



COPYRIGHT ACT REVIEW – ISSUES PAPER

Submission to MBIE

PUBLIC VERSION

5th April 2019

ABOUT VOCUS

1. Vocus New Zealand is the third largest fixed line operator employing over 600 staff In New Zealand. Our retail operation includes a number of challenger brands - Slingshot, Orcon, Flip, and 2Talk. We are also an active wholesaler of services including access, voice and broadband over both fibre and copper.
2. Vocus has made significant investments in New Zealand. We are the largest copper unbundler with a presence in over 200 exchanges throughout New Zealand. In addition we operate 4,200km fibre optic network transits between virtually all major towns and cities and connects directly into all major peering exchanges.
3. Our customers in New Zealand range from government agencies, integrators, large corporate, SME and residential households. We are committed to New Zealand's fibre future.
4. Vocus is committed to New Zealand and is one of the few large NZ telecommunications companies to base all its customer service call centres here in New Zealand rather than outsourcing its customer service operations overseas.
5. Vocus Group is one of the fastest growing telecommunications companies in Australasia and a major provider of voice, broadband, domestic and international connectivity and data centers throughout New Zealand and Australia.
6. Vocus welcomes the opportunity to make this brief submission on the Copyright Act review Issues Paper.
7. Vocus participated in and fully supports the TCF submission on the Copyright Act Review Issues Paper. This submission is made in support of points in the TCF submission and also includes a copy of research Vocus commissioned in December 2018 to better understand the issue of digital piracy.
8. If you would like any further information about the topics in this submission or have any queries about the submission, please contact:

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WHAT IS THE EXTENT OF THE PROBLEM AND WHAT IS THE TREND

9. Vocus commissioned Perceptive to help understand New Zealanders attitudes towards, and participation in digital piracy (downloading / streaming / viewing copyright / licensed material without paying for it).
10. Perceptive designed an online survey targeted at a nationally representative sample of internet users aged 18+ years. The survey was completed by 1,000 respondents and was weighted to Statistics NZ census data (age, gender and region). The margin of error is +/- 3%. The survey was conducted between 21st and 27th December 2018.
11. The survey is attached in Appendix 1. The key findings (page 4 of attached) were summarised by the research company as follows: -

“Netflix is killing content piracy

Half of all people around New Zealand have watched something that may have been pirated at some point in their lives.

But it appears that the “golden age of piracy” in the modern day is changing; the majority of people nowadays rarely or never watch pirated collateral, watch less pirated material than they used to, and they believe this behaviour will continue in the future as well.

This change appears to mostly be due to easy access to free and paid on-demand material through services like Netflix and OnDemand.

Despite this reduction in appetite for piracy, people still believe that “it would be almost impossible to stop people” from pirating something if they really wanted to.

The logic appears to be centred around the diaspora of pirate sites; that if the most popular ones were blocked, people would simply get their material elsewhere, from the “10 or more” pirate sites that people believe exist.

While New Zealanders have little sympathy for those who do pirate, it appears that, from their perspective, censoring certain sites to reduce piracy is an exercise in futility.

People believe piracy will continue to decline in the future. “

ISPs INVEST TO PROVIDE CONSISTENTLY GOOD QUALITY AND AFFORDABLE INTERNET

12. ISPs core function in the eco-system is the transmission of bits and bytes to ensure Kiwis get affordable, consistently fast, easy access to information, communication, applications and services, around the world. Some ISPs may also be content providers in their own right, but that is a different and distinct role they play.
13. ISPs invest in integrating into their network technologies that are designed to optimize the performance of their services for their customers. Caches and CDN's are examples of this type of technology investment and are critical to ensuring that UFB delivers to its potential and that international bandwidth costs are minimized.

14. Caches & CDNs are essential tools for ISPs to perform their core function... ensuring NZ consumers get affordable, fast, easy access to information, entertainment, communications from around the world. Safe Harbour provisions for ISP's are entirely appropriate to ensure that these investments continue.

CONSUMERS SHOULD NOT MEET THE COST OF PROTECTING COMMERCIAL INTERESTS

15. The internet by design is difficult to control, for example: -
- it is designed to 'repair' itself if one node is removed so attempts to block sites or remove content are often complex and ineffective as content can readily reappear or blocked nodes can be circumvented.
 - it is easy to 'appear' as if you are in one location when in fact you are elsewhere making physical location largely irrelevant.
16. In Vocus' opinion an ISP's role should not be to police or censor the internet and any intervention puts them in a precarious situation with respect to the interest of multiple parties, including their customers.
17. Where ISPs are required to assist a rightsholder then it is entirely appropriate that the costs associated with protecting the commercial interests of the instigating party are recovered. It's a commercial decision by the instigator of any action and they should bear the cost and recover, where the court or tribunal see fit, from the infringer.
18. If the instigator of the action doesn't bear the cost (albeit this may be recovered from the infringer) then ultimately it will be the customers of the ISP that bear the cost – that is not a , reasonable expectation. Furthermore, with some ISPs becoming content providers it would be inappropriate if other ISPs could not recover their costs in assisting an ISP/Content Holder acting in their capacity as a content provider. To not be able to do so would risk creating competitive distortions and cross subsidies between two markets, content and internet access.
19. In addition the TCF submission suggests some appropriate principles where regulation requires an ISP to act: -
- a. *"A court should judge whether the specific content should be blocked and make the appropriate orders against ISPs. ISPs should not be required to make judgements themselves on what content should be blocked;*
 - b. *The regime should apply to all ISPs;*
 - c. *The choice of technology for blocking should be for the ISP to decide;*
 - d. *ISP's costs should be covered by the party seeking the blocking (who may be the copyright owner or another party);*
 - e. *There should be a process to manage changes to the list of the websites blocked e.g. timeframes and notice period, when a site should be unblocked, how to manage mirrors of a site which subsequently appear;*
 - f. *ISPs are indemnified by a copyright holder against third party liability for any action they take pursuant to a website blocking order for such copyright holder under the Copyright Act."*

WHY WAS THE EXISTING INFRINGEMENT REGIME NOT USED?

20. ISP's went to considerable cost to develop and setup systems to handle notices, notify their customers of how to lodge complaints and have maintained these systems for 5 years or more. They have in no way recovered these costs due to the rightsholders lack of use of the system.
21. Vocus' view was that the policy intent of the '3 strike' regime was not to 'stamp out' infringement (that is simply not possible) it was designed to make an example of serious infringers and be a deterrent. The reasons given by the rightsholders for not using the systems aren't credible, for example early issues with some ISPs systems were simply 'teething problems' that were rectified.
22. A more likely reason for the global rightsholders not using the system, despite them pushing for it to be introduced was: -
 - They did not agree with the decision of the tribunal whose role, entirely appropriately, was to balance the rightsholders and individuals' rights. Similarly, they didn't go to the courts for injunctions as they couldn't predict the outcome.
 - Their international policy (its not local considerations that drove their actions) changed, they were waiting to see what happened in other markets or they were concerned about international precedents. For example, the cost recovery through the \$25 fee may have set an international precedent that they didn't agree with.