



Senator the Hon George Brandis QC
Attorney-General &
Minister for the Arts

The Hon Malcolm Turnbull MP
Minister for Communications

Dear

Over the course of this year, we have been discussing the best ways to reduce the high levels of online copyright infringement in Australia. We thank you for your input and co-operation in this process of consultation.

The Government recognises that addressing online copyright infringement is a complex task with shared responsibility between rights holders, internet service providers (ISPs) and consumers. We also appreciate that this is a dynamic issue, affected by changing technology and consumer behaviour. As such, the Government has sought the least burdensome and most flexible way of responding to concerns about online copyright infringement, while protecting the legitimate interests of the rights holders in the protection of their intellectual property.

The Government understands the unique position of ISPs with respect to assisting rights holders to identify and communicate with people alleged to have infringed copyright. We recognise that, for various reasons, agreement has not been reached between rights holders and ISPs on efforts to address online copyright infringement. To overcome this, the Government asks that ISPs and rights holders develop a code with a view to registration by the Australian Communications and Media Authority (ACMA) under Part 6 of the *Telecommunications Act 1997* (the Telecommunications Act).

We note that the existence of a code will be central to a court's assessment of whether a party has taken "reasonable steps" under sections 36 or 101 of the *Copyright Act 1968* (the Copyright Act) for the purposes of authorisation liability.

We expect the code to address the following objectives:

- that ISPs take reasonable steps (including the development of an education and warning notice scheme) to deter online copyright infringement on their network, when they are made aware of infringing subscribers, in a manner that is proportionate to the infringement
- informing consumers of the implications of copyright infringement and legitimate alternatives that provide affordable and timely content
- providing appropriate safeguards for consumers
- fairly apportioning costs as between ISPs and rights holders
- ensuring smaller ISPs are not unfairly or disproportionately affected, and
- include a process for facilitated discovery to assist rights holders in taking direct copyright infringement action against a subscriber after an agreed number of notices.

Any code must be sustainable and technology neutral. It should be educative and attempt to address the reasons that people are accessing unauthorised content. Consumer interests must be given genuine consideration in your negotiations.

If an industry code is not agreed by 8 April 2015, the Cabinet has determined that the Government will prescribe binding arrangements either by an industry code prescribed by the Attorney-General under the Copyright Act or an industry standard prescribed by the ACMA, at the direction of the Minister for Communications under the Telecommunications Act, on such terms as agreed by us.

The Government has also decided to introduce legislation that will enable a court to order the blocking of overseas hosted websites that can be shown to be primarily for the purpose of facilitating online copyright infringement.

The issue of price and availability of legitimate content in Australia was a key factor raised in the majority of submissions to the Online Copyright Infringement Discussion Paper. The Government notes recent efforts by the industry in this area, and expects industry to continue to respond to this demand from consumers in the digital market.

The Government accepts that there is no single proven course of action to reduce levels of online copyright infringement and that as technology and consumer behaviour continues to change the options to respond to online copyright infringement will likely have to change. We will be working closely with other countries to get a better understanding of levels of online copyright infringement and the effectiveness of different approaches to respond to the problem. In light of this, the Government will review the effectiveness of efforts to reduce online copyright infringement within 18 months of a code or standard coming into operation.

We strongly urge all parties to approach these discussions in good faith and in keeping with the common goal of reaching an agreement, without delay. It is better that this exercise be undertaken consensually, rather than prescriptively.

We have also written to rights holders, ISPs and consumer groups to inform them of the Government's decision.

Yours sincerely

Malcolm Turnbull
Minister for Communications

George Brandis
Attorney-General