

Telecommunications Carriers' Forum

**Internet Service Provider
Copyright Code of Practice**

**Draft
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FOR PUBLIC CONSULTATION

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A. PURPOSE

1. The purpose of this Code is to:
 - 1.1 provide a reasonable policy and process for Parties to comply with section 92A (termination of internet accounts of repeat copyright infringers in appropriate circumstances) of the Copyright Act 1994;
 - 1.2 promote respect for copyright;
 - 1.3 assist Copyright Holders to educate internet Users and Downstream ISPs as to their rights and obligations with respect to copyright;
 - 1.4 enable ISPs to operate a fair system to discourage their services being used for copyright Infringement once they have been informed of such Infringement whilst recognising that the primary responsibility for resolving issues of use and protection of copyright material rests with the Copyright Holder and the User directly as between themselves;
 - 1.5 assist other ISP organisations that have direct control over a User's Internet Account to achieve the above purposes (even where those ISPs are not Parties to this Code) by passing on Copyright Holder Notices of Infringement to those ISPs where they appear to be responsible for or have a closer relationship to the Internet Account of the User in question;
 - 1.6 provide, for the assistance of Parties, on the TCF Website from time to time, examples of communications referred to in this Code (for example, Education Notices, Copyright Notifications, Final Warnings, Termination Notices and notifications by Parties to Copyright Holders). To avoid doubt, Parties may use any such examples as they please, in whole or in part, provided that this Code is complied with, but the TCF makes no representation and gives no warranty with respect to such examples. Parties use them at their own risk.
2. This Code was endorsed by the TCF and available for signature as from [date to be added].
3. This Code and its interpretation shall be governed by New Zealand law and the Parties submit to the exclusive jurisdiction of the New Zealand Courts with respect to any matter arising out of or in connection with it.

B. DEFINED TERMS

In this Code, unless the context otherwise requires:

“**Act**” means the Copyright Act 1994.

“**Business Day**” means a day on which registered banks are open for normal banking business, excluding Saturdays, Sundays and nation-wide public holidays. Regional public holidays are considered to be Business Days.

“**clause**” refers to a clause in this Code.

“**Code**” means this ISP Copyright Code of Practice including any annexures. To avoid doubt, example communications, which may be provided by the TCF on the TCF Website for the purposes of this Code, do not form part of it.

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“Copyright Holder” means the owner of copyright in a work as set out in the Act, or their duly authorised agent.

“Copyright Holder Notice” means a notice by a Copyright Holder alleging Infringement, in the form set out in Annexure 2 for a Pre-Approved Copyright Holder or Annexure 3 for a Copyright Holder that is not a Pre-Approved Copyright Holder.

“Copyright Notification” means a communication to a User advising them of the number and date of Undisputed Education Notices and Disputed Education Notices (but not any Expired Education Notices) that are recorded in the Party’s system with respect to that User’s Internet Account, as at the date of that communication.

“Counter-Notice” means a notice to a Party from a User or Downstream ISP containing the information set out in Annexure 4.

“Court” means a New Zealand Court.

“Customer Complaints Code” means the TCF customer complaints code endorsed by the TCF on 13 November 2007 (as amended from time to time).

“Disputed Education Notice” means an Education Notice that is disputed in accordance with section F (Counter-Notice Procedure) of this Code.

“Downstream ISP” means an ISP to which a Party supplies internet services which services are then re-supplied (either directly itself, or indirectly via one or more other Downstream ISPs) to the User. For example a Downstream ISP may be a business or other organisation that supplies telecommunication services, membership or subscription services or otherwise directly provides Internet Accounts to Users. In turn, Users who are individuals may be students, employees, contractors or customers for example.

“Education Notice” means a communication sent by a Party to:

- (a) a User, educating that User as to the possibility of Infringement having occurred over the User’s Internet Account and either attaching the Copyright Holder Notice or containing all details set out in the Copyright Holder Notice; or
- (b) a Downstream ISP, passing on a Copyright Holder Notice that appears to be related to an Internet Account that the Downstream ISP provides to a User (either directly itself, or indirectly via one or more further Downstream ISPs).

Education Notices will also give a brief overview of important aspects of this Code.

“Essential Service Provider” means a person who requires their Internet Account in order to deliver an essential service referred to in Part A of Schedule 1 of the Employment Relations Act 2000.

“Expired Education Notice” means an Education Notice which has expired under clause 17.

“Final Warning” means a Copyright Notification to a User which discloses that a Party has recorded three Undisputed Education Notices (none of which is an Expired Education Notice) against the Internet Account record of the User in that Party’s system, each such Education Notice being dated in a different calendar month. The Final Warning informs the User that if another Copyright Holder Notice is received relating to that User’s Internet Account, a

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Termination Notice will be sent to that User and that Internet Account will be Terminated in accordance with clause 29.

“Infringement” means an Infringement under the Act which satisfies the evidence criterion set out in clause 10 (including satisfaction of any of the examples in clause 11) and **“Infringe”** shall be interpreted accordingly.

“Infringer” means a User who Infringes.

“Internet Account” means the particular internet service provided by an ISP to a Downstream ISP, or to a User by which that User accesses the internet or has material hosted by that ISP, including, for example:

- (a) internet access or hosting of any nature provided by an ISP that is that User’s employer;
- (b) internet access or hosting of any nature provided on a casual basis by an internet café, school, tertiary institution library or other ISP;
- (c) internet access or hosting of any nature that that User controls themselves.

To avoid doubt, a User may have multiple means of accessing the internet or hosting material but an Internet Account for the purposes of this Code is solely that particular service which is the subject of a Copyright Holder Notice.

“ISP” means “internet service provider” as defined in the Act.¹

“Party” means a person who has agreed to be bound by this Code.

“person” means a legal person and includes a body corporate and any other legal entity.

“Pre-Approval Certifier” means the TCF or a body appointed by the TCF (if it wishes) to conclusively certify, for the purposes of this Code, that a Copyright Holder and its agent (if any) have satisfied the Pre-Approval Process with respect to a certain specified category of work(s) under the Act. The Pre-Approval Certifier may also remove a Copyright Holder’s Pre-Approval if that Copyright Holder is in default under the Pre-Approval Process.

“Pre-Approval Process” means a process established by the TCF and published on the TCF Website² by which a Copyright Holder establishes to the Pre-Approval Certifier’s satisfaction (including by way of Sworn evidence should the Pre-Approval Certifier consider that

¹ As at the date of endorsement of this Code by the TCF, the definition of “internet service provider” in the Act is:

“a person who does either or both of the following things:

- (a) offers the transmission, routing, or providing of connections for digital online communications, between or among points specified by a user, of material of the user’s choosing;
- (b) hosts material on websites or other electronic retrieval systems that can be accessed by a user.”

² [Note for consultation purposes: This is yet to be developed but will comprise a process by which a Copyright Holder’s status and evidence collection methods can be checked and approved. A cost recovery fee will be charged to a person seeking Pre-Approval status.]

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appropriate), that that Copyright Holder is an owner of copyright in a certain specified category of work(s) under the Act, and substantiates its methods of collecting evidence of alleged Infringement, that any agent of that Copyright Holder is that Copyright Holder's duly authorised agent, and which provides for payment of Processing Fees on a monthly basis and removal of Pre-Approval in the event of any default. The TCF may amend the Pre-Approval Process from time to time as it sees fit.

"Pre-Approved Copyright Holder" means a Copyright Holder that has been approved under a Pre-Approval Process.

"Processing Fee" means a fee set by the TCF and published on the TCF Website from time to time, which will be charged by a Party to a Copyright Holder to cover the costs of processing a Copyright Holder Notice and the consequent sending of an Education Notice, Copyright Notification or Termination Notice and for otherwise operating the processes set out in this Code in respect of that Copyright Holder Notice. Different levels of Processing Fee may be set for Pre-Approved Copyright Holders and for Copyright Holders who are not Pre-Approved Copyright Holders.

"Repeat Infringer" means an Infringer who has, under the process set out in section D (Repeat Infringement) of this Code, Infringed repeatedly. To avoid doubt, an Infringer need not Infringe repeatedly with respect to the same category of work under the Act or with respect to the same Copyright Holder, to qualify as a Repeat Infringer.

Sworn means sworn in such fashion as would be necessary for the material in question to be produced as evidence in a court having competent jurisdiction to hear a copyright dispute in the Country of residence of the person providing that material.

"TCF Website" means that part of the TCF's website at www.tcf.org.nz, which relates to this Code.

