



**Australian Vice-Chancellors' Committee**  
*the council of Australia's university presidents*

**University IT Systems: Managing Liability for  
Transmitting, Caching, Hosting and Linking to  
Copyright Material**

**An AVCC Resource Paper**

**March 2007**

## **1. Introduction**

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### **1.1 This Resource Paper:**

- (a) aims to assist Universities in managing the copyright infringement risks associated with transmitting, caching, hosting and linking to third party Copyright Material;
- (b) recognises that different universities will implement appropriate measures in different ways. References to policies or other documents by name are not intended to be prescriptive as it will be the substance and efficacy of the measures taken that is important rather than the names or status given to them. Each university will need to consider whether and how best to adapt or add to or supplement its existing measures in order to address the concerns highlighted in this Paper;
- (c) aims to provide a resource for the development of procedures which would operate when universities become aware (whether by reason of being notified by copyright owners or otherwise) that University Systems are being, or may be, used to transmit, cache, host or link to Infringing Material;
- (d) recognises the educational and research need of Universities to provide internet access and services and that they will rightly continue to expand their capabilities as service providers. It also recognises that the primary purpose of a University in making available University Systems to Authorised Users is not a profit purpose and that any measures designed to secure compliance with the Act should not impose disproportionate cost or other resource burdens on that University. Accordingly, this Paper does **not** suggest or recommend that Universities should take on investigation, monitoring or training roles or obligations. Rather, the emphasis is on having appropriate policies and terms of use, bringing them and the University's determination to secure compliance to the attention of Authorised Users, and to developing workable approaches to responding to and investigating complaints and to disciplining offenders.

### **1.2 Applicability of the Copyright Act safe harbour provisions to Universities**

The Act includes a safe harbour regime which applies to Carriage Service Providers. As most Universities are not Carriage Service Providers<sup>1</sup>, these legislative safe harbour provisions **do not** apply to them. (This may change – the Act may be amended to bring Universities within the safe harbour provisions. The AVCC will notify Universities if and when this occurs).

Notwithstanding this, individual Universities might choose to conduct themselves as though they were covered by the safe harbour regime. In order to assist Universities in this regard, Annexure A to this Resource Paper contains a detailed description of the safe harbour scheme and the conditions which must be complied with in order for Carriage Service Providers to get the benefit of that scheme.

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<sup>1</sup> The exception is the University of Queensland

## 1.3 Caching exception for educational institutions

The *Copyright Amendment Act 2006*, which amended the *Copyright Act 1968* with effect from 1 January 2007, contains at s 200AAA a new proxy caching exception for educational institutions. The AVCC and other educational sector groups had requested that the government clarify the status of proxy caching by educational institutions following suggestions by Copyright Agency Limited that universities and schools should be required to remunerate copyright owners for the activity of proxy caching.

The new exception applies if:

- (a) a **computer system** (or network) is operated by or on behalf of a body administering an educational **institution**; and
- (b) the **system** is operated **primarily to enable staff and students of the institution to use the system to gain online access for educational purposes to works** and other subject-matter (whether they are made available online using the Internet or merely the **system**); and
- (c) the **system automatically** makes:
  - (i) **temporary electronic reproductions** of **works** made available online through the **system** to users of the **system** in response to **action** by the users; and
  - (ii) **temporary electronic copies** of other subject-matter made available online through the **system** to users of the **system** in response to **action** by the users; and
- (d) those reproductions and copies are made by the **system merely to facilitate efficient later access to the works and other subject-matter** by users of the **system**.

If these conditions are met, copyright in a **work** or other subject-matter reproduced or copied by the **system** as described above is not infringed by either the reproduction or **copying** or the later communication of the **work** or other subject-matter, using that reproduction or **copy**, to a user of the **system**.

While the Act contains no guidance as to what amounts to a "temporary" reproduction or copy, the clear legislative intention was that the exception apply to caching of a kind (eg proxy caching) which arguably falls outside of the temporary copy exception contained in s 43A of the Act.

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## 2. Terminology and interpretation

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### 2.1 In this Paper:

“**Act**” means the Copyright Act, 1968, as amended from time to time.

“**Authorised User**” means and includes all staff, students, clinical and adjunct title holders, alumni and other users who are authorised by a University to use its systems or network to access the internet.

**"Carriage Service Provider"** means a Carriage Service Provider within the meaning of the *Telecommunications Act 1997*.

**"Copyright Material"** means all works, and subject matter other than works, protected by copyright under the Act.

**"Designated Representative"** means the person referred to at paragraph 3 of this paper.

**"Infringing Material"** means any material which infringes copyright within the meaning of the Act and which has been reproduced or communicated by an Authorised User, using University Systems. Where that material is part of a larger work or compilation or other subject matter then only that part which infringes copyright is "Infringing Material" for the purpose of this Paper.

**"Rights Holder"** means an owner or exclusive licensee of a relevant copyright under the Act.

**"Take Down Notice"** means a means a notice, whether or not in the form prescribed in Copyright Regulations, issued by or on behalf of a Rights Holder to a University:

- (a) signed by or on behalf of the Rights Holder;
- (b) identifying the Copyright Material claimed to have been infringed;
- (c) identifying the allegedly Infringing Material to be removed, or to which access is to be disabled, including its location (i.e. URL address, IP address or network address);
- (d) containing information reasonably sufficient to permit the University to contact the Rights Holder; and
- (e) containing a statement by an appropriate authorised officer or employee of the Rights Holder (or otherwise implying), that the Rights Holder has a good faith belief held on reasonable grounds that there has been a reproduction or communication of the allegedly Infringing Material by an Authorised User which is not authorised by the copyright owner or its exclusive licensee.

