ASTRA Subscription Television Australia

Australian Law Reform Commission Discussion Paper: Copyright and the Digital Economy

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INTRODUCTION

The Australian Subscription Television and Radio Association (ASTRA) welcomes the opportunity to comment on the Discussion Paper of the Australian Law Reform Commission's (ALRC) Review of Copyright and the Digital Economy.

ABOUT ASTRA

ASTRA is the peak industry body for subscription television (STV) in Australia. ASTRA was formed in September 1997 when industry associations representing subscription (multi-channel) television and radio platforms, narrowcasters and program providers came together to represent the new era in competition and consumer choice. ASTRA's membership includes the major STV operators, as well as channels that provide programming to these platforms.

GENERAL COMMENTS

As we noted in November 2012 in our submission to the Issues Paper of this Review, the STV sector, like other sectors involved in the production and distribution of content, relies on a strong legislative framework to protect the substantial investments made in creative content, and to provide certainty for content producers that they can receive a fair return on this investment. Copyright law must reflect an appropriate balance between the ability for consumers to use copyright material and the right of the copyright owner to manage exploitation of the content that the owner has invested economic and other resources to create.

The impact of convergence and the digital economy has the potential to create synergies across once separate industries to drive innovation in the communications environment, however this potential cannot be realised if content producers and distributors are not able to effectively monetise the content they produce or acquire. The ability for content producers and distributors to extract fair monetary returns for their investment in developing or acquiring content is essential for the ongoing sustainability of media and communications enterprises and for the continued investment in Australian content production.

ASTRA recognises that the Discussion Paper demonstrates an acknowledgement of the significant investments behind the creation and acquisition of Australian and international content, and that appropriate remuneration for the use of that content is essential for Australian producers and content distributors to continue making such investments. However, we continue to be concerned that a number of the proposed reforms which are justified on the basis of a shift in community attitudes regarding how copyright material should be accessed and used give undue weight to what might otherwise correctly be considered to be infringing behavior merely because it has become a social norm. We also maintain that more emphasis should be given to reforms that might increase community recognition of the need for commercially sustainable business models to ensure continued creation of Australian content.

COMMENTS ON SPECIFIC CHAPTERS OF THE DISCUSSION PAPER

ASTRA provides the following comments on particular aspects of the ALRC's Discussion Paper. All ASTRA members strongly support a robust copyright regime that appropriately balances the rights of copyright owners with the ability of consumers to access and use copyright content. We would refer you to submissions by individual ASTRA members for their detailed responses to other issues dealt with in the Discussion Paper.

1. Third Parties (Ch 5)

ASTRA submits that third-party 'facilitation' of copying and storing copyright content, particularly in relation to the 'private and domestic use' provisions, is likely to include some form of

commercial gain for the entity providing the 'facilitation' service. The Optus TV Now case affirmed the legitimate interests of sports bodies and other rights holders in receiving a justifiable return for their property and investments, and the inappropriateness of an entity attempting to exploit exceptions for private and domestic use for commercial gain.

STV providers typically offer subscribers time-limited access to content with recording permitted on STV set top units. This business model would be undermined if copying by third parties was permitted, or the legislative scheme condoned subscriber copying of this content for permanent retention in a remote storage facility. As such, ASTRA would caution against any exemption which allows recordings made by entities, not licensed by rights holders, to be stored on remote servers for subscribers to access. This would be a commercial exploitation and must require a licence from the content owner.

Furthermore, ASTRA would be concerned with the extension of any exception to a third party facilitating private uses, since many such services seek to exploit provision of access to content in a way that would be harmful to the interests of right holders, including by providing access to third parties and allowing the user to share such stored content more broadly. Any exception, including those applying to time shifting should be exercisable solely by those which it seeks to benefit – private individuals.

As detailed below, ASTRA believes the existing provisions for time-shifting work effectively in the interests of both the consumer and the rights holder, and that any proposed new exception should not be contemplated where its introduction impacts on the capacity of content owners to receive a fair and reasonable return for their investment.

2. Private and domestic use (Ch 9)

Proposal 9–1: The fair use exception should be applied when determining whether a private and domestic use infringes copyright. 'Private and domestic use' should be an illustrative purpose in the fair use exception.

Proposal 9–2: If fair use is not enacted, the Copyright Act should provide for a new fair dealing exception for private and domestic purposes. This should also require the fairness factors to be considered.

