

12 February 2016

Copyright Law and Policy Section
Department of Communications and the Arts

By email: copyright@communications.gov.au

Dear Sir/Madam

The Australian Subscription Television and Radio Association (ASTRA) welcomes the opportunity to comment on the proposed amendments to the *Copyright Act 1968* released by the Department.

ASTRA is the peak industry body for subscription media in Australia. ASTRA was formed in September 1997 when industry associations representing subscription (multichannel) television and radio platforms, narrowcasters and program providers came together to represent the new era in competition and consumer choice. ASTRA's membership includes the major subscription TV operators, as well as over 20 independently owned and operated entities that provide programming to these platforms, including Australian-based representatives of international media companies, small domestic channel groups and community-based organisations.

ASTRA's members make use of intellectual property arrangements to enable the delivery to consumers of a diverse range of news, information, sport and entertainment programs which convey significant social benefits to a broad cross-section of the Australian community. In 2015, one third of Australians subscribe, along with millions more who watch subscription content in public venues. Every week more than 1000 hours of first-run locally produced content is broadcast, as well as the best international content.

Balanced copyright protections also enable the subscription television industry to make substantial economic contributions. In 2014/15 ASTRA members invested more than \$796 million in local content production, added \$2.083 billion to the economy, and created jobs for 8370 Australians.

ASTRA would like to provide brief comments on proposed section 113P(2), as it would apply to use of copyright material by educational institutions.

In particular, ASTRA is concerned that the provision as drafted includes no requirement that educational institutions which copy or communicate copyright material derived from a subscription TV service, subscribe to that service (as opposed to having obtained the material from a third party).

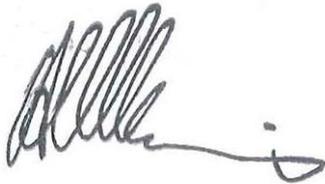
ASTRA would also like to note its concern that proposed section 113P(2) does not contain a requirement that the amount of the work copied does not unreasonably prejudice the legitimate interests of the copyright owner, despite this provision appearing in proposed subsection 113P(1)(d) in relation to works.

Proposed amendments to address these issues are at Attachment A. The amendments are designed to ensure that any authorised use of copyright material does not unreasonably prejudice rights holders.

We note similar submissions will be made by ASTRA member Foxtel.

If you have any queries or would like to discuss the issues raised in this letter, please contact Holly Brimble, Policy and Regulatory Manager (holly.brimble@astra.org.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Andrew Maiden', with a long horizontal flourish extending to the right.

Andrew Maiden
CEO

Suggested amendments to proposed section 113P(2) of the Copyright Act

Broadcasts

- (2) The body administering an educational institution does not infringe copyright in copyright material by copying, or communicating a copy of, the whole or a part of the copyright material if:
- (a) a broadcasts remuneration notice in relation to the educational institution is in force; and
 - (b) the copyright material is:
 - (i) a broadcast; or
 - (ii) a work, sound recording or cinematographic film included in a broadcast; or
 - (iii) the content of a free-to-air broadcast, if the broadcaster made the content available online at or after the time of the broadcast; or
 - (iv) the content of a free-to-air broadcast, if the content was electronically transmitted using the internet at, or at substantially, the same time as the broadcast; and
 - (c) the copying or communicating occurs solely for the educational purposes of:
 - (i) the educational institution; or
 - (ii) another educational institution, if a broadcasts remuneration notice in relation to the other educational institution is in force; and
 - (d) the amount of the copyright material copied or communicated does not unreasonably prejudice the legitimate interests of the owner of the copyright material; and
 - (e) the copying or communicating complies with:
 - (i) any relevant agreement between the broadcasts collecting society and the body administering the educational institution; and
 - (ii) any relevant determination made by the Copyright Tribunal under subsection (4); and
 - (f) where the copyright material referred to in section 113P(2)(b)(i) or section 113P(2)(b)(ii) is a subscription broadcast, the educational institution has been authorised by the broadcaster to access the broadcast in intelligible form.

‘Broadcaster’ to have the following meaning:

broadcaster means a person licensed under the *Broadcasting Services Act 1992* to provide a broadcasting service (as defined in that Act).

‘Subscription Broadcast’ to have the following meaning (which is the same as in Part VAA of the Act, as set out in section 135AL):

subscription broadcast means a broadcast that is encrypted and is made available by the broadcaster only to persons authorised by the broadcaster to access the broadcast in intelligible form.