



Copyright Amendment Regulations 2004 (No. 1)¹

Statutory Rules 2004 No. 405²

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Copyright Act 1968*.

Dated 16 December 2004

P. M. JEFFERY
Governor-General

By His Excellency's Command

PHILIP RUDDOCK
Attorney-General

1 Name of Regulations

These Regulations are the *Copyright Amendment Regulations 2004 (No. 1)*.

2 Commencement

These Regulations commence on the commencement of item 191 of Schedule 9 to the *US Free Trade Agreement Implementation Act 2004*.

3 Amendment of *Copyright Regulations 1969*

Schedule 1 amends the *Copyright Regulations 1969*.

Schedule 1 Amendments

(regulation 3)

[1] After Part 3

insert

Part 3A Limitation on remedies available against carriage service providers

Note Subsection 116AG (1) of the Act provides that a carriage service provider must satisfy the relevant conditions set out in Subdivision D of Division 2AA of Part V of the Act before the limitations on remedies in section 116AG of the Act apply.

Division 3A.1 Preliminary

20A Definitions for Part 3A

- (1) In this Part:

action has the same meaning as in Part V of the Act.

agent, of an owner of the copyright in copyright material, means a person authorised to act for the owner for the purpose of Division 2AA of Part V of the Act and this Part.

designated representative, for a carriage service provider, means the person designated under regulation 20C to receive notifications and notices under this Part for the carriage service provider.

owner, in relation to the copyright in copyright material, includes an exclusive licensee of the copyright in the material.

system or network, in relation to a carriage service provider, means a system or network controlled or operated by or for the carriage service provider.

user, in relation to copyright material stored on a carriage service provider's system or network, means the person who directed the carriage service provider to store the copyright material on its system or network.

- (2) A word or expression used in this Part and in Division 2AA of Part V of the Act has the same meaning in this Part as it has in that Division.

Note The following words and expressions are defined in Division 2AA of Part V of the Act — see section 116AB:

- caching
- copyright material
- industry code.

20B Industry code (Act s 116AB)

For subparagraph (a) (i) of the definition of *industry code* in section 116AB of the Act, the following requirements are prescribed in relation to an industry code to which condition 2 of item 1 of the table in subsection 116AH (1) of the Act applies:

- (a) the industry code must be developed through an open voluntary process by a broad consensus of copyright owners and carriage service providers;
- (b) the industry code must include a provision to the effect that *standard technical measures* are technical measures that:
 - (i) are used to protect and identify copyright material; and
 - (ii) are accepted under the industry code or developed in accordance with a process set out in the industry code; and
 - (iii) are available on non-discriminatory terms; and
 - (iv) do not impose substantial costs on carriage service providers or substantial burdens on their systems or networks.

20C Designated representative

- (1) A carriage service provider must designate a person to be the representative of the carriage service provider (a *designated representative*) to receive notifications and notices issued under this Part for the carriage service provider.
- (2) The carriage service provider must publish a notice in a reasonably prominent location on its website setting out the following information:
 - (a) the title of the position of the designated representative;
 - (b) sufficient information to allow a person to contact the designated representative, including:
 - (i) an electronic mail address; and
 - (ii) a postal address; and
 - (iii) if available, a telephone number or fax number, or both.

20D Requirements for notifications and notices issued under this Part

- (1) A notification, notice or counter-notice issued under this Part must:
 - (a) be in accordance with, or substantially in accordance with, the form prescribed by this Part; and
 - (b) be issued by post or electronic communication to the carriage service provider's designated representative.
- (2) The requirement for a person's signature on a notification, notice or counter-notice is taken to have been met in relation to a notification, notice or counter-notice that is issued by electronic communication if:
 - (a) a method is used to identify the person and to indicate the person's approval of the information and statements contained in the communicated notification, notice or counter-notice; and
 - (b) the method used was as reliable as was appropriate for the purpose of communicating the information and statements contained in the notification, notice or counter-notice.

