

Copyright Amendment Regulations 2004 (No. 1) 2004 No. 405

EXPLANATORY STATEMENT

Statutory Rules 2004 No. 405

Issued by the authority of the Attorney-General

Copyright Act 1968

Copyright Amendment Regulations 2004 (No. 1)

The *Copyright Act 1968* (the Act) grants and determines the scope of copyright in Australia.

Section 249 of the Act provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters that are required or permitted by the Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to the Act. Also relevant to these regulations are the references to regulation making powers in section 116AB (definition of 'industry code'), the table in subsection 116AH(1) and section 116AJ that will be inserted into the Act by the *US Free Trade Agreement Implementation Act 2004* (the USFTA Act).

The *Copyright Regulations 1969* (the Principal Regulations) prescribe matters relating to, amongst other things, remedies for copyright infringement and notices required to be given by the Act.

The USFTA Act contains 9 schedules that amend the relevant Australian legislation to fulfil Australia's obligations under the Australia-United States Free Trade Agreement (AUSFTA). The USFTA Act received Royal Assent on 16 August 2004. Schedule 9 to the USFTA Act amends the Act to fulfil obligations under Chapter 17 of the AUSFTA, which deals with Intellectual Property Rights.

Article 17.11.29 of the AUSFTA requires Australia to provide:

- legal incentives for service providers to cooperate with copyright owners in deterring the unauthorised storage and transmission of copyright material; and
- limitations regarding the scope of remedies available against service providers for copyright infringements that they do not control, initiate or direct and that take place through systems or networks controlled or operated by them or on their behalf.

The AUSFTA requires Australia to implement the above obligations consistently with the framework set out in Article 17.11.29.

Part 11 of Schedule 9 to the USFTA Act makes amendments to the Act to fulfil these obligations. The amendments detail the nature of the limitations on remedies and set out the conditions that must be satisfied by a carriage service provider, in relation to certain online activities, before the limitations apply. Some changes to these conditions are also contained in the *Copyright Legislation Amendment Act 2004*.

The Copyright Amendment Regulations (the Regulations) amend the Principal Regulations by:

- introducing new regulations that prescribe that an industry code that relates to accommodating and not interfering with standard technical measures used to protect and identify copyright material must be developed through an open voluntary process by a broad consensus of copyright owners and carriage service providers and must require technical measures to meet certain requirements before they qualify as a standard technical measure;

- introducing a new regulation that requires carriage service providers to designate a person to be the representative of the carriage service provider for the purpose of receiving notifications notices or counter-notices issued in compliance with the Regulations;
- introducing new regulations that provide procedures in relation to conditions set out in the table in subsection 116AH(1) of the Act, inserted by item 191 of Schedule 9 to the USFTA Act; and
- introducing new regulations that provide civil remedies against carriage service providers in certain circumstances and against persons who knowingly make misrepresentations in notifications, notices or counter-notices under the Regulations.

The procedures set out in the Regulations are intended to provide incentives for carriage service providers to assist copyright owners to protect and enforce their copyrights in an online environment. The procedures form part of the conditions that must be satisfied by carriage service providers who intend to take advantage of the limitations on remedies that may be granted against them for certain activities carried out on their systems or networks under the statutory scheme set out in Division 2AA of Part V of the Act, inserted by item 191 of Schedule 9 to the USFTA Act.

Details of the Regulations are provided in the Attachment.

Item 191 of Schedule 9 to the USFTA Act will commence on the later of 1 January 2005 or the date of entry into force of the AUSFTA. Accordingly, the Regulations commence on the later of 1 January 2005 or the entry into force of the AUSFTA.

Subsections 4(1) and 4(2A) of the *Acts Interpretation Act 1901* read together provide that regulations may be made between the passing and the commencement of legislation upon which they rely for their authority, as long as such regulations are not expressed to commence before that legislation.

ATTACHMENT

Details of the *Copyright Amendment Regulations 2004 (No. 1)*

Regulation 1 provides that the Regulations are the *Copyright Amendment Regulations 2004 (No. 1)*.

