

## GoT Content?

TERESA CORBIN: OK, if we can just get a seat, we'll get started.

OK, so, good afternoon, everybody. Thank you for coming back after lunch. I could say that I think this might be the hottest topic for the conference, but the reality is that there have been many hot topics at this conference, so I think it's a bit hard to pick. Before we start, I just wanted a reminder that we have Auslan interpreters and that we need to talk slowly, so it's always a good thing to remember. And also, I want to acknowledge that we have some special visitors here today from Thailand, from the National Broadcasting and Telecommunications Commission of Thailand. So we're very pleased to have you as part of our conference this afternoon. I now want to introduce Stilgherrian, who will take us forward with the panel, and introduce the rest of the panellists.

STILGHERRIAN: Thank you very much. Good afternoon, everyone. GoT Content? – GoT, Games Of Thrones – the compulsory reference when you're discussing copyright and copyright infringement in Australia. With that out of the way, I'm hoping this afternoon that we can get away with some of the more setpiece discussions on the topic that we've seen, particularly last week – Malcolm Turnbull held a copyright infringement forum, and that, I think, allowed all of the participants to set out their positions on the topic. It's a very controversial subject in Australia. We seem to have two extremely polarised points of view in the debate. On one side, we have the traditional industries that depend on copyright – and at the moment, particularly the film and television industry – essentially telling us that they face an existential threat, and that the entire industry will completely collapse forever unless piracy is stamped out 100%. And on the other side of the equation, we've got a point of view which says that all of this content material should be available instantly everywhere in the world in the form we want at the price we want, and if you get in the way, you're just a fool and a dinosaur, and deserve to die.

I suspect the truth is somewhere in the middle. Certainly, the world is going through a massive change because of this internet thing and because of the digitisation of all knowledge. It's a revolution, some people say. The thing about revolutions is that things get broken, and some things do not survive. But after the revolution, things are better, in general, we hope. So I want to explore some of those issues and, also look at some of the ethical things – that's our brief for today. We've got a 90-minute session. We're a little way into that, so 80 or so minutes to go. At about the halfway mark, we'll open thing up to questions on the floor. But to kick things off, I'll mention where we're up to in this great debate, then introduce the guests and get them to start reflecting on this. Online copyright infringement is a live political issue in Australia at the moment, because the government intends to update the Copyright Act. A discussion paper has been distributed. Submissions closed on September 1. They've been gradually appearing at the appropriate website. Again, many of them sketching out these rather polarised points of view. I won't go through the discussion paper in full detail because it's essentially a bit legalistic and, as someone pointed out to me just before the session, it's a bit boring.

(LAUGHTER)

Although it talks about the responsibility of three groups of people – namely, the content producers to make content available in a timely fashion and an appropriate, competitive price, of the internet service providers to participate in this process in a way which helps minimise copyright infringement, and the consumers for essentially not operating illegally, or at least operating ethically. It discusses three proposals which are all about the role of the internet service provider. So it does appear that Attorney-General Brandis is thinking along those lines. I'll just mention what those three areas are – the three proposals. One is to extend authorisation liability. Now, to get out of the technical language of the law, when the

case came up between AFAC – the Australian Federation Against Copyright Theft, which is being reborn as the Australian Screen Association, changed their name to avoid the negative publicity of their previous name – when they took internet service provider iiNet to court, it went all the way to the High Court and AFACT lost, because the internet service providers were found not to be liable for authorisation – that is, in the legal sense of enabling and encouraging copyright infringement.

One section is about changing the Copyright Act to make it clearer that ISPs can, indeed, be bad and authorise in this way. Another proposal is that there be some method for content copyright holders to take out a court order, an injunction, so that ISPs would be forced to block access to overseas sites that were found to be copyright-infringers. Essentially, blocking access to certain overseas websites. If they operate within Australia, well, of course they can just sue them directly and take them down. The other one is to – The third one is to extend the Safe Harbour scheme, by which an internet service provider is not liable for copyright infringement that happens on its network, provided that it has certain things in place, such as a mechanism for accepting reports of copyright infringement and a mechanism for taking infringing material down. The proposal is essentially to extend that to not just internet service providers in the common carrier sense, but to privately held networks that offer an internet service such as a university or a company that offers internet access to its employees.

There's lots more to talk about than just those issues. I will now introduce the panel. To my immediate left, Lori Flekser, executive director of the IP Awareness Foundation. Next to her, Kimberlee Weatherall, associate professor at the Sydney University Law School. And on my far left, Matt Levey, director of campaigns and communications for Choice. Now, Kimberlee, I'll start with you – how close did I get the description of the discussion paper and the legal changes? She's laughing already. I am doomed.

KIMBERLEE WEATHERALL: Not too bad. Not too bad. I was actually told before the panel that I should just correct anything that was wrong. There was one thing – the third proposal, with the Safe Harbours. Probably the least discussed of all of the proposals, because it has less to do with enforcement and more to do with correcting an error we made a decade ago when we changed our copyright law. Basically, the idea of proposal three is to extend the Safe Harbours to all online service providers. That means people who are providing wireless, of course, people who aren't common carriers. It also means search engines. It also means Web hosts. It means YouTube, Google – anyone who's providing a hosting service. There's actually a lot more to it. The basic point of the third proposal is the Safe Harbours were always meant to cover these people, because that's what our treaty with the US says. But there was a drafting error a decade ago.

STILGHERRIAN: That means there's really nothing to discuss about that.

KIMBERLEE WEATHERALL: Not really.

STILGHERRIAN: OK. Forget those two minutes. You will not get that back.

(LAUGHTER)

KIMBERLEE WEATHERALL: The first two proposals are the enforcement ones, the ones we need to discuss here. There's a couple of things I wanted to comment on just briefly as we start. One is, broadly speaking, the idea that you see in the discussion paper is consumers deserve access, online infringement is a real problem, the assumption in the discussion paper – you pointed out that there's an awful lot about ISPs and enforcement, and nothing about, "What about the access side? What about making sure we have timely, reasonably priced access to content?"

STILGHERRIAN: What about consumer education to say, "Hey, don't do the bad things"?

KIMBERLEE WEATHERALL: In part, the first proposal is actually about the education side, because, while the proposal as a legal matter is "Let's make ISPs liable for their BitTorrenting consumers," the theorising behind that is that ISPs will negotiate with copyright owners some scheme whereby they are dealing with infringement and, the key idea behind that scheme, as it's being presented, particularly by rights owners, is that we want ISPs to send on notices to tell consumers they've been detected infringing, to tell them why infringement is bad, to tell them where they could legitimately get access. Part of the thinking behind proposal one is actually the education side.

STILGHERRIAN: Some ISPs do that already. Some don't. And of course, iiNet is the whipping boy of the industry in this way because they have stood up harder than anyone else. That was the whole subject of the legal case. Um, I've forgotten what I was going to ask you there. I better move on.

KIMBERLEE WEATHERALL: I'm done.

STILGHERRIAN: You're done?

KIMBERLEE WEATHERALL: Sorry, can I just say – one of the things about stepping back, one of the things the discussion paper is assuming is that the government has no role when it comes to access and timely, reasonably priced access – that they should step back from the market.

STILGHERRIAN: That is the ideological view of the current government, and the previous government, for that matter.

