

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

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 service providers. Internet service providers are then required to match those allegations to the relevant account holder, and send a series of notices.

Application of the Act

The Act only applies to “Internet Protocol Address Providers” (IPAPs). IPAPs are defined in the Act as:

“IPAP, or Internet protocol address provider, means a person that operates a business that, other than as an incidental feature of its main business activities,—

- (a) offers the transmission, routing, and providing of connections for digital online communications, between or among points specified by a user, of material of the user's choosing; and
- (b) allocates IP addresses to its account holders; and
- (c) charges its account holders for its services; and
- (d) is not primarily operated to cater for transient users “

While they do provide internet access, the IPAP definition excludes organisations such as educational establishments, internet cafes, public wi fi providers, and businesses whose core business is not the provision of internet access, from being required to send notices under the new regime.

The definition of “Internet Service Provider” in the Copyright Act 1994 continues to apply for the other sections of the Act (such as section 92B to E).

Infringement information

The [Copyright \(Infringing File Sharing\) Regulations 2011](#) set out requirements for the notice regime in addition to what is in the Act. They prescribe a range of requirements that must be met with regard to allegations of infringement under the process. If you receive infringement allegations from rights owners that do not comply with the regulations, you are not required to comply with the notice regime under the Act.

Notices

The [Copyright \(Infringing File Sharing\) Regulations 2011](#) also set out the requirements for the form and content of notices IPAPs are required to send to their account holders. Importantly, notices must include the information for account holders housed on the MED website, or a link to that information.

Fees

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.

Application to mobile networks

The Act does not apply to internet access granted via cellular mobile networks, until November 2013.

Do I need to suspend my customers' internet access?

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.