

# **ALCC LIBRARY AND ARCHIVE COPYRIGHT TRAINING**

## **Copyright Extended**

**Prepared by Australian Libraries Copyright Committee**

# Other resources on the ALCC website

[libcopyright.org.au/content/resources](http://libcopyright.org.au/content/resources) 

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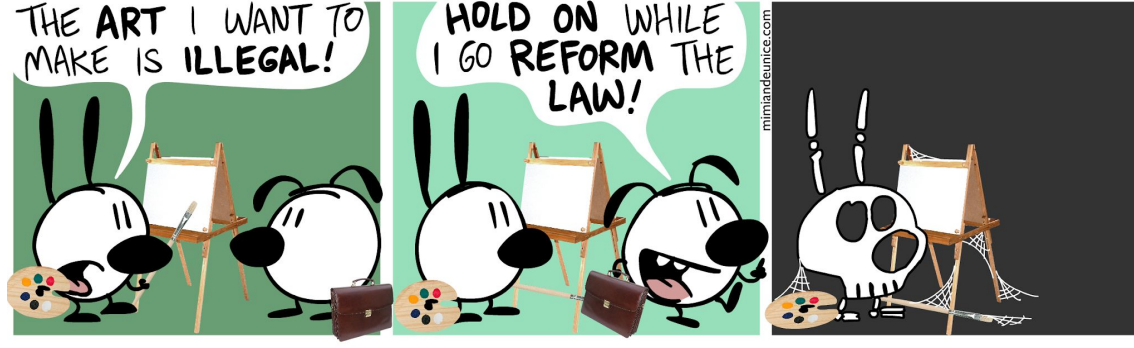




## Copyright basics:

- Most things you want to use are covered by copyright
- Most things you want to do are covered by copyright
- Getting permission is hard
- You have rights

# **PART 2 – COPYRIGHT EXTENDED**



# Disability and Other Measures Act

## *Copyright Amendment (Disability Access and Other Measures) Act 2017*

[legislation.gov.au/Details/C2017A00049](https://legislation.gov.au/Details/C2017A00049)







# Ratified the Marrakesh Treaty

to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled

First treaty to focus on user rights  
- education and libraries next?





# Disability and Other Measures Act

## Disability and Other Measures Act:

- Broadened exceptions for providing access to a person with a disability.
- Simplified the Statutory Education Licence scheme.
- Fixed the exceptions for preservation.
- Ended perpetual copyright for unpublished works (and partial solution for orphan works).

## Disability Access

# Disability Statutory Licensing schemes

s 200AB(4)



# ~~Disability Statutory Licensing schemes~~

~~§ 200AB(4)~~

# Disability and Other Measures Act / Disability access

Introduced:

- An exception for the use of copyright material by organisations assisting persons with a disability.
- Fair dealing for purpose of access by persons with a disability.

any use - any material - any disability

*Disability Discrimination Act 1992* definition of disability



s 113F – Use of copyright material  
by organisations assisting  
persons with a disability

# Disability and Other Measures Act / Disability access

- Declared organisation only
- Reporting to collecting society
- Destroy copies after made
- Only if not available in any accessible format

# Disability and Other Measures Act / Disability access

- ~~Declared organisation only~~
- ~~Reporting to collecting society~~
- ~~Destroy copies after made~~
- ~~Only if not available in any accessible format~~

# Disability and Other Measures Act / Disability access

It is not an infringement if:

- The use is to assist one or more people with a disability access the format they need.
- And the organisation is satisfied that the material cannot be obtained in that format within a reasonable time at an ordinary commercial price.



# Disability and Other Measures Act / Disability access

- Focuses on client's needs – eg the specific format needed.
- Encourages the building of libraries of accessible material.
- Permits import and export of accessible material.
- No reporting or record keeping required (though still a good idea)

But only educational institutions and non-profits with a 'principal function' of assisting people with a disability.

