



**Electronic Frontiers**  
AUSTRALIA

PO Box 382, North Adelaide SA 5006  
T +61 2 9011 1088 F +61 2 8002 4009  
E [email@efa.org.au](mailto:email@efa.org.au) W [www.efa.org.au](http://www.efa.org.au)  
ABN 35 050 159 188

The Honourable Nicola Roxon  
Attorney-General  
Attorney-General's Department  
Central Office, 3-5 National Circuit  
BARTON, ACT 2600

***By email***

Tuesday, 28<sup>th</sup> February 2012

Dear Attorney-General,

**Re: Proposals to amend the Copyright Act 1968 to restrict consumer options for recording free-to-air television broadcasts for personal use.**

I write in relation to speculation that the Government is considering unheralded changes to the Copyright Act, and on behalf of Electronic Frontiers Australia Inc, to urge patience and caution in considering law reform.

Established in January 1994, Electronic Frontiers Australia (EFA) is a national, membership-based non-profit organisation representing Internet users concerned with on-line freedoms and rights.

Following the recent Federal Court decision relating to the cloud-based recording of free to air sports broadcasts (*Singtel Optus Pty Ltd v National Rugby League Investments Pty Ltd (no 2) [2012] FCA 34*), EFA understands that the major sporting codes have called for legislative changes to prohibit the use of certain technologies for the recording of free-to-air broadcasts of sporting events.

The right to record television programs for personal use is recognised under section 111 of the *Copyright Act 1968* (Cth). Consumers exercise this right using a variety of devices, including physical devices such as Video Cassette Recorders (VCRs) and Digital Video Recorders (DVRs), and, increasingly, using mobile and cloud-based recording services accessed through the Internet. There is a convergence between the use of media devices which considerably boost the value of this right to the public.

EFA is concerned that hasty amendment to the Copyright Act to restrict the technology choices available to consumers wishing to record free-to-air television broadcasts for later viewing would deprive the public of choice and would put a brake on cloud services. In a time of rapid technological innovation, with mobile devices and cloud-based services becoming increasingly important for the consumption of all forms of media, the introduction of technology-specific restrictions relating to the recording of free-to-air television brings the risk of serious negative consequences.

These consequences may result in Australian consumers being denied the full benefit of future technological innovations relating to content distribution, by:

- locking in monopoly content distribution business models; and,
- introducing legislative inflexibility that may impede investment across the mobile services, cloud-based services and wider Internet services markets, undermining job creation in these important economic growth sectors.

EFA believes that legislation relating to consumer rights to content should be technology neutral, and that effective consultation with all affected stakeholders is essential before any change to such legislation is undertaken. This includes currently contracted parties, but also users and businesses with an interest in new technology and new services.

EFA therefore requests that the government not to introduce any legislative changes relating to the recording of free-to-air television broadcasts without first undertaking effective consultation with the full range of stakeholders, ideally as part of the imminent Australian Law Reform Commission review process.

EFA would be pleased to be involved in such consultation, and I will be in Canberra this Friday, 2<sup>nd</sup> March, and would be pleased to meet with a representative from your office to discuss this matter further.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Cake', written in a cursive style.

David Cake  
Chair