



Australian Government

Department of Communications

Post-Implementation Review

Broadcasting and Datacasting Services (Parental Lock)
Technical Direction 2009

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Contents

1. Purpose.....	3
2. The regulatory problem – rationale for intervention.....	4
3. Objectives	6
4. Consultation	8
5. Impact Analysis.....	10
6. Recommendation	14

1. Purpose

On 21 October 2009, the Minister for Broadband, Communications and the Digital Economy made the *Australian Communications and Media Authority (Development of Technical Standards for Domestic Digital Television Reception Equipment) Direction No. 1 of 2009*¹ (Ministerial Direction). The Ministerial Direction required the Australian Communications and Media Authority (the ACMA) to determine a technical standard to ensure that digital televisions and digital receivers sold in Australia must have a parental lock capability.

The ACMA subsequently introduced the *Broadcasting and Datacasting Services (Parental Lock) Technical Standard 2010* (Parental Lock Standard)² on 28 July 2010. This post-implementation review outlines the reasons, intention, impact and effectiveness of the Ministerial Direction.

Australian Government agencies are required to undertake a post-implementation review when regulation, with more than a minor or machinery of government impact, is introduced without a regulation impact statement. A post-implementation review is required to examine:

- > the problem that the regulation was intended to address;
- > the objective of government action;
- > the impacts of the regulation; and
- > the effectiveness of the regulation and its ongoing relevance.

Consultation is also required as part of a post-implementation review. However, the level of consultation need only be commensurate with the significance of the measure under review.

¹ *Australian Communications and Media Authority (Development of Technical Standards for Domestic Television Reception Equipment) Direction No. of 2009* www.comlaw.gov.au/Details/F2009L04140

² *Broadcasting and Datacasting Services (Parental Lock) Technical Standard 2010* www.comlaw.gov.au/Details/F2010L02220

2. The regulatory problem – rationale for intervention

Broadcasters have the primary responsibility for ensuring that the material they broadcast meets community standards. Most aspects of program content are governed by codes of practice developed by industry groups representing the various broadcasting sectors. The ACMA registers codes once it is satisfied that broadcasters have undertaken public consultation and the codes contain appropriate community safeguards.

In 2008, the Senate Standing Committee on Environment, Communications and the Arts (Senate Committee) conducted an inquiry into the effectiveness of the broadcasting codes of practice. The terms of reference of the inquiry focused on:

- > *the frequency and use of coarse and foul language (swearing) in programs;*
- > *the effectiveness of the current classification standards as an accurate reflection of the content contained in the program;*
- > *the operation and effectiveness of the complaints process currently available to members of the public;*
- > *any other related matters.*³

The Senate Committee also considered the concept of community standards and the effectiveness of the ACMA in its responsibilities under section 10 of the *Australian Communications and Media Authority Act 2005*, namely:

- > *to conduct and commission research into community attitudes on issues relating to programs and datacasting content;*
- > *to assist broadcasting service providers to develop codes of practice that, as far as possible, are in accordance with community standards.*⁴

³ *The effectiveness of the broadcasting codes of practice*, Senate Standing Committee on Environment, Communications and the Arts, June 2008, page 2

⁴ *Australian Communications and Media Authority Act 2005*, section 10 (h) and (i)

When examining the ACMA's responsibilities regarding community standards the Senate Committee referred to the National Classification Code which provides that:

- > *adults should be able to read hear and see what they want;*
- > *minors should be protected from material likely to harm or disturb them;*
- > *everyone should be protected from exposure to unsolicited material that they find offensive;...*⁵

The Senate Committee received over 80 submissions from representatives of the television and radio industries, from family and community groups and the public. A common theme in the submissions to the Senate Committee was that the classification system did not offer sufficiently clear guidance as to the probable content of a program, regardless of whether the concern was inappropriate language or other potential causes of offence, and, that there was a significant level of concern regarding material broadcast in the early and mid-evening time zones when it was considered that children were likely to be watching television. Other submissions noted the impracticality or impossibility of continually monitoring children's access to television due to societal and economic pressures for children to be left unattended.

