



GEO-BLOCKING

The Productivity Commission is likely to include its recommendation from the Draft report that the Government make clear that it is not an infringement for consumers to circumvent geo-blocking technology. Screen Producers Australia strongly opposes this recommendation.

BACKGROUND

This issue was first articulated at the July 2013 House of Representatives Standing Committee on Infrastructure and Communications report, *At What Cost? IT Pricing and the Australia Tax*. That report focused on the practice of content owners imposing price discrimination in different jurisdictions and consumer's right to access content. That report was written when the Australian dollar was at near parity with the US dollar and the contemporary cost of content and software in Australia was higher than in the US.

WHAT IS THE PROBLEM?

With a supra-national internet, national boundaries have become porous and seemingly irrelevant to transactions of goods and services across national borders. Consumers may elect to purchase goods at lower prices in other countries than in their own country. This becomes problematic when it comes to digital content, which is licensed, not sold.

Further, these licenses are sometimes determined geographically, due to financing deals, contractual

obligations or a desire to segment markets to maximise returns from investment in content. As such, in some cases, the prices for content in Australia may be higher than in other countries or not even available in Australia due to licensing arrangements.

WHAT IS THE PROPOSAL?

The Productivity Commission has recommended that the Government ensure it is not an infringement for consumers to circumvent geo-blocking technology.

WHY IS THIS PROPOSAL A PROBLEM?

The proposal as it stands is hugely problematic, has the potential for unintended consequences, undermine the system for the production and distribution of content in Australia. It will also put Australian in breach of its international obligations to protect creator's rights.

1. FINANCING AND SELLING CONTENT INTERNATIONALLY

In an increasingly difficult environment to finance film and television content wholly from domestic sources, producers seek to obtain finance from offshore. Generally, in exchange for this foreign investment in the production phase, the producer might agree to provide the investor with an exclusive licence for that country or broader geographical regions. Once production has finished, the producer may then seek to sell their content around the world. It is then up to content owners in different countries to set the price they wish to apply to the content, based on what they think the market will accept.

If the Productivity Commission's proposal was adopted, it would allow an Australian consumer to obtain content from third party countries and not pay the content owner in Australia, who is likely to be a

broadcaster (commercial, national or subscription) or a service provider (such as Netflix or Stan).

This robs the Australian content owner from a sale, lowers their return on investment, undermines the value of their asset, and has the effect of reducing the available funding for future local content productions.

2. INTERNATIONAL RACE TO THE BOTTOM ON PRICES

If the proposal was accepted, where Australian consumers would be able to pick and choose the lowest possible price for content on a global scale, this would put downward pressure on Australian prices which would settle at the lowest possible price in order to be competitive with offshore providers of content. If this price becomes unsustainable for the Australian content provider (e.g. a broadcaster), they may decide not to invest in specific content, denying access to that content for legitimate purchasers in Australia.

This then become a vicious cycle as history has shown that denying access to content drives up piracy rates. With the value chain for Australian content production and distribution under severe pressure already, this would have the effect of putting at risk many smaller production companies, costing jobs and growth.

3. BREACH OF INTERNATIONAL LAW

Australia has been an exemplary party to the multiplicity of copyright treaties that have been concluded since Australia joined the *Berne Convention* in 1926. These treaties oblige countries to have minimum standards of protection for creators and their works and subject to a standard of exceptions to the author's exclusive rights. The international standard for exceptions is the three step test. Copyright entered the trade realm with the *TRIPs Agreement*, to which Australia is party. This treaty was concluded under the auspices of the World Trade Organization and allows for dispute resolution.

The proposal would legitimise the consumption of content in Australia without payment to the owner of content in Australia, **an infringement of copyright**. The proposal would undermine creator's rights in Australia and as it stands, it is difficult to conceive how it could possibly comply with the three step test.

If foreign owned content was infringed, then there is a risk that other WTO members may begin WTO dispute resolution action against Australia. Similar action has been brought by **France against the US**, and by the **US against China**.