

6 March 2008

Ms Helen Daniels
Assistant Secretary
Copyright Law Branch
Attorney General's Department
By Email

Dear Ms Daniels

COPYING PHOTOGRAPHS AND FILMS IN A DIFFERENT FORMAT FOR PRIVATE USE

ASTRA writes to you with regard to the Government's review of sections 47J and 110AA of the Copyright Act 1968 ('**Review**'). This correspondence will focus upon section 110AA of the Copyright Act 1968 ('**the Act**') concerning the review of format shifting provisions for audio-visual material. ASTRA appreciates the opportunity to contribute to this Review.

ASTRA represents the interests of subscription television platforms and channel providers / producers. A list of ASTRA's members can be found at www.astra.org.au/members.asp.

ASTRA's members have a vested interest in ensuring that copyright law provides an effective measure of protection of their respective interests as copyright owners and as broadcasters. ASTRA's members invest significant amounts of money in the production and exploitation of films and television programs and have a legitimate interest in ensuring that their rights in works created by them are sufficiently protected from theft, misuse or unauthorised exploitation. A certain legislative environment will ensure continued long term investment in, and exploitation of, new works, both internationally and in Australia.

In ASTRA's 2005 submission regarding Fair Use and other Copyright Amendments considering amongst other things, time-shifting and format shifting (attached), we stated the following regarding format shifting:

"A right to engage in format-shifting is more relevant to the copying of musical works from one format (usually a CD) to another format (at present, an MP3 player via recording the musical work to a computer hard drive from a CD in the first instance). However, in the digital environment, it is only a matter of time before format-shifting will also become an issue in respect of the copying of television broadcasts from one format to another (for example, recording a program using a PDR, copying that program to a personal computer hard drive and then copying that recording to a portable video player such as a next generation MP3 player or iPod). As ASTRA is not directly involved in the exploitation of musical works other than as embodied in programs in its subscription television and radio broadcasts, and as currently the effective format-shifting of television broadcasts is less relevant as available bandwidth is yet to catch up with file sizes, ASTRA does not at this



stage make any material submissions in relation to the format-shifting of works. However, ASTRA would like the opportunity to revisit this issue in the future.”

ASTRA is aware that there is strong opposition from many copyright owners to an expansion of audio visual format shifting rights for content users. ASTRA is also aware that platforms providing content to consumers seek further flexibilities in the Act to permit format shifting within certain controlled distribution systems such as transferring material from (for example) digital video recorders to portable versions of this device.

The overarching concern from copyright owners are that changes to the Act may have the effect of encouraging wide spread piracy of audio visual works and thereby crippling their opportunity to receive economic benefit from the exploitation of their works. ASTRA is a strong and vocal advocate against piracy of both content and services and so intimately understands these concerns. Further, contractually and through commercial agreement with distribution platforms, the process of expanding format shifting rights may (albeit slowly) be occurring already without the need for legislative intervention. However, the issue appears to be whether this process is happening quickly enough for copyright users (and therefore platforms) given the rapid nature of technological advancement and therefore whether there is there a need to make limited format shifting permissible with various controls given the experience both here and internationally regarding musical works.

ASTRA’s view is that it is probably too early to tell. ASTRA recommends a further review of the Act at a time in the future when it will be easier to assess the contractual frameworks regarding supply of content for format shifting purposes and the consumer demand for such use.

Do not hesitate to contact ASTRA if there is anything further that we may be able to provide to assist in the consultation process.

Yours sincerely

A handwritten signature in cursive script that reads "Debra Richards".

Debra Richards
CEO