Regulation 2 provides that the Regulations commence on the commencement of item 191 of Schedule 9 to the USFTA Act, which is 1 January 2005 or, if later, the entry into force of the AUSFTA.

Regulation 3 provides that Schedule 1 amends the *Copyright Regulations 1969*.

Schedule 1, item 1 inserts new regulations 20A to 20X, under the new heading, 'Part 3A - Limitation on remedies available against carriage service providers'.

New Subdivision B of Division 2AA of Part V of the Act, inserted by item 191 of Schedule 9 to the USFTA Act, sets out four categories of online activities to which the limitations on remedies apply. A Category A activity is where the carriage service provider acts as a conduit for internet activities through the provision of facilities for transmitting, routing or providing connections for copyright material. A Category B activity is where the carriage service provider caches copyright material through an automatic process. A Category C activity it where the carriage service provider stores copyright material on their systems or networks. A Category D activity is where the carriage service provider refers to an online location using online information tools or technology.

Subregulation 20A(1) provides, for the purposes of Part 3A, definitions of 'action', 'agent', 'designated representative', 'owner', 'system or network' and 'user'.

Subregulation 20A(2) provides that a word or expression used in new Part 3A and in Division 2AA of Part V of the Act, inserted by item 191 of Schedule 9 to the USFTA Act, has the same meaning in the new Part 3A as it has in Division 2AA.

The note to subregulation 20A(2) states that 'caching', 'copyright material' and 'industry code' are defined in Division 2AA of Part V. The definitions are in section 116AB of the Act, inserted by item 191 of Schedule 9 to the USFTA Act. Subparagraph (b) of the definition of 'industry code' in section 116AB provides that an industry code means an industry code developed in accordance with the regulations.

Regulation 20B provides requirements in relation to the provisions of an industry code to which condition 2 of item 1 of the table in subsection 116AH(1) of the Act, inserted by item 191 of Schedule 9 to the USFTA Act, applies. Condition 2 of item 1 of the table in subsection 116AH(1) applies to all categories of online activities for which the limitations on remedies available against carriage service providers can apply. The condition requires that a carriage service provider, where there is a relevant industry code in force, must comply with the relevant provisions of an industry code that relate to accommodating and not interfering with standard technical measures used to protect and identify copyright material. The intention of the condition is to ensure that the scheme accommodates and encourages the development of appropriate technological solutions to protect copyright works.

The regulation provides that such provisions of the industry code must be developed through an open voluntary process by a broad consensus of copyright owners and carriage service providers. The regulation also provides that the relevant provisions of an industry code must include a provision to the effect that standard technical measures are technical measures that meet a number of requirements. The technical measures must be used to protect and identify copyright material; be accepted under the industry code or developed in accordance with a process set out in the industry code; be available on non-discriminatory terms; and not impose substantial costs on carriage service providers or substantial burdens on their systems or networks.

The requirements in regulation 20C are relevant to compliance with a number of conditions in subsection 116AH(1). Compliance with conditions, and therefore, with this regulation, is necessary for a carriage service provider to qualify for the limitations in section 116AG of the Act, inserted by item 191 of Schedule 9 to the USFTA Act, for Category B, C and D activities set out in sections 116AD - 116AF of the Act also inserted by item 191 of Schedule 9 to the USFTA Act.

Subregulation 20C(1) provides that a carriage service provider must designate a person to be the representative of the carriage service provider to receive notifications and notices issued under Part 3A.

Subregulation 20C(2) provides that the carriage service provider must publish a notice in a reasonably prominent place on its website setting out the title of the designated representative and sufficient information to allow a person to contact the designated representative. The published notice must include an electronic mail address and a postal address. If available, a telephone number or a fax number, or both must also be included in the notice. Procedures in the regulations require notifications, notices and counter-notices to be issued to the carriage service providers designated representative.

Subregulation 20D(1) provides that a notification, notice or counter-notice under Part 3A must be in accordance with, or substantially in accordance with, the form prescribed by Part 3A and be issued by post or electronic communication to the carriage service provider's designated representative.

