

**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 

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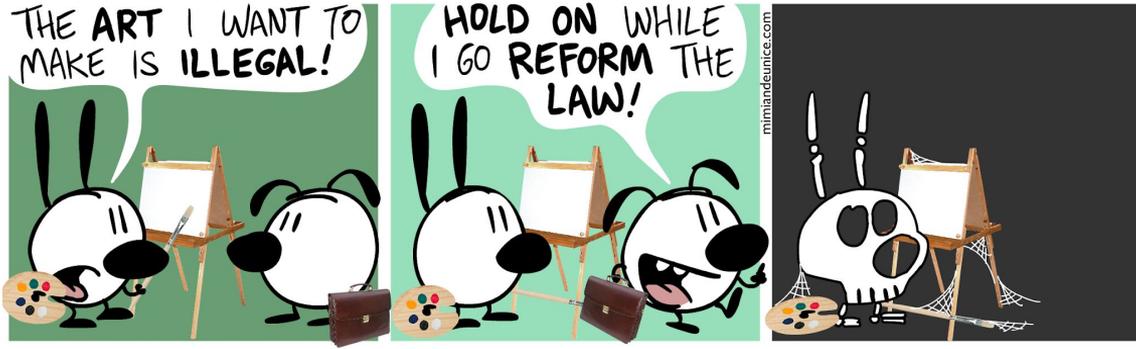
creativecommons.org/licenses/by/4.0 

ENTER

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



mimiandunice.com

Disability and Other Measures Act

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

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- Ended perpetual copyright for unpublished works (and partial solution for orphan works).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~~

'10% or one chapter' rule

~~'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





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~~

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





What is a safe harbour?

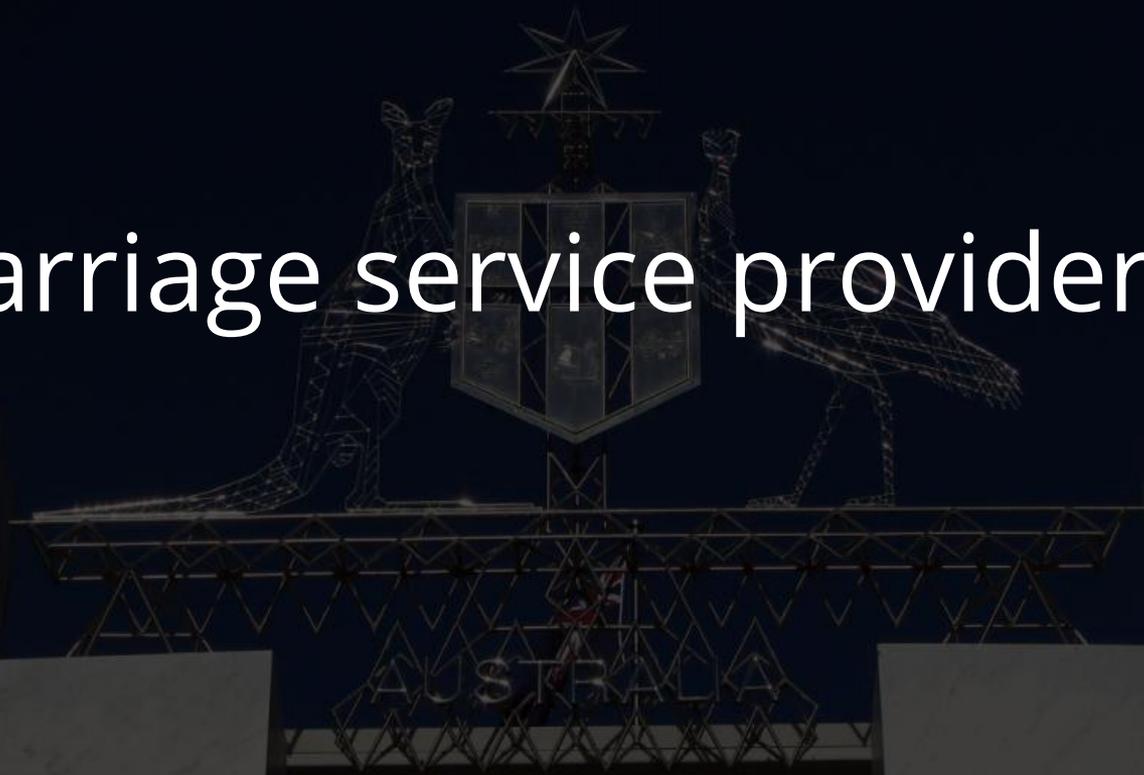
Online service providers
avoid financial remedies
for infringements by others on
their services.

