

Australia's Online Service Provider Safe Harbours – Guide for Libraries and Archives

Checklist B: Notice and takedown process for institutions providing hosting services

In addition to the above steps for all institutions, institutions providing a service that hosts material at the direction of third parties (ie a hosting service) will need to comply with the following notice and takedown procedure for any allegedly infringing material on their system if they want to access the safe harbours for those services. It is similar to the notice and takedown procedures most institutions will already have in place, but requires certain forms and processes.

A hosting service would, for instance include a site where you allow users to upload material they have created as part of a competition, community outreach or open access repository. It will not include any service where your institution is responsible for selecting or uploading the material (eg a curated online collection) or where you select content before it is published (eg a user generated content platform where material is moderated before it is publicly viewable).

If you charge for the hosting service or otherwise receive a financial benefit directly attributable to it, it will not be covered by the safe harbour.

Notice and takedown procedure

1. Remove material that has been uploaded at the direction of a client if:

a) you receive a credible takedown notice alleging that it is infringing; OR

- The notice must be from the owner or exclusive licensee of the material, or their agent.
- The notice should be in the form prescribed by the legislation. There are different forms if the [material has been found to be infringing by a court](#), or if the copyright owner/licensee just has a [good faith belief that it is infringing](#).
- If the notice is not in the appropriate form but still contains the relevant information, it is good practice to accept it. If it does not provide the relevant information, you should respond with a link to the form for them to fill out.
- As these notices are sometimes sent in error or fraudulently, it is good practice to check the veracity of the notice before removing the material ie check that the person sending it appears to be the copyright owner or their agent, and that the material is what they claim it is (eg not just another work with a similar title). This should be done expeditiously.

b) you become aware that it is infringing

- You are not required to “hunt down” infringing materials on your system, or to otherwise monitor communications. However, if your staff does discover material they suspect to be infringing on your system in the course of their work, it should be taken down.



The removal must be “expeditious.” This is not legally defined, but the aim should be to remove the material as soon as possible, usually within 3 working days.

2. Notify the user who uploaded the material to your system that it has been taken down

- As part of doing this, you must send them a copy of the notice of claimed infringement, so they have the details.
- You should also tell them that they have 3 months to issue a counter-notice disputing the claim.
- The counter-notice should be in the form prescribed by the legislation. There are different counter-notice forms if the material was [taken down in response to a notice by the copyright owner/licensee](#), or [taken down on the initiative of the institution](#).

3. If you receive a counter-notice, send it to the copyright owner or their agent

- In doing so you should inform the owner/agent that they have 10 working days to seek a court order restraining the activity, or else the material will be restored.

4. If the copyright owner notifies you they are taking court action within 10 working days, keep the material down. If they do not, or if the action was unsuccessful, restore the material.

For example: an institution is running a competition in which it encourages users to upload videos using its public domain materials to a special website it has set up. It receives an email from a record label claiming to be the copyright owner of music used in one of these videos, with a notice and takedown form attached.

The institution checks that the song is the one the record label identifies, and that the record label is the original publisher of the material, and then disables access to the material. It sends the notice on to the original uploader of the material, notifying them that the material has been removed. When it does not get a counter-notice from the original uploader within 3 months, it leaves the material down.

An electronic version of this checklist and the full Guide is available at <http://libcopyright.org.au/content/resources>