"Telecommunications Carriers' Forum" or **"TCF"** means the Telecommunications Carriers' Forum Incorporated of New Zealand.

"Termination" means closure of a Repeat Infringer's Internet Account and **"Terminate"** shall be interpreted accordingly.

"Termination Notice" means a notice from a Party to a User that that User is a Repeat Infringer for the purposes of this Code and that that User's Internet Account is to be terminated as close as practicable to the expiry of 48 hours from the time that notice is sent by that Party.

"Undisputed Education Notice" means an Education Notice which is not disputed in accordance with section F (Counter-Notice Procedure).

"User" means a person with an Internet Account, who or which is not a Downstream ISP.

"Vulnerable Customer" means a User who for reasons of their health, disability or safety, or that of a member of their household, is reliant on their Internet Account.

C. PRINCIPLES

4. Parties to this Code believe that the following principles are important. They will take them into account in their dealings with Users, Downstream ISPs and Copyright Holders, in interpreting this Code and in exercising any discretion under it. Those principles are:

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- 4.1 Users are to be considered innocent until an ISP has reason to believe, based on evidence that would be acceptable to a Court, that a User is a Repeat Infringer. To avoid doubt, the fact that a User is considered to be a Repeat Infringer under this Code and is subject to any consequent sanction does not prevent that User applying to a Court for an order otherwise and the Party in question agrees that it will abide by any order of a Court in those circumstances.
- 4.2 Users and Downstream ISPs should have the right to challenge Copyright Holder Notices under this Code.
- 4.3 All ISPs are required to comply with the Act (whether or not they are Parties to this Code). When a Party passes a Copyright Holder Notice to a Downstream ISP, it therefore does so in reliance on such compliance and in particular in reliance on that Downstream ISP having and implementing a termination policy complying with section 92A of the Act.
- 4.4 While an ISP can assist in dealing with Copyright Holder Notices of Infringement in accordance with the process set out in this Code, where there is any dispute, those Copyright Holder Notices should be dealt with directly between the Copyright Holder and the User in question with as little involvement of the ISP as possible. However, from both a privacy and commercial confidentiality perspective, it is not appropriate for an ISP to disclose User or Downstream ISP detail without that customer's consent or a Court order (unless a User claims to be a Downstream ISP, in which case such disclosure is necessary in order to enable the Copyright Holder and the Downstream ISP to communicate directly).
- 4.5 A primary purpose of this Code is to assist in the education of Users and Downstream ISPs as to their rights and obligations with respect to copyright. For such education (and any ultimate sanction) to be effective, it should:
 - 4.5.1 be undertaken by the ISP that directly provides and controls the Internet Account of a User;
 - 4.5.2 recognise that if there is any Infringement it results from the actions and decisions of a natural person and therefore education and sanctions should be targeted as far as possible at that natural person;
 - 4.5.3 be non-threatening and informative;
 - 4.5.4 be timely, so that it should be delivered as close as practicable in point of time to the alleged activity which prompts the Copyright Holder Notice;
 - 4.5.5 allow Users and Downstream ISPs reasonable time to consider and act upon the matters raised in an Education Notice.
- 4.6 If a Copyright Holder has sufficient evidence of serious repeat or other Infringement under the Act, then it should take action itself rather than relying on an ISP to take action under this Code.
- 4.7 ISPs expect Copyright Holders to treat them equitably and not unduly discriminate between ISPs in the issuing of Copyright Holder Notices.
- 4.8 Termination of an Internet Account is a "last resort" as set out in this Code. However, ISPs should ultimately have the discretion to Terminate the Internet Account of a User that they consider is seriously Infringing on a repeated or other basis, where following the process envisaged by section E (Repeat

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Infringement) of this Code would be inappropriate.

- 4.9 Downstream ISPs should not have their Internet Accounts terminated, since by doing so, a Party will inevitably terminate the Internet Accounts of Users who are not involved whatsoever in the Infringement, which would be inappropriate and unacceptable.
- 4.10 Vulnerable Customers and Essential Service Providers should not have their Internet Account Terminated except in exceptional circumstances as determined by a Party in its sole discretion.

D. COMPLIANCE

5. The Code is applicable to those ISPs that have agreed in writing to be bound by it. A current list of signatories may be found on the TCF Website. A Party may withdraw from this Code by giving 20 Business Days notice in writing to the TCF. The TCF may, if it wishes, publish such withdrawal on the TCF Website or otherwise as it sees fit.
6. If a Party receives:
 - 6.1 an unexpectedly large number of Copyright Holder Notices or Counter-Notices in any given period; or
 - 6.2 if the information in any Copyright Holder Notice or Counter-Notice is inadequate or overly complex; or
 - 6.3 if a Party otherwise suffers any event or situation outside its reasonable control,which, in any case, impacts on its ability to perform any obligation or meet any timeframe set out in this Code, it will not be in breach of this Code if it fails to perform that obligation or meet that timeframe provided that it uses its reasonable commercial efforts to perform that obligation as soon as possible.
7. The Parties consider that compliance with this Code meets their obligations under section 92A of the Copyright Act. However, should it be found by a Court of competent jurisdiction that such is not the case, then the Parties will immediately review this Code to determine whether it can be amended to address the Court's decision.
8. Each Party will, as soon as practicable after becoming a Party and within no more than 20 Business Days after signature, amend its terms of use for the provision of Internet Accounts to take account of this Code.

E. REPEAT INFRINGEMENT

9. The objective of this section is to set out, for the purposes of this Code, when a person will be considered to be a Repeat Infringer under this Code.

Establishing an Infringement

10. To establish any Infringement, the Copyright Holder must provide a Party with evidence that that Party considers, in its sole discretion, would be sufficient to satisfy a Court that an Infringement under the Act has taken place.

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11. Examples of evidence which would be sufficient include:
 - 11.1 a judgement of a Court (interim or final) finding Infringement under the Act;
 - 11.2 a Copyright Holder Notice which complies with this Code;
 - 11.3 such other evidence as that Party is prepared, in its sole discretion, to accept would be sufficient to satisfy a Court that an Infringement under the Act has taken place.

Repeat Infringement

12. Subject to section F (Counter-Notice Procedure) and section H (Vulnerable Customers and Essential Service Providers), a Party will follow the process set out in clauses 13 to 19 and in section G (Final Warnings and Termination) before it Terminates an Infringer's Internet Account.
13. To initiate this process, a Copyright Holder must send a Copyright Holder Notice to the ISP that the Copyright Holder reasonably considers is providing the Internet Account which is referred to in that Copyright Holder Notice.
14. A Copyright Holder Notice will only be accepted for processing by a Party if it is:
 - 14.1 completed and signed in the form set out in Annexure 2 for Pre-Approved Copyright Holders, including confirmation that that Copyright Holder will pay the Processing Fee in accordance with the requirements of the Pre-Approval Process;
 - 14.2 completed and Sworn in the form set out in Annexure 3 for Copyright Holders who are not Pre-Approved Copyright Holders and accompanied by the Processing Fee;
 - 14.3 issued with respect to an Internet Account that is provided by that Party;
 - 14.4 sent to the generic email address provided by that Party for receipt of Copyright Holder Notices, as displayed on that Party's website and on the TCF Website; and is
 - 14.5 received by that Party no later than one calendar month after the date of the alleged Infringement that the Copyright Holder Notice refers to.

If any of the conditions in Clauses 10 or 14 are not satisfied, the Party may refer the Copyright Holder Notice back to the Copyright Holder and will have no further responsibility with respect to that Copyright Holder Notice.

15. Whenever a Party receives a Copyright Holder Notice complying with clause 14 (unless clauses 28 and 29 apply) it will within five Business Days of that receipt:
 - 15.1 flag that Copyright Holder Notice against the Internet Account record of the User or Downstream ISP that is the subject of that Copyright Holder Notice;
 - 15.2 send an Education Notice to that User or Downstream ISP;
 - 15.3 notify the Copyright Holder that has sent the Copyright Holder Notice that that Party has taken the steps referred to in clauses 15.1 and 15.2, provided that:
 - 15.3.1 in no circumstances will that Party at that time disclose information which might identify a User without the User's prior written consent or

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an order of a Court.

15.3.2 in no circumstances will that Party at that time disclose information which might identify a Downstream ISP to a non Pre-Approved Copyright Holder without the Downstream ISP's prior written consent or an order of a Court.

