



Australian Vice-Chancellors' Committee
the council of Australia's university presidents

***Content, University IT Systems
and the Internet***

1. Introduction

1.1 This Resource Paper:

- (a) aims to provide a framework which facilitates a review by universities of their policies, procedures, systems and management structure to ensure that they adequately address copyright infringement risks in the context of content on the internet;
- (b) recognises that different universities will implement appropriate measures in different ways. References to policies or other documents by name are not intended to be prescriptive as it will be the substance and efficacy of the measures taken that is important rather than the names or status given to them. Each university will need to consider whether and how best to adapt or add to or supplement its existing measures in order to address the concerns highlighted in this Paper;
- (c) aims to provide a resource for the development of take down notice procedures which would operate when universities become aware that their systems, equipment or services are being, or may be, used to host, trade or make available infringing material on the internet;
- (d) recognises the educational and research need of Universities to provide internet access and services and that they will rightly continue to expand their capabilities as service providers. It also recognises that the primary purpose of a University in making available University Systems to Authorised Users is not a profit purpose and that any measures designed to secure compliance with the Act should not impose disproportionate cost or other resource burdens on that University. Accordingly, this Paper does **not** suggest or recommend that Universities should take on investigation, monitoring or training roles or obligations. Rather, the emphasis is on having appropriate policies and terms of use, bringing them and the University's determination to secure compliance to the attention of Authorised Users, and to developing workable approaches to responding and investigating complaints and to disciplining offenders.

2. Terminology and interpretation

2.1 In this Paper:

“**Act**” means the Copyright Act, 1968, as amended from time to time.

“**Authorised User**” means and includes all staff, students, clinical and adjunct title holders, alumni and other users who are authorised by a University to use its systems or network to access the internet.

“**Contact Officer**” means the individual or individuals referred to in paragraph 5.3 of this Paper.

“Copyright Material” means all works, and subject matter other than works, protected by copyright under the Act.

“Infringing Material” means any material which infringes copyright within the meaning of the Act and which has been reproduced or communicated by an Authorised User, using University Systems. Where that material is part of a larger work or compilation or other subject matter then only that part which infringes copyright is "Infringing Material" for the purpose of this Paper.

“Rights Holder” means an owner or exclusive licensee of a relevant copyright under the Act.

“Take Down Notice” means a notice as described in paragraph 5.1.

“University” means a university whose Vice-Chancellor, President or equivalent is a member of AVCC from time to time.

“University Systems” means the IT systems, equipment, software, file distribution programs or services, and other IT services (including internet access services) or infrastructure made available by a University.

3. Use policies for Authorised Users

- 3.1 It is suggested that Universities develop, implement and update appropriate policies designed (but obviously not guaranteed) to deter and prevent Authorised Users from using University Systems to infringe or facilitate the infringement of copyright in Copyright Material and to inform them of their obligations under those policies and of the serious consequences of non-compliance.
- 3.2 A University that provides internet access or hosting facilities or services to its Authorised Users should consider including as part of an internet usage or similar policy:
- (a) the regular provision to all Authorised Users of appropriate information, in written or electronic form, about copyright, and its copyright compliance policies;
 - (b) a requirement that all Authorised Users confirm (whether by a "Click to Agree" mechanism or through an enrolment or subscription process or by using any of a number of other possible means):
 - (i) that they have read the relevant usage terms and policies, and agree to comply with them; and
 - (ii) that they acknowledge that the University may collect or receive personal information of an Authorised User in the course of managing the operation and use of University Systems and that that information can be used in connection with efforts to ensure that their use and that of other Authorised Users complies with all relevant laws and University policies; and

- (c) a clear expression of the University's intention to secure compliance with its policies in this area and to impose appropriate sanctions on offenders.

3.3 It is suggested that a University should also:

- (a) communicate the terms and nature of all relevant copyright compliance policies and terms of usage of University Systems (as amended from time to time) to its employees (whether or not Authorised Users); and
- (b) provide all staff and students with a clear mechanism for reporting suspected intellectual property infringements involving the use of University Systems to the University.