Proposal 9–3: The exceptions for format shifting and time shifting in ss 43C, 47J, 109A, 110AA and 111 of the Copyright Act should be repealed.

ASTRA believes the existing exceptions for copying legally acquired copyright material have worked well to provide an appropriate balance between reasonable use by consumers and the right of content owners to receive fair remuneration for the use of copyright content.

Content owners and distributors are developing new business models that give consumers greater flexibility in the acquisition, access and use of copyright material. A converged media and communications environment will only increase competition and drive content producers and distributors to develop more innovative and consumer-responsive means to access and use copyright content, while ensuring a reasonable return for investment in content creation.

The ability of content rights holders to have certainty over how their content is distributed, accessed and used is vital to ensure continued investment in content production. ASTRA would strongly oppose any reforms that permit an entity that is not the rights holder, or an entity not authorised by the rights holder, to build a business model using copyright material based on exceptions specifically created only for private or domestic use.

Any recommendations for new exceptions that may arise from this review should include an assessment of the potential economic detriment for content owners. Any proposed new exception should not be contemplated where its introduction impacts on the capacity of content owners to receive a fair and reasonable return for their investment. ASTRA submits that such

any exception seeking to broadly facilitate any "private or domestic" use, without reference to what specific acts are the subject of such an exception, would be likely to significantly impair the interests of stakeholder, and introduce uncertainty for both right holders as well as consumers.

Use of different works and subject-matter are not necessarily comparable – consumers access and use music, films, television programs, books and other content in different ways. Exceptions that may be appropriate for one content form, and that do not impact on the ability of the content owner to receive fair remuneration for that content, may not be appropriate for, and may threaten the commercial viability of, other forms of content or content delivered in a particular way. ASTRA urges caution in any proposals that may threaten the commercial basis that underpins the creation and distribution of copyright content.

3. Retransmission of Free-to-air Broadcasts (Ch 15)

The retransmission of free-to-air (FTA) broadcasts is a complex communications policy issue that cannot be addressed within the narrow scope of copyright reform, and ASTRA agrees with the conclusion of the ALRC that it would be inappropriate for this Review to make recommendations on a must-carry scheme.

As ASTRA has previously submitted to this Review, the existing retransmission scheme works well to the benefit of consumers and has no detrimental impact on the normal commercial operations of FTA television broadcasters. As discussed below, ASTRA does not consider that either option for reform proposed by the ALRC is justified or warranted.

Retransmission of free-to-air services by subscription television has no negative impact on advertising revenue for commercial free-to-air television services

Commercial FTA broadcasters argue that a retransmission right should be introduced for these broadcasters to "exploit the value of their services". ASTRA submits the existing regulatory framework for the retransmission of FTA television under the Broadcasting Services Act (BSA) and the Copyright Act works well for both consumers and all industry stakeholders.

Commercial broadcasting services are services that provide programs that are "made available free to the general public" and that "are usually funded by advertising revenue".[1] Commercial FTA broadcasters argue that allowing FTA services to be made available "on competing platforms without consent is prejudicing the legitimate interests of broadcasters to exploit those channels, including on the terrestrial platform".[2] However, commercial FTA broadcasters have never provided any evidence to suggest that the retransmission of their services by STV leads to a loss of advertising revenue or potential audience reach (that is, the normal means by which commercial FTA broadcasters exploit the economic value of their channels):

- the BSA provides that a service provided by a commercial television broadcasting licensee is only permitted to be retransmitted within the licence area of the licensee[3] – commercial television services retransmitted on STV platforms consist of the same programs with the same advertisements as those services transmitted terrestrially within the relevant licence area, meaning that advertisers reach relevant audiences;
- retransmission has no detrimental impact on the number of households within a licence area that can adequately receive FTA signals (and thus be exposed to advertising on a FTA channel);
- audience numbers for FTA programs, upon which commercial FTA broadcaster advertising revenues are based, include FTA viewing in homes of STV subscribers;

[1] *Broadcasting Services Act 1992*, s 14.
[2] Free TV submission to ALRC Issues Paper, 10 December 2012, p.5.
[3] Subject to the payment of equitable remuneration to the underlying rights holders: BSA, s 212.

- the fact that there may be less viewing of FTA television services in homes with STV compared to non-STV homes is not an effect of retransmission, but of competition between different television services.