15.4 To avoid doubt, when a Party notifies a pre-Approved Copyright Holder that it has taken the steps referred to in clauses 15.1 and 15.2 with respect to a Downstream ISP, that Party will also disclose the identity and contact details of that Downstream ISP to the Pre-Approved Copyright Holder and will advise the Downstream ISP accordingly.

15.5 Notification sent under clause 15.3 shall include a count of the total number of Education Notices sent to the User or Downstream ISP that is the subject of the Copyright Holder Notice and whether any of them are Disputed Education Notices.

16. Where a Party is unsure whether the person that is the subject of a Copyright Holder Notice is a User or a Downstream ISP, it shall treat them as a User.

17. Any Copyright Holder Notice which has not resulted in Termination within 18 calendar months of the date of the alleged Infringement referred to in that Copyright Holder Notice shall expire as shall any Education Notice issued with respect to that Copyright Holder Notice and any flag relating to that Copyright Holder Notice which has been loaded against the Internet Account in question.

18. Each calendar month a Party will send a Copyright Notification to all Users (but not Downstream ISPs) that have received Education Notices from that Party during that calendar month.

19. If a Party receives a Copyright Holder Notice from another ISP under clause 15.2 (because that Party is a Downstream ISP), then that Party will deal with that Copyright Holder Notice as if it had received it directly from the Copyright Holder in question on that date and the provisions of sections E (Repeat Infringement), F (Counter-Notice Procedure), G (Final Warnings and Termination) and H (Vulnerable Customers and Essential Service Providers) shall apply to that Copyright Holder Notice accordingly. To avoid doubt, this may include that Party sending the Copyright Holder Notice to a further Downstream ISP if the person that is the subject of the Copyright Holder Notice is not a User whose Internet Account is directly controlled by that Party.

F. COUNTER-NOTICE PROCEDURE

[Consultation Note: Please also refer to the Supplemental at the back of this draft Code outlining a reworded strawman Counter-Notice Procedure.]

20. The objective of this section is to provide an opportunity:

20.1 for a User to dispute an Education Notice (including by asserting that they are a Downstream ISP);

20.2 for a Downstream ISP to dispute that they are the Downstream ISP with respect to a Copyright Holder Notice (including by asserting that they are a User).

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User disputes

21. If a User wishes to dispute an Education Notice, the User must:
 - 21.1 send a Counter-Notice to the address specified by the Party for receipt of Counter-Notices. The User may also, if it wishes, send a copy of that Counter-Notice to the Copyright Holder specified in the Education Notice and will let the Party know, at the same time, if it does so;
 - 21.2 send the Counter-Notice within three calendar months of the date on which the Copyright Holder Notice was issued.
 - 21.3 set out in its Counter-Notice the reason(s) why the User does not reasonably consider that it has Infringed,

provided however that a User may not dispute an Education Notice at any time after it has been sent a Termination Notice (although it may dispute Termination on the basis that it is a Vulnerable Customer or Essential Service Provider).
22. If the reason given by the User under clause 21.3 is that they assert that they are a Downstream ISP, then the Counter Notice must also include a statement that as a Downstream ISP, they:
 - 22.1 state that the contents of the notice are true, correct and not misleading by omission and that they understand that the ISP and the Copyright Holder will be relying on those assurances in processing the Counter-Notice Notice in accordance with the Code;
 - 22.2 are aware that by claiming to be a Downstream ISP they are accepting that they are required to have and reasonably implement a policy that complies with section 92A of the Act;
 - 22.3 agree to that Party forwarding their Counter-Notice (including their contact details) to the Copyright Holder that has made the Copyright Holder Notice in question (provided that it is a Pre-Approved Copyright Holder) so that that Copyright Holder may communicate directly with them with respect to that Copyright Holder Notice.
23. When it receives a Counter-Notice from a User, the Party must:
 - 23.1 flag the User's Internet Account record in its system with the fact that the Copyright Holder Notice in question has been disputed;
 - 23.2 notify the Copyright Holder in question that it's Copyright Holder Notice has been disputed and provide such details of the User's Counter-Notice as that Party considers reasonable provided that in no circumstances (other than those referred to in clause 22.3) will that Party disclose information which might identify the User, without the User's prior written consent or an order of a Court.

Downstream ISP disputes

24. If a person that a Party considers to be a Downstream ISP wishes to dispute an Education Notice, it may do so solely on the basis that it is not a Downstream ISP with respect to that Copyright Holder Notice (unless it wishes to claim that it is a User). To avoid doubt, the Party will not be obliged to accept any dispute on the basis that the Downstream ISP is not in a position to directly control the Internet Account of the

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User that is the subject of the Copyright Holder Notice. The responsibility for forwarding the Copyright Holder Notice on to a further Downstream ISP, if applicable, shall rest with the Downstream ISP (whether or not that Downstream ISP is a Party).

25. When it receives a Counter-Notice from a Downstream ISP under clause 24, the Party must:
 - 25.1 flag the Downstream ISP's account record in the Party's system with the fact that the Copyright Holder Notice in question has been disputed;
 - 25.2 notify the Copyright Holder in question that it's Copyright Holder Notice has been disputed and provide such details of the Downstream ISP's Counter-Notice as that Party considers reasonable, provided that in no circumstances will that Party disclose information which might identify the Downstream ISP, without the Downstream ISP's prior written consent or an order of a Court unless the Copyright Holder in question is a Pre-Approved Copyright Holder in which case the identity and contact details of the Downstream ISP will be disclosed to that Pre-Approved Copyright Holder and the Downstream ISP will be advised accordingly.
26. In dealing with any User or Downstream ISP in response to a Counter-Notice, a Pre-Approved Rights-Holder must comply with any code of conduct agreed between the Pre-Approval Certifier and that Pre-Approved Copyright Holder as part of it's Pre-Approval Process.

G. FINAL WARNING AND TERMINATION

Final Warning

27. Where a monthly Copyright Notification which is to be sent to a User shows that that User has at least:
 - 27.1 three Undisputed Education Notices;
 - 27.2 with each of those three being in a different calendar month; and
 - 27.3 none of those three being an Expired Education Notice,that Copyright Notification shall be sent as a Final Warning to that User.

Termination

28. If a Copyright Holder Notice complying with clause 14 is received by a Party with respect to a User who has been sent a Final Warning, the Party shall check its records to see whether the criteria under clause 27 are still satisfied.
29. If those criteria remain satisfied as at the date of receipt of that Copyright Holder Notice, then, subject to section H (Vulnerable Customers and Essential Service Providers) of this Code that Party will, within five Business Days of receiving that Copyright Holder Notice, send a Termination Notice to the User in question and will at a time which is as close as practicable to the expiry of 48 hours from the sending of that Termination Notice, Terminate that User's Internet Account unless prevented from doing so by an order of a Court. To avoid doubt, once a Termination Notice is sent, a User shall no longer have the right to dispute any Education Notice under section F (Counter-Notice Procedure) (but may dispute the Termination itself on the basis that the User is a Vulnerable Customer or Essential Service Provider).

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30. If those criteria do not remain satisfied (for example, because the User has disputed sufficient Education Notices so that there are no longer three Undisputed Education Notices), then that Copyright Holder Notice shall be dealt with in accordance with and subject to clause 15.
31. The Party will confirm Termination to the Copyright Holder that sent the Copyright Holder Notice referred to in clause 28, provided that in no circumstances will that Party disclose information which might identify the User, without the User's prior written consent or an order of a Court.

Overriding ISP Discretion

32. Notwithstanding anything else in this Code, if a Party reasonably considers that a User has seriously Infringed (either in terms of the number of Infringements or in terms of the commercial or other nature of any such Infringement(s)), or if it considers a User has abused or is abusing the Counter-Notice Procedure in section F (Counter-Notice Procedure), it may exercise its discretion to issue that User with a Final Warning even though, under the process set out in section E (Repeat Infringement), a Final Warning is not due for issue. Following the issue of a Final Warning, the provisions of this Code shall apply to any further Copyright Holder Notice issued with respect to that User.
33. In exercising its discretion in clauses 32 above, an ISP shall take account of the purposes set out in section A and principles set out in section C of this Code.

