

COPYRIGHTAGENCY

**Submission to Senate Legal and
Constitutional Affairs Committee**

**Copyright Amendment (Online
Infringement) Bill 2015**

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1. INTRODUCTION

Copyright Agency welcomes the Government's introduction of the Copyright Amendment (Online Infringement) Bill 2015. Content creators face significant challenges from unauthorised use of their content, which impedes their participation in Australia's digital economy. For example, Australian publishers are limiting their investment in heavily pirated genres because the investment cannot be recouped, and reducing their advances on future royalties to authors. Online infringement hurts small as well as large content creators, as attested recently by Adelaide publisher David Butler.¹

We also strongly support the Government's position that everyone has a role in reducing online copyright infringement. This includes the increasing availability of content from a range of legitimate sources, education and awareness, a commitment by consumers to support creation of content by acquiring it from legitimate sources, and a commitment by service providers to assist their customers to acquire content from legitimate sources.

The Bill reflects similar solutions to those successfully implemented in other countries. The experience overseas has shown courts ordering injunctions following careful consideration of the public interest, including implications for consumers and creators of content.

2. WHICH WEBSITES: PROPOSED NEW SECTION 115A(1)(C)

Proposed new section 115A(c) confines the injunction power to online locations whose 'primary purpose' is to 'infringe, or to facilitate the infringement of, copyright'. The limitation may mean that the remedy is not available for online locations that provide other services (deliberately or otherwise), but whose infringing activity is nevertheless a substantial purpose, or has a substantial effect.

The requirement is not necessary given the factors courts take into account as a matter of course before ordering an injunction. It is not a requirement in other countries whose courts have successfully and effectively ordered injunctions.

The examples in paras [38] of the Explanatory Memorandum to the Bill could be properly addressed by the sorts of factors courts routinely take into account before ordering an injunction.

If a purpose requirement is retained, it should refer to a substantial purpose or effect.

3. FACTORS: PROPOSED NEW SECTION 115A(5)

Courts already routinely consider a range of factors before ordering an injunction. If factors are to remain in the legislation, they should only be matters to which a court can (but is not obliged) to have regard. In addition, a number of the factors duplicate matters taken into consideration in other ways and therefore should be omitted from the legislation. These include the factors in paragraphs (a), (f), (g), (i) and (j).

4. JURISDICTION: PROPOSED AMENDMENT TO SECTION 131D

We would support the Federal Circuit Court having jurisdiction, and thus the omission of the amendment from the Bill.

¹ Internet piracy harms small content-creation companies, David Butler, The Australian, 10/4/15

5. ABOUT COPYRIGHT AGENCY

Copyright Agency is a not-for-profit copyright management organisation (CMO). It has more than 28,000 members, who include writers, artists and publishers.

Copyright Agency is appointed by the Australian Government to manage statutory licences in the Copyright Act for educational and government use of text and images, and to manage the artists' resale royalty scheme. It also offers a range of other licences as non-exclusive agent for its members, including to the corporate sector.

Copyright Agency also manages Viscopy's licensing and membership services. Viscopy is a CMO representing more than 10,000 visual artists.

Both Copyright Agency and Viscopy are affiliated with similar organisations in other countries, enabling the licensing of foreign content in Australia, and the collection of royalties for the use of Australian content overseas.

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