In its submission to this Review's Issues Paper, Free TV claimed that subscription platforms such as Foxtel, FetchTV and Telstra's T-Box "include FTA channels in their product to enhance the appeal of their product" and assert that "the availability of free-to-air services in a subscription product is a key component of marketing campaigns for such services", citing FetchTV and Telstra T-Box as examples.[4] In response to these claims, ASTRA notes that:

- consumers pay for STV to receive channels, programming and other services that are different to what is available on FTA television, not to receive services they can already receive for free;
- the availability of retransmitted FTA services is not part of any marketing or promotional material for the Foxtel platform;
- neither FetchTV nor Telstra T-Box retransmit FTA services. Both the Fetch and T-Box set-top boxes include digital terrestrial tuners for reception of FTA services, just like any other digital television receiver available on the retail market. To argue that FetchTV or Telstra is unfairly exploiting the availability of FTA services to promote their products would be equivalent to arguing that Sony or Samsung unfairly exploit FTA services by marketing its televisions as being able to receive terrestrial FTA television.

Commercial FTA broadcasters are effectively seeking an additional revenue stream from STV customers for television services that are required to be both freely available and usually funded by advertising, and where those customers can already receive those services without payment.

Existing retransmission regime works well for the benefit of consumers

The retransmission of FTA services on STV gives subscribers the convenience of not needing to move from one platform to another. Consumers who view FTA services via their STV provider can access these services terrestrially (or via satellite) if they choose to do so.

The retransmission of FTA broadcasts on STV has, up to this point, been successfully achieved under the existing regulatory regime for retransmission through commercial negotiation between STV platform providers and commercial and national television broadcasters. There is no public policy justification for regulatory intervention in a process which works effectively in the interests of the consumer and the underlying rights holders in the programs broadcast by FTA services.

Proposal 15–1:

- ***Option 1: The exception to broadcast copyright provided by the Broadcasting Services Act 1992 (Cth), and applying to the retransmission of free-to-air broadcasts; and the statutory licensing scheme applying to the retransmission of free-to-air broadcasts in pt VC of the Copyright Act, should be repealed. This would effectively leave the extent to which retransmission occurs entirely to negotiation between the parties—broadcasters, retransmitters and underlying copyright holders.***
- ***Option 2: The exception to broadcast copyright provided by the Broadcasting Services Act, and applying to the retransmission of free-to-air broadcasts, should be repealed and replaced with a statutory licence.***

Option 1 will put the onus on FTA broadcasters to clear the underlying rights, which will be practically impossible given the amount of content comprised in a FTA broadcast to be cleared.

[4] Free TV submission to ALRC Issues Paper, 10 December 2012, p.5.

As a result, implementation of option 1 will have the likely effect of eliminating retransmission in Australia.

The ALRC itself recognises the practical challenges with option 1. Leaving aside the issue of the volume of content to be cleared, it is noted in the Discussion Paper that underlying rights holders may choose not to provide clearance, or place conditions on the ways in which their content can be used when retransmitted. It is noted that if the current free use exception for broadcast copyright were repealed:

> while underlying rights holders would not directly determine whether retransmission is allowed, in practice, they may be able to prevent it…[because] they may condition licensing of their content for free-to-air broadcast on the basis that the retransmission will not occur, or that the retransmission only occur on, for example, linear subscription television but not other technologies, such as 3G or 4G mobile networks.[5]

In these circumstances, even if a FTA broadcaster sought to have its entire service retransmitted on a STV platform it may not be able to, or may be forced to 'black out' certain programs from view on the retransmitted service. This would be an undesirable outcome for the viewer, as well as the FTA broadcasters and their advertisers.

Neither is the introduction of Option 2, which would involve the introduction of a statutory licensing scheme for broadcast copyright, justified.

As previously submitted by ASTRA, FTA broadcast signals are universally and freely available in Australia. Where a service is retransmitted on a STV platform for the convenience of subscribers (as recognised by the Copyright Tribunal), and merely facilitates another way of navigating to FTA channels that are otherwise already able to be received, there is no case for imposing new cost and administrative burdens on STV providers by introducing an additional licensing scheme.

The merit of imposing these cost and administrative burdens must be further questioned in light of the expectation that a statutory licensing scheme would deliver only a very small new revenue stream to FTA broadcasters. As noted in Foxtel's submission in response to this Discussion Paper, it is expected that the value of equitable remuneration payable for broadcast copyright would be within and not additional to the existing rates determined by the Copyright Tribunal, and that the current distribution policy for government use of television programs would be a good guide. In that case, where equitable remuneration is payable for broadcast copyright, a mere 2% is allocated to the broadcast signal.

