

## Notice Process under section 122A to U of the Copyright Act 1994 – Information for Rights Owners

*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.*

### Overview

On 1 September 2011, sections 122A to U of the Copyright Act 1994 (the Act) come into force. These sections set out a process for rights owners to use when they consider that an internet user has infringed their copyright via a file sharing network.

The process allows rights owners to forward allegations of copyright infringement via file sharing networks to internet protocol address providers (IPAPs). IPAPs are then required to match those allegations to the relevant account holder, and send a series of notices.

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.

### Necessary information

The [Copyright \(Infringing File Sharing\) Regulations 2011](#) provide a range of requirements for the information that rights owners must provide to IPAPs. Rights owners must also comply with the time frames in s122C of the Copyright Act 1994 with regard to alleged infringements. If infringement evidence does not comply with the Act and associated regulations, an IPAP is not required to match or send notices to account holders.

### Do I need to pay a fee?

The [Copyright \(Infringing File Sharing\) Regulations 2011](#) allow an IPAP to charge a \$25 fee for processing a rights owner notice. The Government intends to review this fee after the notice process has been in force for six months.

## **Do I need to respond to account holder challenges**

Under sections 122G and H of the Act, you must respond to a challenge (via the relevant IPAP) if you do not wish the challenge to be accepted (and the notice subsequently cancelled).

Rights owners may decide whether to accept or reject an account holder challenge. Account holders may refer to rejected challenges as part of their case if enforcement action is taken at the Copyright Tribunal.

### *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 notice process begins again. Any further infringement allegations sent to the same account holder 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 matched to the same account holder will result in a new warning notice.

## **Will I get account holders contact details?**

Account holder contact details will be withheld during the notice process.

## **Copyright Tribunal**

If an account holder has received an enforcement notice, their IPAP will also forward that enforcement notice to the relevant rights owner. The Act allows a rights owner to take a claim to the Copyright Tribunal for up to \$15,000.

The [Copyright \(Infringing File Sharing\) Regulations 2011](#) set out the factors the Tribunal will consider when determining claims.

More information about the Tribunal can be found on their website.