

A V S D A

Australian Visual Software Distributors Association Ltd

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Senate Legal and Constitutional Affairs Committee
Parliament House
Canberra ACT 2600

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**Submission by AVSDA to the
Senate Standing Committee on Legal and Constitutional Affairs on its
Review of the *Copyright Amendment Bill 1996***

About AVSDA:

The Australian Visual Software Distributors Association (AVSDA) takes this opportunity to provide this submission to the Legal and Constitutional Affairs Senate Standing Committee's review of the *Copyright Amendment Bill 2006* (the Bill).

AVSDA represents the interests of owners of copyright in, and distributors of film and television DVDs in Australia. AVSDA's members range from all the major international film distribution companies through to wholly owned Australian companies. AVSDA members include: Buena Vista Home Entertainment, Imagine Entertainment, Paramount Home Entertainment, Icon Films, Palace Films, Roadshow Entertainment, Rainbow Video Shock DVD, Sony Pictures Home Entertainment, Time-Life Australia, Twentieth Century Fox Home Entertainment, Universal Pictures Video, Warner Home Video and Warner Vision.

The Australian DVD and video market represents a significant part of the Australian economy, in terms of revenues, employment and culture. In 2005/2006 the wholesale sales of DVDs in Australia amounted to \$1,065,096,658. According to ABS data, the entire film and television production and distribution industry in Australia employs directly or indirectly over 50,000 people. The industry is now reached its mature stage of the

lifecycle with the DVD expected to be the favoured way to view movies for many years to come, with new business models complementing the DVD to rent or purchase model. Late 2006 and into 2007 will also see the launch of new generation high definition DVD's in Australia (comprising both HD and Blue ray formats).

Introduction:

AVSDA members depend for their existence on their capacity to protect the value of their investments through their intellectual property. A strong and effective copyright regime is essential for their continued success and survival in the market and Australia's copyright laws are regarded as world class. They have a highly developed program of enforcement of their rights in Australia and AVSDA members welcome the *Government's Copyright Amendment Bill 2006*.

AVSDA supports the Bill in its current form and recommends that the Senate Committee likewise approves the Bill which is the result of numerous reviews and consultations with multiple Australian stakeholders, including positive changes made after the release of the exposure draft.

The Exposure Draft of the Bill, TPMs and access control definitions:

AVSDA would like to congratulate the Australian Government in the way it sought industry and consumer feedback to this Bill by releasing an exposure draft for comment. This was a critical process in achieving a positive outcome and drafting of the Bill the Committee is now considering. The exposure draft, in AVSDA's opinion, contained language in Schedule 12 on the definition of Technological Protection Measures (TPMs) and Access Controls which went against policy intent. The Bill now being considered by the Committee has either fixed the language from the exposure draft stage, or has clarified any ambiguities as to intent through the Explanatory Memorandum to the Bill.

Two specific concerns from the exposure draft stage of the legislation included: (i) the region coding carve-out from the TPM definition had unintended consequences which did not protect legitimate business models and commercial and classification arrangements, and (ii) the definition of access controls whereby it contained 'no link to copyright' which again had the unintended policy outcome of not protecting legitimate business models.

AVSDA has read the February 2006 House of Representatives Standing Committee on Legal and Constitutional Affairs' report (the LACA report) on TPMs and notes that it recommended in part that "...exceptions proposed for region coding TPM circumvention under Article 17.4.7(e)(viii) be granted wherever the criteria for further exceptions under

Article 17.4.7(e)(viii) are met” (Recommendation 4). The exposure draft, in responding to this recommendation, created a carve-out or exception to the TPM scheme to legislate the intent expressed by the LACA committee. Unfortunately, it did so too broadly and caught up geo-location and geo-filtering TPMs which are essential in protecting a download or timed video on demand service. These geo-location and filtering tools allow distributors and rights’ owners to ensure that a work is only made available to a market where the rights to distribute in that market, and any additional rights within or connected to the work such as music rights to a film, have been cleared for legal release in that market.

The exposure draft would also have not allowed (or rather allowed the legal circumvention) the use of geo-location/filtering TPM’s which protect Australian families and children from content deemed illegal under Australia’s classification system.

AVSDA believes that the original definition of access controls proposed in the exposure draft was written in a way that streamed, or downloaded to view content services over the internet or other digital devices (such as a mobile telephone), whereby access to the service was restricted to those who were eligible to receive it (ie they had paid for it), was not protected as there was ‘no link to copyright’ insofar as there would be no “hard” copy being placed on a device for multiple or later re-use. That is, one-time streamed content viewing would not be protected under the original wording in the exposure draft of access controls. The Government has listened to the concerns of AVSDA and other copyright owners on what is essentially a technical drafting point which has led to the improved legislation that the Committee is now considering. The result is that industry will now have the confidence and protection to roll-out exciting new offerings, at various (lower) price points to Australian consumers that we are now witnessing in the US and UK.

Conclusion:

AVSDA also welcomes the additional enforcement measures that go along with the pro-consumer fair use style changes this Bill also addresses – namely the specific time and format shifting exceptions. AVSDA is pleased that the Government did not put forward broad and undefined “US Style” fair use legislation as Australia does not have the appropriate case law history to provide the clarification and limited scope of the US system. The specific proposed uses around time shifting of television content for limited re-use in the home (and the necessary tight rules on this) and format shifting for the common consumer practice of format shifting (legitimately purchased) music from one listening device to another in this Bill is appropriate.

AVSDA believes this Bill achieves the difficult balance in ensuring consumers are not unnecessarily breaking the law, recognises current and long-held consumer practices in relation to time and format shifting whilst restricting their application, and protects current

and emerging digital film and TV business models in a rapidly changing technological environment.

AVSDA urges the Committee to approve the legislation in its current form.

Kind Regards

SIMON BUSH