



ACCAN POSITION STATEMENT ON COPYRIGHT AND CONSUMERS

Introduction

ACCAN's Strategic Plan pledges us to campaign for clear and fair arrangements for consumers in relation to digital content, and to entrench consumer rights at the centre of communications policy.

A key dimension of clear and fair arrangements for digital content must be clear and fair rules for consumers on copyright.

Copyright rules must serve the whole community

Copyright rules must serve the needs of the community in achieving both social and economic ends. On the one hand creators need to be rewarded for their work. On the other, the human rights to freedom of cultural expression, and access to information and education, need to be protected.

The public interest requires a balance between the public domain and private rights, between public access and protections for creators, between competition and monopoly.

Copyright rules must not penalise legitimate user activities

In the era of user-generated content, social networking and smartphones where people from all walks of life create and publish online, play with videos, photos, words and music, it is more important than ever that there exist clear and fair rules that consumers can follow.

Accordingly, ACCAN believes that copyright rules should not criminalise people or place people at risk of financial penalties when they engage in these kinds of



activities or when they record or copy from one format to another for non-commercial use.

Copyright rules must not affect access to communications

Access to the internet is now a practical necessity in everyday life. Many government and business services are delivered in a way that assumes universal access.

Both internet and phone services are often delivered over the same infrastructure and bundled into one account.

Accordingly, penalties for copyright infringement must not result in any person being disconnected from a phone or internet service. Disconnection from an essential utility service on the basis of copyright infringement is both disproportionate and inappropriate.

The provisions in the Copyright Act which offer incentives for service providers to disconnect people who have infringed copyright should be abolished.

Copyright rules need to be simple and relevant for the online era

The explosion of online services has changed the way we live and work. Increasingly, services of all kinds are delivered online. Even our favourite television programs can be recorded online, stored remotely, and viewed by us through an online service.

While the law allows people to record television programs for their own personal use, there is uncertainty over whether the rules are keeping pace with the new delivery technologies.

Accordingly ACCAN believes the time has come for changes.



ACCAN calls for:

- More fair dealing or fair use exceptions to copyright which are technology-neutral and recognise the legitimacy of consumer activities such as sharing user-generated content.
- A right for consumers to record and format shift content that has been acquired lawfully, for non-commercial use. The rules must be simple, technology-neutral and easy for consumers to understand.

Illegal downloading: a call to industry

The widespread nature of illegal downloading points to a market failure. While there will always be some who break the law, there are untapped opportunities for quality online services at reasonable prices to be offered to Australian consumers.

The content industries are beginning to offer their products online, but a great deal more innovation is needed in order to cater for unmet demand. Films and television in particular could be offered online in such an easy, convenient and value-added way that the mainstream public would have no reason to visit illegal sites.

Before threatening consumers or “educating” them about why they should not have the content they desire in the way they want, the industry needs to take responsibility for meeting market demand.

The industry should supply on good terms, in a timely manner, in high-quality formats compatible with different technologies and platforms, the full range of content – old and new – that is potentially available from around the world.



Respect the public and respect for the law follows

The threat of penalties can only go so far in attaining public compliance with any law. This is particularly so in an era when copying only takes the click of a mouse.

Ultimately respect for copyright rules arises from the values and attitudes of the public. Meeting market demand together with fair rules will create that respect.

Peer-to-peer downloading: notification schemes

File-sharing of TV shows, movies and music via peer-to-peer (P2P) software has attracted government intervention in some countries. This has usually taken the form of notice schemes, where ISPs are informed by copyright owners of suspected infringements. Letters are then sent to the relevant account holders with information about the infringement and how to acquire content legally. Some schemes involve financial penalties or account terminations.

If any such scheme were to be developed in Australia, ACCAN believes it must be a scheme that fosters respect for consumer rights as well as respect for the rights of creators.

- It must uphold the right to free, independent review of any allegation and must afford due process to people who have allegations made against them – even if there are no sanctions attached to those allegations.
- It must not compromise individual privacy and the right to confidentiality of online activities.
- It must not contain any measure that would have the result of disconnecting any person from a broadband, internet or phone service.



Disconnection from an essential utility service that is often shared among multiple individuals within premises is disproportionate and unacceptable.

Copyright rules must not result in discrimination against people with disabilities

Copyright rules affect the ability of people who are blind or vision-impaired to have the same level of access to printed material that the rest of us enjoy. In particular, access to material published or delivered via online and electronic formats is a concern.

Currently there is an exception to copyright for people with disabilities so they can access a copyrighted work in a suitable format. But the rules are confusing and vague. The circumstances must be “a special case” and the use should not “unreasonably prejudice the legitimate interests” of the copyright owner. People with disabilities are left unsure whether what they want to do is legal or not.

These restrictive rules may also be inconsistent with a commitment to ending disability discrimination as embodied in the Disability Discrimination Act and the UN Convention on the Rights of Persons with Disabilities.

ACCAN believes our laws must allow for printed material to be made available in electronic versions that are accessible for people who are blind or vision-impaired, and to allow such electronic versions to be created and held without fear of penalty.

Accordingly, there should be a wide exception to copyright allowing people to create and hold accessible electronic versions free from onerous obligations and legal uncertainty.



Similarly, rules which make it illegal for people to use or obtain technologies that enable use of accessible electronic versions, should be abolished.



STATEMENT ON ACCAN PARTICIPATION IN GRADUATED RESPONSE NEGOTIATIONS

ACCAN is participating in the negotiations to ensure the consumer voice is heard at the table. Our participation in the discussion does not imply endorsement of the views of content industry groups in relation to copyright infringement nor does it imply that the current copyright rules are not in need of reform.

Our priority in these negotiations is to ensure that market failure, particularly for online supply of films and television, is on the table for discussion and addressed with real commitments to meet consumer demand.

We also believe that a notice scheme should play fair by consumers. We are at the table to voice our view that:

- such a scheme is not acceptable if data is collected in a way that breaches consumers' privacy or involves entrapment methods.
- notices should not be sent out about content that is not legally available in Australia in a reasonable manner.
- notices should not harass or contain false information about legal options for Australian consumers, as some current notices do. For example, some notices now advise of online ways of accessing content that are in fact blocked to Australian consumers.
- notices should not contain an inducement to admit to any wrongdoing that could have legal consequences for consumers.

The Basic Consumer Rights will guide us in these talks:

- The right to be informed
- The right to be heard
- The right to redress or remedy