

Telstra's submission to the Australian Law Reform Commission's (ALRC) "Serious Invasions of Privacy in the Digital Era"

Introduction

Telstra would like to thank the ALRC for the opportunity to contribute a submission to this inquiry. Whilst we continue to disagree with the need to introduce a statutory cause of action, we would like to thank the ALRC for the manner in which it has conducted this inquiry, in particular how the ALRC has sponsored important dialogue around key privacy matters.

Telstra takes the privacy of our customers seriously and we will continue to invest in our privacy framework as customer expectations continue to mature, the digital economy grows and technology continues to evolve. We work hard to meet our privacy responsibilities and understand our customers concerns about their privacy.

Our previous submissions clearly state our position around the introduction of a statutory cause of action for serious invasions of privacy. These submissions can be found here:

- http://www.alrc.gov.au/sites/default/files/subs/45._org_telstra_response.pdf (November 2013)
- <http://www.ag.gov.au/Consultations/Documents/Rightsosueforseriousinvasionofpersonalprivacy-issuespaper/32%20Telstra.PDF> (November 2011)

Summary

At a general level, we oppose the introduction of a new statutory cause of action for the following reasons:

- We remain comfortable that the existing legal and regulatory framework, together with our own internal compliance procedures and those of external dispute bodies, are sufficient to satisfactorily resolve any instances where there has been a serious breach of privacy. Accordingly, we query what value the new laws proposed in the Discussion Paper would add.
- Given the recent privacy reforms and enhancements to the Privacy Commissioner's powers, as well as existing laws that are directed at protecting an individual's privacy, we do not believe the introduction of another statute and framework is consistent with the deregulation agenda currently being pursued by the Federal Government.

In addition, we oppose the introduction of a new Australian Privacy Principle relating to the destruction or de-identification of personal information given the rights already conferred by the existing APPs and the practical difficulties in dealing with deletion.

Finally, if a new statutory cause of action for serious invasions of privacy is introduced because of a demonstrated need:

- It is vital that it include robust protections for internet intermediaries, who are not responsible for the creation or publication of content by those who use their services. We support a safe harbour scheme and believe that there should be no conditions attached to this protection.
- We welcome the ALRC's view that the cause of action be limited to only intentional or reckless conduct so it is focussed on *serious* invasions of privacy. Intentional or reckless conduct should be assessed and proved in accordance with the standards of criminal law.

- We reiterate our strong view that there be a requirement to demonstrate causation plus a clear element of compensable loss or damage before any cause of action could exist.

Comments

In the table following, we outline our comments in relation to the specific proposals and questions. Where we have not expressed a view on a proposal, we have stated “no comment.”

Proposals and Questions		Telstra Comment
4. A New Tort in a New Commonwealth Act		
Proposal 4-1	A statutory cause of action for serious invasion of privacy should be contained in a new Commonwealth Act (the new Act).	As stated in our cover letter and previous submissions, we do not consider a new law is required and do not agree with this proposal.
Proposal 4-2	The cause of action should be described in the new Act as an action in tort.	No comment.
5. Two Types of Invasion and Fault		
Proposal 5-1	<p>First element of action: The new tort should be confined to invasions of privacy by:</p> <p>(a) intrusion upon the plaintiff's seclusion or private affairs (including by unlawful surveillance); or</p> <p>(b) misuse or disclosure of private information about the plaintiff (whether true or not).</p>	We refer you to our previous submissions.
Proposal 5-2	<p>Second element of action: The new tort should be confined to intentional or reckless invasions of privacy. It should not extend to negligent invasions of privacy, and should not attract strict liability.</p>	<p>We refer you to our previous submissions.</p> <p>If this law were enacted, <i>serious invasions of privacy</i> should be limited to intentional or reckless conduct (based on standards developed in criminal law). An invasion of privacy should be deliberate, reckless and/or intentional to meet a seriousness threshold.</p> <p>Inadvertent breaches, particularly where due to factors beyond a party's control, should not give rise to liability under any new cause of action. If the threshold for the cause of action were set too low, it would risk creating uncertainty for customers, regulators and businesses.</p>