# ILLINOIS STATE FAIR GROUNDS



# s 113E – Fair dealing for the purpose of access by persons with a disability



# Disability and Other Measures Act / Disability access

Can do anything that is:

- Fair
- For the purpose of providing access to one or more persons with a disability

Can be used:

- By anyone.
- For anyone (with a disability).

# Disability and Other Measures Act / Disability access

But fairness factors apply:

- The purpose and character of the dealing.
- The nature of the work.
- Effect on the potential market or value.
- The amount and substantiality of the part copied.

No need to apply the commercial  
availability limitation.  
(though can still be good idea)

## Disability and Other Measures Act / Disability access

"Section 113E is intended to ... enable a person with a disability to enjoy equitable access to ... a person without a disability ... [it] is deliberately flexible and is intended to encourage creativity, innovation and responsiveness to relevant technological advances within the disability sector."

- Explanatory Memorandum



# Making Content Accessible: Navigating Australia's Copyright Law for Disability Access

<http://libcopyright.org.au/content/resources>

# Disability and Other Measures Act / Disability access

## Preliminary Questions

- Is the client a “person with a disability”?
- Does the disability cause the person difficulty in reading, viewing, hearing or comprehending copyright material?
- Is there another form that will allow that person to better read, view, hear or comprehend the material?
- Is the material already available in the form the person needs?
- Do you have a fair process for identifying and recording client requirements?

## Disability and Other Measures Act / Disability access

### Is your use permitted under the non-profit exception (s113F)?

- Are you from a qualified organisation?
- Is the use for the sole purpose of enabling the client to access the material in the form they need?
- Have you checked that the material is not commercially available in the form the client needs?

### Is your use permitted under the fair dealing for disability access (s113E)?

- Is the use for the purpose of a person or persons with a disability accessing material?
- Is it fair?

# Disability and Other Measures Act / Disability access







Disability and Other Measures Act / Education

# Educational Statutory Licence

Part VA statutory licence

Part VB statutory licence



~~Part VA statutory licence~~

~~Part VB statutory licence~~



# Disability and Other Measures Act / Education

'10% or one chapter' rule

# Disability and Other Measures Act / Education

~~'10% or one chapter' rule~~

# Disability and Other Measures Act / Education

Introduced a single scheme:

- With no express limits on copying or communicating copyright material by an educational institution.
- With no specific reporting and monitoring.

Provided:

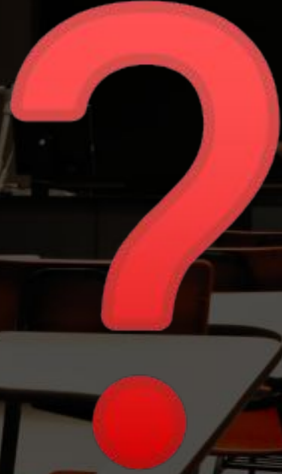
- A remuneration notice is in place between the educational institution and the relevant collecting society.
- Does not unreasonably prejudice the interests of the copyright owner.

# Disability and Other Measures Act / Education





# Disability and Other Measures Act / Education



Keep everything the same  
until you hear from the  
National Copyright Unit /  
Universities Australia





A row of glass jars filled with pickles, with the word "Preservation" overlaid in blue text.

# Preservation



# Disability and Other Measures Act / Preservation

s 51A

s 110B

# Disability and Other Measures Act / Preservation

~~§ 51A~~

~~§ 110B~~

s 113H – Use for the purpose of  
preserving the collection

# Disability and Other Measures Act / Preservation

- Applies to:
  - Any material.
  - Any activity.
  - Any format.
- Can be:
  - Any number of copies.
  - Any library officer – eg. experts at other libraries with specialist knowledge and/or equipment.
  - Done by / for another library



# Disability and Other Measures Act / Preservation

Provided:

- The use is for the purposes of preserving the collection.
- For published works, the version cannot be obtained.
- The library is 'open to the public', including institutions that:
  - Are open to a subcategory of the public – eg. students.
  - Are open part-time, on a temporary basis, or on request.
  - Only make their materials available via interlibrary loan.
- The archive is nonprofit.

