

Copyright Act 1994 - revised proposal for section 92A

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The Minister of Commerce, Simon Power, has issued a revised version of section 92A of the Copyright Act 1994 dealing with copyright infringement in the digital environment.

The revised proposal introduces a process similar to that for domain name disputes in New Zealand.

The first step of the proposal is where a copyright owner believes one or more of its copyright works has been infringed, it can send a first infringement notice to an internet service provider (ISP). The ISP must then send the notice on to its customer, the alleged infringer. The copyright owner can also send via the ISP a cease and desist notice. The alleged infringer can respond directly to the copyright owner and the copyright owner can then accept or reject the response. If the copyright holder believes there has been a further infringement of copyright, after a cease and desist notice has been sent, the copyright owner can apply to the Copyright Tribunal to obtain an order requiring the ISP to provide contact details of the alleged infringer.

The copyright owner can also lodge a complaint with the Copyright Tribunal. The alleged infringer will have an opportunity to respond and can choose to mediate. The

Copyright Tribunal will be given the ability to award an injunction as well as damages or account of profits, as well as a fine and can order an ISP to terminate the alleged infringer's account.

The proposal removes the previous requirement for ISPs to consider and make decisions on complaints from copyright owners.

The proposal does not provide a definition of an ISP. This was a serious issue under section 92A as it was so wide and included anybody who provided the transmission or providing of connections for online communications as well as anyone who hosts material on websites or other electronic retrieval systems.

The Ministry of Economic Development is seeking comments by 7 August 2009.