

**Embargoed until 10 am Friday 19 September 2008**

**Joint Media Statement**

**Telecommunications Carriers' Forum**

**InternetNZ**

**Internet Service Providers Association of New Zealand**

**Telecommunications Users Association of New Zealand**

**New Zealand Computer Society**

**Women in Technology**

**Auckland, 19 September 2008**

## **ICT INDUSTRY MOVES TO ADDRESS COPYRIGHT CONFUSION**

“A deeply flawed law that undermines fundamental rights and simply will not work.”

That is what the telecommunications industry, internet service providers, user groups, internet advocates and IT professionals think of parts of the recently passed Copyright (New Technologies) Amendment Act.

The TCF is today announcing steps to create a Code of Practice to guide ISPs and internet users through a legislative minefield created by section 92A of the Copyright Act.

“Section 92A has achieved one thing, and one thing only”, TCF CEO Ralph Chivers said today, “uniting the ICT sector and others who will be affected in an unprecedented show of solidarity against it”.

“While we recognise that the Act has introduced a number of positive measures, some hastily inserted last-minute changes have placed an unacceptable burden on internet service providers and have the potential to significantly undermine the legal rights of internet users”, Mr Chivers said.

Section 92A, when it is brought into force, will require ISPs to “reasonably implement” a policy to disconnect “in appropriate circumstances” the internet services of users who have repeatedly downloaded or uploaded infringing music, movies, games and other copyright material.

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“The Act gives no guidance on what ‘reasonably implement’ or ‘in appropriate circumstances’ mean,” Mr Chivers said. “This leaves the door wide open to those who seek disconnection of an alleged repeat infringer based on flimsy evidence, or worse, allegations alone.”

“Identifying repeat offenders will not be easy. A complex data matching exercise will be required, and even then it will not always be clear who the real offender is, particularly when an internet account is used by a family, a business or a school. The potential for an alleged offender to be denied natural justice is significant. For these reasons, a court order backed up by solid evidence would normally be required before taking such invasive action.”

“Businesses support the need to protect intellectual property, and we are sympathetic to the significant problems the music, movie and gaming industries face. However, balance is the key. Protecting one person’s interests at the expense of others is completely inappropriate,” Chivers said.

InternetNZ Executive Director Keith Davidson agrees. “The potential for infringement of human rights is a significant concern to us. Arguably one of the great benefits of the Internet has been the strengthening of human rights and the development of democratic freedoms around the world. However, this law change has the potential for Internet users to have their service disconnected on very weak grounds, undermining the fundamental right of ‘innocent until proven guilty’.”

“Rights holders and the industry need to work together, to find more pragmatic solutions. We need to preserve the service providers’ obligations to offer unencumbered access to the Internet for their customers but at the same time find ways to adequately protect copyright,” Davidson said.

Internet Service Providers Association President Jamie Baddeley likened the situation to putting private security guards in to quell a riot without body armour. “The worst aspect of this law is that it provides no protection to ISPs who try and implement the law’s requirements in good faith. They are exposed to legal risk from their customers if they act, and to legal risk from copyright holders if they do not. They are caught in the middle without any form of legal protection and will be required to go through a costly and complex process to solve a problem that is not of their making,” Mr Baddeley said. “This has the potential to put some of our smaller innovative members out of business - undoing a lot of the great work the government has previously done to develop a more competitive environment.”

“It is unacceptable that Parliament has placed the burden of sorting out this mess on ISPs,” TUANZ CEO Ernie Newman said. “ISPs in New Zealand are socially responsible; it’s not their job to interpret and enforce vague laws, particularly when they interfere with their customers’ rights. Worse still, the definition of ISP in the Act captures schools, universities, and libraries - in fact just about anyone who provides internet access to someone else.

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The loose language Parliament has included in the legislation will require an army of lawyers to interpret, at the expense of ISPs and ultimately, their customers.”

“The New Zealand Computer Society strongly supports protection of Intellectual Property, but this isn’t the way to do it”, NZCS’s Chief Executive Paul Matthews added. “You could use the same flawed justification that underpins this law to force The Warehouse to ban someone from shopping there for their food and clothes just because they are accused of copying a few DVDs that they have bought. Yes, copyright infringement is wrong, but it needs to be proven first and the penalty kept in proportion. Termination of all internet access in this day and age of online education, social networking and electronic services is a huge penalty,” Matthews said. “This is simply bad law whichever way you look at it.”

Cheryl Horo from Women in Technology pointed to the value of solving the underlying issues. “Ultimately it is in all of our interests to ensure that artists, as with our technology businesses, receive a fair return on their investments. New Zealand’s film, music and gaming industries are increasingly dependent on advanced information technology - it is in all of our interests to help these sectors grow and develop. Education will play an important role in progressing this issue.”

Recognising the difficulties created by s92A, the TCF is developing a Code of Practice aimed at providing a consistent and workable approach to meeting the requirements of the Act.

“We are grateful for the early work done on this issue by InternetNZ,” Mr Chivers said. “We will build on this work to create an industry code that has wide buy-in, so that users are appropriately protected and ISPs are able to continue providing services without unnecessary legal risk.”

“The TCF will continue to consult widely as we develop the Code, including with copyright holder groups. We accept that copyright infringement is a problem and we will do our part to ensure it is appropriately managed,” Chivers said.

“In our view, it makes sense to delay the introduction of section 92A to give time for the Code to be developed. In our discussions with copyright holders and government we have stressed the need to find a better way of managing this problem - section 92A as it stands simply won’t cut it. Regardless, it will be the responsibility of the next Parliament to repair the problems caused by this deeply flawed legislation.”

ENDS

Q&A

**What is an Internet Service Provider?**

Under the Copyright Act, the definition of an Internet Service Provider goes much further than the traditional ISP. It includes schools, universities, libraries and any other organisation that provides internet services.

**Copyright Act s92A - what it says**

*“An Internet service provider must adopt and reasonably implement a policy that provides for termination, in appropriate circumstances, of the account with that Internet service provider of a repeat infringer.”*

Unfortunately, that’s pretty much all it says. The phrases “reasonably implement”, “in appropriate circumstances” and “repeat” are all essentially undefined and open to a wide range of interpretations.

Implementing this law will challenge even the most well resourced telecommunications company, let alone universities, schools libraries and other smaller providers of internet access.

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