**"University"** means a university whose Vice-Chancellor, President or equivalent is a member of AVCC from time to time.

**"University Systems"** means the IT systems, equipment, software, file distribution programs or services, and other IT services (including internet access services) or infrastructure made available by a University.

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### 3. Designated Representative

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- 3.1 It is suggested that each University appoint a person ("Designated Representative") to be the University's representative to receive notifications, notices etc from third parties in relation to content transmitted, cached, hosted or referred to on the University System.
- 3.2 It is suggested that each University publish a notice in a reasonably prominent location on its website setting out the following information:
- (a) the title of the position of the Designated Representative; and
  - (b) sufficient information to allow a person to contact the Designated Representative, including:
    - (i) an electronic mail address;
    - (ii) a postal address; and
    - (iii) if available, a telephone number and/or fax number.
- 3.3 The Designated Representative's details might be appropriately publicized as a point of contact for staff, students and others to report suspected intellectual property infringements.

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### 4. Use policies for Authorised Users

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- 4.1 It is suggested that Universities develop, implement and update appropriate policies designed (but obviously not guaranteed) to deter and prevent Authorised Users from using University Systems to infringe or facilitate the infringement of copyright in Copyright Material and to inform them of their obligations under those policies and of the serious consequences of non-compliance.
- 4.2 A University that provides internet access or hosting facilities or services to its Authorised Users should consider including as part of an internet usage or similar policy:
- (a) the regular provision to all Authorised Users of appropriate information, in written or electronic form, about copyright, and its copyright compliance policies;
  - (b) a requirement that all Authorised Users confirm (whether by a "Click to Agree" mechanism or through an enrolment or subscription process or by using any of a number of other possible means):
    - (i) that they have read the relevant usage terms and policies, and agree to comply with them; and
    - (ii) that they acknowledge that the University may collect or receive personal information of an Authorised User in the course of managing the

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operation and use of University Systems and that that information can be used in connection with efforts to ensure that their use and that of other Authorised Users complies with all relevant laws and University policies; and

- (c) a clear expression of the University's intention to secure compliance with its policies in this area and to impose appropriate sanctions on offenders.

4.3 It is suggested that a University also:

- (a) communicate the terms and nature of all relevant copyright compliance policies and terms of usage of University Systems (as amended from time to time) to its employees (whether or not Authorised Users); and
- (b) provide all staff and students with a clear mechanism for reporting suspected intellectual property infringements involving the use of University Systems to the University.

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## 5. Facilities Management Practices

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5.1 Subject to appropriate exceptions which might include (but are not limited to) those outlined below, it is suggested that a University provide a means (eg password protected access) to regulate access to the internet using University Systems by all Authorised Users. This would involve access only being provided to individual identifiable Authorised Users (as opposed to generic access) and procedures being in place to verify Authorised User identification. One aim of these measures is to enable the University, once it is established that some act took place using University Systems or internet access provided by them, to identify the Authorised User who did or caused the act. Exceptions may arise in a range of circumstances including:

- (a) the use of specialised equipment, such as TCP/IP video conferencing units, where there is no meaningful login process;
- (b) kiosk applications, in which a computer provides access to a limited range of information web pages;
- (c) limited function computers being made available in libraries for searching the catalogue and to access licensed online research materials; and
- (d) demonstration sites where prospective students can "sample" online and flexible delivery of courses.

5.2 It is suggested that a University maintain records containing personally identifiable information in respect of each Authorised User in accordance with its usual standards and procedures for data retention. There may be exceptions, such as where periodic access accounts (secure from the rest of the network) are created for conference attendees and users of public library facilities, where it is appropriate for the University to choose not to retain any record of the user for the future.

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5.3 If, in the course of any systems management monitoring of network traffic, filtering that traffic, using file detection technologies, or exercising any other network or systems management capability a University detects files which include Infringing Material, it is suggested that the University have in place procedures designed to bring this to the attention of the Designated Representative so that the question of whether or not any take down procedures should be triggered can be considered by the University.

5.4 It is also suggested that the University draw attention to copyright compliance messages in relevant University websites or pages which it decides are appropriate for this purpose, and at the location of relevant facilities. Relevant websites or pages will have a focus and audience within the University (including Authorised Users) and would not usually include sites and pages with a significant external focus or audience. These messages might include one or more of the following: (a) compliance notices on the page which first appears when an Authorised User logs in to a workstation; (b) prominent educational notices on any sites on its servers where the University is aware that users have in the past posted infringing software, music, photographs, videos, movies or other content; (c) compliance notices at physical facilities where computer workstations are made available for use including computer labs.

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## 6. Investigating and responding to Take Down Notices and other copyright complaints and demands

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6.1 Each University should develop and implement an internal procedure for responding to Take Down Notices and other complaints and demands from copyright owners, and reports from other sources, that University Systems are being used to transmit, cache, host or link to Infringing Material or allegedly Infringing Material. Such complaints etc may relate to material posted on websites, mp3 music files or mpeg movie files kept on searchable computer hard drives, or to Copyright Material which is traded, available or reproduced using University Systems or connections to University Systems in other ways and formats. They may also relate to cached Copyright Material where the material has been removed, or access to it has been disabled, at the originating site.