Proposals and Questions		Telstra Comment
<p>Proposal 5–3</p> <p>The new Act should provide that an apology made by or on behalf of a person in connection with any invasion of privacy alleged to have been committed by the person:</p> <p>(a) does not constitute an express or implied admission of fault or liability by the person in connection with that matter; and</p> <p>(b) is not relevant to the determination of fault or liability in connection with that matter.</p>	<p>If this law were enacted, we would welcome this proposal. We believe in the importance of being professional, thorough and sensitive when managing a privacy matter raised by customers. We believe apologising, where it is appropriate, is important in addressing a matter responsibly. We think it is important that we are not hamstrung from giving an apology where we feel it is appropriate to do so for fear of it constituting an admission of liability.</p> <p>If this law were enacted, we also support an apology being a mitigating factor to be taken into account in determining remedies.</p>	
<p>Proposal 5–4</p> <p>Evidence of an apology made by or on behalf of a person in connection with any conduct by the person is not admissible in any civil proceedings as evidence of the fault or liability of the person in connection with that matter.</p>	<p>See above.</p>	
<p>6. A Reasonable Expectation of Privacy</p>		
<p>Proposal 6–1</p>	<p>Third element of action: The new tort should only be actionable where a person in the position of the plaintiff would have had a reasonable expectation of privacy, in all of the circumstances.</p>	<p>We refer you to our previous submissions.</p> <p>The concept of a “<i>reasonable expectation of privacy</i>” could be difficult to interpret and thus create confusion. If this law were enacted, additional guidance would be needed for parties to fully appreciate this critical test. The paper refers to case law that could give guidance, which would enable flexibility as times change.</p>

Proposals and Questions	Telstra Comment
<p>Proposal 6–2</p> <p>The new Act should provide that, in determining whether a person in the position of the plaintiff would have had a reasonable expectation of privacy in all of the circumstances, the court may consider, among other things:</p> <ul style="list-style-type: none"> (a) the nature of the private information, including whether it relates to intimate or family matters, health or medical matters, or financial matters; (b) the means used to obtain the private information or to intrude upon seclusion, including the use of any device or technology; (c) the place where the intrusion occurred; (d) the purpose of the misuse, disclosure or intrusion; (e) how the private information was held or communicated, such as in private correspondence or a personal diary; (f) whether and to what extent the private information was already in the public domain; (g) the relevant attributes of the plaintiff, including the plaintiff's age and occupation; (h) whether the plaintiff consented to the conduct of the defendant; and (i) the extent to which the plaintiff had manifested a desire not to have his or her privacy invaded. 	<p>If this law were enacted:</p> <ul style="list-style-type: none"> • With regards to (f), we suggest it cover the extent to which the private information was made available by the plaintiff, in addition to being in the public domain. • With regards to (h), we support consent being implied and expressed as the paper points out. • We do not believe that (i) should be included. As the paper points out, whether someone has a manifest desire not to have privacy invaded is not relevant to whether that person's privacy has been invaded.

Proposals and Questions		Telstra Comment
7. Seriousness and Proof of Damage		
Proposal 7-1	Fourth element of action: The new Act should provide that the new cause of action is only available where the court considers that the invasion of privacy was 'serious'. The new Act should also provide that in determining whether the invasion of privacy was serious, a court may consider, among other things, whether the invasion of privacy was likely to be highly offensive, distressing or harmful to a person of ordinary sensibilities in the position of the plaintiff.	<p>We refer you to our previous submissions.</p> <p>With regards to “<i>highly offensive, distressing or harmful to a person of ordinary sensibilities in the position of the plaintiff</i>” we note that “<i>distressing or harmful</i>” is inconsistent with comparable laws in other jurisdictions, which may lead to confusion and uncertainty.</p>
Proposal 7-2	The plaintiff should not be required to prove actual damage to have an action under the new tort.	<p>We refer you to our cover letter and previous submissions.</p> <p>Consistent with our previous submissions, we believe that a person’s perception of what constitutes their “privacy” is most often a subjective consideration. For this reason, our strong view is that, should this new law be enacted, a person should be required to demonstrate an element of damage before any cause of action could exist. If an individual has suffered no damage, an alleged privacy breach should not give rise to a cause of action as a <i>serious</i> invasion of privacy.</p>
8. Balancing Privacy with Other Interests		
Proposal 8-1	Fifth element of action: The new Act should provide that the plaintiff only has a cause of action for serious invasion of privacy where the court is satisfied that the plaintiff’s interest in privacy outweighs the defendant’s interest in freedom of expression and any broader public interest. A separate public interest defence would therefore not be needed.	<p>We refer you to our cover letter and previous submissions.</p> <p>Consistent with our previous submissions, if this new law were enacted, we believe that this be an element and not a defence to ensure a sufficiently high threshold appropriate for <i>serious</i> invasions of privacy.</p>

