



Copyright Amendment (Online Infringement) Act 2018

No. 157, 2018

**An Act to amend the *Copyright Act 1968*, and for
related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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Copyright Amendment (Online Infringement) Act 2018

No. 157, 2018

An Act to amend the *Copyright Act 1968*, and for related purposes

[Assented to 10 December 2018]

The Parliament of Australia enacts:

1 Short title

This Act is the *Copyright Amendment (Online Infringement) Act 2018*.

2 Commencement

- (1) Each provision of this Act 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 Act	The day after this Act receives the Royal Assent.	11 December 2018

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Copyright Act 1968

1 Section 115A (heading)

Repeal the heading, substitute:

115A Injunctions relating to online locations outside Australia

2 Subsections 115A(1) and (2)

Repeal the subsections, substitute:

Application for an injunction

- (1) The owner of a copyright may apply to the Federal Court of Australia to grant an injunction that requires a carriage service provider to take such steps as the Court considers reasonable to disable access to an online location outside Australia that:
 - (a) infringes, or facilitates an infringement, of the copyright; and
 - (b) has the primary purpose or the primary effect of infringing, or facilitating an infringement, of copyright (whether or not in Australia).
- (2) The application under subsection (1) may also request that the injunction require an online search engine provider (other than a provider that is covered by a declaration under subsection (8B)) to take such steps as the Court considers reasonable so as not to provide a search result that refers users to the online location.

Granting the injunction

- (2A) The Court may grant the injunction in the terms, and subject to the conditions, that the Court considers appropriate.

Note 1: For the matters that the Court may take into account when determining whether to grant the injunction, see subsection (5).

Note 2: The terms and conditions of the injunction that apply to a carriage service provider under subsection (1) may be different from those that apply to an online search engine provider under subsection (2).

- (2B) Without limiting subsection (2A), the injunction may:

- (a) require the carriage service provider to take reasonable steps to do either or both of the following:
 - (i) block domain names, URLs and IP addresses that provide access to the online location and that are specified in the injunction;
 - (ii) block domain names, URLs and IP addresses that the carriage service provider and the owner of the copyright agree, in writing, have started to provide access to the online location after the injunction is made; and
- (b) require the online search engine provider to take reasonable steps to do either or both of the following:
 - (i) not provide search results that include domain names, URLs and IP addresses that provide access to the online location and that are specified in the injunction;
 - (ii) not provide search results that include domain names, URLs and IP addresses that the online search engine provider and the owner of the copyright agree, in writing, have started to provide access to the online location after the injunction is made.

3 After paragraph 115A(3)(b)

Insert:

- (ba) if the application under subsection (1) also sought for the injunction to apply against an online search engine provider—the online search engine provider; and

4 After paragraph 115A(4)(a)

Insert:

- (aa) if the application under subsection (1) also sought for the injunction to apply against an online search engine provider—the online search engine provider; and

5 Paragraph 115A(5)(a)

Omit “(1)(c)”, substitute “(1)(b)”.

6 After paragraph 115A(5)(e)

Insert:

- (ea) if the application under subsection (1) also sought for the injunction to apply against an online search engine

provider—whether not providing search results that refer users to the online location is a proportionate response in the circumstances;

7 After paragraph 115A(5)(g)

Insert:

- (ga) if the application under subsection (1) also sought for the injunction to apply against an online search engine provider—whether it is in the public interest not to provide search results that refer users to the online location;

8 After subsection 115A(5)

Insert:

Presumption that the online location is outside Australia

- (5A) For the purposes of the proceedings, the online location is presumed to be outside Australia, unless the contrary is established.

9 After subsection 115A(8)

Insert:

- (8A) An application under subsection (7) must not request the Court to vary the injunction so that it applies to an online search engine provider that is covered by a declaration under subsection (8B).

Declarations excluding online search engine providers

- (8B) The Minister may, by legislative instrument, declare that:
- (a) a particular online search engine provider; or
 - (b) an online search engine provider that is a member of a particular class;
- must not be specified in an application under subsection (1) or (7).

10 Subsection 115A(9)

Omit “The carriage service provider”, substitute “A carriage service provider or, if applicable, an online search engine provider”.

11 Subsection 131A(2)

Omit “against carriage service providers providing access”, substitute “relating”.

12 Application of amendments

The amendments made by this Schedule apply to applications under section 115A of the *Copyright Act 1968* that are made on and after the commencement of this Schedule for:

- (a) the making of an injunction under that section after that commencement; or
- (b) the varying or rescinding of an injunction that is made under that section before or after that commencement.

*[Minister’s second reading speech made in—
House of Representatives on 18 October 2018
Senate on 12 November 2018]*

(217/18)