Subregulation 20D(2) provides that if a notification, notice or counter-notice is issued by electronic communication, the signature requirement is met if two requirements are satisfied. First, a method must be used to identify the person and indicate their approval of the information and statements contained in the communication. Second, the method used must be as reliable as appropriate for the purpose of communicating the information and statements contained in the notification, notice or counter-notice.

New Division 3A.2 sets out the procedures that a carriage service provider must follow in order to comply with condition 3 of item 3 of the table in subsection 116AH(1) in respect of a Category B activity.

Condition 3 of item 3 of the table in subsection 116AH(1) requires a carriage service provider to expeditiously remove or disable access to cached copyright material upon notification in the prescribed form that material has been removed or access to it has been disabled at the originating site. Subregulation 20E(1) provides that for this condition the form of notice set out in Part 1 of Schedule 10 of the Copyright Regulations is prescribed.

Subregulation 20E(2) provides that the notification must be made by the owner, or an agent of the owner, of the copyright in cached copyright material on a carriage service provider's system or network that has been removed, or to which access has been disabled, at the originating site.

New Division 3A.3 sets out the procedures that a carriage service provider must follow in order to comply with condition 2 of item 4 (in respect of a Category C activity) and condition 2 of item 5 (in respect of a Category D activity) of the table in subsection 116AH(1). Condition 2 of items 4 and 5 of the table in subsection 116AH(1) requires a carriage service provider to expeditiously remove or disable access to copyright material (Category C), or a reference to copyright material (Category D) residing on its system or network upon receipt of a notice in the prescribed form that the material has been found to be infringing by an Australian court.

Subregulation 20F(1) provides that for condition 2 of item 4 and condition 2 of item 5, of the table in subsection 116AH(1) of the Act the form of notice set out in Part 2 of Schedule 10 of the Regulations is prescribed.

Subregulation 20F(2) sets out a number of requirements for a notice under subregulation 20F(1). The notice relates to either a Category C or Category D activity.

Paragraph 20F(2)(a) provides that in relation to Category C activities the notice issued under subregulation 20F(1) must be made by the owner, or an agent of the owner, of the copyright in the material residing on a carriage service provider's system or network that has been found to be infringing by an Australian court.

Paragraph 20F(2)(b) provides that in relation to Category D activities the notice issued under subregulation 20F(1) must be made by the owner, or an agent of the owner, of the copyright in the copyright material that has been found to be infringing by an Australian court, and to which a reference is provided by the carriage service provider on its system or network.

New Division 3A.4 sets out the procedures that copyright owners or their agents and carriage service providers must follow in relation to condition 3 of item 4 (Category C activities) of the table in subsection 116AH(1) in the circumstances where a copyright owner, or an agent of the owner, believes on reasonable grounds that the material residing on the carriage service providers' system or network is infringing and wishes the carriage service provider to remove or disable access to the material.

Regulation 20G provides that the Division prescribes the procedure to be followed in relation to copyright material residing on a carriage service provider's system or network if the owner of the copyright material, or an agent of the owner, believes on reasonable grounds that the material is infringing and wishes the carriage service provider to remove or disable access to the material.

Regulation 20H provides, for the purposes of Division 3AA, definitions of 'counter-notice', 'notice of claimed infringement' and 'working day'.

Subregulation 201(1) provides that the copyright owner, or an agent of the owner, must issue a notice of claimed infringement to the carriage service provider's designated representative. Subregulation 201(2) provides that the notice of claimed infringement must be in accordance with or substantially in accordance, with the form set out in Part 3 of Schedule 10. The notice will be effective providing that either the prescribed form in Part 3 of Schedule 10 is used or a notice that is substantially in accordance with the prescribed form.

Regulation 20J sets out the action required by a carriage service provider who receives a notice of claimed infringement from a copyright owner or their agent under regulation 20I. A carriage service provider intending to take advantage of the statutory scheme in Division 2AA of Part V for limitations on remedies that may be granted against them for certain activities carried out on their systems or networks must comply with the takedown procedure set out in this regulation.

