

From: Brendan Scott  
To: Committee, Broadband (SEN)  
Subject: Submission to Senate Select Committee on the National Broadband Network

Dear Secretary

I would like to make the following submission to the work of the Senate Select Committee on the National Broadband Network. I apologise for not making this submission by 27 May, but hope that the committee will be able to give it consideration.

My submission is that current reports on the NBN do not take into account the likelihood of extra costs being incurred by the operators of the NBN or their distributors as a result of changes in the regulatory environment in which it will be operating. In particular, copyright law is set to change within the early part of the NBN amortisation period in a way which will affect the uptake of, or costs of providing, an internet carriage service.

In particular, there is a current push to implement a "three strikes" regime, where broadband users have their internet service disconnected if they are accused of infringing three times (see eg: <http://www.irishtimes.com/newspaper/frontpage/2010/0524/1224271013389.html>) and a move to make carriers liable for their users' infringements by way of authorisation (see, eg the iiNet case).

The impacts of these measures will be twofold:

- \* first, they will either increase the cost of the NBN (either directly or indirectly through its resellers/distributors) by imposing copyright clearance costs or they will reduce uptake by effectively excluding some class of users from the network (or both).

- \* second, they will impede innovative uses of the network for fear of copyright infringement, particularly if carriers are, in effect, liable for the acts of their users.

In a sense such regulatory change is speculative, in that the parliament may decline to implement such changes. However, for a variety of reasons the history of this area indicates that, with minor exceptions, proponents of expanded copyright law have secured every legislative change they have sought over the last 30 years. Over the last 20 years, the time from first floating proposals internationally to implementation within Australian legislation is on the order of 5-7 years.

The legislative groundwork for the implementation of these measures is set out in the ACTA being negotiated by DFAT at the moment.

Some costing should be done of the likely impact of these changes, preferably as part of the NBN studies.

Yours faithfully,

Brendan Scott