



Copyright Amendment (Online Infringement) Act 2015

No. 80, 2015

**An Act to amend the *Copyright Act 1968*, and for
related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 80, 2015

An Act to amend the *Copyright Act 1968*, and for related purposes

[Assented to 26 June 2015]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Copyright Amendment (Online Infringement) Act 2015*.

2 Commencement

This Act commences on the day after this Act receives the Royal Assent.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Copyright Act 1968

1 After section 115

Insert:

115A Injunctions against carriage service providers providing access to online locations outside Australia

- (1) The Federal Court of Australia may, on application by the owner of a copyright, grant an injunction referred to in subsection (2) if the Court is satisfied that:
 - (a) a carriage service provider provides access to an online location outside Australia; and
 - (b) the online location infringes, or facilitates an infringement of, the copyright; and
 - (c) the primary purpose of the online location is to infringe, or to facilitate the infringement of, copyright (whether or not in Australia).
- (2) The injunction is to require the carriage service provider to take reasonable steps to disable access to the online location.

Parties

- (3) The parties to an action under subsection (1) are:
 - (a) the owner of the copyright; and
 - (b) the carriage service provider; and
 - (c) the person who operates the online location if, but only if, that person makes an application to be joined as a party to the proceedings.

Service

- (4) The owner of the copyright must notify:
 - (a) the carriage service provider; and
 - (b) the person who operates the online location;

of the making of an application under subsection (1), but the Court may dispense, on such terms as it sees fit, with the notice required to be sent under paragraph (b) if the Court is satisfied that the owner of the copyright is unable, despite reasonable efforts, to determine the identity or address of the person who operates the online location, or to send notices to that person.

Matters to be taken into account

- (5) In determining whether to grant the injunction, the Court may take the following matters into account:
- (a) the flagrancy of the infringement, or the flagrancy of the facilitation of the infringement, as referred to in paragraph (1)(c);
 - (b) whether the online location makes available or contains directories, indexes or categories of the means to infringe, or facilitate an infringement of, copyright;
 - (c) whether the owner or operator of the online location demonstrates a disregard for copyright generally;
 - (d) whether access to the online location has been disabled by orders from any court of another country or territory on the ground of or related to copyright infringement;
 - (e) whether disabling access to the online location is a proportionate response in the circumstances;
 - (f) the impact on any person, or class of persons, likely to be affected by the grant of the injunction;
 - (g) whether it is in the public interest to disable access to the online location;
 - (h) whether the owner of the copyright complied with subsection (4);
 - (i) any other remedies available under this Act;
 - (j) any other matter prescribed by the regulations;
 - (k) any other relevant matter.

Affidavit evidence

- (6) For the purposes of the proceedings, section 134A (affidavit evidence) applies as if the reference in paragraph 134A(f) to a particular act included a reference to a class of acts.

Rescinding and varying injunctions

- (7) The Court may:
- (a) limit the duration of; or
 - (b) upon application, rescind or vary;
- an injunction granted under this section.
- (8) An application under subsection (7) may be made by:
- (a) any of the persons referred to in subsection (3); or
 - (b) any other person prescribed by the regulations.

Costs

- (9) The carriage service provider is not liable for any costs in relation to the proceedings unless the provider enters an appearance and takes part in the proceedings.

2 Paragraphs 119(a) and 120(1)(b)

After “115”, insert “or 115A”.

3 Section 131A

Before “The”, insert “(1)”.

4 At the end of section 131A

Add:

- (2) Despite subsection 39(2) of the *Judiciary Act 1903*, the Supreme Court of a State or Territory does not have jurisdiction in relation to applications under section 115A of this Act (injunctions against carriage service providers providing access to online locations outside Australia).

5 At the end of section 131D

Add “(other than section 115A)”.

*[Minister’s second reading speech made in—
House of Representatives on 26 March 2015
Senate on 18 June 2015]*

(56/15)