Retransmission is an extremely limited right and an insignificant exception to the FTA broadcast copyright – as noted, the retransmission must be simultaneous, unaltered and must be made available in the same licence area in which the FTA service is available terrestrially. Where retransmission occurs, commercial broadcasters are already remunerated through advertising revenue. Where retransmission does not currently occur, it is even less likely if an additional and unjustified FTA revenue stream were to be introduced.

Must carry obligations

ASTRA agrees with the conclusion of the ALRC that it would be inappropriate to make recommendations on a must-carry scheme in the context of this review given, as the ALRC notes, this issue "does not directly concern the operation of copyright exceptions, which are the subject of the Terms of Reference" and that "the policy rationales for must carry regimes are clearly based primarily on communications and media policy and are not issues that can, or should be driven by the ALRC in the context of reform of copyright laws".[6]

[5] ALRC Discussion Paper, p.58.
[6] ALRC Discussion Paper, p.327.

Given the issue of must carry obligations and retransmission consent may be considered in the broader context of media and communications policy, in Appendix A ASTRA reiterates its position that existing retransmission arrangements are appropriate and that there is no evidence of a need for US-style must carry/retransmission consent scheme in Australia.

4. Contracting Out (Ch 17)

Proposal 17–1 The Copyright Act should provide that an agreement, or a provision of an agreement, that excludes or limits, or has the effect of excluding or limiting, the operation of certain copyright exceptions has no effect. These limitations on contracting out should apply to the exceptions for libraries and archives; and the fair use or fair dealing exceptions, to the extent these exceptions apply to the use of material for research or study, criticism or review, parody or satire, reporting news, or quotation.

ASTRA opposes the introduction of any prohibition on the right of 'contracting out'.. Such a change could lead to greater uncertainty in commercial arrangements for the use of copyright material; and, we consider that existing principles of competition, contract and consumer law are sufficient to address any problems that may arise.

APPENDIX A: Appropriateness of existing retransmission arrangements

As ASTRA detailed in its submission to this Review's Issues Paper,[7] the particular public policy concerns that drove the introduction of 'must carry' regimes in the United States and Europe have never existed in Australia.

For many households in the United States and Europe, cable or other non-terrestrial broadcast transmission platforms are the primary or only means by which households can reliably receive terrestrial television services. The primary public policy objectives of 'must-carry' regimes in these countries are to ensure consumers are able to access FTA television services, and to ensure the viability of FTA commercial television broadcasters through being able to reach all consumers in their advertising market.

Problems with the must carry regime in the United States

Cable television began in the United States in the late 1940s as community-based services for the retransmission of FTA television in areas that could not receive adequate reception of those services from household antennas. Subscription services were later added to the retransmitted FTA services delivered by cable. By 1992, when Congress enacted the first must-carry legislation in the United States, a significant majority of US homes received FTA television by means other than "over the air" broadcasts, a trend which has continued to this day.[8]

The public policy rationale for must-carry rules in the US remains much the same today as they were when those rules were first introduced:[9]

- to ensure all viewers can receive FTA television – there were concerns that, without 'must carry' provisions, cable networks may decide not to carry local television stations; and
- to ensure the viability of local FTA television stations, including local affiliates of the major US networks and those stations operating independently – of particular concern was that loss of advertising revenue for local television stations would threaten local content production.[10]

Under the US must carry rules/retransmission consent rules, STV providers are either compelled to provide otherwise freely available commercial FTA services to their subscribers, on demand of the FTA service, or else negotiate a fee for the retransmission of that service.

This has increasingly led to FTA broadcasters in the United States withdrawing retransmission consent (and thus the availability of their signals to STV subscribers) as a negotiating tactic to extract ever higher retransmission fees from STV providers (fees that STV providers may pass on to their subscribers to receive television signals that should otherwise be freely available).[11]

There is increasing debate in the United States as to whether circumstances persist to justify a must carry/retransmission consent regime at all. It has been noted that the scheme in the US does not operate to provide a 'free market' for the value of retransmitted signals to be

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[7] See ASTRA Submission to the Issues Paper of the ALRC Review of Copyright and the Digital Economy, December 2012, available at: http://www.astra.org.au/ArticleDocuments/137/ALRC%20Copyright%20Review%20Issues%20Paper%20-%20ASTRA%20submission%20-%2030%20November%202012.pdf.aspx?Embed=Y.