Proposals and Questions		Telstra Comment
Proposal 8–2	<p>The new Act should include the following non-exhaustive list of public interest matters which a court may consider:</p> <ul style="list-style-type: none"> (a) freedom of expression, including political communication; (b) freedom of the media to investigate, and inform and comment on matters of public concern and importance; (c) the proper administration of government; (d) open justice; (e) public health and safety; (f) national security; (g) the prevention and detection of crime and fraud; and (h) the economic wellbeing of the country. 	<p>With regards to (f) and (g), they should be extended to include all law enforcement activities, for example investigation, prevention, detection and prosecution of crime and fraud. In addition, the protection of public revenue could also be considered.</p>
9. Forums, Limitations and Other Matters		
Proposal 9–1	Federal, state and territory courts should have jurisdiction to hear an action for serious invasion of privacy under the new Act.	We refer you to our previous submissions.
Question 9–1	If state and territory tribunals should also have jurisdiction, which tribunals would be appropriate and why?	We refer you to our previous submissions.
Proposal 9–2	The new Act should provide that the new tort be limited to natural persons.	We refer you to our previous submissions.

Proposals and Questions		Telstra Comment
Proposal 9-3	A cause of action for serious invasion of privacy should not survive for the benefit of the plaintiff's estate or against the defendant's estate.	We refer you to our previous submissions.
Proposal 9-4	A person should not be able to bring an action under the new tort after either (a) one year from the date on which the plaintiff became aware of the invasion of privacy, or (b) three years from the date on which the invasion of privacy occurred, whichever comes earlier. In exceptional circumstances the court may extend the limitation period for an appropriate period, expiring no later than three years from the date when the invasion occurred.	<p>We refer you to our previous submissions, and continue to support a limitation period of one year from the date upon which the plaintiff becomes aware of the cause of action should this new law be enacted.</p> <p>Further, if this new law were enacted, we would be concerned by the inclusion of "<i>exceptional circumstances</i>". We believe it is more desirable for issues to be dealt with swiftly and to remove incentives for claimants to delay commencing proceedings. This is in the interests of claimants (including from an evidential perspective and to reduce distress) and also removes uncertainty for defendants.</p>
Proposal 9-5	<p>The new Act should provide that, in determining any remedy, the court may take into account:</p> <p>(a) whether or not a party took reasonable steps to resolve the dispute without litigation; and</p> <p>(b) the outcome of any alternative dispute resolution process.</p>	If this new law were enacted, we would support such factors being taken into account, particularly to provide incentives for the parties to resolve issues without resort to court proceedings.
10. Defences and Exemptions		
Proposal 10-1	The new Act should provide a defence of lawful authority.	We refer you to our previous submissions on defences.
Proposal 10-2	The new Act should provide a defence for conduct incidental to the exercise of a lawful right of defence of persons or property where that conduct was proportionate, necessary and reasonable.	We refer you to our previous submissions on defences.

Proposals and Questions		Telstra Comment
Proposal 10-3	The new Act should provide for a defence of absolute privilege for publication of private information that is co-extensive with the defence of absolute privilege to defamation.	We refer you to our previous submissions on defences.
Proposal 10-4	<p>The new Act should provide for a defence of qualified privilege to the publication of private information where the defendant published matter to a person (the recipient) in circumstances where:</p> <p>(a) the defendant had an interest or duty (whether legal, social or moral) to provide information on a subject to the recipient; and</p> <p>(b) the recipient had a corresponding interest or duty in having information on that subject; and</p> <p>(c) the matter was published to the recipient in the course of giving to the recipient information on that subject.</p> <p>The defence of qualified privilege should be defeated if the plaintiff proves that the conduct of the defendant was actuated by malice.</p>	We refer you to our previous submissions on defences.
Question 10-1	Should the new Act instead provide that the defence of qualified privilege is co-extensive to the defence of qualified privilege to defamation at common law?	We refer you to our previous submissions on defences.
Proposal 10-5	The new Act should provide for a defence of publication of public documents.	We refer you to our previous submissions on defences.
Proposal 10-6	The new Act should provide for a defence of fair report of proceedings of public concern.	We refer you to our previous submissions on defences.

