



TCF INTERNET SERVICE PROVIDER COPYRIGHT CODE OF PRACTICE

Draft dated 4 February 2009

SUBMISSION FROM TUANZ

- 1 TUANZ appreciates the opportunity to comment on the Draft dated 4 February 2009.
- 2 TUANZ membership encompasses a diversity of organisations with interests in this Code from several perspectives – as commercial ISPs, copyright holders, and end users. However, for the purpose of this Submission we are responding in the interests of the bulk of our members who are owners of private networks and therefore fall under the definition of “Downstream ISP” under the Code.
- 3 We consider the drafting of Section 92a to be extremely poor. This has led to the draft Code being inordinately complex and challenging to understand, as evidenced by the four process flow charts. Feedback from our members suggests that among the myriad of other issues confronting them at this time of unprecedented pressure, most simply have not had time to read the draft and are not likely to. This means a very large number of Downstream ISPs, within TUANZ and outside, are unlikely to read the Code until they receive their first Copyright Holder Notice, and possibly not even then.
- 4 TUANZ firmly supports the underlying principle that the education of infringers is a key objective. To that end, since the passage of the Act we have on several occasions reminded our members of the need to have an in house “acceptable use policy” that makes clear that abuse of copyright on the network will not be condoned.
- 5 The draft as it stands exposes Downstream ISPs to considerable risk. It appears that by the time a Copyright Holder Notice makes its way from the originator, through one or more commercial ISPs to the Downstream ISP, and on to an end user, a great deal of time could be consumed. This could place the alleged infringer, along with their employer or equivalent, in a position where the time frame for any Dispute is unreasonably compressed. We believe natural justice requires that the time frame for an alleged infringer to issue a counter

notice should commence from the date they receive the Copyright Holder Notice in question. This means that the time period referred to in clause 21.2 should commence not from the date on which the Copyright Holder Notice was issued, but from the date on which it was communicated to the User who is the alleged Infringer.

- 6 Terminating an employee's access to their employer's network is a draconian and serious action. In many cases such action could make it impossible for the employee to continue functioning as such. With jobs and livelihoods potentially at stake, the way in which Counter Notices are dealt with must comply with principles of fair process and natural justice in a way that is sufficiently robust that a Downstream ISP/employer is able to defend any resulting personal grievance claim. The code as presently drafted appears to fall far short of meeting this test.

Ernie Newman
Chief Executive
6 March 2009



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