Division 3A.2 Conditions — cached copyright material**20E Notification in relation to Category B activity**

- (1) For condition 3 of item 3 of the table in subsection 116AH (1) of the Act, the form of notification set out in Part 1 of Schedule 10 is prescribed.
- (2) 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.

Division 3A.3 Conditions — copyright material found to be infringing by an Australian court

20F Notice in relation to Category C and D activities

- (1) For condition 2 of item 4 (Category C activities), and condition 2 of item 5 (Category D activities), of the table in subsection 116AH (1) of the Act, the form of notice set out in Part 2 of Schedule 10 is prescribed.
- (2) A notice under subregulation (1) must:
 - (a) if the notice relates to a Category C activity — be made by the owner, or an agent of the owner, of the copyright in the copyright material residing on a carriage service provider's system or network that has been found to be infringing by an Australian court; or
 - (b) if the notice relates to a Category D activity — 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.

Division 3A.4 Conditions — takedown of copyright material following notice from copyright owner

20G Application of Division 3A.4

For condition 3 of item 4 (Category C activities) of the table in subsection 116AH (1) of the Act, this Division prescribes the procedure to be followed in relation to copyright material residing on a carriage service provider's system or network if:

- (a) the owner, or an agent of the owner, of the copyright in the material believes, on reasonable grounds, that the material is infringing; and
- (b) the owner or agent wishes the carriage service provider to remove or disable access to the material.

20H Definitions for Division 3A.4

In this Division:

counter-notice means a notice issued under regulation 20K.

notice of claimed infringement means a notice issued under regulation 20I.

working day, in a place, means a day that is not:

- (a) a public holiday or a bank holiday in that place; or
- (b) a Saturday or a Sunday.

20I Notice of claimed infringement

- (1) The owner, or an agent of the owner, of the copyright in the copyright material must issue a notice of claimed infringement in relation to the copyright material to the carriage service provider's designated representative.
- (2) A notice of claimed infringement must be in accordance with, or substantially in accordance with, the form set out in Part 3 of Schedule 10.

20J Takedown procedure

- (1) If 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.
- (2) As soon as practicable after removing, or disabling access to, copyright material under subregulation (1), the carriage service provider must send to the user who directed the carriage service provider to store the copyright material on its system or network:
 - (a) a copy of the notice of claimed infringement; and
 - (b) a notice stating:
 - (i) that the copyright material has been removed, or access to it has been disabled; and
 - (ii) 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 of the *Copyright Regulations 1969* to the carriage service provider's designated representative disputing the claims in the notice of claimed infringement.

Note 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.

- (3) A carriage service provider is taken to have complied with subregulation (2) if:
- (a) the carriage service provider has taken reasonable steps to identify the user but has been unable to do so; or
 - (b) the carriage service provider sends the documents to the user as required by subregulation (2) but they are not received by the user.

20K Counter-notice

- (1) If a user receives a copy of 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.

Note 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.

- (2) A counter-notice must:
- (a) be in accordance with, or substantially in accordance with, the Form set out in Part 4 of Schedule 10; and
 - (b) be issued within 3 months after the user receives the copy of the notice of claimed infringement.

20L Copy of counter-notice to be sent to copyright owner

- (1) If a carriage service provider receives a counter-notice from a user under regulation 20K in response to a notice of claimed infringement, the carriage service provider must, as soon as practicable after receiving the counter-notice, send to the

copyright owner or agent who issued the notice of claimed infringement:

- (a) a copy of the counter-notice; and
- (b) a notice stating that if the owner or agent does not, within 10 working days after the date the notice was sent, bring an action seeking a court order to restrain the activity that is claimed to be infringing, the carriage service provider will restore, or enable access to, the copyright material on its system or network.

- (2) If the counter-notice is from a user who is an individual, the copy of the counter-notice and the notice under paragraph (1) (b) sent to the copyright owner or agent under subregulation (1) may disclose information that could identify the user if the disclosure is consistent with the *Telecommunications Act 1997* and the *Privacy Act 1988*.

