforcement response to the genuine and increasing problem of copyright piracy. I shall talk about some of the activity in Australia against the background of this strategy.

### Possible legislative initiatives

40. The first platform of the strategy is to constantly review the Copyright Act to ensure that it contains effective provisions to address copyright piracy. This strategy focuses on having up-to-date laws that operate effectively in both the online and hard copy environments. I have already outlined some of the recent amendments to the Copyright Act. While the Attorney-General's strategy only pertains to copyright (because of his Ministerial responsibility) I note that industrial property legislation is also subjected to regular review as

demonstrated by the recent reviews into the enforcement of trade marks and patents conducted by the Advisory Council on IP.

#### Cooperation and coordination

41. The second part of the strategy relates to cooperation between Australian Government agencies, the States and industry. As I have already mentioned, Australia has a federated system of government. Intellectual property offences are federal offences. However, they may be actioned by Federal and State police services. This means that fruitful coordination between law enforcement agencies is vital.

42. As part of its strategy, the Government has established an interdepartmental committee on intellectual property enforcement. The Committee brings together all relevant Australian Government agencies to promote a more coordinated approach to IP enforcement issues. The Committee is currently considering a broad range of enforcement issues such as: border enforcement; specific copyright and trade mark enforcement reforms resources and competing Government priorities and international developments.

43. Most recently as a result of the Committee's work, new advice alerting travellers about pirated and counterfeit goods was incorporated in the Department of Foreign Affairs and Trade's publication *Hints for Australian Travellers*.

44. There are also other consultative bodies that provide an opportunity for policy and law enforcement agencies to engage with industry. In response to the Parliamentary Committee Report to which I have already referred, '*Cracking Down on Copycats: the enforcement of copyright in Australia*', the Government established the Intellectual Property Enforcement Consultative Group (IP Enforcement Group).

45. The IP Enforcement Group is chaired by the AFP and is made up of representatives from the film, music and software industries as well as brand owners, government agencies including the Attorney-General's Department, IP Australia, the Australian Customs Service, the Australian Institute of Criminology and the Australian Crime Commission, some State police services and the Federal Director of Public Prosecutions. The main function of the Group is to encourage practical cooperation between industry, police services and Customs mainly by information sharing. For example, the Federal Director of Public Prosecutions has prepared outline briefs for prosecuting IP offences which it has distributed to industry and State police to assist them in dealing with IP crime. The briefs include guidelines for investigators in preparing briefs of evidence, a breakdown of elements of the offences under the relevant Acts as well as broader prosecution policy.

46. In recognition of the lack of a single database for recording information about IP crime and the importance of this in informing the Government's approach to IP enforcement, the IP Enforcement Group has formed a working group to address the issue of data collection on IP crime. The working group has developed a form for industry to use to record such information. It is hoped that this will enable information on IP crime to be collated in a central repository. This will provide a valuable resource in developing responses to IP enforcement issues. It will also facilitate the tracking of trends in IP crime in Australia.

47. The Government is also examining other ways of improving coordination and cooperation between Federal and State law enforcement on IP crime. For example, because IP offences are federal offences, they are not covered in the training of State police officers.

This can create difficulties when complaints about IP offences are made to State police and can sometimes mean that IP offences are not pursued. The Australian Government is examining ways to develop best practice guidelines for State police officers that would provide a quick guide on steps for such officers to take for IP investigations and prosecutions. The Government is keen to ensure that State police officers are trained to properly undertake IP investigations. We are also looking at broader options that would simplify procedures for the police to enable them to deal with more copyright piracy complaints.

#### Adequate police resources

48. Thirdly, adequate resources being allocated for IP enforcement is an ongoing challenge, given the range of other crimes that our authorities have to deal with. I am sure that the issue of adequate police resources for IP enforcement is not unique to Australia. At the moment, the AFP operates under general policy directions provided by the Australian Minister for Justice and responds to matters having regard to guidelines that ensure resources are effectively applied to the highest priority work.

49. Both the AFP and State police have other higher profile commitments and limitations (eg, national security) in responding to increasing rates of IP crime occurring at markets throughout Australia. For example, some markets are held in rural areas where AFP officers are not present. We are actively examining ways in which police services can be more effectively resourced to investigate IP offences.

#### Border enforcement

50. Australia is also continually considering its border control measures that relate to the importation of infringing copies of copyright material to ensure they are working effectively. The importance of this issue has increased in recent times due to increasing problems with the importation of infringing copyright material into Australia. As you would realise, we are an island country with very large borders.

