



TELSTRA CORPORATION LIMITED

**Submission to ACCC on Communications Alliance
Ltd's Application for Authorisation (A91453)**

13 October 2014

BACKGROUND

Telstra Corporation Limited ('Telstra') welcomes the opportunity to comment, as an interested party, on Communication Alliance Ltd ('CA')'s application for authorisation. The application relates to CA's proposal that it and its members may agree not to advertise on websites that promote, facilitate or engage in online copyright infringement.

Telstra is a member of CA and generally supportive of its initiatives. However, Telstra also has its own independent views. Telstra is in a key position to bring a balanced and constructive perspective to the issue of online copyright infringement. We have an extensive intellectual property portfolio, which includes copyright. We are a part owner in Foxtel and we support start-up innovators via our muru-D[®] accelerator program. We are Australia's leading ISP and our customers are enthusiastic consumers of digital content.

Telstra acknowledges that online copyright infringement is a serious issue. We also acknowledge that identifying a sustainable and equitable solution (that balances the needs of all stakeholders) is particularly challenging.

SUBMISSION

General Comments

Telstra agrees with CA that a multi-faceted approach is required to efficiently tackle online copyright infringement. We also agree that reducing advertising revenues flowing to infringement-focused websites is a legitimate strategy which has potential to help reduce online copyright infringement.

Telstra already has stringent internal procedures in place for assessing appropriate website advertising. However, we recognise that a co-ordinated approach by an industry body such as the CA has potential for a greater combined effect.

There is some international support for the suggested approach – for example the UK is also pursuing 'Follow the Money' strategies, in an attempt to reduce the funding for online copyright infringement, as detailed in CA's application. A benefit of this approach is that it does not require any legislative change to current copyright legislation.

In principle, we support CA's proposed arrangement whereby CA's members may agree to prevent their products and services being advertised on websites that promote, facilitate or engage in online copyright infringement.

Specific Issues

We have the following additional comments in relation to specific aspects of CA's proposed arrangement:

- Voluntary basis – CA’s proposal indicates that compliance with the arrangement by its members will be voluntary. That is, members will be invited to implement policies to prevent advertising on specified websites. Telstra considers that this voluntary basis is appropriate, and that compliance should not be a prerequisite for membership of CA.
- ‘Do Not Advertise’ list of websites – The proposed arrangement envisages a list be prepared and maintained detailing websites that promote, facilitate or engage in online copyright infringement – ie a ‘Do Not Advertise’ list. Another option would be a white list strategy, whereby members of CA would be encouraged to advertise only on websites which had been assessed as **not** promoting, facilitating or engaging in online copyright infringement. A white list model would provide more stringent control over the range of websites deemed appropriate for members to place advertisements. However, in the CA context, it seems more suitable that members should be free to advertise on websites except where the sites have specifically been deemed for inclusion on a ‘Do Not Advertise’ list. Therefore, Telstra considers that a ‘Do Not Advertise’ list is an appropriate model in this context. Individual members wishing to implement more stringent standards would be free to do so.
- Criteria – CA have indicated that a list of criteria will be created to assist in classifying websites that promote, facilitate or engage in online copyright infringement. They have provided examples of criteria, including:
 - sites offering torrents that enable internet users to illegally download or upload digital files containing content that is subject to copyright e.g. movies, music, books, software
 - sites promoting and providing links to sites that offer torrents
 - sites that offer advice to internet users on how to go about illegal downloading of content

We recognise that some guidance will be necessary to help identify websites that should be included on the black list. However, we stress that these criteria must have inbuilt flexibility to allow for the constantly evolving technology used to facilitate online copyright infringement.

- Independent management of black list – CA proposes that the black list be prepared and maintained independently of CA and signatories. CA proposes a number of potential independent bodies that might be appropriate, including:
 - The Department of Communications

- ACMA
- An expert individual whose appointment would attract the support of rights holders and ISPs alike

We understand that CA is currently consulting with the Department of Communications on this issue.

The body managing the black list will necessarily have some discretion regarding the websites included on the black list. This means they will play a relatively important role in the proposed arrangement.

Telstra agrees that the black list must be managed by an independent body. We also agree that the body must have significant expertise in the area of online copyright infringement, and that cross-stakeholder consultation, including with rights holders, is required.

- Review and appeal mechanism – It is proposed that owners of sites included on the black list will be notified and given 48 hours to object to its inclusion. The reasons given by the site owner would be reviewed and assessed by either the independent body or outsourced to a suitably accredited independent commercial arbitrator. Telstra supports the notion that websites targeted for black listing should be notified and afforded the opportunity to object.
- Assessment of authorisation – CA's application suggests that the authorisation request, if granted, should be reviewed after a five years. Telstra agrees that an initial five year term would be a suitable timeframe, and would allow an appropriate opportunity to assess the effectiveness of the proposed arrangement in reducing the flow of advertising funds to black listed sites, and in addressing the problem of online copyright infringement.