

## Foxtel

### Response to the Digital Platforms Inquiry Draft Report

#### 1 Executive Summary

Foxtel Management Pty Ltd (**Foxtel**) welcomes the comprehensive and thoughtful Digital Platforms Inquiry Preliminary Report. We believe that the issues identified in the Preliminary Report should be an important priority area for regulatory reform and investigation in light of the critical role news and journalism plays in the democratic process. We agree with the thrust of the Preliminary Report – that a number of digital platforms hold substantial market power and are engaging in practices that undermine competition from media content providers – and we welcome the recommendations aimed at addressing the anti-competitive practices of digital platforms.

We have limited our response to four recommendations which we believe should be considered further in or withdrawn from the Final Report. In summary:

- **Preliminary recommendation 6:** We consider that the Inquiry should focus on the competitive impacts of digital platforms on media and advertising services markets. We believe that in light of the increasingly editorial role played by digital platforms in the atomisation and dissemination of news and journalism, there is a case for increasing the obligations and liabilities on dominant digital platforms. However, as per the Terms of Reference, we consider that the recommendations aimed at addressing the anti-competitive practices of those dominant digital platforms should form the focus of the Final Report.
- **Preliminary recommendation 7:** We do not support this recommendation. We consider that a mandatory standard for take-down processes does not address the core issue of liability of copyright infringement and will have the effect of normalising infringement. We propose the ACCC recommend legislative amendments to clarify authorisation liability under the *Copyright Act 1968 (Cth)*.
- **Preliminary recommendation 10:** We do not support this recommendation. There is a lack of evidence of harm caused by an absence of a tort for serious invasions of privacy, there is already an extensive body of laws which protect privacy, and a range of unintended consequences would flow from introducing such a tort. The Australian Law Reform Commission's recommended structure for the privacy tort (for that is what it was asked to develop, not consider whether a statutory tort was appropriate response to a problem) would apply across the economy and impinge on our ability to report on matters of public interest. Such a fundamental change in law requires broad stakeholder engagement and impact assessment that is beyond the scope of the Inquiry.
- **Preliminary recommendation 11:** We do not support this recommendation. We consider that civil pecuniary penalties should not apply to the unfair contracts regime for two principal reasons: the meaning of 'unfair' is uncertain and the available remedies already provide adequate protection against the use of unfair contract terms. In any event, we consider that this recommendation goes beyond the scope of this Inquiry and it would not be appropriate for an economy-wide change to form part of the Final Report.

We look forward to engaging with the ACCC further on these important issues as the Inquiry proceeds.

## **Preliminary recommendation 6—review of media regulatory frameworks**

**The ACCC proposes to recommend that the Government conduct a separate, independent review to design a regulatory framework that is able to effectively and consistently regulate the conduct of all entities which perform comparable functions in the production and delivery of content in Australia, including news and journalistic content, whether they are publishers, broadcasters, other media businesses or digital platforms.**

Foxtel agrees with the ACCC that existing broadcasting concepts underlying legislative and regulatory frameworks are outdated and, in many cases, obsolete. We also agree that digital platforms benefit from an unfair advantage as a result of operating under fewer regulatory restraints and incurring lower compliance costs than traditional media businesses.

As the ACCC has acknowledged, digital platforms increasingly perform media-like functions that go beyond the mere passive distribution of content via technical means. We agree with the ACCC's comments at page 129 of the Draft Report:

“[D]igital platforms perform increasingly important functions that are part of the supply of news and journalistic content to Australians. That is, digital platforms have an active role in the supply of news media content in Australia and should not be regarded as pure distributors or mere intermediaries in Australian media markets.”

“Digital platforms also have considerable influence in shaping Australian consumers' online news choices. This results from the combination of digital platforms' role as online intermediaries for news content and their media-like functions in selecting and curating content, evaluating content based on specific criteria, and ranking and arranging content for display to their users. That is, the role of digital platforms as gateways to news media or the internet for a large number of Australian increases the impact and importance of their media-like functions on Australian media markets.”

The increasingly editorial role of digital platforms has been acknowledged in reviews and reports conducted by the European Commission<sup>1</sup> and the UK House of Commons.<sup>2</sup> We support the recommendation contained in the UK House of Commons Final Report on Disinformation and 'Fake News' that, in light of their role in the dissemination of news and journalism, digital platforms should be subject to increased obligations and liabilities in any reformed regulatory framework.<sup>3</sup>

While a wholesale reform of media regulation may assist traditional media content providers in the long-term, we consider there is a real and immediate risk to the sustainability of news and journalism in the short-term. We therefore recommend that the ACCC focus its recommendations on addressing the anti-competitive practices of digital platforms identified in the Preliminary Report.

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<sup>1</sup> European Commission, The digital transformation of news media and the rise of disinformation and fake news, April 2018, p50

<sup>2</sup> House of Commons, Disinformation and 'fake news': Final Report, February 2019

<sup>3</sup> House of Commons, Disinformation and 'fake news': Final Report, February 2019, p89

## **Preliminary recommendation 7—take down standard**

**The ACCC proposes to recommend the ACMA develop a Mandatory Standard regarding digital platforms' take-down procedures for copyright infringing content, to enable effective and timely take-down of infringing content. This may take the form of legislative amendments to the Telecommunications Act so that the ACMA has the power to set a mandatory industry standard applicable to digital platforms.**

Foxtel welcomes the ACCC's acknowledgement of the harm caused to content creators by widespread copyright infringement and the practical challenges facing rights holders regarding enforcing copyright against digital platforms. Digital platforms benefit from copyright infringement, in terms of attracting users to their platforms and therefore facilitating advertising and data collection opportunities. This creates a conflict of interest as regards addressing online copyright infringement effectively and efficiently.

While we appreciate the intention behind preliminary recommendation 7, we do not support a mandatory standard for take-down procedures on the basis it does not address the core issue of liability for copyright infringement and will have the effect of normalising infringement. We consider that a mandatory standard would continue to place the burden of policing online copyright infringement on rights holders and would result in a slow and expensive process, which does not adequately address the challenges facing rights holders in the online space.

