

INFRINGEMENT NOTICE

NOTICE UNDER SECTION 572E OF THE *TELECOMMUNICATIONS ACT 1997*
(CTH)

To: **Circles Australia Pty Ltd**
ACN 630 647 264
Level 2
50 Miller Street
North Sydney NSW 2060
Attention: Mr Donald Chuck Yen Chan

I, Cathy Rainsford, am an authorised infringement notice officer of the Australian Communications and Media Authority for the purposes of 572L of the *Telecommunications Act 1997* (the **Act**).

I have reasonable grounds to believe that on 2 June 2022, Circles Australia Pty Ltd ACN 630 647 264 (**Circles**), in its capacity as a carriage service provider, contravened subsection 101(1) of the Act by failing to comply with the service provider rule at subclause 10(2) of Schedule 2 to the Act, being a listed infringement notice provision (**the contraventions**). The details of the contraventions are outlined below.

I give Circles this Infringement Notice under section 572E of the Act in relation to the contraventions.

In giving this Infringement Notice I have had regard to the *Telecommunications (Infringement Notices) Guidelines 2011*.

Details of the contraventions

It is alleged that Circles contravened subsection 101(1) of the Act by failing to comply with the service provider rule at subclause 10(2) of Schedule 2 to the Act on 19 occasions. The service provider rule requires a carriage service provider (**CSP**) to give to Telstra (in its capacity as the Integrated Public Number Database Manager) the information Telstra reasonably requires to provide and maintain the Integrated Public Number Database (**IPND**).

Schedule 1 to this Infringement Notice sets out brief details of the contraventions.

Penalty payable under this Infringement Notice

In accordance with section 572G of the Act, the penalty payable under this Infringement Notice is \$253,080. The penalty has been calculated as set out in the table in Schedule 2 to this Infringement Notice.

Time for payment of the penalty

The penalty should be paid **within 28 days** after the day on which this Infringement Notice is given.

The penalty should be paid to the Australian Communications and Media Authority, on behalf of the Commonwealth, into the account below within 28 days of receipt of the Notice.

Please include the narration "Circles - NS" with your payment.

ABN: 55 386 169 386

Financial Institution: [REDACTED]

Branch: [REDACTED]

BSB: [REDACTED]

Account No [REDACTED]

Account Name: [REDACTED]

You may ask for additional time to pay. Any request should be made to me as soon as possible, and no later than 28 days after the date this Infringement Notice is given.

If the penalty is paid

If you pay the penalty specified in this Infringement Notice within the time for payment (being within 28 days after the day on which this Infringement Notice is given, or, if applicable, within the longer period allowed under paragraph 572F(1)(d)(ii) of the Act) and the Infringement Notice is not withdrawn, the matter will not be dealt with by the Federal Court of Australia under Part 31 of the Act. Your liability for the alleged contraventions, the subject of this Infringement Notice, will be discharged. No further proceedings will be taken with respect to the alleged contraventions.

Payment does not equate to a finding that the contraventions occurred.
Payment is not an admission of liability.

If the penalty is not paid

If you do not pay the penalty within the time for payment, the ACMA may take action for the alleged contraventions.

That action may include the institution of civil penalty proceedings in the Federal Court. The penalties that the Court can impose are potentially significantly higher than that in an Infringement Notice (see section 570 of the Act).

Withdrawal of the infringement notice

The ACMA may withdraw this Infringement Notice. It may do so of its own volition or upon your request. To be effective the withdrawal must occur within 28 days after the Infringement Notice was given.

If you wish to apply for withdrawal of the Infringement Notice, you should write as soon as practicable setting out the basis/reasons for the request. Your application should be addressed to me in the first instance.

If the Infringement Notice is withdrawn after the penalty is paid, the penalty will be refunded.

Please note that if this Infringement Notice is withdrawn, the ACMA may consider taking action for the alleged contravention(s), the subject of this Infringement Notice.

Enquiries concerning the Infringement Notice

If you have any enquiries or questions about this Infringement Notice contact me on +61 2 6219 5500 or by email at Cathy.Rainsford@acma.gov.au.



Signature (Authorised Infringement Notice Officer)

Cathy Rainsford
General Manager
Content and Consumer Division
Authorised Infringement Notice Officer
13 January 2023

SCHEDULE 1

Brief details of the contraventions are set out below,
in accordance with section 572F of the Act.

1. Background

- 1.1. Circles is an Australian proprietary company, limited by shares, with a registered office at 50 Miller Street North Sydney NSW 2060.
- 1.2. On 8 September 2022, the ACMA commenced an investigation into whether Circles had contravened subsection 101(1) of the Act by failing to comply with the IPND service provider rule at subclause 10(2) of Schedule 2 to the Act.