The Senate Committee, noting these concerns, recommended that action be taken to ensure that parents and guardians would be able to effectively manage their children's (and potentially their own) viewing to protect them from harmful or disturbing content. To address this, the Senate Committee recommended various changes to the codes of practice and:

*that the provision of parental lock-out become an industry standard for digital televisions sold in Australia.*⁶...

On 19 June 2008 the Committee tabled its report to the President of the Senate.

For reference, the parental lock on a digital television receiver (that is, a set-top box or an integrated digital television) allows a parent or guardian to limit children's access to programs at or above a user determined Australian classification level⁷, including the PG classification, the M classification or the Mature Audience (MA) classification. When the parental lock is activated viewers are unable to see images or hear audio associated with content related to certain classifications. A parental lock only allows the user to access programs rated at or above a certain classification through the use of a four digit pin code. Once the parental lock feature has been activated, only those who know the pin code will be able to view the blocked content or blocked channel.

⁵ National Classification Code 2005 made under the *Classification (Publications, Films and Computer Games) Act 1995*, section 6

⁶ *The effectiveness of the broadcasting codes of practice*, Senate Standing Committee on Environment, Communications and the Arts, June 2008, page 19

⁷ Further information on the television classification guidelines is available in Appendix 4 of the Commercial Television Industry Code of Practice at www.freetv.com.au/content_common/pg-code-of-practice-.seo

3. Objectives

In July 2009, the Australian Government provided its response to the Senate Committee's inquiry into the effectiveness of the broadcasting codes of practice. The government gave in principle support to the Senate Committee's recommendation that a parental lock function become an industry standard for digital televisions sold in Australia, and noted that the voluntary industry standard for digital televisions and digital receivers was under review.

Standards describe the minimum set of characteristics a product or service must demonstrate to show the product or service can do what it is supposed to do. Without agreed standards, products may not be safe, lack interoperability, be inefficient or simply not work at all.

When the Senate Committee released the recommendations from its inquiry, an Australian standard, *AS 4933.1-2005 Digital television – Requirements for receivers Part 1: VHF/UHF DVB-T television broadcasts, developed by Standards Australia through its Broadcasting and Related Services Committee*, was in existence. One of the optional features in AS 4933.1 was a 'parental guidance lock-out function'. However, compliance with this Australian Standard was voluntary.

In line with the government's public response to the Senate Committee's recommendations, the Minister for Broadband, Communications and the Digital Economy, following consultation with the ACMA, made the Ministerial Direction under subsection 14(1) of the *Australian Communications and Media Authority Act 2005*. The Ministerial Direction required the ACMA to determine a technical standard to ensure that digital televisions and digital receivers sold in Australia had a parental lock capability.

The explanatory statement of the Ministerial Direction clearly outlined the Government's objective:

It is the Australian Government's intention that, together with the classification of television content already in place under the Commercial Television Industry Code of Practice 2004, mandating the parental lock in digital television receivers will further protect children from viewing material which may be inappropriate or harmful and support parents and guardians in protecting their children from such content. The Government considers this an important objective as Australia moves towards a digital-only television environment and the amount of content and channels available to viewers increases.⁸

Given the specific nature of the objective and the Government's clear and public support for a parental lock standard, this direction and the various ways in which it could be implemented were the only options seriously considered at the time. Use of the Ministerial directions power also

⁸ Explanatory Statement – *Australian Communications and Media Authority (Development of Technical Standards for Domestic Television Reception Equipment) Direction No. of 2009* www.comlaw.gov.au/Details/F2009L04140

provided a way of implementing this policy flexibly, in a timely fashion, and without changes to underlying laws.

The Ministerial Direction sought to achieve the Government's objective of making the parental lock functionality universally available in digital receivers and televisions in Australia. This would ensure that when parents or guardians, in particular, purchased a digital receiver or television it would provide them with an automatic means for protecting their children's access to content with a classification level they considered may be inappropriate or harmful. This universal accessibility could only be effectively achieved by mandating the parental lock via an industry standard.

The Ministerial Direction also required the ACMA to consider whether to exempt any particular class of domestic reception equipment, whether to request an industry code for electronic program guides, and whether to request an industry code that deals with domestic reception equipment labelling schemes.

