

Explanatory Statement

Copyright Act 1968

Copyright Amendment (Service Providers) Regulations 2018

Issued by the Authority of the Minister for Communications and the Arts

Purpose

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

Subsection 249(1) 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.

The *Copyright Amendment (Service Providers) Regulations 2018* (Regulations) extend the operation of Part 6 of the *Copyright Regulations 2017* (Copyright Regulations) to other types of service providers consequential to amendments made by the *Copyright Amendment (Service Providers) Act 2018* (Service Providers Act).

Part 6 of the Regulations is made in relation to Division 2AA of Part V of the Act. Division 2AA of Part V of the Act is a 'safe harbour scheme' that limits the remedies available against carriage service providers for infringements of copyright that relate to the carrying out of certain online activities. The Act sets out certain conditions which a carriage service provider can comply with in order to limit their liability. Carriage service providers benefit from the resulting increased certainty about liability for copyright infringements on their facilities or network infrastructure. The concept of a carriage service provider is defined in section 87 of the *Telecommunications Act 1997* (Telecommunications Act).

In accordance with Division 2AA of Part V of the Act, Part 6 of the Regulations prescribes matters relating to conditions for the application of the safe harbour scheme (including notification requirements), industry codes and civil remedies.

From 29 December 2018, the Service Providers Act amends Division 2AA of Part V of the Act to extend its operation beyond carriage service providers to also include institutions and organisations which are:

- educational institutions, through their administering bodies, including universities, schools, technical colleges, training bodies and pre-schools;
- libraries that either make their collections available to the public or are Parliamentary libraries, through their administering bodies;
- archives, through their administering bodies, including the National Archives of Australia and specified state archives, galleries and museums;
- key cultural institutions, through their administering bodies, including specific archives and libraries that are not open to the public; and
- organisations assisting persons with a disability.

The Regulations amend the Copyright Regulations to ensure that the safe harbour scheme procedures and requirements outlined in Part 6 will apply to all defined service providers from 29 December 2018. The main amendments in the Regulations relate to introducing an industry code process for newly defined service providers, who unlike carriage service providers, are unable to develop a code under the Telecommunications Act; and providing a more flexible arrangement for the appointment of designated representatives who deal with notifications under the scheme.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the Regulations are set out at [Attachment 1](#).

Consultation

An exposure draft of the Regulations was released for public consultation on 5 June 2018.

The following stakeholders made submissions on the exposure draft:

Australian Copyright Council

Australian Film & TV Bodies

Australian Libraries Copyright Committee (ALCC)

Australian Publishers Association (APA)

Australasian Music Publishers Association Limited (AMPAL)

APRA AMCOS

Copyright Advisory Group COAG Education Council

Music Rights Australia

Nightlife

PPCA

Redbubble Limited

Universities Australia

The procedures and requirements outlined in Part 6 of the Copyright Regulations are in line with safe harbour conditions in the Act and Australia's obligations under the Australia-US Free Trade Agreement. The intent is not to change the practical operation of these procedures or requirements, nor to apply them differently to newly defined service providers (from how they have applied to carriage service providers). Submissions from stakeholders which related to matters of policy such as mandating the development of industry codes, assigning costs for code development against service providers, or changing the operation of the notice and take down scheme have not been considered. Other issues relating to the effective operation of Part 6 of the Copyright Regulations were addressed, as outline below.

A number of stakeholders outlined an inconsistency in the exposure draft between the mandatory requirements for developing industry codes about standard technical measures for carriage service providers in comparison to codes developed by other service providers in the proposed amendments to sections 18 and 18A. The current industry code requirements for carriage service providers in section 18 of the Copyright Regulations provide that industry codes that deal with standard technical measures must include the information in subparagraphs 18(b)(i) to (iv). Amendments were made to section 18A of the exposure draft Regulations to ensure consistency with these requirements for service providers other than carriage service providers.

The exposure draft Regulations did not propose amendments to the appointment of designated representatives by service providers under section 19 of the Copyright Regulations. Designated representatives are appointed to receive notifications, notices and counter-notices from copyright owners about claimed infringement in line with the conditions under subsection 116AH(1) of the Act. A number of stakeholders outlined that newly defined service providers

operate differently from carriage service providers and may require flexibility when nominating a designated representative. Unlike carriage service providers, service providers will often consist of a body which administers a number of other entities which each may need to separately deal with the notifications.

