

Our ref: DHlb1447470

20 March 2018

The Director, Copyright Law Section
Department of Communications and the Arts
GPO Box 2154
CANBERRA ACT 2601

Dear Sir/Madam,

Review of Copyright Online Infringement Amendment

The Law Society of NSW appreciates the opportunity to comment on the review of the *Copyright Amendment (Online Infringement) Act 2015* ("Online Infringement Amendment"). The Law Society's Business Law Committee contributed to this submission.

The consultation paper, *Review of the Copyright Online Infringement Amendment* notes that this review supports the Government's commitment to review the operation of the Online Infringement Amendment 18 months after it commenced on 27 June 2015, after allowing additional time for evidence to emerge.

We address some of the specific questions from the consultation paper below.

Question 1: How effective and efficient is the mechanism introduced by the Online Infringement Amendment?

The Online Infringement Amendment enables copyright owners to apply to the Federal Court of Australia to block access to an online location meeting certain conditions.¹ After considering a number of factors, the Federal Court may grant an injunction to require a carriage service provider to take reasonable steps to disable access to such an online location.

There is a privately maintained website, which tracks the use of s 115A to obtain blocking orders.² It appears from the published data, that while all of the s 115A cases that have been decided to date have been successful, each has taken around six to nine months from the date of lodgement of an application to the granting of an order. Given the number of downloads that can occur each day on these websites, this remains a very long time for an aggrieved party to have to wait for a remedy.

¹ *Copyright Act 1968* (Cth), s115A

² See: <https://s115a.com/>.

Question 2: Is the application process working well for parties and are injunctions operating well, once granted?

Once a website is blocked, it is very easy from a technological point of view for the person offering that website to set up a new website with the same content, or for users of the website to circumvent the block by using a Virtual Private Network ("VPN"). In contrast, the process to obtain a new block on a new website, which may involve, depending on the circumstances, seeking a new order adding the new website to the existing list of blocked websites in those proceedings, or by commencing new proceedings to obtain a blocking order, is expensive and time consuming.

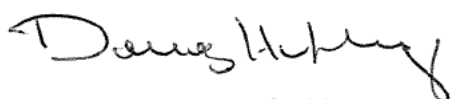
However, with the precedent established by Federal Court decisions to date applying s 115A and the structure of the orders that the Court will now make being clarified, future applications are less likely to be contested by the Internet Service Providers. As a result, the procedure for copyright owners to obtain website blocking orders in order to prevent online piracy of movies, television programs and music via illegal file sharing and streaming, will be far more streamlined and efficient.

We note that a recent study has indicated that there has been a substantial decrease in illegal downloading activity since 2016.³ This may be attributable in part, however, to an improvement in pricing and accessibility of popular content, for example on streaming media such as NetFlix and Stan and on other platforms such as iTunes, meaning that people that might have accessed illegal content in the past are now accessing legitimate content and paying for it by choice despite still being able to illegally download such content if they wished to do so. The possibility of such factors contributing to falling levels of copyright infringement is acknowledged in the consultation paper.⁴

Once again, we thank you for the opportunity to comment.

If you have any questions in relation to this submission, please contact Liza Booth, Principal Policy Lawyer

Yours faithfully,



Doug Humphreys OAM
President

³ Incopro, *Site blocking Efficacy Australia* May 2017, available at: http://www.incoproip.com/case_studies_reports_categories/site-blocking-efficacy-australia-asa/

⁴ Department of Communications and the Arts, *Review of the Copyright Online Infringement Amendment*, February 2018 5.