We consider the better approach to improving the rights protection environment is to clarify authorisation liability under the *Copyright Act 1968 (Cth)*. Clarifying authorisation liability will incentivise the digital platforms to manage the business risk associated with hosting infringing content on their platforms via the implementation of effective and efficient solutions suited to the digital environment. This should include reversing the onus of monitoring and removing content to manage such a business risk.

We submit that the ACCC should withdraw preliminary recommendation 7 and instead recommend the Government re-engage on the matter of amending the authorisation provisions in the Copyright Act to ensure digital platforms are liable for infringing user content hosted on those platforms.

### **Authorisation liability**

As the ACCC is aware, digital platforms displaying copyright infringing material may be held liable for 'authorising' others to infringe copyright under sections 36 and 101 of the Copyright Act. These provisions provide that authorising a person to infringe a copyright without the licence of the copyright owner is itself infringement of a copyright. Subsections 36(1A) and 101(1A) set out three factors that a court must take into account in determining whether a person (such as a digital platform) has authorised an infringement:

- (a) the extent (if any) of the person's power to prevent the doing of the act concerned;
- (b) the nature of any relationship existing between the person and the person who did the act concerned; and
- (c) whether the person took any reasonable steps to prevent or avoid the doing of the act, including whether the person complied with any relevant industry codes of practice.

The above list of factors were inserted into the Copyright Act following the High Court's decision in *UNSW v Moorhouse*<sup>4</sup> to provide certainty for communications and information technology industries that provide users with access to copyright material. However, they have not achieved this purpose and instead have introduced significant uncertainty into the doctrine of authorisation liability.<sup>5</sup>

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<sup>4</sup> *University of New South Wales v Moorhouse and Angus & Robertson (Publishers) Pty Ltd* (1975) 6 ALR 193.

<sup>5</sup> The uncertainty regarding authorisation liability has been noted by several commentators. See for example: Phillips Fox, 2004, *Digital Agenda Review*, Canberra: Attorney General's Department, available at

The most recent authority on authorisation liability is the High Court's decision in *Roadshow Films Pty Ltd & Ors v iiNet Ltd*,<sup>6</sup> (*iiNet*). In that case, the majority of the High Court noted the need for reforming authorisation liability in the context of peer-to-peer file sharing:

This final conclusion shows that the concept and the principles of the statutory tort of authorisation of copyright infringement are not readily suited to enforcing the rights of copyright owners in respect of widespread infringements occasioned by peer-to-peer file sharing, as occurs with the BitTorrent system.<sup>7</sup>

Following the High Court's decision in *iiNet*, the Attorney-General's Department issued a discussion paper on online copyright infringement (**Copyright Discussion Paper**)<sup>8</sup> that canvassed a proposal to amend the authorisation provisions so that the 'power to prevent an act of infringement' would no longer be a separate element of s 36(1A) and s 101(1A), but would rather form one of a number of relevant factors to be assessed by a court when determining whether 'reasonable steps' had been taken to prevent or avoid the infringement. The purpose of the amendments was to clarify that the absence of a direct power to prevent a particular infringement (such as a user streaming copyright infringing video content) would not, of itself, preclude an ISP or digital platform from taking reasonable steps to prevent or avoid an infringing act.

To date, the Government has not pursued that proposal or any of the alternative proposals put forward in response to the Copyright Discussion Paper. In our view, the ACCC should recommend the Government re-engage on this issue, which should include a review of the authorisation provisions so as to clarify the circumstances in which digital platforms will be held liable for the infringing acts of their users.

Unless digital platforms are at risk of copyright infringement for displaying infringing content on their platforms, there will be no incentive on them to implement efficient and effective technological solutions – fit for the digital age and not anchored in an analogue era – to monitor, vet and remove infringing content hosted on their platforms.

### **Mandatory Standard on take-down procedures**

Foxtel considers that the introduction of a take-down standard under the *Telecommunications Act 1997* (*Cth*) to be administered by ACMA will not be effective or efficient at removing infringing material, particularly in light of the fact most infringement now takes place by way of streaming. Instead, it will have the effect of normalising infringing conduct and will continue to place the burden on rights holders to clean up the digital platforms, teaspoon by teaspoon. Such a state of affairs is suboptimal, inefficient and ineffective.

Rights holders, including Foxtel, have been discussing improvements to take-down processes with the digital platforms for over a decade and very little has changed. Even with a mandatory standard, our experience with the current practices of digital platforms does not give us confidence that take-down processes would become effective or efficient. Failures with the current practices of the digital platforms, include but are not limited to:

- 1 The digital platforms fail to actively monitor and vet content before it is communicated when they have the technically capability to do so and do not take reasonable steps to avoid copyright or trademark infringement.

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<http://www.ag.gov.au/DigitalAgendaReview/reportrecommendations>; Dr Kanchana Kariyawasam and Anthony Austin, 'YouTube, Internet File Sharing and Copyrights', *Contemporary Issues in Law*, 2011, available at [https://research-repository.griffith.edu.au/bitstream/handle/10072/45621/77945\\_1.pdf?sequence=1&isAllowed=y](https://research-repository.griffith.edu.au/bitstream/handle/10072/45621/77945_1.pdf?sequence=1&isAllowed=y);

<sup>6</sup> (2012) 248 CLR 42.

<sup>7</sup> *Roadshow Films Pty Ltd & Ors v iiNet Ltd* (2012) 248 CLR 42, 79.

<sup>8</sup> Attorney-General's Department, *Online Copyright Infringement Discussion Paper* July 2014 available at <<http://apo.org.au/system/files/40630/apo-nid40630-71931.pdf>>.