Proposals and Questions		Telstra Comment
Question 10-2	Should the new Act provide for a defence of necessity?	We refer you to our previous submissions on defences.
Proposal 10-7	The new Act should provide a safe harbour scheme to protect internet intermediaries from liability for serious invasions of privacy committed by third party users of their service.	<p>If a new law were enacted, we would support this proposal. We believe it is justified that “internet intermediaries” (which would include Carriage Service Providers (CSPs), Internet Service Providers (ISPs), search engines and online publishers) have full and robust protection from liability when a serious invasion of privacy is committed by users of their services, particularly when the intermediary has:</p> <ul style="list-style-type: none"> • no knowledge of the content; • no means of knowing for certain whether it constitutes a serious invasion of privacy (an internet intermediary cannot be expected to act as “judge and jury”); and /or • no reasonable means to remove the content or to ensure it is permanently removed and not re-published or cached by others. <p>Additionally, it would be inappropriate for any new law to provide incentives for claimants to pursue intermediaries. In particular in circumstances where it is difficult to identify or pursue the person who created or published the content giving rise to privacy concerns, or more cost effective or lucrative to pursue the intermediary.</p>

Proposals and Questions		Telstra Comment
<p>Question 10-3</p>	<p>What conditions should internet intermediaries be required to meet in order to rely on this safe harbour scheme?</p>	<p>See above.</p> <p>We do not support conditions attaching to protection for intermediaries. If there is a justification for any conditions, the scheme would need to ensure that any conditions imposed are realistic and technology and platform neutral.</p> <p>Some observations in relation to conditions discussed in the paper:</p> <ul style="list-style-type: none"> • Education and awareness – While education and awareness are clearly important and we heavily invest in this area, we question whether it is the role of all types of internet intermediaries and therefore question its practical role within a safe harbour scheme setting. • Provide individuals with a mechanism to remove content they post – For this type of condition to be workable, it would need to be broad and flexible so that platform operators can still have the benefit of the safe harbour scheme without having rigid operational requirements dictated to them.

Proposals and Questions		Telstra Comment
		<ul style="list-style-type: none"> • Content take down on notice – We do not believe it is the role of intermediaries to be involved in determining whether a serious invasion of privacy has occurred, which would be required if an intermediary was expected to remove content on notice of the alleged breach. Further, a number of practicalities must be considered before content take down is introduced as a condition to a safe harbour. For example: <ul style="list-style-type: none"> ○ Even if an intermediary could remove offending content, how do they prevent the user re-publishing it or prevent re-publication by another party that has cached the content? ○ What would be deemed “reasonable steps” to remove? Having expectations across all types of intermediaries will not work as the ability to remove content would differ from platform to platform
11. Remedies and Costs		
Proposal 11–1	The new Act should provide that courts may award compensatory damages, including damages for the plaintiff’s emotional distress, in an action for serious invasion of privacy.	<p>We refer you to our previous submissions.</p> <p>Consistent with our previous submissions, we do not believe damages should be awarded for emotional distress. Emotional distress without a recognised psychiatric injury is not recoverable under general torts law. It would be inconsistent to enable recovery for emotional distress in the context of a privacy breach, where a recovery for emotional distress would be not available where a physical injury has occurred. The alternative would be to award exemplary damages, a recognised concept, to compensate for egregious behaviour (refer to our comments on this below).</p>

Proposals and Questions	Telstra Comment
<p>Proposal 11–2 The new Act should set out the following non-exhaustive list of factors that may mitigate damages for serious invasion of privacy:</p> <ul style="list-style-type: none"> (a) that the defendant has made an appropriate apology to the plaintiff about the conduct that invaded the plaintiff's privacy; (b) that the defendant has published a correction of any untrue information disclosed about the plaintiff; (c) that the defendant has made an offer of amends in relation to the defendant's conduct or the harm suffered by the plaintiff; (d) that the plaintiff has already recovered compensation, or has agreed to receive compensation in relation to the conduct of the defendant; (e) that the defendant had taken reasonable steps to settle the dispute with the plaintiff in order to avoid the need for litigation; and (f) that the plaintiff had not taken reasonable steps to settle the dispute, prior to commencing or continuing proceedings, with the defendant in order to avoid the need for litigation. 	<p>We refer you to our previous submissions.</p> <p>In the event a new law were enacted, we would support the factors proposed, in particular points (a), (d) and (f).</p>

