



Australian Government
Attorney-General's Department

Civil Law Division

14/16581

6 May 2015

Senator Barry O'Sullivan
Committee Chair
Senate Legal and Constitutional Affairs Committee
Parliament House
Canberra ACT 2600

Dear Senator O'Sullivan

Senate Constitutional and Legal Affairs Legislation Committee inquiry into the Copyright Amendment (Online Infringement) Bill – Questions on Notice

Thank you for the opportunity to assist the Committee in its inquiry into the Copyright Amendment (Online Infringement) Bill. I write in relation to the Committee's questions on notice following its hearing on Friday 1 May 2015.

The Committee sought clarification on whether an earlier version of the Bill was circulated within a limited group of stakeholders. The department did not circulate a draft of the Bill for consultation with industry stakeholders prior to its introduction.

The Committee sought information on the cost to Government of retaining a barrister to assist in the drafting of the Bill and the reasons it was thought necessary to engage services outside the department. The department engaged an intellectual property barrister to assist in drafting the Bill, at the Attorney-General's request. Consistent practice of this department is to not reveal payments made to counsel. It was thought necessary to engage the advice of an expert in copyright law given the complexity and technical nature of this area of law, particularly to minimise the risk of any unintended consequences which could increase the burden on industry or unduly restrict the freedom of internet users.

The Committee queried why the Regulation Impact Statement (RIS) was undertaken without specialist assistance. It was thought unnecessary to seek specialist assistance in undertaking the RIS as the regulatory impact of this proposal was minor. The department prepared the RIS in close consultation with the Office of Best Practice Regulation (OBPR) and followed OBPR's guidelines and methodology. The OBPR assessed the RIS as being compliant with the Government's requirements in December 2014. The department was also able to draw on international experience in assessing the regulatory impacts. Information provided on a commercial-in-confidence basis by Carriage Service Providers (CSP) about the costs associated with other website-blocking requirements was also used.

As requested by the Committee, a copy of the RIS, and the methodology used to estimate the regulatory costs, is attached. The RIS has been redacted to remove reference to separate measures that were considered by the Cabinet, and which are not directly relevant to the measure in the Bill.

The Committee queried how many injunctions per year were assumed in order to arrive at the estimated cost burden on CSPs. The estimated cost burden on CSPs was calculated on the basis that 10 injunctions would be sought each year. This figure was based on experience in the United Kingdom, in which injunctions were only sought against major service providers.

Please do not hesitate to contact me if any further information is required.

Yours sincerely

Matt Minogue
First Assistant Secretary
Civil Law Division