- 2 The webform notification process is completely inadequate for live sporting events. Rights holders do not have direct access to the platforms' IP teams for instantaneous take-down of unauthorised live streaming of content. Some sporting events may only last for ten seconds (e.g. the 100m sprint) or for a few minutes (a boxing match where there is an early knockout). Response times to webform notices can vary from ten minutes to several hours depending on where and what time zone the platforms' IP teams operate in.
- 3 The platforms fail to reliably terminate repeat infringers accounts in accordance with their own terms of service.<sup>9</sup> The current process of sending more than two webform notices in order to terminate a YouTube channel does not result in termination of a user's account. We have included a case study in the Schedule to this submission to demonstrate this problem.
- 4 When the platforms use their discretion to terminate a repeat infringer, the same user can create new accounts immediately and continue to infringe. We often see repeat infringers (whose accounts have been terminated) creating a new (or multiple) channels and infringing content being re-uploaded.
- 5 The platforms fail to enforce policies intended to remove unauthorised content or the promotion of websites and illicit streaming devices that distribute unauthorised content.<sup>10</sup> The volume of 'signposting' to unauthorised content is so enormous, it would take years to take it all down, even with a mandatory standard. See screenshots in section 5 and 6 in the Schedule.
- 6 Current content protection technology (YouTube Content ID and Facebook Rights Manager) is very easy to circumvent with screen manipulation. Those systems need to be more effective especially for live sporting events. We need active monitoring by the platforms before live sporting events and direct contact with human reviewers in the IP teams during events for immediate take down. See screenshot 2 in the Schedule. Note the emojis used to circumvent Facebook Rights Manager.

Rights holders incur significant costs in relation to monitoring and taking down infringing content from digital platforms, including the cost of engaging third party technology vendors required to monitor and take-down infringing content. The platforms should compensate rights holders for these costs as we are effectively providing compliance, monitoring and enforcement services to the digital platforms due to the failure of their current processes.

Digital platforms should also to pay rights holders the revenue from advertising that appears alongside infringing content from the time it was uploaded until the time it was claimed or taken down. See screenshot 8 in the Schedule.

## Conclusion

Foxtel considers that once authorisation liability is clarified and digital platforms can reliably be held liable for infringements on their platforms, a mandatory standard would not be required. The onus would be on the platforms to manage the business risk that arises from having clear legal liability. This could be achieved by the digital platforms implementing efficient and effective technology, processes and practices, which should include monitoring and removing infringing content, and developing technology that effectively prevents users from uploading infringing content. This technology would be better suited to addressing efficient monitoring, screening and take-down of infringing material that is fit for purpose in the digital age, now and in the future.

Every unauthorised stream on a digital platform is a potential lost subscription from our legitimate services. The damage to our business could be quantified by the number of viewers of unauthorised

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<sup>9</sup> See clauses 7 and 8 of YouTube's Terms of Services, available at: <https://www.youtube.com/static?template=terms&gl=AU>

<sup>10</sup> See clauses 13 and 14 of Facebook Commerce Policy, available at: <https://www.facebook.com/policies/commerce>

streams on the digital platforms. The screenshots in the Schedule attached demonstrate the scale of the problem and why we need the digital platforms to take responsibility for addressing copyright infringement on their platforms through amendments to the authorisation liability provisions in the Copyright Act.

Foxtel therefore requests the removal of preliminary recommendation 7 in place of a recommendation for further inquiry into this important issue with a view to legislative clarification and reform.

## Preliminary recommendation 10—serious invasions of privacy

**The ACCC proposes to recommend that the Government adopt the Australian Law Reform Commission’s recommendation to introduce a statutory cause of action for serious invasions of privacy to increase the accountability of businesses for their data practices and give consumers greater control over their personal information.**

Foxtel does not support this recommendation.

In 2014, the Australian Law Reform Commission (**ALRC**) was tasked to design a federal statutory cause of action in tort for serious invasions of privacy. To date, the Government has not taken forward the ALRC recommendation. The recommendation is now five years old and there have been a number of important developments in that time, including in relation to consumers’ approach to privacy and amendments to privacy laws, most recently the introduction of a mandatory notification procedure for data breaches.

Foxtel considers that the Digital Platforms Inquiry is not the appropriate forum to consider this fundamental change to Australia’s privacy laws. A statutory cause of action for serious invasions of privacy would apply across the economy and therefore requires broad stakeholder engagement and impact assessment.

If the ACCC considers that it is still appropriate to consider this recommendation, we note the following:

- There is a lack of evidence of an issue, with the Department of Prime Minister and Cabinet acknowledging in the ALRC Issues Paper on a Commonwealth Statutory Cause of Action for Serious Invasion of Privacy ‘...serious invasions of privacy are infrequent...’ in Australia.<sup>11</sup>
- Australia has an extensive body of laws which protect privacy directly and indirectly, across the civil and criminal spectrums, including the Privacy Act 1988, State and Territory privacy and personal information legislation, surveillance and listening devices legislation, various statutory restrictions on publication, the torts of trespass, nuisance, defamation and breach of confidence. The current statutory and common laws are fully equipped to address concerns regarding invasions of privacy. Should the need be identified, common law developments or amending legislation can be used to address specific identified problems.
- Most importantly, the threat to freedom of speech and communication posed by a cause of action for serious invasions of privacy, regardless of how it is structured, will undermine our ability to communicate in the public interest, to the detriment of the Australian public and Australia’s democracy. A statutory cause of action will give precedence to privacy over other vital considerations that are not enshrined in legislation, in particular freedom of speech and the public interest.

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<sup>11</sup> <https://www.ag.gov.au/Consultations/Documents/Righttosueforseriousinvasionofpersonalprivacy-issuespaper/Issues%20Paper%20-%20Statutory%20Cause%20of%20Action%20-%20Serious%20Invasion%20of%20Privacy%20-%20PDF.pdf>, p3

## Preliminary recommendation 11—unfair contract terms

**The ACCC proposes to recommend that unfair contract terms should be illegal (not just voidable) under the Australian Consumer Law, and that civil pecuniary penalties should apply to their use, to more effectively deter digital platforms, as well as other businesses, from leveraging their bargaining power over consumers by using unfair contract terms in their terms of use or privacy policies.**

Foxtel does not support this recommendation.

We consider that civil pecuniary penalties should not apply to the unfair contracts regime for two principal reasons: the meaning of 'unfair' is uncertain and the available remedies already provide adequate protection against the use of unfair contract terms.

In any event, we consider that the Digital Platforms Inquiry, which is tasked to consider the impact of digital platforms on the supply of news and journalistic content, is not the appropriate forum to consider this change of law. The unfair contract terms regime applies to consumer contracts and small business contracts across the economy and therefore any change to the law requires broad stakeholder engagement and impact assessment.

