

Australia's Online Service Provider Safe Harbours – Guide for Libraries and Archives

Checklist A: Compliance steps for all institutions

Institutions that provide facilities to access the internet (eg public access computers), undertake automatic caching, or provide custom search or linking services should follow the steps below if they wish to access the safe harbours.

1. Provide the title of and contact details for a designated person to receive copyright notices on your website

- The position title of the designated representative must be included in the website notice, along with sufficient information to allow them to be contacted. This could be in the form of an email address or via an automatic form.
- The legislation allows institutions to provide the details on either their own website or on that of their administering body (eg the local education department where the school does not maintain their own website). If in doubt as to which website should have the contact details, add them to both.

For example: an institution has a link to a copyright page in the footer of its website. On that page it sets out its copyright policy and states that the institution's Copyright Officer is the designated contact for copyright inquiries and takedown requests. It provides an online form to allow people to send requests to the Copyright Officer.

2. Have a policy for termination, in appropriate circumstances, of the accounts of repeat infringers

- This requires you to have a policy for the termination of accounts of people who have repeatedly infringed copyright using your systems.
- This policy can be internal, but should be written and recorded as evidence of its existence, and it must be "reasonably implemented" ie there must not be evidence of you ignoring repeat infringers.
- There is no definition of "infringer" in the legislation – this could in theory be taken as only applying where a user has been found to have infringed copyright by a court of law. However, best practice for the libraries and archives sector would be for it to apply once you become aware of credible allegations of repeated infringing behaviour by a user (eg due to multiple takedown notices or through your own observations).

For example: an institution hosts a community engagement project in which users are encouraged to upload digital artworks to a web platform. Over a 12 month period it receives three credible notices that a particular user's work contains infringing materials and takes the materials down as a result. After the third notice it terminates the user's account on the service.



3. Remove material from your cache if it has been removed from the original site for being infringing

- This provision relates to material that might be stored in a cache on your public computers or servers. If that material has been taken down from its original website because it is infringing, you are required to remove it from your public computer caches. This is to stop the material from being available via the web services of the institution after it is no longer available at the originating site.
- In practice, these notices are unlikely to be received often. However, institutions should be aware that if they do receive such a notice, they should comply.
- The notice should be in the [form prescribed by the legislation](#). However, if it is not in that form but still contains the relevant information, it is good practice to accept it. If it does not provide the relevant information, you may wish to respond with a link to the form for them to fill out.
- As these notices are sometimes sent in error or fraudulently, it is good practice to check the veracity of the notice before removing the material from the cache ie to check that the material has actually been removed from the originating website.
- Once you have determined the cached material should be removed, the removal must be “expeditious.” This is not legally defined, but the aim should be to remove the material as soon as possible, usually within three working days.

For example: a copyright owner finds their material has been uploaded to the website <http://example.com.au> without their permission and has the material taken down. They then send notices to a library where they believe the material may have been accessed informing them of the takedown and asking them to remove the material from their caches. In response, the library deletes all copies of <http://example.com.au> from their cache.

4. Remove any links you provide on your system that point to third party material that is infringing

- This provision relates to links that you provide on your public access systems eg as part of a reference page on your website or a custom search engine.
- If you become aware - either through notification by the copyright owner or through your staff activities - that a link points to material that is infringing, you are required to remove the link from your services.
- The notice:
 - must be from the owner or exclusive licensee of the material, or their agent;
 - must state that the owner/licensee/agent believes, on reasonable grounds, that the material to which it links is infringing; and
 - should be in the [form prescribed by the legislation](#). However, if it is not in that form but still contains the relevant information, it is good practice to accept it. If it does not provide the relevant information, you may wish to respond with a link to the form for them to fill out.

- As these notices are sometimes sent in error or fraudulently, it is good practice to check the veracity of the notice before removing the material ie check that the person sending it appears to be the copyright owner and that the material is what they claim it is (eg not just another work with a similar title).

For example: an institution provides a list on its website of places to get openly-licensed material that can be legally reused, which includes a link to a website <http://freemusic.net>. This website is taken to court and found to be providing infringing content. When a library staff member sees a news story about the court case they remove the link from the list.

5. Comply with any relevant industry codes

- This provision only applies to codes relating to:
 - accommodating and not interfering with technical measures used to protect and identify copyright material; or
 - updating cached material.
- At the time of writing this checklist, no qualified codes exist or are planned.
- If in future libraries and archives enter into codes on these subjects with rights holders, it will be a requirement to comply with them to access the safe harbour.

An electronic version of this checklist and the full Guide is available at <http://libcopyright.org.au/content/resources>