KIMBERLEE WEATHERALL: Sure. And it's the idea behind copyright – you create a market for works, then let the market do its work, and the prices...

Of course, when the whole discussion paper is essentially representing rights owners coming to government and saying, "We want you to strengthen copyright," it's actually almost, I think, incumbent on the government to step back and say, "OK, but what do we get for that? What's the quid quo pro here? Are we, in fact, going to see more access? Or by strengthening your rights, and by no increasing enforcement, are we just ensuring that Australian consumers continue to get more expensive and untimely access to content?"

STILGHERRIAN: There's obviously nothing controversial there in any way! Lori, what's your response to this discussion paper, and perhaps some of the things Kimberlee has said?

LORI FLEKSER: Well, I'll start by just saying that I'm not a lawyer, and the IP Awareness Foundation is not a lobby group. We are simply about trying to inform consumers about the value of content and the impact of piracy, and we do this by research and really understanding the real number of people and the frequency and incidents and attitudes of people towards piracy in Australia. We do this through campaigns and education programs.

I don't want to really comment on the intricacies of the government paper, other than to say that I am deeply, deeply passionate about the idea that a combination of legislation and education are the keys to stopping people from pirating, accessing unlicensed, infringing – you'll hear a number of terms for it – unauthorised content. You can call it theft, you can call it stealing, you can call it freeloading. Let's call it piracy today, much as I hate the word.

STILGHERRIAN: Mm-hmm.

LORI FLEKSER: Just because people do understand what it means – it means that you downloading or streaming content which is online, which is not there at the behest of the copyright owners or copyright distributors and that the people who made that content, or have paid to recoup revenue from that content, are not receiving any.

I think I'll leave it there and just say we're completely supportive, the IP Awareness Foundation is completely supportive, of the legislation that government needs to intervene. It's a really important step. Technology has moved way ahead of legislation. Legislation has simply not kept pace with technology, and that was acknowledged by the High Court in the iiNet case. And it's time that legislation was amended to ensure that the people who spend millions of dollars and many, many years of hard work and labour and passion to create great content get some revenue, and are able to make a living from that.

STILGHERRIAN: Thanks, Lori. Matt, I better bring you into the conversation. Your reaction and Choice's reaction to the discussion paper? And then we'll take our gloves off and get into the debate.

MATT LEVEY: Sure. Maybe a good way of framing it is – has legislation kept up with technology? I think Choice would ask whether business models have kept up with technology. We would say that, for a long time, Australian consumers have faced incumbent distributors of content in Australia – people like Foxtel, people like Village Roadshow – who've essentially let technology get away from them, who have not, I guess, kept up with consumers, who are now confronting a market where people understand what it's like to get Netflix for \$10 a month and watch an entire season of House Of Cards in a weekend, and then they don't understand why they can't do the same thing with the other shows they like.

I think we'll come to some of those points later. Maybe to take it to the discussion paper, I think that's exactly the frame in which we view it. We're identifying a problem, which is that there are high rates of piracy or, it's claimed specifically high rates of piracy in Australia. But I think it's a paper that puts assumptions about a legislative solution ahead of any evidence as to whether those legislative solutions are going to work. It's a curious paper, in some ways. It's almost like it was written by two people with possibly views at alternative ends of the spectrum. The middle of it is two quite heavy-handed proposals to essentially place a lot of costs on ISPs, which will inevitably be passed on to consumers. At the front, it's got some nice statements about how industry has a role to play by making content cheaper and making it more flexibly available. Of course, at no point does the paper then go on to talk about what government could do to facilitate that outcome. From our point of view, we've found that, you know, those statements at the beginning were obviously very easy to agree with – we agree that consumers and internet service providers, and rights holders, all have a role when it comes to piracy. But you don't see that role reflected in the proposals that we're talking about.

STILGHERRIAN: Mm. Thanks, Matt. I think we'll certainly move very quickly away from the nuts and bolts of that proposal, but there was a word you used there which was "evidence", and it's something Lori mentioned too. We see, constantly mentioned the "fact" – I'll put "fact" in scare quotes – that Australia has the worst piracy rates in the world. Can we actually put some hard numbers around this, or is this part of the problem? And I guess a sub-question to that is this term "piracy", or "online copyright infringement", covers a very wide range of behaviours, from something where someone obtains a copy of a movie before it's even been released and starts distributing it to the world – which is obviously a high-impact kind of thing – all the way to the other end, where an example might be, "I'm actually paying for this content, but I'm using an American Netflix account which, by their terms and conditions, I shouldn't be doing, but it's not actually illegal under Australian law. Am I doing the right thing?" We hear some numbers. What can we trust? Lori, I'll start with you.

LORI FLEKSER: IP Awareness Foundation has been doing research, both qualitative and quantitative, since 2008. Generally it's done via Newspoll, so in an online omnibus which is your anonymous – the various studies have varied between 1,100 respondents to close to 2,000 respondents, all weighted.

STILGHERRIAN: So it's a statistically valid sample?

LORI FLEKSER: Statistically valid samples. Obviously in 2008, piracy was more around – physically piracy, purchasing of illegally burned DVDs, the kind of stuff you bring back from Bali, et cetera. It's really only in the last three or so years that that has moved predominantly into the online space, so it's very hard to track those figures. But we know, from – I'll quote the 2015 research... The 2013 research. 25% of adults between 18 and 64, and 24% of teens between 12 and 17, are either regularly or casually – which is about once a month – downloading pirated content online. I'm only talking about TV and movies, I'm not talking about music at all – it's not my area of expertise. I think we can trust those figures. And what we also know is that, in that 12-17-year-old group, for which we did the first research ever done in Australia last year, activity increases with age. So by the time – at around 12, there's about 17% of kids who are downloading. By the time they reach 17, that's moved into around 30%. So this is an activity that is becoming innate in our digital natives, as they become more and more accustomed to working and receiving content online. This is the way in which they receive content.

STILGHERRIAN: Matt or Kimberlee, do you have any firm views or figures? ..or comments that they're not?

KIMBERLEE WEATHERALL: Look, the figures here are always the subject of endless debate. I mean, surveys like that always depend on, "How did you ask the question?" There's only so many questions you can ask in a survey and still get people to finish the survey. That means you can't actually get down into, "Well, was the stuff you were downloading available in some other way? Was it on catch-up TV?" You can argue about this endlessly.

When Matt mentioned "evidence" before, I think what he was really asking for was evidence that the methods being proposed would work, which is also a big question here just because there is research, published by an academic down at Monash where she looked for evidence that this was working, didn't find the evidence that it was working – she's not saying that there's clear evidence it's not working, these sort of systems, but she didn't find the evidence that it was. Again, you look at the music rights, some of the submissions in the current system – sorry, current consultation – some of those come with apparent evidence, but it's in confidential annexes that we can't look at. Evaluating the evidence here is actually really hard.

STILGHERRIAN: That's quite difficult. Matt, do you see the same thing?

MATT LEVEY: Yeah, I do agree with what Kimberlee said. I also think there's unhelpful assumptions, even in the debate around piracy rates. I think they're important bits of data, but I also think that there's sort of an assumption running through this whole debate that Australians love to steal stuff, and the only reason they're able to get away with it is we haven't been tough enough in this area. I think that's a ridiculous assertion. The fact that a business like Netflix, that doesn't officially operate in Australia or spend a single dollar marketing here, has over 200,000 subscribers, it's estimated and, growing, shows there's actually a very healthy appetite for Australians to pay for things if they can get it in a format and a way that they find convenient. So I think, to talk about piracy as a problem and rates of

piracy as a problem, the fundamental question we should be looking at is why are people not paying for content when they should be?