6.2 Take Down Notices, complaints and demands etc should, regardless of who has received them, be directed at first instance to the Designated Representative. The Designated Representative will not necessarily be the same person who investigates allegedly infringing postings on websites and the like which will typically need both legal and IT expertise. This investigation and validation process will need to be able to take place quickly. For this reason, identifying the group involved in investigation, and any processes or approvals that they need to follow before they can make any determination to take down or disable Infringing Material, is important.

6.3 It is suggested that if the Designated Representative receives a Take Down Notice which is or appears to be issued in accordance or substantially in accordance with the form prescribed in the *Copyright Regulations* 1969, the University expeditiously remove or disable access to the Copyright Material which is the subject of the Notice *prior* to properly assessing its position and deciding whether

to challenge the Notice. (Note: the form of Notices prescribed in the *Copyright Regulations* are attached at Annexure B to this Resource Paper.)

- 6.4 It is suggested that if the University is notified by any other means (whether by the Rights Holder or any other person) of facts and circumstances that make it apparent that the material which it is hosting or linking to is *likely* to be Infringing Material, it expeditiously remove or disable access to the material *prior* to properly assessing its position and deciding whether to continue hosting or linking to the material.
- 6.5 Demands and notices addressed to faculty staff, off campus locations (eg CRCs) and the like will need to be dealt with in a way which ensures that they are quickly and properly investigated and acted upon. Redirecting them to the Designated Representative is one way to achieve this.
- 6.6 Where a University removes or disables access to material in response to a Take Down Notice or the like it should consider retaining a copy of the files the subject of the notice. It should also consider whether the Authorised User(s) involved and those who make decisions about the commencement of relevant disciplinary proceedings or other application of sanctions need to be notified of the decision.
- 6.7 A University should ensure that any internal take down procedure leaves it free to dispute any Take Down Notice (by notice to the Rights Holder) on any available ground, including that the Rights Holder has not established to the University's satisfaction that:
- (a) it (rather than the University or an employee of the University or some other person) is an owner or exclusive licensee of any relevant copyright in relation to the alleged Infringing Material; or
  - (b) the alleged Infringing Material has been reproduced or communicated or otherwise used or dealt with by an Authorised User in any way which infringes any relevant copyright.

In investigating any allegation in a Take Down Notice a University will need to consider whether the reproduction or communication or other use or dealing in the relevant Copyright Material was pursuant to an express or statutory licence, or a fair dealing or other exception under the Act, and it may need to speak to the Authorised User for this or other reasons connected with the allegation and its investigation.

- 6.8 If there is a dispute relating to a Take Down Notice that cannot be resolved by discussion and negotiation between the relevant Rights Holder and the University then a University may wish to keep an appropriate record of its position by advising the Rights Holder in writing of the terms of the dispute and **should** in any case retain a preservation copy of the files the subject of the dispute.

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## 7. University identification of infringing material

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- 7.1 Where a University becomes aware other than by means of a Take Down Notice or notification by a third party that the University System is being used to host or link to Infringing Material, it is suggested that the University take all steps that it would

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take under its take down procedure if it had received a Take Down Notice from a relevant Rights Owner in connection with the same activity. This would not include any obligation to identify or contact the relevant Rights Owner or to let them know of the conduct in question or the steps taken by the University in response.

- 7.2 Where a University becomes aware of facts or circumstances that make it apparent that material which is being hosted on or linked to from the University System is *likely* to be Infringing Material, it is suggested that the University take all steps that it would take under its take down procedure if it had received a Take Down Notice from a relevant Rights Owner in connection with the same activity pending an opportunity to consider more fully whether or not the material is in fact Infringing Material. This would not include any obligation to identify or contact the relevant Rights Owner or to let them know of the conduct in question or the steps taken by the University in response.

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## 8. Sanctions

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- 8.1 A University should ensure that it is able to impose a range of appropriate sanctions against those who contravene its relevant policies or usage terms. Those sanctions may be pursuant to formal disciplinary procedures and/or pursuant to the terms upon which access to and use of University Systems is granted.
- 8.2 Given that a University must manage the risks arising from its ownership and operation of University Systems, it will need to have the ability to act flexibly and quickly in many cases. Disciplinary proceedings which require the proof of misconduct or of copyright infringement by a student or staff member may not always be appropriate. One option would be to reserve formal disciplinary proceedings for repeat offenders and serious infringements (eg commercial piracy) which equate to misconduct of a deliberate character. In parallel a University could also have terms of access and use which allow it to take a variety of steps from the giving of warnings to temporary suspensions of access if it concludes that there is any non-compliance or likely non-compliance with its policies/user terms. In cases where warnings are given Universities might consider a period during which they do some monitoring of the use of University Systems by the person in question to check for additional infringing activity. This would be made known to the offender and the possibility of such a sanction made known more generally.
- 8.3 It will be important that when Universities become aware of non-compliance with policies in this area that they do take appropriate action. Students and staff should become aware through news of such actions that the University has both the power to impose sanctions and the resolve to do so in appropriate cases. It is suggested that any review in this area considers whether there is an appropriate range of disciplinary processes and sanctions, whether the "offences" are defined in terms that make them unnecessarily difficult or time-consuming to prove or otherwise put too high an onus on the University, how quickly they could be actioned in relatively straightforward cases, and whether they are also appropriate for more serious or repeat offenders.

