

COMMUNICATIONS
ALLIANCE LTD



INDUSTRY CODE

C653:2015

COPYRIGHT NOTICE SCHEME

PUBLIC COMMENT VERSION -20/2/15

C653:2015 – Copyright Notice Scheme Industry Code

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INTRODUCTORY STATEMENT

The Copyright Notice Scheme Code is designed to facilitate a cooperative industry-led copyright notice scheme through which Internet Service Providers (“**ISPs**”) and the owners of copyright works or their authorised representatives (“**Rights Holders**”), will work to deter the practice of online copyright infringement and inform consumers about available and lawful content alternatives.

The Code provides for the creation of a copyright notice scheme under which ISPs will accept reports (in a prescribed format) from Rights Holders. The reports will identify Internet Protocol (“**IP**”) addresses that a Rights Holder alleges have been used to infringe copyright in online work of the Rights Holder. The reports will request that the relevant ISP notify the relevant Account Holders of the alleged infringements.

ISPs will endeavour to match the IP addresses identified by Rights Holders to the Account Holders to which the IP addresses were assigned at the time of the alleged infringements. Where an IP address is matched, the ISP will send to that Account Holder a notice (in a prescribed format) informing them of the alleged infringement.

Notices will also include or link to educational material designed to:

- inform the Account Holder that the activity allegedly detected on their account is indicative of an infringement of copyright under the *Copyright Act 1968*; and
- provide general information about sources of lawful online content.

Any Account Holder who receives three notices within a 12 month period will have the option to seek an independent review conducted by an independent Adjudication Panel.

Where an Account Holder has received three notices within a 12 month period, ISPs will, on the request of a Rights Holder, facilitate an expedited preliminary discovery process to assist the Rights Holder to enforce its copyright (as described in Chapter 3 of the Code). This process can be initiated by a Rights Holder whose allegation prompted an Education, Warning or Final Notice.

This Code has been drafted by a Communications Alliance Working Committee 66 (WC66), chaired by Mr Gary Smith from Optus (see Committee membership at PARTICIPANTS – Page 20.)

The Working Committee worked closely with a Stakeholder Group, which included representatives of Rights Holders and consumer representative organisations and which provided input and guidance on successive drafts of the Code. The Code reflects certain input of Rights Holders and consumer representative organisations but is not a final agreed position and discussions continue with those stakeholders. A program of bilateral meetings and sub-committee meetings were held between Rights Holder representatives and ISP representatives during the development of the Code. The Code is now being published in draft form to allow a 30 day Public Comment period – the results of which will further inform the final text.

February 2015

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1 GENERAL

1.1 Introduction

- 1.1.1 Section 112 of the Telecommunications Act 1997 (the "Act") sets out the intention of the Commonwealth Parliament that bodies and associations, representing sections of the telecommunications industry, develop industry codes relating to the telecommunications activities of participants in those sections of the industry.
- 1.1.2 The development of this Code has been facilitated by Communications Alliance through:
- a Working Committee (WC66) comprised of representatives from the telecommunications industry;
 - a program of bilateral and sub-committee meetings of Internet Service Provider representatives and Rights Holder representatives; and
 - a Stakeholder Group, which included representatives of Rights Holders, consumer representative organisations and the internet industry, assisted by an observer from the Australian Communications and Media Authority (ACMA), which provided input and guidance to successive drafts of the Code.
- 1.1.3 The Code should be read in conjunction with related legislation, including:
- (a) the Act;
 - (b) the *Privacy Act 1988 (Cth)*; and
 - (c) the *Copyright Act 1968 (Cth)*.
- 1.1.4 This Code is intended to be a relevant industry code of practice for the purposes of sections 36(1A)(c) and 101 (1A)(c) of the *Copyright Act 1968 (Cth)*.
- 1.1.5 If there is a conflict between the requirements of the Code and any requirements imposed on an ISP by statute, the ISP will not be in breach of the Code by complying with the requirements of the statute.

1.2 Registration

The Code is to be submitted to the Australian Communications and Media Authority for registration under section 117 of the Act.

The Code is to be registered by the Australian Communications and Media Authority under section 117 of the Act.

1.3 Scope

- 1.3.1 The Code applies to the Carriage Service Providers section of the telecommunications industry under section 110 of the Act.
- 1.3.2 The Code deals with the following telecommunications activities as defined in section 109 of the Act:
 - (a) carrying on business activities as a Carriage Service Provider; or
 - (b) supplying Goods or Services for use in connection with the supply of a Listed Carriage Service.
- 1.3.3 The Code applies to ISPs that supply residential fixed internet access services and seeks to regulate matters to do with Account Holders of those services and allegations by Rights Holders that an Account Holder's service has been used to infringe online copyright.
- 1.3.4 The Code does not apply to matters covered by codes or standards registered or determined under the *Broadcasting Services Act 1992 (Cth)* (as required by section 116 of that Act).

1.4 Objectives

- 1.4.1 The objectives of the Code are to:
 - (a) operate as an important part of a range of measures designed to:
 - (i) reduce the incidence of online copyright infringement by Australian internet users; and
 - (ii) improve knowledge of Australian internet users as to which online activities can constitute copyright infringement and when particular practices may be infringing;
 - (b) create a copyright notice scheme that works in concert with other initiatives that together are designed to dissuade Australian internet users from engaging in online copyright infringement. These initiatives include continuing efforts of Rights Holders to ensure timely and ready availability to Australian consumers of lawful content alternatives; and
 - (c) provide information to Australian consumers as to how to identify and readily access lawful available content alternatives.

1.5 Commencement Dates for the Code and the Copyright Notice Scheme

- 1.5.1 This Code commences as an industry Code upon registration by the Australian Communications and Media Authority under section 117 of the Act.

- 1.5.2 The notice scheme described in this Code commences on a date being the earlier of:
- (a) 1 September 2015; or
 - (b) A date to be determined by the Copyright Information Panel, taking account of:
 - (i) the reasonable steps to be taken by ISPs to enable their compliance with the copyright notice scheme;
 - (ii) the prescribed steps to be taken by Rights Holders to participate in the copyright notice scheme;
 - (iii) the readiness of the Copyright Information Panel, the Adjudication Panel and the Certification Body or Bodies to discharge their responsibilities under the copyright notice scheme;
 - (iv) approval by the Copyright Information Panel of the form of Infringement Reports and notices to be provided under this scheme; and
 - (v) agreement on an indemnity to be provided by Rights Holders to ISPs in relation to the operation of the copyright notice scheme; and
 - (vi) the implementation of agreed copyright notice scheme funding arrangements as described in Section 4.4.

