

SAMPLE LIBRARY

INTERNET SERVICE PROVIDER

COPYRIGHT POLICY

First Edition

**Produced by the Copyright Task Force of the
Library and Information Association
of New Zealand Aotearoa
Te Rau Herenga o Aotearoa**

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INTRODUCTION

The Copyright Act 1994 (as amended) includes libraries within the definition of Internet service provider; and section 92A requires that “An Internet service provider must adopt and reasonably implement a policy that provides for termination, in appropriate circumstances, of the account with that Internet service provider of a repeat infringer”. “Repeat infringer” is defined as “a person who repeatedly infringes the copyright in a work by using 1 or more of the Internet services of the Internet service provider to do a restricted act without the consent of the copyright owner”.

The Telecommunications Carriers’ Forum *Internet Service Provider Copyright Code of Practice* includes libraries within its definition of downstream ISPs. Downstream ISPs are ISPs which re-supply Internet services from another ISP (such as a telecommunications ISP like Telecom, TelstraClear or Woosh) to users such as employees, students, contractors, clients or customers. Downstream ISPs may also themselves supply services to one or more other downstream ISPs. For example: Telecom is a telecommunications ISP which supplies services to a city council (a downstream ISP), which in turn supplies services to its library (a downstream ISP) which hosts a website. Clause 4.9 of the *Code* states that “Downstream ISPs should not have their Internet access terminated” by telecommunications ISPs.

Clause 4.3 of the TCF *Code* states that telecommunications ISPs will pass notices of alleged infringement received from copyright owners to downstream ISPs “in reliance on that downstream ISP having and implementing a termination policy complying with section 92A of the Act”. The *Code* requires that downstream ISPs receiving copyright holder notices deal directly with copyright owners to resolve the issues raised.

Libraries that are able to identify the alleged infringer may dispute with the copyright owner that any infringement has occurred. If, however, infringement is accepted, libraries are encouraged to educate the person regarding copyright law, and give at least two warning notices before that person’s Internet access within the library is terminated.

However, it will frequently be the case that identification of users of library-supplied Internet-access computers on which copyright infringement has been alleged may not be possible, either because users are not required to authenticate, or because records by date and time of Internet sessions are not kept. Where this is so, libraries may be asked by copyright owners to supply them with a copy of the library’s “policy that provides for termination”, to show what steps are being taken to prevent copyright infringement in the library.

The following sample policy is intended to provide guidance for libraries on what their “policy that provides for termination” should include. The sample policy should be tailored by libraries to express what their policies and procedures actually are. Libraries may wish to check with their institutions’ managers and/or legal advisers, to ensure that the policies are acceptable.

The sample policy is titled *Library Internet Service Provider Copyright Policy* because it is wider than just a “policy that provides for termination” of user Internet access or accounts.

Further information is given in section 22 of LIANZA's *The Copyright Act 1994 and Amendments: Guidelines for Librarians* which is on the LIANZA copyright webpage at <http://www.lianza.org.nz/publications/copyright.html>.

Libraries should also check the TCF *Internet Service Provider Copyright Code of Practice* at <http://www.tcf.org.nz/copyright>.

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[NAME OF LIBRARY]

LIBRARY INTERNET SERVICE PROVIDER COPYRIGHT POLICY

Definitions

1. The Copyright Act 1994 (as amended) defines Internet service providers (ISPs) as follows:

“**Internet service provider** means 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”.

Libraries fall within this definition.

2. Section 92A(1) of the Act states that “An Internet service provider must adopt and reasonably implement a policy that provides for termination, in appropriate circumstances, of the account with that Internet service provider of a repeat infringer”. Section 92A(2) states that “**repeat infringer** means a person who repeatedly infringes the copyright in a work by using 1 or more of the Internet services of the Internet service provider to do a restricted act without the consent of the copyright owner”.
3. The Telecommunications Carriers’ Forum *Internet Service Provider Copyright Code of Practice* (see <http://www.tcf.org.nz/copyright>) includes libraries within its definition of downstream ISPs. Downstream ISPs are ISPs which re-supply Internet services to users such as employees, students, contractors, clients or customers, or to other downstream ISPs.

