

Copyright Amendment Act - Controversial Internet

Provisions

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Copyright protection in New Zealand is governed by the Copyright Act 1994. The New Zealand Government recently passed a number of controversial amendments to this Act in an effort to bring it up to speed with emerging advances in digital technology, and to deal with the massive problem of copyright infringement on the internet.

Of particular note are provisions which render ISPs responsible for enforcing copyright by requiring them to terminate customers' internet access where there has been "repeated " copyright infringement.

Another area of controversy relates to the definition of ISP. Strictly speaking telecommunication carriers and businesses that "host material on websites or other electronic retrieval systems that can be accessed by the user" including intranets, work networks, common sites or common servers, could fall within the definition of ISP

Section 92A of the Copyright Act 1994, specifically requires ISPs (and arguably a number of businesses), to "adopt and implement a policy that provides for the

termination, in appropriate circumstances, of the account (...) of a repeat infringer". This provision is mirrored on Section 116AH of the Australian Copyright Act 1968, which recently received media attention through the activities (or alleged inactivity) of iiNet.

Where copyright is being infringed, the copyright owner is required to issue a notice to the ISP. Upon receiving this notice, the ISP or organisation must delete the infringing material, prevent access to it and advise the employee or user committing the infringing conduct of the same. If the ISP or organisation fails to act, it becomes liable under the Act for copyright infringement.

Where there is repeated infringement, the ISP and organisation must act in accordance with a policy that provides for the termination of internet accounts. The owner of the copyright work can however only issue a "notice" to a telecommunication carrier. The actual "user" of the internet is likely to be employees of a company and not the organisation. However the telecommunication carrier would attribute the infringing conduct to the organisation's internet account and not the individual employee. To avoid termination, the organisation must have a policy that addresses infringing conduct by employees. As a result, companies may need to institute policies relating to the use of the shared site (for example by limiting permission to download or upload material), the deletion of infringing material, the prevention of access to infringing material and the termination of internet access by employees who repeatedly infringe copyright.

Telecommunications companies have banded together to institute a voluntary code of

practice to govern their obligations and responsibilities under the Act. At the time of writing however, one of New Zealand largest telecommunications companies TelstraClear is refusing to accept or work with the voluntary code . Successful implementation of the Act seems unlikely until a resolution can be found.

This article was published in Managing Intellectual Property, April 2009.