4. Facilities Management Practices

- 4.1 Subject to appropriate exceptions which might include (but are not limited to) those outlined below, it is suggested that a University provide a means (eg password protected access) to regulate access to the internet using University Systems by all Authorised Users. This would involve access only being provided to individual identifiable Authorised Users (as opposed to generic access) and procedures being in place to verify Authorised User identification. One aim of these measures is to enable the University, once it is established that some act took place using University Systems or internet access provided by them, to identify the Authorised User who did or caused the act. Exceptions may arise in a range of circumstances including:
- (a) the use of specialised equipment, such as TCP/IP video conferencing units, where there is no meaningful login process;
 - (b) kiosk applications, in which a computer provides access to a limited range of information web pages;
 - (c) limited function computers being made available in libraries for searching the catalogue and to access licensed online research materials; and
 - (d) demonstration sites where prospective students can "sample" online and flexible delivery of courses.
- 4.2 It is suggested that a University maintain records containing personally identifiable information in respect of each Authorised User in accordance with its usual standards and procedures for data retention. There may be exceptions, such as where periodic access accounts (secure from the rest of the network) are created for conference attendees and users of public library facilities, where it is appropriate for the University to choose not to retain any record of the user for the future.
- 4.3 If in the course of any systems management monitoring of network traffic, filtering that traffic, using file detection technologies, or exercising any other network or systems management capability a University detects files which include Infringing Material, it is suggested that the University have in place procedures designed to bring this to the attention of a Contact Officer (or equivalent designated staff

member(s)) so that the question of whether or not any take down procedures should be triggered can be considered by the University. **Nothing in this paragraph or Paper requires any of these monitoring or other activities to be undertaken.**

- 4.4 It is suggested that a University designate an appropriate senior individual or individuals as its Contact Officer(s) for receiving complaints about possible violations of copyright involving use of the University's Systems including the receipt of Take Down Notices.
- 4.5 Details of Contact Officers might be appropriately publicized as a point of contact for staff, students and others to report suspected intellectual property infringements.
- 4.6 It is also suggested that the University draw attention to copyright compliance messages in relevant University websites or pages which it decides are appropriate for this purpose, and at the location of relevant facilities. Relevant websites or pages will have a focus and audience within the University (including Authorised Users) and would not usually include sites and pages with a significant external focus or audience. These messages might include one or more of the following: (a) compliance notices on the page which first appears when an Authorised User logs in to a workstation; (b) prominent educational notices on any sites on its servers where the University is aware that users have in the past posted infringing software, music, photographs, videos, movies or other content; (c) compliance notices at physical facilities where computer workstations are made available for use including computer labs.

5. Investigating and responding to take down notices

A University will need to develop and implement an internal approach to responding to complaints/demands by copyright owners, or reports from other sources, that University Systems are being used to host or communicate allegedly Infringing Material on the internet. Such notices may refer to material posted on websites, mp3 music files or mpeg movie files kept on searchable computer hard drives, or to Copyright Material which is traded, available or reproduced using University Systems or connections to University Systems in other ways and formats. Any approach will include deciding who such notices and reports should be directed to in the first instance although clearly the University must deal with reports or demands addressed to others. This Paper suggests that one or more Contact Officers be nominated for this purpose and that their identity and role is made known, at least within the University. These people will not necessarily be the same staff group who investigate allegedly infringing postings on websites and the like which will typically need both legal and IT expertise. This investigation and validation process will need to be able to take place quickly so that identifying the group involved in investigation, and any processes or approvals that they need to follow before they can make any determination to take down or disable Infringing Material, is important. If a University wishes to review its approach to responding to demands that it takes down or disables allegedly Infringing Material then the following paragraphs set out some factors to consider.

- 5.1 For the purposes of this section, "Take Down Notice" means a notice issued by or on behalf of a Rights Holder to a University:
 - (a) signed by or on behalf of the Rights Holder;

- (b) identifying the Copyright Material claimed to have been infringed;
- (c) identifying the allegedly Infringing Material to be removed, or to which access is to be disabled, including its location (i.e. URL address, IP address or network address);
- (d) containing information reasonably sufficient to permit the University to contact the Rights Holder; and
- (e) containing a statement by an appropriate authorised officer or employee of the Rights Holder, that the Rights Holder has a good faith belief held on reasonable grounds that there has been a reproduction or communication of the allegedly Infringing Material by an Authorised User which is not authorised by the copyright owner or its exclusive licensee.

