



INFORMATION SHEET

Copyright (Infringing File Sharing) Amendment Act

September 2011

The Copyright Council of New Zealand does not provide legal advice. The purpose of this information sheet is to give introductory information only. If you need to know how the law applies in a particular situation, please seek legal advice.

Introduction

The Copyright (Infringing File Sharing) Amendment Act provides copyright owners with a special process for dealing with online copyright infringements. The new law came into force on 1 September 2011.

What does it cover?

The Act sets up a regime for taking enforcement action against people who infringe copyright via file sharing. It doesn't cover other activities, such as e-mailing or streaming on sites such as YouTube. However accessing copyright works via such methods can also infringe copyright and is covered under other provisions of the Copyright Act 1994.

For an introduction to copyright, including a description of copyright works and restricted uses, see our information sheet [An introduction to copyright in New Zealand](#).

What is file sharing?

File sharing is the downloading or uploading of material using peer-to-peer (P2P) networks or applications that allow material to be shared among multiple users.

How does file sharing infringe copyright?

Under copyright law, copyright owners have certain exclusive rights to use works that they own copyright in. This means that another person must have the copyright owner's permission before they can exercise one of those rights. If a person who isn't the copyright owner exercises an exclusive right without permission, it is likely to infringe copyright.

The copyright owner's exclusive rights include the right to copy the work and to communicate the work to the public. File sharing copyright works without the permission of the owner may infringe on both of these rights.



What are the main points?

The focus of the Act is on educating internet users about copyright and deterring illegal file sharing. It provides a process for copyright owners (and their agents) to use when an internet user has infringed their copyright using a file sharing network.

Under the regime the copyright owner can forward allegations and evidence of illegal file sharing to internet service providers (ISPs). ISPs are then required to send notices to their customers informing them that they may have infringed copyright via file sharing. The ISP may send up to three infringement notices. An internet account holder has the opportunity to challenge these notices.

Requirements for the form and content of the notices are set out in the Act and in the Copyright (Infringing File Sharing) Regulations 2011.

If there has been no resolution following the three-notice process, then copyright owners can take their claim to the Copyright Tribunal. The Tribunal can make awards of up to \$15,000.

The Act includes a power for a District Court to suspend an internet account for up to six months in appropriate circumstances. However, this part of the law is not currently in force and will only be brought into force at a later date if the three-notice process and the remedies by the Copyright Tribunal are considered ineffective.

Does all file sharing infringe copyright?

File sharing copyright works without the permission of the owner can infringe on exclusive rights of copyright owners. However, there are some instances where file sharing may not infringe copyright. For example, there are several “permitted acts” under the Copyright Act (often referred to as copyright exceptions) that apply to copyright material. If you have the right to use a work from a file sharing network under the terms of a specific copyright exception, your use of the work may not infringe copyright.

For more information about the fair dealing copyright exceptions, see our information sheet [Fair dealing](#).

Further information

See www.respectcopyrights.co.nz and www.med.govt.nz.

The text of the Amendment Act can be found at www.legislation.govt.nz.

For further information about copyright, see our website www.copyright.org.nz