20M Restoring copyright material

- (1) A carriage service provider must comply with this regulation if:
 - (a) 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 in relation to a notice of claimed infringement issued by the copyright owner or agent; and
 - (b) either:
 - (i) the owner or agent does not, within 10 working days after those documents were sent, notify the carriage service provider's designated representative that the owner or agent has brought an action seeking a court order to restrain the activity that is claimed to be infringing; or
 - (ii) the carriage service provider is notified that an action for infringement of the copyright in the copyright material has been discontinued or was unsuccessful.

- (2) The carriage service provider must restore, or enable access to, the copyright material on its system or network:
 - (a) if the carriage service provider is not notified by the copyright owner or agent of the matter mentioned in subparagraph (1) (b) (i) within the period mentioned in that subparagraph — as soon as practicable after the end of that period; or
 - (b) if the carriage service provider is notified of the matter mentioned in subparagraph (1) (b) (ii) — as soon as practicable after receiving the notification.

Note The carriage service provider is not required to have regard to a notification from the copyright owner or agent of a kind mentioned in subparagraph (1) (b) (i) if it is received more than 10 working days after the documents were sent to the owner or agent under regulation 20L.

Division 3A.5 Conditions — procedure following takedown of copyright material other than following notice by copyright owner

20N Application of Division 3A.5

- (1) For condition 3 of item 4 (Category C activities) of the table in subsection 116AH (1) of the Act and subject to subregulation (2), this Division 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.

Note The carriage service provider must act expeditiously to remove or disable access to copyright material residing on its system or network if the carriage service provider becomes aware of a matter mentioned in paragraph (1) (a) or (b) in relation to the material — see condition 2A of item 4 of the table in subsection 116AH (1) of the Act.

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- (2) This Division does not apply if the carriage service provider becomes aware of a matter mentioned in paragraph (1) (a) or (b) in relation to copyright material residing on the carriage service provider's system or network as a result of receiving a notice of claimed infringement under Division 3A.4, or any other notification, from the owner, or an agent of the owner, of the copyright in the material.

Note The procedure prescribed in Division 3A.4 applies if the carriage service provider receives a notice of claimed infringement in relation to the copyright material from the owner, or an agent of the owner, of the copyright in the material.

20P Notice to user

- (1) As soon as practicable after removing, or disabling access to, the copyright material under condition 2A of item 4 of the table in subsection 116AH(1) of the Act, the carriage service provider must send to the user who directed the carriage service provider to store the copyright material on its system or network a notice stating:
- (a) that the copyright material has been removed, or access to it has been disabled; and
 - (b) the grounds for removing, or disabling access to, the copyright material; and
 - (c) that the user may, within 3 months after receiving the notice, issue a counter-notice in accordance with regulation 20Q of the *Copyright Regulations 1969* to the carriage service provider's designated representative disputing the grounds for removing, or disabling access to, the copyright material and requesting the carriage service provider to restore, or enable access to, the copyright material on the carriage service provider's system or network.
- (2) A carriage service provider is taken to have complied with subregulation (1) if:
- (a) the carriage service provider has taken reasonable steps to identify the user but has been unable to do so; or
 - (b) the carriage service provider sends the notice to the user as required by subregulation (1) but it is not received by the user.

20Q Counter-notice

- (1) 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, or disabling access to, the copyright material and requesting the carriage service provider to restore, or enable access to, the copyright material on the carriage service provider's system or network.

Note 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.

- (2) A counter-notice must:
- (a) be in accordance with, or substantially in accordance with, the Form set out in Part 5 of Schedule 10; and
 - (b) be issued within 3 months after the user receives the notice under regulation 20P.

20R Restoring copyright material

If:

- (a) a carriage service provider receives a counter-notice in relation to copyright material under regulation 20Q; and
- (b) on the basis of the information and statements in the counter-notice, 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.

**Division 3A.6 Conditions — takedown of
reference to copyright material
following notice from copyright
owner****20S Application of Division 3A.6**

For condition 3 of item 5 (Category D activities) of the table in subsection 116AH (1) of the Act, this 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 network if:

- (a) the owner, or an agent of the owner, of the copyright in the material believes, on reasonable grounds, that the material is infringing; and
- (b) the owner or agent wishes the carriage service provider to remove or disable access to the reference to the material.

