

Copyright Complaints and Takedown Procedure

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Purpose

This procedure describes the steps taken when the University receives notice, or is made aware, of alleged copyright infringements.

Applicable governance instruments

| Instrument | Section | Principles |
|--|--|------------|
| Intellectual Property Policy | 5 Copyright | 5.1-5.2 |
| Data and Information Governance Policy | 3 Information, communication and technology services and facilities use 4 Data and information management | All |
| Copyright Act 1968 (Cth) | Part 6 | |
| Copyright Regulations 2017 (Cth) | All | |

Procedure

1. Background

The objective of this procedure is to protect the University, as far as possible, from liability and damages for copyright infringement. A university that is sued for copyright infringement could plead the copyright Safe Harbours provisions. The Safe Harbours are a set of provisions in the *Copyright Act 1968 (Cth)* that protect certain online service providers from liability for damages for copyright infringements. To rely on the

provisions the University must comply fully with the conditions of the provisions with respect to alleged infringements.

This procedure applies to all members of the University community and anyone exercising an exclusive right of a Third-Party Copyright holder (that is, copyright not held or licenced by the University) on behalf of or in connection with the University. The procedure provides a clear reporting structure, supports the University's compliance framework, and allows for the application of the Safe Harbour provisions under Part 6 of the *Copyright Regulations 2017 (Cth)*.

2. Alleged copyright breaches

2.1. Allegations

A suspected or alleged breach of copyright may involve non-compliance with, for example, the University's obligations under statutory and other licences relating to the copying of printed texts or audio-visual broadcast materials, or the performance of copyrighted music.

Other cases of potential copyright infringement may involve the inappropriate use of University information and communication technology services, facilities, and infrastructure (for example, the illicit downloading of copyrighted audio-visual material from the internet or the use of copyrighted software outside the University's licence provisions).

Complaints around suspected or alleged breaches of the *Australian Code for the Responsible Conduct of Research 2018 (Cth)* are managed under the *Research Integrity Complaints Procedure*.

2.2. Appointment of a Designated Representative

To rely on the Safe Harbour provisions, the University must designate a responsible officer as its representative (Designated Representative) who will send or receive notices, counter-notices, and notifications for the University and manage complaints under this procedure. The Designated Representative is the University Copyright Manager.

3. Takedown notices

A takedown notice is the notice provided in Schedule 2 of the *Copyright Regulations* that can be filled in by a Copyright Owner (or their agent) with details of their material and sent to the University, asserting they have identified it as hosting their copyright material without permission.

3.1. Receipt of a takedown notice by the University

When the University receives a takedown notice, the Copyright Manager will:

- notify the Chief Information Officer and General Counsel of the details of the alleged infringement; and
- immediately organise expeditious removal of, or disable access to (takedown), the copyrighted material specified in the notice residing on the University's system or network.

As soon as practicable after removing/disabling access to the copyrighted material, the University Copyright Manager will send the person who uploaded the content:

- a copy of the takedown notice received by the University; and
- a notice stating that:
 - the copyrighted material has been removed or access to it disabled; and
 - the person may, within 3 months, give a counter-notice to the University disputing the claims in the takedown notice.

3.2. Receipt of a counter-notice

Depending on the circumstances, the University or the person uploading the material may issue a counter-notice if they dispute that the material is infringing. The form of the counter-notice also appears in Schedule 2 of the *Copyright Regulations*.

Once a counter-notice is received, the Copyright Manager will send to the copyright owner (or person who issued the takedown notice):

- a copy of the counter-notice; and
- a notice stating that if the copyright owner (or authorised agent) does not, within 10 business days after the notice was sent, bring an action to restrain the activity that is claimed to be infringing, the University will restore, or enable access to, the copyrighted material on its system or network.

The Copyright Manager will then notify the Chief Information Officer and General Counsel of the actions taken in relation to the counter-notice.

3.3. Takedown notices concerning links

Upon receipt of a notice the University will expeditiously remove or disable access to the link specified in the notice.