# Disability and Other Measures Act / Preservation

And you can:

- Provide onsite access to an electronic preservation copy, as long as you take reasonable steps to prevent it from being used to infringe copyright.
- Once you have made a preservation copy, it can be used as the source to provide access to material under any of the other provisions – eg. document delivery, interlibrary loan, s 200AB









# Disability and Other Measures Act / Preservation





Copyright duration / Unpublished works

Unpublished works are  
protected perpetually



# Copyright Term



Copyright duration / Unpublished works

~~Unpublished works are  
protected perpetually~~

Copyright duration / Unpublished works

Published or unpublished:

Life of the  
author



70 years

If “make public” before 1 January 2019, get 70 years

# Copyright duration for orphan works:

Year made or  
made public + 70 years

If “made public” within 50 years of creation

## Copyright duration / Orphan works

As of 1 January 2019 default rule will be:

- Works - life of the author plus 70
  - If you don't know the author, 70 from creation / made public
- Films and sound recordings - 70 years from creation / made public

Transition - if “made public” before 1 January 2019, get 70 years from “made public”



# Copyright duration / Orphan works

When is author unknown?

- Spectrum from anonymous to John Smith

When made public?

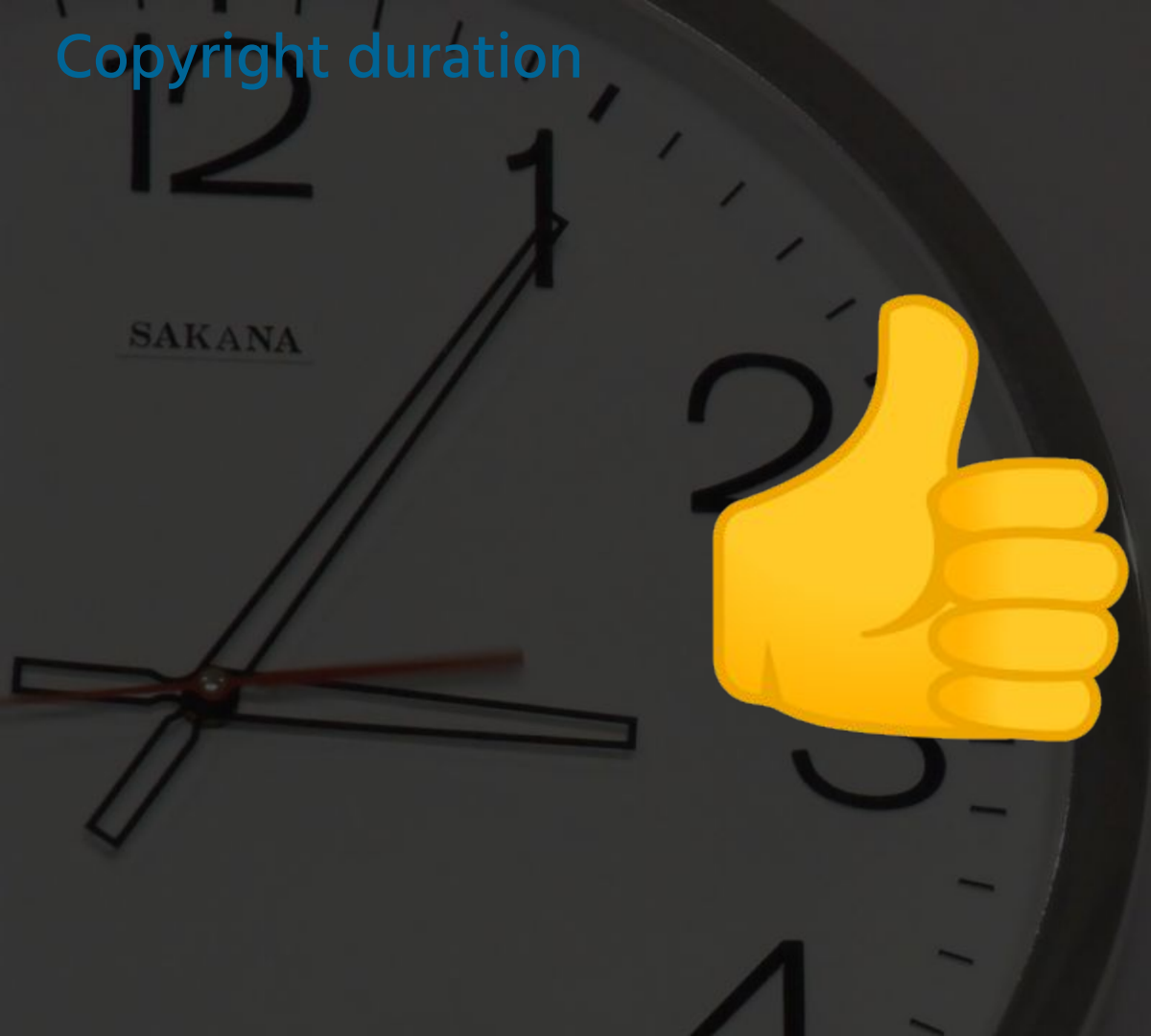
- Only with creator's authorisation ie not under exception

