



Appendix D - Suggested amendments from FACTS¹

1. Make Part VAA referable to "Broadcast Decoders and Broadcast Decoding Devices".
2. Amend Division 1 to include the following definition:

"Broadcast Decoder" means a device (including a computer program) that by its operation enables the reception of an encoded broadcast signal."

Amend the definition of "encoded broadcast":

"Encoded Broadcast" means:

- (a) in the case of a subscription broadcasting service:
 - (i) a broadcast delivered by a broadcasting service that is made available only to persons who have the prior authorisation of the subscription broadcaster and only on payment by such persons of subscription fees (whether periodically or otherwise); and
 - (ii) access to which in an intelligible form is protected by a technical measure or arrangement (including a computer program).
- (b) in the case of a commercial television broadcasting service:
 - (i) a broadcast delivered by a broadcasting service, access to which in an intelligible form is protected by a

¹ Federation of Australian Commercial Television Stations, handed to the Committee on 21 October 1999, Canberra.

technical measure or arrangement (including a computer program).

3. Insert a new Division 2 in the following terms and renumber the balance of the Part appropriately:

'Division 2 - Actions in relation to broadcast decoders'

135AN Actions in relation to broadcast decoders

- (1) Subject to subsection (2), this section applies if:
 - (a) a person has a broadcast decoder in their possession, custody or control without the authority of the broadcaster whose signal is encoded; and
 - (b) the person uses or authorises the use of the broadcast decoder to receive the encoded broadcast signal without the authority of the broadcaster; and
 - (c) the use of the broadcast decoder results in a commercial benefit to the person in or in connection with a trade or business carried on by, or in association with, the person.
- (2) Subsection (1) does not apply unless the person knew or ought reasonably to have known that the broadcaster had not authorised the person to have possession, custody or control of the broadcast decoder.
- (3) This section does not apply in relation to anything lawfully done for the purposes of law enforcement or national security by or on behalf of:
 - (a) the Commonwealth or a State or Territory; or
 - (b) an authority of the Commonwealth or of a State or Territory.
- (4) Subject to subsection (7), if this section applies, the broadcaster may bring an action against the person.
- (5) The relief that a court may grant in an action under this section includes an injunction (subject to such terms, if any, as the court thinks fit) and either damages or an account of profits.
- (6) If, in an action under this section, the court is satisfied that it is proper to do so, having regard to:

- (a) the flagrancy with which the defendant did the acts described in paragraph (1)(b); and
- (b) any benefit shown to have accrued to the defendant as a result of using or authorising the use of the broadcast decoder; and
- (c) all other relevant matters;

the court may, in assessing damages, award such additional damages as it considers appropriate in the circumstances.

- (7) An action cannot be brought against a person under this section in respect of the act described in paragraph (1)(b) after the expiration of 6 years from the time when the person did the act.