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## ANNEXURE A

### The Copyright Act Carriage Service Provider Safe Harbour and Notice and Take-Down Provisions

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#### 1. What activities does the safe harbour scheme apply to?

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**Transmitting:** a carriage service provider carries out a *Category A activity* by providing facilities or services for transmitting, routing or providing connections for copyright material, or the intermediate and transient storage of copyright material in the course of transmission, routing or provision of connections.

**Automatic caching:** a carriage service provider carries out a *Category B activity* by caching copyright material through an automatic process. The carriage service provider must not manually select the copyright material for caching.

**Hosting:** a carriage service provider carries out a *Category C activity* by storing, at the direction of a user, copyright material on a system or network controlled or operated by or for the carriage service provider.

**Linking:** a carriage service provider carries out a *Category D activity* by referring users to an online location using information location tools or technology.

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#### 2. What are the limitations on liability?

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It is a condition of obtaining the benefit if the limitations on liability that a carriage service provider satisfy the relevant conditions which are set out in paragraph 3 below.

##### General limitation

For infringements of copyright that occur in the course of carrying out any of the activities to which the safe harbour applies, a court must not grant relief against a carriage service provider that consists of:

- (a) damages or an account of profits; or
- (b) additional damages; or
- (c) other monetary relief.

### Category specific limitations

For an infringement of copyright that occurs in the course of the carrying out of a Category A activity, the relief that a court may grant against a carriage service provider is limited to one or more of the following orders:

- (a) an order requiring the carriage service provider to take reasonable steps to disable access to an online location outside Australia;
- (b) an order requiring the carriage service provider to terminate a specified account.

For an infringement of copyright that occurs in the course of the carrying out of a Category B, C or D activity, the relief that a court may grant against a carriage service provider is limited to one or more of the following orders:

- (a) an order requiring the carriage service provider to remove or disable access to infringing copyright material, or to a reference to infringing copyright material;
- (b) an order requiring the carriage service provider to terminate a specified account;
- (c) some other less burdensome but comparably effective non-monetary order if necessary.

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## 3. What are the conditions for each of the categories of activity?

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Activity	Conditions
All categories	<ol style="list-style-type: none"><li>1. The carriage service provider must adopt and reasonably implement a policy that provides for termination, in appropriate circumstances, of the accounts of repeat infringers.</li><li>2. If there is a relevant industry code in force—the carriage service provider must comply with the relevant provisions of that code relating to accommodating and not interfering with standard technical measures used to protect and identify copyright material.</li></ol>
Category A (transmission)	<ol style="list-style-type: none"><li>1. Any transmission of copyright material in carrying out this activity must be initiated by or at the direction of a person other than the carriage service provider.</li><li>2. The carriage service provider must not make substantive modifications to copyright material transmitted. This does not apply to modifications made as part of a technical process.</li></ol>
Category B (automatic caching)	<ol style="list-style-type: none"><li>1. If the copyright material that is cached is subject to conditions on user access at the originating site, the carriage service provider must ensure that access to a significant part of the cached copyright material is</li></ol>

	<p>permitted only to users who have met those conditions.</p> <p>2. If there is a relevant industry code in force—the carriage service provider must comply with the relevant provisions of that code relating to:</p> <ul style="list-style-type: none"> <li>(a) updating the cached copyright material; and</li> <li>(b) not interfering with technology used at the originating site to obtain information about the use of the copyright material.</li> </ul> <p>3. The service provider must expeditiously remove or disable access to cached copyright material upon notification in the prescribed form that the material has been removed or access to it has been disabled at the originating site.</p> <p>4. The carriage service provider must not make substantive modifications to the cached copyright material as it is transmitted to subsequent users. This does not apply to modifications made as part of a technical process.</p>
<p>Category C (hosting)</p>	<p>1. The carriage service provider must not receive a financial benefit that is directly attributable to the infringing activity if the carriage service provider has the right and ability to control the activity.</p> <p>2. The carriage service provider must expeditiously remove or disable access to copyright material residing on its system or network upon receipt of a notice in the prescribed form that the material has been found to be infringing by a court.</p> <p>2A. The Carriage Service Provider must act expeditiously to remove or disable access to copyright material residing on its system or network if the carriage service provider:</p> <ul style="list-style-type: none"> <li>(a) becomes aware that the material is infringing; or</li> <li>(b) becomes aware of facts or circumstances that make it apparent that the material is likely to be infringing.</li> </ul> <p>3. The carriage service provider must comply with the <i>prescribed procedure*</i> in relation to removing or disabling access to copyright material residing on its system or network.</p>

Category D (linking)	<ol style="list-style-type: none"> <li>1. The carriage service provider must not receive a financial benefit that is directly attributable to the infringing activity if the carriage service provider has the right and ability to control the activity.</li> <li>2. The carriage service provider must expeditiously remove or disable access to a reference residing on its system or network upon receipt of a notice in the prescribed form that the copyright material to which it refers has been found to be infringing by a court.</li> <li>2A. The Carriage Service Provider must act expeditiously to remove or disable a reference residing on its system or network if the carriage service provider: <ol style="list-style-type: none"> <li>(a) becomes aware that the copyright material to which it refers is infringing; or</li> <li>(b) becomes aware of facts or circumstances that make it apparent that the copyright material to which it refers is likely to be infringing.</li> </ol> </li> <li>3. The carriage service provider must comply with the <i>prescribed procedure</i>* in relation to removing or disabling a reference residing on its system or network.</li> </ol>
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\*The reference to the prescribed procedure is a reference to the **notice and take-down** scheme which is contained in the *Copyright Regulations 1969* ("the Regulations") and discussed in paragraph 4 below.

