



Australian Libraries
Copyright Committee

c/- National Library of Australia
Parkes Pl, Parkes
ACT 2600

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Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: legcon.sen@aph.gov.au

Copyright Amendment (Online Infringement) Bill 2015

We thank the Legal and Constitutional Affairs Legislation Committee for the opportunity to make this submission on the *Copyright Amendment (Online Infringement) Bill 2015* ('the Bill').

The core mission of librarians and other information professionals is to ensure access to information for all for personal development, education, cultural enrichment, leisure, economic activity and informed participation in and enhancement of democracy... Librarians and other information workers reject the denial and restriction of access to information and ideas most particularly through censorship whether by states, governments, or religious or civil society institutions.¹

The Australian Libraries Copyright Committee (ALCC) endorses the technical analysis of the Bill conducted by the Australian Digital Alliance. However we wish to emphasise that the library and archive sector fundamentally opposes censorship or filtering of the web that can undermine access to knowledge and the free publication of speech. We believe that website blocking should only be used as a last resort² and if used, must be exercised with great caution and oversight to ensure transparency.

While we recognise some positives in the drafting of the Bill, we do not believe that these provide adequate protection to the principle of free of information and access to knowledge. We wish to draw particular attention to the following.

We commend:

- The use of the impartial judicial system, with its protections for proper process and transparency

¹Loida Garcia-Febo, Anne Hustad, Hermann Rösch, Paul Sturges and Amelie Vallotton (FAIFE working group) *IFLA Code of Ethics for Librarians and other Information Workers* (August 2011)

²We note that this is only available to 'overseas' based websites – we would prefer it to be for websites outside of any practical reach of rights holders. If there is, for example a US based rights holder organisation and a US based site, it would be reasonable for direct action to be commenced in the USA. Some scope for this to be considered by the court would ensure this measure is used only when no other measures would be practical.



- Mandated safeguards to be considered such proportionality, impact on classes of people and the public interest
- Restricting matters to the Federal Court, leading to specialised judges
- Ability of judge to specify terms of order, allowing orders to evolve as technologies and systems change
- Flexibility to enable injunctions granted under the proposed amendment to be limited (in duration), varied or rescinded over time (S 115 A (7)).
- Carriage service providers' (CSP) liability is not sought
- No direct impact on to CSP subscribers' privacy, with no access sought or granted to IP addresses and or personal information

However, there are also some critical shortcomings in the Bill as presented, including negative impacts upon human rights. The Australian Constitution offers no overarching protections for fundamental freedoms, making it essential they are explicitly written into legislation. While the explanatory memorandum accompanying includes a statement of compatibility with human rights, including the right to *freedom of opinion and expression* there is **no explicit protection of freedom of expression within the proposed amendment itself.**

At a bare minimum, we propose the following amendments:

- An explicit direction for the court to consider the impact on freedom of expression and access to knowledge;
- Encouragement for the court to allow public interest advocates to contest injunctions;
- Provision for affected parties, including public interest advocates, to be able seek review and revocation of existing injunctions in a practical manner;
- Removal of the provision for further factors to be added through regulation;
- Narrowing of the scope of online locations that can be covered by the injunction
- Ongoing monitoring of adverse effects;
- Transparent and easily accessible online list of blocked sites and free online access to all judgement and orders; and
- Requirement that notices be provided if people try to reach blocked sites, including an explanation as to why the site is blocked and available recourses and remedies.

The library sector also wishes to draw attention to the outstanding copyright reforms in other areas.

The outstanding review of TPMs means that university libraries are unable to make accessible copies of DVDs for hearing impaired students without incurring criminal liability. The perpetual copyright in unpublished works locks up priceless pieces of Australian heritage. And the lack of fair use means that libraries are significantly hampered in their ability to serve their public, especially in the digital environment.

Should this additional measure of enforcement be implemented, we strongly urge the Government to also progress the outstanding copyright reforms in the public interest with equal haste.

Margaret Allen

Chair – Australian Libraries Copyright Committee