The Australian Treasury is already conducting a review of the extension of unfair contract terms regime to small businesses. That review is considering whether the framework is operating effectively and that appropriate levels of protection are afforded to small businesses. The report was due to be provided to the Government on 1 February 2019. The introduction of a civil penalties regime, which Foxtel does not support, is more appropriately considered as part of that review.

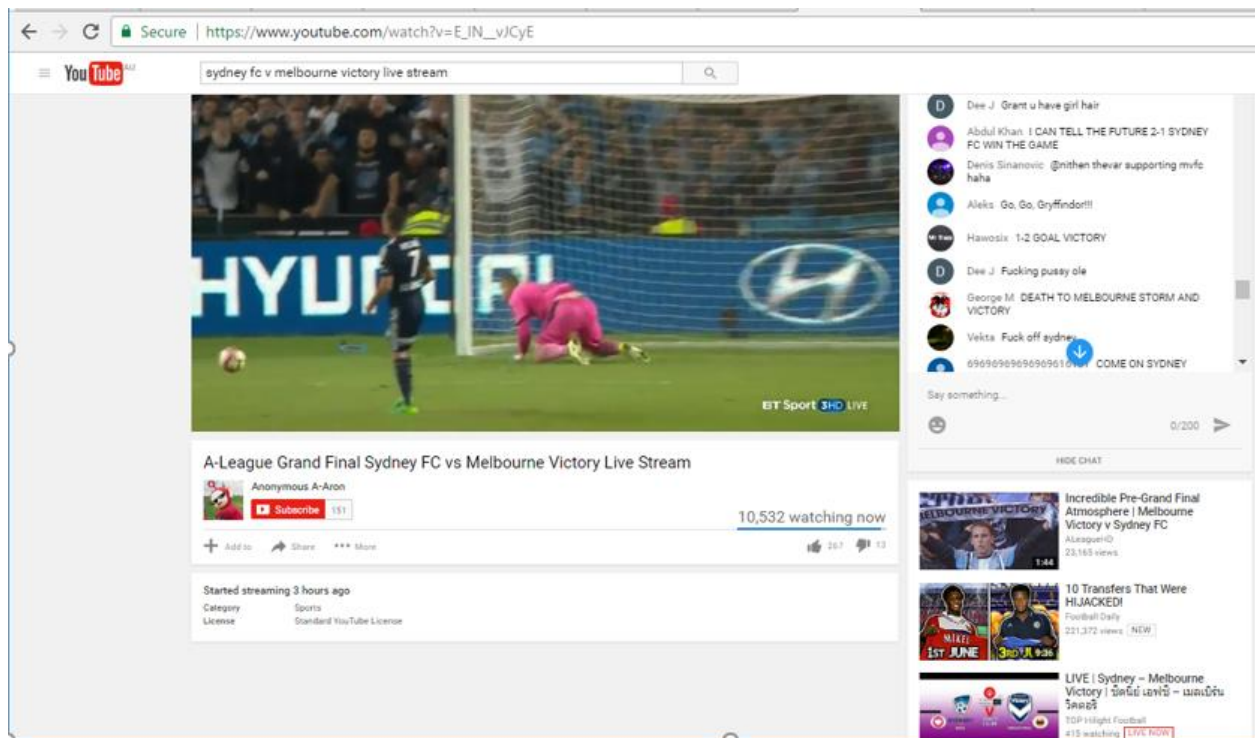
If the ACCC considers that it is still appropriate to pursue this recommendation, we note the following:

- The meaning of an 'unfair' contract term is subjective and contextual and therefore inherently uncertain. Unfairness is determined on a case-by-case basis, by reference to the contract as a whole and the context in which the contract operates. The court is required to make a subjective assessment of the term and, in particular, determine whether the term oversteps the mark of legitimate commercial conduct. A term may be fair in one context but unfair in another context. It is not appropriate for penalties to attach to upfront obligations that are inherently uncertain.
- There are a range of remedies available to ensure adequate protection against the use of unfair contract terms. If a contract term is declared unfair by a court, it cannot be relied on or enforced and any loss a consumer suffers as a result of the term may be the subject of a compensation order. A compensation claim may be brought by a private litigant or by the regulator on behalf of a consumer or consumers. Further, where an unfair contract term is also a false or misleading representation, or where relying on the term amounts to unconscionable conduct, the ACCC may pursue pecuniary penalties under those provisions. This occurred in the ACCC's enforcement action against Europcar where Europcar was penalised \$100,000 for making false or misleading representations in relation to the enforcement of unfair contract terms.
- The Australian Consumer Law Review considered whether regulators should have the power to seek monetary penalties against businesses in breach of the unfair contract terms provisions and determined this was unnecessary. The Review recommended instead extending the investigatory powers of regulators to the unfair contracts regime so as to enable stronger enforcement. The Federal Government accepted that proposal and, on 25 October 2018, it was passed into law as part of the *Treasury Laws Amendment (ACL Review) Act 2018 (Cth)*.



## Schedule 1

- 1 Over 10,000 viewers watch A League grand final 2018 live on YouTube.



- 2 Over 30,000 viewers for unauthorised stream of Test Cricket on Facebook.