[8] In 2009, the OECD reported that 84% of the US population received television by cable or satellite means (OECD, Communications Outlook 2011). Recent media reports put STV penetration in the US at 90% (see "News bid to make TV really pay", *Australian Financial Review*, 21 June 2012).

[9] See R. Frieden, "Analog and Digital Must-Carry Obligations of Cable and Satellite Television Operators in the United States" Working Paper Series, University of Pennsylvania, April 2005; J.H. Snider, "Multicast Must-Carry for Broadcasters" Spectrum Series Issues Brief 13, New America Foundation Spectrum Policy Program, Dec 2003.

[10] See Screenrights submission to the Convergence Review, 28 October 2011, p.4.

[11] Burton, M. "Reforming Retransmission Consent" (2011-12) 64 Fed Comm L J 617 at 623.

determined as a normal exploitation of the copyright in the broadcast. Rather, retransmission negotiations occur in the context of a regulatory framework that "mixes elements of private bargaining with forced-access and protectionist elements", creating "artificial constraints" that have the effect of conferring a negotiating advantage to FTA broadcasters and against STV providers.[12]

If a must carry/retransmission consent scheme was introduced in Australia, the rollout of the NBN and the potential for increased competition between platforms delivering audiovisual and television-like services would only increase the bargaining power of the commercial FTA broadcasters. As noted in relation to the recent experience in the US:

> In passing the 1992 Act, Congress was motivated by what was then perceived to be a bottleneck for video distribution. The congressional restrictions sought to "protect" broadcasters in local broadcast markets from competing content offered by cable companies or from retransmission of out-of-market broadcasting content. "Must carry" mandates, in particular, were enacted out of a professed concern that, absent regulatory intervention, cable's perceived dominance over multichannel video distribution could result in local broadcasting being "blacked out."[13]

Whether or not fears of such 'bottlenecks' were ever justified, established STV providers in the US are now facing increasing competition for the delivery of video services, with consumers

> now able in many instances to choose between two, three, or even four video service providers. These market developments have rendered whatever worries that existed in 1992 all but obsolete. And this is even more so with broadband Internet and wireless services now offering consumers even more avenues for receiving video content – of which they are very rapidly availing themselves.[14]

As the US industry association for FTA broadcasters itself made clear during debate in 1991 on the introduction of the US 'must carry' scheme, the intention of the US scheme was never for retransmission consent fees to be a revenue stream for national television networks.[15] However, the major US networks are increasingly viewing retransmission fees as no more than a lucrative supplementary revenue generator – one ultimately extracted from cable television subscribers.

As a result, the traditional public policy link in the US between protecting local content production and the operation of the must carry/retransmission consent regime has become increasingly tenuous. The major US networks now routinely demand ever increasing 'programming fees' from their affiliate stations, to be drawn from retransmission fees, while at the same time those local stations increasingly scale back local television production. A recent study found little evidence that retransmission consent revenues are being used by FTA broadcasters to deliver on the public policy promise to maintain or increase local program production. Rather, these revenues are being used in large part to fund the commercially attractive programming activities of national broadcast networks.[16] Retransmission consent has helped networks "further dominate local affiliates and leverage themselves into cable programming" to the extent that "retransmission consent has in fact harmed local over-the-air

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[12] May, R.J., "Broadcast Retransmission Negotiations and Free Markets" (2010) *The Free State Foundation: Perspectives from FSF Scholars*, October 18, 2010, Vol. 5, No. 24.
[13] Ibid.
[14] Ibid.
[15] As noted in the testimony of M. Witmer, Executive Vice President & Chief Video and Content Officer, Time Warner Cable during hearings on "The Cable Act at 20" before the US Senate Committee on Commerce, Science and Transportation, July 24, 2012, available at: http://commerce.senate.gov/public/index.cfm?p=Hearings&ContentRecord_id=df31aa95-2c78-4594-9d47-265ed87594de&Statement_id=956f4171-cae3-4042-8914-e41e7d7715a9&ContentType_id=14f995b9-dfa5-407a-9d35-56cc7152a7ed&Group_id=b06c39af-e033-4cba-9221-de668ca1978a&MonthDisplay=7&YearDisplay=2012
[16] Napoli, P.M., "Retransmission Consent and Broadcaster Commitment to Localism" (2011-12) 20 CommLaw Conspectus 345 at 362.

broadcast television".[17] The must carry/retransmission consent regime in the United States, in effect, compels STV providers to subsidise the commercial activities of direct competitors, with no discernible public interest benefit.