H. VULNERABLE CUSTOMERS AND ESSENTIAL SERVICE PROVIDERS

Vulnerable Customers

34. Parties must act in a socially responsible manner when dealing with Vulnerable Customers who have identified a need for an ongoing Internet Account.
35. Each Party will:
 - 35.1 Ensure information relating to Vulnerable Customers and how to register as a Vulnerable Customer is displayed either online or in written material that is easily accessible by Vulnerable Customers;
 - 35.2 Ensure a process is in place for dealing with Vulnerable Customers which includes the approach outlined in clause 36.
36. Parties will ensure a socially responsible approach is taken when considering a Vulnerable Customer's dependency on an Internet Account before Terminating that Internet Account. This approach will include not Terminating an essential Internet Account unless all available avenues had been explored between the User and the Party and any Copyright Holder that has issued a Copyright Holder Notice with respect to that User, provided that in no circumstances will that Party disclose information which might identify the User, without the User's prior written consent or an order of a Court.

Essential Service Providers

37. Parties will not Terminate the Internet Accounts of Essential Service Providers unless all available avenues had been explored between the User and the Party and any Copyright Holder that has issued a Copyright Holder Notice with respect to that User, provided that in no circumstances will that Party disclose information which might

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identify the User, without the User's prior written consent or an order of a Court.

I. NOTICES

38. All Education Notices, Copyright Notifications, Final Warnings, Termination Notices or other communications with Downstream ISPs and Users for the purposes of this Code must be in writing but may be sent using any of a number of different channels such as post, fax, or email. In addition, if a Party wishes, it may also follow up by telephone call, text, voice messaging or otherwise, however the Party must:
- 38.1 ensure that the attempts to inform are directed to the Downstream ISP or User;
 - 38.2 ensure that the primary method used by the Party to inform the Downstream ISP or User is in a format reasonably acceptable to the User based on their usage history;
 - 38.3 in the case of verbal advice, make reasonable attempts to ascertain whether the Downstream ISP or User has understood such advice and ensure a record of the conversation is documented;
 - 38.4 include the date of issue on all written communications.

J. DATA RETENTION

39. Each Party shall keep all communications it sends or receives under this Code and all User and Downstream ISP Internet Account records which are dealt with in any way under this Code (including those relating to Terminated Internet Accounts) for a minimum period of 2 years from the date of the Infringement referred to in the Copyright Holder Notice to which those records relate.
40. A summary of the information that a Party is required to retain in accordance with the preceding clause 39 is set out in Annexure 5.

K. COMPLAINTS

Complaints under Customer Complaints Code

41. A person that has the right to lodge a complaint against a Party under the [Customer Complaints Code](#) may do so if they consider that that Party has not followed this Code.

Non-Compliance with Code

42. If the TCF becomes aware, from a User, Downstream ISP, Copyright Holder or other channels, of a suspected breach of the Code by a Party to this Code, the TCF may appoint an Enforcement Agency (as defined in the Customer Complaints Code) to investigate the suspected breach.
43. When considering the non-compliance of the Party in order to make a determination, the Enforcement Agency must consider:
- 43.1 the volume of non-compliance complaints received in relation to the Code,

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- 43.2 the likely impact of the non-compliance on the complainant,
 - 43.3 the seriousness of the non-compliance of the Party, and
 - 43.4 the Party's past conduct with respect to compliance with the Code's obligations.
44. The Enforcement Agency may issue that Party with a written:
- 44.1 Caution Notice of Breach;
 - 44.2 Warning Notice of Breach; or
 - 44.3 Public Censure Notice.
45. The Enforcement Agency must first issue a Caution Notice of Breach and then a Warning Notice of Breach to the Party in relation to the particular breach in question before making a determination to issue a Public Censure Notice relating to the Party.
46. The Enforcement Agency will provide a copy of any Caution Notice of Breach, Warning Notice of Breach or Public Censure Notice issued to all Parties to the Code. Parties to the Code who receive a copy of a Caution Notice of Breach or Warning Notice of Breach shall keep such notice confidential.

Caution Notice of Breach

47. The written Caution Notice of Breach to the Party will include a request that one or more of the following actions be undertaken by that Party:
- 47.1 rectification of the breach;
 - 47.2 specific corrective actions; and/or
 - 47.3 an internal review of the Party's state of compliance with the obligation.
48. The Caution Notice of Breach will specify a timetable within which the action is required to be completed, with duration dependent upon the nature and complexity of the action. The Enforcement Agency will also seek confirmation from the Party of receipt of the Caution Notice of Breach.

Warning Notice of Breach

49. The written Warning Notice of Breach to a Party is a more severe version of the Caution Notice of Breach, and may be appropriate for situations where the Party has failed to undertake voluntarily the actions requested by the Caution Notice of Breach, within the timetable specified. The Warning Notice of Breach to the Party will include an order that one or more of the following actions be undertaken by the Party:
- 49.1 rectification of the breach;
 - 49.2 specific corrective actions;
 - 49.3 arrange for an independent audit of its compliance procedures in relation to the Code's obligations. The auditor must be approved by and report to the Enforcement Agency on compliance with the Code's obligations. The Party will be required to implement recommendations of the audit; and
 - 49.4 that the Party conduct relevant education of its relevant staff to address

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knowledge inadequacies that may have led to the breach.

50. The Warning Notice of Breach will nominate a timetable within which the action is required to be completed, and the steps needed to be taken by the Party to address the action required by the Warning Notice of Breach, with duration dependent upon the nature and complexity of the action. The Enforcement Agency will also seek confirmation from the Party of receipt of the notice.

Public Censure Notice

51. In the event of a refusal or failure on the part of the Party to undertake to the Enforcement Agency's satisfaction any actions required by a Warning Notice of Breach within the timetable specified therein, the Party will promptly be formally advised by the Enforcement Agency that a Public Censure Notice is to be prepared for widespread publication. The Party will be sent an advance copy of the intended Public Censure Notice, which will:

51.1 identify the Party by name;

51.2 give details of the breach;

51.3 list all requests/orders previously made of the Party;

51.4 report on whether an independent audit has been ordered and, if so, state the results of the audit;

51.5 state that at the date of publication, the requests of the Caution Notice(s) of Breach and the orders of the Warning Notice(s) of Breach have not been complied with;

51.6 specify a final timetable by which any corrective action must be completed by the Party.

52. The Party will also be advised that publication of the Public Censure Notice will not occur until a specified time period has elapsed from the date the advance copy of the public censure notice is sent, (the period of time is at the discretion of the Enforcement Agency). If the Enforcement Agency is fully satisfied that the Party has fully complied as ordered prior to the date the Public Censure Notice is due to be published, then the Public Censure Notice shall not be published.

53. If the Public Censure Notice is proceeded with, it will be published in the New Zealand Gazette, the TCF's newsletter, and at the Enforcement Agency's discretion, may be published in any relevant industry newsletter or magazine, in the national newspapers or in Consumer bulletins.

54. If the audit report states that the Party has complied with the Code then if the audit was undertaken at the request of the TCF, the Internet Service Provider shall bear its own costs and the costs of the Enforcement Agency shall be reimbursed to it by the TCF.

55. If the audit report states that the Party has not complied with the Code then the Audit Costs will be payable by that Party.

56. For the purposes of clause 55, "Audit Costs" means the aggregate of:

56.1 Enforcement Agency and TCF reasonable direct costs in respect of the audit (including auditing and legal fees); and

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56.2 such costs of the audited Party in respect of time involved in assisting the audit as are submitted by the Party to the Enforcement Agency which the Enforcement Agency determines are fair and reasonable.

L. GENERAL

57. A person issuing a communication for the purposes of the Code may depart in minor ways from the exact form of any notice or communication which is set out in any Annexures to this Code provided that the information specified in the form is included and provided that any formats agreed to between a Pre-Approved Copyright Holder and a Party must be used and will not be modified without prior agreement.
58. Nothing in this Code affects a Party's right to suspend or cease providing services (including an Internet Account) to any person, which that ISP may have under any terms of service, a contract, an employment agreement or under any statute or other law, or otherwise.
59. Nothing in this Code affects any rights that any person may have under an ISP's terms of service, contract, employment law or under the Consumer Guarantees Act 1993, the Fair Trading Act 1986 or under any other statute, law or otherwise.
60. In order to promote respect for copyright and the effective operation of this Code:
- 60.1 the TCF may work with Pre-Approved Copyright Holders and Parties on joint initiatives from time to time provided that the purposes set out in section A and principles set out in section C of this Code are respected;
- 60.2 Parties will not engage in advertising which promotes Infringement of copyright.
61. Parties expect Copyright Holders to hold and retain all evidence that gives rise to any Copyright Holder Notice at the time that Copyright Holder Notice is made and for a minimum period of two years from the date of the alleged activity which is the subject of that Copyright Holder Notice. A Party may request that a Copyright Holder provide such evidence to that Party in Sworn form at any time (if it has not already been provided in Sworn form) and a failure by the Copyright Holder to do so as soon as is practicable will entitle the Party to delay proceeding any further with any part of the process set out in this Code in respect of that Copyright Holder Notice.