The Regulations also require CSP's to appoint a Designated Representative to receive notifications and notices issued under the safe harbour provisions. The CSP must publish a notice in a reasonably prominent location on its website setting out:

- (a) the title of the position of the Designated Representative; and
- (b) sufficient information to allow a person to contact the Designated Representative, including:
  - (i) an electronic mail address;
  - (ii) a postal address; and
  - (iii) if available, a telephone number or fax number, or both.

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#### **4. How does the notice and take-down regime operate?**

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The Government has released draft Regulations which set out the notice and take-down scheme which will apply from 1 January 2005. Almost certainly, these will undergo further amendment before they come into force. The reason for this is that the current draft does not take into account the last minute amendments to the safe harbour scheme contained in the *Copyright Legislation Amendment Act 2004*. The AVCC will update this document to take account of the Regulations once they are introduced.

## Annexure B – prescribed form of Take Down Notices

### COPYRIGHT REGULATIONS 1969 - SCHEDULE 10

#### Forms for Part 3A

(regulations 20E, 20F, 20I, 20K, 20Q and 20T)

Part 1 Form of notification in relation to cached [copyright material](#)

#### COMMONWEALTH OF AUSTRALIA

#### *Copyright Regulations 1969*

#### NOTIFICATION THAT CACHED [COPYRIGHT MATERIAL](#) HAS BEEN REMOVED OR ACCESS HAS BEEN DISABLED AT THE ORIGINATING SITE

TO [ *name of carriage service provider* ]

1. I, the person whose name is stated below, issue this notification for the purposes of condition 3 of item 3 of the table in [subsection 116AH](#) (1) of the [Copyright Act 1968](#) and regulation 20E of the *Copyright Regulations 1969*.
2. I am the \*owner/\*agent of the [owner](#) of the copyright in the cached [copyright material](#) specified in the Schedule (the *specified cached copyright material*).
3. I believe, in good faith, that the specified cached [copyright material](#) has been removed, or access to it has been disabled, at the originating site.
4. I have taken reasonable steps to ensure that the information and statements in this notification are accurate.

NAME OF \*OWNER/\*AGENT OF [OWNER](#):

ADDRESS:

TELEPHONE NUMBER:

FAX NUMBER:

E-MAIL ADDRESS:

[ *signature* ]

\*Owner/\*Agent of [owner](#)

#### SCHEDULE

DESCRIPTION OF CACHED [COPYRIGHT MATERIAL](#): [ *insert sufficient information to enable the carriage service provider to identify the cached [copyright material](#) that has been removed, or to which access has been disabled, at the originating site* ]

INFORMATION ABOUT THE ORIGINATING SITE: [ *insert sufficient information to enable the carriage service provider to identify the originating site from which the cached [copyright material](#) has been removed or at which access has been disabled* ]

DESCRIPTION OF CACHED [COPYRIGHT MATERIAL](#) ON CARRIAGE SERVICE PROVIDER'S [SYSTEM OR NETWORK](#): [ *insert sufficient information to enable the carriage*

service provider to identify the cached [copyright material](#) on its [system or network](#) that is to be removed, or to which access is to be disabled ]

\* *Omit if inapplicable*

*Note 1* Strict compliance with this form is not required and substantial compliance is sufficient -- see [section 25C](#) of the [Acts Interpretation Act 1901](#) .

*Note 2* If this notification is issued by electronic communication, the requirement to sign the notification is taken to have been met if the method described in subregulation 20D (2) of the *Copyright Regulations 1969* is used.

*Note 3* An [action](#) for a civil remedy may be brought by a person who suffers loss or damage because of a material representation made knowingly in this notification -- see regulation 20X of the *Copyright Regulations 1969* . In addition, it is an offence under the *Criminal Code* to issue this notification knowing that it is false or misleading in a material particular -- see section 137.2 of the *Criminal Code* .

Part 2 Form of notice in relation to [copyright material](#) found to be infringing by an Australian court

COMMONWEALTH OF AUSTRALIA

*Copyright Regulations 1969*

NOTICE RELATING TO [COPYRIGHT MATERIAL](#) THAT HAS BEEN FOUND TO BE INFRINGING BY AN AUSTRALIAN COURT

TO [ *name of carriage service provider* ]

1. I, the person whose name is stated below, issue this notice for the purposes of:

\*condition 2 of item 4 of the table in subsection 116AH (1) of the [Copyright Act 1968](#) and regulation 20F of the *Copyright Regulations 1969* .

OR

\*condition 2 of item 5 of the table in [subsection 116AH](#) (1) of the [Copyright Act 1968](#) and regulation 20F of the *Copyright Regulations 1969* .

