

7 June 2016

Productivity Commission
Inquiry into Australia's Intellectual Property Arrangements

By online submission

Dear Sir/Madam

Draft Report of the Inquiry into Australia's Intellectual Property Arrangements

ASTRA welcomes the opportunity to comment on the Draft Report of the Inquiry into Australia's Intellectual Property Arrangements.

About ASTRA

ASTRA is the peak industry body for subscription media in Australia. 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 2016, 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.

We refer to our earlier submission which sets out the importance of balanced copyright arrangements for a sustainable local content delivery industry, and in turn, investment in Australian production. A system which permits copyright owners to ensure fair return on investment supports a subscription television industry which last year invested more than \$796 million in local content production, added \$2.083 billion to the economy, and created jobs for 8370 Australians.

ASTRA also refers to separate submissions from ASTRA members Foxtel, Telstra and others, which will set out individual ASTRA members' views on the range of copyright recommendations in the Draft Report.

Circumvention of geoblocking technology

This submission is focussed on draft recommendation 5.1:

The Australian Government should implement the recommendation made in the House of Representatives Committee report *At What Cost? IT pricing and the Australia tax* to amend the *Copyright Act 1968* (Cth) to make clear that it is not an infringement for consumers to circumvent geoblocking technology.

ASTRA does not support this recommendation and urges the Commission not to include it in its final report.

Encouraging Australians to circumvent geo-blocking technology would constitute direct government intervention into the distribution of local and international content in a way that would seriously undermine local businesses, cultural objectives and popular consumer offerings. It would have serious long term implications.

Impact on Australian content production

Subverting territorial licensing will have a significant detrimental impact on Australians' ability to see themselves and their cultural identity reflected back to them through locally produced screen content. Government should not act to amplify these deleterious outcomes through ill-advised intervention.

This is because territorial licensing (and the subsequent protection of those licenses via geo-blocking technology) enables the right investment conditions for sustainable local production. It also provides a model for the importation of international content which contributes to the revenue necessary for that investment in local production. It ensures the best mix of local and international content is available to Australians at reasonable prices.

It is well established that high quality Australian television production is extremely expensive. A mini-series can cost, on average, \$1.28 million per hour and telemovies can cost, on average, \$2.04 million per hour.¹

In order to recoup these costs content owners must have the flexibility to licence their content how they see fit in order to maximise return on their investment.

Territorial licensing enables local producers of premium programs like *Banished*, and *Top of the Lake*, to decide into which territories they will licence their program, and the price terms on which they do so. Producers will only invest the many millions of dollars required to produce high quality content if they can be assured that a regime is in place that allows them sufficient control over the use of that content for a fair and appropriate return on that investment.

The ability of Australian content businesses to acquire relatively inexpensive international content is also underpinned by territorial licensing. This is true not just

¹ Screen Australia reports the average cost per hour of Australian productions in different genres on its website at <https://www.screenaustralia.gov.au/research/statistics/dramatvdramahoursxformat.aspx>.

for subscription television, but also for free-to-air television services and local subscription video on demand services.

This is crucial as it enables service providers to offer a comprehensive catalogue of content in an economic way and helps generate enough revenue to invest in Australian content, which, as noted above, is costly, and is significantly more expensive to produce than it is to acquire Australian distribution rights to international programming.

In this way, there is a clear link between geographic licensing arrangements and the achievement of important cultural policy objectives. Moves to subvert these licensing arrangements would have significant implications for Australia's cultural life and cultural industries, as well as for Australian consumers.

Impact on cultural policy objectives

The production of Australian television content is an enduring public good, contributing to cultural identity and enabling the telling of Australian stories in Australian voices.

This has been repeatedly recognised in studies and reviews, with the ACMA identifying it as one of the 'enduring concepts' which retain lasting significance in the face of substantial change in the communications sector.² The Convergence Review also found the production of Australian screen content to be an objective which will survive upheavals in the communications landscape:

Since the inception of television broadcasting, governments of all persuasions have sought to ensure that Australian professional content is shown on our screens.

