
SKY Network Television Limited
-Submission on the draft copyright Code of Practice for S92A

SKY Network Television Limited wishes to make a submission on the draft Internet Service Provider Copyright Code of Practice. SKY's interest in the Code is as the holder of copyright. Occasionally SKY has sought to have copyright offending material removed by ISP's. It welcomes the development of the Code of Practice, as part of the implementation of section 92A of the Copyright Act, as a means of dealing with repeat infringers.

SKY has only 2 substantive comments on the draft Code;

1. The 3-month period allowed under clause 21.2 to dispute an education notice seems too long. For the copyright holder, it means that where there are repeat offences within a short period, they may have to wait up to 3 months and a little longer after the last notice to get the infringer terminated. From the user's perspective, 3 months seems more than what is needed and they are likely to put it aside and forget about it in that time anyway. 1 month would seem to be enough time.
2. As SKY understands it, an education notice would be able to be negated simply by the user issuing a dispute notice. This seems too easy. Although this can be overridden under clause 32 if the ISP thinks the user is abusing the dispute notice process, it seems unlikely that ISPs will exercise this discretion and there is no incentive on them to do. We have reviewed the alternative procedure proposed in the supplement to the draft Code, which involves the copyright holder and the user trying to resolve the issues, but this will result in deadlock. We do not think it is workable. One option would be to have a 3rd party adjudicator to rule on a disputed notice. This may work subject to resolving issues about timing, who it should be, funding etc. An alternative we suggest is that the copyright holder be given an opportunity to comment on any dispute notice, then the ISP makes a decision on whether or not the education notice should stand, giving notice and reasons for its decision. The factors that the ISP could consider should include whether there has been a judgement of the Court finding infringement and whether the user's reasons for issuing a dispute notice are reasonable and genuine.

Kind regards
Tony O'Brien