

Copyright (Infringing File Sharing) Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill amends the Copyright Act 1994 (the **Act**) to provide new enforcement measures against the unauthorised sharing of copyright material via the Internet (infringing file sharing). It repeals section 92A of the Act (enacted by section 53 of the Copyright (New Technologies) Amendment Act 2008, but not brought into force), which would have required ISPs to adopt a policy providing for the termination of a repeat infringer's Internet account.

File sharing involves the direct or indirect transfer of material via the Internet between 2 points. The transfer may be between users, or between a user and a place where that material is stored. Sharing of copyright works or parts of those works often occurs without the authorisation of the copyright owner, constituting an infringement.

The Act currently provides civil enforcement measures that are considered to be ineffective in remedying infringing file sharing. For each infringement a copyright owner must seek a court order to obtain the identity of the infringer from that infringer's Internet service provider (**ISP**). The cost of seeking an order and the cost of taking infringement proceedings in court is generally much higher than a possible award of damages for that particular infringement, acting as a barrier to the effective enforcement of copyright.

While the damage sustained by a copyright owner from a single file sharing infringement is generally small, the prevalence of infringing file sharing in the current digital environment is having a negative cumulative effect on New Zealand's music, film, and software industries. Internationally, this problem is also recognised, and other jurisdictions such as the US and UK have legislated or are legislating to provide for the effective enforcement of copyright against file sharers.

This Bill provides a regime that aims to—

- deter file sharing that infringes copyright;
- educate the public about the problem;
- compensate copyright owners for damage sustained from copyright infringement by file sharing;
- provide sanctions for serious copyright infringers;
- limit ISP liability that may result from account holders' infringing file sharing.

Public education and deterrence

Lack of public knowledge that file sharing may infringe copyright contributes to the prevalence of this activity in the digital environment. The Bill provides for account holders to receive infringement notices that warn that file sharing may infringe copyright, and that continued infringement may result in enforcement action. The Bill also provides time frames in which subsequent notices cannot be sent, to give account holders reasonable time to curb infringing activity.

The Bill intends to deter the majority of infringers through a first notice. However, provision is also made for more effective enforcement of copyright against repeat infringers.

A first notice (a **detection notice**) will include education information and inform the account holder that any further evidence of infringement will be logged by their ISP. It will also outline that enforcement action may be taken if the account holder receives a third notice.

Second and third notices (**warning notices** and **enforcement notices**) will contain a list of alleged infringements for that account holder since the detection notice and a warning that the Copyright Tribunal (the **Tribunal**) may award compensation based on that list. The visibility of an account holder's infringing activity in each notice and a warning that those infringements may be subject to an award is

intended to deter infringers, especially those who are already aware their actions breach copyright but persist in infringing file sharing.

Upon receiving notification from an ISP that an account holder has received 3 notices, copyright owners may apply to the Tribunal for a compensation award up to \$15,000. Copyright owners may also make an application to a District Court for an order requiring the ISP to suspend the account holder's Internet access for up to 6 months.

Account holders may challenge infringement allegations by copyright owners. The Bill allows an account holder to contest a notice or its contents within prescribed time frames and provides a mechanism for copyright owners to accept or reject any challenge.

Compensation for copyright infringement by file sharing

This Bill extends the jurisdiction of the Tribunal so that it can make awards that compensate copyright owners in cases of repeat copyright infringement by file sharing. The Bill provides that claims will generally be heard on the papers; however, account holders may request a hearing or the Tribunal may order one.

If the Tribunal holds a hearing, parties may not be represented by a lawyer. This is so that Tribunal hearings are inexpensive for the parties, which improves access to the Tribunal. However, the Tribunal may give leave for a lawyer to be present.

Sanctions for serious infringers

Copyright owners will be able to seek a court order suspending a repeat infringer's Internet account for up to 6 months after a third notice has been sent to the account holder. A court is better equipped to consider whether suspension is appropriate in the circumstances of each case. The Bill gives examples of things the court must consider, including the seriousness of the infringing.

ISP liability

The Act currently provides "safe harbours" (exclusions from liability) for ISPs where they are acting as a mere conduit for copyright infringement over the ISPs' network. This Bill gives a safe harbour to ISPs from liability for file sharing infringements occurring over

their networks, provided they comply with their obligations under the Bill.

