



TELSTRA CORPORATION LIMITED

Further Submission to the Productivity Commission

on

Bilateral and Regional Trade Agreements

16 April 2010

Introduction

Telstra Corporation Limited ('Telstra') welcomes the opportunity to make a further submission to the Productivity Commission's review into Bilateral and Regional Trade Agreements. This further submission relates only to the intellectual property (IP) aspects of Bilateral and Regional Trade Agreements.

As Australia's leading telecommunications and information service company, Telstra provides customers with a truly 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.

IP Chapters in Bilateral and Regional Trade Agreements

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 creative 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 Australia's trading partners to understand IP issues generally, and to negotiate specific IP Chapters in a broad range of Bilateral and Regional Agreements.

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. Further, these issues are resulting in novel interactions between IP laws and other laws such as privacy, censorship and free expression. The matters are complex and controversial and impact Australian businesses and consumers in different ways.

In view of these uncertainties, IP Chapters in Australia's trade agreements should not include matters which are not settled under Australian law.

Continuing with the example of secondary liability for copyright infringement, there is no agreed international solution to the issue, including no agreed solution in Australia – the matter is currently before the Federal Court of Australia. It would therefore be inconsistent for Australia to negotiate clauses on these types of issues in international agreements before they are settled under Australian law.

Further, transparency in the negotiation process is extremely important (particularly where new solutions to new IP issues are being negotiated), to ensure that all interested parties are afforded an opportunity to assess the potential impacts and to communicate any issues or concerns to the relevant Government agency.