

Copyright Amendment Bill - the new Section 92A

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The government's plans for fixing up the much debated section 92A of the Copyright Act have now been confirmed by the introduction into Parliament on 23 February 2010 by Commerce Minister Simon Power of a bill to implement the change

The Copyright (Infringing File Sharing) Amendment Bill repeals the controversial section and replaces it with a three-notice system administered by the Copyright Tribunal which the government foreshadowed last year.

Under the new bill, alleged infringers will receive 3 warnings; first a detection notice, followed by a warning notice and finally an enforcement notice. The bill also requires a minimum period of three weeks in between which subsequent infringement notices cannot be sent, thereby giving the alleged infringers to address the illegal activity.

A detection notice informs account holders that their activities on the internet are infringing copyright and will outline the enforcement action that may be taken against them should such activity continue. The warning notice and the enforcement notice will contain a list of the alleged infringements for that account since the detection notice was sent.

Copyright owners are to be notified by an ISP once 3 notices have been sent to any account holder and the copyright owner will be able to seek suspension of an internet account through the District Court for up to 6 months. Penalties for third time infringers include orders from the Copyright Tribunal for a monetary fine up to \$15,000 or an order from the District Court requiring the ISP to disconnect the internet account for up to 6 months.

The bill also allows alleged infringers who feel that they have been wrongly accused to apply to have their case heard by the Copyright Tribunal at no cost.

The bill also introduces a new definition of Internet Service Provider (ISP). Public submissions on the earlier definition raised a concern that some organisations that are not traditional ISPs, including businesses, libraries and universities could be required to send notices to infringers. The new definition places only traditional ISPs in the position of having to monitor activity and send infringement notices. ISPs are also allowed to charge copyright owners for the monitoring and notice work they are obliged to perform under the new bill.

The bill will be referred to Select Committee, and the public will have an opportunity to make submissions on the proposed legislation. The legislation is expected to become law later in the year.