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

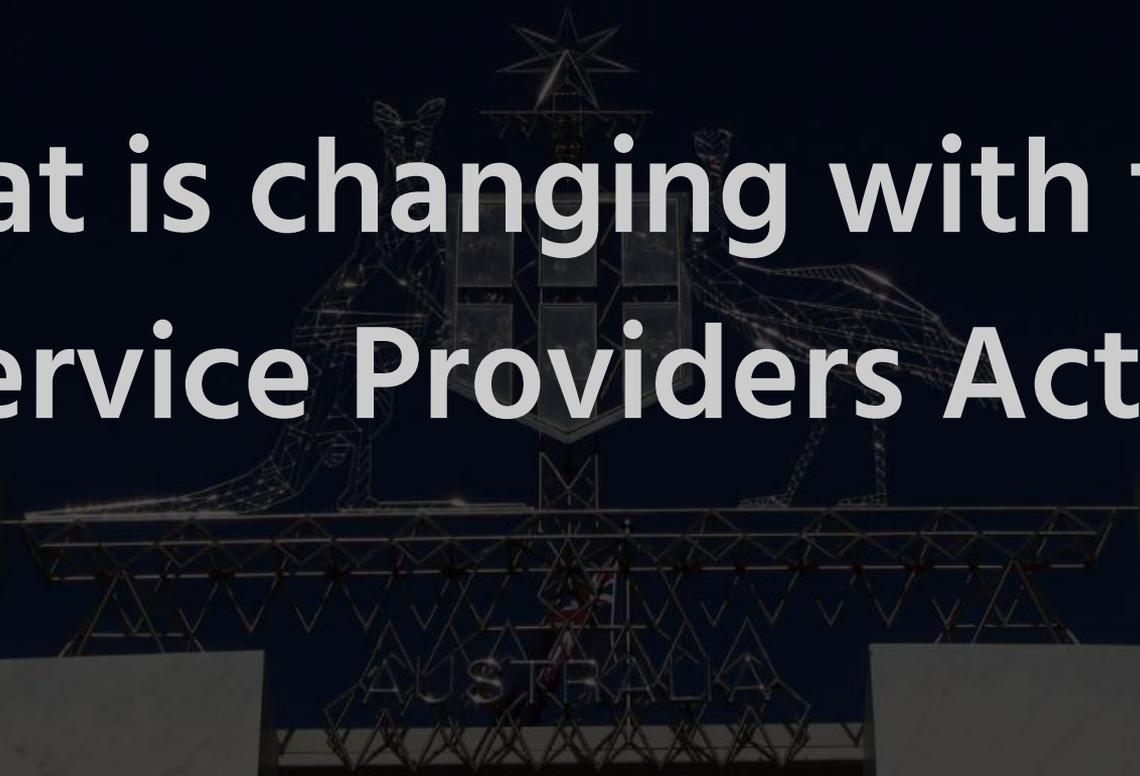


Carriage service providers