LORI FLEKSER: Because it's free. It's just that simple. There are people with Netflix accounts both here and internationally who are still pirating. People pirate because they can get the content for nothing.

MATT LEVEY: I would say there's also plenty of evidence that some of the biggest peer-to-peer downloaders of content are also the biggest legal obtainers of content. If we're going to talk about it from the point of view of, what is the industry actually losing as a result of this behaviour? – I think it's more complex than simply the percentage of people who might obtain a product without paying the price.

LORI FLEKSER: It's so tricky. 1 out of 4 Australians – whether you believe the figure or not – who are not purchasing or paying for a product that they're consuming. If you were at a restaurant and 1 out of 4 people ate there and didn't pay, you would not be in business for terribly long. Let's assume that, if they had to pay, some of those people wouldn't choose to come to the restaurant but some would – I mean, when you talk about evidence about whether laws will work or not, how many times is legislation proven to work before it's enacted? I mean, how would you know that when you pass laws about drink-driving or littering that people are going to adhere to it? You actually have to protect copyright as a start, then play it out.

KIMBERLEE WEATHERALL: We are talking about legislation and schemes that have been tried in other jurisdictions. It does work -

LORI FLEKSER: It's all incredibly new, and a lot of the jurisdictions that are putting things into place are still playing with various schemes and the way in which it's done. There is evidence to show that, when pirate sites are blocked – like when Megaupload disappeared virtually overnight – there was an upsurge of about 10% to legal sites. Our research shows that 72% of people say that if they were given a notification by their ISPs to say that their infringing behaviour had been detected, that they would stop.

STILGHERRIAN: This is the kind of issues we're talking about here – we've leapt into it without explaining some of them. The kind of infringement notices are part of what's often called a graduated response system – it's been tried in a number of nations. Through some mechanism or other, people who are doing illegal copyright infringement on an internet service provider's network are notified in some way to say, "Hey, what you're doing is wrong." There's some escalation process so that those notices get more serious, until some end outcome. Some countries have tried disconnecting people from the internet at that point. That has been counted in places like France, I believe, where it was ruled that internet access is now so much an important part of everyday life that it becomes a fundamental human right to communication. There is the argument about whether these schemes actually work or not. The modelling that Kimberlee referred to earlier is by Rebecca Giblin, and her report can be found. As Kimberlee explains, in the jurisdiction she looked at, there's no evidence that it works, but absence of evidence is not evidence of absence. The jury is still out, if you put that in that kind of legalistic framework. This question of "illegal activity will decline if there is an inexpensive and convenient alternative" – to what extent do we know that is true? Or is that wishful thinking?

KIMBERLEE WEATHERALL: Ohh... Well, Matt has already pointed to one piece of evidence – it's true that at least some people -

STILGHERRIAN: "At least some"...

KIMBERLEE WEATHERALL: At least some people will take active steps to get around geoblocking and use various technologies in order to ensure they can pay and use Netflix when, apparently, you could just BitTorrent everything for free anyway. There's some evidence that at least some proportion of people are going to pay if they can.

STILGHERRIAN: Does that also mean that there is at least some proportion of people who will never pay, no matter what?

KIMBERLEE WEATHERALL: Probably.

LORI FLEKSER: I'm sure. There's no doubt.

STILGHERRIAN: That's human nature, isn't it?

LORI FLEKSER: Absolutely. There is a proportion of human nature that will get anything for free if they can.

STILGHERRIAN: That's the point I'm making.

KIMBERLEE WEATHERALL: I don't think copyright has ever managed to achieve, in history, complete zero infringement.

STILGHERRIAN: Murder is illegal, but we still have murders, yes.

(LAUGHTER)

KIMBERLEE WEATHERALL: Take a step back, as well. What are we trying to achieve with the copyright system? We're trying to achieve – to make sure that creators get incentives for creation. That doesn't necessarily mean they have to be paid by every single individual whoever consumes content. It's never worked like that and never will. But if we can have legal, timely, reasonable access and people are paying, then you may well get to the position where you've got the sufficient incentives for the level of creativity we want, and you can ignore the 20 or 30 or whatever percentage of people it is who probably would never have paid for it in the first place.

LORI FLEKSER: How do you explain music, then? Music is available for free, you know, at various price points for streaming, et cetera, and yet it is still a real issue in the music industry.

MATT LEVEY: We had Spotify come out last week and say, since they launched in Australia, there's been a 20% reduction in piracy rates.

LORI FLEKSER: But those figures can't be explained, because they said they don't have any figures prior to that. I think they've just asked people whether they used to pirate or something. Music figures show that around 20% of people are still illegally downloading music even though they can stream it for nothing.

MATT LEVEY: I guess it goes to questions around availability, but it also goes to questions around this assumption that the only reason Australians are infringing on copyright is because they can, is because there's some sort of inherent wish of people to steal stuff.

LORI FLEKSER: It's not just stuff, let's be clear. Copyright around the world is under threat.

MATT LEVEY: There's a mass denial of the role that price and availability play in this debate. If you look at the 10 most torrented films in Australia this week, 6 of them are not

legally available in Australia. So it's very hard to sustain an argument, I think, that there's not a motivating factor for people to infringe when you look at that sort of marketplace.

LORI FLEKSER: I don't know, I haven't looked at this week's, but I looked at Choice's recent figures. They were completely wrong.

MATT LEVEY: On what basis?

LORI FLEKSER: They weren't available on downloads because they were in the cinema. I mean, you raised the business model earlier.

STILGHERRIAN: This is an interesting point. The argument is often made that, if it were available at a price and convenience there... Are we saying here that going to the cinema is not convenient? "I want to watch this in my living room this week, even though I could go to the cinema this week and watch it in my living room next week"? Is there a point at which we tell consumers, "No, shut up. It's not available. Wait, or pay, or go to the cinema"?

(LAUGHTER)

MATT LEVEY: This is a question around, I think, how we've seen technology move well ahead of incumbent business models. Take Foxtel, as an example. The idea that you might want to take some premium content that people really want, and bundle that with numerous reality shows about Real Housewives, taxidermy, all sorts of stuff – repeats of Friends – and then put that into something that you charge \$50 a month for, is something that increasingly consumers look at and don't take seriously, because they see other options where they can go and buy Orange Is The New Black or Games Of Thrones directly, or essentially watch the entire season of House Of Cards in one go, instead of it being drip-fed over three months. This idea that rights holders – in fact, I would step back and not say this about rights holders, but it's about the middle men – intermediary businesses that, for a long time, have flipped the ticket and served up to consumers content in the way that has best suited their business model and best suited the way that they've actually managed their exclusive rights in Australia. ..rather than a recognition that consumers are now accessing things in a global marketplace, the same way in which they can shop online and go to the United States and buy cosmetics cheaper than they can in Australia. Why would they differentiate between that experience and buying a television show? It's a head-in-the-sand idea that we will sustain these business models that let the intermediaries drip-feed content on their terms, when consumers are get things from the marketplace on their turns. It's completely unsustainable.