## Copyright duration / Orphan works

On 1 January 2019, millions of works are going to fall into the public domain.

What are we going to do about it?

Copyright duration



# Service Providers Act

## *Copyright Amendment (Service Providers) Act 2018*

[legislation.gov.au/Details/C2018A00071](https://legislation.gov.au/Details/C2018A00071)







What is a safe harbour?



Online service providers  
avoid financial remedies  
for infringements by others on  
their services.

# Service Providers Act / Current system

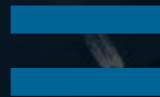
Courts cannot award financial remedies against 'carriage service providers' that:

- Provide access to the internet
- Cache material automatically
- Store material online at the direction of the user
- Link to third-party material.



# Carriage service providers

Carriage service providers



Internet service providers (ISPs)

# What is changing with the Service Providers Act?

## ~~Carriage~~ service providers



# Service Providers Act / Extending safe harbour

‘Service providers’ are:

- Carriage service providers.
- Organisations assisting persons with a disability.
- Bodies administering:
  - A library.
  - An archive.
  - A key cultural institution.
  - An educational institution.

# Service Providers Act / Current system

BUT only apply if:

- Acting as a service provider - depends on services
- Comply with requirements

## Compliance is voluntary.

- Compliance lowers exposure to risk in relation to safe harbour activities.
- Non-compliance does not make you liable
- The Service Providers Act applies from Friday 29 December 2018.

***What library and archive activities  
relate to safe harbour?***



# Service Providers Act / Extending safe harbour

- A library or archive providing public access computers or public wi-fi means it is providing access to the internet.
- Automatic caching occurs if a library or archive provides computers or servers to search online.
- Allowing users to upload materials means a library or archive is storing material online.
- Links to other websites in a collection, catalogue, directory or database means a library or archive is linking to third party materials.

Most libraries and archives  
provide internet access

Most libraries and archives  
automatically cache material

The background of the slide is a dark, low-key photograph of the Australian Coat of Arms. The central shield is visible, flanked by a kangaroo on the left and an emu on the right. Above the shield is a seven-pointed star. The entire emblem is supported by a complex metal framework. The word 'AUSTRALIA' is visible at the bottom of the emblem. The overall tone is dark and formal.