ISP definition

The Bill inserts a separate definition of Internet service provider into the Act for the purpose of the regime. The definition is intended to exclude universities, libraries, and businesses that provide Internet access to their members or employees but are not in the nature of a traditional ISP such as Telecom. Only traditional ISPs are in a position to perform evidence matching and notice functions.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that the Bill comes into force on **1 October 2010**.

Clause 3 provides that the Bill amends the Copyright Act 1994 (the **Act**).

Part 1

Infringing file sharing

Clause 4 repeals the definition of Internet service provider in section 2(1). This is because the term Internet service provider, or ISP, is defined in the Bill to mean different things for different purposes. The term Internet service provider is used for the purpose of the safe haven provisions in sections 92A to 92E, while the abbreviation ISP is used in the infringing file sharing provisions in *new sections 122A to 122R*.

Clause 5 substitutes a *new section 92A*. *New section 92A* contains the definitions of Internet services and Internet service provider for the purposes of sections 92A to 92E.

Clause 6 amends section 92B by inserting a further safe haven provision relating to Internet service providers that may know of infringing activity as a result of their involvement in the infringing file sharing regime. An Internet service provider does not infringe copyright, despite possible knowledge of an infringement, as long as it complies with its obligations under *new sections 122A to 122R* and associated regulations. *Clause 6* also omits the definition of Internet services, because this is moved into *new section 92A*.

Clause 7 inserts *new sections 122A to 122R* into Part 6 (remedies for infringement).

New section 122A sets out definitions for the purpose of the infringing file sharing regime. Key terms are account holder, file sharing, infringement, IP address, and ISP.

New section 122B gives an overview of the regime.

New sections 122C to 122H set out the system for sending notices to people who are alleged to have infringed copyright by file sharing. The system works as follows:

New section 122C

- copyright owners send ISPs information about infringements detected at Internet protocol addresses (**IP address**):
- ISPs are obliged to match each IP address with the relevant account holder's details and to issue an infringement notice to the account holder:

New sections 122D to 122H

- the first notice sent is a detection notice. It is issued the first time an infringement against a particular copyright owner is matched to an account holder. No further infringement notices can be sent for 3 weeks after the date of the detection notice, but a record is kept of all infringements by the account holder against the same copyright owner from that date. The account holder has 1 week in which to challenge the detection notice. If the challenge is not rejected within 3 weeks after the date of the detection notice, the detection notice is cancelled. A detection notice expires 9 months after it is issued, or 4 weeks after an enforcement notice is issued:
- if a further infringement occurs at least 3 weeks after a detection notice is issued, a second notice (a warning notice) is issued. This lists all infringements since the date of the detection notice. The same time limits and provisions about challenges apply as with a detection notice:
- if, at least 3 weeks after a warning notice, a further infringement occurs against the same copyright owner, an enforcement notice is issued. The same provisions apply as with a warning notice, but after an enforcement notice is sent the copyright owner has 4 weeks in which to take enforcement action against the account holder.

New section 122I sets out the 2 special enforcement mechanisms available under the infringing file sharing regime, which are—

- an order from the Tribunal for a sum of up to \$15,000; and
- an order from a District Court requiring the ISP to suspend the account holder's account.

Both these orders are in addition to, and do not displace, any other remedies under the Act.

New sections 122J to 122N are about the process of getting an order from the Tribunal. The amount of the order is determined in accordance with regulations. It is based on the number of infringements identified in the enforcement notice that the Tribunal is satisfied occurred at an address of the account holder against the copyright owner. The order may include a sum to compensate the copyright owner for the fees it has to pay to the ISP under *new section 122R*, and reimbursement of the application fee to the Tribunal.

New section 122O is about the order that a District Court may make requiring an ISP to suspend the account of an infringer to whom an enforcement order has been sent. A copyright owner may bring whatever evidence it likes to the court (such as evidence that 1 or more Tribunal orders have been made against the account holder), but the court must consider various matters when deciding whether to make the order, such as the degree of the account holder's reliance on access to the Internet.

New section 122P provides a mechanism by which a copyright owner can find out the contact details of an account holder for the purpose of seeking an order under *new section 122O*. The copyright owner may apply to a District Court for an order requiring the ISP to disclose that information, but must undertake not to disclose the information for any purpose other than one associated with an order under *new section 122O*.

New section 122Q sets out the obligations of ISPs with respect to maintaining records, reporting, and keeping account holders' names and contact details confidential.