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

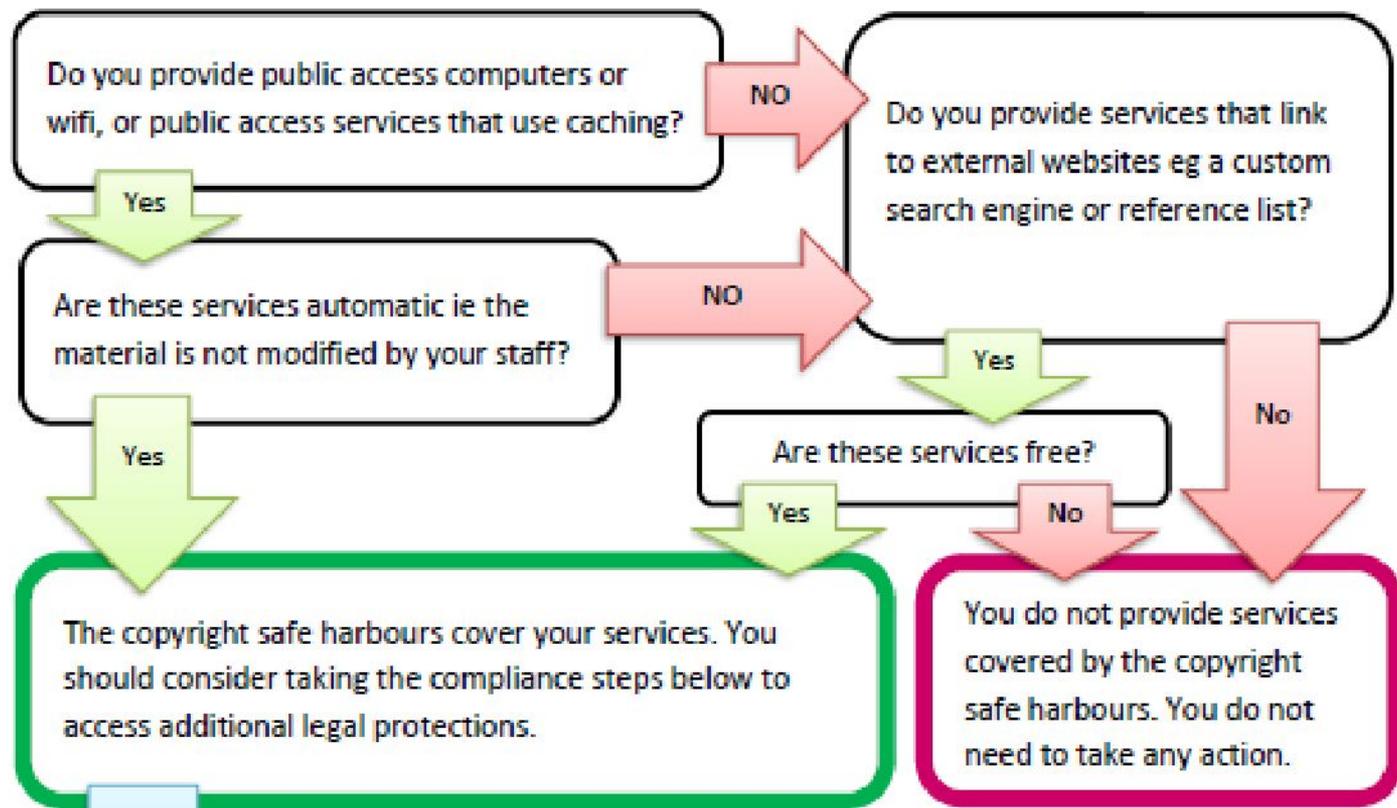
Most libraries and archives
automatically cache material

