

BY EMAIL

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# Blake Dawson

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Dear Colleagues

**12 October 2011**

**Telstra Internet Direct and Business Broadband  
Service Withdrawal – Mr Demetrios Vakras and Ms Lee-Anne Raymonds**

**Our reference**  
RJT JDC

**Partner**  
Robert Todd  
T 61 2 9258 6082  
robert.todd  
@blakedawson.com

**Contact**  
Julie Cheeseman  
T 61 2 9258 5847  
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We act for Telstra Corporation Limited (**Telstra**) in relation to this matter.

We refer to the email correspondence between ██████████ and ██████████ dated 10 October 2011 and the email from your client Mr Vakras copied to Mr ██████████ and John ██████████ (among others) dated 12 October 2011 with the subject "UK case of Bunt v Tilley [2007]".

We also refer to the following content hosted by your clients on their Telstra Business Broadband service:

1. [www.vakras.com](http://www.vakras.com);
2. [www.leeanneart.com](http://www.leeanneart.com);
3. [www.humanistranshumanist.com](http://www.humanistranshumanist.com);
4. [www.phantastart.com](http://www.phantastart.com);
5. [http://www.vakras.com/guildford\\_lane\\_gallery.html](http://www.vakras.com/guildford_lane_gallery.html);
6. <http://www.vakras.com/exhibitions.html>;
7. <http://www.vakras.com/links.html>;
8. <http://www.vakras.com/demetrios/reviews.html>;
9. [http://www.vakras.com/demetrios/pages/exhibitions\\_archival\\_works.html](http://www.vakras.com/demetrios/pages/exhibitions_archival_works.html);
10. <http://www.leeanneart.com/guildfordlanegallery.html>;
11. <http://www.leeanneart.com/events.html>;
12. <http://www.humanistranshumanist.com/vakras-raymond-VCAT-claim.html>;
13. [http://www.phantastart.com/vakras/guildford\\_lane\\_gallery.html](http://www.phantastart.com/vakras/guildford_lane_gallery.html)
14. [http://www.phantastart.com/vakras/guildford\\_lane\\_gallery-](http://www.phantastart.com/vakras/guildford_lane_gallery-)

addenda.html;

15. [http://www.phantastart.com/vakras/exhibitions.html#exhibition\\_in\\_2009](http://www.phantastart.com/vakras/exhibitions.html#exhibition_in_2009);

16. <http://www.phantastart.com/vakras/directory.html>

(the **Content**).

It is clear from the correspondence that your client Mr Vakras disagrees with Telstra's view that it is either exposed to or accruing liability under the *Broadcasting Services Act 1992* (Cth) and under the Defamation Act as a result of your clients' use of Telstra's Business Broadband services. Telstra remains of the view that having been notified of the above publications it is exposed to potential liability and does not propose to debate this issue with your client further.

As you are aware from Mr Eeles' email of 10 October 2011:

- When your clients acquired Business Broadband services from Telstra, they agreed that their use of those services would be governed by Telstra's "Our Customer Terms – Internet Direct and Business Broadband section" (the **Terms**). The relevant provisions are set out in Mr [REDACTED] email to Mr [REDACTED] of 10 October 2011 sent at approximately 2:50pm but are repeated below for convenience.
- Clause 4.2(g) of Part A – General of the Terms prohibits your clients from using Telstra's Internet Direct and Business Broadband services "in a way that exposes either [Telstra] or [the customer] to risk of prosecution or legal or administrative action under any law".
- Clauses 4.1 and 4.2(j) of Part A – General of the Terms require the customer to comply with the Acceptable Usage Policy, which states that "a Customer must not use the Telstra Network, or allow the Telstra Network to be used ... in a manner which could result in Telstra incurring a liability to any person".
- Telstra has been threatened with legal action as a result of your clients' use of its services and in particular, its use of the services to make the Content available for download from the Internet.

Mr Vakras has requested a copy of this correspondence in his email of 12 October 2011. Our client is not obliged and does not agree to provide your clients with a copy of the correspondence containing the threat of legal action. We are however instructed to inform you that the substance of the threat is that unless the Content (and any other content which is substantially similar and defamatory of Mr Cripps) is taken down, an application will be made by Mr Cripps for Telstra to be joined as a defendant in defamation proceedings commenced by Mr Cripps in the Supreme Court of Victoria, numbered SCI 01484/2011. Your clients are already party to these proceedings as defendants and are aware of the claims made in those proceedings.

- In response to our client's previous request that particular content be taken down from your clients' websites, Mr Vakras has indicated in his email of 12 October 2011 that he is "currently censoring the material under protest". It appears to our client that the steps taken by Mr Vakras to date have involved either the words "censored" being pasted over the material of concern or, to the extent that material has been taken down from some webpages, your clients have then used Telstra's services to repost the material of concern (or material that is substantially similar) on other locations on their web server.
- In the circumstances, your clients continue to be in breach of a material term of the Terms by using Telstra's Business Broadband services to make the Content, material

substantially similar to the Content and material that is defamatory of Mr Cripps available for download from the internet.

We are instructed that Telstra hereby gives your clients further written notice of its intention to suspend your clients' Business Broadband service as a result of your clients' material breach of the Terms unless the Content is removed from your clients' servers by **10.00am tomorrow morning** (13 October 2011).

If the Content is not removed by this time or is reposted on other locations on your clients' webserver (including material which is substantially similar to the Content and/or is defamatory of Mr Cripps), Telstra will suspend your clients' service and no further notice will be given to you.

We request that Mr Vakras kindly refrain from directly contacting any Telstra employees about this matter. All further correspondence on this matter should be directed to us, as Telstra's legal representatives.

Yours faithfully

A handwritten signature in blue ink, appearing to be 'B. Vakras', with a long horizontal line extending to the right.