20T Notice of claimed infringement

- (1) The owner, or an agent of the owner, of the copyright in the copyright material to which the reference is provided must issue a notice of claimed infringement to the carriage service provider's designated representative.
- (2) A notice of claimed infringement must be in accordance with, or substantially in accordance with, the form set out in Part 6 of Schedule 10.

20U Takedown procedure

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.

Division 3A.7 Civil remedies

20V Action taken to comply with a condition

A carriage service provider is not liable for damages or any other civil remedy as a result of action taken in good faith by the carriage service provider to comply with any of the following conditions:

- (a) condition 3 of item 3 (Category B activities) of the table in subsection 116AH (1) of the Act;
- (b) condition 2, 2A or 3 of item 4 (Category C activities) of the table in subsection 116AH (1) of the Act;
- (c) condition 2, 2A or 3 of item 5 (Category D activities) of the table in subsection 116AH (1) of the Act.

Note See also Divisions 3A.2, 3A.3, 3A.4, 3A.5 and 3A.6 of this Part in relation to these conditions.

20W Failure to restore or enable access to copyright material

- (1) This regulation applies to a carriage service provider who is required to comply with regulation 20M or 20R in relation to particular copyright material.
- (2) If the carriage service provider fails to restore, or enable access to, the copyright material on its system or network as required by 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.
- (3) However, 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 copyright material in accordance with regulation 20M or 20R.

20X Misrepresentations in notifications and notices

- (1) A person who issues a notification, notice or counter-notice under this Part, for the purpose of satisfying a condition in

Subdivision D of Division 2AA of Part V of the Act, must not knowingly make a material misrepresentation in that notification, notice or counter-notice.

- (2) For subregulation (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 and statements included in the notification, notice or counter-notice.
- (3) 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.

[2] After Schedule 9

insert

Schedule 10 Forms for Part 3A

(regulations 20E, 20F, 20I, 20K, 20Q and 20T)

Part 1 Form of notification in relation to cached copyright material

COMMONWEALTH OF AUSTRALIA

Copyright Regulations 1969

NOTIFICATION THAT CACHED COPYRIGHT MATERIAL HAS
BEEN REMOVED OR ACCESS HAS BEEN DISABLED AT THE
ORIGINATING SITE

TO [*name of carriage service provider*]

1. I, the person whose name is stated below, issue this notification for the purposes of condition 3 of item 3 of the table in subsection 116AH (1) of the *Copyright Act 1968* and regulation 20E of the *Copyright Regulations 1969*.

2. I am the *owner/*agent of the owner of the copyright in the cached copyright material specified in the Schedule (the *specified cached copyright material*).
3. I believe, in good faith, that the specified cached copyright material has been removed, or access to it has been disabled, at the originating site.
4. I have taken reasonable steps to ensure that the information and statements in this notification are accurate.

NAME OF *OWNER/*AGENT OF OWNER:

ADDRESS:

TELEPHONE NUMBER:

FAX NUMBER:

E-MAIL ADDRESS:

[signature]

*Owner/*Agent of owner

SCHEDULE

DESCRIPTION OF CACHED COPYRIGHT MATERIAL: *[insert sufficient information to enable the carriage service provider to identify the cached copyright material that has been removed, or to which access has been disabled, at the originating site]*

INFORMATION ABOUT THE ORIGINATING SITE: *[insert sufficient information to enable the carriage service provider to identify the originating site from which the cached copyright material has been removed or at which access has been disabled]*

DESCRIPTION OF CACHED COPYRIGHT MATERIAL ON CARRIAGE SERVICE PROVIDER'S SYSTEM OR NETWORK: *[insert sufficient information to enable the carriage service provider to identify the cached copyright material on its system or network that is to be removed, or to which access is to be disabled]*

* Omit if inapplicable

Note 1 Strict compliance with this form is not required and substantial compliance is sufficient — see section 25C of the *Acts Interpretation Act 1901*.

