**EXPOSURE DRAFT**



|  |
| --- |
| **EXPOSURE DRAFT** |

Copyright Amendment (Service Providers) Regulations 2018

I, General the Honourable Sir Peter Cosgrove AK MC (Ret’d), Governor‑General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2018

Peter Cosgrove

Governor‑General

By His Excellency’s Command

Mitch Fifield **[DRAFT ONLY—NOT FOR SIGNATURE]**

Minister for Communications

Contents

Copyright Amendment (Service Providers) Regulations 2018 1

1 Name 1

2 Commencement 1

3 Authority 1

4 Schedules 1

Schedule 1—Amendments 2

Copyright Regulations 2017 2

1 Section 4 (definition of *designated representative*) 2

2 Section 4 2

3 Section 4 (definitions of *system or network* and *user*) 2

4 Part 6 (heading) 2

5 Section 18 (heading) 2

6 Section 18 2

7 Subparagraph 18(a)(i) 2

8 After section 18 2

9 Sections 19, 20, 23 to 35, 37 and 38 4

10 Parts 1 to 3 of Schedule 2 4

11 Part 3 of Schedule 2 (note 3) 4

12 Part 4 of Schedule 2 4

13 Part 4 of Schedule 2 (notes 2, 4 and 5) 4

14 Part 5 of Schedule 2 4

15 Part 5 of Schedule 2 (notes 2 and 4) 4

16 Part 6 of Schedule 2 4

1 Name

This instrument is the *Copyright Amendment (Service Providers) Regulations 2018*.

2 Commencement

(1) Each provision of this instrument 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 instrument | At the same time as the *Copyright Amendment (Service Providers) Act 2018* commences. |  |

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

This instrument is made under the *Copyright Act 1968.*

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Copyright Regulations 2017

1 Section 4 (definition of *designated representative*)

Omit “carriage” (wherever occurring).

2 Section 4

Insert:

***designated service providers*** means a class of service providers (other than carriage service providers).

***service provider*** has the meaning given by section 116ABA of the Act.

3 Section 4 (definitions of *system or network* and *user*)

Omit “carriage” (wherever occurring).

4 Part 6 (heading)

Omit “**carriage**”.

5 Section 18 (heading)

Repeal the heading, substitute:

18 Requirements for industry codes registered under Part 6 of the *Telecommunications Act 1997*

6 Section 18

Omit “that does not deal solely with caching”.

7 Subparagraph 18(a)(i)

Repeal the subparagraph, substitute:

(i) owners and exclusive licensees of copyrightor a class ofowners and exclusive licensees of copyright; and

8 After section 18

Insert:

18A Industry codes developed by designated service providers

(1) For the purposes of paragraph (b) of the definition of ***industry code*** in section 116AB of the Act, an industry code, or a variation of an industry code, developed by designated service providers must be developed in accordance with this section.

Requirement for broad consensus

(2) An industry code, or a variation of an industry code, must be developed through an open voluntary process by a broad consensus of:

(a) owners and exclusive licensees of copyrightor a class of owners and exclusive licensees of copyright; and

(b) the designated service providers to which the code, or the code as varied, is to apply.

Content of industry code

(3) An industry code may contain any or all of the following:

(a) a provision relating to accommodating and not interfering with standard technical measures;

(b) a provision to the effect that standard technical measures are technical measures that:

(i) are used to protect and identify copyright material; and

(ii) are accepted under the code or developed in accordance with a process set out in the code; and

(iii) are available on non‑discriminatory terms; and

(iv) do not impose substantial costs on the designated service providers or substantial burdens on their systems or networks;

(c) a provision relating to:

(i) updating copyright material that is cached; and

(ii) not interfering with technology used at the originating site to obtain information about the use of the copyright material.

(4) An industry code must contain all of the following:

(a) a provision specifying the designated service providers to which the code applies;

(b) a provision setting out when the code takes effect and when it will cease to have effect;

(c) a provision requiring that the code be published on the website of a person or body representing the designated service providers when the code takes effect;

(d) a provision requiring that, if the code is varied, the varied code be published on the website of a person or body representing the designated service providers when the variation takes effect.

Consultation requirement

(5) Before an industry code, or a variation of an industry code, takes effect, a person or body representing the designated service providers must:

(a) publish a draft of the code, or a draft of the code as proposed to be varied, on the website of the person or body; and

(b) invite submissions about the draft code, or proposed variation, within a specified period (which must be at least 30 days after the draft is published); and

(c) consider any submissions received within that period.

9 Sections 19, 20, 23 to 35, 37 and 38

Omit “carriage” (wherever occurring).

10 Parts 1 to 3 of Schedule 2

Omit “*carriage*” (wherever occurring).

11 Part 3 of Schedule 2 (note 3)

Omit “carriage” (wherever occurring).

12 Part 4 of Schedule 2

Omit “*carriage*” (wherever occurring).

13 Part 4 of Schedule 2 (notes 2, 4 and 5)

Omit “carriage” (wherever occurring).

14 Part 5 of Schedule 2

Omit “*carriage*” (wherever occurring).

15 Part 5 of Schedule 2 (notes 2 and 4)

Omit “carriage” (wherever occurring).

16 Part 6 of Schedule 2

Omit “*carriage*” (wherever occurring).