New section 122R allows ISPs to charge copyright owners for the work they are obliged to do under the infringing file sharing regime, and provides that regulations may prescribe the rates charged or methods for calculating the rates charged.

Clause 8 consequentially amends section 123 by including references to the new sections.

Part 2

Related amendments to Parts 10 and 11

Clause 9 increases the number of members of the Tribunal from 2 to 5.

Clause 10 amends section 234, the regulation-making section, to provide for regulations to be made dealing with various aspects of the infringing file sharing regime, such as prescribing the forms of the infringement notices and setting the amounts that the Tribunal can award.

Regulatory impact statement

The regulatory impact statement for this Bill was prepared on 9 December 2009. It is available on—

- the Ministry of Economic Development's website at http://www.med.govt.nz/templates/MultipageDocumentTOC___42521.aspx; and
 - Treasury's website at <http://www.treasury.govt.nz/publications/informationreleases/ris/pdfs/ris-med-cifs-feb10.pdf>.
-

Hon Simon Power

Copyright (Infringing File Sharing) Amendment Bill

Government Bill

Contents

		Page
1	Title	2
2	Commencement	2
3	Principal Act amended	2

Part 1

Infringing file sharing

4	Interpretation	3
5	New section 92A substituted	3
	92A Interpretation for sections 92A to 92E	3
6	Internet service provider liability if user infringes copyright	3
7	New heading and sections 122A to 122R inserted	4

Infringing file sharing

122A	Interpretation for sections 122B to 122R	4
122B	Overview of infringing file sharing regime	5
122C	ISPs to send infringement notices	6
122D	Detection notices	7
122E	Warning notices	8
122F	Enforcement notices	9
122G	Challenging infringement notices	10
122H	Effect of challenge to, and cancellation of, infringement notice	10
122I	Enforcement action after issue of enforcement notice	11

Copyright (Infringing File Sharing) Amendment Bill		
cl 1		
	122J Application to Tribunal	11
	122K Notice of proceedings	12
	122L Decisions generally made on papers and without hearing	13
	122M If hearing is held	13
	122N Tribunal order requiring payment to copyright owner	14
	122O Court order suspending account holder's account	15
	122P Order requiring ISP to disclose account holder details	15
	122Q Obligations of ISPs	16
	122R Fees payable by copyright owners to ISPs	16
8	Rights and remedies of exclusive licensee	17
Part 2		
Related amendments to Parts 10 and 11		
<i>Copyright Tribunal</i>		
9	Membership of Tribunal	17
<i>Regulations</i>		
10	Regulations	17

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Copyright (Infringing File Sharing) Amendment Act **2010**.
- 2 Commencement**
This Act comes into force on **1 October 2010**. 5
- 3 Principal Act amended**
This Act amends the Copyright Act 1994.

Part 1
Infringing file sharing

- 4 Interpretation**
The definition of **Internet service provider** in section 2(1) is repealed. 5
- 5 New section 92A substituted**
Section 92A (as inserted by the Copyright (New Technologies) Amendment Act 2008, but not in force) is repealed and the following section substituted:
- “92A Interpretation for sections 92A to 92E** 10
In this section and sections 92B to 92E, unless the context otherwise requires,—
“**Internet service provider** means a person who does either or both of the following:
“(a) offers the transmission, routing, or providing of connections for digital online communications, between or among points specified by a user, of material of the user’s choosing: 15
“(b) hosts material on websites or other electronic retrieval systems that can be accessed by a user 20
“**Internet services** means the services referred to in the definition of Internet service provider.”
- 6 Internet service provider liability if user infringes copyright**
- (1) Section 92B is amended by inserting the following subsection after subsection (2): 25
“(2A) An Internet service provider does not infringe the copyright in the work, or authorise A’s infringement of the copyright in the work, merely because the Internet service provider knows of the infringement from information received as a result of anything done under **sections 122A to 122R**, provided that, in relation to the alleged infringement, the Internet service provider complies with all its obligations under those sections and under any regulations made under **section 234(eb) to (eh)**.” 30 35
- (2) Section 92B(4) is repealed.