Note 2 If this notification is issued by electronic communication, the requirement to sign the notification is taken to have been met if the method described in subregulation 20D (2) of the *Copyright Regulations 1969* is used.

Note 3 An action for a civil remedy may be brought by a person who suffers loss or damage because of a material representation made knowingly in this notification — see regulation 20X of the *Copyright Regulations 1969*. In addition, it is an offence under the *Criminal Code* to issue this notification knowing that it is false or misleading in a material particular — see section 137.2 of the *Criminal Code*.

Part 2 Form of notice in relation to copyright material found to be infringing by an Australian court

COMMONWEALTH OF AUSTRALIA

Copyright Regulations 1969

NOTICE RELATING TO COPYRIGHT MATERIAL THAT HAS BEEN FOUND TO BE INFRINGING BY AN AUSTRALIAN COURT

TO [*name of carriage service provider*]

1. I, the person whose name is stated below, issue this notice for the purposes of:
*condition 2 of item 4 of the table in subsection 116AH (1) of the *Copyright Act 1968* and regulation 20F of the *Copyright Regulations 1969*.
OR
*condition 2 of item 5 of the table in subsection 116AH (1) of the *Copyright Act 1968* and regulation 20F of the *Copyright Regulations 1969*.
2. I am the *owner/*agent of the owner of the copyright in the copyright material specified in the Schedule (the *specified copyright material*), being:
*copyright material residing on your system or network.
OR
*copyright material to which you have provided a reference on your system or network.

3. I believe, in good faith, that the specified copyright material has been found to be infringing by an Australian court.
4. I have taken reasonable steps to ensure that the information and statements in this notice are accurate.

NAME OF *OWNER/*AGENT OF OWNER:

ADDRESS:

TELEPHONE NUMBER:

FAX NUMBER:

E-MAIL ADDRESS:

[signature]

*Owner/*Agent of owner

SCHEDULE

DESCRIPTION OF COPYRIGHT MATERIAL: *[insert sufficient information to enable the carriage service provider to identify the copyright material that has been found to be infringing by an Australian court]*

LOCATION OF COPYRIGHT MATERIAL RESIDING ON CARRIAGE SERVICE PROVIDER'S SYSTEM OR NETWORK OR REFERENCE TO COPYRIGHT MATERIAL PROVIDED BY CARRIAGE SERVICE PROVIDER ON ITS SYSTEM OR NETWORK: *[insert sufficient information to enable the carriage service provider to locate on its system or network the copyright material that has been found to be infringing by an Australian court, or the reference provided by the carriage service provider on its system or network to copyright material that has been found to be infringing by an Australian court]*

* Omit if inapplicable

Note 1 Strict compliance with this form is not required and substantial compliance is sufficient — see section 25C of the *Acts Interpretation Act 1901*.

Note 2 If this notice is issued by electronic communication, the requirement to sign the notice is taken to have been met if the method described in subregulation 20D (2) of the *Copyright Regulations 1969* is used.

Note 3 An action for a civil remedy may be brought by a person who suffers loss or damage because of a material representation made knowingly in this notice — see regulation 20X of the *Copyright Regulations 1969*. In addition, it is an offence under the *Criminal Code* to issue this notice knowing that it is false or misleading in a material particular — see section 137.2 of the *Criminal Code*.

Part 3 Form of notice of claimed infringement by owner or agent — copyright material

COMMONWEALTH OF AUSTRALIA

Copyright Regulations 1969

NOTICE OF CLAIMED INFRINGEMENT OF COPYRIGHT BY COPYRIGHT OWNER OR AGENT — COPYRIGHT MATERIAL

TO [*name of carriage service provider*]

1. I, the person whose name is stated below, issue this notice for the purposes of condition 3 of item 4 of the table in subsection 116AH (1) of the *Copyright Act 1968* and regulation 20I of the *Copyright Regulations 1969*.
2. I am the *owner/*agent of the owner of the copyright in the copyright material specified in the Schedule (the *specified copyright material*), being copyright material residing on your system or network.