'Must carry' in Europe

In Europe, as in the United States, there is substantial reliance on non-terrestrial broadcast means to access FTA television.[18] As a consequence, must-carry regimes of various forms have also been introduced in a number of European jurisdictions in response to the Must Carry provisions of the European Commission Universal Services Directive (the Directive). Article 31 of the Directive (the provision relating to "must carry" obligations) states:

> Member States may impose reasonable "must carry" obligations, for the transmission of specified radio and television broadcast channels and services, on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or television broadcasts to the public *where a significant number of end-users of such networks use them as their principal means to receive radio and television broadcasts*. Such obligations shall only be imposed *where they are necessary to meet clearly defined general interest objectives and shall be proportionate and transparent*. The obligations shall be subject to periodical review. (emphasis added).[19]

The Directive clearly states that Member States may only impose these obligations on networks where end-users use them as the principal means to receive television. Indeed, it is instructive that the provision sits in the EU directive on Universal Service (that is, the directive relating to the minimum services that end users should receive) and not the Audiovisual or Media directives. Moreover, the Directive is clear that such obligations should be imposed only where they are necessary to meet "a clearly defined general interest objective". The primary purpose of the provision is to ensure that end-users have access to FTA television broadcasts, including those of the publicly-funded broadcasters which form such a significant part of the European broadcasting environment. Must-carry requirements were considered necessary to ensure publicly-funded broadcasters were carried by cable networks and thus available to all those who were ultimately paying for them.[20]

Relevance to Australia

In Australia, the public policy rationale of ensuring universal access to FTA television does not apply. Consumer access to reliable FTA television services in Australia is not contingent on subscribing to a STV platform, unlike many parts of Europe and the United States. Indeed, in regional areas, STV has never retransmitted FTA commercial television services. As the following chart demonstrates, in contrast to most countries in the OECD, Australians mainly receive FTA television services via terrestrial transmission.

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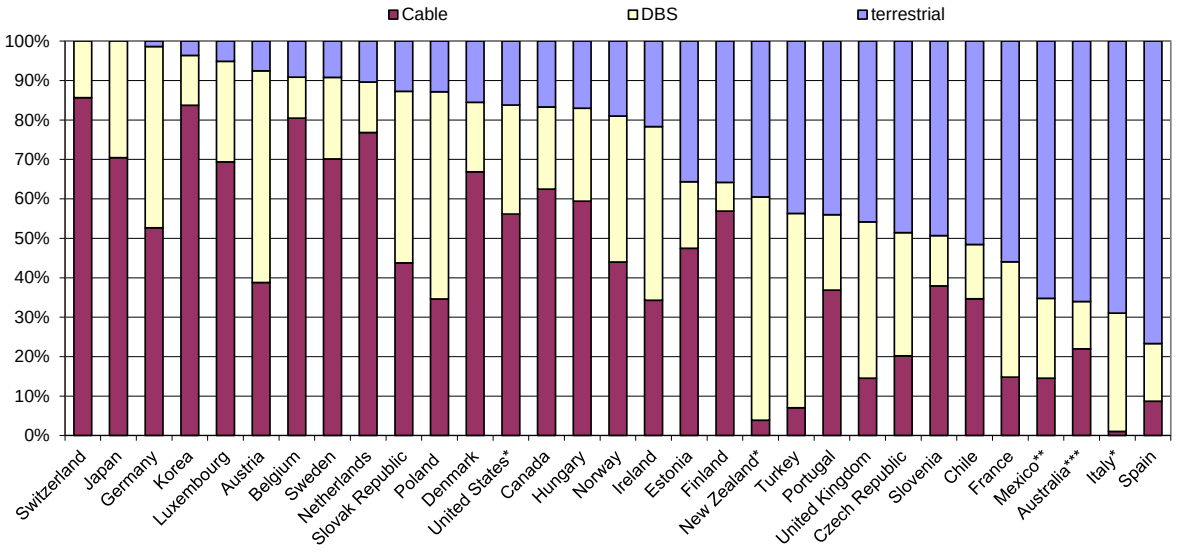
[17] Lubinsky, C. "Reconsidering Retransmission Consent: An Examination of the Retransmission Consent Provision (47 U.S.C. § 325(b)) of the 1992 Cable Act" (1996-97) 49 Fed Comm LJ 99 at 164.

