



Wednesday, 15 April 2015

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600
By email: legcon.sen@aph.gov.au

Dear Committee Secretary,

Senate inquiry into the Copyright Amendment (Online Infringement) Bill 2015 (Cth)

Thank you for providing the opportunity to make a submission in relation to the Copyright Amendment (Online Infringement) Bill 2015 (Cth).

The Commission is aware that the intention of this Bill is to "introduce a key reform to reduce online copyright infringement" by providing for court injunctions requiring Carriage Service Providers (CSPs) to block foreign online locations that facilitate copyright infringement.

The Commission is mindful that attempts to stop copyright infringement are consistent with advancing human rights. Property rights are human rights. People have the right to own property, whether intellectual or physical, and these rights should be preserved and protected.

However, the justifications to stop copyright infringement are not unlimited. Respecting intellectual property rights, including copyright can unreasonably restrict freedom of expression without proper 'fair use' exceptions in copyright law. Similarly, without a sufficiently high threshold to justify a court injunction such a Bill could quickly become a de facto internet filter.

The Bill attempts to be prescriptive by establishing a 'test' for courts to assess whether an injunction can be granted and setting out a number of factors that the Court must take into account when applying this test. The factors informing this test include:

- the flagrancy of the infringement or its facilitation
- whether disabling access to the online location is a proportionate response in the circumstances
- the impact on any person likely to be affected by the grant of the injunction, and

- whether it is in the public interest to disable access to the online location.

While these factors do ensure that there is a threshold to inform the granting of an injunction, they are not sufficient.

Australia's copyright law is in need of serious reform. While the Copyright Act contains a number of 'fair dealing' provisions for particular purposes, a key problem with Australia's copyright regime is the absence of a reasonable 'fair use' provision that accommodates both freedom of expression and the protection of property rights. Under the regime proposed in the Bill there remains an outside risk a website that carries content that would be covered by another country's 'fair use' exception may be blocked because of the absence of a sufficiently broad 'fair use' exception in Australian law.

In response the Australian Human Rights Commission recommends that:

1. An additional 'factor' that assesses the extent of the infringement as a share of the total copyrighted work (i.e., only ten seconds of a two-hour long movie), and
2. The introduction of a 'fair use' exception, or new 'fair dealing' exception, in the *Copyright Act 1968* (Cth).

The Commission notes that an extensive discussion about the introduction of a "flexible fair use exception" and "a new fair dealing exception" were extensively considered in the Australian Law Reform Commission's 2013 report, *Copyright and the Digital Economy*.

I hope this submission assists in your consideration of the Bill.

Yours sincerely,



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Human Rights Commissioner

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