

## FACT SHEET

### US FREE TRADE AGREEMENT IMPLEMENTATION ACT 2004

#### AMENDMENTS TO ENCODED BROADCAST PROVISIONS OF *COPYRIGHT ACT 1968* TO IMPLEMENT OBLIGATIONS IN AUSTRALIA- UNITED STATES FREE TRADE AGREEMENT

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##### *Background*

The *US Free Trade Agreement Implementation Act 2004* (USFTAI Act) and the *Copyright Legislation Amendment Act 2004* (CLA Act) made a series of amendments to the encoded broadcast provisions in Part VAA of the *Copyright Act 1968* (the Act). The amendments implement obligations under Article 17.7 of the Australia-United States Free Trade Agreement (AUSFTA). Both the AUSFTA and the encoded broadcast amendments in the USFTAI Act and the CLA Act came into force on 1 January 2005.

##### *Wider criminal and civil liability*

The amendments to Part VAA of the Act have strengthened the protection of encoded broadcasts by widening the scope of both criminal and civil liability. In summary, criminal liability will now extend to:

- any use of a broadcast decoding device to gain access to an encoded broadcast without authorisation of the broadcaster where the person uses, or authorises the use of, the device by way of trade or with the intention of obtaining commercial advantage or profit (sub-s 135AS(1A)),
- the distribution of a decoded broadcast without authorisation irrespective of whether the distribution is for commercial advantage or profit (sub-s 135AS(1B)), and
- the use of a broadcast by way of trade or with the intention of obtaining a commercial advantage where the initial decoding of the encoded broadcast was done by another person without authorisation of the broadcaster (sub-s 135AS(1C)).

Activity for which civil actions may be brought has also been widened to include:

- use of a broadcast decoding device to gain unauthorised access to an encoded broadcast where the person knew or ought reasonably to have known that the decoding was unauthorised (sub-s 135ANA(1)),
- distribution of a decoded signal where there is a prejudicial impact on a person with an interest in the signal and the person distributing the signal knew that it had been accessed without the broadcaster's authorisation (sub-s 135ANA(1A)), and

- reception of an encoded broadcast that has been accessed through a broadcast decoding device (regardless of whether the person receiving the broadcast used a decoding device themselves), where the person knew that the broadcaster had not authorised access to the broadcast (sub-s 135ANA(1B)).

The amendments to the civil remedy provisions extend the scope of those provisions under the Act which previously applied only to the use of a broadcast decoding device for the purpose of, or in connection with, a trade or business.

Standing to seek civil remedies has also been extended to channel providers and any other person with an interest in the copyright in the content of the encoded broadcast. Previously, standing to initiate civil proceedings under Part VAA of the Act was available only to broadcasters.

#### *Mode of delivery*

The amendments to Part VAA apply to encoded broadcasts regardless of the mode of delivery. In doing so, Australia has gone further than is required by its obligations under Article 17.7 of the AUSFTA by capturing cable signals in addition to satellite signals.

#### *More information*

For copies of the USFTAI Act and the CLA Act (and Explanatory Memoranda) visit: [www.comlaw.gov.au](http://www.comlaw.gov.au)

If you would like more information on copyright generally visit <http://www.ag.gov.au/copyright>, or subscribe to the Attorney-General's Department's Copyright E-news at <http://www.ag.gov.au/www/enewscopyrightHome.nsf>