

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO

Group: 2

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Question No. SBE14/064

Senator Collins asked the following question at the hearing on 20 November 2014:

Mr Minogue: In the third last paragraph of that letter, the government says, 'We'll be working closely—we'll be keeping an eye on how it is developing. Government accepts there is no single proven way through this, but it is ultimately a matter for industry to address itself.' Because there are multifactors adding to what the problem is and because different stakeholders will have a different view about what the root problem is, in the last sentence of that paragraph, the minister and the Attorney say:

In light of this, the Government will review the effectiveness of efforts to reduce online copyright infringement within 18 months of a code or standard coming into operation.

Senator JACINTA COLLINS: I am sorry; I thought I understood that the government would be looking at legislating at 18 months.

Mr Minogue: I beg your pardon, Senator?

Senator Brandis: No, no. We are going to relook at it and see how it is going.

Mr Minogue: I think what the Attorney did say—and also said in the letter—was that government is not just setting industry on a path, and saying, 'See how you go.' Government has been very clear that it expects to see an agreed code by April of next year, and if that is not achieved by industry then government may consider other options, including the prescription of a standard under the ACMA powers—under the Telecommunications Act.

Senator JACINTA COLLINS: So then the time frame for industry is to reach a voluntary agreement by April.

Mr Minogue: April.

Senator Brandis: A hundred and twenty days from yesterday.

Senator JACINTA COLLINS: And then the government will review the situation with a view to—

Mr Minogue: Reviewing the effectiveness of what has been achieved. I should mention also that the injunctions measures that the Attorney mentioned would be on a separate path. They would require legislation, but that will be a matter for government's parliamentary business processes.

Senator JACINTA COLLINS: I will come to that. That is in part helpful, but I will come to that part in a moment. But, in terms of the government indicating that if a satisfactory voluntary code is not achieved then a prescribed code will be looked at, what is the time frame for that?

Mr Minogue: That would be determined by ACMA under the Telecommunications Act. I would have to qualify a little, because it is not an act we administer. I think there are time limits under that as to how ACMA discharges those mandatory powers that it has involving consultation prior to the exercise of those powers. The exercise of a voluntary code to be recognised under the Telecommunications Act also has time limits or time periods for which the ISPs would need to undertake public consultation as well, and that would be before April. But, in direct answer to your question about the time frame for the exercise of the mandatory power, I would have to take that on notice.

Senator JACINTA COLLINS: Yes, I do not think it is actually specified, other than that the cabinet will readdress the issue after 8 April.

Mr Minogue: That is right.

Senator JACINTA COLLINS: In the letter, I had conflated that with the 18-month review.

Mr Minogue: No, it is separate.

The answer to the honourable senator's question is as follows:

On 10 December 2014, the Attorney-General and the Minister for Communications announced new measures to ensure Australians make informed choices when accessing online content and to strengthen the industry's ability to tackle online copyright infringement. Ministers wrote on the same day to industry leaders requiring them to immediately develop an industry code with a view to registration by the Australian Communications and Media Authority (ACMA) under Part 6 of the *Telecommunications Act 1997*. The code will include a process to notify consumers when a copyright breach has occurred and provide information on how they can gain access to legitimate content.

Failing agreement by 8 April 2015, the Government will impose binding arrangements either by an industry code prescribed by the Attorney-General under the *Copyright Act 1968* or an industry standard prescribed by the ACMA, at the direction of the Minister for Communications under the Telecommunications Act. The Government will decide the timing of these binding arrangements following the outcome of the Code negotiations.

Under s125AA of the Telecommunications Act, the Minister for Communications may direct the ACMA to determine an industry standard that deals with matters related to the telecommunications activities of participants in a particular section of the telecommunications industry. There is no period prescribed in the Telecommunications Act for ACMA to determine such an industry standard, however, the Minister may direct ACMA to determine the standard within a specified period.

Further questions on the Act should be referred to the Minister for Communications.