

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"), the Governments of Australia and the United States reached the following understanding in relation to 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 rights in 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 would be grateful if you would confirm that your government shares this understanding. I have the honour to propose that this letter and your confirming reply be treated as an integral part of the Agreement.

Sincerely,

MARK VAILE

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

Dear Minister Vaile:

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

“Dear Ambassador Zoellick:

In connection with the signing on this date of the Australia-United States Free Trade Agreement (the “Agreement”), the Governments of Australia and the United States reached the following understanding in relation to 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 rights in 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 would be grateful if you would confirm that your government shares this understanding. I have the honour to propose that this letter and your confirming reply be treated as an integral part of the Agreement.

Sincerely,

MARK VAILE”

I have the further honour to confirm that my government shares this understanding and that your letter and this letter in reply are an integral part of the Agreement.

Sincerely,

Robert B. Zoellick