Subregulation 20J(1) provides that where a carriage service provider receives a notice of claimed infringement under regulation 20I, the carriage service provider must expeditiously remove, or disable access to, the copyright material specified in the notice and residing on its system or network. Because the factual circumstances will vary from case to case, a specific time limit for expeditious action has not been prescribed. These factual circumstances may include the size of the carriage service provider, the number of notices of claimed infringement a carriage service provider has to act on at any one time, and the time taken to expeditiously action each notice. A carriage service provider may establish a procedure for handling multiple notices of claimed infringements received within a short period. A carriage service provider is not required to prioritise notices according to the claimed seriousness of the infringement alleged by the copyright owner or the owner's agent. It would be open for a carriage service provider to action notices of claimed infringement in the order in which they are received, providing the takedown is expeditious.

Subregulation 20J(2) provides that as soon as practicable after removing, or disabling access to, copyright material under subregulation 20J(1), the carriage service provider must send the user who directed the carriage service provider to store the material on its system or network a copy of the notice of claimed infringement and a notice stating:

- that the copyright material referred to on the notice of claimed infringement has been removed, or access to it has been disabled; and
- that the user may, within 3 months after receiving the copy of the notice of claimed infringement, issue a counter-notice in accordance with regulation 20K to the carriage service provider's designated representative, disputing the claims in the notice of claimed infringement.

The note to regulation 20J(2) states that the carriage service provider need not take any further action in relation to the copyright material unless the carriage service provider receives a counter-notice from the user under regulation 20K.

Subregulation 20J(3) sets out circumstances in which a carriage service provider is taken to have complied with subregulation 20J(2). It will suffice if the carriage service provider has taken reasonable steps to identify the user but has been unable to do so, or, if the carriage service provider sends the documents to the user as required by subregulation 20J(2) but the user does not receive them.

It is intended that 'reasonable steps' to identify the user will include, for example, identifying the person responsible for the subscription for the service provided by the carriage service provider. It will not be necessary for the carriage service provider to identify the actual person who has utilised the service. It is not intended that this regulation place an obligation on carriage service providers to go beyond the notice of claimed infringement or their own records in order to obtain contact information. It should be sufficient if the carriage service provider sends an email to an email address associated with the web site or sends a notice to an address the user submitted with their subscription. The carriage service provider should be considered to have complied with the obligation in subregulation 20J(2) if they forward the relevant documents to the user but, for some reason not known to the carriage service provider or beyond their control, the user does not receive the documents.

Regulation 20K sets out a counter-notice procedure for a user where the user disagrees with the claims made by the copyright owner or the owner's agent in the notice issued under regulation 20I in relation to the infringing nature of the copyright material.

Subregulation 20K(1) provides that if a user receives a notice of claimed infringement from a carriage service provider under regulation 20J, the user may issue a counter-notice to the carriage

service provider's designated representative disputing the claims set out in the notice of claimed infringement.

The note to subregulation 20K(1) states that if the user does not issue a counter-notice to the carriage service provider's designated representative, the carriage service provider is not required to take any further action in relation to the notice of claimed infringement.

Paragraph 20K(2)(a) provides that a counter-notice must be in accordance with, or substantially in accordance with the form set out in Part 4 of Schedule 10. The notice will be effective providing that either the prescribed form in Part 4 of Schedule 10 is used or a notice that is substantially in accordance with the prescribed form.

Paragraph 20K(2)(b) requires that a counter-notice must be issued within 3 months after the user receives the copy of the notice of claimed infringement. The period of 3 months is specified as it acknowledges that the user may need time to seek legal advice regarding their options. A carriage service provider is under no obligation to retain the material that has been removed if a counter-notice is not received within 3 months.

Regulation 20L sets out the action required by a carriage service provider who receives a counter-notice from a user under regulation 20K in response to a notice of claimed infringement.

Subregulation 20L(1) provides that if the carriage service provider receives a counter-notice from a user, the carriage service provider must, as soon as practicable after receiving the counter-notice, send the copyright owner or agent who issued the notice of claimed infringement a copy of the counter-notice and a notice. The notice must state that if the copyright owner or agent does not, within 10 working days, take court action to restrain the activity claimed to be infringing, the carriage service provider will restore, or enable access to, the copyright material on its system or network.