2. I am the \*owner/\*agent of the [owner](#) of the [copyright material](#) specified in the Schedule (the *specified copyright material* ), being:

\*copyright material residing on your [system or network](#).

OR

\*copyright material to which you have provided a reference on your [system or network](#).

3. I believe, in good faith, that the specified [copyright material](#) has been found to be infringing by an Australian court.

4. I have taken reasonable steps to ensure that the information and statements in this notice are accurate.

NAME OF \*OWNER/\*AGENT OF [OWNER](#):

ADDRESS:

TELEPHONE NUMBER:

FAX NUMBER:

E-MAIL ADDRESS:

[ *signature* ]

\*Owner/\*Agent of [owner](#)

SCHEDULE

DESCRIPTION OF [COPYRIGHT MATERIAL](#): [ *insert sufficient information to enable the carriage service provider to identify the [copyright material](#) that has been found to be infringing by an Australian court* ]

LOCATION OF [COPYRIGHT MATERIAL](#) RESIDING ON CARRIAGE SERVICE PROVIDER'S [SYSTEM OR NETWORK](#) OR REFERENCE TO [COPYRIGHT MATERIAL](#) PROVIDED BY

CARRIAGE SERVICE PROVIDER ON ITS **SYSTEM OR NETWORK**: [ insert sufficient information to enable the carriage service provider to locate on its [system or network](#) the [copyright material](#) that has been found to be infringing by an Australian court, or the reference provided by the carriage service provider on its [system or network](#) to [copyright material](#) that has been found to be infringing by an Australian court ]

\* Omit if inapplicable

*Note 1* Strict compliance with this form is not required and substantial compliance is sufficient -- see [section 25C](#) of the [Acts Interpretation Act 1901](#) .

*Note 2* If this notice is issued by electronic communication, the requirement to sign the notice is taken to have been met if the method described in subregulation 20D (2) of the [Copyright Regulations 1969](#) is used.

*Note 3* An [action](#) for a civil remedy may be brought by a person who suffers loss or damage because of a material representation made knowingly in this notice -- see regulation 20X of the [Copyright Regulations 1969](#) . In addition, it is an offence under the [Criminal Code](#) to issue this notice knowing that it is false or misleading in a material particular -- see section 137.2 of the [Criminal Code](#) .

Part 3 Form of notice of claimed infringement by [owner](#) or agent -- [copyright material](#)

COMMONWEALTH OF AUSTRALIA

*Copyright Regulations 1969*

NOTICE OF CLAIMED INFRINGEMENT OF COPYRIGHT BY COPYRIGHT [OWNER](#)  
OR AGENT --  
[COPYRIGHT MATERIAL](#)

TO [ *name of carriage service provider* ]

1. I, the person whose name is stated below, issue this notice for the purposes of condition 3 of item 4 of the table in subsection 116AH (1) of the [Copyright Act 1968](#) and regulation 20I of the *Copyright Regulations 1969* .

2. I am the \*owner/\*agent of the [owner](#) of the copyright in the [copyright material](#) specified in the Schedule (the *specified [copyright material](#)* ), being [copyright material](#) residing on your [system or network](#).

*Omit the following paragraph if this notice is being completed by the agent of the copyright [owner](#).*

\*3. I believe, in good faith, that the storage of the specified [copyright material](#) on your [system or network](#) is not authorised by me or a licensee, or the [Copyright Act 1968](#) , and is therefore an infringement of the copyright in that material.

*Omit the following paragraph if this notice is being completed by the copyright [owner](#).*

\*3. I believe, in good faith, that the storage of the specified [copyright material](#) on your [system or network](#) is not authorised by the copyright [owner](#) or a licensee of the copyright [owner](#), or the [Copyright Act 1968](#) , and is therefore an infringement of the copyright in that material.

4. I have taken reasonable steps to ensure that the information and statements in this notice are accurate.

NAME OF \*OWNER/\*AGENT OF [OWNER](#):

ADDRESS:

TELEPHONE NUMBER:

FAX NUMBER:

E-MAIL ADDRESS:

[ *signature* ]

\*Owner/\*Agent of [owner](#)

SCHEDULE

DESCRIPTION OF [COPYRIGHT MATERIAL](#): [ *insert sufficient information to enable the carriage service provider to identify the [copyright material](#) in respect of which the infringement is claimed* ]

LOCATION OF [COPYRIGHT MATERIAL](#) RESIDING ON CARRIAGE SERVICE PROVIDER'S SYSTEM: [ *insert sufficient information to enable the carriage service provider to locate on its [system or network](#) the [copyright material](#) in respect of which the infringement is claimed* ]

\* *Omit if inapplicable*

*Note 1* Strict compliance with this form is not required and substantial compliance is sufficient -- see [section 25C](#) of the [Acts Interpretation Act 1901](#) .

*Note 2* If this notice is issued by electronic communication, the requirement to sign the notice is taken to have been met if the method described in subregulation 20D (2) of the *Copyright Regulations 1969* is used.

*Note 3* An [action](#) for a civil remedy may be brought by a person who suffers loss or damage because of a material representation made knowingly in this notice -- see regulation 20X of the *Copyright Regulations 1969* . In addition, it is an offence under the *Criminal Code* to issue this notice knowing that it is false or misleading in a material particular -- see section 137.2 of the *Criminal Code* .