1.6 Code Evaluation

The Code will be evaluated, as described in Section 4.3:

- (a) 18 months after commencement of the notice scheme, as determined by the Copyright Information Panel in accordance with section 1.5.2; and
- (b) every 5 years subsequently; or
- (c) in the event of significant developments that affect the Code or a Chapter within the Code.

1.7 Powers of the Telecommunications Industry Ombudsman to handle complaints under the Code

The Code does not confer powers or functions on the TIO under section 114 of the Act. Any enquiries from Account Holders or members of the public related to the copyright notice scheme are to be handled by the process approved by the Copyright Information Panel. Challenge Notices are managed by the Adjudication Panel.

2 ACRONYMS, DEFINITIONS AND INTERPRETATIONS

2.1 Acronyms

For the purposes of the Code:

ACCAN

means the Australian Communications Consumer Action Network

ACMA

means the Australian Communications and Media Authority.

CSP

means Carriage Service Provider.

ISP

means a Carriage Service Provider that provides an internet carriage service, being a carriage service that enables end users to access the internet.

TIO

means the Telecommunications Industry Ombudsman.

2.2 Definitions

For the purposes of the Code:

Account Holder

means any natural person who has a residential fixed internet account with an ISP.

Act

means the *Telecommunications Act 1997 (Cth)*.

Adjudication Panel

means the independent body appointed by the Copyright Information Panel to adjudicate on Challenge Notices by Account Holders.

Acknowledgment

means an Account Holder's acknowledgement of a Final Notice, as described in section 3.9.2.

Carriage Service Provider

has the meaning given by section 87 of the Act.

Certification Body or Bodies

means the third party independent bodies approved by the Copyright information Panel to carry out the audit and certification of an evidence gathering process under clause 3.3.1(a) of the Code.

Challenge

means a challenge by an Account Holder to a Notice, this notice to be in the form of a Challenge Notice after receipt of a Final Notice.

Challenge Notice

means a notice in a form prescribed by the CIP, sent by an Account Holder to the Adjudication Panel, within the Challenge Period, for the purpose of challenging a Final Notice..

Challenge Period

means the period of 28 days from the issue of a Final Notice that an Account Holder has in which to initiate a Challenge.

Consumer Organisation

means:

- (a) unless otherwise determined by agreement between Qualifying Rights Holders and ISPs, ACCAN;
- (b) if another organisation is determined by agreement between Qualifying Rights Holders and ISPs, that other organisation.

Copyright Act

means the *Copyright Act 1968* (Cth).

Copyright Information Website

means a website to be commissioned by the CIP and operated on its behalf, providing information about the operation of this Code and the Copyright Notice Scheme, including addressing anticipated questions of Account Holders, ISPs, Rights Holders and members of the public.

Copyright Information Panel (CIP)

means the panel created pursuant to this Code to undertake the responsibilities and provide the services described in Chapter 4.

Education Notice

means a notice in a form prescribed by the CIP and bearing CIP branding, being the first of a series of three notices that may be issued to an Account Holder, in escalating order (1) Education; (2) Warning; (3) Final.

Evaluation Process

means process to evaluate the Code and the copyright notice scheme as described in section 4.3.

Final Notice

means a notice in a form prescribed by the CIP and bearing CIP branding, being the third of a series of three notices to Account Holders, in escalating order (1) Education; (2) Warning; (3) Final. These notices might not relate to copyright works owned by the same Rights Holder.

Final Notice List

means the list referred to in section 3.12 that is to be provided by an ISP, upon request of a Rights Holder.

Infringement Report

means a report in a form prescribed by the CIP and sent in a manner prescribed by this Code from a Rights Holder to an ISP alleging that an IP address allocated to that ISP has been used to infringe copyright in online works of the Rights Holder.

IP address

means an Internet Protocol address (IP address), which is a public numerical label assigned to a device (e.g., modem or router) providing access to a public computer network that uses the Internet Protocol for communication and is consistent with the system known as Internet Protocol Version 4 (IPV4) or Internet Protocol Version 6 (IPV6).

Personal Information

has the same meaning as in the *Privacy Act 1988* (Cth).

Preliminary Discovery

- (a) in the case of proceedings before the Federal Court of Australia, has the meaning given in the Federal Court Rules;
- (b) in the case of proceedings before the Federal Circuit Court, has the meaning given in the Federal Circuit Court Rules;
- (c) in the case of proceedings before any other Federal court or tribunal, has the meaning given in the rules of procedure of that Federal court or tribunal.

Quarantine Period

means a 14 day period following the issue of an Education Notice or Warning Notice to an Account Holder, during which subsequent Infringement Reports pertaining to that Account Holder do not result in further notices being sent to that Account Holder. (If a Rights Holder decides to commence legal action against an Account Holder, the Rights Holder may rely on any alleged infringements including those that were detected during any quarantine period.)

Rights Holder

means a copyright owner, an exclusive licensee of copyright work, or a person acting as agent for one or more copyright owners who meets the criteria specified in section 3.3.1 of this Code and is listed in the Register of Rights Holders maintained by the CIP and to the extent required to contribute to the funding arrangements provisions of the Code, is compliant with those arrangements.

Warning Notice

Means a notice in a form prescribed by the CIP and bearing CIP branding, being the second of a series of three notices to Account Holders, in escalating order (1) Education; (2) Warning; (3) Final.

2.3 Interpretations

In the Code, unless the contrary appears:

- (a) headings are for convenience only and do not affect interpretation;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) words in the singular includes the plural and vice versa;
- (d) words importing persons include a body whether corporate, politic or otherwise;
- (e) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) mentioning anything after include, includes or including does not limit what else might be included;
- (g) words and expressions which are not defined have the meanings given to them in the Act; and
- (h) a reference to a person includes a reference to the person's executors, administrators, successors, agents, assignees and novatees.