Omit the following paragraph if this notice is being completed by the agent of the copyright owner.

- *3. I believe, in good faith, that the storage of the specified copyright material on your system or network is not authorised by me or a licensee, or the *Copyright Act 1968*, and is therefore an infringement of the copyright in that material.

Omit the following paragraph if this notice is being completed by the copyright owner.

- *3. I believe, in good faith, that the storage of the specified copyright material on your system or network is not authorised by the copyright owner or a licensee of the copyright owner, or the *Copyright Act 1968*, and is therefore an infringement of the copyright in that material.

4. I have taken reasonable steps to ensure that the information and statements in this notice are accurate.

NAME OF *OWNER/*AGENT OF OWNER:

ADDRESS:

TELEPHONE NUMBER:

FAX NUMBER:

E-MAIL ADDRESS:

[signature]

*Owner/*Agent of owner

SCHEDULE

DESCRIPTION OF COPYRIGHT MATERIAL: *[insert sufficient information to enable the carriage service provider to identify the copyright material in respect of which the infringement is claimed]*

LOCATION OF COPYRIGHT MATERIAL RESIDING ON CARRIAGE SERVICE PROVIDER'S SYSTEM: *[insert sufficient information to enable the carriage service provider to locate on its system or network the copyright material in respect of which the infringement is claimed]*

* Omit if inapplicable

Note 1 Strict compliance with this form is not required and substantial compliance is sufficient — see section 25C of the *Acts Interpretation Act 1901*.

Note 2 If this notice is issued by electronic communication, the requirement to sign the notice is taken to have been met if the method described in subregulation 20D (2) of the *Copyright Regulations 1969* is used.

Note 3 An action for a civil remedy may be brought by a person who suffers loss or damage because of a material representation made knowingly in this notice — see regulation 20X of the *Copyright Regulations 1969*. In addition, it is an offence under the *Criminal Code* to issue this notice knowing that it is false or misleading in a material particular — see section 137.2 of the *Criminal Code*.

**Part 4 Form of counter-notice in response to
notice of claimed infringement by owner
or agent**

COMMONWEALTH OF AUSTRALIA

Copyright Regulations 1969

COUNTER-NOTICE IN RESPONSE TO
NOTICE OF CLAIMED INFRINGEMENT OF COPYRIGHT BY
COPYRIGHT OWNER OR AGENT

TO [*name of carriage service provider*]

1. I, the individual or body corporate whose name is stated below, having received a copy of a notice of claimed infringement from you under regulation 20J of the *Copyright Regulations 1969* in relation to the copyright material specified in the Schedule (the ***specified copyright material***), issue this counter-notice for the purposes of condition 3 of item 4 of the table in subsection 116AH (1) of the *Copyright Act 1968* and regulation 20K of the *Copyright Regulations 1969*.
2. I am the user who directed you to store the specified copyright material on your system or network.
3. I believe, in good faith on the grounds set out in paragraph 4, that the notice of claimed infringement was issued because of:
 - *(a) a mistake as to fact or law in relation to the specified copyright material; or
 - *(b) a mistake in identifying the specified copyright material.
4. The grounds for my belief in the statement in paragraph 3 are as follows:
[*state the grounds*]

Omit the following paragraph if the user does NOT live in, or carry on a business in, Australia.

- *5. I agree to comply with the orders of a court having jurisdiction in the place where I live or undertake my business, being a place in Australia.

Omit the following paragraph if the user lives in, or carries on a business in, Australia.

- *5. I agree to comply with the orders of a court having jurisdiction in a place in Australia where you, the carriage service provider, are located and where an action for infringement of the copyright in the specified copyright material could be brought.
6. I will accept service of process in any action for infringement of the copyright in the specified copyright material.
7. I have taken reasonable steps to ensure that the information and statements in this counter-notice are accurate.

