AUSTRALIAN
DIGITAL ALLIANCE

24 February 2012

The Hon Nicola Roxon MP
Attorney-General
Parliament House
Canberra ACT 2600

By email: nicola.roxon.MP@aph.gov.au

Dear Attorney General,

RECORDING FREE-TO-AIR CONTENT FOR PERSONAL USE IN THE DIGITAL AGE

Following the recent Federal Court decision which ruled on the legitimacy of cloud-based recordings of free-to-air sports broadcasts, (*Singtel Optus Pty Ltd v National Rugby League Investments Pty Ltd (no 2) [2012] FCA 34*), we understand that the major sporting codes have called for legislative changes to introduce new restrictions on access to free-to-air sports broadcasts, and the use of cloud-based services to record those broadcasts.

The Australian Digital Alliance (ADA), the peak representative body for copyright users and innovators in Australia, is concerned both regarding the nature and scope of these amendments, and the impact on growth of the digital economy were an amendment introduced while legal action is still ongoing.

Consumers have the right to record free-to-air content

Firstly, the ADA urges government to consider the consequences of any amendment that restricts the right of consumers to access any free-to-air content at the time of their choice, using the device of their choice. This right is reflected in section 111 of the *Copyright Act 1968* (Cth), allowing consumers to record TV content for their own personal use.

The proportion of Australian consumers accessing TV content online, via time-shifted viewing, catch up services and online streaming is increasing dramatically. Not only are consumers accessing TV content in different ways, but via a broadening range of devices, including laptops, PCs, mobile phones, smart phones and tablets. Cloud-based services that enable consumers to record free-to-air TV content of their choosing, to play back on the device of their choosing, are a part of that diverse landscape for content consumption. The Optus "TV Now" service that is the focus of contention for the football codes is one such service.

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Businesses need confidence to innovate and invest in new digital technologies

As the peak representative body for copyright users and innovators, including a number of IT companies and sectors embracing new digital technologies, the ADA is seriously concerned that an overly hasty amendment to domestic legislation will deter investment in digital innovation in Australia. To achieve our goal of becoming a leading digital economy by 2020, businesses must be provided with encouragement and confidence to develop new digital products and services for the Australian market.

Cloud services in particular will be an important part of our digital future. As Australia prepares to roll out the National Broadband Network, an overly restrictive amendment could cripple the technology we have invested so much in. Our legal regime should not restrict or outlaw particular cloud-based services for consumers in Australia that are recognised as legitimate and have been embraced in other jurisdictions.

The ADA is adamant that any proposed amendment to the Copyright Act or other domestic legislation to resolve this issue be opened to consultation with consumer representatives, copyright interests and the broader Australian community. In light of the imminent Australian Law Reform Commission review of the Copyright Act in the digital environment, the ADA strongly encourages government to have this issue included in the review's terms of reference.

The Australian Digital Alliance is eager to meet with you or your advisers to discuss this issue further. Ellen Broad, Executive Officer for the Australian Digital Alliance, is the contact for this matter and can be reached on (02) 6262 1273 or at ebroad@nla.gov.au.

Kind regards,

Derek Whitehead
Chairman
Australian Digital Alliance