LORI FLEKSER: There's a big difference between me going online and buying my cosmetics cheaper in the US and actually walk into David Jones and stealing it because it's too expensive for me.

MATT LEVEY: I'm talking about someone going on a VPN and getting that product from overseas.

STILGHERRIAN: Let's look at that issue. I'll ask first, how much of this whole debate is actually about distributors and protecting distributors' revenue streams as opposed to protecting creators' income?

MATT LEVEY: There's this narrative running through the last weeks of it that what's best for Australian drama is what's best for Foxtel. What's best for Australian drama is what's best for Village Roadshow – we won't see any more Gallipolis if we let incumbent distributors keep going about this business model the way they have forever. There was an absurd comment at the copyright forum last week, convened by the minister for communications – if we don't copyright things, all we'll have left is videos of cats on skateboards. As much of a fan I am of

videos of cats on skateboards, to think that the only way we can produce quality content is that if the business models currently distributing them have their current business models protected over time – I think that's almost – it's closely connected to the piracy debate, but it's quite different, because we're seeing the internet disrupt business models everywhere, through news media, in the taxi industry with Uber. We're seeing it in the hotel industry with Air B&B. We're seeing consumers connected with supply in a way we've never seen it before. It's putting middle men under pressure in all of those industries. The same thing is happening in the content industry, and they're yelling for the government to help them out. I think we do actually need to take a step back and ask if this is an argument asking about what's best for Australian distributors, or an argument about what's best for the creative industries in Australia.

STILGHERRIAN: The structure of the law around copyright is based on territories and distribution deals and so on and the very nature of the internet is a global thing. Is copyright utterly, utterly broken?

KIMBERLEE WEATHERALL: Gee, I hope not! I hope it is not utterly broken.

STILGHERRIAN: That is only a hope, though!

KIMBERLEE WEATHERALL: There's still got to be merit to the idea that if you create something you have a right to make money out of it and you have some rights to decide how it is used. That basic idea, I think, is fundamentally sound.

The international framework where rights have been divided into different countries and it takes years and years for licences, once you have them, to be in one country and then another country – that bit is definitely broken. It is, in many ways, incumbent on us, at a policy and at a business level, to make all of this start to make more sense. To move towards facilitating global licensing. And that's easier said than done. Europe has been working on this for years now and it has succeeded more in some industries than others.

STILGHERRIAN: But we do have functioning global marketplaces for music, for books – I mean, whether anyone is happy about the amount of money they're making it at the moment is a different question but there are places I can go – Eyewitness News, Amazon, Global Play, for any amount of magazines and recorded music – some kinds of video (Film and television) product, but in general, no, those moving image things have not become a global marketplace yet.

KIMBERLEE WEATHERALL: And there are a couple of reasons for that which are pretty simply. Napster started in 1998 so the music industry has been dealing with this for an awful lot longer. Of course, we didn't get Spotify in Australia until 2012 or 2011, and Pandora the same time so it has taken that long for the music industry to adjust. In the audio visual area it hit them much later because we didn't have the internet speeds for it to become as big an issue. So they are behind. They are behind the eight ball. But arguably, they should have seen it coming and been making arrangements for that.

But also, I mean, I think it's probably true that if you look at how the business models in the industry have worked they are very much dependent on these ideas of windowing and you send it to the cinemas first and then maybe you send it to pay TV and then DVDs and then at some stage it becomes the midday movie and then you work your way through these different windows and extract maximum profit at each stage.

STILGHERRIAN: And less and less revenue at each point in that cycle.

KIMBERLEE WEATHERALL: And that's not going to work anymore. I've seen a number of submissions in the current process which say "We have to have windowing", we certainly couldn't ever move away from windowing and that has got to be wrong.

LORI FLEKSER: It is not wrong and you can't take the distributor out of this argument, it is not someone who does nothing, picks it up and moves it across to there.

STILGHERRIAN: Isn't it?

LORI FLEKSER: I made my living being a film-maker for many years and I've worked on productions where for four years of development trying to raise the millions of dollars it takes you are unpaid and you are incredibly reliant on the distribution model, which still raises money because an average film costs, in Australia, \$8 million to \$10 million, and overseas in America, a low budget film, \$25 million or \$30 million. So let's not kid ourselves that it is in any way comparable to making music which you can do in your garage really, if you want to, that is not how films are made. Films are dependent on the windows because cinema is not only where films make the most amount of their revenue and most of that money does not go back to the distributors, most of it goes to the cinema. Then the trickle through to the distributors, who have spent, again, millions of dollars, to make sure that people know that that film is on. I mean, there are thousands of films made every year. How many do you hear about? You hear about the ones that those distributors have spent millions of dollars putting ads on buses, bringing stars out this it country to have a premiere, putting ads on television, creating synergies with products they can market their film with. It is a very expensive business. And that film, its performance in the box office will have an effect on its revenue down the line. It will affect how it will be paid for in television. It is placed on a shelf in a DVD store or a Walmart or a Kmart.

STILGHERRIAN: I should say, when I use the word "Distributor" I'm not probably not thinking of just that role in the company technically called film distributors but the entire distribution chain of distributor, cinema, cable television company or, in the case of a book, it would be the wholesaler, the retailer, you know, retail margins, staff in a bookstore, and so on. But in the specific case of moving images, film and TV, how much of the distributor's role is currently signing up agreements effectively to guarantee that audience? Because if you have an exclusive agreement to show something on Foxtel in Australia, then you can pencil in that X,000 or X00,000 people guaranteed to watch this and that is an income stream that I can commit it.

LORI FLEKSER: It is complex, because sometimes that may not be the distributor. The content creators might create deals where revenue from a guaranteed source like a television network for a pay TV or free-to-air might actually pay for some of the budget in advance of them screening it.

STILGHERRIAN: We see that at the end of the television program where it says "Coproduction with the Australian Broadcasting Corporation" et cetera. They've already guaranteed its television slot?

LORI FLEKSER: A film will have sales agents around the world who will pay the film, and that's part of the budget, to actually sell the film into cinemas in that country. You can see it doesn't work but there's nothing that replaces it and the tiny amounts of money available on online distribution systems are still not an answer yet to being able to make quality expensive content and content is not expensive because of high paid stars. Content is expensive because it involves the work of thousands of people over several years.

STILGHERRIAN: Here is a very diabolical question then – do we actually as a society have a right to expect that material to always continue to be economical? I mean, in the last great

revolution, when television came in, certain kinds of entertainment, such as vaudeville disappeared, they went on to television for a little while, but then television transformed that and you certainly didn't need a vaudeville theatre in every suburb so everyone could go every Tuesday night, you know needed one show for an entire city. Does the film industry have a right or a necessity to even exist?

LORI FLEKSER: No, if people stop going, then they will stop existing. But if people stop going because they are allowed to steal the content online, that is another matter.

KIMBERLEE WEATHERALL: See but... but... I would never, ever want to downgrade or disrespect the effort and all of that that were talking about. But, you know, what I am hearing is, nothing should ever have to change in the way that we have made movies.

LORI FLEKSER: But it is already changing.

KIMBERLEE WEATHERALL: And – and the government should step in and ISP providers should pay and every ISP customer should step in and pay to make sure that these things don't have to change.

