



Internet  
Association  
of Australia

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To: Attorney General's Department

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**RE: Copyright Enforcement Review**

## INTRODUCTION

Thank you for the opportunity to express the Internet Association of Australia's (**IAA**) perspective on the issues and questions raised in the Issues Paper for the Attorney General's Department's Copyright Enforcement Review.

IAA is a member-based association representing Australia's Internet community. Our membership is largely comprised of small to medium sized Internet Service Providers (**ISPs**) and carriage service providers (**CSPs**). This response is written primarily in representation of these members, as well as for the public good of the Internet and the broader Internet industry.

IAA and our members understand and appreciate the grave implications of copyright infringement and support the government in finding ways to ensure a more robust and resilient copyright enforcement regime.

However, in general, we advocate for regulation to apply at the appropriate layer of the internet services technology stack. ISPs, CSPs and carriers operate networks at layer 3 and below, and are not responsible for over-the-top content where copyright infringement may take place on the Internet.

We understand that for practicality, there are already legislative provisions which require CSPs to comply with the website blocking scheme where a court order has been made. We provide our response to the following questions raised in the Issues Paper with regards to the website blocking and safe harbour scheme.

## OUR RESPONSE

*8. How effective and efficient is the current website blocking scheme as a way of combating copyright infringement and steering online consumers towards legitimate sources of content? For example, is the application process working well for parties, and are injunctions operating well, once granted?*

*9. Could the way the website blocking scheme operates be improved in any way (for example to address the use of new and emerging technologies to navigate around or through website blocks), including through changes to how the current scheme is practically implemented, or potential amendments to legislation?*

We do not believe the current website blocking scheme to be an entirely effective or efficient way of combatting copyright infringement. We strongly advocate that government explores other methods through which to combat copyright enforcement as there will always be issues and shortfalls related to website blocking.

In particular, the involvement of the Federal Court of Australia is a resource intensive process that burdens all parties involved. We understand that subsection 115A(9) provides that CSPs are not liable for proceeding costs unless they take part in the proceedings, and this is intended to reduce the burden for CSPs. However, this is still a very resource intensive process that is then ultimately borne by the general public. In addition, this promotes unfairness as CSPs are incentivised to not take part in proceedings, and therefore cannot provide explanations as to how blocking the domain names, URLs and/or IP addresses would result in adverse implications, many of which are matters that the court must take into account under subsection 115A(5).

In addition, even without CSPs being responsible for court-related costs if they do not contest the proceedings, there are still costs incurred due to the technical and administrative work involved in actioning a website blocking order. Amendments should be made expressly provide that all reasonably incurred costs related to the CSP complying with an order should be borne by the copyright owner.

Furthermore, while the court-ordered injunctions may be limited to certain time durations, there is no clear mechanism outlined for the process of reversing the blocks once they are no longer necessary. While publishers often move infringing content to other servers soon after the block is imposed, these measures unnecessarily remain in place for long periods afterwards.

Thus we strongly recommend that alternative enforcement measures which focus on reducing infringement at the source is prioritised. With regards to mechanisms involving CSPs to block content, we recommend the development of a more industry friendly approach that does not involve the court to effect website blocking processes, actually encourages discussion and consideration of broader public policy such as impact on Internet, and a clear process to remove blocks as soon as possible.

In general, we believe that blocking and taking down content will always be ineffective to the extent that it does not resolve the infringement at the source. Following blocks to a copyright infringing website, the content is often quickly reloaded to other servers to replace the blocked website. Or those motivated will bypass blocking techniques to still access the content. This can then result in other consequences that puts end-users at risk such as if they download unreliable

software that redirects traffic to avoid filters, thereby jeopardising the overall security of the Internet.

There are also various other risks for collateral damage. For example, blocking IP addresses result in other legal content being erroneously blocked alongside the infringing content. URL blocks have a high error rate that cause performance problems that affect overall speed and reliability of the Internet, or compromises to the security of the Internet.

We therefore strongly recommend that in the consideration of any new mechanisms to improve the enforcement of copyright, that the government considers the larger impact of these mechanisms on the Internet. At its core, the Internet is an open, interoperable and global network that is most reliable when it remains as such.

Figure 4 of the Issues Paper indicates that overall, the unlawful consumption of content online has recently decreased, where in 2021, less than 30% respondents responded to unlawfully consuming content online across all content types.

Therefore, as unlawful consumption of online content decreases, we do not see the need to develop further processes that will create bigger burdens for CSPs to operate.

*10. How effectively and efficiently are the authorisation liability provisions and/or safe harbour scheme (and associated notice and take-down process) currently operating as mechanisms for addressing copyright infringement?*

We support the safe harbour scheme but strongly recommend its expansion to cover “online service providers.” This echoes recommendations made by the Productivity Commission in its Report into Australia’s Intellectual Property arrangements, as well as the wide support for the amendment of “carriage service providers” to “online service providers” across Australian industry, academia and other stakeholders.

As noted in the Productivity Commission’s report, this expansion is in line with comparable international schemes, and a way to help improve the resilience of Australia’s copyright protection laws in the rapidly evolving digital technology landscape.

## CONCUSION

Once again, IAA appreciates the opportunity to contribute to the Copyright Enforcement Review. We are committed to assisting in the development of an effective framework that is also practical and appropriate to protect the intellectual property of copyright owners. In this process, we believe that accounting for the broader social and economic consequences, and impact on the Internet is necessary. We sincerely look forward to continue working with the government, industry and other stakeholders to improve Australia’s copyright enforcement regime.

## ABOUT THE INTERNET ASSOCIATION OF AUSTRALIA

The Internet Association of Australia (IAA) is a member-based association representing the Internet community. Founded in 1995, as the Western Australian Internet Association (WAIA), the Association changed its name in early 2016 to better reflect our national membership and growth.

Our members comprise industry professionals, corporations, and affiliate organisations. IAA provides a range of services and resources for members and supports the development of the Internet industry both within Australia and internationally. Providing technical services as well as social and professional development events, IAA aims to provide services and resources that our members need.

IX-Australia is a service provided by the Internet Association of Australia to Corporate and Affiliate members. It is the longest running carrier neutral Internet Exchange in Australia. Spanning six states and territories, IAA operates over 30 points of presence and operates the New Zealand Internet Exchange on behalf of NZIX Inc in New Zealand.

IAA is also a licenced telecommunications carrier, and operates on a not-for-profit basis.

Yours faithfully,

Narelle Clark  
Chief Executive Officer  
Internet Association of Australia