

---

## Brenda Chawner- Submission on the draft copyright Code of Practice for S92A

Thank you for the opportunity to make a submission on your draft Internet Service Provider Copyright Code of Practice. I have six main concerns about the draft, as outlined below.

1. The draft CoP appears to assume that it will \*always\* be possible for an organisation to identify the individual user responsible for an alleged infringement. This is unlikely to be the case for a large number of organisations, including public libraries that provide anonymous Internet access to members of the public (whether or not they are registered library users), Internet cafes, and a range of other organisations that provide a single password for their customers to access a wireless network, such as cafes and the Koru Club. The definition of an 'Internet account', clause (b), mentions 'casual' access, which to me implies that such anonymous use would qualify as an 'Internet account'. It is unrealistic to expect these organisations to change their processes so that they capture detailed information about each of these users, such as checking photo ID and storing the details for up to six months. If this is a requirement under the draft CoP, it raises privacy issues relating to the storage of this data which would need to be discussed with the Privacy Commissioner.

Following on from this, under clause 14.5, Copyright Holders have up to one month from the time of the alleged infringement to issue a Copyright Holder Notice. I would prefer to see this shortened to one week, to make it easier for organisations to identify the alleged infringer.

2. Clause 18 appears to create the potential for ISPs to have to complete a large amount of processing at the end of each month. They will not only need to send out the Education Notices for any copyright holder notices received on the last working day of the month, they will also need to send out appropriate Copyright Notifications. I suggest that the requirement be changed to send out Copyright notifications by the end of the first week of the following month, to relieve this pressure. This approach is similar to standard accounts payable deadlines, with many organisations requiring invoices issued on the last day of each month to be paid by the 20th of the following month.
3. I do not support the Supplemental approach outlined in the reworded Strawman Counter-Notice Procedure. This gives the Pre-Approved Copyright Holders far too much power, since it effectively makes them both prosecutor and judge. I would prefer to see a neutral third party, similar to the current Copyright Tribunal, play this role. I am also concerned that this process would reveal confidential customer information to rights holders, which is another aspect that would need to be clarified by the Privacy Commissioner.
4. I agree that any person or organisation issuing a Copyright Holder Notice should be charged a processing fee, and that this fee should be passed to the downstream ISP responsible for the Internet Account of the user, since they will bear the major portion of the costs involved in investigating the alleged infringement.
5. The term 'Education Notice' appears to be misleading, since its definition emphasises providing details of the infringement, rather than material explaining what copyright is, why the alleged actions are considered to be an infringement, and what a more acceptable alternative would be. I would like to see the text of the education notices expanded to include this aspect, as well as notifying people of their right to dispute the notice.
6. Finally, and perhaps most importantly, since a large number of organisations, government departments, schools, tertiary institutions, and even families will now be classed as ISPs under the Copyright Act, I would like to see some sample Copyright

Compliance Policies appended to the ISP CoP, to assist them in developing suitable policies for their particular situation.

Of course, my preference would be to have Section 92a repealed so that artists, writers, rights holders, and consumers can have an open discussion on more appropriate models to protect copyright and reward artists and other people who create copyrighted material in this Internet age, and would support any move in this direction even more strongly.

Thank you for your time.

Brenda Chawner