LORI FLEKSER: I don't think there's no desire for change. I think there is change, there has been change, change is slow. Cinemas have existed for over 100 years in the same way and, as you said, Kimberlee, the change has only really been recently and there have been some major moves. Windows have diminished. They haven't disappeared but they have diminished. Fast-tracking is...

STILGHERRIAN: Are we expecting too much change too quickly, then?

MATT LEVEY: Look, I think – similar to Kimberlee, I wouldn't for a moment diminish the fact that consumers want marvellously produced content and that requires budgets of a certain size and certainly nothing in Choice's position is anti-content. I mean, we exist as an organisation because we create content and sell it to people, that's 98% of our funding. But I guess what I would say is it's – and Malcolm Turnbull said this himself, it is increasingly hard to see a future where the idea of locking the world up into regions and preventing people accessing online content across those regions is going to be sustainable. When you can go direct, as a consumer, to the person who has created that content – or a form of distribution, and again, I should clarify I'm not saying there would be no role at all for distributors, but I think what we consider a distribute to be is in some way changing before our eyes. I think it's impossible to believe that there won't be universal access to content in those ways and I was having this debate with Foxtel a couple of months back in one of the preliminary rounds of this debate and they made the point – and I don't want to verbal them here, but what we do – the fact they have an arts channel, for example. They have a certain quota to produce Australian drama. You know, I think the fact that we're questioning whether that business model is sustainable into the future isn't questioning the value of an arts channel or the value of Australian drama, I guess it's questioning how can we see a profound change this these things? If I knew what that change was going to look like I would be off running a start-up!

(LAUGHTER)

But to get to the other point, there's nothing in Choice's view of the world which is pro-piracy. We recognise that, you know, as an organisation ourselves, we benefit when people pay for what we produce. But if we're going to make a serious intervention in this debate it has got to be something that works. And there's absolutely no evidence that the proposals that are in that discussion paper, or a range of others, are going to work, but what there is evidence of is that they stand to impose risks, including costs, but including more intrusive interventions around people's access to the internet, whether that's slowing the speeds, whether that's

cutting them off entirely, whether that's A S I C going out to block 250 websites when they were trying to block one. We're entering a territory where the potential costs far outweigh any evidence of potential benefits. So that's not an argument to say piracy is good or that we don't need to actually look at something that might work. It is actually an argument to say, let's look at something that will work.

LORI FLEKSER: Such as what? Changing distribution models?

KIMBERLEE WEATHERALL: No, no, there's a range of legal models being discussed at the moment. So, in the discussion paper itself you've got two proposals. One is the website blocking and one is the grade waited response-type idea of having notices sent on. Maybe one of those is better than the other.

Another thing that is being discussed, and was discussed last week here and has been discussed a great deal in the US, is the "Follow the money" approach, removing advertising revenue and credit card processing from the really bad guy type websites. So it is not like there isn't a range of possible legal interventions. But maybe we need to, you know, try one, rather than go the whole hog. Maybe we need to say, "Try website blocking".

LORI FLEKSER: I just want to talk about the "Follow the money" issue because it was an interesting one raised last week in the sense that these Pirate Bay and all of these websites, these infringing websites, are not benign altruistic services that exist for the good of sharing content with great passionate content consumers out there. They are absolutely money-making machines and they make an enormous amount of money. Now, the University of Ballarat did some research last year and only 1% of the ads on infringing sites – on the top, I think, 35 infringing sites – actually comes from legitimate ads, as in mainstream companies. And often they come through aggregators, so those companies have not actually said, "I want to advertise on the Pirate Bay" they've gone through an aggregator.

STILGHERRIAN: I think we ended up in the ironic position of there being an Australian government advert on Pirate Bay one day!

LORI FLEKSER: So one %. What is the remaining 99%? 50% of those are malware, spyware, viruses. The remaining 49% is essentially offshore gambling, sex, pornography, illicit drugs, Viagra, penis enlargement. Those are the kinds of ads. So when you say follow the money those are not legitimate businesses to cut off sources to. It won't be that simply. You can cut off the 1% but what about the 99%?

STILGHERRIAN: We're talking there about somewhere close to an area I wrote a lot about, which is the rich area of online crime and grey activities where it has reached the point now where it used to be "The Russian criminals" or "The Ukrainian criminals" as a gang – now it's whole rich and separate eco system where there are people who just write malware or just will do the money laundering or just will craft the email to convince you to click on a link. It's all incredibly specialised and the grey internet advertising market is part of that and I say "Grey" because at one level they are not committing any crime as such, they're just selling ads on a website, and yet, as you point out, Lori, they are clearly part of a semi-legal at best system which then shades through several shades of grey into clear illegality. That is not a simple problem to tackle, I would imagine. And yet it is one that international law enforcement is starting to begin to address.

KIMBERLEE WEATHERALL: No-one said any of these issues were simple, Stilgherrian! If they were, we wouldn't be having this debate!

STILGHERRIAN: Exactly, we would be solved and making money online.

KIMBERLEE WEATHERALL: I would like to make one point, just for the record, if nothing else, because a lot of these discussions do end up in these policy things. One thing that is very important to understand is that the legal proposals in the discussion paper are a disaster as currently drafted. In fact, most rights owner organisations in their submissions say the same thing. They're just – they are back to the drawing board stuff. And any legal drafting in this space, you know, whatever of these proposals you end up going down, needs very, very careful attention, because the risk of unintended consequences is enormous, whichever of these proposals you are looking at.

STILGHERRIAN: And yet the rights holders insist that it is an urgent issue.

KIMBERLEE WEATHERALL: Yes.

STILGHERRIAN: That is a problem, then, isn't it?

KIMBERLEE WEATHERALL: It is.

STILGHERRIAN: I do want to open for questions shortly, but one last question...

KIMBERLEE WEATHERALL: They must be getting bored out there! There must be people want to go ask questions out there.

STILGHERRIAN: There are, but I wanted to throw in very quickly, we're looking at some kind of inevitable radical change, I think. The revolution factor. Do we have any sense of what it might look like after the revolution, or, perhaps, if we can't say that, because as Matt rightly pointed out, if we knew what it was, we would already be making the preparatory work to be billionaires, but can we see any indication of what it definitely won't be? I'll start with Matt and then come down the table back towards me.

MATT LEVEY: Look, I've probably said it to some degree. I think it won't be a world where digital goods and services are carved up by geographic regions. I just think it can't be, as much as some people might want it to. You know, it's the equivalent of trying to stop the internet and you will find that, you know, to the extent that there's that group of people that were referred to earlier, who will steal no matter what, I reckon those people are always going to be one, or two, or three or four steps ahead of whatever might be brought in to stop it as well. So in terms of what it will look like, I think a lot more consumers will be going direct to the source and I think what we currently regard as the role of a distributor or the role of a curator of content, you know, as a subscription television service might view itself, is going to change radically. I think you will see a lot more self-curation, you have seen that will from the way someone puts together their Twitter feed through to how someone chooses to receive their news every day. It's less about the editor on high creating something for you and more about an experience of consumers deciding for themselves what sort of content they want to access in what sort of time frame and in what sort of basis. I ideally hope that, you know, along with that innovation, we actually see maybe a more mature debate about policy responses which are going to sustain creative industries, but I think we need to separate the idea of what do current business models look like and what's good for Australian creative industries in the future because while they are linked I don't think they are the same question.

