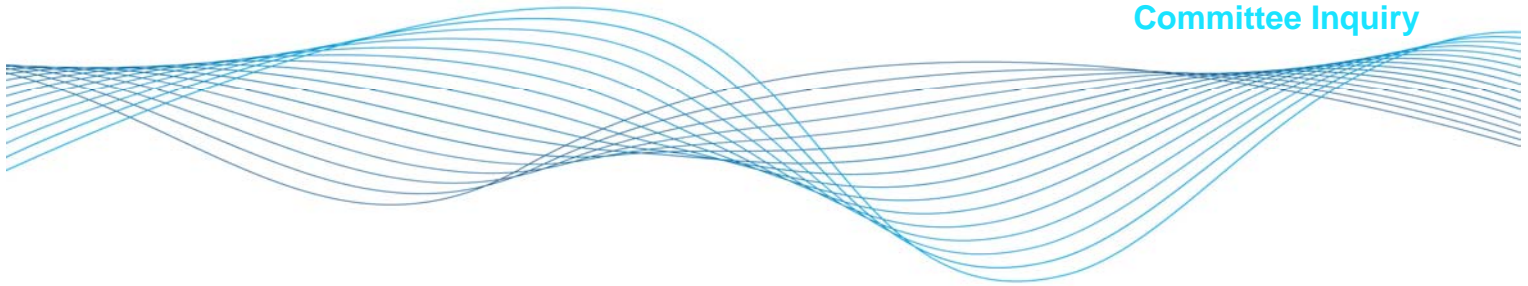




**Copyright Amendment Bill 2006**  
**Senate Legal & Constitutional Affairs**  
**Committee Inquiry**



## 1. Background

ASTRA welcomes the opportunity to submit to the Senate Legal and Constitutional Affairs Committee's inquiry into the provisions of the Copyright Amendment Bill 2006 ('**the Bill**'). ASTRA represents the interests of subscription television broadcasters and channels. A complete list of ASTRA's members is available at [www.astra.org.au/members.asp](http://www.astra.org.au/members.asp).

ASTRA's interest in the Bill is focused upon two areas: Schedule 6 – Exceptions to infringement of copyright and Schedule 9 – Unauthorised access to encoded broadcasts.

## 2. Timing

ASTRA supports the immediate introduction of the legislative amendments proposed by the Bill.

In relation to amendments contained in Schedule 9 of the Bill, the effect of this legislation will have immediate, significant and long awaited benefits for the subscription television industry in its efforts to combat subscription television piracy. The industry's losses attributed to piracy are significant and any measure that may assist to stem that loss is welcomed.

In relation to amendments pertaining to the time-shifting of television programs contained in Schedule 6 of the Bill, given that the amendments are designed to reflect the daily reality of millions of private households that engage in the copying of television programs for the purpose of viewing such programs at a more convenient time, ASTRA supports the immediate introduction of these amendments to assist to stem the increasing divergence between the rights granted to copyright users in the Copyright Act 1968 ('**the Act**') to use copyrighted works and the manner in which they are using those works.

## 3. Schedule 6 – Exceptions to infringement of copyright

### Summary of Position

- ASTRA supports amendments to the Act contained in Schedule 6 of the Bill in relation to:
  - 'Part 1 – Recording broadcasts for replaying at more convenient time' which repeals and replaces Section 111 of the Act; and
  - 'Part 3 – Use of copyright material for certain purposes' specifically in relation to use for parody or satire
- The effect of these amendments broadens the scope of the copyright exceptions which in ASTRA's view are a sensible development and brings the Act into line with legislation in comparable common law jurisdictions such as the United States, United Kingdom, New Zealand and Ireland.
- Other amendments contained in the Bill have less impact upon ASTRA's members' primary activities. ASTRA therefore does not intend to make any substantive submissions about other aspects of the Bill at this time.

### Part 1 – Recording broadcasts for replaying at more convenient time

ASTRA supports changes to the Act which endorse the use by consumers of lawfully acquired copying devices, whilst preserving the interests of copyright owners and broadcasters and protecting their rights to continue to exploit works created or licensed by them in a manner that does not derogate from the long established principles of copyright law in Australia.

To that end copyright users should be permitted to record a television broadcast for the purpose of viewing or listening to the broadcast at a later or more convenient time for private and domestic purposes. This should include the right to record any and all underlying copyrighted works contained in that broadcast. The right to time-shift should be subject to the exercise of a broadcaster's right to implement a technological protection measure on their broadcasts.

Currently Section 111 of the Act does not permit the copying of underlying works contained in the television broadcast, such as sound recordings, feature films or dramatic or reality based television series, but rather is restricted to live sporting and news broadcasts (and even then some underlying works may exist in the broadcast of these programs that are prohibited from being recorded). For most people, the current application of Section 111 is of limited benefit to both copyright owners and users and should be broadened.