3 COPYRIGHT NOTICE SCHEME

3.1 Overview of Copyright Notice Scheme

- 3.1.1 This Code provides for a copyright notice scheme whereby Rights Holders and ISPs work to help deter the practice of online copyright infringement and provide information to consumers about lawful available content alternatives.
- 3.1.2 This scheme does not identify alleged infringers of copyright. The method of detection entails linking an IP address allegedly used for infringements. Notices will therefore be sent to the Account Holder to whose service that IP address was allocated at that time.
- 3.1.3 This copyright notice scheme provides that, at the instigation of Rights Holders, ISPs must, where possible, issue Education, Warning or Final Notices to relevant Account Holders.
- 3.1.4 After a Final Notice is issued to an Account Holder and within 12 months of the Account Holder receiving an Education Notice, any Rights Holder whose copyright work has been the subject of an Education, Warning or Final Notice will be provided with assistance (as described in Sections 3.12 of the Code) to take direct copyright infringement action against an Account Holder.
- 3.1.5 Time limits apply to all stages of this copyright notice scheme, including the issuing of any notices and the making of any Challenges.
- 3.1.6 An ISP must not accept any requests by a Rights Holder to, disclose any personal information including the identity or any contact details of an Account Holder at any stage of the copyright notice scheme, unless there is a court order or written permission from the Account Holder expressly authorising such disclosure of personal information.
- 3.1.7 This copyright notice scheme applies to residential fixed, internet Account Holders only.
- 3.1.8 Attachment 1 provides a graphic representation of the process flows to be followed under the copyright notice scheme, the relationships between the different components of the copyright notice scheme and a description of those components.
- 3.1.9 Attachment 2 illustrates the steps that ISPs will typically need to follow in order to respond to an Infringement Report received from a Rights Holder.

3.2 Qualifying ISPs

3.2.1 This Code applies to an ISP if:

- (a) it provides residential fixed internet access services to [*threshold number, still under consideration*] relevant Account Holders, or more, within Australia; and/or
- (b) is a fixed internet service provider within a group of associated entities (within the meaning of section 50AAA of the *Corporations Act 2001*) that together provide residential fixed internet access to [*threshold number, still under consideration*] relevant Account Holders, or more, within Australia.

3.3 Rights Holders

3.3.1 The copyright notice scheme enabled by this Code is available to a Rights Holder if:

- (a) The processes that the Rights Holder proposes to use (or authorises to be used on its behalf) to detect alleged online copyright infringements, identify corresponding IP addresses and generate Infringement Reports have been independently audited and certified by a Certification Body and such an audit verifies that the evidence gathering process will give reasonable grounds to believe that either:
 - (i) an Account Holder of an ISP has infringed the Rights Holder's copyright by means of the ISP's service; or
 - (ii) a person or persons other than an Account Holder has used the service and that other person has infringed the Rights Holder's copyright.

The independent audit by the Certification Body will be conducted on a confidential basis and the reasoning of the audit opinion will be confidential. The audit opinion and any conditions to that opinion, including a general description of the technology used by the Rights Holder, will be a public document. Rights Holders must certify, on request made by the Copyright Information Panel, that there has been no material change to the processes described in 3.3.1(a). Where a Rights Holder makes any material change to the processes described in 3.3.1(a) the Rights Holder must re-submit the process for re-auditing and re-certification.

- (b) The Rights Holder has provided the CIP with a single point of contact through which Infringement Reports will be provided to relevant ISPs.
- (c) At or before the first time it sends an Infringement Report to an ISP, a Right Holder has provided an indemnity to that ISP [on terms to be agreed.]

3.4 Infringement Report from Rights Holders to ISPs

3.4.1 Any Infringement Report under this Code must:

- (a) be sent by email to the designated ISP email address provided to the CIP by the relevant ISP for use under this Code;
- (b) be sent within seven days of an alleged infringement being detected and verified (using certified processes as required by clause 3.3.1) by or on behalf of the Rights Holder and;
- (c) include the information required under clause 3.4.2;
- (d) provided in a format approved by the CIP.

3.4.2 An Infringement Report must include:

- (a) the name, address and email address of the Rights Holder;
- (b) a statement that the Rights Holder is entitled to send the Infringement Notice;
- (c) identification of the copyright work including the title of the work and a description of the nature of the work;
- (d) a statement that a certified process has been used and the Rights Holder is satisfied that an infringement of the copyright work has been detected by the use of that certified process;
- (e) the date, time and time zone at which the alleged infringement occurred;
- (f) the IP address associated with the alleged infringement;
- (g) a unique numerical identifier allocated to the Infringement Report by the Rights Holder; and
- (h) the date of the Infringement Report.

3.5 Frequency and Volume of Copyright Infringement Reports

Detailed elements of this section are still being discussed by Rights Holders and ISPs

- (a) ISPs will have the discretion to use manual, semi-automated or automated processes.
- (b) No ISP will be obliged to process more than a [minimum specified number] of Infringement Reports during a given calendar month during the initial 18 months of operation of the copyright notice scheme. An ISP may nominate at the commencement of the scheme its initial capacity to process Infringement Reports, should this be higher than the specified number.

- (c) If the volume of Infringement Reports being received by an ISP during the period prior to evaluation of the scheme exceeds the [minimum specified number] of reports per month, ISPs may choose to increase their capacity to process reports. An Infringement Report that is above the [minimum specified monthly number] will effectively 'expire' if the relevant ISP is not able to process and send it to the relevant Account Holder within two months of receipt from the Rights Holder (e.g. due to overwhelming volume and/or the ISP being in the process of upgrading their processing capability).

3.6 Processing of Infringement Reports by the ISP

- 3.6.1 An ISP is not obliged to process an Infringement Report received from a Rights Holder or to send any corresponding Notices unless:
 - (a) the Rights Holder has provided an indemnity to the ISP in accordance with section 3.3.1(c) of the Code;
 - (b) to the extent required to contribute to the costs arrangements prescribed in section 4.4 of the Code, the Rights Holder has complied with those costs arrangements; and
 - (c) the CIP has prescribed the form of the Infringement Reports and Notices to be issued under the Code;
 - (d) in the case of a Final Notice, the CIP has appointed the Adjudication Panel.
- 3.6.2 Subject to 3.6.1, within seven days of receipt of an Infringement Report from a Rights Holder, the ISP will:
 - (a) [send by email an acknowledgement of receipt of the Infringement Report to the Rights Holder];
 - (b) take reasonable steps to match the specified IP address to an Internet Service and subsequently, to an Account Holder of that ISP;
 - (c) if, after taking reasonable steps, the ISP cannot match the specified IP address to an Account Holder, the ISP will report that failure to the Rights Holder together with, if known, a statement as to why the match was not possible. In these circumstances the ISP is not required to take any further action in relation to the relevant Infringement Report;
 - (d) if:
 - (i) the IP address can be matched to an Account Holder, and
 - (ii) the Infringement Report relates to matters which occurred after the end of any relevant Quarantine Period in relation to that Account Holder;

- (e) then the ISP must send, in the first instance, an Education Notice, then a Warning Notice and then a Final Notice in each case in accordance with the relevant Code requirements:
 - (i) by email to the contact email address of the Account Holder, as held by the ISP; and
 - (ii) that includes the information required under either clause 3.7, 3.8 or 3.9 as appropriate; and
 - (iii) in the case of a Final Notice (only), also in accordance with section 3.9.2.
- (f) If, 12 months after sending an Education Notice to an individual Account Holder, the ISP has not received a total of at least three Infringement Reports in respect of that Account Holder, the tally of infringement allegations received for the Account Holder will revert to zero.