51. For example, Australians returning from holidays are also returning with increasing numbers of infringing DVDs and CDs. Under our copyright system, infringing copies can only be seized by Australian Customs if the copyright owner has lodged a Notice of Objection. In addition, as with other countries, the infringing copies can only be seized if imported for certain trade and commercial purposes.

52. The Australian Government has received a number of representations from DVD rental businesses stating that their businesses are suffering because people returning to Australia are importing infringing copies of the latest releases.

53. Also as is the case with police services, the appropriate level of resources for Customs is an issue.

54. We are currently considering options for addressing these issues. Our obligations under TRIPs in relation to border measures and the fact these goods are being imported for personal use make finding a policy solution challenging.

55. The Advisory Council on Intellectual Property also made certain recommendations about the Trade Mark Notice of Objection System in its report on Trade Mark Enforcement.

Any changes considered in relation to trade marks will also be relevant to the copyright system and border control.

56. There are some important policy issues to be worked through in addressing this problem.

#### International developments

57. The final part of the strategy relates to international developments. At the risk of stating the obvious, appropriate enforcement measures to address copyright piracy and trade mark counterfeiting is a global issue. This is particularly true in the digital environment. Information exchange and engagement with other countries on IP enforcement issues is therefore an important part of the Government's enforcement strategy. This meeting provides an excellent opportunity for such engagement. The Australian Government is also actively pursuing enforcement issues in other fora. For example, the Australian Attorney-General has raised copyright enforcement as an issue for consideration by Commonwealth Law Ministers. Australia is also an active participant in the APEC IP Experts Group and is hosting APEC in 2007. The Australian Government also contributes to work being done elsewhere. For example, it responded to the OECD survey on Counterfeiting and Piracy and distributed the survey to industry representatives for their response.

58. At an operational level, the Australian Government is also considering cooperation with law enforcement agencies in other countries on these issues. For example, the AFP has liaison officers in approximately 27 countries. The purpose of those postings is, among other things, the exchange of information including technical and scientific expertise to enhance law enforcement capabilities.

#### AWARENESS RAISING

59. Having appropriate laws and procedures in place is clearly a primary consideration in having an effective IP system. The Australian Government recognises that awareness raising is an important part of ensuring the effectiveness of such laws. The Australian Government is developing its approach to education on IP enforcement. This will in part depend on the findings of the research it has commissioned, particularly as it relates to attitudes about IP crime. Any future approach will build on existing practices. Some of these practices are outlined below.

60. At present, awareness is raised through mechanisms such as information on Government Internet pages and targeted campaigns.

61. As part of Australia's commitment to educating the public about the issues surrounding IP enforcement, the Attorney-General's Department and IP Australia's websites provide clear and accessible information on intellectual property. This material includes newsletters and fact sheets.

62. Both organisations also field enquiries from the public about general IP issues. In addition, staff members of the both organisations regularly provide presentations to both Government and non-Government organisations about Australian intellectual property law, policy and practice.

63. The Australian Customs Service website also includes information on the protection of copyright and trade marks and the Notice of Objection Scheme. Information is also provided to travellers regarding the importation of counterfeit of pirated goods.

64. As previously mentioned, the Department of Foreign Affairs and Trade publication *Hints for Australian Travellers* also includes information about the importation of counterfeit and pirated goods. This brochure is published in hard copy and distributed with new passports and is also available on the Department's website.

65. The Australian Institute of Criminology has also recently published an information sheet on *Reducing IP Crime*.

66. Further details of information on Australian Government websites is contained in the annex to this paper.

67. Another important way of raising awareness is through publicity surrounding successful enforcement actions. In some instances, law enforcement agencies will carry out targeted strike actions to gain the maximum deterrent effect from enforcement actions. From time to time, they will also work with industry on awareness raising campaigns. For example, Crimestoppers, a public information service of both Federal and State police, in conjunction with the Interactive Entertainment Association of Australia, recently ran a series of television advertisement targeted at reducing the sale and possession of pirated computer software and games.

68. The Australian Government also supports industry in its important role in educating the public on intellectual property enforcement issues.

69. For example, in 2004, the Attorney-General launched a campaign produced by the Australian Federation Against Copyright Theft (AFACT) designed to raise awareness about movie piracy. The movie trailer was produced by AFACT together with a coalition of film producers, theatres and other film industry suppliers. It is being shown on nearly 2,000 theatre screens around Australia.

70. In 2005 the Attorney-General attended a destruction ceremony of 150,000 pirated DVDs organised by film industry representatives. In his speech at this event, the Attorney acknowledged the importance of such events in raising public awareness that DVD and other copyright piracy is a crime – like any other crime – and real people suffer because of it.