The aim of section 19 is to ensure that owners of copyright and/or exclusive licensees of copyright can easily identify who they can send notices to in order to comply with Part 6 of the Copyright Regulations. It also aims to ensure that the service provider appoints the most appropriate person to efficiently deal with notices (and any counter-notices) in line with the requirements in Part 6 of the Copyright Regulations. Amendments have been made to section 19 to ensure the notification system will work effectively by providing service providers with the flexibility to nominate multiple designated representatives, if needed, while also ensuring that the relevant representative can be easily identified and contacted.

A number of minor concerns were raised about the operation of the industry code requirements for both carriage service providers and service providers.

- The film and television industry raised practical concerns about the operation of consensus requirements for copyright owners and exclusive licensees when developing industry codes. Amendments were made to paragraphs 18(2)(a) and 18A(2)(a) to make clear that consensus can be achieved with the agreement of both copyright owners and exclusive licensees, or separately, by just one of these parties.
- The film and television industry suggested that paragraphs 18(3)(d) and 18A(4)(d), should refer to consideration of ‘proportionate costs’ rather than ‘substantial costs. This is a matter of policy and is based on Australians obligations under the Australia-US Free Trade Agreement therefore no changes have been made.
- Some stakeholders suggested that paragraph 18A(5)(b) would require codes developed by service providers other than carriage service providers to have an end date. This has been clarified in the Regulations.

Some stakeholders suggested that the Government commit to a review of the effectiveness of the amendments in the Regulations in 12 to 18 months. The Government will monitor the operation of the amendments to ensure that service providers and copyright owners are able to appropriately comply with the requirements of Part 6 of the Copyright Regulations.

Regulation Impact Statement

The Office of Best Practice Regulation has assessed the expansion of the safe harbour scheme in Division 2AA of Part V of the Act to a broader range to service providers as having minor regulatory impact on business, community organisations and individuals. As such, a RIS is not required.

Statement of Compatibility with Human Rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at [Attachment 2](#).

Attachment 1: Notes on Sections

Section 1—Name

Section 1 provides for the Regulations to be cited as the *Copyright Amendment (Service Providers) Regulations 2018*.

Section 2—Commencement

Section 2 provides for the commencement of the Regulations.

The Regulations commence at the same time as the Service Providers Act commences. The Service Providers Act will commence on 29 December 2018.

Section 3—Authority

Section 3 provides that the Regulations are made under the authority of the Act. Section 249 of the Act contains a general regulation making power to prescribe matters to give effect to the Act. Division 2AA of Part V of the Act sets out certain matters which may be prescribed in regulations in relation to the operation of the safe harbour scheme.

Section 4—Schedules

Section 4 provides that an instrument specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in that Schedule, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Schedule 1 amends Parts 6 and 16 and Schedule 2 of the Copyright Regulations.

Item 1—Section 4 (definition of *designated representative*)

Item 1 replaces the definition of *designated representative* to omit “carriage” at each occurrence and to align with amendments to section 19 at item 6. Section 19 requires service providers to appoint a *designated representative* in order to receive notifications, notices and counter-notices as required to comply with the notice requirements outlined in subsection 116AH(1) of the Act.

The effect of the removal of “carriage” is to expand the operation of Part 6 of the Copyright Regulations to apply to a broader range of institutions and organisations as defined in section 116ABA of Act (as amended by the Service Providers Act) to include:

- educational institutions, through their administering bodies, including universities, schools, technical colleges, training bodies and pre-schools;
- libraries that either make their collections available to the public or are Parliamentary libraries, through their administering bodies;
- archives, through their administering bodies, including the National Archives of Australia and specified state archives, galleries and museums;
- key cultural institutions, through their administering bodies, including specific archives and libraries that are not open to the public; and

- organisations assisting persons with a disability.

Item 2—Section 4

Item 2 inserts new definitions of *designated service provider* and *service provider* in section 4.

Item 2 defines *designated service provider* as meaning a service provider other than a carriage service provider. The term is used to distinguish between the requirements for developing a code that applies to carriage service providers and the requirements for developing a code that applies to service providers that are not carriage service providers (as inserted by Item 5).