3.7 Education Notice

- 3.7.1 An Education Notice pursuant to this Code must include the following information:
- (a) that an Infringement Report has been received from a Rights Holder which alleges that an IP address allocated to the Account Holder's internet account may have been used to infringe copyright;
 - (b) the identity of the Rights Holder and time, time zone and date of the alleged infringement and a description of the content that is alleged to have been the subject of the infringement ;
 - (c) that no personal information of the Account Holder has been passed by the ISP to any third party, including the Rights Holder;
 - (d) acknowledgment that the detected alleged infringement may not necessarily have been undertaken by the named Account Holder;
 - (e) a statement that further alleged infringements undertaken on the Account Holder's service may lead to the sending of further notices;
 - (f) a statement that engaging in copyright infringement may lead to a Rights Holder instituting court proceedings against the Account Holder;
 - (g) that any queries about the notice should be directed to the Copyright Information Panel;
 - (h) a link to pages at the Copyright Information Website that will provide information addressing likely queries by

Account Holders and members of the public and provide educational material about how to:

- (i) access legitimate content alternatives;
- (ii) make internet services more secure from unauthorised access and use; and
- (iii) avoid infringing copyright online.

3.7.2 In its covering email to an Account Holder, the ISP will:

- (i) identify itself as the sender of the notice but is not required to place any of its own branding on the Education Notice; and
- (ii) include a reference to, and information which would allow an Account Holder to access the ISP's privacy policy.

3.7.3 The ISP will make a record that it has sent an Education Notice to the Account Holder.

3.8 Warning Notice

3.8.1 A Warning Notice pursuant to this Code must include the following information:

- (a) that the Account Holder has previously received an Education Notice;
- (b) that a further Infringement Notice has been received from a Rights Holder which alleges that an IP address allocated to the Account Holder's internet account may have been used to infringe copyright;
- (c) the identity of the Rights Holder, the time, time zone and date of the alleged infringement and a description of the content that is alleged to have been the subject of the infringement;
- (d) that no personal information of the Account Holder has been passed to any third party;
- (e) acknowledgment that the detected alleged infringement may not necessarily have been undertaken by the named Account Holder;
- (f) that receipt of a further notice may result in a Rights Holder instituting court proceedings against the Account Holder, including a preliminary discovery application to obtain the Account Holder's details;
- (g) that any queries about the notice should be directed to the CIP;

- (h) that the Account Holder may wish to seek independent legal advice; and
- (i) a link to pages at the Copyright Information Website which will provide information addressing likely queries by Account Holders and members of the public and provide educational material about how to:
 - (i) access legitimate content alternatives;
 - (ii) make internet services more secure from unauthorised access and use; and
 - (iii) avoid infringing copyright online.

3.8.2 In its covering email to an Account Holder, the ISP will:

- (i) identify itself as the sender of the notice but is not required to place any of its own branding on the Warning Notice; and
- (ii) include a reference to, and information which would allow an Account Holder to access the ISP's privacy policy.

3.8.3 The ISP will make a record that it has sent a Warning Notice to the Account Holder.

3.9 Final Notice

3.9.1 A Final Notice pursuant to this Code must include the following information:

- (a) that the Account Holder has previously received an Education Notice and a Warning Notice;
- (b) that a further Infringement Notice has been received from a Rights Holder which alleges that an IP address allocated to the Account Holder's internet account appears to have been used to infringe copyright;
- (c) the identity of the Rights Holder, the time, time zone and date of the alleged infringement and a description of the content that is alleged to have been the subject of the infringement;
- (d) a statement that the detected infringement may not necessarily have been undertaken by the named Account Holder;
- (e) that an Acknowledgment of the Account Holder's receipt of the Final Notice will be sought by the ISP as determined at the ISP's discretion in accordance with section 3.9.2 of the Code;
- (f) that receipt of the Final Notice may result in a Rights Holder instituting court proceedings against the Account Holder,

including a preliminary discovery application to obtain the Account Holder's details;

- (g) that any queries about the Final Notice should be directed to the CIP;
- (h) that the Account Holder may wish to seek independent legal advice;
- (i) that the Account Holder has the option to seek, via the Adjudication Panel, an independent review of the alleged infringement; and
- (j) a link to pages at the Copyright Information Website which will provide information addressing likely queries by Account Holders, state how a Challenge may be made and how it would be assessed, and provide educational material about how to:
 - (i) access legitimate content alternatives;
 - (ii) make internet services more secure from unauthorised access and use; and
 - (iii) avoid infringing copyright online;

3.9.2 An ISP will select an Acknowledgment measure in its discretion from any one or more of the following:

- (a) registered Post: in addition to sending a Final Notice by email, the ISP sends the Final Notice by registered post (recipient signature required) to the billing address of the Account Holder. The signature provided upon receipt will constitute acknowledgement by the relevant Account Holder that a Final Notice has been received by the Account Holder;
- (b) pop-ups, or other real-time notices or information pages that do not interrupt the internet services but continue to appear periodically until the Account Holder takes action to acknowledge receipt of the Final Notice; or
- (c) another acknowledgement measure that the Copyright Information Panel has approved and specified for the purpose of this section 3.9.2 and which is a reasonable alternative.

3.9.3 In its covering email to an Account Holder, the ISP will:

- (i) identify itself as the sender of the notice but is not required to place any of its own branding on the Final Notice; and
- (ii) include a reference to, and information which would allow an Account Holder to access, the ISP's privacy policy.

- 3.9.4 The ISP will make a record that it has sent a Final Notice to the Account Holder and will specify the form of the Acknowledgment.
- 3.9.5 The ISP will make a record of Acknowledgements that it receives.
- 3.9.6 The ISP is not required to send any further notices to an Account Holder who receives a Final Notice within 12 months from when a Rights Holder sent that Account Holder an Education Notice.