### Part 3 – Use of copyright material for certain purposes

The elements of satire and parody are valid forms of expression that are recognised within the fair use doctrine established by US courts and (save for satire) in the European Union Information Society Directive (Article 5(3)). The extension of the fair dealing rights to include these forms of expression creates greater certainty for copyright users whilst not diminishing the rights of copyright owners and is therefore supported.

## **4. Schedule 9 – Unauthorised access to encoded broadcasts**

### Summary of Position

- ASTRA supports amendments to the Act contained in Schedule 9 of the Bill which repeals and replaces Part VAA of the Act.
- ASTRA members believe that the cumulative changes to the Act will help to address the problem of piracy of subscription television services.
- The amendments to the Act proposed in the Bill contain a number of provisions that will act as a deterrent for those who may seek illegal subscription television services.
- The piracy of subscription television services provides a significant commercial advantage to end users. This is money that would otherwise be used for the growth and development of the Australian film and television industry and the associated industries (for example the arts and sports industries) that work collaboratively within the sector. The harm to the sector as a whole is significant.

- The deliberate and willful theft of service and consequent defrauding of subscription television businesses is no different to any other form of theft or fraud. The dishonest nature of this conduct contravenes the fundamental values of Australian society.
- The proposed amendments to the Act help to align Australian law and policy with other comparable jurisdictions such as the United States, Canada, United Kingdom and New Zealand.

The cornerstone of ASTRA's members' business models is that people pay to receive and view subscription television through monthly subscription fees on an ongoing and continued basis. It is the reason the service is often referred to as 'pay TV'. Those who do not pay the television operator for the right to receive the television broadcast are excluded from receiving it by the television operator encrypting the television broadcast signal. The operator then limits supply of equipment (set top box and smart card) to decode the broadcast to those who pay for the service.<sup>1</sup>

ASTRA's members invest heavily in the development and production of the most advanced technologies and solutions designed for the protection of encrypted broadcasts. However those who stand to gain from breaching these protections will always attempt and often succeed in circumventing encryption technology or by engaging in conduct that escapes the reach of current legislation. When this occurs, the financial impact upon the industry is significant.

The commercial harm of subscription television piracy to both the subscription television industry as well as associated industries that benefit from a healthy film and television sector is significant. The subscription television industry influences the investment and growth of the training and employment development opportunities for a broad and increasingly large range of Australian workers whose livelihoods are influenced directly by the industry's successes. Approximately 5000 people currently work directly for subscription television businesses.

It is usual for payments to be made to the various owners of copyright in the programs and productions broadcast on subscription television on a 'per subscriber per month' basis. Subscription television piracy reduces the number of legitimate subscribers which reduces the payments received by copyright owners. While this affects payments to copyright holders in Australia and globally, it also affects the role the subscription television industry can play in helping to shape the cultural contributions of Australian media and society. Subscription television broadcasts over 100,000 hours of, and spends millions each year on Australian programs and productions<sup>2</sup> that have a significant role in shaping the way Australians are represented to each other and around the world. The ability to spend on and broadcast Australian programs and productions and continue to develop innovative entertainment media experiences for Australian consumers is limited when revenue and

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<sup>1</sup> Subscription TV is a different business model to that of free-to-air television which requires the widest possible reception of service due to payment being made entirely by advertisers willing to pay a premium for the widest possible exposure of their products and services using this communication medium. Free-to-air television has dominated the Australian market for many years. The Commercial Broadcasters successfully lobbied to delay the introduction of subscription television in Australia until the 1990's. Further and certainly related to this domination of the market by free-to-air television, the penetration of subscription television is relatively small when compared to other international markets. Understanding the unique nature of the service offered and the particular threats and risks it faces is however growing.

<sup>2</sup> Results of ASTRA's Annual Survey of its members 2001 - 2005

investment funds are threatened by End User Piracy.

In order to combat piracy and in addition to its members' activities, ASTRA has embarked on various activities to attempt to combat subscription television piracy. These include:

1. The development of an ASTRA Piracy Hotline to gather further information in relation to pirate activities that affect the industry.
2. The development of a consumer and community education program to increase the levels of awareness of subscription television piracy. ASTRA's website, industry association newsletters and media releases have been used to highlight police activities and to disseminate information.
3. The development of a State, Territory and Australian Federal Police ('AFP') education program to increase levels of awareness of subscription television piracy and to generate greater involvement in combating this problem.
4. The development of an education program for Key Contractors and Third Party Installers of subscription television equipment.
5. The training of a number of technical experts in order to assist court proceedings in facilitating successful prosecutions.

In addition to this, subscription television broadcasters have invested significantly in an effort to combat subscription television piracy.

In ASTRA's view proposed amendments to the Act will go a significant way to providing the missing link in a chain of protection to enable the subscription television industry to be properly equipped to actively and effectively educate the public and respond to unlawful activities that threaten its continuing viability.

ASTRA would welcome the opportunity to discuss its views further and would be pleased to provide any further comment or clarification on the matters raised in its submission.

30 October 2006