

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO

Group: 2

Program: 1.1

Question No. AE15/129

Senator Collins asked the following written question from the 24 February and 27 March 2015 hearings:

1. Was a private barrister retained by the Government to assist in finalising the drafting of the Bill? What was the cost of this work?
2. Did the Attorney-General personally have any part in the drafting of the Bill?
3. Has the Government sought advice on whether the terms of the Bill or any previous draft would capture some VPNs? Can the Government guarantee that VPNs cannot be caught by the terms of the Bill?
4. Has any industry stakeholder requested that the Government allow for the blocking of VPNs by this Bill?
5. Does the Bill provide for the indemnification of ISPs against third party lawsuits by rights-holders? If not, why not?

The answer to the honourable senator's question is as follows:

1. Yes. The cost of this work is commercial-in-confidence.
2. In line with normal practice, the Attorney-General considered the text of Bill during its drafting, and approved it before it was finalised for introduction in Parliament.
3. The Government sought advice on a number of legal aspects of the Bill, including the potential scope of the new provision.

Whether a particular online location will come within the scope of the Bill will be a matter for the court to consider having regard to the elements in proposed subsection 115A(1) and the relevant factors in proposed subsection 115A(5). As noted in the Explanatory Memorandum, the factors to be taken into account set an intentionally high threshold test for satisfaction by the court. The purpose of the scheme is to allow a specific and targeted remedy to prevent those online locations which flagrantly disregard the rights of copyright owners from facilitating access to infringing copyright content. Online locations that do not meet this threshold will not come within the scope of the new provision.

The Bill has been drafted in a technologically neutral way to ensure that it can adapt to developing technologies. That is consistent with the approach in other international site-blocking precedents that operate in the United Kingdom, Ireland and Singapore.

4. The Government is not aware of any specific request of this nature.

5. The Bill does not create any new rules concerning indemnities. Whether a separate civil action could be brought against an ISP is a matter for a court to consider.

The Bill does not affect existing laws on copyright infringement, authorisation liability, breach of contract or any of the safe harbour conditions.