Item 2 defines a *service provider* as having the meaning given by section 116ABA of the Act. The effect of this amendment is to expand the operation of Part 6 of the Copyright Regulations to the institutions and organisations listed in Item 1.

Item 3—Section 4 (definitions of *system or network* and *user*)

Item 3 amends the definition of *system or network* and *user* in section 4 to omit “carriage” at each occurrence. The effect of this amendment is to expand the operation of Part 6 of the Copyright Regulations to institutions and organisations defined as service providers in section 116ABA of the Service Providers Act.

Item 4—Part 6 (heading)

Item 4 amends the heading of Part 6 to omit “carriage” at each occurrence. The effect of this amendment is to expand the operation of Part 6 of the Copyright Regulations to institutions and organisations defined as service providers in section 116ABA of the Service Providers Act.

Item 5—Section 18

Existing section 18 of the Copyright Regulations prescribes the requirements for industry codes developed by carriage service providers for the purposes of conditions in subsection 116AH(1) of the Act. This item substitutes section 18 ‘Industry codes developed by carriage service providers’ for the purposes of those provisions of the Act.

Paragraph (a) of the definition of *industry code* in section 116AB of the Act provides that the term means an industry code that: (i) meets any prescribed requirements; and (ii) is registered under Part 6 of the Telecommunications Act. The simplified outline of Part 6 of the Telecommunications Act notes that bodies and associations that represent sections of the telecommunications industry may develop industry codes under the part. It is likely that a service provider, who is not a carriage service provider (defined as *designated service provider* in item 2 above), will not fall within the meaning of sections of the telecommunications industry and would therefore be unable to develop codes under the Telecommunications Act.

Paragraph (b) of the definition of *industry code* in section 116AB of the Act provides that the term also means an industry code developed in accordance with the Copyright Regulations.

Section 18A ‘Industry codes developed by designated service providers’ is introduced under the definition of *industry code* in paragraph 116AB(b) of the Act to provide a vehicle for designated service providers to develop industry codes for the purposes of subsection 116AH(1) of the Act.

Section 18 – Industry codes developed by carriage service providers

Carriage service providers are expected to comply with the requirements under substituted section 18 in developing codes for the purposes of subsection 116AH(1) of the Act.

Section 18 of the Regulations replaces section 18 of the Copyright Regulations in substantively the same form but with a number of amendments.

- The words “that does not deal solely with caching” are omitted from the requirement that an industry code must be developed through a process as prescribed by subsection 18(2). Subsection 18(2) requires that an industry code be developed through an open voluntary process by a broad consensus of copyright owners and/or exclusive licensees and carriage service providers. This makes clear that this prescribed requirement should apply equally to codes developed in relation to both standard technical measures (under item 1 of subsection 116AH(1) of the Act) and caching (under item 3 of subsection 116AH(1) of the Act).
- The words “or a class of owners of copyright” and “or class of exclusive licensees” are added to paragraph 18(2)(a) to the requirement that codes must be developed by broad consensus. This makes clear that broad consensus may occur within a specific group of copyright owners and/or exclusive licensees. This could include specific groups of copyright owners by type of copyright material such as sound recording rights holders or film rights holders.
- Paragraph 18(2)(a) is also amended to add “either or both of the following” to make clear that broad consensus may occur between carriage service providers and with either copyright owners or exclusive licensees, or both. This would mean that consensus is only required for the relevant copyright holders in Australia, which could be either a group of Australian copyright owners, or for foreign owned copyright material, a group of exclusive licensees.

Section 18A – Industry codes developed by designated service providers

Section 18A outlines the requirements for developing, or varying an existing code, as made by a class of service providers other than carriage service providers (*designated service providers*) for the purpose of item 1 or 3 of subsection 116AH(1) of the Act. These obligations substantially align with the requirements for the development of an industry code under section 18 of the Copyright Regulations and Part 6 of the Telecommunications Act.

Subsection 18A(1) outlines that an industry code as defined in paragraph 116AB(b) of the Act must be developed in accordance with section 18A.

Similar to subsection 18(2), subsection 18A(2) requires that an industry code must be developed or varied through an open voluntary process by a broad consensus of copyright owners and/or exclusive licensees and designated service providers. This can include broad consensus within a specific group of copyright owners and/or exclusive licensees.

