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Ms Helen Daniels  
Assistant Secretary  
Copyright Law Branch  
Attorney-General's Department  
Robert Garran Offices  
National Circuit  
BARTON ACT 2600

Dear Ms Daniels

### **Review of Part V Division 2AA of the Copyright Act**

I refer to the Department's Issues Paper entitled *Part V Division 2AA of the Copyright Act: Limitation on Remedies Available Against Carriage Service Providers: Does the Scheme Need to be Expanded?*

Free TV welcomes the opportunity to comment on the Issues Paper. This submission outlines Free TV's broad preliminary views on the issues raised in the Paper. Free TV would appreciate the opportunity to provide further comment on any specific legislative proposals put forward by Government as a result of this review.

As content producers and content owners, Free TV's members are committed to strong copyright protection. Free TV supports arrangements which encourage providers of network access to cooperate with copyright owners in deterring unauthorised storage and transmission of copyright materials by subscribers. In the main, the interests of copyright owners are served by speedy take-down of infringing material. For this reason, Free TV supports in principle expansion of the scheme beyond carriage service providers to educational institutions and libraries, which provide network access to large numbers of users, which fulfil an important social function in doing so and which can not reasonably monitor the actions of users over the systems and networks they operate.

As copyright owners, broadcasters are also committed to effective enforcement mechanisms. The digital environment presents a number of challenges for broadcasters. The capacity of the internet to be used as an unauthorised distribution channel for television programs is a matter of great concern to television broadcasters. Piracy over the internet has exploded in recent years, particularly as a result of increase in use of file-sharing software applications such as BitTorrent and others.

Where the safe-harbour scheme does not result in take-down, or take-down within a reasonable time, copyright owners may be forced to enforce their rights via legal proceedings. In this context we note that section 116A1 of the Act appears to provide carriage service providers with a real procedural advantage, in that provided the carriage service provider can '*point to evidence ... that suggests that the carriage service provider has complied with a [safe-harbour] provision, the court*

*must presume, in the absence of evidence to the contrary, that the carriage service provider has complied with the condition.*" (and is protected from financial penalties).

This provision has not yet been tested and we do not yet know how it will operate in a practical sense. However, Free TV is concerned that the provision may result in added expense and difficulty in enforcing copyright.

Free TV seeks a review of this provision in conjunction with any expansion of the safe-harbour scheme, to ensure that copyright owners are able to enforce their rights as and when necessary, without unwarranted cost and expense.

Please contact me if you would like to discuss this submission.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Julie Flynn', with a long, sweeping flourish extending to the right.

**JULIE FLYNN**  
**Chief Executive Officer**