



Copyright Amendment (Service Providers) Regulations 2018

I, the Honourable Paul de Jersey AC, Administrator of the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 06 December 2018

Paul de Jersey AC
Administrator of the Government of the Commonwealth of Australia

By His Excellency's Command

Mitch Fifield
Minister for Communications and the Arts

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1 Name

This instrument is the *Copyright Amendment (Service Providers) Regulations 2018*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	At the same time as the <i>Copyright Amendment (Service Providers) Act 2018</i> commences.	29 December 2018

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Copyright Act 1968*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Copyright Regulations 2017

1 Section 4 (definition of *designated representative*)

Repeal the definition, substitute:

designated representative of a service provider means a person designated under subsection 19(1) to receive for the service provider notifications, notices and counter-notices given for the purposes of a condition in subsection 116AH(1) of the Act.

2 Section 4

Insert:

designated service provider means a service provider other than a carriage service provider.

service provider has the meaning given by section 116ABA of the Act.

3 Section 4 (definitions of *system or network* and *user*)

Omit “carriage” (wherever occurring).

4 Part 6 (heading)

Omit “carriage”.

5 Section 18

Repeal the section, substitute:

18 Industry codes developed by carriage service providers

- (1) For the purposes of subparagraph (a)(i) of the definition of *industry code* in section 116AB of the Act, this section prescribes requirements that an industry code developed by carriage service providers must meet.
- (2) An industry code must be developed through an open voluntary process by a broad consensus of:
 - (a) either or both of the following:
 - (i) owners of copyright or a class of owners of copyright;
 - (ii) exclusive licensees of copyright or a class of exclusive licensees of copyright; and
 - (b) carriage service providers.
- (3) An industry code that does not deal solely with caching must include a provision to the effect that standard technical measures are technical measures that:
 - (a) are used to protect and identify copyright material; and
 - (b) are accepted under the code or developed in accordance with a process set out in the code; and
 - (c) are available on non-discriminatory terms; and
 - (d) do not impose substantial costs on carriage service providers or substantial burdens on their systems or networks.

18A Industry codes developed by designated service providers

- (1) For the purposes of paragraph (b) of the definition of *industry code* in section 116AB of the Act, an industry code, or a variation of an industry code, developed by a class of designated service providers must be developed in accordance with this section.

Requirement for broad consensus

- (2) An industry code, or a variation of an industry code, must be developed through an open voluntary process by a broad consensus of:
- (a) either or both of the following:
 - (i) owners of copyright or a class of owners of copyright;
 - (ii) exclusive licensees of copyright or a class of exclusive licensees of copyright; and
 - (b) the class of designated service providers to which the code, or the code as varied, is to apply.

Content of industry code

- (3) An industry code may contain either or both of the following:
- (a) a provision relating to accommodating and not interfering with standard technical measures;
 - (b) a provision relating to:
 - (i) updating copyright material that is cached; and
 - (ii) not interfering with technology used at the originating site to obtain information about the use of the copyright material.
- (4) If an industry code contains a provision of a kind mentioned in paragraph (3)(a), the industry code must contain a provision to the effect that standard technical measures are technical measures that:
- (a) are used to protect and identify copyright material; and
 - (b) are accepted under the code or developed in accordance with a process set out in the code; and
 - (c) are available on non-discriminatory terms; and
 - (d) do not impose substantial costs on the designated service providers or substantial burdens on their systems or networks.
- (5) An industry code must contain all of the following:
- (a) a provision specifying the class of designated service providers to which the code applies;
 - (b) a provision setting out when the code takes effect and the circumstances in which the code will cease to have effect;
 - (c) a provision requiring that the code be published on the website of a person or body representing that class of designated service providers when the code takes effect;
 - (d) a provision requiring that, if the code is varied, the varied code be published on the website of a person or body representing that class of designated service providers when the variation takes effect.

Consultation requirement

- (6) Before an industry code, or a variation of an industry code, takes effect, a person or body representing that class of designated service providers must:
 - (a) publish a draft of the code, or a draft of the code as proposed to be varied, on the website of the person or body; and
 - (b) invite submissions about the draft code, or proposed variation, within a specified period (which must be at least 30 days after the draft is published); and
 - (c) consider any submissions received within that period.
- (7) Subsection (6) does not apply in relation to a variation of an industry code if the variation is of a minor nature.

6 Section 19

Repeal the section, substitute:

19 Designated representatives

- (1) A service provider must designate one or more persons to be the representative of the service provider to receive for the service provider notifications, notices and counter-notices given for the purposes of a condition in subsection 116AH(1) of the Act.
- (2) The service provider must publish a notice in a reasonably prominent location on a website of the service provider setting out the following information for each designated representative of the service provider:
 - (a) the title of the position of the designated representative;
 - (b) sufficient information to allow a person to contact the designated representative.

7 Paragraph 20(b)

Omit “the carriage service provider’s designated representative”, substitute “a designated representative of the service provider”.