M. REVIEWS, EXPIRY, REVOCATION AND AMENDMENTS TO THIS CODE

Review of Code

62. The TCF will commence a review of this Code not later than two years after the date referred to in clause 2.
63. Any amendments that the TCF proposes to make to the Code as a result of the review will be published for public consultation.
64. Following public consultation and approval by the relevant TCF working party, suggested amendments to the Code, including any amendments agreed to by the TCF as a result of public consultation, will be submitted to the TCF Board for approval.
65. Once approved by the TCF Board, the revised Code will be published on the TCF Website and will come into effect 40 Business Days after the date of that publication.

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Expiry, Revocation and Amendments to this Code

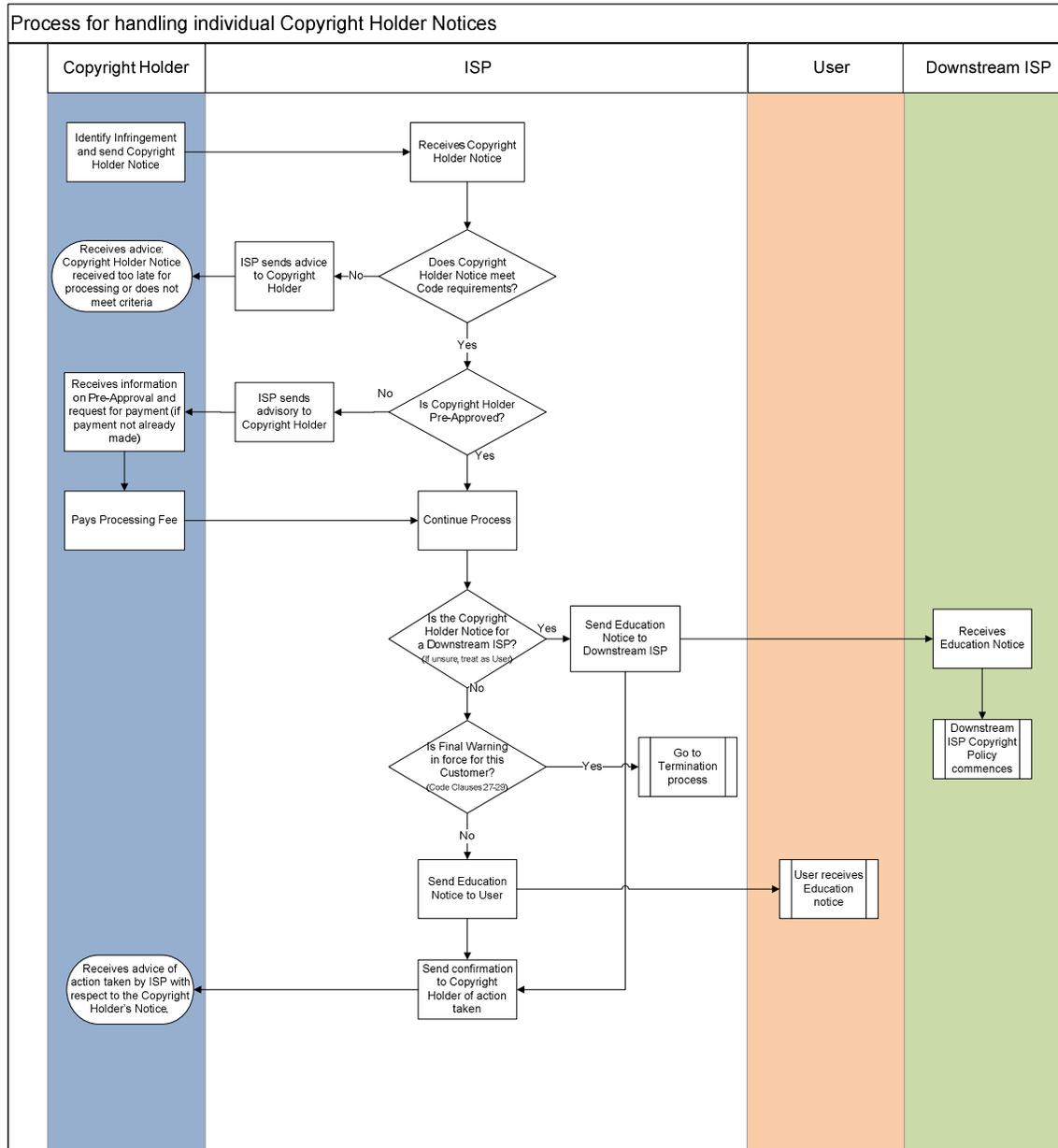
66. To avoid doubt, and in accordance with the Telecommunications Carriers' Forum's Operating Procedures Manual, any Forum Member may put a Project Proposal to the TCF Board (at any time) for the amendment or revocation of the Code.

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ANNEXURE 1: DIAGRAMS SHOWING CODE PROCESSES

A. Process for handling individual Copyright Holder Notices

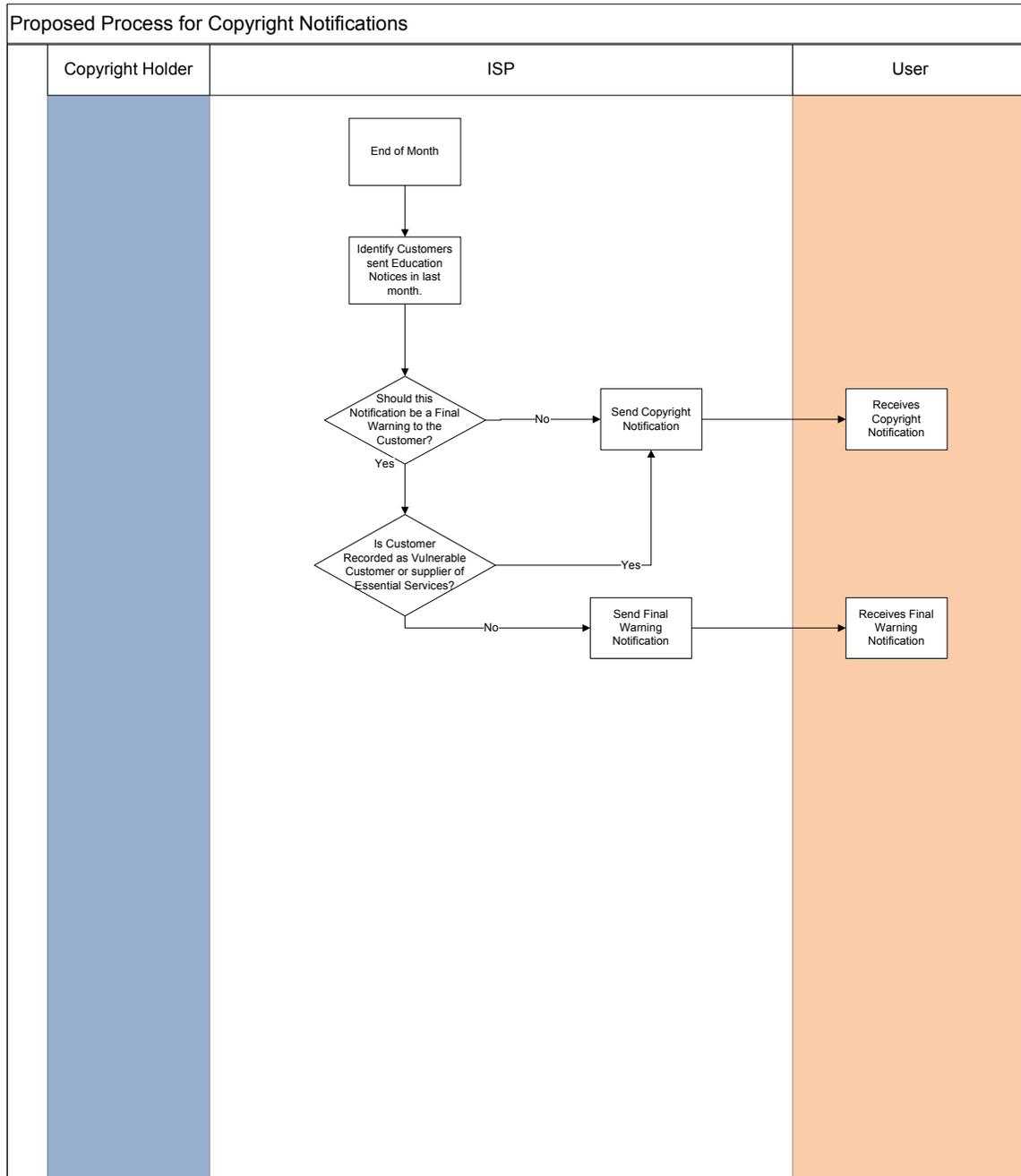
The process outlined below shows the process the ISP will follow upon receipt of a Copyright Infringement Notice from a Copyright holder.