STILGHERRIAN: Kimberlee?

KIMBERLEE WEATHERALL: Doing business models for this sort of thing isn't my job. That's why I went into academia!

STILGHERRIAN: You can hand it on if you wish.

KIMBERLEE WEATHERALL: Yes, look, I think what's interesting at the moment is that we're already seeing some experimentation. Some of the release of whole seasons of television shows over in the US so that people can binge-watch, if that's what they prefer, or watch it week to week, if that's what they prefer. People experimenting with different kinds of methods of funding creativity, whether it be, you know, crowd funding, right through to, you know, current models. So, that's what I find interesting at the moment and I don't know where it will go. But I do have to agree that, you know, trying to stem the tide and maintain current windowing, for however long, just does not look like a winner.

STILGHERRIAN: And Lori?

LORI FLEKSER: Look, I would like to be hopeful, but, let's look at the less hopeful.

STILGHERRIAN: Hopeful that?

LORI FLEKSER: Last year's qualitative research was a very in-depth study into the minds and attitudes of 12-17 years old, and what they were saying is, "Why would I pay for it when I can get it for free"? Why would I pay for it when I'm only going to watch it once and why would I pay for it when I may not like it? And that is the digital native who really has an expectation that content is ubiquitous, it is out there, I can use my money I things I know I already like, I can use it on things I like, a piece of music I will play more than once. I would love to think there is a world out there in the future where people can watch what they want, when they want, on whatever device they want, but I think Lord David Putnam said there was a lot of discussion about freedoms of the internet but very constant debate about what sort of responsibility one should take when going online. I would like to hope that, while it is people's personal responsibility, and that they will see a long-term sustainable future in the content industries by allowing content creators to decide how they want to release their content, whether that's for free or for payment, and respecting that, I do think that legislation needs to play a really important role in that debate.

STILGHERRIAN: Thanks, Lori. I wonder how much part of that view of the teenagers is just that they are irresponsible teenagers and teenagers have never wanted to pay for anything or do things they don't want to do!

KIMBERLEE WEATHERALL: Irresponsible teenagers without a steady income.

STILGHERRIAN: They don't have the money to pay for things.

LORI FLEKSER: Although they have the money to buy the hardware?

KIMBERLEE WEATHERALL: They have the money to buy the hardware?

(LAUGHTER)

LORI FLEKSER: In the main, parents subsidise their children's habits online and they are much more concerned about their children being victims online, rather than them being perpetrators of any kind of crime online.

STILGHERRIAN: I don't think we will solve that today!

LORI FLEKSER: Not with this panel anyway.

STILGHERRIAN: Let's open things up for questions. Normal rules, don't make speeches, snipers have been placed and at the 30 second mark they will shoot you. Jonathan, you want to jump in first. He works for the place, he has the right.

I want to shift the conversation from law to social values. There are a lot of things that people do that are wrong, against the law, but are hard to police or enforce – red lights, drink-driving. But over a long period of time, drink-driving, for example, went from something that was accepted as something people did to something that was, due to decades of public-education campaigns, frowned upon and not done and just a bad thing and people stopped doing it as much as they used to. Illegal downloading – do you think there's a role for government in long-term education around "It's not cool to take stuff for free"?

MATT LEVEY: Whether it's a public education or a cultural question around that stuff, I think there's a place for it. That's an interesting discussion. Choice, although the vast majority of people access our content by paying money to get into our website, we still have a magazine. A question that people with print publications around the world have been asking themselves for several years now in the face of steep declines is, "What are people willing to pay for? Is there a group of people out there" – their normative approach to what they should and shouldn't pay for has been change so much – it's rethinking the whole way we produce news. There's a debate, for example, around investigative news should be considered for government subsidies. There's definitely been a cultural shift, and there may well be an interesting discussion to have around whether there's a role for government and a role for others within that sort of normative framework. I still believe, though, that there are some pretty unhelpful and unsubstantiated ideas around this debate that, as I said at the outset, Australians are prepared to nick stuff if they can get away with it. Think there's plenty of evidence that that's not the case, and essentially there are things we would know would work at the moment around availability and affordability at the moment that we know we're not doing.

NEW SPEAKER: What about Kim?

KIMBERLEE WEATHERALL: If the basic question is, "Is public education about copyright and how important it is" and all of that a good thing the of course it's a good thing. I do believe in the copyright system. I teach it. I've taught it for 10 years. I have plenty of creators as friends. Is there a role for creation? Of course there is. How do we bring about cultural change in this area? That's a harder question to answer. I think Matt's point is a valid one, but I do think there's, in some ways, the copyright industries in the last several years haven't done themselves any favours in the way that they've gone down a very punitive sort of approach and route.

STILGHERRIAN: Are you saying that they've managed to make themselves look like the bad guys in the debate?

KIMBERLEE WEATHERALL: Yes. Yes. To a very significant extent. And that doesn't help. Frankly, it's continuing to occur through, you know, some of the ideas around punishing consumers here, but also all of the lobbying around various trade agreements – there's this constant push for more legislation, more treaties, more punishment, more criminal (inaudible). I don't think that does anyone any favours, and it has given copyright a very bad name over the last little while. If there's one area of law that really needs a good name in order to ensure that this good, private behaviour complies with it, it's copyright. Copyright needs a good publicity image. There's been some consciousness of that. It's been really interesting to watch the debate going on in the world intellectual property organisation recently, with Francis Gurrie, the director-general there, actually saying it's incumbent on us, the supporters of copyright, to make sure that we're conscious of this, and to try and build a more positive in, engaged-with-consumers image to bring about that cultural shift that values

creation. There's a bit of 2-way here. It's not just about the government going out and telling everyone "It's very evil to download, so stop doing it!" It's also, you know, "Let's have a conversation about supporting creativity. Let's engage with consumers about what they want and what's important to them." It can't all just be one way.

STILGHERRIAN: Lori, did you have anything to add to that?

LORI FLEKSER: Really – legislation to frame what is legal, what's illegal, and education to help people to understand that copyright has a value and that piracy has an impact.

KIMBERLEE WEATHERALL: You know what would also be nice? Reasonable copyright law.

(LAUGHTER)

The other big mess missing thing in this whole debate is we had an ALRC report come down end of last year that said our exceptions are crap, they don't make sense, they're technology-specific, there's no flexibility, and that just disappeared without a trace and suddenly we're talking about enforcement again. Of course, all the copyrighters said, "We can't have more exceptions! That would be terrible." Let have a 2-sided debate. Let's make copyright law make more sense and talk about enforcement at the same time, 'cause that's what really frustrating for, I think, a lot of people who want to support the copyright system – it's all one-way.

STILGHERRIAN: Any questions from the floor? Yes, at the back? If you can keep hold of the microphone if you think you might have a supplementary question so that will also be heard on the recording?