Proposals and Questions	Telstra Comment
<p>Proposal 11–3</p> <p>The new Act should set out the following non-exhaustive list of factors that may aggravate damages for serious invasion of privacy:</p> <ul style="list-style-type: none"> (a) that the plaintiff had taken reasonable steps, prior to commencing or continuing proceedings, to settle the dispute with the defendant in order to avoid the need for litigation; (b) that the defendant had not taken reasonable steps to settle the dispute with the plaintiff in order to avoid the need for litigation; (c) that the defendant’s unreasonable conduct at the time of the invasion of privacy or prior to or during the proceedings had subjected the plaintiff to special or additional embarrassment, harm, distress or humiliation; (d) that the defendant’s conduct was malicious or committed with the intention to cause embarrassment, harm, distress or humiliation to the plaintiff; and (e) that the defendant has disclosed information about the plaintiff which the defendant knew to be false or did not honestly believe to be true. 	<p>No comment.</p>
<p>Proposal 11–4</p> <p>The new Act should provide that the court may not award a separate sum as aggravated damages.</p>	<p>No comment.</p>

Proposals and Questions		Telstra Comment
Proposal 11-5	The new Act should provide that, in an action for serious invasion of privacy, courts may award exemplary damages in exceptional circumstances and where the court considers that other damages awarded would be an insufficient deterrent.	We refer you to our previous submissions. Consistent with our previous submissions, we do not support this proposal. If it were included, any exemplary damages already ordered by the Australian Privacy Commissioner should be taken into account.
Proposal 11-6	The total of any damages other than damages for economic loss should be capped at the same amount as the cap on damages for non-economic loss in defamation.	We refer you to our previous submissions. Consistent with previous submissions, we agree with the cap.
Proposal 11-7	The new Act should provide that a court may award the remedy of an account of profits.	We do not believe this is appropriate as profit should not be relevant to matters associated with privacy.
Proposal 11-8	The new Act should provide that courts may award damages assessed on the basis of a notional licence fee in respect of the defendant's conduct, in an action for serious invasion of privacy.	No comment.
Proposal 11-9	The new Act should provide that courts may award an injunction, in an action for serious invasion of privacy.	No comment.
Proposal 11-10	The new Act should provide that courts may order the delivery up and destruction or removal of material, in an action for serious invasion of privacy.	No comment.
Proposal 11-11	The new Act should provide that courts may make a correction order, in an action for serious invasion of privacy.	No comment.
Proposal 11-12	The new Act should provide that courts may make an order requiring the defendant to apologise to the plaintiff, in an action for serious invasion of privacy.	No comment.
Proposal 11-13	The new Act should provide that courts may make a declaration, in an action for serious invasion of privacy.	No comment.

Proposals and Questions		Telstra Comment
Question 11-1	What, if any, provisions should the ALRC propose regarding a court's power to make costs orders?	No comment.
12. Breach of Confidence Actions for Misuse of Private Information		
Proposal 12-1	If a statutory cause of action for serious invasion of privacy is not enacted, appropriate federal, state, and territory legislation should be amended to provide that, in an action for breach of confidence that concerns a serious invasion of privacy by the misuse, publication or disclosure of private information, the court may award compensation for the claimant's emotional distress.	We refer you to our cover letter and previous submissions. Consistent with our previous submission, we do not believe damages should be awarded for emotional distress.
Proposal 12-2	Relevant court acts should be amended to provide that, when considering whether to grant injunctive relief before trial to restrain publication of private (rather than confidential) information, a court must have particular regard to freedom of expression and any other countervailing public interest in the publication of the material.	No comment.
13. Surveillance Devices		
Proposal 13-1	Surveillance device laws and workplace surveillance laws should be made uniform throughout Australia.	We support the harmonisation of these surveillance regimes and think this would benefit both consumers and businesses. We see no obvious reason for inconsistencies between jurisdictions.
Proposal 13-2	Surveillance device laws should include a technology neutral definition of 'surveillance device'.	We support this proposal provided it does not extend the scope of the current laws.

