

Notice regime under Sections 122A to U of the Copyright Act. How does it work?

Disclaimer: The Ministry of Economic Development is not able to give you legal advice. Accordingly the following information should not be treated as such. If you are in doubt about your legal position, you should contact a lawyer.

Why have I received a notice?

Sections 122A to U of the Copyright Act 1994 provide a process for copyright owners to use when they consider an internet user has infringed their copyright via a file sharing network.

File sharing networks are not illegal in themselves. However, much of the content that is shared on file sharing networks is music, film, television, books or software that is protected by the Copyright Act 1994.

You have received a notice because the owner of copyright in a creative work alleges that you have infringed their copyright via a file sharing network.

The law requires your internet service provider (defined in the Act as an Internet protocol address provider, or “IPAP”) to send you an infringement notice if a copyright owner or their representative (defined in the Act as “rights owners”) gives them evidence of alleged copyright infringement.

The notice you have received includes evidence of the alleged infringement. For example, it names the copyright work or works that are alleged to be infringed (either by downloading from or uploading to the internet), the relevant file sharing network that is alleged to be used, and the date and time of the alleged infringement.

Overview of the notice process

[This diagram](#) sets out the notice process in more detail.

The notice process begins when a rights owner sends allegations of copyright infringement to an IPAP.

If an IPAP receives allegations of infringement from a rights owner, they are required to determine which of their account holders was using the internet at the time, based on their “IP”, or “internet protocol” address.

Once an IPAP has determined which account holder the allegation relates to, they are required to send an infringement notice to that account holder. If an account holder receives three notices within 9 months that relate to the same rights owner, the rights owner may choose to take a claim for up to \$15,000 to the Copyright Tribunal.

The process also provides two ways in which account holders can dispute infringement allegations, either directly with the rights owner, or if a claim is made, at the Copyright Tribunal. More information on these processes can be found below.

Infringement Notices

There are three stages of infringement notice under the process. These are:

- 1) Detection notice
- 2) Warning notice
- 3) Enforcement notice

Notices last for 9 months from the date of the detection notice, or, from the expiry of an enforcement notice (whichever is the earlier).

On-notice Period

If you receive a notice, 28 days must pass before another one can be sent. This is called the “on notice period”. While another notice cannot be sent during this time, your IPAP must still match any further allegations of infringement to your account. These allegations will be included in any further notices, and will be considered by the Tribunal if a claim is made against you.

Challenges

Infringement notices can be challenged directly with the rights owner who sent them. [This diagram](#) sets out the challenge process in more detail.

It is important to note that a challenge must be made within 14 days of the date of the notice that the challenge relates to. Rights owners must also respond to the challenge (either accepting or rejecting it) via your IPAP within 28 days of the notice (e.g. the on-notice period). If a rights owner accepts a challenge, or does not respond, the notice that the challenge relates to will be cancelled. More information about challenges is included below.

Effect of expired or cancelled notices

Notices can either expire (after 9 months of the date of the detection notice) or can be cancelled due to a challenge.

If a notice expires, the process begins again. Any further infringements detected on your account will result in a new detection notice.

If a notice is cancelled due to a challenge, previous notices remain in effect. For example, if a warning notice is cancelled, the detection notice remains in effect and any further infringements detected on your account will result in a new warning notice.

Copyright Tribunal

If an enforcement notice has been sent, and has not been cancelled due to a valid challenge, the rights owner may choose to take a claim for up to \$15,000 to the Copyright Tribunal. Tribunal claims are intended to be heard “on the papers”. On the papers means that claims will be decided based on written arguments from both sides. However you may request a hearing in person.

If a claim is made at the Copyright Tribunal you will be contacted by the Tribunal. Lawyers are not required at Tribunal hearings, and in fact are not allowed unless the Tribunal agrees.

Your rights and obligations under the notice process

What should I do if I receive a notice?

If you, a family member, or someone who has access to your internet connection has been downloading or uploading copyright material without the copyright owner's permission, you should stop doing so or ask that person to stop. If no further allegations of copyright infringement are detected on your internet connection, it is unlikely you will receive further notices.

How do I know whether it's copyright material?

Copyright law protects original creative works, such as sound recordings, television programmes, films, and software from unauthorised use. Copyright protection is automatic, and generally comes into existence when the relevant work is made. Registration is not necessary for copyright to exist.

Under New Zealand law copyright works are protected for 50 years from the death of the author in the case of literary works like books and computer software, and for 50 years from the date of publication in the case of films and music. We are also party to a number of international agreements that require the same protection to be given to works from overseas. This means overseas rights owners can use the notice process.

Sometimes, copyright owners give permission for their works to be freely accessed via the internet. However, copyright law puts the onus on the person accessing the work to ensure that the owner has given permission.

