

Telecommunication Carriers' Forum
Combined Project Proposal & Scope for
Establishment of Copyright Policy Working Party

Name of Proposer: Vodafone

Date Submitted: 23 June 2009

Issue Identification

In July 2009, it is expected that the Ministry of Economic Development will be releasing for consultation, proposed amendments to Section 92A (s92A) of the Copyright Act for feedback from key stakeholders including the Telecommunication Carriers' Forum (TCF).

The TCF needs to establish a TCF Copyright Policy Working Party to ensure a collaborative approach and unified voice in reviewing and responding to the MED proposal for amendments to s92A and to identify any requirement for further work required for TCF Members to comply with the amended Copyright Act s92A. TCF Members may also choose to develop their own submissions, independent of this working party.

Background

In September 2008, the Telecommunications Carriers' Forum (TCF) established a Copyright working party to develop a draft Copyright Code of Practice designed to assist organisations in meeting their obligations under s92A of the Copyright Act. This working party was subsequently disbanded.

S92A required ISPs to have a policy to terminate the internet account of repeat copyright infringers in appropriate circumstances.

S92A was due to come into force on 31 October 2008; however this was postponed until 28 February 2009 to allow the TCF and other key stakeholders in the industry to develop an ISP Copyright Code of Practice to assist ISPs in complying with the Act. S92A was then further delayed at the request of the TCF and was due to come into force on 27 March 2009.

During the TCF's public consultation phase on the draft TCF Copyright Code of Practice, forty eight (48) submissions were received. The key issues raised were:

1. The Act is written poorly (s92A in particular) and should be repealed.
2. The definition of an ISP (under the Act) is too broad.
3. The TCF Copyright Working Party shouldn't be doing this work.
4. Neither the ISP nor the Rights Holder should be 'judge and jury' in determining if copyright has been repeatedly infringed and a users internet services account should be terminated as a consequence. Any judgement should be determined by a Court.
5. Termination of a users internet services account is not appropriate or should only occur following a court order.
6. The Code does not provide a clear allocation of proof burdens upon copyright owners and a presumption of innocence.
7. The Code does not support ISPs who provide anonymous access to the internet, such as libraries and universities.

On 23 March 2009 the New Zealand Government announced that s92A of the Copyright Act 1994 would not come into force on 27 March as scheduled, but would be amended to address areas of concern.

A letter from the Ministry of Economic Development (MED) dated 27 May 2009, received by TCF members advised that:

- a) A working group had been established by the MED to develop a set of proposals/questions for input from targeted stakeholders.
- b) It was envisaged that stakeholders would have three weeks from July 2009 in which to respond to the proposal.
- c) MED officials have said they are working to a number of guiding principles to ensure:
 - any legislation leading to internet account termination of repeat copyright infringers is explicit and factors in process, practicality and enforceability;
 - terms used in legislation are clearly defined; and
 - the process leading to account termination is clear to all parties concerned.
- d) MED officials will seek approval from Cabinet during August 2009 and it is anticipated that a Bill will be ready for introduction into the House during September or October 2009.

On 10 June 2009 the TCF chair sent a letter to Hon Simon Powers, Minister of Commerce requesting a meeting and recommending the government have the MED undertake a more fundamental review of s92A (and ensure consistency as between sections 92A and 92C) to ensure New Zealand ends up with an online copyright protection regime that works in a cost effective manner. As at 22 June 2009 the TCF was still awaiting a response from Hon Simon Power's office with regards to a potential meeting.

For further background information on Copyright visit: <http://www.tcf.org.nz/copyright>

Proposed Project Scope

The proposal is to establish a TCF Copyright Policy Working Party to:

1. Review and respond to the MED proposal/questions in relation to amendments to s92A of the Copyright Act;
2. Respond to any draft Policies developed by the MED or others; and
3. Provide a forum for determining any further work required by the TCF to support TCF Members who are ISPs, in complying with a revised s92A and any other changes to the Copyright Act once the new Bill is passed through Government.

Deliverables

The deliverables for this working party are:

1. Submissions to the Ministry of Economic Development in relation to proposed amendments to s92A of the Copyright Act.
2. Responses to any Copyright Policies developed by the MED or others.

3. Recommendations to the TCF Board for further work or activity relating to s92A of the Copyright Act.

Working Party Membership

It is recommended that the following parties be invited to join the Working Party as well as any other TCF Members who would like to participate.

Working Party Members	Name	Organisation	Email
Project Leader:	David Diprose	Vodafone	David.Diprose@vodafone.com
	Graham Walmsley	CallPlus	Grahamw@callplus.co.nz
TCF Members:	Charlie Boyd	Orcon Internet	charlie.boyd@team.orcon.net.nz
	Bianca Miller	Telecom	Bianca.Miller@telecom.co.nz
	Brent McAnulty	Telecom	Brent.McAnulty@Telecom.co.nz
	Jonathan Hope	TelstraClear	Jonathan.Hope@telstraclear.co.nz
	Richard Horrell	TelstraClear	Richard.Horrell@telstraclear.co.nz
	Andrew Cushen	Vodafone	Andrew.Cushen@vodafone.com
	Matthew Law	Woosh	MLaw@woosh.com

Resources

The Working Party will require the following external resources:

1. Consultancy Advice; and
2. Forum Administrator.

Expertise in copyright law is required for this working party. It is proposed that Rick Shera from Lowndes Jordan be appointed to assist in the development of the response to the MED proposal.

The TCF budget for this working party is \$24,000. This covers the cost of the Consultant and Forum Administrator for the period June to December 2009.

With the exception of the independent resource referred to above, all Working Party members will bear their own costs and expenses of participation.

Voting Arrangements

The Working Party members entitled to vote must be active Working Party members who are TCF Members.

For the avoidance of doubt, the Forum Administrator and the Consultant will not have a vote.

Project Timeline

Milestone	Date
Draft response to MED Copyright s92A proposal submitted to TCF Board for approval.	July 2009, dependent on when MED response is due.
Final response to MED submitted by TCF	By the date specified by the MED, expected to be end July.
Assessment of next steps and work required (if any) by the TCF Copyright Working Party	Dependent on timing of above.

Recommendation

That the TCF Board:

1. **Agree** that a separate project proposal and project scope is not required to establish this working party, since it has only recently been disbanded.
2. **Approve** this combined project proposal & scope, including working party membership and resource requirements.
3. **Agree** that the report set out in section 7.1.11 of the TCF Rules is not required.