8 Section 23

Omit “carriage” (wherever occurring).

9 Subsection 24(1)

Omit “the carriage service provider’s designated representative”, substitute “a designated representative of the service provider”.

10 Subsection 25(1)

Omit “carriage” (wherever occurring).

11 Subsection 25(2)

Omit “carriage” (first and second occurring).

12 Paragraph 25(2)(b)

After “a notice”, insert “(the *user notice*)”.

13 Subparagraph 25(2)(b)(ii)

Omit “to the carriage service provider’s designated representative disputing the claims in the notice of claimed infringement”, substitute “disputing the claims in the notice of claimed infringement to the designated representative of the service provider specified in the user notice”.

14 Subsection 25(2) (note)

Omit “carriage” (wherever occurring).

15 Subsection 25(3)

Omit “carriage” (wherever occurring).

16 Subsection 26(1)

Omit “carriage” (first occurring).

17 Subsection 26(1)

Omit “to the carriage service provider’s designated representative disputing the claims set out in the notice”, substitute “disputing the claims set out in the notice of claimed infringement to the designated representative of the service provider specified in the user notice mentioned in paragraph 25(2)(b)”.

18 Subsection 26(1) (note)

Omit “the carriage service provider’s designated representative, the carriage”, substitute “that designated representative, the”.

19 Subsection 27(1)

Omit “carriage” (wherever occurring).

20 Subsection 28(1)

Omit “carriage” (first and second occurring).

21 Subparagraph 28(1)(b)(i)

Omit “carriage service provider’s designated representative”, substitute “designated representative of the service provider specified in the notice mentioned in paragraph 27(1)(b)”.

22 Subparagraph 28(1)(b)(ii)

Omit “carriage”.

23 Subsection 28(2) (including the note)

Omit “carriage” (wherever occurring).

24 Section 29

Omit “carriage” (wherever occurring).

25 Subsection 30(1)

Omit “carriage” (first and second occurring).

26 Paragraph 30(1)(c)

Omit “carriage service provider’s designated representative”, substitute “designated representative of the service provider specified in the notice”.

27 Subparagraph 30(1)(c)(ii)

Omit “carriage” (wherever occurring).

28 Subsection 30(2)

Omit “carriage” (wherever occurring).

29 Subsection 31(1)

Omit “carriage” (first occurring).

30 Subsection 31(1)

Omit “carriage service provider’s designated representative”, substitute “designated representative of the service provider specified in the notice received by the user”.

31 Paragraph 31(1)(b)

Omit “carriage” (wherever occurring).

32 Subsection 31(1) (note)

Omit “the carriage service provider’s designated representative, the carriage”, substitute “that designated representative, the”.

33 Sections 32 and 33

Omit “carriage” (wherever occurring).

34 Subsection 34(1)

Omit “the carriage service provider’s designated representative”, substitute “a designated representative of the service provider”.

35 Sections 35, 37 and 38

Omit “carriage” (wherever occurring).

36 At the end of Part 16

Add:

132 Amendments made by the *Copyright Amendment (Service Providers) Regulations 2018*

- (1) A designation under subsection 19(1) that is in effect immediately before the commencement of the *Copyright Amendment (Service Providers) Regulations 2018* (the **amending regulations**) continues to have effect on and after that commencement as if it were a designation under subsection 19(1), as amended by the amending regulations.
- (2) Sections 24 to 26, 30, 31 and 34, as amended by the amending regulations, apply in relation to the following:
 - (a) a notice given under sections 24, 30 and 34, as so amended, on or after the commencement of the amending regulations;

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- (b) a notice given under sections 25, 26 and 31, as so amended, on or after that commencement that relates to a notice referred to in paragraph (a) of this subsection.

37 Parts 1 to 3 of Schedule 2

Omit “*carriage*” (wherever occurring).

38 Part 3 of Schedule 2 (note 3)

Omit “*carriage*” (wherever occurring).

39 Part 4 of Schedule 2

Omit “*carriage*” (wherever occurring).

40 Part 4 of Schedule 2 (note 2)

Repeal the note, substitute:

Note 2: This counter-notice must be given to the designated representative of the service provider who is specified in the notice to which this counter-notice relates within 3 months after the user receives that notice—see section 26 of the *Copyright Regulations 2017*.

41 Part 4 of Schedule 2 (notes 4 and 5)

Omit “*carriage*” (wherever occurring).

42 Part 5 of Schedule 2

Omit “*carriage*” (wherever occurring).

43 Part 5 of Schedule 2 (note 2)

Repeal the note, substitute:

Note 2: This counter-notice must be given to the designated representative of the service provider who is specified in the notice to which this counter-notice relates within 3 months after the user receives that notice—see section 31 of the *Copyright Regulations 2017*.

44 Part 5 of Schedule 2 (note 4)

Omit “*carriage*” (wherever occurring).

45 Part 6 of Schedule 2

Omit “*carriage*” (wherever occurring).