3.10 Challenge Notice from Account Holder to Adjudication Panel

- 3.10.1 An Account Holder may, after receiving a Final Notice, challenge an Education, Warning or Final Notice, by sending a Challenge Notice, to the Adjudication Panel.
- 3.10.2 The challenge process will be administered by the Adjudication Panel and approved and specified by the CIP. The challenge process must be accessible by Account Holders and transparent while protecting personal information such as the identity and contact details of the Account Holder and the independence and impartiality of the Adjudication Panel.
- 3.10.3 A fee of \$25 will be payable by the Account Holder upon lodgement of the Challenge Notice and will be refundable if the Challenge is successful. The fee may be waived by the Adjudication Panel if it believes this is warranted in the individual circumstances.
- 3.10.4 The costs of the Adjudication Panel in adjudicating any Challenge Notice are payable by the relevant Rights Holder.
- 3.10.5 The CIP must not itself review the Challenge Notice nor have access to any of the Account Holder's personal information at any stage of this copyright notice scheme. Challenges may only be determined by the Adjudication Panel following the process prescribed in section 3.10.2 and otherwise in accordance with provisions of this Code.
- 3.10.6 A Challenge Notice is not valid if it is received by the Adjudication Panel more than 28 days after the date of the Final Notice to which it relates.
- 3.10.7 The Adjudication Panel must advise the relevant ISP that an Account Holder has filed a Challenged Notice. Until the outcome of that Challenge is determined by the Adjudication Panel and that outcome notified to the relevant ISP, the relevant Account Holder must be omitted from any Final Notice List.
- 3.10.8 An ISP must provide the Adjudication Panel with any information that the Adjudication Panel reasonably requests from the ISP, to enable the Adjudication Panel to determine whether the ISP's matching of the IP address specified in the Infringement Report to the Account Holder specified in the Notice was properly conducted.

- 3.10.9 A Rights Holder must provide the Adjudication Panel with any information that the Adjudication Panel reasonably requests from the Rights Holder to enable the Adjudication Panel to determine whether a process certified pursuant to section 3.3.1 (a) of this Code was used as the basis for the Infringement Report and the certification remains current.
- 3.10.10 In reviewing Challenge Notices the Adjudication Panel must take into account any relevant information provided by the Rights Holder, the ISP and the Account Holder. To the extent that it is the subject of the Challenge, the Adjudication Panel may consider:
- (a) whether the Infringement Report in relation to the Notice that is the subject of the Challenge arose out of use by or on behalf of the Rights Holder of the processes certified pursuant to section 3.3.1(a);
 - (b) whether the matching of the IP address specified in the Infringement Report to the Account Holder specified in the Notice appears to have been properly conducted;
 - (c) any other relevant matter raised by the Account Holder that is supported by credible evidence, including without limitation material supporting any claim that the Notice that is the subject of Challenge arose out of use of the Account Holder's account by a person that was not authorised by the Account Holder to use that internet access account; and
 - (d) any other circumstances which the Adjudication Panel considers should reasonably be taken into account.
- 3.10.11 The Adjudication Panel will determine on the basis of written material before it in relation to a challenge whether that challenge should be successful, on the balance of probabilities and otherwise on such basis as it reasonably considers fair and just.
- 3.10.12 If the Adjudication Panel:
- (a) rejects the Challenge, the Adjudication Panel must, within 28 days, send a response to the Account Holder:
 - (i) stating the rejection, the reasons for the rejection and the potential consequences; and
 - (ii) stating that matters raised in the Challenge can again be raised by the Account Holder in any court proceedings commenced by the relevant Rights Holder.

The Adjudication Panel must also advise the relevant ISP and the relevant Rights Holder that the Account Holder's Challenge has been unsuccessful.

- (b) upholds the Challenge, the Adjudication Panel must, within 28 days, send a response to the Account Holder:
 - (i) stating the acceptance of the Challenge, the reasons for it and that the ISP will be asked to treat the Final Notice as if it was never sent; and
 - (ii) the Adjudication Panel must also advise the relevant ISP and the relevant Rights Holder that the Account Holder's Challenge has been successful and request that the Account Holder's ISP update its records accordingly.

3.10.13 The Adjudication Panel must, at all times, protect the personal information of account holders in accordance with the Australian Privacy Principles.

3.11 Record Keeping by ISPs

- 3.11.1 ISPs must retain, for a minimum of 24 months, the following information, in relation to all relevant, active Account Holders:
- (a) any Infringement Reports sent by Rights Holders to the ISP;
 - (b) any Education, Warning and Final Notices sent by the ISP to any of its Account Holders; and
 - (c) any acknowledgement received from the Account Holder on receipt of the Final Notice.
- 3.11.2 To the extent permitted by law and not contrary to any court order, an ISP may de-identify or destroy after 24 months from the date of the relevant document, the following information:
- (a) any Infringement Reports sent by the Rights Holders to the ISP;
 - (b) any Education, Warning or Final Notices sent by the ISP to its Account Holders
 - (c) any records relating to these documents.

3.12 Final Notice Lists and Facilitated Preliminary Discovery - Rights Holders may Pursue Further Action

- 3.12.1 A Final Notice List may be requested in writing by any Rights Holder that sent an Infringement Report to an ISP in relation to an Account Holder of that ISP who ultimately receives a Final Notice. Rights Holders will send their Final Notice List requests to the designated email address of the relevant ISP.
- 3.12.2 Within seven days (or such time as otherwise agreed between the ISP and the Rights Holder) of receipt of a request under 3.12.1, an ISP must provide a Final Notice List to the Rights Holder:
- (a) in electronic form; and