Part 4 Form of counter-notice in response to notice of claimed infringement by owner or agent

COMMONWEALTH OF AUSTRALIA

*Copyright Regulations 1969*

COUNTER-NOTICE IN RESPONSE TO  
NOTICE OF CLAIMED INFRINGEMENT OF COPYRIGHT BY COPYRIGHT OWNER  
OR AGENT

TO [ *name of carriage service provider* ]

1. I, the individual or body corporate whose name is stated below, having received a copy of a notice of claimed infringement from you under regulation 20J of the *Copyright Regulations 1969* in relation to the copyright material specified in the Schedule (the *specified copyright material*), issue this counter-notice for the purposes of condition 3 of item 4 of the table in subsection 116AH (1) of the *Copyright Act 1968* and regulation 20K of the *Copyright Regulations 1969*.
2. I am the user who directed you to store the specified copyright material on your system or network.
3. I believe, in good faith on the grounds set out in paragraph 4, that the notice of claimed infringement was issued because of:
  - \*(a) a mistake as to fact or law in relation to the specified copyright material; or
  - \*(b) a mistake in identifying the specified copyright material.
4. The grounds for my belief in the statement in paragraph 3 are as follows:  
[ *state the grounds* ]

*Omit the following paragraph if the user does NOT live in, or carry on a business in, Australia .*

- \*5. I agree to comply with the orders of a court having jurisdiction in the place where I live or undertake my business, being a place in Australia .

*Omit the following paragraph if the user lives in, or carries on a business in, Australia .*

- \*5. I agree to comply with the orders of a court having jurisdiction in a place in Australia where you, the carriage service provider, are located and where an action for infringement of the copyright in the specified copyright material could be brought.
6. I will accept service of process in any action for infringement of the copyright in the specified copyright material.
7. I have taken reasonable steps to ensure that the information and statements in this counter-notice are accurate.

NAME OF \*INDIVIDUAL/\*BODY CORPORATE:

ADDRESS:

TELEPHONE NUMBER:

FAX NUMBER:

E-MAIL ADDRESS:

[ signature ]

[User](#)

## SCHEDULE

DESCRIPTION OF [COPYRIGHT MATERIAL](#): [ insert sufficient information to enable the carriage service provider to identify the [copyright material](#) in respect of which the infringement is claimed ]

LOCATION OF [COPYRIGHT MATERIAL](#) ON CARRIAGE SERVICE PROVIDER'S [SYSTEM OR NETWORK](#): [ insert sufficient information to enable the carriage service provider to identify where on its [system or network](#) the [copyright material](#) in respect of which the infringement is claimed was stored ]

\* Omit if inapplicable

*Note 1* Strict compliance with this form is not required and substantial compliance is sufficient -- see [section 25C](#) of the [Acts Interpretation Act 1901](#) .

*Note 2* A counter-notice must be issued to the carriage service provider's [designated representative](#) within 3 months after the [user](#) receives the notice of claimed infringement to which the counter-notice relates.

*Note 3* If this counter-notice is issued by electronic communication, the requirement to sign the counter-notice is taken to have been met if the method described in subregulation 20D (2) of the [Copyright Regulations 1969](#) is used.

*Note 4* An [action](#) for a civil remedy may be brought by a person who suffers loss or damage because of a material representation made knowingly in this counter-notice -- see regulation 20X of the [Copyright Regulations 1969](#) . In addition, it is an offence under the [Criminal Code](#) to issue this counter-notice knowing that it is false or misleading in a material particular -- see section 137.2 of the [Criminal Code](#) .

*Note 5* As soon as practicable after the carriage service provider receives this counter-notice, the carriage service provider must send a copy of it to the copyright [owner](#) or agent, together with a notice stating that if the [owner](#) or agent does not, within 10 working days after the date the notice was sent, bring an [action](#) seeking a court order to restrain [the activity](#) that is claimed to be infringing, the carriage service provider will restore, or enable access to, the [copyright material](#) on its [system or network](#) -- see regulation 20L of the [Copyright Regulations 1969](#) .

*Note 6* Information that could identify a [user](#) who is an individual may be disclosed by the carriage service provider in the copy of this counter-notice or the notice referred to in Note 5 sent to the copyright [owner](#) or agent if the disclosure is consistent with the [Telecommunications Act 1997](#) and the [Privacy Act 1988](#) . However, if the carriage service provider is required by a court to disclose identifying information about a [user](#) who is an individual, the information must be disclosed.

Part 5 Form of counter-notice in response to takedown of [copyright material](#) other than following notice by [owner](#) or agent

COMMONWEALTH OF AUSTRALIA

*Copyright Regulations 1969*

COUNTER-NOTICE IN RESPONSE TO TAKEDOWN OF [COPYRIGHT MATERIAL](#) OTHER THAN FOLLOWING NOTICE BY COPYRIGHT [OWNER](#) OR AGENT

TO [ *name of carriage service provider* ]

1. I, the individual or body corporate whose name is stated below, having received a notice from you under regulation 20P of the *Copyright Regulations 1969* in relation to the [copyright material](#) specified in the Schedule (the *specified copyright material*), issue this counter-notice for the purposes of condition 3 of item 4 of the table in subsection 116AH (1) of the *Copyright Act 1968* and regulation 20Q of the *Copyright Regulations 1969*.
2. I am the [user](#) who directed you to store the specified [copyright material](#) on your [system or network](#).
3. I believe, in good faith on the grounds set out in paragraph 4, that you have removed, or disabled access to, the specified [copyright material](#) because of:
  - \*(a) a mistake as to fact or law in relation to the specified [copyright material](#); or
  - \*(b) a mistake in identifying the specified [copyright material](#).
4. The grounds for my belief in the statement in paragraph 3 are as follows:  
[ *state the grounds* ]
5. I have taken reasonable steps to ensure that the information and statements in this counter-notice are accurate.

