

16 March 2018



Ms Helen Owens

Assistant Secretary, Content and Copyright
Department of Communications and the Arts

By email: copyright.consultation@communications.gov.au

Dear Helen,

RE: Review of the Copyright Infringement Amendment

Communications Alliance welcomes the opportunity to briefly comment on the questions raised in the Department of Communications and the Arts (DoCA) consultation paper on the review of the Copyright Infringement Amendment.

Overall, Communications Alliance feels that the mechanism introduced by the Online Infringement Amendment in June 2015 works effectively and that the Court process for injunctions established by the Amendment is working well for Carriage Service Providers (CSPs). Experience from the applications for injunctions made so far has shown that the process is working smoothly and without undue burden or delay.

CSPs also feel that the streamlined process for applications for injunctions that are extensions or variations of already existing injunctions, for example to extend an injunction to additional top-level domains (e.g. from the (fictitious) domain love2pirate.com to love2pirate.co.uk and love2pirate.tv) through the Court process is proving effective and efficient.

It is also pleasing to see that, on several occasions, Rights Holders have re-examined previously granted injunctions and notified CSPs that a continued block of a website is no longer required due to the website no longer infringing or facilitating the infringement of copyright.

Given the significant efforts that CSPs and Rights Holders have expended to reach the current level of consensus, Communications Alliance recommends no changes be made to the Federal Court-based application and injunction process.

Without detracting from the overall positive balance that CSPs have drawn, CSPs contend that amendments to Section 115A(9) might be warranted. Currently, this section provides that CSPs "are not liable for any costs in relation to the proceedings unless the provider enters an appearance and takes part in the proceedings." CSPs understand the rationale of the provision but note that given the changing nature of technology in the field of copyright infringement (e.g. streaming, apps for set-top boxes etc.) there may be circumstances in which a CSP might reasonably want to be heard in the proceedings in order to advise on the workings of a technology or

the technical details of disabling access to a website without necessarily being liable for parts of the costs of the proceeding. The provision of such technical expertise is quite different to an appearance and should not per se trigger liability for costs. CSPs recommend that this section be reviewed in this light and a form of 'reasonable test' be introduced to enable the Federal Court to have access to all technical expertise when making a decision to grant or not to grant an injunction.

Please contact me if you have any questions or would like to discuss the matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read "John Stanton". The signature is written in a cursive style with a large, stylized initial "J".

John Stanton

Chief Executive Officer