Subregulation 20L(2) provides that if the counter-notice is from a user who is an individual, the copy of the counter-notice and the notice informing the copyright owner or agent of the 10 working day period for commencement of court proceedings may disclose information that could identify the user if disclosure is consistent with the *Telecommunications Act 1997* and the *Privacy Act 1988*.

Regulation 20M provides for the restoration of access to copyright material in certain circumstances.

Subregulation 20M(1) sets out the circumstances in which a carriage service provider must restore or enable access to the copyright material that had been removed or to which access had been disabled under regulation 20J when the carriage service provider sends a copy of a counter-notice issued by a user and a notice to the copyright owner or agent under regulation 20L. Those circumstances are either where the copyright owner or agent does not notify the carriage service provider within 10 working days after the documents were sent under regulation 20L that they have brought an action seeking a court order to restrain the activity that is claimed to be infringing, or the carriage service provider is notified that an action for infringement of the copyright in the copyright material has been discontinued or was unsuccessful.

If one of the circumstances specified in subregulation 20M(1) applies, subregulation 20M(2) provides that the carriage service provider must, as soon as practicable, restore or enable access to the copyright material on its system or network.

The note to regulation 20M states that the carriage service provider is not required to have regard to a notification from the copyright owner or agent that they have brought an action seeking a court order to restrain the activity that is claimed to be infringing if the notification is received more than 10 working days after the documents were sent to the copyright owner or agent under regulation 20L.

New Division 3A.5 sets out procedures that a carriage service provider must follow in relation to condition 3 of item 4 (Category C activities) of the table in subsection 116AH(1) in the

circumstances where the carriage service provider removes or disables access to material other than as a result of following an effective notice of claimed infringement from the copyright owner. That is, the carriage service provider has already expeditiously removed or disabled access to copyright material residing on its system or network in compliance with condition 2A (inserted by item 11 of the *Copyright Legislation Amendment Act 2004*) of item 4 of the table in subsection 116AH(1). Consequently, the obligations under Division 3A.5 arise after the material has been removed or access to it disabled.

Subregulation 20N(1) provides that for condition 3 of item 4 (Category C activities) of the table subsection 116AH(1), Division 3A.5 prescribes the procedure to be followed in relation to copyright material residing on a carriage service provider's system or network if the carriage service provider (a) becomes aware that the material is infringing; or (b) becomes aware of facts or circumstances that make it apparent that the material is likely to be infringing. The note to subregulation 20N(1) refers to condition 2A of item 4 of the table in subsection 116AH(1) that provides that if the carriage service provider becomes aware of a matter mentioned in 20N(1)(a) or (b) in relation to the material, the carriage service provider must act expeditiously to remove or disable access to the material.

Subregulation 20N(2) qualifies subregulation 20N(1) by providing that this Division does not apply if the carriage service provider becomes aware of a matter in (a) or (b) as a result of receiving a notice of claimed infringement under Division 3AA, or any other notification, from the copyright owner, or an agent of the owner. The note to subregulation 20N(2) provides that the procedure prescribed in Division 3AA applies if the carriage service provider receives a notice of claimed infringement from the copyright owner or the owners agent.

Regulation 20P provides a mechanism for notice to users after a carriage service provider has removed or disabled access to copyright material under condition 2A of item 4 of the table in subsection 116AH(1).

Subregulation 20P(1) provides that as soon as practicable after removing, or disabling access to, the copyright material, the carriage service provider must send a notice to the user who directed the carriage service provider to store the copyright material on its system or network. The notice must state that the copyright material has been removed or access to it disabled, the grounds for doing so and that the user may, within 3 months after receiving the notice, issue a counter-notice in accordance with regulation 20Q to the carriage service provider's designated representative. The purpose of the counter-notice is to dispute the grounds for removing the copyright material or disabling access to it and to request the carriage service provider to restore or enable access to the copyright material on the carriage service provider's system or network.

Subregulation 20P(2) sets out circumstances in which a carriage service provider is taken to have complied with subregulation 20P(1). It will suffice if the carriage service provider has taken reasonable steps to identify the user but has been unable to do so, or, if the carriage service provider sends the documents to the user as required by subregulation 20P(1) but the user does not receive them.