- (b) in a form which does not enable any Account Holder to be identified.
- 3.12.3 A Final Notice List must provide the following information:
 - (a) The number of Account Holders who have been issued with an Education, Warning or Final Notice in respect of an alleged infringement against the Rights Holder and have received a Final Notice since the issue of the last Final Notice List (i.e. up to a maximum of 24 months or from the date of commencement of the scheme, if no Final Notice list request has been received from that Rights Holder during that period);
 - (b) A record of any Acknowledgement and the form of that Acknowledgment; and
 - (c) The IP addresses respectively allocated to those respective Account Holders at the time of the alleged infringements.
- 3.12.4 In accordance with section 3.10.7, the information set out in the Final Notice List should not include Final Notices that are the subject of a Challenge that has been notified and is pending determination and any upheld Challenge.
- 3.12.5 An ISP does not have to accept a further request for a Final Notice List from a Rights Holder within one month from the making of such a request by that Rights Holder to that ISP.
- 3.12.6 The ISP must not disclose the identity or contact details of any Account Holder to Rights Holders in the Final Notice List.
- 3.12.7 A Rights Holder may elect to lodge an application with a Federal court or tribunal for Preliminary Discovery seeking to obtain access from an ISP to an Account Holder's identity and contact details.
- 3.12.8 An ISP must act reasonably to facilitate and assist an application by a Rights Holders for Preliminary Discovery to the extent that such orders are sought:
 - (a) following Rights Holders and ISPs observing the procedures prescribed by this Code in relation to an Account Holder whose IP address was included on a Final Notice List provided by that Account Holder's ISP to a relevant Rights Holder;
 - (b) in relation to the identity and address (if available to that ISP) contact details of that Account Holder; and
 - (c) for provision of copies of Notices sent to that Account Holder that were the subject of the Final Notice List.
- 3.12.9 An ISP must comply with a final court order to disclose the Account Holder's details to the Rights Holder.

- 3.12.10 Nothing in this Chapter or this Code affects the rights and remedies of Rights Holders under the Copyright Act in relation to any alleged infringement of copyright, whether or not the alleged infringement has been the subject of any Infringement Notice.

4 COPYRIGHT INFORMATION PANEL

4.1 Structure and Operation of the Copyright Information Panel

- 4.1.1 The CIP will be established jointly by Right Holders and ISPs and the Consumer Organisation and will commence operation no later than operational effect of this Code.
- 4.1.2 The CIP will be a panel of persons appointed, respectively, by the Right Holders, ISPs and the Consumer Organisation.
- 4.1.3 The operating budget of the CIP will be jointly agreed by Rights Holders and ISPs and its operating expenses will be jointly funded by them in equal portion, (other than as stated in sections 3.10.3 and 3.10.4).
- 4.1.4 The CIP will have a chairperson agreed by Rights Holders and ISPs. The chair will alternate between a Rights Holder representative and an ISP representative annually.
- 4.1.5 The CIP will consist of an Executive Committee consisting of five members appointed as follows:
 - (a) as to two Representatives, by Rights Holders;
 - (b) as to two Representatives, by ISPs; and
 - (c) as to one Representative, by the Consumer Organisation.
- 4.1.6 The Tenure of Representatives will be two years from the date of their respective appointment, with the right to seek reappointment. The Chair of the Executive Committee will alternate between a Rights Holder representative and an ISP representative annually.
- 4.1.7 The Executive Committee will offer an avenue for input and guidance as to this Code from other relevant stakeholders.

4.2 Responsibilities of the Copyright Information Panel

- 4.2.1 The CIP will be responsible for:
 - (a) determining the commencement date of the copyright notice scheme in accordance with section 1.5.2 and the CIP will publishing this commencement date on the Copyright Information Website;
 - (b) the appointment of the Certification Body or Bodies;
 - (c) determining and prescribing the form of Infringement Reports and Notices under the Code;
 - (d) the appointment of the Adjudication Panel;
 - (e) commissioning and overseeing provision of secretarial and administrative support for the;

- (i) conduct of the CIP's functions;
 - (ii) conduct of the Adjudication Panel's functions;
 - (iii) content and operation of the Copyright Information Website; and
 - (iv) maintaining a public register of Rights Holders (including details of the single point of contact provided by each Rights Holder);
- (f) oversight of provision (outsourced under such arrangements as the CIP determines) of advice and educational material to the public on the purpose and operation of all aspects of the Code and the copyright notice scheme, particularly through commissioning and operation of the Copyright Information Website and including;
- (i) the reasons for the creation of the copyright notice scheme and how it operates;
 - (ii) (activities that constitute an online infringement of copyright and the possible consequences of these activities;
 - (iii) the availability of lawful content alternatives;
 - (iv) how to make internet services secure from unauthorised use; and
 - (v) how to avoid infringing activity;
- (g) providing for the handling of any enquiries from Account Holders and members of the public;
- (h) reasonable reporting to interested persons (including Rights Holders, ISPs, consumers, the Federal Government and the ACMA) on the operation of the Code, including by commissioning preparation and publication of a summary annual report in such form as the CIP may determine following consultations with stakeholders; and
- (i) overseeing the Evaluation Process described in section 4.3.

4.3 Evaluation Process

- 4.3.1 An evaluation of the Code and the copyright notice scheme will be conducted by an independent party appointed by the CIP and will be undertaken with the support of the Federal Government.
- 4.3.2 The Evaluation Process will commence within 18 months of commencement of the notice scheme, as determined by the CIP in accordance with Section 1.5.2.

- 4.3.3 The Evaluation Process will have such terms of reference as the Executive Committee may determine by majority decision of Representatives appointed at that time.
- 4.3.4 Rights Holders and ISPs must provide the independent party with any information that is reasonably requested to enable the Evaluation Body to conduct the Evaluation Process, except that the Evaluation will not have access to personal information of Account Holders.
- 4.3.5 The Evaluation Process will include consideration of:
- (i) the effectiveness of the Code against the Objectives in Section 1.4;
 - (ii) the operational effectiveness of the Code processes, including the number of Notices sent to Account Holders and the number of Preliminary Discovery applications filed by Rights Holders;
 - (iii) any potential refinement of the Code and the processes prescribed by the Code that might improve its effectiveness, including the scope of coverage of the Code, or address any unintended adverse effects;
 - (iv) the effectiveness and fairness of operation of provisions of this Code in relation to Applications for Preliminary Discovery made in respect of alleged online copyright infringement, including any allegations of inappropriate practices; and
 - (v) the effectiveness and fairness of the fee payable to lodge a Challenge Notice with the Adjudication Panel.
- 4.3.6 The independent party will provide a written report to the CIP within 3 months of commencing the Evaluation Process. The report may include commercial in confidence material and is to be drafted so that commercial in confidence material is redacted or otherwise separated to enable release of a public summary version or other fair version of the report.

