



The Director, Copyright Law Section
Department of Communications and the Arts
GPO Box 2154
Canberra ACT 2601

July 4, 2018

Dear Director,

The Motion Picture Association of America (MPAA) and the Independent Film and Television Alliance (IFTA) appreciate the opportunity to comment on the current Copyright Modernisation Consultation in Australia.

The MPAA is a trade association which represents major Film and TV producers and distributors engaged in promoting the film and television industry worldwide. MPAA's members regularly shoot films and source post-production in Australia, with recent examples being *Thor Ragnarok*, *Alien Covenant* and *Pirates of the Caribbean: Dead Man Tell No Tales*. MPAA's members also are involved in the distribution of Australian films, with 21% of the box office revenues generated by Australian movies coming from our members' distribution activities.¹

The [Independent Film & Television Alliance](#) (IFTA) is a global trade association for the independent motion picture and television industry, a non-for-profit that represents [more than 130 production and distribution companies from over 20 countries](#) who produce and distribute their films and television programming worldwide. IFTA members have recently shot *Hacksaw Ridge*, *Lion*, and *Hotel Mumbai* in Australia.

Copyright protection is the lifeblood and foundation of our industry – it underpins the business models and investments necessary for both independent and major studio productions. Preserving and supporting copyright law is crucial to the success of our industry. We submit this joint-letter to voice our support for the positions taken in the submission filed by the *Australian Film & TV Bodies*. In particular, we are concerned about the potential new exception for technical and incidental use raised by the consultation. This exception would be a world-first and, in our view, exceeds what is permitted under Australia's WTO/TRIPS obligations that require any copyright exceptions to comport with that agreement's three-step test as articulated in the *Berne Convention*.

In addition, we fear that the proposed exception would undermine Australia's recently amended safe harbor scheme, which has just been revised after much careful and extensive debate.²

In addition, we encourage the government to refrain from introducing broad exceptions that prohibit parties from agreeing to terms and conditions that vary from the statutory language of particular

¹ MPDAA data 2012-2017. Available on request.

² On June 27, Australia's House of Representatives passed the *Copyright Amendment (Service Providers) Bill 2017*.

copyright provisions³ as doing so would disrupt existing commercial practices, weaken freedom of contract and make commercial agreements less certain in Australia.

Australia has recently introduced a number of positive reforms which are allowing its creative industries to thrive, notably the 2015 legislation permitting rightsholders to seek to have access to piracy sites curtailed.

We urge the Australian government to be mindful of its international obligations as it considers new exceptions to the copyright act so as to ensure that any reforms are based on a careful assessment of the issue to be remedied. We ask that any amendment be clearly assessed for its ability to address real and articulated deficiencies in the law and to avoid any negative or unintended consequences.

We are happy to provide further thoughts on these matters and look forward to seeing the results of the Government's deliberation and recommendations.

Yours faithfully,



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³ This deviation from the parameters of a statutory exception is referred to in the consultation as "contracting out".