7 **New heading and sections 122A to 122R inserted**

The following heading and sections are inserted after section 122:

“Infringing file sharing

“122A Interpretation for sections 122B to 122R 5

“(1) In this section and **sections 122B to 122R**, unless the context otherwise requires,—

“account holder, in relation to an ISP, means a person who has an account with the ISP

“detection notice means a detection notice issued by an ISP to an account holder in respect of an alleged infringement against a copyright owner (*see section 122D*) 10

“enforcement notice means an enforcement notice issued by an ISP to an account holder in respect of at least 3 alleged infringements against a copyright owner (*see section 122F*) 15

“file sharing is where material—

“(a) is downloaded from the Internet; or

“(b) is made available on the Internet by a user in a form in which the material may be downloaded by 1 or more other users; or 20

“(c) is transferred, directly or indirectly, via the Internet from one user to another user

“infringement means an incidence of file sharing that involves the infringement of copyright in a work, or part of a work, by a user 25

“infringement notice means a detection notice, a warning notice, or an enforcement notice that—

“(a) is issued to an account holder by an ISP; and

“(b) identifies the infringement that triggers the notice; and

“(c) in the case of a warning notice or an enforcement notice, identifies any other infringements that have occurred since the date of the detection notice 30

“IP address means an Internet protocol address

“ISP, or Internet service provider, means a person that operates a business that— 35

“(a) offers the transmission, routing, and providing of connections for digital online communications, between or

among points specified by a user, of material of the user's choosing; and

“(b) charges its account holders for the services provided in **paragraph (a)** on a regular basis; and

“(c) is not primarily operated to cater for transient users 5

“**on-notice period** means the period of 3 weeks beginning on the date of a detection notice or a warning notice and ending with the close of the date that is 3 weeks later

Example

(1) A detection notice is issued on Monday, 1 March. The on-notice period ends with the close of Sunday, 21 March. 10

(2) A warning notice is issued on Friday, 26 March. The on-notice period ends with the close of Thursday, 15 April.

“**quarantine period** means a period of 4 weeks beginning on the date of an enforcement notice and ending with the close of the date that is 4 weeks later 15

“**warning notice** means a warning notice issued by an ISP to an account holder in respect of at least 2 alleged infringements against a copyright owner (*see section 122E*).

“(2) In this section and **sections 122B to 122R**, a reference to the date of an infringement, an infringement notice, or a challenge is a reference to,— 20

“(a) in the case of an infringement, the date on which it is recorded by a copyright owner as having occurred:

“(b) in the case of an infringement notice, the date on which it is issued by the ISP: 25

“(c) in the case of a challenge made under **section 122G**, the date on which it is received from an account holder by an ISP.

“**122B Overview of infringing file sharing regime** 30

“(1) **Sections 122A to 122R** provide copyright owners with a special regime for taking enforcement action against people who infringe copyright through file sharing.

“(2) The regime provides that, at the instigation of copyright owners, ISPs must issue infringement notices to alleged infringers. 35

- “(3) The 3 kinds of infringement notices, in the order in which they are given, are a detection notice, a warning notice, and an enforcement notice.
- “(4) After an enforcement notice is issued to an alleged infringer, the copyright owner may take enforcement action by seeking the following orders against the alleged infringer: 5
- “(a) an order from the Tribunal for a sum of up to \$15,000;
- “(b) an order from a District Court requiring the ISP to suspend the account holder’s account for up to 6 months.
- “(5) Time limits apply to all stages of the regime. 10
- “(6) This section is by way of explanation only. If any provision is inconsistent with it, the other provision prevails.

“**122C ISPs to send infringement notices**

- “(1) If a copyright owner provides an ISP with information that identifies an IP address at which an infringement of its copyright is alleged to have occurred as a result of file sharing, the ISP must— 15
- “(a) match the IP address with the account holder to whom it related at the time of the infringement; and
- “(b) issue the appropriate infringement notice to the account holder within 1 week after receiving the information. 20
- “(2) An ISP need not comply with the obligation in **subsection (1)(a)** to match IP addresses if—
- “(a) the alleged infringement occurred more than 1 week before the ISP received the relevant information from the copyright owner; or 25
- “(b) the alleged infringement occurred after an infringement that triggered a detection notice but before the date of that detection notice; or
- “(c) the alleged infringement occurred during a quarantine period applying to the account holder with respect to the copyright owner; or 30
- “(d) the copyright owner has not complied with regulations made under section 234 that impose requirements on the information, or form of information, to be provided for the purposes of **subsection (1)**; or 35