3 Almost 100,000 viewers watching Foxtel exclusive pay per view boxing match live on Facebook.

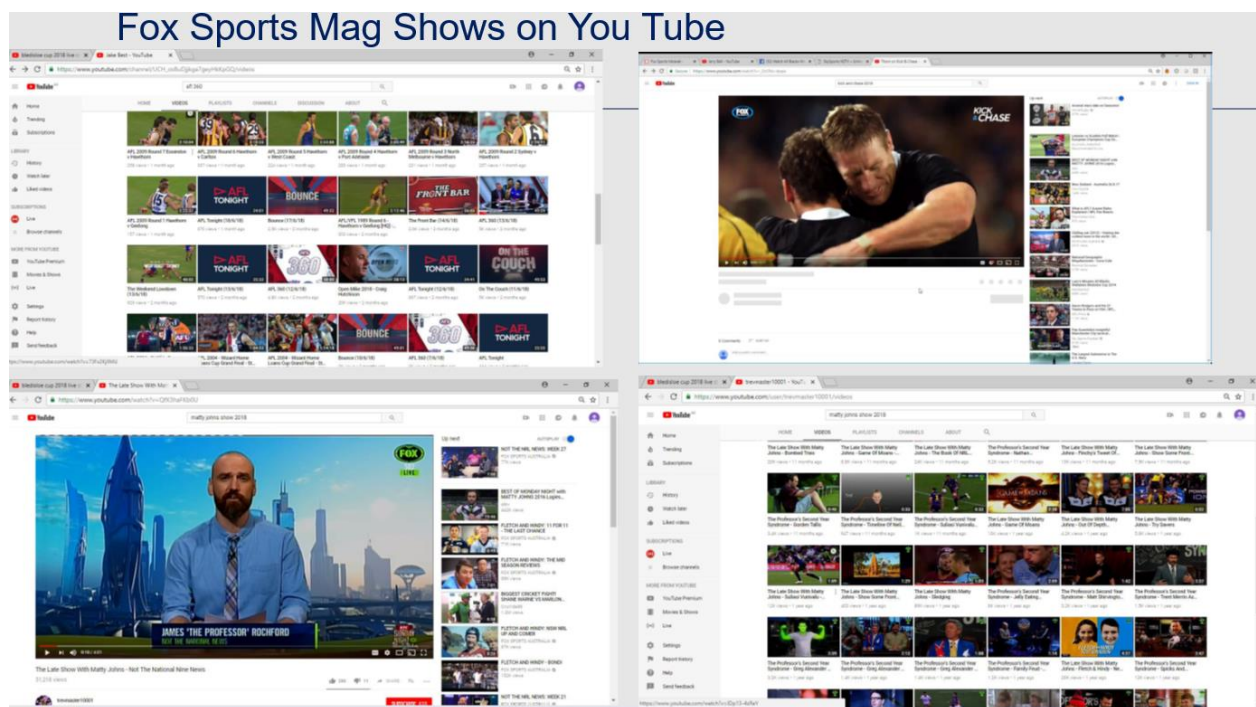
The image shows a Facebook interface. On the left is a profile for 'Unknown' with details: 'Mechanic at Zupps Aspley Holden & HSV', 'Lives in Brisbane, Australia', and 'In a relationship with Zarina Fullerton'. Below the profile are sections for 'Photos' (showing a man, a dog, and a red car) and 'Friends - 58'. On the right is a live video post titled 'Green fight' showing a boxing match. The video has a 'LIVE' badge and '99.0k' viewers. Below the video are interaction buttons (Like, Comment, Share), a comment count of '15k', and a share count of '10,791 shares'. Comments from 'Meleesa Howlett' and 'Adam Cross' are visible.

4 Full NRL and other rugby league matches on You Tube.

The image shows a YouTube channel page for 'syde-y.com'. The page displays a grid of 20 video thumbnails, all related to NRL and rugby league matches. The videos are arranged in a 4x5 grid. Each thumbnail includes a title, a view count, and a timestamp. The channel's navigation bar at the top includes links to 'Home', 'My channel', 'Trending', 'Subscriptions', 'Library', 'History', 'Watch Later', 'Subscriptions', 'Add channels', 'Popular on YouTube', 'Music', 'Sports', 'Gaming', 'Browse channels', and 'YouTube Movies'. The address bar shows the URL 'https://www.youtube.com/channel/UCVWCI\_T-xKicagnOQHtdg/videos'.



- 5 Fox Sports Magazine shows uploaded by You Tube users.



- 6 Signposting of unauthorised Streams - Facebook





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**STATE OF ORIGIN**  
QLD vs NSW Live Stream 2018 State Of Origin  
Watch QLD vs NSW - 12 Nov 18 ago  
QLD vs NSW Live Stream 2018 State Of Origin Rugby Live Broadcast: <https://www.youtube.com/watch?v=...>  
1st vs 2nd Game - 12 Nov 18 ago  
NSW

**STATE OF ORIGIN**  
NSW vs QLD Live Stream 2018 State Of Origin Rugby  
Watch NSW vs QLD - 1 Nov 18 ago  
NSW vs QLD Live Stream 2018 State Of Origin Rugby Live Broadcast: <https://www.youtube.com/watch?v=...>  
1st vs 2nd Game - 1 Nov 18 ago  
NSW

**STATE OF ORIGIN**  
LIVE Queensland Maroons vs New South Wales State Of Origin Rugby  
Watch QLD vs NSW - 6 Nov 18 ago  
QLD Queensland Maroons vs New South Wales State Of Origin Rugby Live Broadcast: <https://www.youtube.com/watch?v=...>  
1st vs 2nd Game - 6 Nov 18 ago  
NSW

**STATE OF ORIGIN**  
Queensland vs New South Wales Live Rugby State Of Origin Line 2018  
Watch QLD vs NSW - 6 Nov 18 ago  
Queensland vs New South Wales Live Rugby State Of Origin Line 2018 Live Broadcast: <https://www.youtube.com/watch?v=...>  
1st vs 2nd Game - 6 Nov 18 ago  
NSW

**STATE OF ORIGIN**  
Match State Of Origin Live 2018 Queensland Maroons vs New South Wales  
Watch QLD vs NSW - 6 Nov 18 ago  
Match State Of Origin Live 2018 Queensland Maroons vs New South Wales Live Broadcast: <https://www.youtube.com/watch?v=...>  
1st vs 2nd Game - 6 Nov 18 ago  
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**STATE OF ORIGIN**  
Queensland Maroons vs New South Wales Live Stream 2018 State Of Origin  
Watch QLD vs NSW - 18 Nov 18 - 12 Nov 18 ago  
Queensland Maroons vs New South Wales Live Stream 2018 State Of Origin Live Broadcast: <https://www.youtube.com/watch?v=...>  
1st vs 2nd Game - 18 Nov 18 - 12 Nov 18 ago  
NSW

