

ADDITIONAL COMMENTS BY THE
MOTION PICTURE ASSOCIATION
ON THE COPYRIGHT AMENDMENT
(DIGITAL AGENDA) BILL 1999

The Motion Picture Association (MPA) would like to follow up on our submission of 1 October to the Standing Committee on Legal and Constitutional Affairs to emphasize two issues of concern with regard to the Copyright Amendment (Digital Agenda) Bill 1999.

1. The proposed statutory licensing scheme for the retransmission of free-to-air broadcasts should be reexamined to narrow the scope of authorized retransmissions, thus ensuring that retransmitters will not retransmit broadcasts over new media under the guise of compulsory license.
2. The Bill should include an extension of the term of copyright protection, in keeping with the worldwide trend.

Definition of "Retransmitter"

The MPA recognizes the Australian Government's desire for the Bill to be technology neutral, thus making it less likely that the Bill will be rendered obsolete by rapid technological changes.

However, the resulting ambiguity could cause inordinate harm to copyright holders. In the near future, when Australia moves to digital broadcasting of free-to-air broadcasts, there will be no protection under the law as currently proposed against the retransmission of digitally sourced works over the Internet so long as the retransmitters fall within the very broad definition of "retransmitters."

In proposed Section 135ZZI, "Retransmitter means a person who makes a retransmission of a free-to-air broadcast". Internet services and their new means for delivery of programs could fall under this broad definition. The Internet has no geographic boundaries, so the possible harm to copyright owners from a global system of retransmissions subject to a compulsory license is enormous.

Accordingly, the MPA strongly urges the House Standing Committee on Legal and Constitutional Affairs to re-examine the statutory licensing scheme being proposed under the Bill and specifically consider excluding Internet services and other new technologies from the proposed definition of "retransmitter" in Section 135ZZI. The Committee may wish to consider the following wording:

"Retransmitter means a subscription broadcasting service licensed under the Broadcast Services Act that delivers a retransmission of a free-to-air broadcast by means of cable."

Term of Copyright Protection

There is a worldwide trend to extend the term of copyright protection. The MPA strongly recommends that Australia take this opportunity to join this international movement.

Currently in Australia, the basic copyright term is 50 years following the death of the author. The term of copyright protection for a cinematograph work is 50 years after the expiration of the calendar year in which the film was first published.

While this meets the minimum requirements of the Berne Convention, many countries already provide longer terms of protection for audiovisual works. These include:

| | | | |
|----------------|---------------|----------------|---------|
| United Kingdom | United States | Germany | France |
| Spain | Italy | Netherlands | Sweden |
| Belgium | Denmark | Switzerland | Norway |
| Greece | Finland | Austria | Hungary |
| Portugal | Romania | Irish Republic | Iceland |
| Slovenia | Mexico | Israel | India |
| Colombia | Venezuela | Turkey | Peru |

Indeed, the term of protection in the United States for audiovisual works is now 95 years from publication or 120 years from creation, whichever is shorter. The basic term of copyright protection is 70 years after the last surviving author's death.

The MPA urges the Committee to insert amendments to:

- 1) Section 94 of the Australia Copyright Act to provide cinematograph works with a term of copyright protection of 95 years from the beginning of the year following the year of first publication; and
- 2) Sections 33 and 34 of the Copyright Act to provide a basic term of copyright protection of 70 years following the death of the author of literary, dramatic, musical and artistic works.

These longer terms would recognize the increasing value of audiovisual and other copyright works to Australia and would ensure that Australia's copyright regime does not divert from the international trend in this important area.

Conclusion

We appreciate the opportunities the Committee has provided to comment on this Bill and hope the Committee will give favorable consideration to the two points highlighted in this submission.