Proposals and Questions		Telstra Comment
Proposal 13–3	Offences in surveillance device laws should include an offence proscribing the surveillance or recording of private conversations or activities without the consent of the participants. This offence should apply regardless of whether the person carrying out the surveillance is a participant to the conversation or activity, and regardless of whether the monitoring or recording takes place on private property.	No comment.
Proposal 13–4	Defences in surveillance device laws should include a defence of responsible journalism, for surveillance in some limited circumstances by journalists investigating matters of public concern and importance, such as corruption.	No comment.
Question 13–1	Should the states and territories enact uniform surveillance laws or should the Commonwealth legislate to cover the field?	We have no particular preference so long as there is consistency.
Proposal 13–5	Surveillance device laws should provide that a court may make orders to compensate or otherwise provide remedial relief to a victim of unlawful surveillance.	If needed, compensation should only be available where there is proof of actual damage, consistent with our submissions above.
Question 13–2	Should local councils be empowered to regulate the installation and use of surveillance devices by private individuals?	No comment.
14. Harassment		
Proposal 14–1	A Commonwealth harassment Act should be enacted to consolidate and clarify existing criminal offences for harassment and, if a new tort for serious invasion of privacy is not enacted, provide for a new statutory tort of harassment. Alternatively, the states and territories should adopt uniform harassment legislation.	We refer you to our previous submissions. We do not believe a new law is necessary.

Proposals and Questions	Telstra Comment
15. New Regulatory Mechanisms	
Proposal 15–1	<p>The ACMA should be empowered, where there has been a privacy complaint under a broadcasting code of practice and where the ACMA determines that a broadcaster's act or conduct is a serious invasion of the complainant's privacy, to make a declaration that the complainant is entitled to a specified amount of compensation. The ACMA should, in making such a determination, have regard to freedom of expression and the public interest.</p>
Proposal 15–2	<p>A new Australian Privacy Principle should be inserted into the <i>Privacy Act 1988</i> (Cth) that would:</p> <p>(a) require an APP entity to provide a simple mechanism for an individual to request destruction or de-identification of personal information that was provided to the entity by the individual; and</p> <p>(b) require an APP entity to take reasonable steps in a reasonable time, to comply with such a request, subject to suitable exceptions, or provide the individual with reasons for its non-compliance.</p>
Question 15–1	<p>Should the new APP proposed in Proposal 15–2 also require an APP entity to take steps with regard to third parties with which it has shared the personal information? If so, what steps should be taken?</p>

We would be concerned with any overlap between regulators, in particular between the ACMA, TIO and the Privacy Commissioner.

We oppose the introduction of a new principle primarily because of:

- issues relating to anonymity and data management are sufficiently covered within the existing APPs;
- the impracticality of such a principle and the significant burden on industry; and
- competing legal obligations, for example under the Telecommunications Consumer Protection Code (TCP) we are required to hold certain types of information for certain periods of time.

See above.

Proposals and Questions	Telstra Comment
<p>Question 15–2 Should a regulator be empowered to order an organisation to remove private information about an individual, whether provided by that individual or a third party, from a website or online service controlled by that organisation where:</p> <p>(a) an individual makes a request to the regulator to exercise its power;</p> <p>(b) the individual has made a request to the organisation and the request has been rejected or has not been responded to within a reasonable time; and</p> <p>(c) the regulator considers that the posting of the information constitutes a serious invasion of privacy, having regard to freedom of expression and other public interests.</p>	<p>We do not believe this is workable for a number of reasons, including:</p> <ul style="list-style-type: none"> • this would be out of step with other laws (for example the ACCC cannot action takedowns for misleading posts); and • the effectiveness of a takedown power in the online context needs to be carefully assessed, particularly in relation to content generated via a social media and other user generated content (UGC) context. UGC can be removed but re-posted or cached. Moreover, removal of UGC might inflame the situation and lead to more problematic content being posted.
<p>Proposal 15–3 The Privacy Act 1988 (Cth) should be amended to confer the following additional functions on the Australian Information Commissioner in relation to court proceedings relating to interferences with the privacy of an individual:</p> <p>(a) assisting the court as amicus curiae, where the Commissioner considers it appropriate, and with the leave of the court; and</p> <p>(b) intervening in court proceedings, where the Commissioner considers it appropriate, and with the leave of the court.</p>	<p>No comment.</p>