The explanatory statement for the Parental Lock Standard expressly stated that digital television and digital receiver equipment were to:

- > *have parental lock capabilities; or*
- > *distribute information that enables the parental lock capabilities in other domestic reception equipment to operate.*⁹

The latter point was intended to ensure that, for example, a set-top box attached to a television set did not block the parental lock information in the incoming television signal from being received by the television to which it is connected.

The Parental Lock Standard ensured that the requirement to include parental lock capabilities was applied to domestic reception equipment as broadly and consistently as practicable and that digital reception equipment supplied to the market would meet consumer needs for an appropriate and effective protection mechanism for children.

Further, the Parental Lock Standard outlined that from the date of its application it would be an offence under section 130B of the *Broadcasting Services Act 1992* to supply equipment that did not comply with the Parental Lock Standard.

The ACMA made the Parental Lock Standard on 28 July 2010 and it took effect from 4 February 2011. All new models of digital reception equipment introduced into the Australian market from this date were required to have a parental lock function. To help minimise its impacts, any model supplied in Australia prior to the Parental Lock Standard taking effect is not required to comply and can continue to be supplied indefinitely to the Australian market. Compliance with the Parental Lock Standard is only applicable to those devices that were first supplied to the Australian market after it took effect and any new models released in the future.

⁹ Explanatory Statement – *Broadcasting and Datacasting Services (Parental Lock) Technical Standard 2010*
www.comlaw.gov.au/Details/F2010L02220

4. Consultation

Stakeholder consultation was undertaken prior to the determination of the Parental Lock Standard. On 24 February 2010, the ACMA released a discussion paper which outlined the intended approach to the Parental Lock Standard and sought stakeholder comments on related issues, including comments on whether any classes of equipment should be exempted from the Parental Lock Standard.

The consultation period closed on 2 April 2010 during which time the ACMA received 13 submissions in response to the discussion paper. The submissions received included the following industry stakeholders:

- > Consumer Electronics Suppliers Association;
- > Hills Antenna and TV Systems;
- > Telstra;
- > Austar;
- > Australian Industry Group;
- > Free TV Australia;
- > Communications Council;
- > Dick Smith Electronics; and
- > Panasonic.

The issues raised in the submissions were considered by the ACMA in drafting the Parental Lock Standard and all submissions were published on the ACMA website.

Industry stakeholders did not raise any concerns about the cost of compliance. However, these stakeholders generally agreed that an extended period of time between the determination of the Parental Lock Standard and it taking effect would be beneficial in allowing time for manufacturers to make the necessary minor modifications to models of digital televisions or digital receivers that would be supplied to the Australian market. The staged approach to implementation provided the industry with approximately ten months to prepare for the commencement of the standard.

In preparing the post-implementation review the Department of Communications consulted with the ACMA to obtain information in relation to compliance, complaints and other impacts on stakeholders resulting from the introduction of the Parental Lock Standard. The ACMA, in turn,

sought feedback from peak bodies, the Australian Industry Group (Ai Group)¹⁰ and the Consumer Electronics Suppliers Association (CESA)¹¹, on the impact of the Parental Lock Standard on industry. Details of the industry response are provided in the impacts section of this report.

Given the significant consultation that the ACMA undertook prior to the commencement of the Parental Lock Standard and the minor nature of the regulation, this level of consultation post-implementation was considered appropriate and commensurate with the significance and impact of the measure.

¹⁰ The Ai Group is a peak industry association in Australia which along with its affiliates represents the interests of more than 60,000 businesses in an expanding range of sectors including: manufacturing; engineering; construction; automotive; food; transport; information technology; telecommunications; call centres; labour hire; printing; defence; mining equipment and supplies; airlines; and other industries.

¹¹ CESA represents suppliers of a wide range of consumer electrical and electronic products in the Australian market. It provides a forum for suppliers of consumer electronics and major appliances to focus on regulatory, technical and commercial issues that affect the capacity of member companies to supply product in the Australian market.

5. Impact Analysis

Impact on Industry

The cost and impact of the Parental Lock Standard on industry is expected to have been limited for several reasons.

During their consultation process the ACMA identified that, following discussions with manufacturers, around 85 per cent of digital receivers available in the Australian market in 2009 already had the parental lock capability. Further, industry expected that close to 100 per cent of the new digital receivers in the market would have the parental lock function by mid-2010.¹²

The discussion paper released in 2010 by the ACMA provided industry with advance warning of the proposed requirements for digital receivers and digital televisions. Following this consultation, the ACMA widely disseminated information regarding the determination of the Parental Lock Standard as well as the date when it would take effect. Consultation in the development and implementation of the Parental Lock Standard helped minimise the impact of the measure on industry.