2. Matters giving rise to the Notice

- 2.1. Circles is a CSP within the meaning of section 87 of the Act.
- 2.2. The IPND is a database containing public telephone numbers used by customers in Australia, and is managed by Telstra, as required by section 10 of the *Telecommunications (Carrier Licence Conditions - Telstra Corporation Limited) Declaration 2019 (Telstra Licence Conditions)*. It is used for critical purposes such as the emergency call service, the emergency alert system and investigations by law enforcement.
- 2.3. The service provider rule at subclause 10(2) of Schedule 2 to the Act requires that, where a CSP supplies a carriage service to an end-user that has a public number, the CSP must give the IPND Manager such information as the IPND Manager reasonably requires to meet its obligation to provide and maintain an IPND.
- 2.4. The information which the IPND Manager requires from CSPs to fulfil its IPND obligations includes information specified in the Telstra Licence Conditions and the Integrated Public Number Database (IPND) Data Users and Data Providers Technical Requirements for IPND. These include, among other things, the public number, customer name, customer address, the name of the CSP providing the service and a list status code for the public number indicating whether the service is listed or unlisted.
- 2.5. On 2 June 2022, Circles did not upload customer data to the IPND for the public numbers associated with 19 of its active carriage services.
- 2.6. Circles stated that it failed to upload the customer data because it was not familiar with the file level error that prevented an upload file from successfully uploading on 2 January 2022, which prevented all subsequent files from uploading until it was made aware of the issue and remediated on 26 August 2022.
- 2.7. Therefore, the ACMA has reasonable grounds to believe that Circles has contravened the service provider rule at subclause 10(2) of Schedule 2 to the Act on 2 June 2022 on 19 occasions.
- 2.8. Subclause 10(2) of Schedule 2 to the Act is a listed infringement notice provision for the purposes of section 572E of the Act¹ (see the

¹ The provision had been a listed infringement notice provision for more than three months before the alleged contraventions took place.

Telecommunications (Listed Infringement Notice Provisions) Declaration 2011).

- 2.9. The dates and public numbers associated with the services relevant to the alleged contraventions are set out in Schedule 2 to the Infringement Notice.
 - 2.10. In contravening subclause 10(2) of Schedule 2 to the Act, Circles has also contravened subsection 101(1) of the Act, which requires a CSP to comply with service provider rules.
 - 2.11. Subsection 101(1) of the Act is a civil penalty provision, as per subsection 101(3) of the Act.
- 3. The amount of the penalty**
- 3.1. The total penalty specified in the Notice is \$253,080 calculated in accordance with section 572G of the Act, as shown in the table at Schedule 2 below.

SCHEDULE 2

Penalties for alleged contraventions of subsection 101(1) of the Act.

	Date of alleged contravention	Date on which public number customer data, was supplied to IPND Manager	Public number associated with a service for which customer data was not supplied to IPND Manager	Penalty Units ²	Penalty
1	02/06/2022	26/08/2022	██████████	60	\$13,320
2	02/06/2022	26/08/2022	██████████	60	\$13,320
3	02/06/2022	26/08/2022	██████████	60	\$13,320
4	02/06/2022	26/08/2022	██████████	60	\$13,320
5	02/06/2022	26/08/2022	██████████	60	\$13,320
6	02/06/2022	26/08/2022	██████████	60	\$13,320
7	02/06/2022	26/08/2022	██████████	60	\$13,320
8	02/06/2022	26/08/2022	██████████	60	\$13,320
9	02/06/2022	26/08/2022	██████████	60	\$13,320
10	02/06/2022	26/08/2022	██████████	60	\$13,320
11	02/06/2022	26/08/2022	██████████	60	\$13,320
12	02/06/2022	26/08/2022	██████████	60	\$13,320
13	02/06/2022	26/08/2022	██████████	60	\$13,320
14	02/06/2022	26/08/2022	██████████	60	\$13,320
15	02/06/2022	26/08/2022	██████████	60	\$13,320
16	02/06/2022	26/08/2022	██████████	60	\$13,320
17	02/06/2022	26/08/2022	██████████	60	\$13,320
18	02/06/2022	26/08/2022	██████████	60	\$13,320
19	02/06/2022	26/08/2022	██████████	60	\$13,320
	TOTAL				\$253,080

² The penalty unit which applied at the time of the alleged contraventions was \$222, as set by section 4AA of the *Crimes Act 1914*.