

KEY POINTS

- The creative industries are an increasingly important driver of investment and economic growth in Australia.
- Copyright law must reflect an appropriate balance between the ability for consumers to use copyright material and the right of the copyright owner to manage exploitation of the content that the owner has invested economic and other resources to create.
- Technological advances in the digital era have enabled significant increases in copyright infringement, posing a significant threat to the viability of content production and distribution.
- ASTRA strongly supports measures that would enhance existing efforts to combat online copyright infringement, by encouraging cooperation between content owners and ISPs, while ensuring ISPs are provided sufficient protection from liability for authorisation of copyright infringement.

BACKGROUND

Economic contribution of Australia's content industries

The creative industries are an increasingly important driver of investment and economic growth in Australia. A 2012 PwC report *The Economic Contribution of Australia's Copyright Industries* found that for the year 2010--11, Australia's copyright industries:

- employed 906,591 people, which constituted 8.0 per cent of the Australian workforce;
- generated economic value of \$93.2 billion, the equivalent of 6.6 per cent of gross domestic product (GDP);
- Generated just over \$7 billion in exports, equal to 2.9 per cent of total exports.

The previous Federal Government's *Strategy for Creative Industries*, published in August 2011, noted that, in 2008-09, the creative industries made a larger contribution to GDP than a number of traditional industry groups, such as agriculture, forestry and fishing.

In 2012-13, the Australian STV industry invested around \$700 million in Australian content production, employing 6600 Australians and adding \$1.6 billion to the Australian economy.

Need for strong copyright enforcement

The subscription television (STV) sector, like other sectors involved in the production and distribution of content, relies on a strong legislative framework to protect the substantial investments made in creative content, and to provide certainty for content producers that they can receive a fair return on this investment. Copyright law must reflect an appropriate balance between the ability for consumers to use copyright material and the right of the copyright owner to manage exploitation of the content that the owner has invested economic and other resources to create.

The impact of convergence and the digital economy has the potential to create synergies across once separate industries to drive innovation in the communications environment, however this potential cannot be realised if content producers and distributors are not able to effectively monetise the content they produce or acquire. The ability for content producers and distributors to extract fair monetary returns for their investment in developing or acquiring content is essential for the ongoing sustainability of media and communications enterprises and for the continued investment in Australian content production.

There is growing evidence of the impact of copyright piracy on media sales. A 2011 study undertaken by Ipsos and Oxford Economics to quantify the economic impact of movie piracy in Australia found that, in the 12 months up to Q3 2010:

- 6,100 Full Time Equivalent (FTE) jobs were forgone across the entire economy including nearly 2,300 forgone directly by the movie industry and retailers;
- allowing for effects on other industries, \$1.37 billion in Gross Output (Sales) was lost across the entire Australian economy – equivalent to a loss of GDP of \$551 million across the Australian economy.

Technological advances in the digital era have enabled significant increases in copyright infringement, posing a significant threat to the viability of content production and distribution. Any dilution of the copyright owner's capacity to exploit rights will reduce the incentive to invest in creative content, reducing the potential for increased Australian content production into the future. Producers will only invest the many millions of dollars required to produce high quality television content such as *The Devil's Playground*, *Wentworth* and *Tim Winton's cloudstreet* 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.

Online Copyright Infringement Discussion Paper

In July 2014, the Federal Government released a discussion paper outlining proposals to enhance existing copyright law to combat online copyright infringement. The Government's key proposals would:

- extend liability for authorising copyright infringement to circumstances where an internet service provider (ISP) can take reasonable steps to discourage or reduce online copyright infringement, even where that ISP does not have a direct power to prevent a person from doing a particular infringing act – 'reasonable steps' could include whether the ISP was complying with 'any relevant industry schemes or commercial arrangements' to prevent online copyright infringement;
- enable rights holders to apply to a court for an order against ISPs to block access to an internet site operated outside Australia, the dominant purpose of which is to infringe copyright;
- extend the safe harbour scheme for ISPs to ensure entities such as universities and online search engines can make use of the safe harbour provisions.

ASTRA strongly supports measures that would enhance existing efforts to combat online copyright infringement, by encouraging cooperation between content owners and ISPs, while ensuring ISPs are provided sufficient protection from liability for authorisation of copyright infringement.

A range of enforcement measures to combat online copyright infringement have been introduced in various overseas jurisdictions, such as graduated response schemes and blocking access to infringing websites. While many of these measures have only recently been introduced, early evidence suggests that, in conjunction with industry-led information

initiatives regarding the impact of piracy on the content industries and the availability of legitimate digital content online, such enforcement measures are effective in reducing online copyright infringement.

At the same time, ASTRA recognises the need to ensure that the legitimate rights and concerns of consumers are taken into account in any legislative framework to address online copyright infringement. While effective enforcement of content piracy is essential to reduce online copyright infringement, we recognise the importance of ensuring the availability of legitimate online digital content, and continued consumer education from industry regarding the impact of content piracy. The content industries have been highly proactive in developing innovative and affordable means by which consumers can access digital content legitimately, and have invested (and will continue to invest) significantly in consumer awareness initiatives.