Paragraph 18A(2)(b) makes clear that broad consensus as required in subsection 18A(2) must occur with a class of designated service providers to whom the industry code will apply. This recognises that a broad range of service providers will likely rely on the safe harbour scheme and would provide flexibility for an industry code to be developed which could apply to a specific group of designated service providers. For example, a specific group of universities may lead the development and implementation of a code on behalf of all Australian universities.

Subsections 18A(3) to (5) outline what must be included in an industry code in order for the code to be valid.

Subsection 18A(3) outlines that an industry code may relate to satisfying conditions in subsection 116AH(1) of the Act in relation to accommodating and not interfering with standard technical measures and dealing with cached copyright material.

Similar to subsection 18(3), subsection 18A(4) requires that industry codes which do not deal solely with caching must include a provision to the effect that standard technical measures are 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 an industry code; be available on non-discriminatory terms; and not impose substantial costs on designated service providers or substantial burdens on their systems or networks.

Subsection 18A(5) sets out additional requirements for provisions which are required to be included in an industry code under paragraph 116AB(b) of the Act. This includes:

- a provision which outlines which class of designated service providers the industry code will apply to (subparagraph (a));
- a provision which outlines when the code will take effect and the circumstances in which the code will cease to have effect – this requirement is not intended to be restricted to provisions setting out specific periods of time or dates alone, but could include a set of conditions relevant to the parties to the code (subparagraph (b));
- a provision requiring that a code, or if the code is being varied, a copy of the varied code, be published on the website of a person or body representing the class of designated service providers, when the code, or the variation, takes effect (subparagraphs (c) and (d)).

Subsection 18A(6) outlines the consultation requirements that must be undertaken by a person or body representing the class of designated service providers before an industry code, or variation of an industry code, takes effect. These requirements align with the consultation requirements in Part 6 of the Telecommunications Act. Similar to paragraphs 119A(1)(e) and (f) of the Telecommunications Act, subsection 18A(7) makes clear that the consultation requirements are not required to be undertaken for a variation of a code which makes only minor changes, such as to update outdated references or correct spelling errors.

Item 6—Section 19

Item 6 replaces section 19 to omit “carriage” at each occurrence and to outline that a service provider must designate one or more persons to be a representative of the service provider to receive notifications, notices and counter-notices given for the purposes of a condition in subsection 116AH(1) of the Act. This item also makes amendments to section 19 to make clear how service providers must publish the information about designated representatives.

The effect of the change to subsection 19(1) is to provide service providers with the flexibility to nominate more than one representative. This will allow service providers to nominate appropriate representatives in line with their administrative structure and practices to receive notifications, notices and counter-notices in line with the prescribed procedures outlined in Part 6 of the Copyright Regulations. A service provider will be expected to ensure that its policy for nominating designated representatives enables it to comply with the conditions in subsection 116AH(1) of the Act.

It is expected that where a service provider is a body administering more than one entity, the administering body would have at least one designated representative who is capable of receiving notifications about the safe harbour activities of each of the entities. However, the service provider will have the flexibility to determine whether it is appropriate for entities under its administration to also have a separate designated representative. For example, this may be utilised where the entities each have a website which is managed by someone other than the administering body.

The effect of the change to subsection 19(2) is that the service provider must include the information required in paragraphs 19(2)(a) and (b) in a reasonably prominent place on a website it administers for each designated representative.

In practice this may mean that where a service provider nominates one person as their designated representative and they administer multiple websites relevant to their safe harbour activities, the required information for that designated representative is available not only on the main website of the administering body, but also on relevant websites of each entity. Where a service provider administers a number of entities which operate different websites and a decision is made to appoint different designated representatives in line with their administrative structure, it would be expected the details of the designated representatives are made clear on a relevant website in line with the requirements in subsection 19(2).

Where a service provider is a body administering multiple entities and has multiple designated representatives, they should consider the most appropriate way to comply with the safe harbour conditions in subsection 116AH(1) of the Act. For example, to ensure copyright owners can easily contact them, service providers may have a primary designated representative who is responsible for any notices relating to entities administered by the service provider. The details of this designated representative would be in a reasonably prominent place on the relevant website of the administering body.

Item 7—Paragraph 20(b)

Item 7 omits “the carriage service provider’s designated representative” in paragraph 20(b) and substitute “a designated representative of the service provider” in order to align with the amendments in Item 6 above.