NEW SPEAKER: Hi, my name is Len. I'm speaking now as the husband of a deaf wife. One of the issues that we have is that, for us to get access to content which is accessible – that is, has captions – we have to either go to the one-movie-a-month theatre in our region, which is on the big screen, as our preference – it may be a children's movie or rom-com I don't want to watch – so we don't get to share the experience of going to the big screen at all, pretty well. If we wanted to watch movies on a legal-download service, most of them that are current, I guess, are captioned, except the Australian programs. So if you go to iTunes, you'll find that nearly all the Australian current content is not captioned. If we want to go to one of the distributors like Foxtel or something, we'll find that almost none of the programs other than the free-to-air stuff is captioned. So if I want to get my Games Of Thrones, I've got to buy a bundle of a whole bunch of stuff, which we have no access to. On the other hand, there are heaps of captioned files of all the major programs which I can download – not that I would – and be accessible, and we can see the current real things that everybody else is watching. If we want to be responsible, we've got to play the other side of the game and make it accessible.

STILGHERRIAN: Thanks, Len, I think it was. Len faces an interesting ethical dilemma there, doesn't he – to actually get content for his family to consume and be a member of our current society, his options are limited. What does he do ethically?

MATT LEVEY: Look, I think it's a really important point, and I say this as someone who spent five years of my life at the Australian Caption Centre subtitling for hearing-impaired Australians.

STILGHERRIAN: That's handy.

MATT LEVEY: Incredibly valuable for a range of reasons. I won't pretend to be an expert on the accessibility question at all, and there'd be people from ACCAN here who I think could speak to it much more thoughtfully than myself, but I guess I would say that there are clear public goods in debates like this. There are things that are worth supporting for very compelling reasons. While it's not quite on par, it goes back to some of those questions about supporting Australian content. I think we need to separate the question of what are the public goods that we decide to support and pay for, and what are the existing business models? I think they're two different things but I wouldn't pretend that I can answer that accessibility question with any degree of expertise.

STILGHERRIAN: Is this one of these cases whereby we just turn a blind eye to a little bit of illegal activity for the greater good? This is a moral question.

(LAUGHTER)

Are you all running from this?

KIMBERLEE WEATHERALL: I... I... I would be fairly amazed if he ever got sued for copyright infringement for doing that. Leonhard louder, please. The microphone's right up the back.

KIMBERLEE WEATHERALL: Sorry! There's me not doing the access thing! I'm so sorry. Let me say that really loudly, then – I don't think you'll ever be sued. And I don't think you should be. You know, if you've got a very legitimate reason, and that is a really legitimate reason, to access this stuff, then I don't think you should be sued for it. And I'll just say that, 'cause, you know, that's just my position. But I think Matt's right – we need to find ways to make sure that you don't have to do that. There should be ways of ensuring captioning so that doesn't have to happen. But I am not an expert in that area.

STILGHERRIAN: Maybe the technology of automatic captioning would help one day, although our professionals doing the captioning in the corner will throw rocks at me for suggesting this is even possible!

Next question? Hand raised at the back there?

NEW SPEAKER: We've got an interesting question here. The debate has gone through on copyright, focused on the entertainment industry, which is not the only area. The entertainment industry, particularly in the US, has a wonderfully laudable history of unethical behaviour which it's now trying to export. This should not disguise the fact that the legal structure we have here is not balanced. The legal structure in the US, where the DCMA is in place – and let us all remember that what we're talking about is criminal offences, however minor and, people have not remembered that – there is the Fair Use Doctrine in the US that allows a balance. As to how it did not allow that to appear in the AUSFTA and the interstate trade agreement that is clearly in the TPP, will mean that, if Brandis ever responds to the ALRC recommendations to put fair use in, the government would be sued for 10s of billions by that same industry. So the answer to the previous question, and many of the others, is the introduction of the Fair Use Doctrine, which has been analysed extensively and recommended by the ALRC, and its recommendation is, I gather, in suspension. I believe there is an expert in the room on this area. Kimberlee?

KIMBERLEE WEATHERALL: Well, I guess I was – this is exactly what I was talking about when I said it would be nice to have a copyright law that made sense. If we're going to sell copywriters a good system that they should support in both their private and public behaviour, that law should make sense and be balanced. And it's not. So I agree with you on that basic point. Doesn't mean that I think file-sharing is ethical, by the way. But I do think

that the unbalanced nature of the copyright system – the unbalanced nature of our laws – is a problem.

STILGHERRIAN: For people new to the topic – the kind of exceptions we're talking about here for fair dealing, as we call it in Australia, fair use in the US – are things like...?

KIMBERLEE WEATHERALL: Well, um, the basic difference between the US and Australia is Australia has specific exceptions. You have to show that you fall within one of the very specific purposes set out in the Act, or one of the very specific sections in the Act. The Fair Use exception in the US says, "If something – there's a purpose, it's not too great an impact – I'm massively paraphrasing here, but the impact on the copyright owner's market is not too great, then there can be an exception even if it hasn't been specifically recommended per legislation. It's The Fair Use defends, for example, the Google Book project to start. The Google Book project and associated projects have made loads and loads and loads of book accessible to people with disability, which has been one of the particularly good outcomes of Google Book. Creative mash-ups and the like may be considered fair use if it didn't fall within a specific exception. There's a flexibility around the US system that means that, you know, unless we foresaw, in all our legislative wisdom, that this thing should be allowed, you're just pinged.

STILGHERRIAN: Mm. We probably don't have time to go further down that rabbit hole this afternoon. But it is an -

KIMBERLEE WEATHERALL: It's another good rabbit hole.

STILGHERRIAN: It's a fantastic rabbit hole. Do we have another question?

You've had a go, so if there's someone else, I'll let them go first. If it's related, very quickly, then? Wait for the microphone, thanks.

NEW SPEAKER: One example is that I purchased a huge collection of DVDs because of this issue. Some of them are scratched now. So I've undertaken the criminal offence of downloading a replacement for the licence for which the distributor refuses to provide a replacement, in spite of the terms and conditions of supply of the DVD I purchased locally. That is a typical example where the only defence would be a Fair Use defence.

STILGHERRIAN: Mm. Thank you. Any further questions? Yes, at the back?

NEW SPEAKER: Narelle Clarke from ACCAN. One of my dear friends and colleagues has a vision impairment – actually, he's blind. He gets access to some great books and things that I can't get easily, and it's really great when he lends me his books. I can't lend him books because of the issues with the copyright – if I loaned him a talking book, that's not allowed. If he lends me a talking book, that's not allowed either. This all seems a bit weird to me. Does anybody else?

MATT LEVEY: I mean, I agree e. I think there's all sorts of quirks in copyright law around devices and transferring content between devices and around the fact that, you know, the famous examples around copying a show onto a VHS tape, which only became legal a couple of decades after people started using VHS machines, and DVDs was more or less a similar time frame. I think you're right – there's a stack of issues which show that we have a very rigid copyright law based on exceptions, rather than what we would, you know – many of us would prefer to see a principles-based fair-use approach where you could actually assess whether an activity was unfairly impacting on the market of the rights holder. You know, that debate – I think it was really bizarre timing of this whole piracy discussion, because I think the Attorney-General may well have flagged it on the day that he announced

the Australian Law Reform Commission's reporting to fair use, and all of a sudden nobody was talking about fair use and we've had a good old chat about piracy. I think there's a lot of unfinished business around copyright law, and it's certainly Choice's hope that we'll get to that.