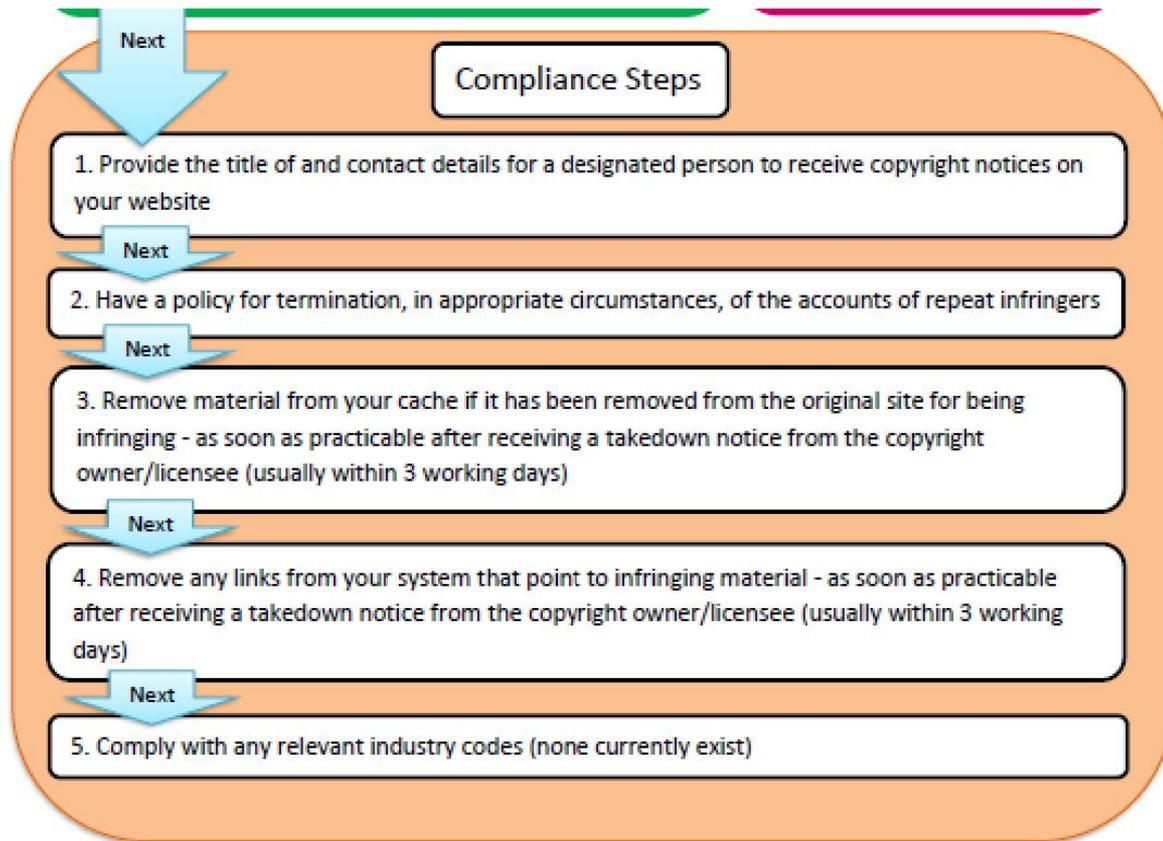
Most libraries and archives
link to third-party material

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

How do you comply?

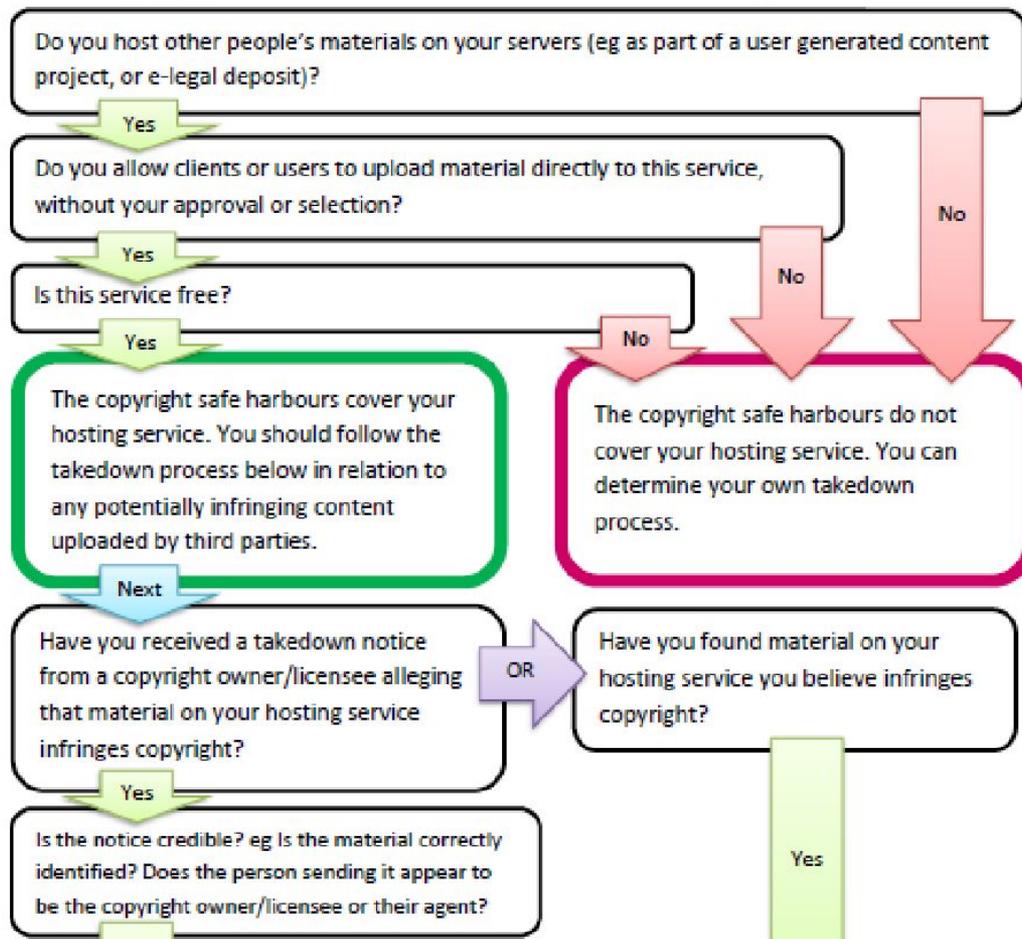
Copyright Safe Harbour Flowchart for All Institutions