- “(e) the copyright owner has not paid, or has not agreed to pay, a fee required by the ISP, as permitted by **section 122R**.
- “(3) An ISP need not comply with the obligation in **subsection (1)(b)** to issue notices if— 5
- “(a) any of **subsection (2)(a) to (e)** applies; or
- “(b) the alleged infringement occurred within an on-notice period applying to the account holder with respect to the copyright owner; or
- “(c) the copyright owner agrees, or asks, that a notice not be issued. 10
- “(4) Notices issued to account holders must be sent by whatever method the ISP uses to communicate with the account holder for billing purposes, unless the account holder and ISP agree in writing to use a different method. 15
- “**122D Detection notices**
- “(1) An ISP must issue a detection notice in relation to a copyright owner to an account holder—
- “(a) the first time the ISP matches the account holder with an IP address at which an infringement is alleged by the copyright owner to have occurred; and 20
- “(b) the first time, following the end of a quarantine period, the ISP matches the account holder with an IP address at which an infringement is alleged by the copyright owner to have occurred. 25
- “(2) A detection notice must be in the prescribed form (if a form is prescribed) and must—
- “(a) identify the copyright owner; and
- “(b) identify the alleged infringement that has triggered the issue of the notice; and 30
- “(c) identify the date of that alleged infringement; and
- “(d) state the date of the detection notice; and
- “(e) explain the consequences to the account holder if further infringing occurs; and
- “(f) explain how the account holder may challenge the notice; and 35
- “(g) comply with any other requirements that may be prescribed in regulations.

- “(3) A detection notice expires 9 months after the date of the detection notice, unless an enforcement notice is issued to the account holder in respect of further infringing against the copyright owner before that date, in which case the detection notice expires 4 weeks after the date of the enforcement notice. 5
- “**122E Warning notices**
- “(1) An ISP must issue a warning notice in relation to a copyright owner to an account holder if—
- “(a) the ISP matches the account holder with an IP address at which an infringement is alleged by the copyright owner to have occurred; and 10
 - “(b) the infringement occurred at least 3 weeks after the date of a detection notice issued to the account holder in relation to the same copyright owner, but before that detection notice expires. 15
- “(2) A warning notice must be in the prescribed form (if a form is prescribed) and must—
- “(a) identify the copyright owner; and
 - “(b) identify the infringement that has triggered the issue of the warning notice; and 20
 - “(c) identify the date of that alleged infringement; and
 - “(d) identify the most recent detection notice issued to the account holder in relation to the copyright owner (the **preceding detection notice**); and
 - “(e) identify any other alleged infringements by the account holder against that copyright owner that have occurred since the date of the preceding detection notice; and 25
 - “(f) state the date of the warning notice; and
 - “(g) explain the consequences to the account holder if further infringing occurs; and 30
 - “(h) explain how the account holder may challenge the notice; and
 - “(i) comply with any other requirements that may be prescribed in regulations.
- “(3) A warning notice expires 9 months after the date of the preceding detection notice, unless an enforcement notice is issued to the account holder before that date, in which case the warning 35

notice expires 4 weeks after the date of the enforcement notice.

“122F Enforcement notices

- “(1) An ISP must issue an enforcement notice in relation to a copyright owner to an account holder if— 5
- “(a) the ISP matches the account holder with an IP address at which an infringement is alleged by the copyright owner to have occurred; and
 - “(b) the infringement occurred at least 3 weeks after the date of a warning notice issued to the account holder in relation to the same copyright owner, but before that warning notice expires. 10
- “(2) An enforcement notice must be in the prescribed form (if a form is prescribed) and must—
- “(a) identify the copyright owner; and 15
 - “(b) identify the infringement that has triggered the issue of the enforcement notice; and
 - “(c) identify the date of that alleged infringement; and
 - “(d) identify the most recent warning notice issued to the account holder in relation to the copyright owner, and the preceding detection notice; and 20
 - “(e) identify any other alleged infringements against the copyright owner that have occurred since the date of the preceding detection notice; and
 - “(f) state the date of the enforcement notice; and 25
 - “(g) explain that enforcement action may now be taken against the account holder; and
 - “(h) explain that, unless the enforcement notice is cancelled, no further infringement notices may be issued in respect of infringements against the copyright owner until the end of the quarantine period; and 30
 - “(i) explain how the account holder may challenge the notice; and
 - “(j) comply with any other requirements that may be prescribed in regulations. 35
- “(3) An enforcement notice expires 4 weeks after its date of issue.
- “(4) On issuing an enforcement notice to an account holder, the ISP must send a copy of the notice to the relevant copyright

owner, but must omit any information that discloses the name or contact details of the account holder.