How can I respond to a notice?

Section 122G of the Copyright Act allows you to challenge the notice you have received. The challenge will be forwarded to the rights owner, but your contact details will be removed. If the rights owner chooses to accept your challenge, the notice will be cancelled. If the rights owner neglects to respond to the challenge, the notice will also be cancelled.

You may challenge a notice, or an infringement included in a notice, for any reason. You may consider that copyright infringement has not occurred on your internet connection, or that you were sent a notice incorrectly. Or, you may consider that you are entitled to use the work under Part 3 of the Copyright Act 1994 (which provides exceptions to copyright), or because the work is not protected by copyright.

What happens if I don't respond?

You are not required to respond to the notice. However, if you ignore the notice and further infringing occurs on your internet connection, you may receive further notices. If you have received an enforcement notice, the copyright owner may choose to take a claim for copyright infringement to the Copyright Tribunal.

Can my internet access be suspended?

The Act includes the possibility for a rights owner to go to the District Court to seek the suspension of an internet account for up to six months, in appropriate circumstances. However, this part of the Act is not in force, so cannot currently be used.

What will happen if a claim is made against me?

If you have received an enforcement notice, the Act allows a rights owner to take a claim to the Copyright Tribunal. If you are found to have infringed copyright via file sharing, the Copyright Tribunal may make an order of up to \$15,000 against you.

If you consider that alleged infringements in a notice did not occur, or that the information in a notice is incorrect, you must give the Tribunal reasons why you think this is so. If you do not, the Tribunal will consider that the infringements have occurred. In this situation they are likely to make an award against you.

The Tribunal will consider the following factors when deciding how much to award against an account holder:

- The purchase price of the works that have been infringed, or if they are not for sale, an amount relating to each infringed work that the Tribunal considers reasonable;
- The amount of any fees paid by the rights owner to the IPAP in exchange for sending infringement allegations to you, and the Tribunal application fee;
- Whether the infringements were flagrant, and the effect of the infringing on the market for the work.

Do I have to pay a fee to contest a claim at the Copyright Tribunal?

There is no fee for account holders to contest claims at the Copyright Tribunal. Rights owners have to pay a \$200 fee.

Will I be liable for infringements that occurred on my account, but that someone else committed?

This will depend on the circumstances of each case. You should ensure that other persons using your internet connection are also aware of the information in this notice. You may wish to have a discussion with family members or flatmates on acceptable internet use.

If you consider that you should not be held liable for infringements made by another person on your internet account, you may wish to contest the claim at the Copyright Tribunal.

Additionally, if you think that someone else has accessed your internet connection without you knowing, you may wish to read the information below on internet issues, including wireless internet connections.

Why does my notice include alleged infringements relating to several different copyright owners?

The Act allows copyright owners to group together for the purpose of using the notice process. They can ask a representative to send allegations of infringement on their behalf. The Act defines these

representatives as “rights owners”. A series of notices (detection, warning and enforcement) must relate to the same rights owner, but alleged infringements could relate to different copyright owners.

This also means that you could receive (for example) two detection notices from different rights owners at the same time.

Further information about copyright law and file sharing

What is copyright?

Copyright protection is granted to creators of original works. Original works could be any of the following:

- Books (known as literary works)
- Films (including television programmes)
- Sound recordings
- Computer software (protected as literary works)

More protected works are listed in [section 14 of the Copyright Act 1994](#).

What is file sharing?

File sharing is the common name given to the sharing of files over the internet via specific “protocols” or computer languages, known as “peer-to-peer” protocols.

Peer-to-peer protocols allow many different internet users to connect together simultaneously. Typically they break files up into small pieces to enable them to be shared in a much shorter time than would be the case if the file was transferred directly between single computers.

There are many different ways to access file sharing networks. Most often, a software programme is required to connect your computer to the relevant network (these are often called “clients”). Some popular file sharing clients are BitTorrent, uTorrent and Vuze.

Another common feature of peer-to-peer clients is that they download the requested file and simultaneously make that file available to other internet users. The user may be unaware that this is occurring, and that information stored on their computer may be accessible by others.

File sharing downloads are often referred to as “torrent” downloads. This term became popular in the mid 2000’s with the increasing use of the “bittorrent” protocol.

How does file sharing infringe copyright?

The Copyright Act gives copyright owners exclusive rights to use creative works that they own copyright in. “Exclusive rights” means that another person must seek the permission of the copyright owner before they can exercise one of those rights. If a person who isn’t the owner exercises an exclusive right without permission, it is likely to be a copyright infringement.

In [section 16 of the Copyright Act](#), the exclusive rights of the copyright owner are expressed as “restricted acts”. This means that the acts set out in section 16 cannot be done in relation to a work without permission of the copyright owner.