LORI FLEKSER: I think it is also just symptomatic of the idea that, you know, legislation does not keep pace with technology. When you talk about the effect that, you know, it was illegal to record off your television set onto a VHS – that was a typical example where the law just had not conceived of those kinds of things. But I think it's worth just keeping in mind, overall, the basic intention of copyright and to make sure that the copyright laws, with all their nuances, of which 100% will never be perfect, the same as 100% of people will never adhere to them, need to keep in mind the basic premise that you need to find a way of encouraging people to participate in creative activity, and the only way you can do that is by making sure that they can make a living from it.

KIMBERLEE WEATHERALL: And the other side of that is that the reason we want to encourage creativity is so that the people of Australia and the world will have access to the best that culture and creativity can create. So access is the flip side of creation – it's the reason we have incentives.

LORI FLEKSER: People want people to watch them. But they want them watched in a way that -

KIMBERLEE WEATHERALL: Six months later? Really?

LORI FLEKSER: It's possible.

KIMBERLEE WEATHERALL: Three months later? Four months later?

LORI FLEKSER: It is the creators' choice – the people who've paid for that content's choice, on how to release it.

KIMBERLEE WEATHERALL: And we should make more and more draconian laws so that absolute choice should be upheld?

LORI FLEKSER: I don't think the laws are about closing off access – I think the laws are about preventing freeloading.

KIMBERLEE WEATHERALL: Again, there's nothing in the discussion paper that will promote access. It apparently is not the role of government to try to be concerned with that.

STILGHERRIAN: Yes, there are odd gaps in the discussion paper. We've got time for another question – there are some closing questions I have for the panel. Gentleman in the blue top there?

NEW SPEAKER: I guess full disclosure, I'm one of Kim's students.

KIMBERLEE WEATHERALL: I won't hold anything against you!

(LAUGHTER)

NEW SPEAKER: This kind of goes to everyone, especially, Lori, on the research you did on that 12-17-year-old able group. In your research, did you look at the effect that this, I guess, hyper-access is having on children's opinions of creativity? Like, these kids in the 12-17-year-old age group are very much the YouTube generation. They all have phones, covers,

they have cousins who watch a hundred YouTube clips a day. Do you think this ability to watch things for free is encouraging them to create, or discouraging them to create? And where do you see it going if we legislate? If, all of a sudden, it's extremely bad for them to be recycling through all this information, do you think we'll create a generation that doesn't want to create, and then we'll just kind of stunt the whole process?

LORI FLEKSER: I'm not really sure. We didn't ask them about their own creative intentions. And you're absolutely right – kids spend the most incredible amount of time online. I mean, I've got a quote here from a 14-year-old who says, "I live on the internet almost daily. I talk, text, watch movies, and download everything I can for free." There is just this total engagement – some kids are spending more than 30 hours a week online, and they are consuming an enormous amount of content. Legal, illegal, in any way that they can. But earlier this year, I went to talk to people at a film school in Melbourne. I was quite surprised that a very large proportion of those students who want to make a career out of the creative industries are participating in unauthorised downloading. When I asked them how they thought that would impact their own careers, they truly believe that they will find a new distribution model. So perhaps Matt is right – that they kind of think that the way in which they work in the future will change the paradigm. And they may well be right. But then I look at Bette Midler's tweet earlier this week – over 4 million downloads of her song, and she made \$114. That might be alright when you're Bette Midler....

STILGHERRIAN: I was about to say, she's probably in a position where she can do OK now.

LORI FLEKSER: But those kind of streaming services we're potentially looking at for film and television, that \$9 Netflix all-you-can-consume model will be a very tough model to encourage creativity in the film and television industries.

STILGHERRIAN: Mmm. I sometimes wonder whether creators or the people who own the rights to their material are signing up to these extremely low-paying services, such as Spotify, simply because they don't see an alternative. They go, "We better sign up for that and get three-tenths of stuff all, because if we don't do that, we'll get absolutely nothing"?

LORI FLEKSER: I don't know. I know musicians who won't sign up, and obviously others who will. Again, the key is that it's a personal choice of that creator. They can choose to do it.

MATT LEVEY: I also think, in some ways, even though music has probably faced these issues a bit earlier than film and TV in a way, this is an incredibly immature market, in a way. We're not yet really understanding exactly what the upheaval that's going on at the moment is going to bring us. I agree that there's legitimate concerns around what businesses like Spotify pay the creators, but I also think there are other services – Band Camp was one that we were talking about the other day – that would potentially have far more generous, if you like, or fair, is probably a better word for it, payment methods. The question that we look at is, in terms of attitudes of people who might be undertaking creativity and what it means if they also infringe, I think there was a study from Columbia University a couple of years ago showing that the people who actually had the highest number of, if you like, illegally obtained music in their collection, also had the largest amount of legally obtained music – these were people who are passionate about content, passionate about music in particular, and acquired it and sampled it and used it in all sorts of ways. It really goes to one of the economic points under the debate, which is that these aren't exhaustible goods. If I go into a supermarket and take some shampoo and run off, I've got that shampoo and no-one else can get it. If I go onto iTunes and I grab a song and then someone else at the same time is stealing that song from a torrent, there's not one less song around. So I think, you know, in some ways, the argument is more complex than that, but I think, you know – and Lori, you would have insights to this through the work that you guys have done yourselves, but the

mindset of people who are taking a lot of content is not as simple as they want to take the content and they're not going to pay for it in any circumstances.

LORI FLEKSER: I think you've touched on a really key point – because it's not a physical transaction, it is the press of a button, and no physical transaction takes place. So a lot of people just won't acknowledge that, however it is transferred from one person to another, it's the value inherent in that content that is actually – that's where you make your money.

STILGHERRIAN: Mm. Look, we're virtually out of time. I'm sorry, but we will have to wrap -

LORI FLEKSER: Can you ask Michael for a question? Can I have some guidance? No, I'm told that we are out of time, so I must wrap up with the panel for one final thing. What would you want people to do, personally, going away from this conversation today, as part of this whole debate and discussion? I'll go from Lori outwards down the table. 60 seconds each.

LORI FLEKSER: Don't do it!

(LAUGHS)

Look, I think we will continue to work very hard at making sure that we try and show people that there is an impact of piracy, that it does have an impact on the creative industries, it does impact people's livelihoods. We will continue to produce education campaigns, and we hope that, you know, bit by bit, while distribution models are and do change, that people also acknowledge that content is valuable, it has a value to the people who made it and who distribute it and who paid for it, and that piracy has an impact. That's what I'd say.

STILGHERRIAN: Kimberlee?

KIMBERLEE WEATHERALL: My biggest hope as this conversation goes on is that we have an argument on every side of the debate. That we do go back to that ALSR point and talk about copyright making sense, because it doesn't in its current form. And we talk about everything that we can do to make sure there's access on reasonable terms in a timely way. And we all commit to all sides of this copyright equation. Because I do believe in the copyright system, and I believe in creators getting paid. But it's all got to work together.

STILGHERRIAN: Matt?

MATT LEVEY: Look, I'd say two things. The first is I would encourage you to go to [choice.com.au](http://choice.com.au) and sign our petition against the proposals in the government's discussion paper.

(LAUGHTER)

But look, I'd also say, buy some content. You know, buy an Australian film. Buy an Australian TV show. Buy an Australian song. Don't pirate. It's not something we support. But support a campaign for a better copyright law.

STILGHERRIAN: Thank you very much. That brings us to the end of this panel, and I'd like you to show your appreciation to our panellists – Lori, Kimberlee and Matt.

(APPLAUSE)