**STATE OF ORIGIN**  
State Of Origin Live 2018 Queensland Maroons vs New South Wales  
Watch QLD vs NSW - 18 Nov 18 - 12 Nov 18 ago  
State Of Origin Live 2018 Queensland Maroons vs New South Wales Live Broadcast: <https://www.youtube.com/watch?v=...>  
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LIVE Queensland vs New South Wales State Of Origin Rugby  
Watch QLD vs NSW - 18 Nov 18 - 12 Nov 18 ago  
LIVE Queensland vs New South Wales State Of Origin Rugby Live Broadcast: <https://www.youtube.com/watch?v=...>  
1st vs 2nd Game - 18 Nov 18 - 12 Nov 18 ago  
NSW

**STATE OF ORIGIN**  
Live Rugby Queensland Maroons vs New South Wales State Of Origin Live 2018  
Watch QLD vs NSW - 18 Nov 18 - 12 Nov 18 ago  
Live Rugby Queensland Maroons vs New South Wales State Of Origin Live 2018 Live Broadcast: <https://www.youtube.com/watch?v=...>  
1st vs 2nd Game - 18 Nov 18 - 12 Nov 18 ago  
NSW

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Queensland Maroons vs New South Wales State Of Origin Rugby Live Stream  
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Queensland Maroons vs New South Wales State Of Origin Rugby Live Stream Live Broadcast: <https://www.youtube.com/watch?v=...>  
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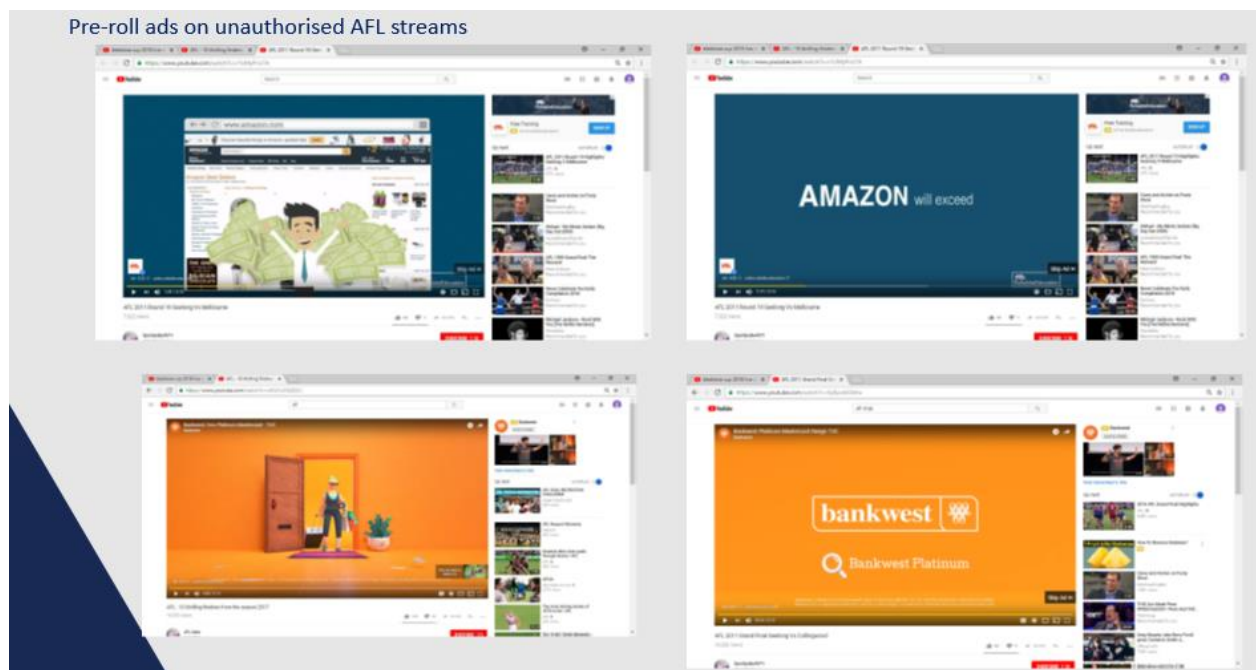
**India vs Australia 3rd T20 Live Streaming: When and Where to Watch, Live Coverage on TV and Online**  
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## 7 Signposting to unauthorised Streams– YouTube

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	<p>india Vs cricket Australia practice match Live stream   mayank cricket update  </p> <p>Mayank Cricket Update M C U • 476 views • Streamed 2 months ago</p>
	<p>Live: Australia Vs India 3rd ODI Cricket Match Hindi Commentary from Stadium   SportsFlashes</p> <p>Sports Flashes • 1.6M views • Streamed 3 weeks ago</p> <p>Live IND vs AUS 3rd ODI cricket match commentary from Stadium Enjoy behind the Scene stories, Epic movements, Thrilling ...</p>
	<p>India vs Australia 2nd ODI Live Streaming 15th Jan 2019</p> <p>HKE News • 479 views • 1 month ago</p> <p>Live Streaming India Vs Australia 2nd ODI. Sport News Episode # 154 India vs australia India vs australia 2019 India vs australia ...</p>
	<p>Pakistan Vs Australia 3rd T20 Live Streaming Schedule And Time Table   PAK vs AUS</p> <p>Crickit Guru • 2.4K views • 3 months ago</p> <p>Pakistan Vs Australia 2nd T20 Live Streaming Schedule And Time Table   PAK vs AUS Pakistan Vs Australia T20 Series 2018 ...</p>
	<p>India vs Australia 2nd Test Live score today's latest news cricket ind vs aus</p> <p>Trend knowledge • 74K views • 2 months ago</p> <p>Live cricket today Day 1, India vs Australia 2nd Test Day 1 Live, Live cricket match today, virat kohli, highlights, ind vs aus live, ...</p>
	<p>Pakistan vs Australia 1stT20 Live streaming Today Cricket Match</p> <p>All yousafzal • 1.5K views • 3 months ago</p> <p>Pakistan vs Australia 1stT20 Live streaming Today Cricket Match hello friends today we will know about how to watch Pakistan ...</p>
	<p>LIVE: Sri Lanka v Cricket Australia XI, Day 3</p> <p>cricket.com.au • 1.75K views • Streamed 3 weeks ago</p> <p>A CA XI side featuring Australia Test squad members Joe Burns, Matt Renshaw, Marnus Labuschagne and young gun Will ...</p>
	<p>Live: IND Vs AUS 2nd ODI   Live Scores and Commentary   2018 Series</p> <p>CricTalks2 • 2.4M views • Streamed 4 weeks ago</p> <p>Live: IND Vs Aus 2nd ODI   Live Scores and Commentary   2018 Series #IndvAus #AdelaideODI #atbet App Link ...</p>
	<p>Australia v South Africa, second ODI</p> <p>cricket.com.au • 3.5M views • 3 months ago</p> <p>Australia prevail over South Africa in a scrappy second ODI in Adelaide, with Marcus Stoinis taking three late wickets to see the ...</p>
	<p>India vs Sri Lanka live cricket match (www.smartcric.com or mobilecric.com)</p> <p>Technical Rahman • 82K views • 1 year ago</p> <p>India vs New Zealand live cricket match (www.smartcric.com or mobilecric.com) https://www.smartcric.com ...</p>
	<p>england vs australia women cricket live streaming RA BD</p> <p>RA SPORTS BD • 586 views • Streamed 1 year ago</p> <p>england vs australia women cricket live streaming with CameraPi Live.</p>