Most libraries and archives  
link to third-party material

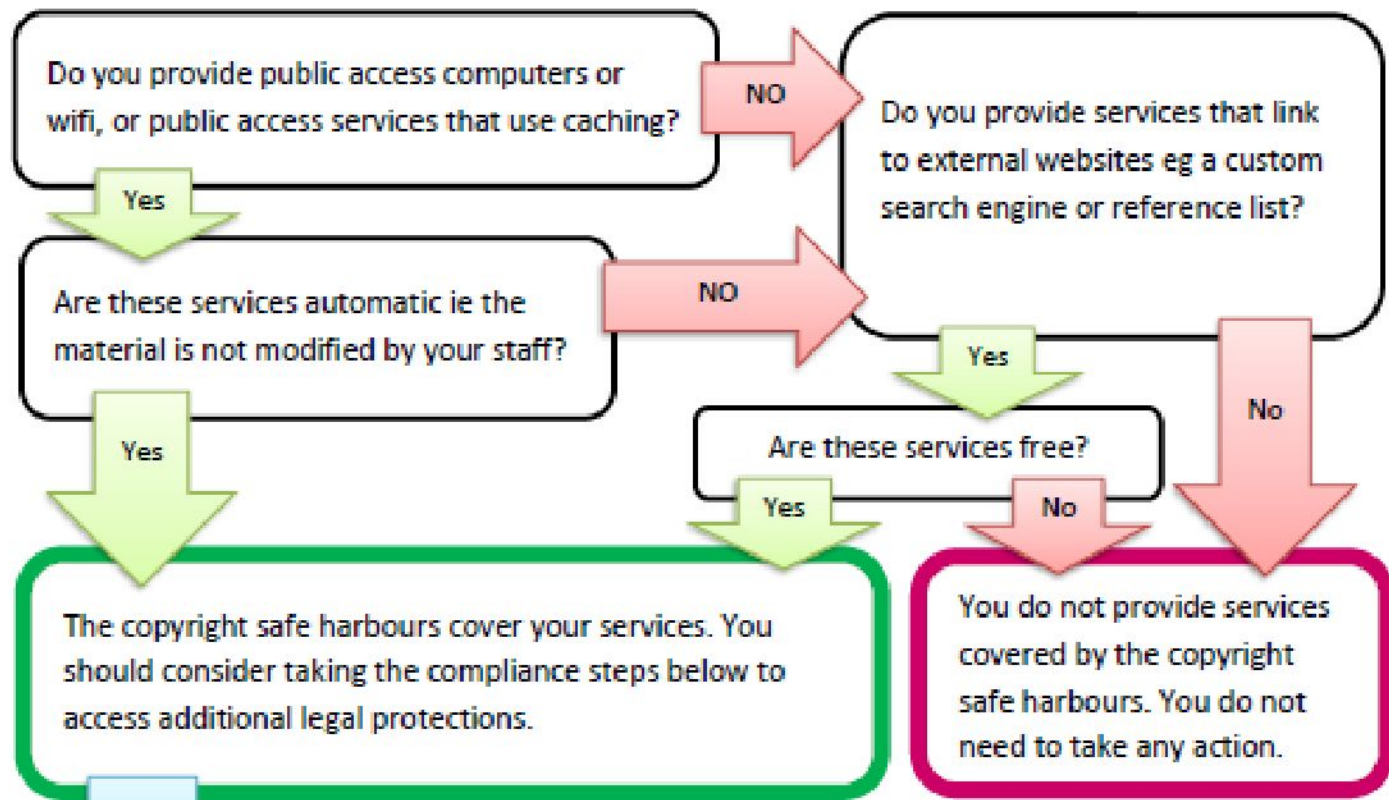


