

23 November 1999

Mr Kevin Andrews
Chair
House of Representatives Standing committee on
Legal and Constitutional Affairs
Parliament House
Canberra
ACT 2600

By Facsimile: 6277 4773

Dear Mr Andrews

I apologise for the lateness of this supplementary submission and any inconvenience it may cause to the Committee or the Secretariat.

However, I believe that it is important any legislation passed by the parliament is enforceable. It has recently come to our attention that delays in the passing of the Broadcasting Services Amendment Bill (No 1) 1999 which are concerned with the broadcast signal may have the unintended effect of delaying the implementation of the statutory licence for underlying rights holders in retransmitted free to air broadcasts contained in the Digital Agenda Bill.

What we are seeking is some assurance from the government that this is not the case and, if it is the case, that some legislative remedy be made to ensure that underlying rights holders are not adversely affected by the delays in the Broadcasting Services Amendment Bill.

I should add that we have had positive discussions with the government on this issue but we believe we are obliged to bring this issue to the Committee's attention.

Nature of the Threat

One of the purposes of the Broadcasting Services Amendment Bill (No1) 1999 was to repeal section 212 (2) of the Broadcasting Services Act which has been interpreted by the High Court in the Foxtel case to give carte blanche to retransmit without permission or compensation for the owners of the signal and without compensating the underlying rights holders or the owners of the signal.

Section 212(2) provides in part that “ no action, suit or proceeding lies against a person in respect of the retransmission” .

Our understanding is that concerns have been raised from ASTRA and FACTS regarding the most desirable arbitration mechanism in lieu of an agreement. Various models are being considered which may add to the delay in the passing of this legislation. Screenrights does not have a view at this point on which model is the most desirable.

However, we do have a view on the potential effect of the delay in the Broadcasting Services Bill.

What do we want?

Without appropriate amendments to the Digital Agenda Bill it may be that the retransmission regime for underlying rights holders is rendered nugatory.

Copyright owners could be the innocent bystanders who could be damaged by the possible delay in the passing of the Broadcasting Services Bill.

We believe some interim legislative measures should be in place to overcome this result in the event of any delay to the broadcasting reforms. Matters within the ambit of the retransmission copyright reforms should be excluded from the operation of section 212(2) of the Broadcasting Services Act.

We would like the committee to raise this question of the operability of Part VC of the Copyright Amendment (Digital Agenda) Bill directly with the government to ensure that the committee is fully informed as to the potential effects of the delay in the Broadcasting Services Bill.

Yours sincerely

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