



44 Avenue Road  
Mosman NSW  
Australia 2088

T : 61 2 8968 7100  
F : 61 2 9969 3520  
W : [freetvaust.com.au](http://freetvaust.com.au)

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Senator Marise Payne  
Chairman  
Senate Legal and Constitutional Affairs Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600

By email: [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

Dear Senator Payne,

### **Free TV Submission on the Provisions of the Copyright Amendment Bill 2006**

Free TV Australia (**Free TV**) thanks you for the opportunity to make a submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the provisions of the *Copyright Amendment Bill 2006*. Free TV Australia is the peak body representing all commercial free-to-air television licensees in Australia.

Free TV welcomes and supports the legislative amendments proposed by the Bill. As content producers and content owners, Free TV's members are committed to strong copyright protection. As copyright owners, our members are committed to effective enforcement mechanisms.

We support the approach the Government has taken to format shifting. In particular, we thank the Government for recognising the distinction between media formats by reference to separate sections in the Act. We appreciate that the Bill as drafted will still enable audio visual producers to develop new and dynamic markets to exploit creative material, whilst balancing the ability of private consumers to record their favourite television program. This is extremely important in the digital age when it is now very easy to copy and distribute material and it is appropriate that producers will be able to continue to develop secondary markets which benefit consumers and producers.

There is however one issue that raises concern for our members that I wish to address.

### **Schedule 6: Part 3 – Parody and Satire**

We support the inclusion of parody or satire as a new exception for the use of copyright material for certain purposes. We consider however that the drafting of s200AB will create uncertainty. As presently drafted the parody and satire exception means that a work must satisfy the following four step test for a court to determine the work does not infringe the owner's copyright:

- (a) The circumstances of the use amount to a special case;
- (b) The use is for the purpose of parody or satire;
- (c) The use does not conflict with a normal exploitation of copyright material; and
- (d) The use does not unreasonably prejudice the legitimate interests of the copyright owner or licensee.

It is unclear why step (a) has been included in relation to parody or satire in addition to what has been established as the “Three Step Test” under the Berne Convention and the Trade Related Aspects of Intellectual Property Rights (TRIPS) copyright treaties. This test is directed toward governments and legislatures in countries that are parties to the TRIPS agreement, and requires them to make an assessment of the circumstances and impact of a proposed limitation or exception to the exclusive rights of copyright owners. It follows that there is no obligation to incorporate the three limbs of the test into the legislation implementing the exception. Having said that, we have no objection to the inclusion of paragraphs (c) and (d) above (which reflect the second and third limbs of the three step test), as these provisions will ensure that users proposing to rely on the exception (and, ultimately, courts analysing the circumstances of those users’ reliance) are required to make an assessment of the impact of their use on the copyright owner.

However, the inclusion of the “special case” language in paragraph (a) creates an additional, and in our view unnecessary, obstacle to reliance on the new exception. It would seem to us that the “use for the purpose of parody and satire” in paragraph (b) is itself the “special case” required under the first limb of the three step test, and by passing this bill, the legislature will have deemed such use to satisfy the first limb. In any event, whereas it will be possible to lead evidence about the market for copyright material, in order to satisfy the requirements of paragraphs (c) and (d), it is entirely unclear what evidence would be required to satisfy paragraph (a) in the case of parody and satire. We therefore recommend the removal of paragraph (a) from the proposed amendment.

Please contact me should you wish to discuss this submission.

Yours sincerely,

**JULIE FLYNN**  
**Chief Executive Officer**