3.4. Takedown notices concerning cached copyrighted material

The University will expeditiously remove or disable access to cached copyrighted material, (as defined in section 116AB of the *Copyright Act*), on its system or network if the University receives notification from a rightsholder that the material has been removed, or access has been disabled, at the originating site.

4. Removing or disabling access to copyrighted material without receipt of a takedown notice

Where the University does not receive a takedown notice, it will remove or disable access to copyright material residing on its system or network if it becomes aware the material is infringing, or facts or circumstances make it apparent that the material is likely to be infringing.

After removing or disabling access to the copyrighted material the Copyright Manager will send the person who uploaded the content a notice stating:

- the copyright material has been removed or access to it disabled; and
- the grounds for removing or disabling access to the copyrighted material; and
- that the person may, within 3 months, give a counter-notice to the University disputing the claims in the takedown notice and requesting that the University restore or enable access to the content.

4.1. Receipt of a counter-notice

If the University receives a counter-notice and based on information contained in that notice is satisfied the copyright material referred to is not, or is not likely to be infringing, the University will as soon as practicable restore or enable access to the content.

5. Internal reporting of alleged copyright breaches

Members of the University community have an obligation to report any suspected or potential copyright breaches to their line manager/supervisor or the relevant organisational unit Head under whose authority and control the suspected copyright breach took place.

Where an organisational unit Head has an actual or perceived conflict of interest in relation to a particular matter, reports may be made directly to the University Copyright Manager.

5.1. Actions relating to alleged infringing materials

On receipt of a report of an alleged copyright breach, an organisational unit Head will investigate the allegation of infringing materials. The organisational unit Head will notify the Copyright Manager if there is a suspected copyright breach.

An organisational unit Head will notify the University Copyright Manager of any remedial action undertaken regarding non-compliance involving a copyright matter. Similarly, the University Copyright Manager will notify a relevant organisational unit Head of any remedial action undertaken in relation to a copyright matter.

Examples of remedial action undertaken by an organisational unit Head or the University Copyright Manager may include:

- removal, confiscation, takedown, or destruction of the copyrighted material in question; or
- a direction for the copyrighted material not to be used by the University for any purpose.

Any allegations against an individual member of the University community will be dealt with in accordance with this procedure and additional action may be taken under other applicable governance instruments.

5.2. Actions regarding an individual's alleged breach

Any member of the University community who is the subject of an allegation of breach of the copyright principles in the *Intellectual Property Policy* will be promptly notified of the allegations made against them, given a reasonable opportunity to respond before a decision is made in relation to the allegation, and will otherwise be afforded procedural fairness.

6. Responsibilities

Responsibility for compliance with the copyright legislation and University policy and procedures relating to copyright rests with the Heads of organisational units. To this end, Heads must ensure that their staff are informed of their responsibilities.

The University Librarian and University Copyright Manager share responsibility for creation, management and retention of records associated with University copyright activities.

The University Copyright Manager is responsible for monitoring compliance with copyright legislation. The Copyright Manager therefore has the authority to require staff to act to ensure legal compliance in accordance with the policy principles and procedures relating to copyright.

The Copyright Manager is authorised to follow up all instances of alleged copyright infringements to ensure appropriate investigation and remedial action is undertaken. Where an organisational unit Head does not, within 10 working days, provide adequate notification of an investigation status, or it is deemed that remedial action is not adequate, the University Copyright Manager may escalate the matter to the Vice-Chancellor.

Related procedures

Research Integrity Complaints Procedure

Versions

| <u>Version</u> | Action | Approved By | Responsible Officer/s | Approval Date |
|----------------|---------------------------|--------------------------------------|------------------------------|----------------------|
| 1 | Approved | Provost | University Librarian | 26 August 2021 |
| 1 | Reconfirmed, unchanged | Deputy Vice-Chancellor (Academic) | University Librarian | 10 August 2022 |

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