Item 8—Section 23

Item 8 omits “carriage” wherever occurring in section 23. The effect of this amendment is to expand the operation of Part 6 of the Copyright Regulations to institutions and organisations defined as service providers in section 116ABA of the Service Providers Act.

Item 9—Subsection 24(1)

Item 9 omits “the carriage service provider’s designated representative” from subsection 24(1) and substitutes “a designated representative of the service provider” in order to align with the amendments in Item 6 above.

Item 10—Subsection 25(1)

Item 10 omits “carriage” wherever occurring in subsection 25(1). The effect of this amendment is to expand the operation of Part 6 of the Copyright Regulations to institutions and organisations defined as service providers in section 116ABA of the Service Providers Act.

Item 11—Subsection 25(2)

Item 11 omits “carriage” in the first and second occurrence in subsection 25(2). The effect of this amendment is to expand the operation of Part 6 of the Copyright Regulations to institutions and organisations defined as service providers in section 116ABA of the Service Providers Act.

Item 12—Paragraph 25(2)(b)

Item 12 inserts “(the user notice)” after “a notice” in paragraph 25(2)(b) in order to label the notice for the purposes of item 13 below. Item 13 makes clear which designated representative a user should send a counter-notice to in accordance with section 26 of the Copyright Regulations.

Item 13—Subparagraph 25(2)(b)(ii)

Item 13 omits “to the carriage service provider’s designated representative disputing the claims in the notice of claimed infringement” in subparagraph 25(2)(b)(ii) and substitutes “disputing the claims in the notice of claimed infringement to the designated representative of the service provider specified in the user notice”.

The effect of this amendment is to make clear that any counter-notice given by a user in accordance with section 26 of the Copyright Regulations should be sent to the designated representative who is nominated in the *user notice* provided in line with paragraph 25(2)(b) (in item 12 above). This amendment is necessary to avoid confusion for the user where a service provider has multiple designated service providers (in line with item 6 above) by requiring that a service provider specifies in a notice provided to a user under section 25 who the appropriate designated representative is.

Items 14, 15 and 16—Subsections 25(2) (note), 25(3) and 26(1)

Items 14, 15 and 16 omit “carriage” wherever occurring in the note under subsection 25(2) as well in subsections 25(3) and 26(1). The effect of this amendment is to expand the operation of Part 6 of the Copyright Regulations to institutions and organisations defined as service providers in section 116ABA of the Service Providers Act.

Item 17—Subsection 26(1)

Item 17 omits “to the carriage service provider’s designated representative disputing the claims in the notice” in subsection 26(1) and substitutes “disputing the claims in the notice of claimed infringement to the designated representative of the service provider specified in the user notice mentioned in paragraph 25(2)(b)”.

The effect of this amendment is to make clear that any counter-notice given by a user in accordance with section 26 of the Copyright Regulations should be sent to the designated representative who is nominated in the *user notice* provided in line with paragraph 25(2)(b) (in line with items 11 and 13 above).

Item 18—Subsection 26(1) (note)

Item 18 omits “the carriage service provider’s designated representative, the carriage” in the note under subsection 26(1) and substitutes “that designated representative, the”. This clarifies that if the designated representative who was specified in a *user notice* provided under paragraph 25(2)(b) of the Copyright Regulations does not receive a counter-notice from the user, then no further action is required by the service provider.

Item 19—Subsection 27(1)

Item 19 omits “carriage” wherever occurring in subsection 27(1). The effect of this amendment is to expand the operation of Part 6 of the Copyright Regulations to institutions and organisations defined as service providers in section 116ABA of the Service Providers Act.

Item 20—Subsection 28(1)

Item 20 omits “carriage” in the first and second occurrence in subsection 28(1). The effect of this amendment is to expand the operation of Part 6 of the Copyright Regulations to institutions and organisations defined as service providers in section 116ABA of the Service Providers Act.

Item 21—Subparagraph 28(1)(b)(i)

Item 21 omits “carriage service provider’s designated representative” in subparagraph 28(1)(b)(i) and substitutes “designated representative of the service provider specified in the notice mentioned in paragraph 27(1)(b)”.

The effect of this amendment is to make clear which designated representative a copyright owner, licensee or agent must notify in order to satisfy the requirements in paragraph 28(1)(b) of the Copyright Regulations. This amendment is necessary to avoid confusion for the owner, licensee or agent where a service provider has multiple designated service providers (in line with item 6 above).