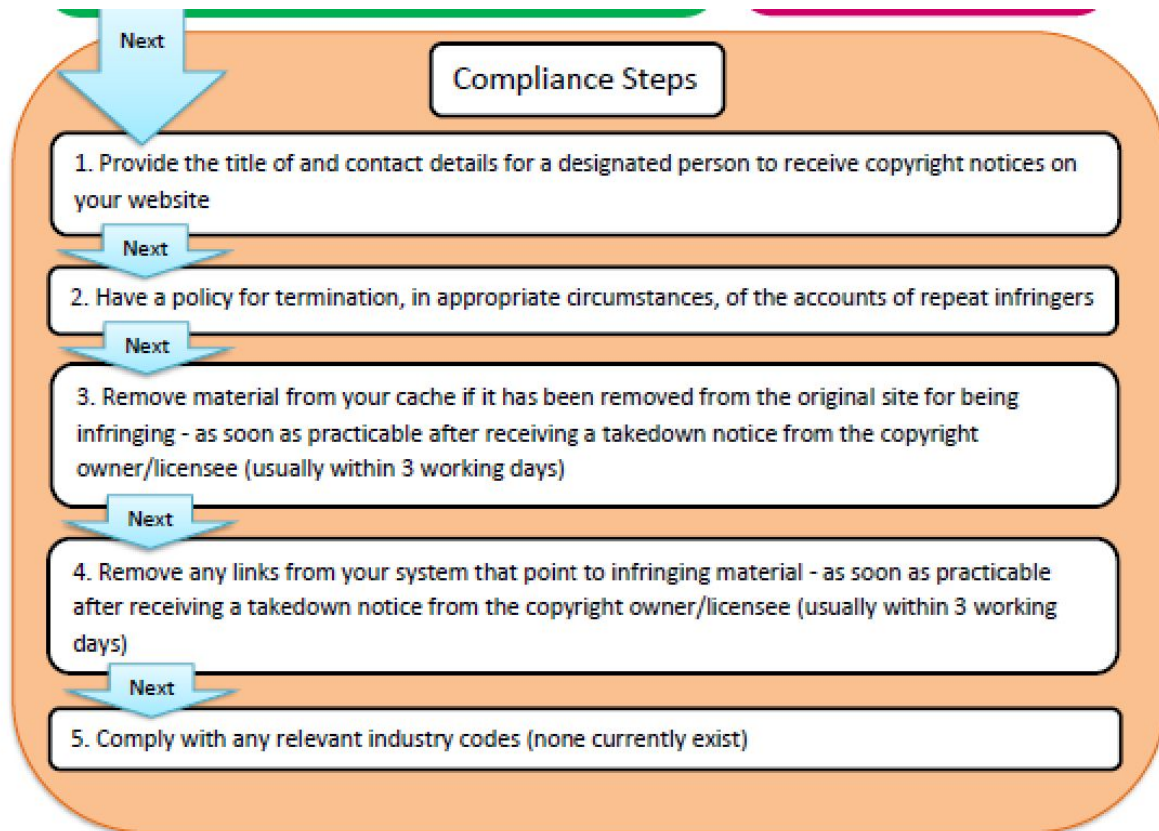
Some libraries and archives  
host third party material (eg NED)