4.4 Costs

Rights Holders and ISPs are cooperatively undertaking further work to:

- *quantify the costs of meeting the specific operational responsibilities and processes required by the Scheme; and*
- *determine how these costs should be fairly apportioned between ISPs and Right Holders, in line with the objectives outlined in the letter from responsible Federal Ministers of 10 December 2014.*

5 REFERENCES

Legislation

Copyright Act 1968

<http://www.comlaw.gov.au/Series/C1968A00063>

Privacy Act 1988

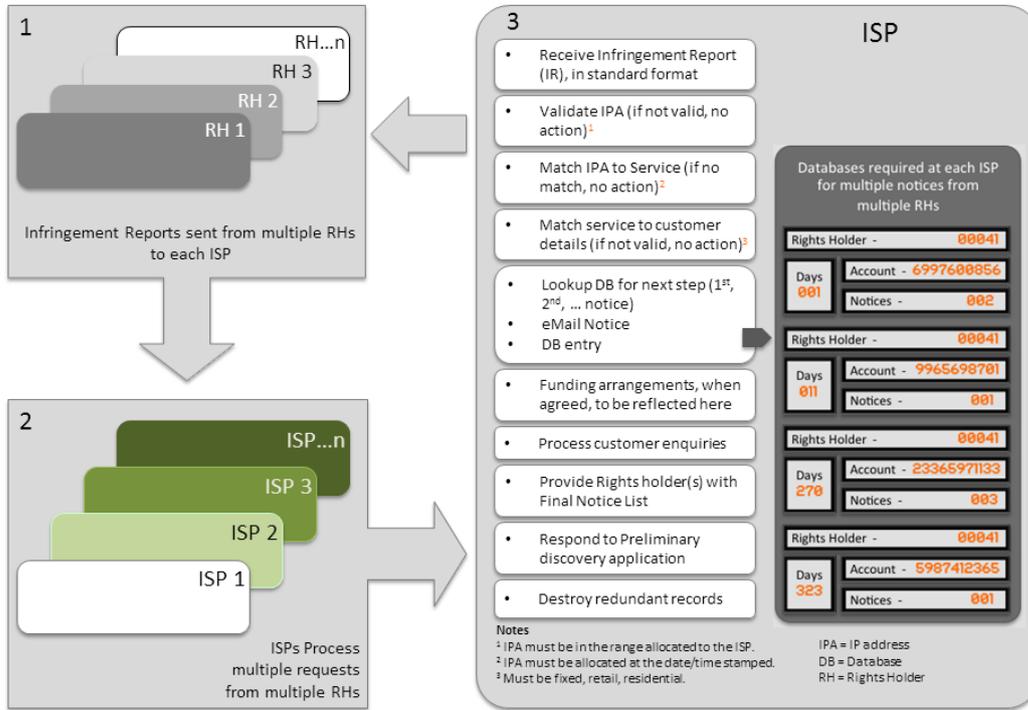
<http://www.comlaw.gov.au/Series/C2004A03712>

Telecommunications Act 1997

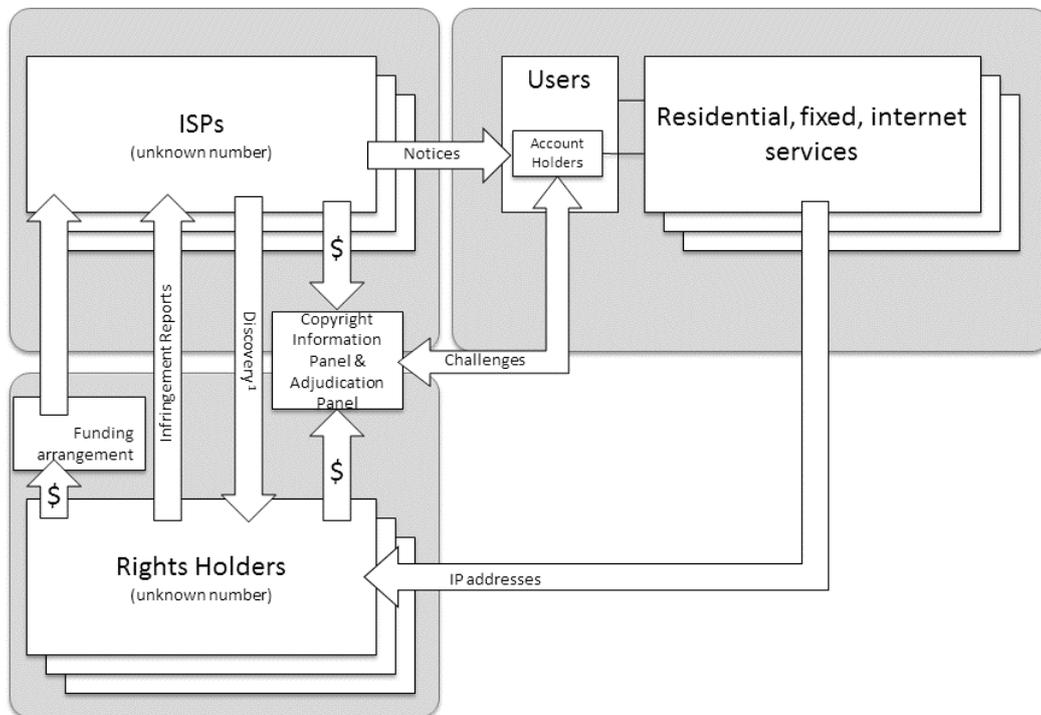
<http://www.comlaw.gov.au/Series/C2004A05145>

ATTACHMENT 1 – PROCESS FLOW

Possible process overview – Copyright Notice Scheme



Relationships and information flows – Copyright Notice Scheme

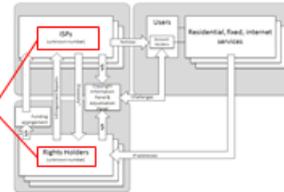


¹ Subject to court order

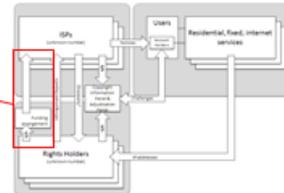
ATTACHMENT 2

Major components of the Copyright Notice Scheme

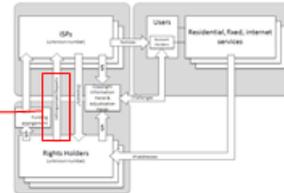
An unknown number of participants will join the scheme. Both ISPs and RHs will qualify according to requirements. The scheme will bind ISPs with > [Minimum Specified Number] residential, fixed internet account holders and is available to qualified RHs.



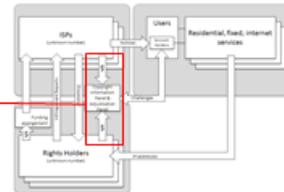
Funding arrangements between ISPs and RHs, when agreed, to be reflected here]



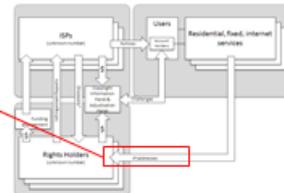
Infringement Reports will be forwarded to ISPs, in a prescribed format.