71. The Australian Government is also involved in awareness raising activities throughout the Asia Pacific region. This work is often undertaken in collaboration with a multilateral organisation, such as APEC, ASEAN and WIPO. For example, we are currently working with Singapore and Hong Kong to develop a workshop on *Effective Strategies for IPR Public Education*, to be held in November 2006 in Hong Kong, to share experiences and knowledge on IPR campaigns with developing economies.

## TRAINING

72. Training is also an important component of an effective IP enforcement system. For example, training for State police officers and lower court judges in relation to IP crime are issues under consideration in Australia. There is also a role for industry to play in this

regard. For example, industry and Government work together in the training of Customs officials to assist in the identification of illegal material. In recognition of the importance of addressing youth attitudes to intellectual property rights, Australian film industry representatives are also working closely with the education sector on an initiative for copyright education in schools.

73. Australian Government and industry is also involved in intellectual property training in the region. For example the AFP and the Australian Customs Service sponsored an enforcement specific workshop held in Hong Kong May 2004. Titled '*APEC Intellectual Property enforcement and border control workshop*', it was initiated by the APEC IP Experts Group, of which Australia is a member. Australia has also provided training for judges in the region. In addition, IP Australia regularly works with and provides training to its counterpart IP offices in the region. Aside from Government sponsored training, Australian industry organisations are also involved in regional training. For example, the Australasian Performing Right Association Ltd (APRA) acts as a training hub for developing collective societies in the region.

## CONCLUSION

74. As I hope this paper has demonstrated, the Australian Government is very engaged in the issue of IP enforcement. The challenge is an evolving one.

75. The Government's approach of commissioning research to scope the situation in Australia will help us to meet these challenges.

76. Constantly reviewing our IP legislation to ensure that it is adequate for dealing with emerging enforcement issues is also a key element of the Australia's approach to IP enforcement.

77. There is a recognition, however, that this must be balanced with information and training about IP rights and their enforcement.

78. Much can be achieved by appropriate coordination and consultation between government and industry bodies.

79. Competing demands on enforcement resources is likely to continue to be a challenge. However, Australian Government policy and enforcement agencies are working and together cooperatively to address these issues.

80. IP enforcement should not be viewed as solely a domestic issue. International cooperation and engagement is an important part of the Australian Government's approach to IP enforcement. Meetings such as this provide a valuable opportunity to exchange ideas and experiences about IP enforcement. Australia looks forward to a continued dialogue on these significant issues.

[Annex follows]

## ANNEX

### Australian Government IP Resources

#### Attorney-General's Department

The Copyright Law Branch of the Department maintains an internet site detailing the work that it does along with information on and a link to up-to-date versions of copyright legislation.

A booklet on copyright entitled 'Copyright Law in Australia: A short guide' is included which contains general information about copyright along with details about organisations which licence or advise on copyright.

Information sheets detailing the effect of amendments to the Copyright Act are also contained on the website, the most recent being information sheets describing the effects of the main amendments to the Act as a result of the *Copyright Amendment (Directors Rights) Act 2005* and Australia – US Free Trade Agreement.

The booklet and information sheets are available on the Internet

<http://www.ag.gov.au/copyright>

A regular newsletter called 'e-news on copyright' is published by the Department. It provides free regular updates on developments in copyright law and subscription to the service is open to anyone via the Department's website. An archive of past newsletters is contained on the website and provides a good overview of the developments in Australian and international copyright law over the past seven years.

### IP Australia

#### IP Australia's website

[www.ipaustralia.gov.au](http://www.ipaustralia.gov.au) is the primary online gateway that IP Australia uses to provide IPR awareness information and resources to the public. The website provides a range of material such as:

explanation of the types of IP rights administered by IP Australia and the registration process; documentation of IP Australia's service level commitments; and latest news and features.

IP Australia's website also provides access to various IPR products and programs, tailored to specific customers and market sectors. Each of these products/programs is developed with distinct branding, such as their own logo/trade mark, and many are supported by their own website. Further detail on IP Australia's flagship products/programs is provided below.

#### IP Access

An online portal that enables users to access a wide range of IP related information and resources provided by both government and non-government sources.

IP Access was initiated following the announcement of the Government's Backing Australia's Ability Initiative in 2001, which tasked government agencies who deal with IP to develop a single-entry web facility.

The information and resources provided via IP Access is tailored according to the type of IP user, for example inventors/innovators, indigenous Australians, government, designers, attorneys and business advisers, cultural institutions, SMEs, the agriculture industry and researchers.

