

Submission

Copyright (Infringing File Sharing) Amendment Bill

Tech Liberty

<http://techliberty.org.nz>

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PO Box 5641
Lambton Quay
Wellington

Introduction

Thank you for the opportunity to make a submission on the Copyright (Infringing File Sharing) Amendment Bill.

About this Submission

Our submission is only concerned with the civil liberties implications of the Bill and will not be commenting on the underlying economic issues around copyright.

We are happy to appear before the committee if this would be helpful.

About the Submitter

Tech Liberty's mission is to "defend civil liberties in the digital age".

We are a group dedicated to protecting people's rights in the areas of the Internet and technology. We make submissions on public policy, help to educate people about their rights, and defend those whose rights are being infringed.

Enquiries can be directed to Tech Liberty's spokesperson, Thomas Beagle, on 021-80-50-40 or at thomas@techliberty.org.nz

General Comments

In general terms we welcome the changes represented by the Copyright (Infringing File Sharing) Bill. The original section 92A of the Copyright Act was offensive to civil liberties on a number of grounds. We note the following improvements:

- The restoration of due process including:
 - The right of the accused to defend themselves.
 - Penalties only being applied by a properly constituted body such as the Copyright Tribunal or District Court rather than by a private business (ISP).
- The restoration of the right to privacy, with subscriber details only revealed at an appropriate step of the process rather than on the demand of the copyright holder.

However we still believe that the current version of the Bill needs some further changes to protect civil liberties, in particular we are concerned that the Bill still includes provisions for an internet account to be suspended.

Internet account suspension

The importance of the internet

The Internet has come a long way from the days when a few university researchers used it to send messages to each other. It now infiltrates many different parts of our lives. We rely on it for community, to keep in touch with our family and friends, to access government services, to buy and sell, to educate and amuse ourselves, to create and publish art.

An increasing number of people also rely on the internet for their livelihoods. They buy and sell over the Internet, run their accounting systems, communicate with their clients. For those people, taking away the internet means they will lose their jobs.

We're still finding out how we're going to use the internet but it seems clear that it is fundamentally changing the way that we interact with each other and the institutions of our society. The internet is only going to get more important to our lives as time passes.

Provision in bill

The Bill as written allows for a copyright owner to apply to the District Court to suspend the account of the account holder for a period of up to six months.

We are opposed to this provision on both practical and civil liberty grounds.

Practical issues with suspension

Shared connections – punishing the wrong people

Internet connections are generally shared by people who live or work together. Account suspension will too often result in multiple people being punished because just one person, possibly not the account holder, has misused it.

Damages vs disconnection – ineffective deterrent

The Copyright Tribunal can already impose damages of up to \$15,000. We suggest that there is no one in the country who would just shrug this off but then be stopped by account suspension.

Switching to another ISP – most people can avoid it

Most people will be able to open an account with another internet service provider if their account is suspended, thereby reducing the deterrent or punitive effects of the suspension.

On the other hand, this will unfairly disadvantage users in remote or rural areas where there might only be one internet service provider. These also happen to be the people, such as farmers, who most benefit from the commercial and social links of the internet.

Civil liberty issues with suspension

The Internet is becoming vital for our participation in civil society. Without participation there is no democracy and with no democracy there is no freedom. We want to live in a free and democratic society.

Core civil liberties

Some of the most important of the core civil liberties are becoming increasingly meaningless without access to the Internet.

- **Freedom of speech** - As public discourse moves online to the world of blogs and online media, the internet is where we exercise our freedom to speak and to listen.
- **Freedom of association** - The internet is an important tool for groups of all sorts to be able to form, organise and communicate.

Both of these rights are protected by the Bill of Rights Act and the exercise of them should not be hindered without good reason. We do not see that punishment for copyright infringement is a good reason to suspend access to the internet.

Justice and balance

Justice must be fair and proportionate or it becomes injustice. Injustice undermines our society by weakening respect for the institutions that we use to run it.

It seems inappropriate and unbalanced that the only reason that we might disconnect someone from the internet is for copyright infringement rather than people who have used it to help steal, defraud or sexually assault.

Recommendation

The Copyright (Infringing File Sharing) Bill already includes substantial financial penalties for infringing copyright.

We believe that the law will not gain any further deterrent effect from including a provision to have an internet account suspended

We further believe that account suspension is an impractical and unjustified risk to civil liberties.

We recommend that section 122O - *Court order suspending account holder's account* be removed from the Bill.