NAME OF *INDIVIDUAL/*BODY CORPORATE:

ADDRESS:

TELEPHONE NUMBER:

FAX NUMBER:

E-MAIL ADDRESS:

[signature]

User

SCHEDULE

DESCRIPTION OF COPYRIGHT MATERIAL: *[insert sufficient information to enable the carriage service provider to identify the copyright material in respect of which the infringement is claimed]*

LOCATION OF COPYRIGHT MATERIAL ON CARRIAGE SERVICE PROVIDER'S SYSTEM OR NETWORK: *[insert sufficient information to enable the carriage service provider to identify where on its system or network the copyright material in respect of which the infringement is claimed was stored]*

* *Omit if inapplicable*

Note 1 Strict compliance with this form is not required and substantial compliance is sufficient — see section 25C of the *Acts Interpretation Act 1901*.

Note 2 A counter-notice must be issued to the carriage service provider's designated representative within 3 months after the user receives the notice of claimed infringement to which the counter-notice relates.

Note 3 If this counter-notice is issued by electronic communication, the requirement to sign the counter-notice is taken to have been met if the method described in subregulation 20D (2) of the *Copyright Regulations 1969* is used.

Note 4 An action for a civil remedy may be brought by a person who suffers loss or damage because of a material representation made knowingly in this counter-notice — see regulation 20X of the *Copyright Regulations 1969*. In addition, it is an offence under the *Criminal Code* to issue this counter-notice knowing that it is false or misleading in a material particular — see section 137.2 of the *Criminal Code*.

Note 5 As soon as practicable after the carriage service provider receives this counter-notice, the carriage service provider must send a copy of it to the copyright owner or agent, together with a notice stating that if the owner or agent does not, within 10 working days after the date the notice was sent, bring an action seeking a court order to restrain the activity that is claimed to be infringing, the carriage service provider will restore, or enable access to, the copyright material on its system or network — see regulation 20L of the *Copyright Regulations 1969*.

Note 6 Information that could identify a user who is an individual may be disclosed by the carriage service provider in the copy of this counter-notice or the notice referred to in Note 5 sent to the copyright owner or agent if the disclosure is consistent with the *Telecommunications Act 1997* and the *Privacy Act 1988*. However, if the carriage service provider is required by a court to disclose identifying information about a user who is an individual, the information must be disclosed.

Part 5 Form of counter-notice in response to takedown of copyright material other than following notice by owner or agent

COMMONWEALTH OF AUSTRALIA

Copyright Regulations 1969

COUNTER-NOTICE IN RESPONSE TO TAKEDOWN OF COPYRIGHT MATERIAL OTHER THAN FOLLOWING NOTICE BY COPYRIGHT OWNER OR AGENT

TO [*name of carriage service provider*]

1. I, the individual or body corporate whose name is stated below, having received a notice from you under regulation 20P of the *Copyright Regulations 1969* in relation to the copyright material specified in the Schedule (the *specified copyright material*), issue this counter-notice for the purposes of condition 3 of item 4 of the table in subsection 116AH (1) of the *Copyright Act 1968* and regulation 20Q of the *Copyright Regulations 1969*.

2. I am the user who directed you to store the specified copyright material on your system or network.
3. I believe, in good faith on the grounds set out in paragraph 4, that you have removed, or disabled access to, the specified copyright material because of:
 - *(a) a mistake as to fact or law in relation to the specified copyright material; or
 - *(b) a mistake in identifying the specified copyright material.
4. The grounds for my belief in the statement in paragraph 3 are as follows:
[state the grounds]
5. I have taken reasonable steps to ensure that the information and statements in this counter-notice are accurate.

NAME OF *INDIVIDUAL/*BODY CORPORATE:

ADDRESS:

TELEPHONE NUMBER:

FAX NUMBER:

E-MAIL ADDRESS:

[signature]

User

SCHEDULE

DESCRIPTION OF COPYRIGHT MATERIAL: [insert sufficient information to enable the carriage service provider to identify the copyright material that has been removed, or to which access has been disabled]

LOCATION OF COPYRIGHT MATERIAL ON CARRIAGE SERVICE PROVIDER'S SYSTEM OR NETWORK: [insert sufficient information to enable the carriage service provider to identify where on its system or network the copyright material that has been removed, or to which access has been disabled, was stored]

* Omit if inapplicable

Note 1 Strict compliance with this form is not required and substantial compliance is sufficient — see section 25C of the *Acts Interpretation Act 1901*.

