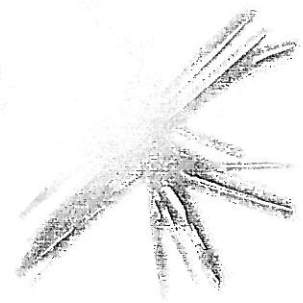


No. 25



Ministry of Economic Development
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31 March 2010

Submission by Telecom New Zealand Limited on the Anti-Counterfeiting Trade Agreement ("ACTA")

1. We refer to the ACTA Invitation for Submissions on Intellectual Property Rights Enforcement in the Digital Environment document (the "**Paper**") issued by the Ministry of Economic Development, and thank you for the opportunity to comment.
2. We also refer to the submissions filed by the Telecommunication Carriers' Forum (the "**TCF**") in response to the Paper (the "**TCF Submission**"). Telecom has played an active role in drafting, and fully endorses, the TCF Submission. In addition we wish to re-affirm some of the issues which are of special concern to us.
3. As a member of the TCF Telecom has been heavily involved in the development of a workable, balanced approach to peer-to-peer repeat infringement. Telecom considers that the regime set out in the proposed Copyright (Infringing File Sharing) Amendment Bill (the "**Bill**") is a vast improvement on the uncertainty which underpinned the previous s92. It is Telecom's strong view that the work carried out to date on the proposed Bill should not be lost through the ACTA negotiations.
4. Telecom's major concerns with any changes ACTA could bring about are:
 - a. increasing the role of ISPs; and
 - b. additional costs ISPs will incur, if ACTA makes changes to the regime instituted by the Bill once the Bill is enacted.

Increasing the role of ISPs

5. Telecom welcomed the Copyright Tribunal's involvement in the regime proposed by the Bill. The involvement of the Copyright Tribunal removes the need for Telecom to make a judgment call on whether infringement has occurred. With the best will in the world, ISPs are not equipped to determine the necessary elements of ownership and infringement, to support a claim. The two parties who are in the best position to

determine this are the rights holder and the alleged infringer themselves. The Copyright Tribunal is the most appropriate body to determine the outcome of any dispute which arises between these two parties.

6. Telecom would be concerned if ACTA sought to re-introduce any requirement for Telecom to make a judgment call on whether infringement had incurred or for Telecom to act in any role other than as a mere conduit. In particular, Telecom strongly considers that we should not be forced to monitor our customers' internet activity. We refer to paragraphs 12 and 13 of the TCF Submission on this. In addition to our own view of being strongly against monitoring our customers' internet activity we consider that end users' views should be considered. Any monitoring of customers' internet activity would be a gross invasion of privacy which is a fundamental right that requires protection.

Additional costs to ISPs

7. Cost is a major concern for Telecom, as there is significant cost in building systems and processes to cater for the new regime proposed by the Bill. Our concern is that if ACTA makes changes to the regime instituted by the Bill once the Bill is enacted this will result in the need to alter our systems and processes at a significant cost to Telecom. We refer to paragraphs 7 to 11 of the TCF Submission on this.
8. Naturally we would be only too happy to provide any further information should you require it.

Yours sincerely

Bianca Miller

Corporate Counsel

Telecom New Zealand Limited