Support for Australian content is based on the social and cultural benefits that come from programs that recognise Australian identity, character and cultural diversity. The Review received many submissions supporting the value of Australian content and the continuing need to promote its production in a converged media environment.³

More recently, the draft report of the Review of the ACMA, in identifying enduring policy concepts, has identified the ongoing need for Australians to "be able to experience Australian voices and stories when using or consuming media and communications services."⁴

It does not stand to reason that, in the long term, Australians will accept an outcome whereby Government action has contributed to the degradation of local screen content. The potential loss of cultural identity, and the threat to the local production industry, clearly outweighs any small benefit that a small proportion of Australians may gain from subscribing to an international service.

² <http://www.acma.gov.au/theACMA/enduring-concepts-building-blocks-for-a-converged-media-and-communications-future>

³ Convergence Review Final Report (2012), p 59

⁴ Review of the ACMA, Draft Report (2016), p 84

An organically developed framework for content distribution

It is important to note that the system of territorial licensing has evolved naturally, supported by a balanced copyright system. It is clearly possible that changing consumer behaviour and/or business models may result in current distribution practices evolving into a pan-geographic or global licensing system. This would not be without its own problems (refer to the Foxtel submission to the Draft Report for further detail).

However, ASTRA supports letting industry, rather than Government intervention, determine the most sustainable long-term arrangements for content licensing and distribution. This is the best way to ensure reasonable returns on investment, re-investment, job creation and innovation.

Potential civil liability issues

ASTRA notes that the Commission supports consumers using technological methods to manipulate their apparent location, so as to deceive overseas service providers into thinking those consumers are within that overseas jurisdiction.

Consumers should be made aware that this is likely to be a breach of the terms and conditions attached to that service, and is therefore not without legal risk. It is not appropriate for the Government, or Government bodies (such as the Commission) to encourage this kind of behaviour.

Industry initiatives to meet consumer demand

ASTRA acknowledges that part of the answer to the trend of circumventing geographic licensing is to ensure timely and cost-effective access to a broad range of copyright protected works, and that this is the responsibility of the content distribution industry.

That's why the subscription TV industry has worked intensively in recent years to create a wide range of consumer options, ensuring the best mix of local and international content is available in a timely way, on a range of devices, and at attractive price points.

The diverse and wide ranging content that Foxtel offers is now available on a full range of devices and platforms. As well as its iQ and MyStar set-top boxes, this includes tablets, mobile phones and other popular devices. For example, Foxtel Play streams TV, news, sport and movies, both live and on-demand, on month-to-month, no lock-in contracts. Foxtel Go is provided at no extra charge to cable and satellite subscribers and provides live and on-demand content on mobile and tablet devices. In addition to these options, Presto's SVOD service offers TV shows and movies on month-to-month, no lock-in contracts.

These services are available at extremely competitive prices, making subscription TV content more affordable than ever. Prices now start at \$26 per month (which provides access to 45 channels and a large amount of on-demand content). The Foxtel Play service is priced at \$25 per month and Presto packages are available from \$9.99 per month.

The industry has also addressed demand for content to be available simultaneously with, or very quickly after, the overseas broadcast. For example, the most recent series of *Game of Thrones* premiered locally at the same time as the US broadcast. There is a long list of other examples set out in Foxtel's submission to the Draft Report.

These developments are a sound example of how the competitive landscape will continue to ensure that media operators are responsive to consumer demands and to technological developments.

We strongly oppose any additional government intervention in relation to the distribution of copyright protected material, whether at the production, distribution or consumer segments of the value chain. This includes draft recommendation 5.1, or any other steps taken which act to increase the rate at which territorial licensing is subverted.

If you have any queries or would like to discuss the issues raised in this letter, please contact Holly Brimble, Policy and Regulatory Manager .

Yours sincerely

Andrew Maiden
CEO