“122G Challenging infringement notices

- “(1) An account holder may challenge an infringement notice by sending a challenge, in the prescribed form, to the ISP that issued the infringement notice. 5
- “(2) A challenge is not valid if it is received more than 1 week after the date of the infringement notice to which it relates.
- “(3) An ISP that receives a valid challenge to an infringement notice must immediately forward it to the relevant copyright owner if the challenge raises an issue that should be addressed by the copyright owner rather than by the ISP. 10
- “(4) The ISP or copyright owner (as appropriate) must consider every valid challenge and, if it decides to reject a challenge, must notify the account holder of that fact and the reason for the rejection. 15
- “(5) If the copyright owner responds to a challenge, the ISP must immediately forward the response to the account holder.
- “(6) If a challenge is rejected, it may be raised again by the account holder in any enforcement proceedings. 20

“122H Effect of challenge to, and cancellation of, infringement notice

- “(1) A challenge is deemed to be accepted if it has not been rejected by the relevant copyright owner or ISP within 3 weeks after the date of the infringement notice to which it relates. 25
- “(2) If a challenge to a detection notice is accepted or deemed to be accepted,—
- “(a) the detection notice and any subsequent infringement notices sent to the account holder in relation to the same copyright owner are cancelled and treated as if they had not been issued; and 30
- “(b) no infringements that occurred between the date of the infringement that triggered the detection notice and the date on which the detection notice is cancelled may be included in an infringement notice. 35
- “(3) If a challenge to a warning notice or an enforcement notice is accepted or deemed to be accepted,—

- “(a) the notice is cancelled and treated as if it had not been issued; but
- “(b) if the challenge related only to an infringement that was not an infringement that triggered a notice, the notice is not cancelled but the infringement is treated as if it were not included in the notice. 5

“**122I Enforcement action after issue of enforcement notice**

- “(1) A copyright owner may take enforcement action against an account holder who has been issued with an enforcement notice in respect of infringements against the copyright owner by doing either or both of the following: 10
 - “(a) applying to the Tribunal for an order under **section 122N** against the account holder:
 - “(b) applying to a District Court for an order under **section 122O** against the account holder. 15
- “(2) Nothing in **sections 122A to 122R** affects the rights and remedies of copyright owners under any other provision of this Part in relation to any infringement of copyright, whether or not the infringement has been included in an infringement notice. 20

“**122J Application to Tribunal**

- “(1) An application to the Tribunal for an order under **section 122N** may not be made after the end of the quarantine period or earlier than—
 - “(a) 1 week after the date of the enforcement notice; or 25
 - “(b) if a valid challenge is received, 3 weeks after the date of the enforcement notice.
- “(2) The application must be in the prescribed form and include or be accompanied by—
 - “(a) a copy of the enforcement notice as forwarded to the copyright owner; and 30
 - “(b) evidence that the copyright owner is the owner of the material in which copyright is alleged to be infringed; and
 - “(c) a statement of which of the alleged infringements identified in the enforcement notice the copyright owner is seeking to enforce; and 35

- “(d) a copy of any challenges received by the copyright owner in respect of any of those alleged infringements, along with any responses by the copyright owner to those challenges; and
- “(e) a statement of the amount that the copyright owner is seeking from the account holder; and 5
- “(f) the prescribed fee for the application.
- “(3) If the Tribunal is satisfied that an enforcement notice has been sent to the account holder in accordance with this Act, the Tribunal must order the relevant ISP to produce to the Tribunal— 10
- “(a) the name and contact details of the account holder; and
- “(b) copies of the detection and warning notices sent to the account holder.
- “(4) The ISP must provide those contact details and notices to the Tribunal as soon as practicable, along with any challenges that were received by it but not forwarded to the copyright owner, and any responses to those challenges. 15
- “(5) If an infringement notice expires, and the notice relates to an application made in accordance with **subsection (1)**, the expiry does not affect the continuation and completion of any proceedings. 20
- “122K Notice of proceedings**
- “(1) The Tribunal must give notice of the proceedings, in the prescribed form, to the account holder and any parties that the Tribunal directs to be joined. 25
- “(2) The notice of proceedings must—
- “(a) identify all the infringements in relation to which the copyright owner seeks an order; and
- “(b) specify the amount sought; and
- “(c) set out the account holder’s right to make submissions and request a hearing. 30
- “(3) The parties to proceedings before the Tribunal for an order under **section 122N** are—
- “(a) the applicant copyright owner; and
- “(b) the account holder identified in the enforcement notice; and 35
- “(c) any other party that the Tribunal directs be added as a party in accordance with section 212(2).