Item 22—Subparagraph 28(1)(b)(ii)

Item 22 omits “carriage” wherever occurring in subparagraph 28(1)(b)(ii). The effect of this amendment is to expand the operation of Part 6 of the Copyright Regulations to institutions and organisations defined as service providers in section 116ABA of the Service Providers Act.

Item 23—Subsection 28(2) (including the note)

Item 23 omits “carriage” wherever occurring in subsection 28(2), including in the note. The effect of this amendment is to expand the operation of Part 6 of the Copyright Regulations to institutions and organisations defined as service providers in section 116ABA of the Service Providers Act.

Item 24—Section 29

Item 24 omits “carriage” wherever occurring in section 29. The effect of this amendment is to expand the operation of Part 6 of the Copyright Regulations to institutions and organisations defined as service providers in section 116ABA of the Service Providers Act.

Item 25—Subsection 30(1)

Item 25 omits “carriage” in the first and second occurrence in subsection 30(1). The effect of this amendment is to expand the operation of Part 6 of the Copyright Regulations to institutions and organisations defined as service providers in section 116ABA of the Service Providers Act.

Item 26—Paragraph 30(1)(c)

Item 26 omits “carriage service provider’s designated representative” from paragraph 30(1)(c) and substitutes “designated representative of the service provider specified in the notice.”.

The effect of this amendment is to make clear that any counter-notice given by a user in accordance with section 31 of the Copyright Regulations should be sent to the designated representative who is nominated in the notice provided in line with subsection 30(1). This amendment is necessary to avoid confusion for the user where a service provider has multiple designated service providers (in line with item 6 above) by requiring that a service provider specifies in a notice provided to a user in accordance with section 30 of the Copyright Regulations who the appropriate designated representative is.

Items 27 and 28—Subparagraph 30(1)(c)(ii) and subsection 30(2)

Items 27 and 28 omit “carriage” wherever occurring in subparagraph 30(1)(c)(ii) and subsection 30(2). The effect of this amendment is to expand the operation of Part 6 of the Copyright Regulations to institutions and organisations defined as service providers in section 116ABA of the Service Providers Act.

Item 29—Subsection 31(1)

Item 29 omits “carriage” in the first occurrence in subsection 31(1). The effect of this amendment is to expand the operation of Part 6 of the Copyright Regulations to institutions and organisations defined as service providers in section 116ABA of the Service Providers Act.

Item 30—Subsection 31(1)

Item 30 omits “carriage service provider’s designated representative” from subsection 31(1) and substitutes “designated representative of the service provider specified in the notice received by the user”.

The effect of this amendment is to make clear that any counter-notice given by a user in accordance with section 31 of the Copyright Regulations should be sent to the designated representative who is nominated in the notice provided in accordance with subsection 30(1) (in line with item 26 above).

Item 31—Paragraph 31(1)(b)

Item 31 omits “carriage” wherever occurring in paragraph 31(1)(b). The effect of this amendment is to expand the operation of Part 6 of the Copyright Regulations to institutions and organisations defined as service providers in section 116ABA of the Service Providers Act.

Item 32—Subsection 31(1) (note)

Item 32 omits “the carriage service provider’s designated representative, the carriage” from the note in subsection 31(1) and substitutes “that designated representative, the”. This clarifies that if the designated representative who was specified in a notice provided under subsection 30(1) of the Copyright Regulations does not receive a counter-notice from the user, then no further action is required by the service provider.

Item 33—Sections 32 and 33

Item 33 omits “carriage” wherever occurring in sections 32 and 33. The effect of this amendment is to expand the operation of Part 6 of the Copyright Regulations to institutions and organisations defined as service providers in section 116ABA of the Service Providers Act.

Item 34—Subsection 34(1)

Item 34 omits “the carriage service provider’s designated representative” from subsection 34(1) and substitutes “a designated representative of the service provider” in order to align with the amendments in Item 6 above.

Item 35—Sections 35, 37 and 38

Item 35 omits “carriage” wherever occurring in sections 35, 37 and 38. The effect of this amendment is to expand the operation of Part 6 of the Copyright Regulations to institutions and organisations defined as service providers in section 116ABA of the Service Providers Act.