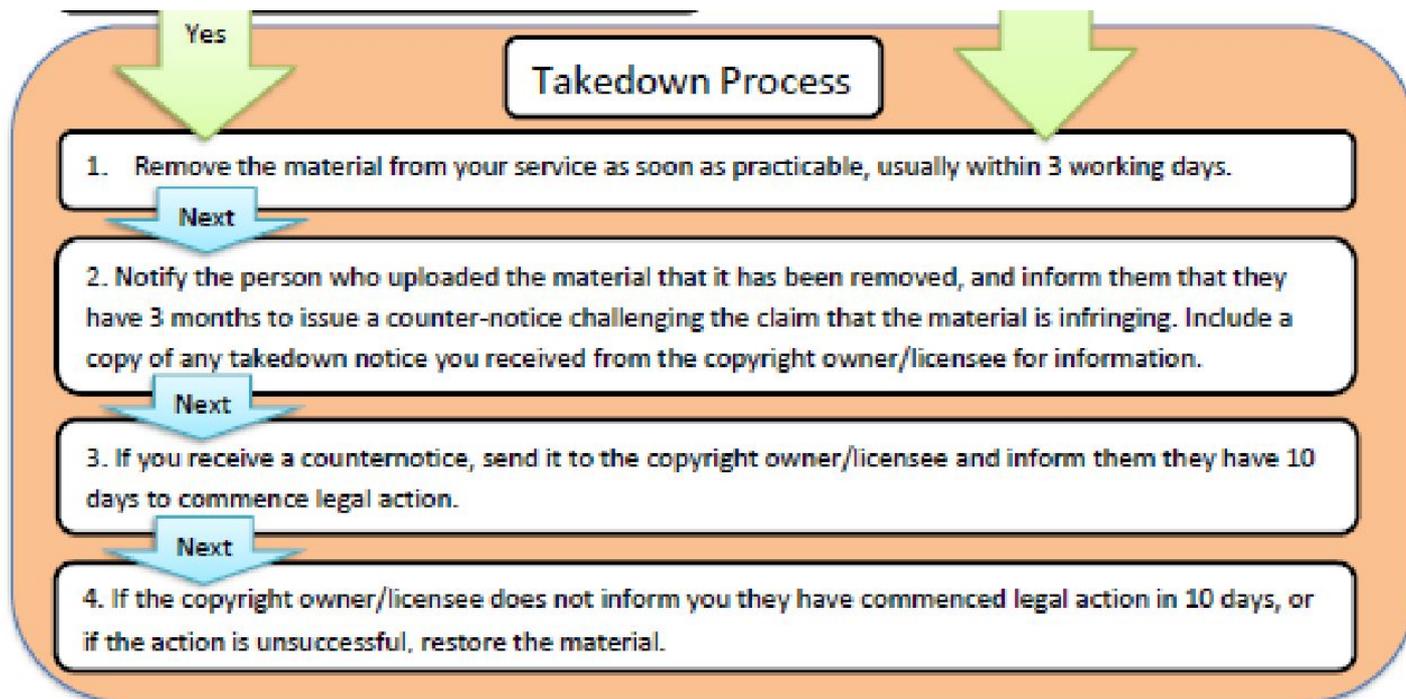




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Copyright Safe Harbour Flowchart for Hosting Institutions





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Safe Harbours Compliance Checklist for Libraries and Archives

libcopyright.org.au/content/resources



Service Providers Act



Modernisation Consultation



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

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 solve 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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