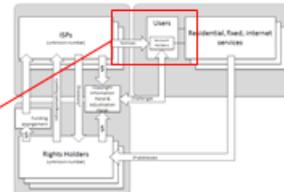
In order to facilitate the operation and governance of the scheme, a Copyright Information Panel (CIP) will maintain a register of qualified RHs, make arrangements to deal with enquiries about the operation of the scheme, develop educational material and provide links to lawful content, An Adjudication Panel will manage challenges from Account Holders to Final Notices or other Notices. The CIP will be co-funded by RHs and ISPs.



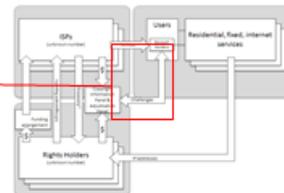
RHs will develop the detection and recording of IP addresses believed to be used for infringements and forward in an agreed standard format to ISPs, together with any other information required by the scheme.



ISPs will receive Infringement Reports from RHs, verify IP addresses, match IP addresses to services and account holders, forward notices in an agreed standard format to primary email address of account holder. ISPs will develop and maintain databases to record notices sent and the status of those notices according to the scheme requirements.



Account Holders will be offered a challenge process for any Final Notice. Details of the process and means of access to the Adjudication Panel will be included in the notices. RHs will fund the cost of the Adjudication Panel determining Challenges



ISP Actions

Each ISP will establish a secure mailbox in which to receive Infringement Reports from RHs, create task lists, create permission for access, develop and document processes and recruit and train staff in the new processes in order to action notifications.
ISPs will create a distribution list of a 'task' which allow management of alerts and escalations within parameters set to ensure actions completed in agreed timeframes.

IP addresses (IPA) have specific formats, are 'time-stamped' and are issued to ISPs in blocks. The ISP will allocate any given IPA to different devices at different times. The ISP will need to validate that the IPAs provided are correctly formatted; in the range allocated to the ISP; and in use at the time indicated by the RH. A record of each validation will be made.

IPAs are allocated to devices connected to services. The device and, therefore, the service must first be determined, for the time stamp provided. This is an action performed with access to network records. A record of each search result will be made.

Once a service has been identified, staff must access billing systems to search for customer identification associated with that service. This will provide Account Holder details, and also determine if it is a service within the scope of the scheme (Residential, fixed, internet). A record of each search result will be made.

ISPs will refer to an appropriate data base (not yet in existence) to determine the appropriate notice (Education/Warning/Final) for issue to the Account Holder. This DB must record time frame of previous notices. ISP will refer to business rules and create and issue correct notice. A record of each notice issued will be made.

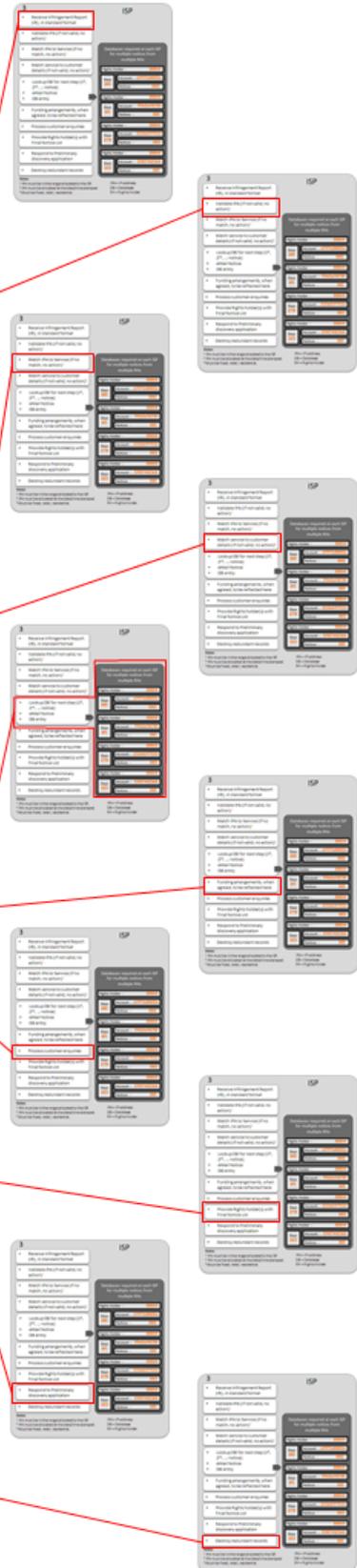
[Funding arrangements between ISPs and RHs, when agreed, to be reflected here]

ISP will recruit and train staff to handle customer enquiries, that are not made to the CIP.
Handle customer enquiries in relation to notices.
A record of each enquiry will be made.

On receipt of request for a 'Final Notice List' from RHs, ISPs will generate list in prescribed format, from records kept.
Forward to RH.
A record of each 'Final Notice List' issued will be made.

If preliminary discovery proceedings commence, respond as appropriate.
Comply with any resulting Court Orders.

Identify aged records and delete according to Code provision or business rules.



PARTICIPANTS

The Working Committee that developed the Code consisted of the following organisations and their representatives:

Organisation	Membership	Representative
Patrick Fair	Voting	Baker and McKenzie
Ben Jenkins	Voting	iiNet
Adam Leeflang	Voting	IP Star
Simon Lewin	Voting	M2
Gary Smith	Voting	Optus
Jane Perrier	Voting	Telstra
James Shaw	Non-voting	Telstra
Mary-Jane Salier	Voting	Verizon
Matthew Lobb	Voting	Vodafone Hutchison Australia

This Working Committee was chaired by Mr Gary Smith of Optus. Shona Fury of Communications Alliance provided project management support. Leanne O'Donnell provided legal drafting services.

Communications Alliance was formed in 1997 to provide a unified voice for the Australian communications industry and to lead it into the next generation of converging networks, technologies and services.

In pursuing its goals, Communications Alliance offers a forum for the industry to make coherent and constructive contributions to policy development and debate.

Communications Alliance seeks to facilitate open, effective and ethical competition between service providers while ensuring efficient, safe operation of networks, the provision of innovative services and the enhancement of consumer outcomes.

It is committed to the achievement of the policy objective of the *Telecommunications Act 1997* - the greatest practicable use of industry self-regulation without imposing undue financial and administrative burdens on industry.



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