



Trond Nilsen <xorgnz@gmail.com>

RE: concerning upcoming Section 92 of the Copyright Amendment Act

Clare Curran <Clare.Curran@parliament.govt.nz>

17 March 2009 17:14

To: xorgnz@gmail.com

Dear Trond,

Thank you for your recent correspondence on section 92A of the Copyright Act sent to the Hon. Lianne Dalziel. I appreciate you taking the opportunity to voice your concerns about the Amendment.

The wider issue of the future of copyright law in a digital age is complex and fast changing. Labour plans to work over the year with interested parties across the sector to further develop Labour policy to keep pace with these developments.

Section 92A of the Copyright Act was due to come into effect on 28 February. More time is required for the affected parties to negotiate the issues and reach agreement on a workable code that upholds the principles copyright protects, while not placing an unreasonable burden on the internet service providers. Labour is prepared to work with the National Government and other parties to support internet service providers and rights holders to reach a satisfactory code of practice, which requires ISPs to develop a policy to deal with repeat copyright infringers.

Labour considered a variety of measures including delaying the enactment of the clause, however, only the Government can do this and agreed to delay Section 92A until the end of March. The Copyright (Internet Service Provider Account Termination Policy) Amendment Bill will be put forward into the ballot by myself as a private member's bill and creates a mechanism for developing guidelines, something not included in the existing legislation. This Bill therefore proposes to amend section 92A to include the following clause:

"(3) A policy as required by subsection (1) must be in accordance with guidelines developed by industry groupings representing the interests of telecommunications carriers and rights holders and agreed by the responsible Minister.

Labour supports a workable code of practice to protect copyright and also support an education campaign to raise public awareness and understanding of the importance of copyright and the meaning of the copyright laws.

Again, I appreciate the opportunity to hear your view on this issue. Please do not hesitate to contact me via my Parliamentary Office (Ph 04 817 9906) if I can be of any further assistance.

Best wishes,

Clare Curran
MP for Dunedin South

Spokesperson for Communication and IT

Sent on behalf.

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-----Original Message-----

From: Trond Nilsen [mailto:xorgnz@gmail.com]

Concerning upcoming Section 92 of the Copyright Amendment Act

Hi,

I'm one of your constituents, registered to vote in the Burwood area of Christchurch East, though currently in the USA studying. I'm writing to you concerning Section 92 of the Copyright Amendment Act which, I understand, is to take effect in late February.

My understanding of this law is that it effectively assumes guilt by accusation in matters of copyright infringement, allowing some set of groups or individuals to claim that their copyright is being infringed and, without court proceedings determining guilt, force ISPs to disconnect that individual or their organization from the Internet. No evidence is required, nor is there any judicial oversight of the process. I am not aware of what remedies are available save expensive legal action to those falsely accused, but given the provisions already mentioned, I don't hold out much hope.

This law change is both repugnant to New Zealand's legal tradition and poorly drafted.

NZ Common law is built upon the presumption of innocence until guilt is proven. In cases such as this where the allegedly infringed party claims that they will suffer some commercial loss if remedy is not applied before the legal process has worked its way through, the appropriate approach is court-administered injunctive relief. In other words, if someone believes someone is infringing their rights and that they will suffer significant commercial loss if action is not immediate, it's up to them to convince a judge to grant them injunctive relief.

As written, the law opens the door to wide spread abuse by groups or individuals claiming that they are being infringed, with no practical recourse available to those being accused. This law strongly favours large, well established groups with strong legal representation at the

cost of the individual, be they consumer, artist, or journalist.

Laws such as this have been tried elsewhere and have been widely criticised for a variety of technical, societal, and legal reasons. That is, we have evidence that they're a bad idea and that they do not achieve their goal, so what is different such that we think it will work here?

This law change is an onerous regulation that will erode freedom of expression and information. I am strongly against it.

I note that public submissions concerning this bill largely favoured the relaxation of these provisions, and that, consequently, they were removed from later versions of the bill by the select committee, but were later reinstated in the house. Why was this? What changed to cause the house to go back on the select committee's decision to respect the large majority of intent expressed by the public?

Finally, I note that, at its third reading, all of Labour's MPs voted to let it through including these provisions, whereas the Green party did not. Freedom of expression and information (particularly on the internet) are critical tools allowing the development of a robust democracy, and ensuring that government is doing what it says it does. It thus underlies almost every other political issue. I regard as critical in deciding my voting behaviour, and you can be assured I will be researching both yours and your party's record on this issue come the next election.

Thanks for your time,

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Thanks!
Trond.

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Blogs:

<http://www.meme-hazard.org>

<http://aigantighe.livejournal.com>