[18] A study of digital television homes in Europe in 2007 found that only 38% of homes received digital television terrestrially, with 42% via satellite, 16% via cable and 4% via IPTV (see W Van den Broeck & J Pierson, *Digital Television in Europe*, ASP/Vupress, 2008, p.2).

[19] Directive 2002/22/EC of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive), Art 31.

[20] Roukens, T., "What are we carrying across the EU these days? Comments on the interpretation and implementation of Article 31 of the Universal Service Directive" (2006) 15 *Media Law & Policy* 201, at 202.



Source: OECD Communications Outlook 2011.
Notes : (*) Data for 2008 instead of 2009; (**) Data for 2005 instead of 2009; (***) Australia was not included in the original OECD chart. Data for Australia estimated by ASTRA based on STV penetration for cable and satellite services, and households reliant on DTH satellite for FTA television services.

STV in Australia has been built on the back of billions of dollars invested in infrastructure and production to provide exclusive programming and innovative services that consumers want, without a cent of Government funding and without the significant statutory protections and privileges afforded to commercial broadcasters. Consumers do not pay for STV services in Australia to watch FTA television – they pay for program diversity and choice. Research commissioned by ASTRA found that, for the majority of STV users, content diversity and exclusive programming are the primary reasons for subscribing.[21] The majority of viewing in STV homes is STV programming.[22]

The viability of commercial FTA television in Australia is ensured through a legislative framework that provides significant protections and privileges to commercial broadcasters including protection from competition from additional FTA services, guaranteed access to valuable broadcast spectrum (a scarce public resource) and preferential access to premium sports content. Successive Australian Governments have invested many hundreds of millions of dollars since 2001 to ensure universal access to digital FTA television by terrestrial means, or by satellite where terrestrial reception is not feasible, including:

- licence fee rebates and direct grants for commercial television broadcasters in regional and remote areas for costs associated with the conversion from analog to digital transmission;[23]
- grants to commercial broadcasters in smaller regional and remote licence areas to ensure that they can provide the full suite of commercial digital television services;[24]
- the Household Assistance Scheme which supplies and installs free digital television HD set top boxes (and free antenna and cabling upgrades if required) to people on the maximum rate Age Pension, Disability Support Pension, Carer Payment, Veterans' Service Pension or Veterans' Income Support Supplement;[25]

[21] ASTRA commissioned survey of STV viewers conducted by MRA Research in January 2011.
[22] Year to date STV share of viewing in STV Homes for 2012 is 56.4%, 2am-2am, with the remainder shared between the five FTA networks, including multi-channels (Source: Source: OzTAM NatSTV as of Week 44 2012).
[23] Minister for Communications, Information Technology and the Arts, "Assistance for digital television in regional areas" Media release, 9 May 2000.
[24] Minister for Broadband, Communications and the Digital Economy, "Full digital TV service for regional and remote Australia", Media Release, 9 November 2010.
[25] For more information, see: http://www.digitalready.gov.au/Households/government-assistance/household-assistance-scheme.aspx

- the Viewer Access Satellite Television (VAST) service which provides the full suite of commercial and national FTA digital television channels to viewers with inadequate terrestrial reception;[26] and
- the Satellite Subsidy Scheme which provides subsidised installation of satellite reception equipment for reception of the VAST service in households in terrestrial digital transmission black-spots.[27]

As the then Minister for Broadband, Communications and the Digital Economy stated after the passage of legislation bringing the VAST service into being, the introduction of the Government-funded VAST service, combined with further Government funding to upgrade transmission infrastructure in regional and remote areas, means that commercial and national broadcasters "are able to deliver the full suite of FTA digital television services to *every viewer in Australia, wherever they live*".[28]

[26] For more information, see: http://www.digitalready.gov.au/Households/what-is-the-switch/VAST-service.aspx
[27] For more information, see: http://www.digitalready.gov.au/Households/government-assistance/satellite-subsidy-scheme.aspx
[28] Minister for Broadband, Communications and the Digital Economy, "Digital switchover legislation passed", Media Release, 25 June 2010.