

# EXPOSURE DRAFT



EXPOSURE DRAFT

## 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

---

EXPOSURE DRAFT



# EXPOSURE DRAFT

---

## Contents

<b>Copyright Amendment (Service Providers) Regulations 2018</b>	<b>1</b>
<b>1 Name</b>	<b>1</b>
<b>2 Commencement</b>	<b>1</b>
<b>3 Authority</b>	<b>1</b>
<b>4 Schedules</b>	<b>1</b>
<b>Schedule 1—Amendments</b>	<b>2</b>
<b>Copyright Regulations 2017</b>	<b>2</b>
1 Section 4 (definition of <i>designated representative</i> ) .....	2
2 Section 4 .....	2
3 Section 4 (definitions of <i>system or network</i> and <i>user</i> ) .....	2
4 Part 6 (heading).....	2
5 Section 18 (heading) .....	2
6 Section 18 .....	2
7 Subparagraph 18(a)(i) .....	2
8 After section 18.....	2
9 Sections 19, 20, 23 to 35, 37 and 38 .....	4
10 Parts 1 to 3 of Schedule 2.....	4
11 Part 3 of Schedule 2 (note 3).....	4
12 Part 4 of Schedule 2 .....	4
13 Part 4 of Schedule 2 (notes 2, 4 and 5).....	4
14 Part 5 of Schedule 2 .....	4
15 Part 5 of Schedule 2 (notes 2 and 4) .....	4
16 Part 6 of Schedule 2 .....	4



# EXPOSURE DRAFT

---

## 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Note: This table relates only to the provisions of this instrument as originally made.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.

# EXPOSURE DRAFT

## 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.

# EXPOSURE DRAFT

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

# EXPOSURE DRAFT

## 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).