Note 2 A counter-notice must be issued to the carriage service provider's designated representative within 3 months after the user receives the notice to which the counter-notice relates.

Note 3 If this counter-notice is issued by electronic communication, the requirement to sign the counter-notice is taken to have been met if the method described in subregulation 20D (2) of the *Copyright Regulations 1969* is used.

Note 4 An action for a civil remedy may be brought by a person who suffers loss or damage because of a material representation made knowingly in this counter-notice — see regulation 20X of the *Copyright Regulations 1969*. In addition, it is an offence under the *Criminal Code* to issue this counter-notice knowing that it is false or misleading in a material particular — see section 137.2 of the *Criminal Code*.

Note 5 If the carriage service provider is satisfied, on the basis of the information and statements in this counter-notice, that the specified copyright material is not, or is not likely to be, infringing, the carriage service provider must restore, or enable access to, the copyright material on its system or network — see regulation 20R of the *Copyright Regulations 1969*.

Part 6 Form of notice of claimed infringement by owner or agent — reference to copyright material

COMMONWEALTH OF AUSTRALIA

Copyright Regulations 1969

NOTICE OF CLAIMED INFRINGEMENT OF COPYRIGHT BY COPYRIGHT OWNER OR AGENT — REFERENCE TO COPYRIGHT MATERIAL

TO [*name of carriage service provider*]

1. I, the person whose name is stated below, issue this notice for the purposes of condition 3 of item 5 of the table in subsection 116AH (1) of the *Copyright Act 1968* and regulation 20T of the *Copyright Regulations 1969*.
2. I am the *owner/*agent of the owner of the copyright in the copyright material specified in the Schedule (the *specified copyright material*), being copyright material to which you have provided a reference on your system or network.
3. I believe, in good faith, that the specified copyright material is infringing under the *Copyright Act 1968*.

4. I have taken reasonable steps to ensure that the information and statements in this notice are accurate.

NAME OF *OWNER/*AGENT OF OWNER:

ADDRESS:

TELEPHONE NUMBER:

FAX NUMBER:

E-MAIL ADDRESS:

[signature]

*Owner/*Agent of owner

SCHEDULE

DESCRIPTION OF COPYRIGHT MATERIAL: *[insert sufficient information to enable the carriage service provider to identify the copyright material in respect of which the infringement is claimed]*

LOCATION OF REFERENCE PROVIDED BY THE CARRIAGE SERVICE PROVIDER ON ITS SYSTEM OR NETWORK: *[insert sufficient information to enable the carriage service provider to locate on its system or network the reference provided by the carriage service provider to the copyright material that is claimed to be infringing]*

* Omit if inapplicable

Note 1 Strict compliance with this form is not required and substantial compliance is sufficient — see section 25C of the *Acts Interpretation Act 1901*.

Note 2 If this notice is issued by electronic communication, the requirement to sign the notice is taken to have been met if the method described in subregulation 20D (2) of the *Copyright Regulations 1969* is used.

Note 3 An action for a civil remedy may be brought by a person who suffers loss or damage because of a material representation made knowingly in this notice — see regulation 20X of the *Copyright Regulations 1969*. In addition, it is an offence under the *Criminal Code* to issue this notice knowing that it is false or misleading in a material particular — see section 137.2 of the *Criminal Code*.

Notes

1. These Regulations amend Statutory Rules 1969 No. 58, as amended by 1981 Nos. 148 and 355; 1982 No. 65; 1983 Nos. 126, 128 and 293; 1984 Nos. 175 and 275; 1987 No. 34; 1988 No. 125; 1990 Nos. 4, 5, 76 and 301; 1992 No. 165; 1993 No. 228; 1995 No. 129; 1998 No. 359; 2001 Nos. 7 and 8.
2. Notified in the *Commonwealth of Australia Gazette* on 23 December 2004.