## 8 You Tube monetising unauthorised streams



### Case Study – You Tube - Repeat Infringer '*Heskey Streams*'

#### Background

On 25, 26 and 27 January 2019, the YouTube channel '*Heskey Streams*' uploaded live streams of three A-League matches on YouTube. The user streamed matches live and took down the content when the matches finished which make it impossible to send a webform notice once the content is removed.

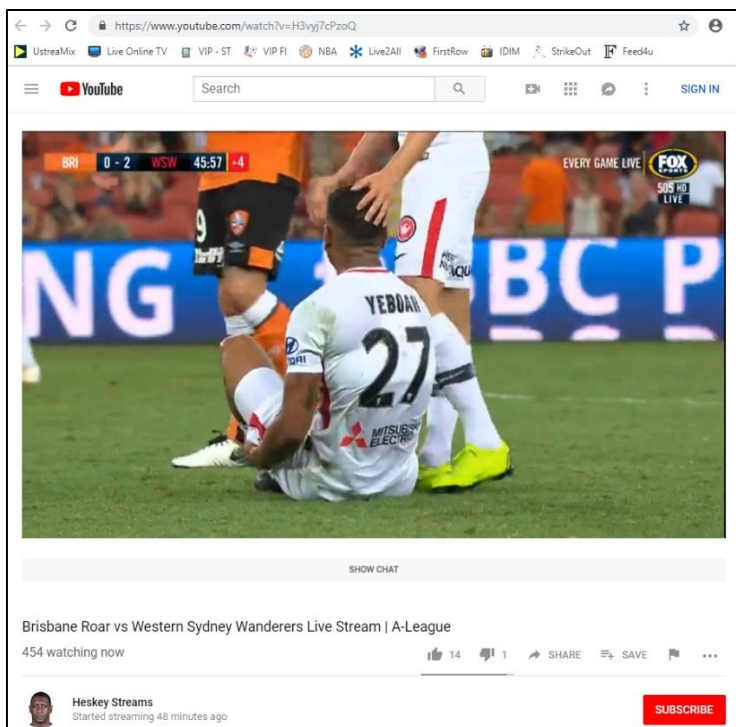
#### Heskey Streams:

<https://www.youtube.com/channel/UC5xclLavtesGOH60jDcsYgA>

Heskey Streams

Friday 25 January 2019

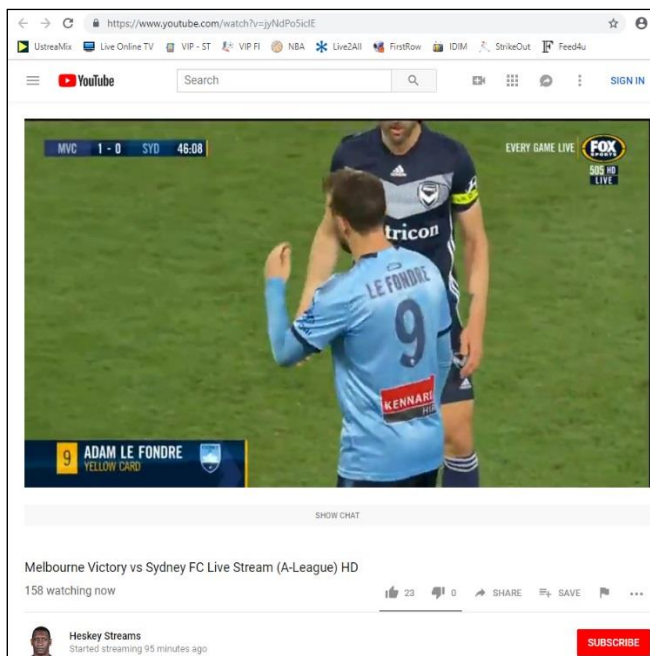
<https://www.youtube.com/watch?v=H3vyj7cPzoQ>



Heskey Streams

Saturday 26 January 2019

<https://www.youtube.com/watch?v=jyNdPo5icIE>



Heskey Streams

Sunday 27 January 2019

[https://www.youtube.com/watch?v=xFU4T\\_tt-SE](https://www.youtube.com/watch?v=xFU4T_tt-SE)




https://www.youtube.com/watch?v=UAT\_1t-5E

Like Online TV VIP - ST VIP FI NBA Live248 Firstrow IDM StrikeOut Free64u Crickfree AlanTV Hulkstream.com

adelaide united

ADL 0 - 0 CCM 04:42

EVERY GAME LIVE FOX Sports 505 HD LIVE



Adelaide United vs Central Coast Mariners Live Stream (A-League) HD

78 watching now

1 0 SHARE SAVE ...

