

To whom it may concern

Recognition and enforcement of foreign judgments (the Hague Conference Judgments Project)

The Australian Digital Alliance (ADA) welcomes the opportunity to provide comments to the Attorney-General's Department regarding the Hague Conference Judgments agreement currently being negotiated.

The ADA is a non-profit coalition of public and private sector interests formed to provide an effective voice for a public interest perspective in copyright policy. It was founded by former Chief Justice of the High Court of Australia, Sir Anthony Mason in February 1999, to unite those who seek copyright laws that both provide reasonable incentives for creators and support the wider public interest in the advancement of learning, innovation and culture. ADA members include universities, schools, disability groups, libraries, archives, galleries, museums, technology companies and individuals. The ADA advocates for copyright legislation that provides a balance between strong protection of copyright and reasonable and equitable access to information in the public interest.

The ADA recognises the value of clarifying the law regarding domestic enforcement of foreign judgments. However, we would be extremely concerned if this had the unintended effect of requiring Australian courts to enforce excessive monetary awards granted in copyright cases by some overseas courts. For example, the system of statutory damages employed by the United States of America can lead to extremely high damages awards for relatively minor infringements. Australia has had a consistent policy of resisting the introduction of such a scheme domestically in its negotiation of agreements such as the Australia-United States Free Trade Agreement and the Trans Pacific Partnership. It would be extremely problematic if the Hague Conference Judgments agreement became a de facto means of changing Australia's long established policy on this matter.

It is therefore vital that any agreement entered into by Australia regarding enforcement of foreign judgments include mechanisms to avoid this undesirable outcome. The ADA does not comment on any specific text or approach proposed in the current Hague Conference Judgments Project negotiations, but notes that both the proposed exclusion of IP judgments and (if not excluded) the proposed carve out to allow courts to limit the remedies enforceable via Australian courts and in particular to refuse to enforce non-compensatory monetary awards may assist. The ADA does note, however, that particularly in the case of US judgments, the mixed purposes of statutory damages may make separating compensatory from non-compensatory elements difficult.

Our principal contact with respect to this matter is our Executive Officer, Jessica Coates, who can be reached at jessica@digital.org.au or on 02 6262 1118.

Yours faithfully



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Chair
Australian Digital Alliance