Regulation 20Q sets out a counter-notice procedure for a user where the user disagrees with the grounds provided in the notice issued by a carriage service provider under regulation 20P. Subregulation 20Q(1) provides that if a user receives a notice from a carriage service provider under regulation 20P, the user may issue a counter-notice to the carriage service provider's designated representative disputing the grounds for removing the copyright material or disabling access to it and requesting the carriage service provider to restore, or enable access to, the copyright material.

The note to subregulation 20Q(1) states that if the user does not issue a counter-notice to the carriage service provider's designated representative, the carriage service provider is not required to take any further action in relation to the copyright material.

Paragraph 20Q(2)(a) provides that a counter-notice must be in accordance with, or substantially in accordance with the form set out in Part 5 of Schedule 10. The notice will be effective providing that either the prescribed form in Part 5 of Schedule 10 is used or a notice that is substantially in accordance with the prescribed form. Paragraph 20Q(2)(b) requires that a counter-notice must be

issued within 3 months after the user receives the notice under regulation 20P. The period of 3 months is specified as it acknowledges that the user may need time to seek legal advice regarding their options. A carriage service provider is under no obligation to retain the material that has been removed if a counter-notice is not received within 3 months.

Regulation 20R provides a mechanism for restoring copyright material where a carriage service provider receives a counter-notice under regulation 20Q. It provides that if the carriage service provider is satisfied that the copyright material is not, or is not likely to be infringing, the carriage service provider must, as soon as practicable after receiving the counter-notice, restore, or enable access to, the copyright material on its system or network.

New Division 3A.6 sets out the procedures that copyright owners or their agents and carriage service providers must follow in relation to condition 3 of item 5 (Category D activities) of the table in subsection 116AH(1) in the circumstances where a copyright owner, or agent believes on reasonable grounds that material that a carriage service provider provides a reference to on its system or network is infringing and wishes the carriage service provider to remove or disable access to the reference to the material. Condition 3 of item 5 of the table in subsection 116AH(1) requires a carriage service provider to comply with the prescribed procedure in relation to removing or disabling a reference provided by the carriage service provider residing on its system or network.

Regulation 20S provides that the Division prescribes the procedure to be followed in relation to a reference to copyright material that is provided by a carriage service provider on its system or if the owner of the copyright material, or an agent of the owner, believes on reasonable grounds that the material is infringing and wishes the carriage service provider to remove or disable access to the reference to the material.

Subregulation 20T(1) provides that the copyright owner, or an agent of the owner, must issue a notice of claimed infringement to the carriage service provider's designated representative. Subregulation 20T(2) provides that the notice of claimed infringement must be in accordance with, or substantially in accordance with, the form set out in Part 6 of Schedule 10. The notice will be effective providing that either the prescribed form in Part 6 of Schedule 10 is used or a notice that is substantially in accordance with the prescribed form.

Regulation 20D sets out the action required by a carriage service provider who receives a notice of claimed infringement from a copyright owner or their agent under regulation 20T. A carriage service provider intending to take advantage of the statutory scheme in Division 2AA of Part V for limitations on remedies that may be granted against them for certain activities carried out on their systems or networks must comply with the takedown procedure set out in this regulation.

Regulation 20D provides that if a carriage service provider receives a notice of claimed infringement under regulation 20T, the carriage service provider must expeditiously remove, or disable access to, the reference to the copyright material specified in the notice and provided by the carriage service provider on its system or network.

New Division 3A.7 sets out matters concerning civil remedies in relation to actions taken under these regulations.