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B. Copyright Notification Process Overview

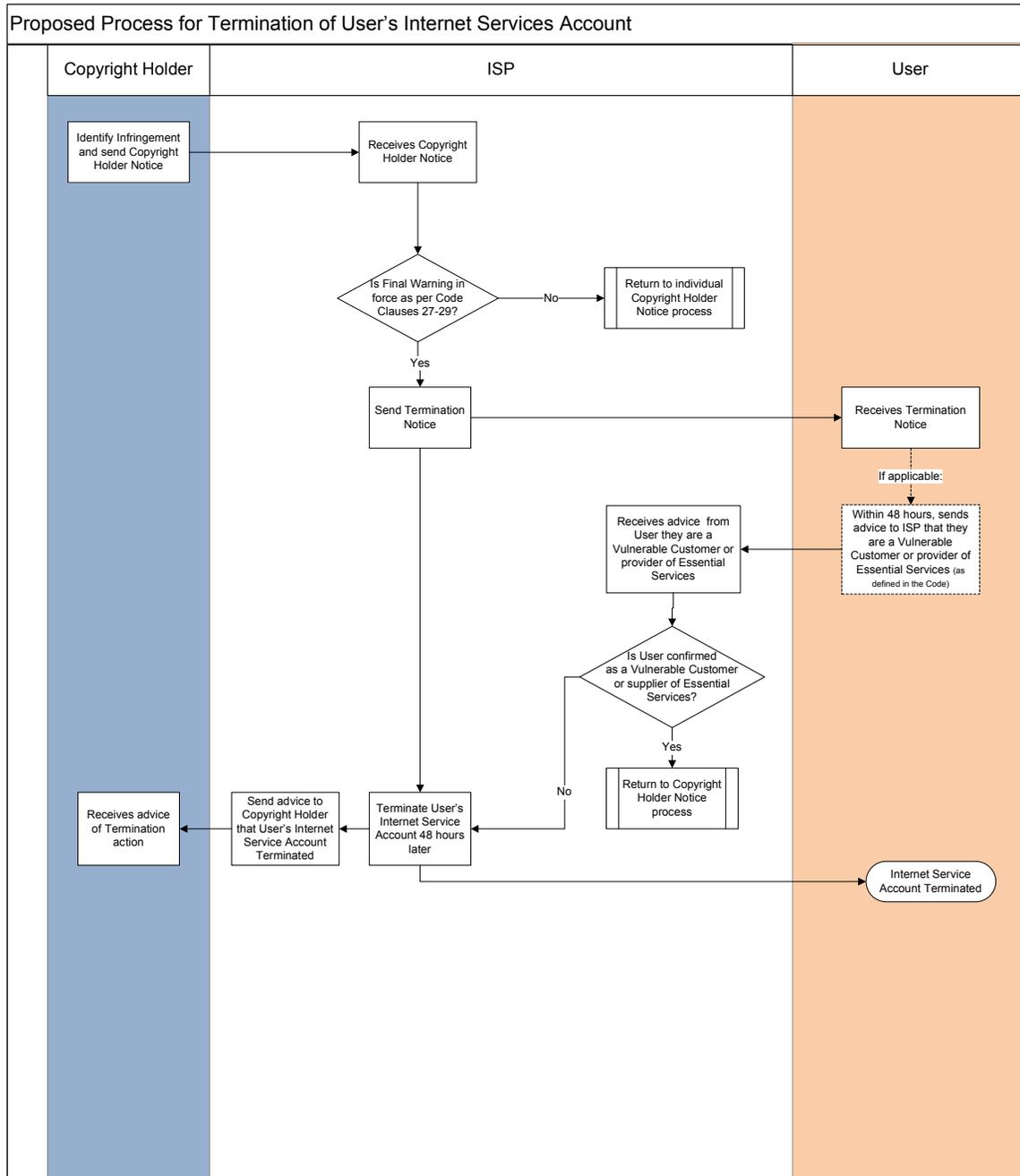
The process diagram below shows the process that ISPs will follow to issue monthly Copyright Notifications to Users. (Copyright Notifications are not sent to Downstream ISPs).



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C. Termination Process Overview

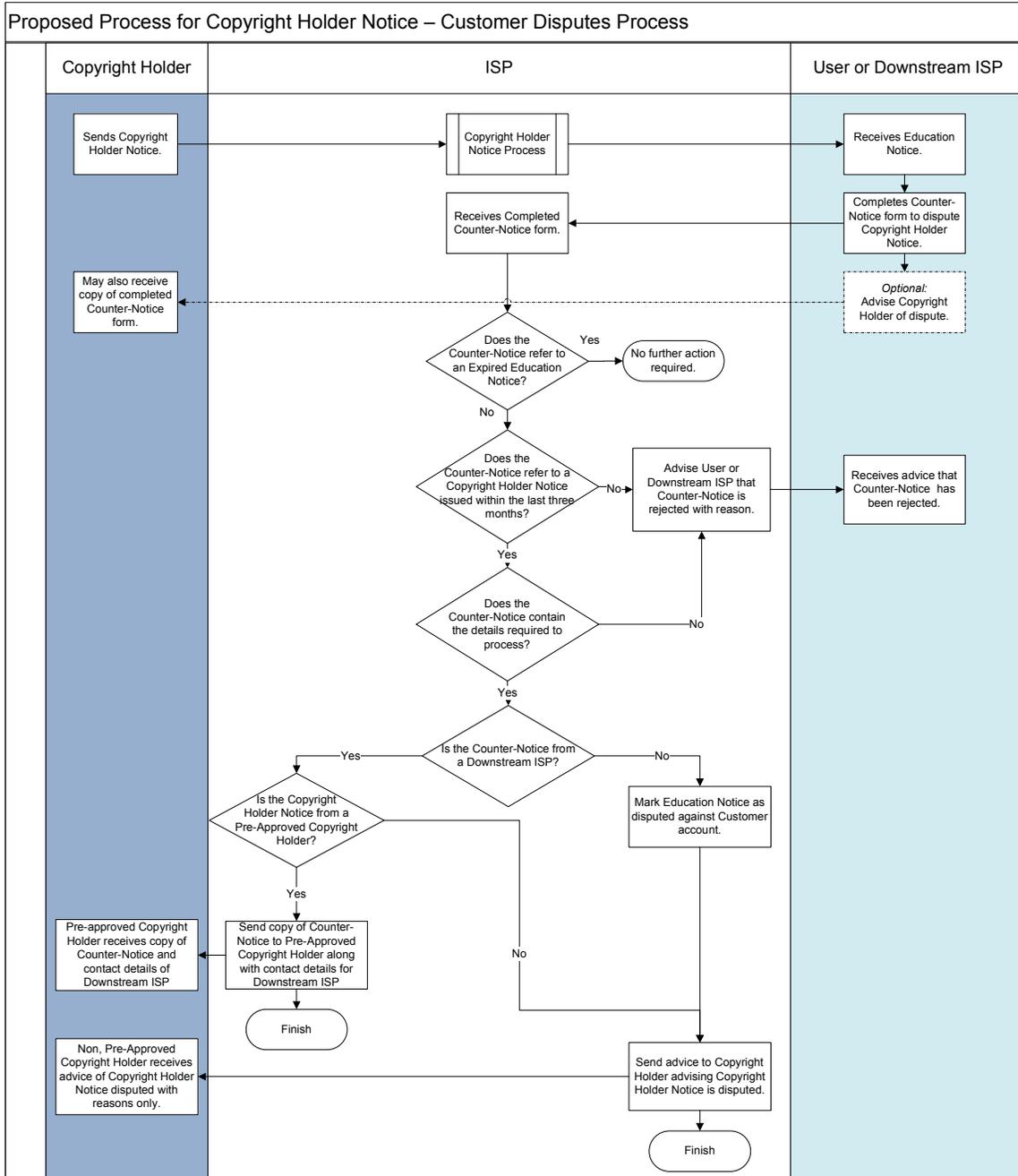
The process diagram below shows the process that ISPs will follow with regards to Terminating User's internet accounts.