IP Access provides enforcement-related information under the headings '*Avoiding IP infringement*', '*Protecting your IP*' and '*Protecting your IP overseas*'.

IP Access also serves as Australia's IPR Service Centre. At the 2003 APEC Senior Official's Meeting (SOM), it was recommended that each APEC member economy establish an IPR Service Centre to make publicly available its national IPR protection and enforcement system's relevant codes, laws, and regulations. Access to APEC IPR Service Centres is provided via the APEC IPEG website.

IPAccess - <http://www.ipaccess.gov.au/index.phtml>

APEC IPR Service Centres - <http://www.apecipeg.org/servicecentres/default.asp>

#### IP Toolbox

IP Australia's IP Toolbox is a comprehensive guide for businesses, researchers and business advisers to assist them identify, protect and benefit from their IP. Presented as a 450-page 22-module workbook and interactive CD -Rom, it is a practical resource that comprehensively explains the range of IPR protection options (such as patents, trade marks, designs, copyright) and includes numerous checklists, key concepts, flow charts, case studies and examples.

IP Toolbox dedicates one of its 22 modules to infringement of IP rights (Module 15). This module contains detailed information on the following topics:

Developing an infringement strategy Obtaining insurance to cover the legal costs of IP infringement actions Issues involved in bringing legal proceedings	The steps involved in prosecuting an infringer of IP rights Strategies for avoiding infringement of IP rights owned by other people Issues relating to the Internet
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IP Toolbox - <http://www.ipaustralia.gov.au/toolbox/index.shtml>

#### IP Professor

An online resource developed specifically for the tertiary sector by IP Australia to increase the level of IP knowledge and awareness within Australia's tertiary (university) community. It offers online lecture material on a range of IP topics, summaries of IP news reported in Australia's major newspapers and allows tertiary institutions to request a guest IP lecturer.

IP Professor - <http://www.ipaustralia.gov.au/ipprofessor/index.shtml>

## SMEs

A key focus of IP Australia's marketing and public awareness efforts is the Small and Medium Enterprise (SME) sector.

*Smart Start* is the centrepiece of IP Australia's SME program. Launched in 2002 as the publication *Smart Start: Your First Steps to Managing IP in a New Business*, it aimed to address a gap in the information market for SMEs and their consideration of IP issues. Following a review of the highly successful publication in 2005, the program was enhanced to include production of a new publication, *Smart Start: Managing IP in Your Business* which incorporated new material and case studies, development of a website to provide online resources that complement the publication, and implementation of a comprehensive promotional campaign.

The promotional campaign included media releases from Australian Government Ministers responsible for small business, participation in seminars and conferences, targeted online advertising to promote the publication and website, targeted editorial and advertising in leading small business publications, provision of *Smart Start* to educators to include in their Small Business Management courses, distribution of the publication through existing networks, and development of an email newsletter.

*Smart Start* addresses enforcement under the heading 'Infringement', and advocates that SMEs should know their IP rights and be prepared to act if their rights are violated. It provides guidance on how an SME can detect infringement, protect its business' IP from infringement on the Internet, avoid infringement of others' IP, and what to do if an IP holder alleges infringement of their rights.

SmartStart website- <http://www.ipaustralia.gov.au/smartstart/index.htm>

## IP fact sheets

In addition to tailored IPR products and programs, IP Australia maintains 'fact sheets' on specific IP rights and protection issues. These fact sheets can be accessed from IP Australia's website and the public can subscribe to be alerted when updates or new fact sheets are created.

Currently there are 27 fact sheets covering the following themes:

IP Basics	IP Management
IP Protection	International IP

Specific fact sheets relevant to IPR infringement and enforcement include:

[Trade Mark Oppositions](#) - What you need to know about opposition proceedings.

[Protect yourself from Infringers and Infringement](#) - Information on how to protect your IP and how to protect yourself against infringing others IP.

[Trade Mark Oppositions \(International\)](#) - An information guide to Trade Mark Oppositions to International Registrations Designating Australia (IRDA) in accordance with the Madrid Protocol.

[WARNING! Unsolicited IP Services](#) Contains a warning of 'bogus' IP service providers who are offering IP protection or promotion services.

Fact sheets - <http://www.ipaustralia.gov.au/resources/factsheets.shtml>

Australian Customs Service

<http://www.customs.gov.au/site/page.cfm?u=4640>

<http://www.customs.gov.au/site/page.cfm?u=4368#11>

Department of Foreign Affairs and Trade

<http://www.smarttraveller.gov.au/hints/index.html>

Australian Institute of Criminology

<http://www.aic.gov.au/publications/crm/crm045.html>

[End of Annex and of document]