
Dr Peter Gainsford-Submission on the draft copyright Code of Practice for S92A

Dear TCF

I write solely as a member of the public who accesses the internet on a daily basis for both leisure and work. I regard internet access as an essential and intrinsic aspect of freedom of speech. In addition, it is a very important part of my work.

Comment.

Section 92A is about as draconian and undemocratic a law as any nation could fear to have. It makes the USA's policy of having "free speech zones" look liberal in comparison.

- There is a serious danger that the law could lead to a situation where a single party acts not only as judge, jury, and executioner but also as plaintiff, prosecutor, and defence counsel, all at the same time. This is fundamentally undemocratic.
- In addition, it provides for depriving some citizens of freedom of speech, on the say-so of people or corporations who may or may not be citizens themselves. This too is fundamentally undemocratic.
- It is only too clear that the law is not designed to benefit artists who create copyrighted content, but merely a few select corporations. This too is fundamentally undemocratic.

The most urgent change that needs to take place is that section 92A needs to be repealed with utmost haste, and I have written to my MP to express this view. In the meantime, the code of practice you have drafted seems to me to represent a decent first attempt at trying to re-balance the outrageously partial situation that now holds. It is not perfect: it does not quite take a presumption of innocence as its starting point, as there is a clear possibility of complainants using the process to victimise and harass individuals. But it is a pretty good effort.

Aspects of the draft policy that must be kept intact, perhaps with minor changes.

- (1) A processing fee for every complaint. I **RECOMMEND** that this fee should represent not only the cost to the ISP but also the inconvenience to the ISP's customer.
- (2) ISPs as final arbiters of complaints. This is entirely reasonable: there are no grounds for doubting the impartiality of ISPs. In any case complainants must not under any circumstances have any say in who arbitrates on the merits of any given case. I have seen reported in the media a response from APRA that they regard the principle of having ISPs as final arbiters as unreasonable; I see no merit whatsoever in that complaint. However, for the sake of preserving a shred of integrity to democratic principles, I **RECOMMEND** that the arbiter for a complaint must always be someone who is a New Zealand citizen.
- (3) A sunset period for every complaint. I agree that this is essential. However, freedom of speech is a basic right, and so a shorter period than 18 months is

needed. I **RECOMMEND** that no period longer than 12 months should be considered.

Omissions from the draft policy.

- (1) The policy contains no provision for re-establishing freedom of speech for victims of complaints. This is wholly unacceptable and fundamentally undemocratic. Disconnection needs to be a temporary measure lasting no longer than 1 to 3 months, and I **RECOMMEND** that this be enshrined in the policy.

Yours sincerely,
Peter Gainsford