Section 16 of the Act says the copyright owner has the exclusive right to copy the work and communicate the work to the public. File sharing copyright works without the permission of the owner may infringe on both of these restricted acts.

What isn't covered by the notice process?

The Act does not cover streaming sites such as you tube, and file locker services. However accessing copyright works via these methods can also infringe copyright, and would be covered by the rest of the Copyright Act 1994. New Zealand's law aims to be technology neutral in this respect, so any method of performing a restricted act it is likely to infringe copyright.

When is a restricted act not copyright infringement?

Copyright law balances the interests of the copyright owner in protecting the work, and the interests of society in having access to copyright works. [Part 3 of the Copyright Act](#) sets out a range of “permitted acts” in relation to copyright works. These acts are often known as copyright exceptions.

You may consider that you have the right to use a work from a file sharing network for the purpose of performing a “permitted act”. If you meet the conditions of the relevant section of the act, using the work may not infringe copyright. More information on permitted acts can be found [here](#).

Internet issues and information for organisations that provide internet access to employees, students or customers

What is an IP address?

Your IPAP allocates you a specific “internet protocol” or IP, address when you use the internet. This address tells your IPAP where to send the web content that you want to look at. It's similar to a street number on your letterbox. It's likely, however that your IPAP gives you different IP addresses over time. IP addresses look like this 10.0.0.100

How can I make my computer safe?

The Netsafe organisation provides useful information on computer security. You can access this information at the following links:

<http://www.netbasics.org.nz>

<http://www.netsafe.org.nz>

What is a wireless internet connection?

It is now common for your IPAP to provide you with a wireless modem for accessing the internet. This allows all of your devices like laptops, desktop computers, mobile phones or tablet computers to access the same internet connection without requiring a physical connection to your modem.

As wireless modems broadcast your internet connection publicly, other wireless devices within a reasonable distance of your modem will be able to see your internet connection and attempt to access it. If you do not have your wireless network protected by a password, it may be possible for others to use it. Malicious users might try to use your connection for illegal activities, including file sharing that infringes copyright.

How can I protect my wireless network?

You can protect your wireless network by ensuring that it is protected by a password. The process for setting up a password will depend on the manufacture of your modem and whether your operating system is Windows or Apple.

For Windows computers, setting up secure networks can usually be found in the control panel, under the network tab. For Apple computers, network security can usually be found in system preferences, under the network tab. More information on security for these operating systems can be found under the “useful links” section below.

What measures can I take to ensure illegal file sharing does not occur on my account?

File sharing networks are not illegal in themselves, however they are often used to share works protected by copyright law. The methods below (or a combination of them) should help to reduce the chances of unwanted file sharing occurring on your computer.

You should contact an IT professional for comprehensive advice on how to mitigate the chances of illegal file sharing occurring on your computer.

Ensuring that file sharing clients are not installed on your organisation's computers

File sharing networks typically require a “client” or piece of software to be installed on the system to access a file sharing network. By ensuring that these clients are not installed on your business computers, and by ensuring that new software cannot be installed without the permission of the system administrator, the chance that file sharing networks can be accessed should be mitigated. There are also specialised software programmes that stop certain applications being installed or used on computers.

Firewalls

Your internet firewall may allow the blocking of file sharing protocols. If you don't have an internet firewall, you should consider getting one, as they provide general security from unwanted outside access to your network. Your firewall may also be able to block websites that prominently feature infringing content.

More sophisticated options include specialised security software for monitoring and blocking file sharing protocols. Some examples are Symantec Endpoint Protection or Untangle's Protocol Control.

Data caps

By limiting the amount of data an internet user can use, you may be able to mitigate the chance of file sharing occurring. Movie and television files are typically hundreds of megabytes to a gigabyte, whereas albums are around 50 to 100 megabytes.

Useful Links

List of common file sharing clients on Wikipedia

http://en.wikipedia.org/wiki/Comparison_of_file_sharing_applications

Copyright Tribunal

<http://www.justice.govt.nz/tribunals/copyright-tribunal>

Netsafe

www.netsafe.org.nz

Copyright Act

http://www.legislation.co.nz/act/public/1994/0143/latest/DLM345634.html?search=ts_act_copyrig ht_resel&p=1&sr=1

Copyright (Infringing File Sharing) Regulations

http://www.legislation.co.nz/regulation/public/2011/0252/latest/whole.html?search=ts_regulation _copyright_resel&p=1#dml3886623

Microsoft security

<http://www.microsoft.com/security/default.aspx>

Apple Security

<https://ssl.apple.com/support/security/>

Rights owners have developed a website:

www.respectcopyrights.co.nz

InternetNZ has developed a website on the new process:

www.3strikes.net.nz

Diagrams

[Notice Process Diagram](#)

[Challenge Process Diagram](#)