“122L Decisions generally made on papers and without hearing

- “(1) Proceedings before the Tribunal for an order under **section 122N** must be determined on the papers unless—
- “(a) any party to the proceedings requests a hearing; or
 - “(b) the Tribunal considers that a hearing should be held. 5
- “(2) The papers on which the proceedings are determined are—
- “(a) the copyright owner’s application to the Tribunal; and
 - “(b) copies of the infringement notices sent to the account holder; and
 - “(c) copies of challenges to any infringement notice, and any responses to those challenges; and 10
 - “(d) any additional information provided by the copyright owner; and
 - “(e) any submissions by the account holder made within the time specified by the Tribunal. 15
- “(3) The Tribunal may determine its own procedure for determining an application that is dealt with on the papers, subject to any regulations.
- “(4) The Tribunal must make all reasonable efforts to ensure that, unless it orders otherwise or an order is made against the account holder, the identity and contact details of the account holder are not disclosed to the copyright owner. 20

“122M If hearing is held

- “(1) If a hearing is held, sections 211 to 224 apply, other than sections 213(1) to (3) and 214(1) and (2). 25
- “(2) Every party to the proceedings may appear personally and be heard.
- “(3) A party may not be represented by a representative, except as follows:
- “(a) a corporation or unincorporated body of persons may be represented by an officer, employee, or member of the corporation or body, or a person who holds a majority interest in it: 30
 - “(b) a person jointly liable or entitled with another or others may be represented by 1 of the persons jointly liable or entitled: 35
 - “(c) a partnership may be represented by an employee of a partnership:

- “(d) a minor, or a person under a disability, may be represented by another person:
 - “(e) if the Tribunal is satisfied that, for sufficient cause, a party is unable to appear in person or is unable to present his or her case adequately. 5
- “(4) A representative may not be a lawyer, unless the Tribunal gives leave.
- “Compare: 1988 No 110 s 38
- “**122N Tribunal order requiring payment to copyright owner**
- “(1) The Tribunal must order an account holder to pay a copyright owner a sum if the Tribunal is satisfied that— 10
 - “(a) each of the 3 alleged infringements that triggered the infringement notices issued to the account holder were infringements of the copyright owner’s copyright that occurred at an IP address of the account holder; and 15
 - “(b) the 3 notices were issued in accordance with this Act.
 - “(2) The sum specified in the Tribunal order must be determined in accordance with regulations made under this Act and must include a sum in relation to every infringement identified in the enforcement notice that the Tribunal is satisfied was committed against the copyright owner at an IP address of the account holder. 20
 - “(3) If the Tribunal makes an order under **subsection (1)**, it may also make an order requiring the account holder to pay to the copyright owner either or both of the following: 25
 - “(a) a sum representing a contribution towards the fee or fees paid by the copyright owner to the ISP under **section 122R**;
 - “(b) reimbursement of the application fee paid by the copyright owner to the Tribunal. 30
 - “(4) The total amount ordered by the Tribunal to be paid by the account holder must not exceed \$15,000.
 - “(5) An order made under this section may be enforced as if it were a judgment for a sum of money made by a District Court.
 - “(6) The Tribunal may award costs against a party to the proceedings only if the Tribunal is satisfied that the party has engaged in conduct intended to impede the prompt determination of the proceedings. 35