Regulation 20V provides immunity to carriage service providers for damages or any other civil remedy as a result of action taken in good faith by the carriage service provider to comply with certain conditions in the table in subsection 116AH(1). The actions covered by this immunity are:

- removing or disabling access to cached copyright material upon notification in the prescribed form that the material has been removed or access to it has been disabled at the originating site (condition 3 of item 3 of the table);
- removing or disabling access to copyright material residing on its system or network upon receipt of a notice in the prescribed form that the material has been found to be infringing by a court (condition 2 of item 4 of the table);

- removing or disabling access to copyright material residing on its system or network if the carriage service provider becomes aware that the material is infringing or becomes aware of facts or circumstances that make it apparent that the material is likely to be infringing (condition 2A of item 4 of the table);
- complying with the prescribed procedure in relation to removing or disabling copyright material residing on its system or network as established in Division 3A.3 (condition 3 of item 4 of the table);
- removing or disabling access to a reference to copyright material that is provided by a carriage service provider on its system or network upon receipt of a notice in the prescribed form that the copyright material to which it refers has been found to be infringing by a court (condition 2 of item 5 of the table);
- removing or disabling access to a reference to copyright material that is provided by a carriage service provider on its system or network if the carriage service provider becomes aware that copyright material to which it refers is infringing or becomes aware of facts or circumstances that make it apparent that the material to which it refers is likely to be infringing (condition 2A of item 5 of the table - as inserted by item 13 of the *Copyright Legislation Amendment Act 2004*); and
- complying with the prescribed procedure in relation to removing or disabling a reference to copyright material that is provided by a carriage service provider on its system or network as established in Division 3AA (condition 3 of item 5 of the table).

The note to regulation 20V states that Divisions 3A.2, 3A.3, 3A.4, 3A.5 and 3A.6 are relevant to the regulation.

Subregulation 20W(1) provides that the regulation applies to a carriage service provider who is required to comply with regulation 20M or 20R (restoring copyright material) in relation to particular copyright material.

Subregulation 20W(2) provides that where the carriage service provider has removed or disabled access to copyright material but fails to comply with the requirements to restore the material in accordance with regulation 20M or 20R, the carriage service provider may be liable for damages or any other civil remedy in an action taken by a user or third party affected by the failure to restore the material.

Subregulation 20W(3) provides that the carriage service provider is not liable for damages or any other civil remedy in an action taken by the owner of the copyright in the copyright material because of the carriage service provider's failure to restore, or enable access to, the relevant copyright material in accordance with regulation 20M or 20R.

Subregulation 20X(1) provides that a person who issues a notification, a notice of or a counter-notice under the regulations in Part 3A, must not knowingly make a material misrepresentation in that notification, notice, or counter-notice.

Subregulation 20X(2) provides that for subregulation 20X(1), a person knowingly makes a material misrepresentation in a notification, notice or counter-notice if the person does not take reasonable steps to ensure the accuracy of the information included in the notification or notice.

Subregulation 20X(3) provides that a person who suffers loss or damage because of a material misrepresentation made knowingly in a notification, notice or counter notice may bring an action for a civil remedy against the person who issued the notification, notice or counter-notice. This subregulation is intended to deter knowingly false

allegations, or allegations that are made without taking reasonable steps to ensure accuracy, in recognition of the detriment of such misrepresentations to copyright owners, carriage service providers and Internet users.

Schedule 1, item 2 inserts a new Schedule 10 after Schedule 9 of the Principal Regulations. Schedule 10 provides the prescribed forms for Part 3A regulations 20E, 20F, 20I, 20K, 20Q and 20T.

Part 1 Form of notification in relation to cached copyright material. This form relates to notification for the purposes of condition 3 of item 3 of the table in subsection 116AH(1) and regulation 20E.

Part 2 Form of notice in relation to infringing copyright material residing on system or network. This form relates to notice for the purposes of condition 2 of item 4 and item 5 of the table in subsection 116AH(1) and regulation 20F.

Part 3 Form of notice of claimed infringement - Category C activity. This form of notice relates to notice for the purposes of condition 3 of item 4 of the table in subsection 116AH(1) and regulation 20I.

Part 4 Form of counter-notice - Category C activity. This form relates to counter-notices for the purposes of condition 3 of item 4 of the table in subsection 116AH(1) and regulation 20K.

Part 5 Form of counter-notice - Category C activity. This form relates to counter-notices for the purposes of condition 3 of item 4 of the table in subsection 116AH(1) and regulation 20Q.

Part 6 Form of notice of claimed infringement - Category D activity. This form relates to notice for the purposes of condition 3 of item 5 of the table in subsection 116AH(1) and regulation 20T.