General principles

4. The Library strongly supports the principles of copyright and the rights of copyright owners, and therefore takes all appropriate actions to ensure that copyright is not breached within the Library, either by staff or by users.
5. The Library has a responsibility to educate its staff and its users on copyright issues affecting them, including issues relating to copyright and the Internet.
6. The Library treats its staff and its users with respect, observes and preserves their privacy, and considers them to be innocent until evidence proves otherwise.
7. The Library has an obligation to investigate and respond in a timely manner to charges of alleged copyright infringement sent to it by telecommunications ISPs, other downstream ISPs or copyright owners.
8. The Library has the right to challenge and dispute such charges.
9. The Library advises telecommunications ISPs, other downstream ISPs or copyright owners if its systems do not enable it to identify individuals who have used Library computers on dates and times at which breaches of copyright have been alleged.

10. Termination of access to the Internet within the Library is always seen as a last resort.

Library staff

11. All Library staff receive instruction on copyright issues relating to libraries, based on publications listed on the LIANZA copyright website at <http://www.lianza.org.nz/publications/copyright.html>, and in particular LIANZA's *The Copyright Act 1994 and Amendments: Guidelines for Librarians*.
12. Queries regarding copyright which are not able to be answered by front-line staff are referred to a senior Library manager.
13. Library staff who observe an apparent breach of copyright in the Library either deal with it themselves in accordance with this Policy, or refer it to a senior Library Manager.

Library users

14. Education on copyright issues relating to library users is provided as appropriate.
15. The Library posts warning notices regarding copying and downloading from the Internet adjacent to its public-access computers and on screen-savers.
16. Where possible, the Library blocks access to Internet sites the sole purpose of which is known to be to facilitate the illegal downloading of materials from the Internet.

Allegations of breaches of copyright

17. If the Library receives notification, either from a telecommunications ISP, another downstream ISP or a copyright owner, that there has been an apparent breach of copyright on a library-owned computer, the Library investigates and takes appropriate action, as detailed below.
18. If the notification is received from a telecommunications ISP, the Library advises that it is a downstream ISP, as defined in section B of the TCF *Internet Service Provider Copyright Code of Practice*, and agrees that the Library may be contacted directly about the alleged breach by the copyright owner.
19. If the alleged breach is identified as having taken place on a Library staff computer, and if the individual staff member can be identified, the facts of the case are ascertained. If the alleged breach is substantiated, the staff member is given additional instruction on copyright law in general and the current incident in particular, and warned that a repetition may result in disciplinary action being taken under the Library's employment contract with that staff member.
20. If the alleged incident is not substantiated, or if the individual staff member can not be identified, this is reported back to the ISP or copyright owner.
21. At the same time, all Library staff are reminded of their obligations to comply with copyright law.
22. If the alleged breach is identified as having taken place on a Library-owned public-access computer, the Library attempts to identify the name and contact details of the person using the computer on the specified date and time.

23. If the person can be identified, the facts of the case are ascertained. If the alleged breach is substantiated, the person is given information on copyright law as this affects library users, and is warned that a repetition may result in the person being banned from using public-access Internet computers in the Library. If notification is received of a second apparent breach of copyright by the same person, and if that breach is substantiated, the person is given a second warning. If notification is received of a third apparent breach of copyright by the same person, and if that breach is substantiated, the person is told that s/he may not use Library-supplied public-access Internet computers in the Library, other than to access the Library Catalogue or Library-subscribed electronic resources, for a period of one year. If the person is a member of the Library, this information is included in the person's Library record.
24. However, in many if not most cases it is not possible for the Library to identify the person using the public-access computer on the specified date and time, either because the Library does not require users to authenticate, or because records of use are kept for only a very short period or not at all. In such cases the Library reports back to the ISP or copyright owner that the alleged breach has been investigated but that the alleged infringement can not be substantiated or infringer identified.

Response to telecommunications ISP, other downstream ISP or copyright owner

25. The Library always responds within three months to each "Copyright Holder Notice" received from a telecommunications ISP, other downstream ISP or copyright owner, giving details of the investigations undertaken and any actions taken. Copies of the correspondence are kept for two years.
26. A copy of this Policy is provided on request as evidence that the Library is taking all actions within its power to comply with copyright law, and to attempt to ensure that breaches of copyright by either Library staff or Library users are minimised.