Heskey Streams  
Started streaming 10 minutes ago

SUBSCRIBE

**Attempted YouTube Copyright Infringement Notification that failed to be accepted by YouTube's system for *Heskey Streams*.**

Copyright Infringement Notification
<p>What is the issue?</p> <ul style="list-style-type: none"><li><input type="radio"/> Inappropriate content (Nudity, violence, etc.)</li><li><input type="radio"/> I appear in this video without permission</li><li><input type="radio"/> Abuse/Harassment (Someone is attacking me)</li><li><input type="radio"/> Privacy (Someone is using my image)</li><li><input type="radio"/> Trademark infringement (Someone is using my trademark)</li><li><input checked="" type="radio"/> Copyright infringement (Someone copied my creation)</li><li><input type="radio"/> Other legal issue (including the circumvention of technological measures, such as providing keygens or serial numbers)</li></ul>
<p>Copyright infringement - Who is affected?</p> <ul style="list-style-type: none"><li><input type="radio"/> I am!</li><li><input checked="" type="radio"/> My company, organization, or client</li><li><input type="radio"/> Another copyright owner</li></ul>
<p>Videos to be removed</p> <p>* URL of allegedly infringing video to be removed: <input type="text" value="https://www.youtube.com/channel/UC5xclLAvtesGOH60jDcsYgA"/> invalid url</p> <p>Describe the work allegedly infringed: * Please select one: <input type="text" value="My company, organization or client's YouTube video was reuploaded by another user"/></p> <p>* The YouTube URL of my original video: <input type="text" value="https://www.foxsports.com.au/football/a-league"/> ⚠</p> <p>* Where does the content appear? <input checked="" type="radio"/> Entire video</p>

As the URL was invalid, the webform notice could not be sent. Accordingly, we sent the following notice directly to YouTube at [copyright@youtube.com](mailto:copyright@youtube.com) to request termination of the repeat infringers account

On 01/30/19 18:52:19 [REDACTED] wrote:

Dear Sir/Madam,

It has come to our attention that the following You Tube users have streamed live A League Matches on 25,26 and 27 January on the following You tube Channels;

<https://www.youtube.com/channel/UC5xclLAvtesGOH60jDcsYgA>

<https://www.youtube.com/watch?v=H3vyj7cPzoQ>

<https://www.youtube.com/watch?v=jyNdPo5icIE>

[https://www.youtube.com/watch?v=xFU4T\\_tt-SE](https://www.youtube.com/watch?v=xFU4T_tt-SE)

See the attached report with screenshots. Note that the videos have been taken down by the user (probably to avoid copyright strikes) and we are unable to send further webform take down notices.

This user Heskey Streams <https://www.youtube.com/channel/UC5xclLAvtesGOH60jDcsYgA> is a repeat infringer under Clause 8B of your Terms of Service by uploading streams on 25,26 and 27 January 2019.

We request that this user's account be terminated immediately to prevent further infringement of Fox Sports' exclusive digital rights to A League matches.

I have copied in the copyright owner (FFA) for any verification if required.

Sincerely,

**ADRIAN CANNON**

SENIOR LEGAL COUNSEL

4 Broadcast Way, Artarmon NSW 2064 | [foxsports.com.au](http://foxsports.com.au)

**From:** [copyright@youtube.com](mailto:copyright@youtube.com) <[copyright@youtube.com](mailto:copyright@youtube.com)>

**Sent:** Friday, 8 February, 2019 10:17 AM

**To:** Adrian Cannon <[REDACTED]>

**Subject:** RE: [5-9219000025419] Unauthorised Live Streaming of A League Matches 25-27 January 2019

Hello,

Thank you very much for your notification. In order to take action on your request, we just need two further items satisfied.

1. A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.
2. A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Please respond with these statements and we will be able to move forward with your complaint.

For future reference, the easiest way to submit a complete complaint is to use our [webform](#).

Regards,

Adrian

The YouTube Legal Support Team

On 02/07/19 16:37:25 [REDACTED] wrote:

Dear Sir/ Madam;

We tried to submit a webform and your system rejected the URL because the repeat infringer had already taken down the live video after the match was completed.

This is a good example of flaws in your webform process. Here are the 2 DMCA statements you require. Note that we are part of the Trusted Copyright Reporter Program and we should not have to provide these technicalities each time we send a notice.

1. Fox Sports Australia Pty Ltd has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.
2. The information in the notification is accurate, and under penalty of perjury, that I and Fox Sports Australia Pty Ltd is authorized to act on behalf of the owner of an exclusive right that is infringed.

Copyright owner copied in for any further verification required. Please terminate this user's account and prevent the user from creating a new account.

Sincerely,

Adrian

**From:** Adrian Cannon <[REDACTED]>

**Sent:** Saturday, 9 February, 2019 7:19 PM

**To:** copyright@youtube.com

**Subject:** Re: [5-9219000025419] Unauthorised Live Streaming of A League Matches 25-27 January 2019

The content was already removed. We want the user's account terminated.

**From:** [copyright@youtube.com](mailto:copyright@youtube.com) <[copyright@youtube.com](mailto:copyright@youtube.com)>

**Sent:** Thursday, 14 February, 2019 8:26 AM

**To:** Adrian Cannon <[REDACTED]>

**Subject:** RE: [9-6989000025048] Unauthorised Live Streaming of A League Matches 25-27 January 2019

Hello,

If you believe a channel has uploaded your copyrighted content without authorization, you may wish to submit [takedown requests](#) for all videos at issue.

If the channel has received multiple takedowns it may be that the channel is scheduled for termination. Before the channel is terminated, they may have some time to request legal advice and determine their next steps.

Regards,

The YouTube Legal Support Team

**From:** Adrian Cannon

**Sent:** Thursday, 14 February, 2019 9:05 AM

**To:** 'copyright@youtube.com' <copyright@youtube.com>

**Subject:** RE: [9-6989000025048] Unauthorised Live Streaming of A League Matches 25-27 January 2019

Hi,

Attached is the evidence that this user is a repeat infringer. The user took the content down once the match had finished. No webform can be sent once the content has been removed.

Please terminate this user's account.

Regards

Adrian

**Two weeks after our notice requesting termination of the user's account, Heskey Streams' YouTube channel remains active in contravention of You Tube's Terms of Service.**