As part of the consultation process in April 2010, industry stakeholders requested approximately 12 to 24 months between the determination of the Parental Lock Standard and it taking effect. They argued this extended period would allow time for manufacturers to make the necessary modifications and for the on-sell of all current stock (where that stock did not already have the parental lock feature). The ACMA took this issue into account when determining the Parental Lock Standard.

The ACMA made the Parental Lock Standard on 28 July 2010 and it took effect six months later on 4 February 2011. This staged implementation provided the industry with approximately ten months to prepare for the commencement of the standard. Given the existing high level of availability of the parental lock function in digital receivers in 2010, and other compliance elements of the Parental Lock Standard, the ACMA determined this would be a sufficient amount of time for industry to implement the changes. No further comment was received from industry on the timing of the implementation of the standard.

The financial impact on industry was minimised by the approach adopted by the ACMA when assessing compliance with the Parental Lock Standard. The ACMA instituted, with strong industry support, a complaint-driven approach to compliance. As a result, the industry is not required to keep records or produce ongoing compliance reports. There are also no obligations on manufacturers or

¹² *Mandating parental lock capability in domestic reception equipment— Determination of a technical standard under Part 9A of the Broadcasting Services Act 1992*, Discussion paper, Feb 2010
www.acma.gov.au/webwr/_assets/main/lib311393/mandating_parental_lock_discussion_paper.pdf

retailers to provide additional labelling on products. This would have significantly reduced the cost of compliance on the industry.

The cost of industry compliance was also reduced by the ACMA's use of a 'grandfathering' clause in the Parental Lock Standard. Specifically, the Parental Lock Standard did not require any models of digital televisions or digital receivers that were supplied to the Australian market prior to the Parental Lock Standard taking effect in 2011 to comply with the parental function requirement. Further, any of these models first supplied before the Parental Lock Standard took effect can continue to be supplied indefinitely to the Australian market. The compliance with the Parental Lock Standard is only applicable to those devices that were first supplied to the Australian market after it took effect and any new models released into the future.

The ACMA considered the risk associated with the use of such a 'grandfathering' clause was low for a range of reasons, including the already widespread presence of a parental lock function in many models of digital receivers and digital televisions in Australia. Most digital receivers and digital televisions supplied to the Australian market are designed for European markets where this functionality is a requirement. The ACMA also considered the relatively short expected lifetimes of new models of digital receivers and digital televisions (including those that may not include the parental lock functionality) a relevant factor.

This 'grandfathering' provision significantly reduced potential compliance costs as manufacturers and retailers are not required to conduct any recall or 'retrofit' previously supplied digital televisions and receivers that do not have a parental lock function.

It is not possible to accurately quantify the financial impact of the Parental Lock Standard on television equipment importers into Australia. There is virtually no manufacturing of digital televisions or other receivers in Australia. Receivers are generally produced for global markets with relatively minor software and hardware adjustments to comply with Australian standards. Digital chipsets are largely standardised and features would be turned off or turned on for Australian conditions. It is highly unlikely that parental lock functionality was specifically developed and implemented solely for the Australian market, or for only limited models of receivers, so any development costs would need to be distributed across multiple markets, platforms and models. As parental lock functionality is only one of multiple functions of a digital television receiver, and as screen size is the primary driver of cost, the per-set costs of parental locks for a manufacturer are likely to be extremely small.

Equally the costs to importers of equipment in Australia are likely to be small to non-existent. There is no reason why any importer would seek to absorb such costs, even if they could be identified.