NAME OF \*INDIVIDUAL/\*BODY CORPORATE:

ADDRESS:

TELEPHONE NUMBER:

FAX NUMBER:

E-MAIL ADDRESS:

[ *signature* ]

[User](#)

SCHEDULE

DESCRIPTION OF [COPYRIGHT MATERIAL](#): [ *insert sufficient information to enable the carriage service provider to identify the [copyright material](#) that has been removed, or to which access has been disabled* ]

LOCATION OF [COPYRIGHT MATERIAL](#) ON CARRIAGE SERVICE PROVIDER'S [SYSTEM OR NETWORK](#): [ *insert sufficient information to enable the carriage service provider to identify where on its [system or network](#) the [copyright material](#) that has been removed, or to which access has been disabled, was stored* ]

\* *Omit if inapplicable*

*Note 1* Strict compliance with this form is not required and substantial compliance is sufficient -- see [section 25C](#) of the [Acts Interpretation Act 1901](#) .

*Note 2* A counter-notice must be issued to the carriage service provider's [designated representative](#) within 3 months after the [user](#) receives the notice to which the counter-notice relates.

*Note 3* If this counter-notice is issued by electronic communication, the requirement to sign the counter-notice is taken to have been met if the method described in subregulation 20D (2) of the *Copyright Regulations 1969* is used.

*Note 4* An [action](#) for a civil remedy may be brought by a person who suffers loss or damage because of a material representation made knowingly in this counter-notice -- see regulation 20X of the *Copyright Regulations 1969* . In addition, it is an offence under the *Criminal Code* to issue this counter-notice knowing that it is false or misleading in a material particular -- see section 137.2 of the *Criminal Code* .

*Note 5* If the carriage service provider is satisfied, on the basis of the information and statements in this counter-notice, that the specified [copyright material](#) is not, or is not likely to be, infringing, the carriage service provider must restore, or enable access to, the [copyright material](#) on its [system or network](#) -- see regulation 20R of the *Copyright Regulations 1969* .

Part 6 Form of notice of claimed infringement by [owner](#) or agent -- reference to [copyright material](#)

COMMONWEALTH OF AUSTRALIA

*Copyright Regulations 1969*

NOTICE OF CLAIMED INFRINGEMENT OF COPYRIGHT BY COPYRIGHT [OWNER](#)  
OR AGENT --  
REFERENCE TO [COPYRIGHT MATERIAL](#)

TO [ *name of carriage service provider* ]

1. I, the person whose name is stated below, issue this notice for the purposes of condition 3 of item 5 of the table in subsection 116AH (1) of the [Copyright Act 1968](#) and regulation 20T of the *Copyright Regulations 1969* .
2. I am the \*owner/\*agent of the [owner](#) of the copyright in the [copyright material](#) specified in the Schedule (the *specified [copyright material](#)* ), being [copyright material](#) to which you have provided a reference on your [system or network](#).
3. I believe, in good faith, that the specified [copyright material](#) is infringing under the [Copyright Act 1968](#) .
4. I have taken reasonable steps to ensure that the information and statements in this notice are accurate.

NAME OF \*OWNER/\*AGENT OF [OWNER](#):

ADDRESS:

TELEPHONE NUMBER:

FAX NUMBER:

E-MAIL ADDRESS:

[ *signature* ]

\*Owner/\*Agent of [owner](#)

SCHEDULE

DESCRIPTION OF [COPYRIGHT MATERIAL](#): [ *insert sufficient information to enable the carriage service provider to identify the [copyright material](#) in respect of which the infringement is claimed* ]

LOCATION OF REFERENCE PROVIDED BY THE CARRIAGE SERVICE PROVIDER ON ITS [SYSTEM OR NETWORK](#): [ *insert sufficient information to enable the carriage service provider to locate on its [system or network](#) the reference provided by the carriage service provider to the [copyright material](#) that is claimed to be infringing* ]

\* *Omit if inapplicable*

*Note 1* Strict compliance with this form is not required and substantial compliance is sufficient -- see [section 25C](#) of the [Acts Interpretation Act 1901](#) .

*Note 2* If this notice is issued by electronic communication, the requirement to sign the notice is taken to have been met if the method described in subregulation 20D (2) of the *Copyright Regulations 1969* is used.

*Note 3* An [action](#) for a civil remedy may be brought by a person who suffers loss or damage because of a material representation made knowingly in this notice -- see regulation 20X of the *Copyright Regulations 1969* . In addition, it is an offence under the *Criminal Code* to issue this notice knowing that it is false or misleading in a material particular -- see section 137.2 of the *Criminal Code* .