

27 April 2012

Assistant Secretary  
Business Law Branch  
Attorney-General's DepartmentBy email: [copyright@ag.gov.au](mailto:copyright@ag.gov.au)

Dear Sir/Madam

**Review of the exceptions in the *Copyright Act 1968* (the '*Copyright Act*')**

Free TV Australia is the peak body representing all of Australia's commercial free-to-air television licensees. Free TV welcomes the Australian Law Reform Commission's review of the copyright exceptions and looks forward to working with the Commission in reviewing the appropriateness and adequacy of these exceptions.

**Exceptions**

The terms of reference refer to 'exceptions'. In our view, this will encompass the following provisions:

- Ephemeral copying
- Retransmission rules
- Incidental use
- Fair dealing
- Time and format shifting provisions for private and domestic use.

These exceptions have a significant impact on the broadcasting industry and the way in which Free TV members operate their business.

Of particular concern to Free TV members are the current retransmission rules, which are outdated and in urgent need of reform. We request that the draft terms of reference make specific reference to the need to review the retransmission rules.

The retransmission rules have failed to adapt to technological and market developments. They currently operate in a way which was not intended at the time of their creation. This is a pressing matter for Free TV members who have no say in whether their signals are transmitted and how. New entertainment platforms, such as IPTV and Internet Television, are using free to air signals without permission or compensation under the existing retransmission rules. This has significantly skewed the balance between owners and users and requires urgent reform.

These concerns have been raised with Government during the Convergence Review consultation process.

Free TV submits that the Review should also give consideration to the introduction of an 'orphaned work' exception. Orphaned works are a significant issue for Free TV members and this area has been identified as needing legal reform for some time.

## Terms of reference

Free TV recommends the following changes to the draft ALRC Terms of Reference:

1. Inclusion of a reference to the need to review the retransmission rules;
2. Amending the scope to include impact of the changes on industry and the public; and
3. Inclusion of a definition of the terms 'non-commercial' and 'social networking'.

Free TV members are key stakeholders in the copyright landscape. Commercial free-to-air television networks have significant interests as prominent content producers and owners, in addition to being regular users of copyright material. Free TV members are committed to a strong copyright protection and enforcement framework. However, this must be balanced with a fair and workable set of exceptions which promote creativity and access to users in a digital economy.

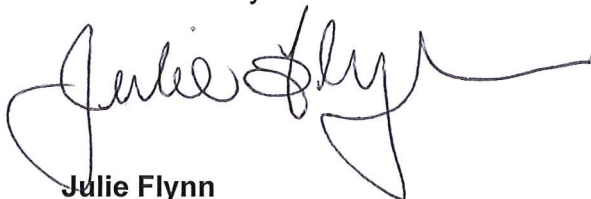
Free TV submits that the scope of reference be expanded to take into account the potential impact of reform options on industry, consumers and the community. Changes to the exceptions in the *Copyright Act* will have significant flow-on on broadcasters and their ability to control and monetise their content.

Free TV also recommends that the Commission provide clarification on what it intends to be covered by the use of the terms 'non-commercial' and 'social networking'. Sites such as YouTube which carry a mix of commercial and user-generated content represent a particular challenge to the copyright framework. Further guidance on these concepts as they are used in the terms of reference is necessary in order to consider the potential implications.

## Contact details

Thank you for the opportunity to comment on the proposed terms of reference. We look forward to engaging with the Australian Law Reform Commission on these important issues throughout the review. Please contact me if you would like any further input or require clarification on any of the points raised in this letter.

Yours sincerely



**Julie Flynn**  
CEO