

EXPOSURE DRAFT



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Copyright Amendment (Service Providers) Regulations 2018

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2018

Peter Cosgrove
Governor-General

By His Excellency's Command

Mitch Fifield [**DRAFT ONLY—NOT FOR SIGNATURE**]
Minister for Communications

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1 Name

This instrument is the *Copyright Amendment (Service Providers) Regulations 2018*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	At the same time as the <i>Copyright Amendment (Service Providers) Act 2018</i> commences.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Copyright Act 1968*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1 Amendments

Schedule 1—Amendments

Copyright Regulations 2017

1 Section 4 (definition of *designated representative*)

Omit “carriage” (wherever occurring).

2 Section 4

Insert:

designated service providers means a class of service providers (other than carriage service providers).

service provider has the meaning given by section 116ABA of the Act.

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

Omit “carriage” (wherever occurring).

4 Part 6 (heading)

Omit “carriage”.

5 Section 18 (heading)

Repeal the heading, substitute:

18 Requirements for industry codes registered under Part 6 of the *Telecommunications Act 1997*

6 Section 18

Omit “that does not deal solely with caching”.

7 Subparagraph 18(a)(i)

Repeal the subparagraph, substitute:

- (i) owners and exclusive licensees of copyright or a class of owners and exclusive licensees of copyright; and

8 After section 18

Insert:

18A Industry codes developed by designated service providers

- (1) For the purposes of paragraph (b) of the definition of *industry code* in section 116AB of the Act, an industry code, or a variation of an industry code, developed by designated service providers must be developed in accordance with this section.

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Amendments **Schedule 1**

Requirement for broad consensus

- (2) An industry code, or a variation of an industry code, must be developed through an open voluntary process by a broad consensus of:
 - (a) owners and exclusive licensees of copyright or a class of owners and exclusive licensees of copyright; and
 - (b) the designated service providers to which the code, or the code as varied, is to apply.

Content of industry code

- (3) An industry code may contain any or all of the following:
 - (a) a provision relating to accommodating and not interfering with standard technical measures;
 - (b) 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 code or developed in accordance with a process set out in the code; and
 - (iii) are available on non-discriminatory terms; and
 - (iv) do not impose substantial costs on the designated service providers or substantial burdens on their systems or networks;
 - (c) a provision relating to:
 - (i) updating copyright material that is cached; and
 - (ii) not interfering with technology used at the originating site to obtain information about the use of the copyright material.
- (4) An industry code must contain all of the following:
 - (a) a provision specifying the designated service providers to which the code applies;
 - (b) a provision setting out when the code takes effect and when it will cease to have effect;
 - (c) a provision requiring that the code be published on the website of a person or body representing the designated service providers when the code takes effect;
 - (d) a provision requiring that, if the code is varied, the varied code be published on the website of a person or body representing the designated service providers when the variation takes effect.

Consultation requirement

- (5) Before an industry code, or a variation of an industry code, takes effect, a person or body representing the designated service providers must:
 - (a) publish a draft of the code, or a draft of the code as proposed to be varied, on the website of the person or body; and
 - (b) invite submissions about the draft code, or proposed variation, within a specified period (which must be at least 30 days after the draft is published); and

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Schedule 1 Amendments

(c) consider any submissions received within that period.

9 Sections 19, 20, 23 to 35, 37 and 38

Omit “carriage” (wherever occurring).

10 Parts 1 to 3 of Schedule 2

Omit “*carriage*” (wherever occurring).

11 Part 3 of Schedule 2 (note 3)

Omit “carriage” (wherever occurring).

12 Part 4 of Schedule 2

Omit “*carriage*” (wherever occurring).

13 Part 4 of Schedule 2 (notes 2, 4 and 5)

Omit “carriage” (wherever occurring).

14 Part 5 of Schedule 2

Omit “*carriage*” (wherever occurring).

15 Part 5 of Schedule 2 (notes 2 and 4)

Omit “carriage” (wherever occurring).

16 Part 6 of Schedule 2

Omit “*carriage*” (wherever occurring).