*How do you comply?*

Copyright Safe Harbour Flowchart for All Institutions

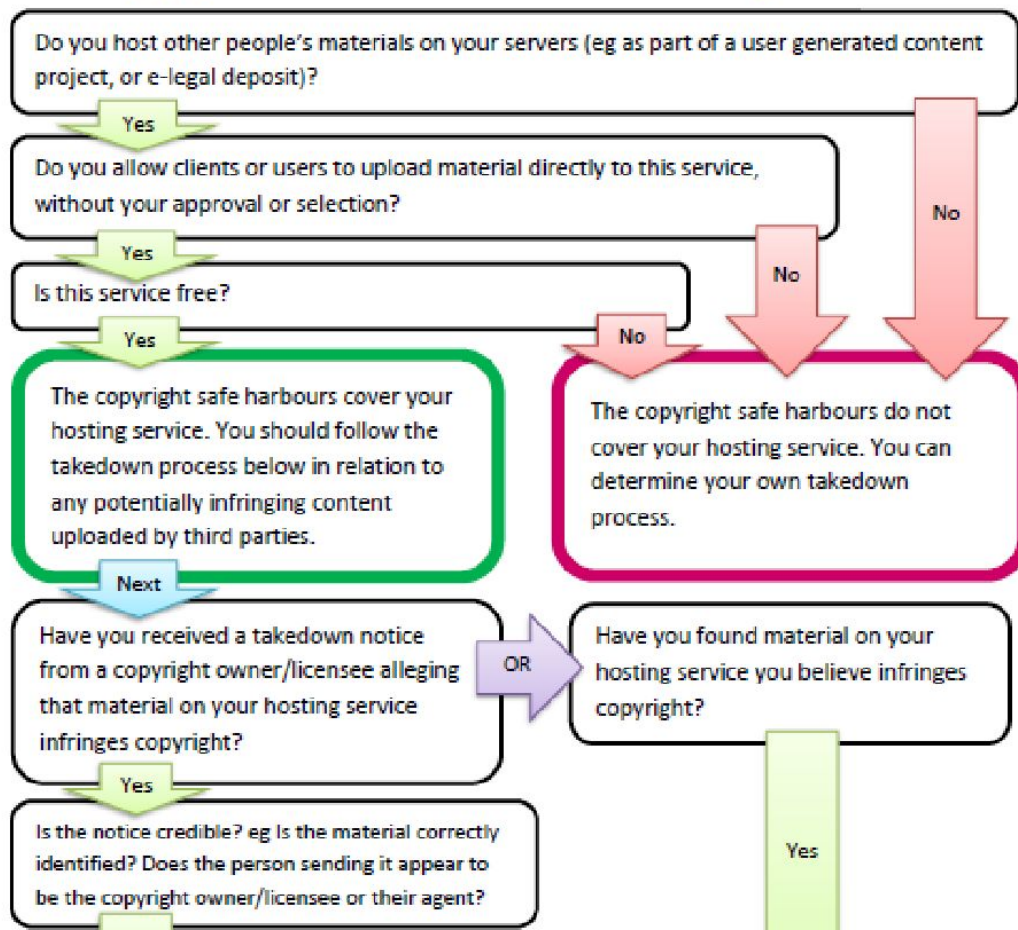


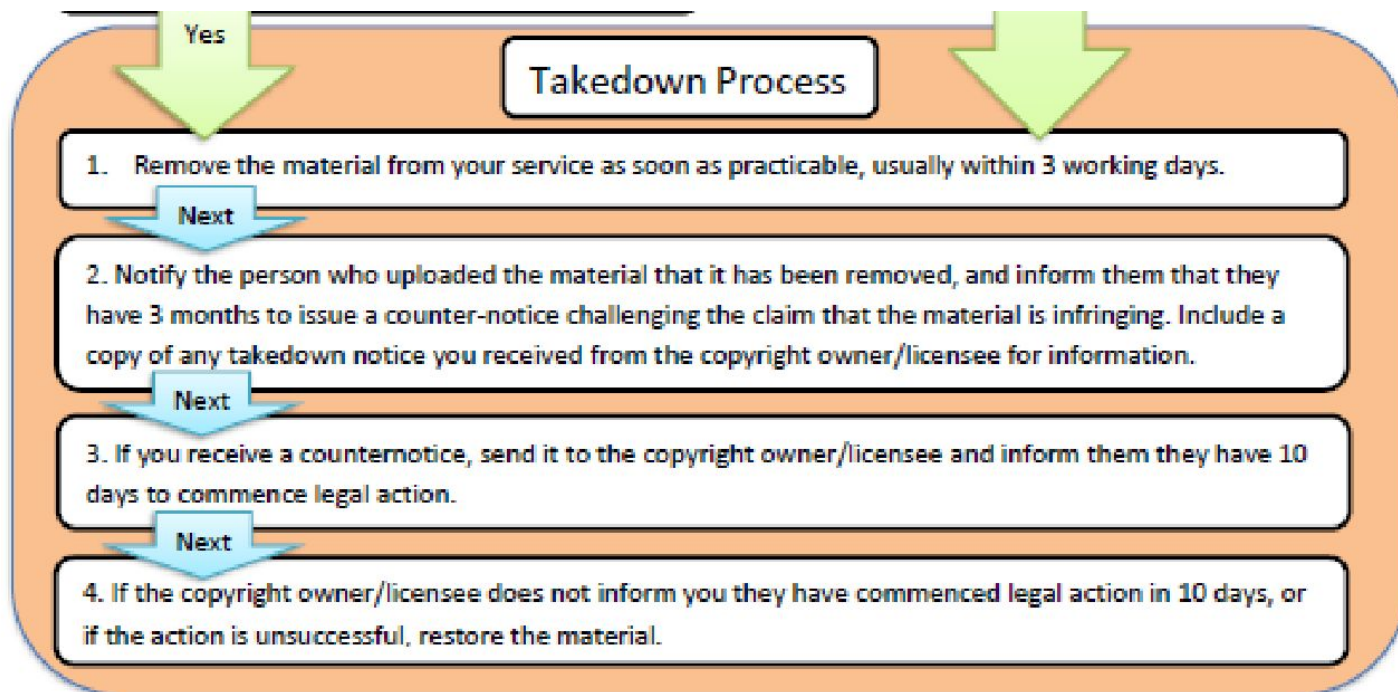


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## Copyright Safe Harbour Flowchart for Hosting Institutions





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# Safe Harbours Compliance Checklist for Libraries and Archives

[libcopyright.org.au/content/resources](http://libcopyright.org.au/content/resources)



# Service Providers Act





# Modernisation Consultation

A wireframe model of the Australian Coat of Arms is centered in the background. It features a shield supported by a kangaroo and an emu, topped with a seven-pointed star. The word 'AUSTRALIA' is visible at the base of the shield. The entire scene is set against a dark blue background with faint, light-colored rectangular shapes at the bottom corners.

# Productivity Commission IP Inquiry 2016

“Australia’s copyright arrangements lack balance and have been slow to adapt to technological change, imposing costs on the broader community.” (p.103)

“they are skewed too far in favour of copyright owners, to the detriment of consumers and intermediate users.” (p.7)

## Modernisation Consultation

PC recommendations:

- Key - fair use for balance
- Controversial - statements about term, allowing parallel importation for books
- Less controversial - end geoblocking, end perpetual copyright, mandate open access

Vocal campaign by rights holders against the report, and particularly fair use

## Modernisation Consultation

In response, Gov is currently consulting on:

- Copyright and contract – protect exceptions from being overruled by contracts
- Orphan works – exception and/or limitation of liability to enable use of orphan works
- Limitations and exceptions – increase flexibility through fair use or fair dealing, and fix the rest of the GLAM exceptions



# Modernisation Consultation

What we want	What the gov is suggesting
Fair use	Fair dealings for: quotation; private use; incidental and technical copying (including TDM); libraries and archives; illustration for the purpose of instruction