Item 36—At the end of Part 16

Item 36 inserts new section 132 which sets out the transitional provisions that apply to the operation of existing designated representatives.

Subsection 132(1) outlines that the appointment of a designated representative under subsection 19(1) prior to the commencement of the Regulations will continue to have effect. The intent of subsection 132(1) is to preserve the appointment of any existing designated representatives which were in place before the commencement of the Regulations.

Subsection 132(2) outlines when amendments to the notice provisions in sections 24 to 26, 30, 31 and 34 by the Regulations will take effect. The intent of subsection 132(2) is that amendments made to these sections will only apply to notices given, and responses provided (for example counter-notices), after the commencement of the Regulations.

Item 37—Parts 1-3 of Schedule 2

Item 37 omits “carriage” wherever occurring in Parts 1 to 3 of Schedule 2. The effect of this amendment is to expand the operation of the forms for Part 6 of the Copyright Regulations to institutions and organisations defined as service providers in section 116ABA of the Service Providers Act

Item 38—Part 3 of Schedule 2 (note 3)

Item 38 omits “carriage” wherever occurring in note 3 of Part 3 of Schedule 2. The effect of this amendment is to expand the operation of the forms for Part 6 of the Copyright Regulations to institutions and organisations defined as service providers in section 116ABA of the Service Providers Act.

Item 39—Part 4 of Schedule 2

Item 39 omits “carriage” wherever occurring in Part 4 of Schedule 2. The effect of this amendment is to expand the operation of the forms for Part 6 of the Copyright Regulations to institutions and organisations defined as service providers in section 116ABA of the Service Providers Act.

Item 40—Part 4 of Schedule 2 (note 2)

In line with Item 17 above (which makes amendments to section 26 of the Copyright Regulations), the note is repealed and substituted with item 40. This item outlines that a counter-notice must be given to the designated representative who is specified in the notice to which the counter-notice relates within 3 months after the user receives that notice.

Item 41—Part 4 of Schedule 2 (notes 2, 4 and 5)

Item 41 omits “carriage” wherever occurring in notes 2, 4 and 5 of Part 4 of Schedule 2. The effect of this amendment is to expand the operation of the forms for Part 6 of the Copyright Regulations to institutions and organisations defined as service providers in section 116ABA of the Service Providers Act.

Item 42—Part 5 of Schedule 2

Item 42 omits “carriage” wherever occurring in Part 5 of Schedule 2. The effect of this amendment is to expand the operation of the forms for Part 6 of the Copyright Regulations to institutions and organisations defined as service providers in section 116ABA of the Service Providers Act.

Item 43—Part 5 of Schedule 2 (note 2)

In line with Item 30 above (which makes amendments to section 31 of the Copyright Regulations), the note is repealed and substituted with item 43. This item outlines that a counter-notice must be given to the designated representative who is specified in the notice to which the counter-notice relates within 3 months after the user receives that notice.

Item 44—Part 5 of Schedule 2 (note 4)

Item 44 omits “carriage” wherever occurring in note 4 of Part 5 of Schedule 2. The effect of this amendment is to expand the operation of the forms for Part 6 of the Copyright Regulations to institutions and organisations defined as service providers in section 116ABA of the Service Providers Act.

Item 45—Part 6 of Schedule 2

Item 45 omits “carriage” wherever occurring in Part 6 of Schedule 2. The effect of this amendment is to expand the operation of the forms for Part 6 of the Copyright Regulations to institutions and organisations defined as service providers in section 116ABA of the Service Providers Act.

Attachment 2: Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Copyright Regulations 2017

This Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Instrument

The purpose of the *Copyright Amendment (Service Providers) Regulations 2018* is to extend the operation of Part 6 of the *Copyright Regulations 1969* to other types of service providers consequential to amendments made by the *Copyright Amendment (Service Providers) Act 2018*.

The Instrument prescribes a range of matters that Part V, Division 2AA of the *Copyright Act 1968* (Act) requires or permits to be prescribed for carrying out or giving effect to that Division of the Act. This includes provisions relating to the form of notifications and the procedures for notifications and counter notifications to be made and the procedure for an industry code to be developed.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms. The *Copyright Amendment (Service Providers) Act 2018* which made primary amendments to expand the scheme in the Act to additional service providers did engage applicable rights and freedoms and a statement of compatibility was made in the explanatory memorandum of that Act.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.