The additional industry consultation undertaken by the ACMA, the Ai Group and CESA to inform the post implementation review elicited the following comment:

- > "three companies advised there were no additional costs as the Australian receiver standard required the parental lock before the ACMA mandated it." (Ai Group) – note: prior to the introduction of the Parental Lock Standard it was not mandatory for receivers to feature a parental lock.
- > One respondent noted that while "no costs were incurred in implementing the software into their televisions" as they included a parental lock prior to the introduction of the Parental Lock Standard, a "considerable amount of time" was spent informing offshore management that this would become a mandatory feature for digital receivers and investigating the requirements for

their high definition (HD) recorders, which include DVD and Blu-Ray Disc Players. The DVD and Blue-Ray Disc Players each had a different parental lock system – and different parental rating systems - to the digital television terrestrial receiver in the recorders (which was included in the HD recorders prior to the Parental Lock Standard being introduced). (Ai Group)

- > “most suppliers already had the parental lock enabled in accordance with the Australian receiver standard AS 4933.1” prior to the introduction of the Parental Lock Standard. “So apart from the small costs of corresponding with overseas manufacturing plants advising of the new mandatory ACMA requirements and seeking confirmation that all future receiving equipment would be compliant, no additional costs were incurred.” (CESA response)
- > “two suppliers advised some software tweaking was required to accommodate the Australian classification codes of General (G), Parental Guidance (PG), Mature Audience (MA) etc but they regarded these costs as negligible.” (CESA response)

Impact on the Community

There are two aspects to be considered in the context of the impact on the community. The first is the benefit of the universal availability of the parental lock function. The second is the impact of the introduction of the Parental Lock Standard on the cost of purchasing a digital television or receiver.

The ACMA provides detailed information on its website for consumers regarding the parental lock, the implementation of the Parental Lock Standard and processes for complaints when instances of non-compliant equipment are detected. As at the end of September 2013, the ACMA has no recorded incidence of complaints related to either the absence of the parental lock function in supplied digital televisions or receivers, or missing parental lock descriptor information in the broadcaster provided Electronic Program Guide data.

It can be inferred from the lack of complaints that those consumers who consider the parental lock an important tool in managing access, particularly children’s, to television content have been able to utilise the function on their devices in the period since the Parental Lock Standard has been in place. However, it should be noted that the scale of benefit to those consumers or the prevalence of use of the parental lock function as a proportion of all consumers in Australia cannot be quantified as there is currently no comprehensive data available in relation to these matters.

There is no evidence that demand for and cost of digital televisions and receivers was adversely affected in any measurable way by the introduction of the Parental Lock Standard. Average prices for digital televisions and receivers also fell significantly between the first half of 2010 and the first half of 2011. The average price of an LCD television set fell by \$256 (32 per cent), and the average price of a plasma television set fell by \$174 (14 per cent).

5.1. Table 1 Changes in average selling prices—1H 2010 to 1H 2011

	Change in price	Percentage change
PVR	-\$156	-32
LCD TV	-\$256	-27
DVD recorder	-\$89	-16
Plasma TV	-\$174	-14

Source: *Television sets in Australian households 2011, Current stock and consumer expectations about replacing television sets*, June 2012, page 15

The reduction in the price of digital televisions and receivers since the making of the Parental Lock Standard, coupled with the fact that in 2010 (before the Parental Lock Standard was mandated) the majority of digital televisions and receivers in the Australian market were already equipped with parental locks, indicates that there is no evidence of any measurable increase in cost to the consumer as a result of the introduction of the Parental Lock Standard.

6. Recommendation

The post-implementation review has revealed that the Parental Lock Standard has a low to negligible impact and cost on industry and consumers. The review has also established that this measure has been minor in nature in terms of both impacts and quantifiable benefits. Finally, given the relatively high level of compliance prior to the introduction of the Parental Lock Standard and the absence of any complaints of non-compliance since then, it can be concluded that the measure has been successful in achieving the objective of universal availability of the parental lock in digital televisions and receivers in Australia.

While it could be argued that the Parental Lock Standard has served its course, industry stakeholders have not identified this measure as a regulatory burden or sought to have the Parental Lock Standard removed. In addition, removing the Parental Lock Standard would have administrative cost implications for the ACMA. Finally, continuing the Parental Lock Standard will provide an assurance to consumers that the necessary tools to manage access to inappropriate or harmful content broadcast on television will be available in a digital television or receiver that they purchase. Further, in the event that they purchase a digital receiver or television that is not compliant with the Parental Lock Standard, the consumer has recourse to complain to the ACMA and pursue a remedy because the Parental Lock Standard is mandatory.

In light of this, it is recommended that the ACMA maintain the Parental Lock Standard.