Protect all exceptions from contractual override	Protect fair dealings and cultural institution exceptions from contractual override
Orphan works exception for non-commercial use by cultural institutions, and for other uses subject to higher test (eg fairness)	Orphan works exception for non-commercial use by cultural institutions, limitation on liability for others
Fix document delivery and interlibrary loan like preservation	Fix document delivery and interlibrary loan like preservation

# Modernisation Consultation

A cartoon illustration in the background shows two purple, blob-like figures with large eyes and hands. One figure is pointing towards a large, dark blue book that has the word 'REALITY' written on its cover in a hand-drawn, white font. In the foreground, there is a large, yellow copyright symbol (©) with a black outline. The overall scene suggests a discussion or consultation about the realities of copyright law.

## What will it mean?

- Fair use / fair dealing for libraries and archives – create flexibility for new technologies, innovation, collaboration, commercial activities
- Orphan works exception – will at minimum make use of orphan works by GLAM less risky, hopefully others
- Contractual override – will mean e-resource contracts can't exclude library and archive exceptions
- Document delivery and interlibrary loan = fixed!

## Modernisation Consultation

Any of the above will be an improvement  
but still need to survive election, lobbying etc

Without fair use, the law will still have gaps,  
become outdated and need further review

### Why do libraries and archives want fair use?

- Broader than s200AB (eg allows some commercial uses)
- Helps solves dilemma re providing material to users for technically infringing uses
- Increases flexibility, acts as a safety valve
- More intuitive for lay person, less confusing than complex exceptions
- Gives institutions confidence to be innovative
- Empowers clients, not just institutions
- Only way to have a future-proofed copyright system



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**EXIT**



THANK  
YOU



# AUSTRALIAN LIBRARIES COPYRIGHT COMMITTEE

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