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D. Copyright Holder Notice Counter-Notice Procedure Overview

The process diagram below outlines the process Parties will follow to manage disputes.



[Consultation Note: Please also refer to the Supplemental at the back of this draft Code outlining a reworded strawman Counter-Notice Procedure.]

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ANNEXURE 2: COPYRIGHT HOLDER NOTICE(PRE-APPROVED COPYRIGHT HOLDER)

Requirements for Pre-Approved Copyright Holders

The following information with respect to a Copyright Holder Notice must be provided by the Pre-Approved Copyright Holder to the ISP to enable the ISP to process the Copyright Holder Notice.

1. Notice Details

- (i) Notice ID Number
- (ii) Name of Copyright Owner or Copyright Owner's Agent Organisation (if applicable)
- (iii) Address of Copyright Owner or Copyright Owner's Agent
- (iv) Full name of the person who completed the Notice
- (v) Email address for person who completed the Notice
- (vi) Phone number for the person who completed the Notice

2. Method of Detection

- (i) Confirmation that detection method used is the same as that which has been Pre-Approved for that Copyright Holder

3. Details Of Infringed Copyright Work(s)

- (i) Type of infringed copyright work(s) *e.g. sound recording, software*
- (ii) Title of copyright work(s) *e.g. name / artist / version*
- (iii) File Name of infringed copyright work(s)
- (iv) Infringing IP address or hosted URL³
- (v) Exact Timestamp and Time Zone (e.g. 09 Nov 2008 13:28:53 GMT) for start and end time of Infringement

4. Any Other Related Information, if known such as:

- (i) Protocol (e.g. BitTorrent), file size of infringed copyright work(s), alleged infringer User Name, Email Address or Location.

5. Confirmation and Authorisation

On submitting the Copyright Holder Notice, the Copyright Holder Notice issuer must

³ Required for Copyright Holder Notices regarding hosted or stored material Infringement

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confirm that:

- (i) They are authorised to submit the Copyright Holder Notice as either the Copyright Holder or the authorised agent of a Copyright Owner;
- (ii) The contents of the Copyright Holder Notice are true, correct and not misleading by omission and that they understand that the ISP will be relying on those assurances in processing the Copyright Holder Notice in accordance with the Code;
- (iii) They agree to indemnify the recipient of the Copyright Holder Notice (including any Downstream ISP to whom this Copyright Holder Notice may be forwarded) for any and all losses, damages, costs or liabilities whatsoever or suffered or incurred in by the recipient (including legal costs on a solicitor / client basis) arising as a result of the Copyright Holder Notice or any part of it being incorrect;
- (iv) They agree to pay, in arrears on receipt of monthly invoice from the ISP, the Processing Fee with respect to that Copyright Holder Notice.

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ANNEXURE 3: COPYRIGHT HOLDER NOTICE(NON PRE-APPROVED COPYRIGHT HOLDER)

Requirements for Non Pre-Approved Copyright Holders

The following information with respect to a Copyright Holder Notice must be provided by the Copyright Holders who are not Pre-Approved Copyright Holders, to the ISP to enable the ISP to process the Copyright Holder Notice.

1. Notice Details

- (i) Notice ID Number
- (ii) Full name of the person who completed the Notice
- (iii) Email address for person who completed the Notice
- (iv) Phone number for the person who completed the Notice

2. Copyright Owner Information

- (i) Name of Copyright Owner
- (ii) Address of Copyright Owner OR address of Copyright Owner's Agent
- (iii) Name of Copyright Owner's Agent Organisation (if applicable)
- (iv) Copyright Owner's Agent Contact person
- (v) Email address for Copyright Owner's Agent
- (vi) Phone number of Copyright Owner's Agent

3. Method of Detection

- (i) Method used for detection of alleged Infringement i.e. software used
- (ii) Full details of how the evidence was collected.
- (iii) Individual responsible for detection and their contact details.

4. Details of Infringed Copyright Work(s)

- (i) Type of infringed copyright work(s) e.g. sound recording, software
- (ii) Title of copyright work(s) e.g. name / artist / version
- (iii) File Name of infringed copyright work(s)

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- (iv) Infringing IP address or hosted URL⁴
- (v) Exact Timestamp and Time Zone (e.g. 09 Nov 2008 13:28:53 GMT) for start and end time of Infringement

5. **Any Other Related Information, if known such as:**

- (i) Protocol (e.g. BitTorrent), file size of infringed copyright work(s), alleged infringer User Name, Email Address or Location

6. **Confirmation and Authorisation**

On submitting the Copyright Holder Notice, the Notice issuer must confirm that:

- (i) They are authorised to submit the notice as either the Copyright Holder or the authorised agent of a Copyright Owner;
- (ii) The contents of the notice are true, correct and not misleading by omission and that they understand that the ISP will be relying on those assurances in processing the Copyright Holder Notice in accordance with the Code;
- (iii) They agree to indemnify the recipient of the Copyright Holder Notice (including any Downstream ISP to whom the Copyright Holder Notice may be forwarded) for any and all losses, damages, costs or liabilities whatsoever or suffered or incurred in by the recipient (including legal costs on a solicitor / client basis) arising as a result of the Copyright Holder Notice or any part of it being incorrect;
- (iv) They agree to pay, in advance, the Processing Fee with respect to the Copyright Holder Notice.
- (v) They acknowledge that the Copyright Holder Notice will not be processed until the Processing Fee has been paid to the ISP.

This form must be Sworn in accordance with the Code.

⁴ Required for Copyright Holder Notice regarding hosted or stored material Infringement

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ANNEXURE 4: COUNTER-NOTICE

For a Counter-Notice to be accepted it must:

1. Provide details of the Copyright Holder Notice that was the subject of the Education Notice being disputed including any reference or ticket numbers.
2. Set out in as much detail as possible the reasons why the person issuing the Counter-Notice does not consider that they have Infringed.
3. State that the contents of the notice are true, correct and not misleading by omission and that they understand that the ISP and the Copyright Holder will be relying on those assurances in processing the Counter-Notice Notice in accordance with the Code.
4. Be sent to the ISP (and optionally the Copyright Holder) within three calendar months of the date on which the Copyright Holder Notice was issued.
5. If the person issuing the Counter-Notice claims that they are a Downstream ISP, comply with clause 22 of the Code.

[Consultation Note: A sample form of Counter-Notice will be included in the final Code]

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ANNEXURE 5: RETENTION OF DATA RELATED TO COPYRIGHT HOLDER NOTICES

1. Details of what information Parties need to retain (flags, details, Notices, disputes, Vulnerable Customers, Essential Service Providers etc) in order to manage and comply with the Code are summarised below. In the event of any inconsistency between this summary and the body of the Code, the latter will prevail.
2. Information pertaining to Copyright Holder Notices, Education Notices and Counter-Notices shall be kept for a minimum period of 2 years from the date of the Infringement referred to in the Copyright Holder Notice.
3. Information held by Parties is contained in two main sections. Firstly additional information held on a per customer basis, and secondly information pertaining to Copyright Holder Notices. In this Annexure, for ease of reference “customer” refers to a User or Downstream ISP.
4. **Customer Information:**
 - 4.1 Information about a Copyright Holder Notice contained in customer details should comprise:
 - 4.1.1 Total number of Copyright Holder Notices - Total number of Copyright Holder Notices which have been accepted under clause 14 of the Code.
 - 4.1.2 Total Copyright Holder Notices currently active - a Copyright Holder Notice that results in an Education Notice being sent to the customer as detailed in clause 15 of the code. Note that this number does not include Copyright Holder Notices which have been disputed in Counter-Notices.
 - 4.1.3 Copyright Holder Notices in dispute (Disputed Education Notices) - This is the total number of Copyright Holder Notices currently in dispute. This is mutually exclusive from Copyright Holder Notices currently active.
 - 4.1.4 Ticket number or tracking number for each Copyright Holder Notice - This is a list of internal ticket or tracking number pertaining to a Copyright Holder Notice.
 - 4.2 Vulnerable customer and Essential Service Providers - As referred to in section H of the Code.
 - 4.3 Downstream ISP - As defined in section B of the Code.
 - 4.4 Terminated due to Repeat Infringement - Flag to indicate User’s Internet Account has been Terminated under the Code.
 - 4.5 Date of Termination - Date of Termination.
5. Information derived from the Copyright Holder Notice itself should also be recorded as should the status of the Copyright Holder (Pre-Approved or non Pre-Approved) - see Annexures 2 and 3.