“122O Court order suspending account holder’s account

- “(1) A District Court may, on application by a copyright owner, make an order requiring an ISP to suspend the account of an account holder for a period of up to 6 months if the court is satisfied that— 5
- “(a) an enforcement notice has been sent to the account holder in accordance with this Act in relation to infringements against the copyright owner; and
 - “(b) the application for the order is made at least 2 weeks after the date of the most recent enforcement notice sent to the account holder in relation to infringements against the copyright owner; and 10
 - “(c) suspension of the account is appropriate in the circumstances, given the seriousness of the infringing.
- “(2) In considering the seriousness of the infringing, the court may consider any evidence put before it by the copyright owner, including any infringement notices relating to infringements against the copyright owner that have been sent to the account holder at any time. 15
- “(3) When considering the circumstances, and determining the duration, of a proposed suspension, the matters that the court may consider include, but are not limited to,— 20
- “(a) the degree of the account holder’s reliance on access to the Internet; and
 - “(b) the identity (if known) of the user who engaged in the infringements identified in the notices; and 25
 - “(c) any other matter that may be specified in regulations.

“122P Order requiring ISP to disclose account holder details

- “(1) This section applies if a copyright owner wishes to apply for an order under **section 122O** against an account holder, but does not know the identity of the account holder. 30
- “(2) A District Court may make an order requiring an ISP to disclose to a copyright owner, as soon as practicable, the name and contact details of an account holder if—
- “(a) the copyright owner applies to the District Court for an order under this section; and 35
 - “(b) the District Court is satisfied, on the basis of information included in the application, that an enforcement notice

has been sent to the account holder in accordance with this Act in relation to infringements against the copyright owner; and

- “(c) the copyright owner has given an undertaking to the court that, if the account holder’s details are released to it, it will use that information only for purposes associated with seeking and enforcing an order made under **section 122O**.

“122Q Obligations of ISPs

- “(1) Every ISP must retain, for a minimum of 40 days, information on the use of the Internet by each account holder. 10
- “(2) Every ISP must retain, for a minimum of 12 months, the following information:
- “(a) any information about infringements that is sent by copyright owners to the ISP for the purpose of matching the infringement to an account holder: 15
- “(b) copies of the infringement notices issued to an account holder:
- “(c) any challenges received by the ISP and any responses to those challenges: 20
- “(d) which infringement notices (if any) have been cancelled or have expired:
- “(e) any orders made under **section 122O** suspending an account holder’s account.
- “(3) No ISP may release the name or contact details of an account holder to a copyright owner unless— 25
- “(a) authorised to do so by the account holder; or
- “(b) required to do so by the Tribunal or a court.
- “(4) On or before 31 December 2011, and annually thereafter, every ISP must publish on its Internet site a report on its compliance with this section during the period starting on 1 October in the previous year and ending on 31 September in the year of the report. 30

“122R Fees payable by copyright owners to ISPs

- “(1) An ISP may charge a copyright owner for performing the functions required of ISPs under **sections 122A to 122Q**. 35

- “(2) If regulations are made that prescribe a rate or rates, or a method or methods for calculating the rate or rates, that may be charged by an ISP, an ISP must not charge more than the rate or rates prescribed by, or calculated in accordance with, the regulations.” 5

8 Rights and remedies of exclusive licensee

- (1) Section 123(1) is amended by omitting “sections 120, 121, and 122 of this Act” and substituting “any of sections 120 to **122O**”.
- (2) Section 123(2) is amended by omitting “sections 120, 121, and 122 of this Act” and substituting “any of sections 120 to **122O**”. 10

Part 2

Related amendments to Parts 10 and 11

Copyright Tribunal

15

9 Membership of Tribunal

- (1) Section 206(1) is amended by omitting “2” and substituting “5”.
- (2) Section 206(3) is amended by omitting “2” and substituting “5”. 20

Regulations

10 Regulations

Section 234 is amended by inserting the following paragraphs after paragraph (ea):

- “(eb) prescribing the form, content, procedures, requirements, and any other matters relating to infringement notices: 25
- “(ec) prescribing the form of notice for challenging an infringement notice:
- “(ed) prescribing the fee payable by copyright owners for applications to the Tribunal under **section 122J**: 30
- “(ee) prescribing the practices and procedures of the Tribunal in relation to determining applications under **section 122J**.”

- “(ef) prescribing the sum, or a method or methods of calculating the sum, that the Tribunal may order an account holder to pay under **section 122N**:
- “(eg) prescribing any matters necessary or desirable in relation to an order, or an application for an order, under **section 122O**: 5
- “(eh) prescribing the rate or rates, or a method or methods for calculating the rate or rates, for the fees that may be charged by ISPs to copyright owners under **section 122R**.”. 10
-