



TELSTRA CORPORATION LIMITED

**Submission to the Department of Foreign Affairs and
Trade**

On

**IP Chapter of the
Trans-Pacific Partnership Agreement**

25 August 2010

Introduction

Telstra Corporation Limited ('Telstra') welcomes the opportunity to make a submission to the Department of Foreign Affairs and Trade ('DFAT') on the intellectual property ('IP') Chapter of the Trans-Pacific Partnership Agreement ('TPPA').

As Australia's leading telecommunications and information service company, Telstra provides customers with an integrated experience across fixed line, mobiles, broadband, information, transaction, search and pay TV. Telstra BigPond is Australia's leading Internet Service Provider offering retail internet access nationally, along with a range of online and mobile content and value added services.

Telstra has an extensive intellectual property portfolio, including trade mark and patent rights in Australian and overseas. Telstra is also a licensor and a licensee of intellectual property, including a licensee of online and digital content.

Submission

Telstra supports a strong and robust intellectual property system that:

- increases legal certainties as to the grant and enforcement of rights; and
- reduces transaction costs, duplication and administrative actions through appropriate harmonisation and IP standards.

Specifically in the context of online and digital content, Telstra supports an intellectual property system that:

- maintains the delicate balance between the interest of rights holders, the rights of users to access and use information and the rights of intermediaries; and
- recognises the Internet as a vital communications, education, social and economic platform.

Consistent with this, Telstra broadly supports the Australian Government's efforts to assist the TPAA participants to understand IP issues generally and to adopt TRIPs standards. However in doing so, Telstra cautions against the TPAA seeking to impose legal remedies to commercial issues, particularly those which may be the result of market failures.

While many IP issues relate to reasonably settled areas of Australian law (for example, the grant and enforcement of trade marks and patents), the increasing popularity of online and digital content is giving rise to a complex set of new issues, which are not settled under Australian or international laws (for example, secondary liability for copyright infringement). These matters are resulting in novel and untested interactions between IP laws and other laws, such as privacy, censorship and free expression. They are complex and controversial and impact Australian businesses and consumers in different ways.

Telstra submits that any IP Chapter in the TPPA should not include matters which are not settled under Australian law.

Specifically in the context of secondary liability for copyright infringement, there is no agreed international solution to the issue, including no agreed solution in Australia

where the matter is currently before the Full Federal Court of Australia. It would therefore be inconsistent for Australia to negotiate and agree clauses on these types of issues in the TPPA before they are settled under Australian law.

Further, transparency and consultation with all stakeholders during the negotiation process is extremely important, to ensure that all interested parties are afforded an opportunity to assess potential impacts and to raise issues and concerns. In particular (again in the context of secondary liability for copyright infringement) Telstra submits that consultations must include Australian ISPs (and other service providers) and Internet users, and must take into account the benefits and detriment to all parties, including cost implications.

If you have any queries in relation to this submission, please do not hesitate to contact Jane Perrier, General Counsel Intellectual Property.