Telecommunications Carriers' Forum

**Internet Service Provider
Copyright Code of Practice**

SUPPLEMENTAL
Reworded Strawman Counter-Notice Procedure

4 February 2009

FOR PUBLIC CONSULTATION

TCF DRAFT FOR CONSULTATION

REWORDED STRAWMAN COUNTER-NOTICE PROCEDURE SECTION F OF TCF DRAFT INTERNET SERVICE PROVIDER COPYRIGHT CODE OF PRACTICE

CONSULTATION NOTES:

1. The wording below is intended to address concerns expressed by certain Copyright Holders, having seen the existing section F in the draft Code, that that section makes it too easy for a User to dispute a Copyright Holder Notice and undermine the Code process. If the below re-wording was to be included in the Code, it would mean that:

(a) a Pre-Approved Copyright Holder would receive the User's contact details (since, under this wording, the User forwards its Counter-Notice directly to the Copyright Holder as opposed to only forwarding it to an ISP); and

(b) a Pre-Approved Copyright Holder would be responsible for resolving the validity of the dispute with the User and advising the ISP as to whether the dispute is considered valid or not.

The position with respect to non Pre-Approved Copyright Holders would not change.

2. The TCF does not, at this stage, have any view on this proposal but has agreed with certain Copyright Holders that it would be worthwhile seeking the views of interested parties through the consultation process.

3. If this re-wording was to be included in the Code, consequential changes would also need to be made to clause 4.4 and Diagram D of Annexure 1 of the Code.

ALTERNATE WORDING:

F. COUNTER-NOTICE PROCEDURE

20. The objective of this section is to provide an opportunity:

20.1 for a User to dispute an Education Notice (including by asserting that they are a Downstream ISP);

20.2 for a Downstream ISP to dispute that they are the Downstream ISP with respect to a Copyright Holder Notice (including by asserting that they are a User).

User disputes involving Pre-Approved Copyright Holders

21. If a User wishes to dispute an Education Notice that is the result of a Copyright Holder Notice provided by a Pre-Approved Copyright Holder, the User must:

21.1 send a Counter-Notice to the address specified by the Pre-Approved Copyright Holder for receipt of Counter-Notices. The User must also send a copy of that Counter-Notice to the Party specified in the Education Notice and will let the Pre-Approved Copyright Holder know, at the same time, if it does so;

21.2 send the Counter-Notice within three calendar months of the date on which the Pre-Approved Copyright Holder Notice was issued.

21.3 set out in its Counter-Notice the reason(s) why the User does not reasonably consider that it has infringed,

provided however that a User may not dispute an Education Notice at any time after it has been sent a Termination Notice (although it may dispute Termination on the basis that it is a Vulnerable Customer or Essential Service Provider).

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22. If the reason given by the User under clause 21.3 is that they assert that they are a Downstream ISP, then the Counter-Notice must also include a statement that as a Downstream ISP, they:
 - 22.1 acknowledge that that Party is relying on their assertion that they are a Downstream ISP rather than a User and confirm that the contents of the Counter-Notice are true, correct and not misleading by omission;
 - 22.2 are aware that by claiming to be a Downstream ISP they are accepting that they are required to have and reasonably implement a policy that complies with section 92A of the Act.
23. When it receives a copy of a Counter-Notice from a User, the Party must flag the User's Internet Account record in its system with the fact that the Copyright Holder Notice in question has been disputed.
24. When it receives a Counter-Notice from a User, the Pre-Approved Copyright Holder must ascertain the validity of the Counter-Notice and otherwise deal with it and the User in accordance with the validation process committed to as part of the Pre-Approval Process (which will include a requirement to report back to the Party in question). To the extent the Counter-Notice relates to technical or other non-copyright issues, the Pre-Approved Copyright Holder will consult with the Party in determining the appropriate course of action.
25. When it receives a response confirming the outcome of a Counter-Notice validation process from a Pre-Approved Copyright Holder, the Party must:
 - 25.1 if the response is that the Pre-Approved Copyright Holder accepts a claim by the person that issued the Counter-Notice that they are a Downstream ISP, update their Internet Account to reflect their status as a Downstream ISP;
 - 25.2 if the response is that the Pre-Approved Copyright Holder does not accept the validity of the Counter-Notice, remove the dispute flag recorded in that Party's system against that User's Internet Account and otherwise proceed under this Code as if the Counter-Notice had never been issued;
 - 25.3 if the response is that the Pre-Approved Copyright Holder accepts the Counter-Notice as valid, retain the dispute flag recorded in that Party's system against that User's Internet Account and otherwise proceed under this Code on the basis that the Counter-Notice is valid.

User disputes involving a non-Pre-Approved Rights Holder

26. If a User wishes to dispute an Education Notice that is the result of a Copyright Holder Notice provided by a non-Pre-Approved Copyright Holder, the User must:
 - 26.1 send a Counter-Notice to the address specified by the Party for receipt of Counter-Notices. The User may also, if it wishes, send a copy of that Counter-Notice to the Copyright Holder specified in the Education Notice and will let the Party know, at the same time, if it does so;
 - 26.2 send the Counter-Notice within three calendar months of the date on which the Copyright Holder Notice was issued.
 - 26.3 set out in its Counter-Notice the reason(s) why the User does not reasonably consider that it has Infringed,

provided however that a User may not dispute an Education Notice at any time after it has been sent a Termination Notice (although it may dispute Termination on the basis that it is a Vulnerable Customer or Essential Service Provider).

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27. If the reason given by the User under clause 21.3 is that they assert that they are a Downstream ISP, then the Counter-Notice must also include a statement that as a Downstream ISP, they:
- 27.1 acknowledge that that Party is relying on their assertion that they are a Downstream ISP rather than a User and confirm that the contents of the Counter-Notice are true, correct and not misleading by omission;
 - 27.2 are aware that by claiming to be a Downstream ISP they are accepting that they are required to have and reasonably implement a policy that complies with section 92A of the Act;
 - 27.3 agree to that Party forwarding their Counter-Notice (including their contact details) to the Copyright Holder that has made the Copyright Holder Notice in question (provided that it is a Pre-Approved Copyright Holder) so that that Copyright Holder may communicate directly with them with respect to that Copyright Holder Notice.
28. When it receives a Counter-Notice from a User, the Party must:
- 28.1 flag the User's Internet Account record in its system with the fact that the Copyright Holder Notice in question has been disputed;
 - 28.2 notify the Copyright Holder in question that it's Copyright Holder Notice has been disputed and provide such details of the User's Counter-Notice as that Party considers reasonable provided that in no circumstances (other than those referred to in clause 27.3) will that Party disclose information which might identify the User, without the User's prior written consent or an order of a Court.

Downstream ISP disputes

29. If a person that a Party considers to be a Downstream ISP wishes to dispute an Education Notice, it may do so solely on the basis that it is not a Downstream ISP with respect to that Copyright Holder Notice (unless it wishes to claim that it is a User). To avoid doubt, the Party will not be obliged to accept any dispute on the basis that the Downstream ISP is not in a position to directly control the Internet Account of the User that is the subject of the Copyright Holder Notice. The responsibility for forwarding the Copyright Holder Notice on to a further Downstream ISP, if applicable, shall rest with the Downstream ISP (whether or not that Downstream ISP is a Party).
30. When it receives a Counter-Notice from a Downstream ISP under clause 29, the Party must:
- 30.1 flag the Downstream ISP's account record in the Party's system with the fact that the Copyright Holder Notice in question has been disputed;
 - 30.2 notify the Copyright Holder in question that it's Copyright Holder Notice has been disputed and provide such details of the Downstream ISP's Counter-Notice as that Party considers reasonable, provided that in no circumstances will that Party disclose information which might identify the Downstream ISP, without the Downstream ISP's prior written consent or an order of a Court unless the Copyright Holder in question is a Pre-Approved Copyright Holder in which case the identity and contact details of the Downstream ISP will be disclosed to that Pre-Approved Copyright Holder and the Downstream ISP will be advised accordingly.
31. In dealing with any User or Downstream ISP in response to a Counter-Notice, a Pre-Approved Rights-Holder must comply with any code of conduct agreed between the Pre-Approval Certifier and that Pre-Approved Copyright Holder as part of it's Pre-Approval Process.