5.2 Schedule A provides an example of a form of Take Down Notice. A letter or other form of notification could include the same information and elements which ordinarily a University will need in order to consider whether or not to remove allegedly Infringing Material. In some cases a University may not feel comfortable acting on a demand unless it has more eg if it is concerned about the authority of the sender of an email it may want some form of verification status. This is not to say that a University can ignore demands by or on behalf of copyright owners that do not include all these elements or information, but that in most such cases a University will want to ask for the balance to be provided so that it can properly assess its position and decide what action to take. Similarly, a University will need to be able to promptly respond to a Take Down Notice or similar demand or report whether it is addressed to any nominated Contact Officer(s) or not. Demands and notices addressed to faculty staff, off campus locations (eg CRCs) and the like will need to be dealt with in a way which ensures that they are quickly and properly investigated and acted upon. Redirecting them to a Contact Officer whose identity and role is understood is one way to achieve this.

5.3 It is suggested that any take down procedure enable a University to investigate and to urgently decide, ordinarily within a few working days of receiving a Take Down Notice (or equivalent), whether or not to remove or disable access to the material alleged in the Take Down Notice to be Infringing Material. Where a University removes or disables access to material in response to a Take Down Notice or the like it should consider retaining a copy of the files the subject of the notice. It should also consider whether the Authorised User(s) involved and those who make decisions about the commencement of relevant disciplinary proceedings or other application of sanctions need to be notified of the decision.

5.4 A University should ensure that any internal take down procedure leaves it free to dispute any Take Down Notice (by notice to the Rights Holder) on any available ground, including that the Rights Holder has not established to the University's satisfaction that:

- (a) it (rather than the University or an employee of the University or some other person) is an owner or exclusive licensee of any relevant copyright in relation to the alleged Infringing Material; or

- (b) the alleged Infringing Material has been reproduced or communicated or otherwise used or dealt with by an Authorised User in any way which infringes any relevant copyright.

In investigating any allegation in a Take Down Notice a University will need to consider whether the reproduction or communication or other use or dealing in the relevant Copyright Material was pursuant to an express or statutory licence, or a fair dealing or other exception under the Act, and it may need to speak to the Authorised User for this or other reasons connected with the allegation and its investigation.

- 5.5 If there is a dispute relating to a Take Down Notice that cannot be resolved by discussion and negotiation between the relevant Rights Holder and the University then a University may wish to keep an appropriate record of its position by advising the Rights Holder in writing of the terms of the dispute and **should** in any case retain a preservation copy of the files the subject of the dispute.

6. University identification of infringing material

Where a University becomes aware other than by means of a Take Down Notice that it is hosting or providing services in connection with possibly infringing reproductions or communications of, or other dealings in, Copyright Material by Authorised Users, it is suggested that the University take all steps that it would take under its take down procedure if it had received a Take Down Notice from a relevant Rights Owner in connection with the same activity. This would not include any obligation to identify or contact the relevant Rights Owner or to let them know of the conduct in question or the steps taken by the University in response.

7. Sanctions

- 7.1 A University should ensure that it is able to impose a range of appropriate sanctions against those who contravene its relevant policies or usage terms. Those sanctions may be pursuant to formal disciplinary procedures and/or pursuant to the terms upon which access to and use of University Systems is granted.
- 7.2 Given that a University must manage the risks arising from its ownership and operation of University Systems, it will need to have the ability to act flexibly and quickly in many cases. Disciplinary proceedings which require the proof of misconduct or of copyright infringement by a student or staff member may not always be appropriate. One option would be to reserve formal disciplinary proceedings for repeat offenders and serious infringements (eg commercial piracy), which equate to misconduct of a deliberate character. In parallel a University could also have terms of access and use which allow it to take a variety of steps from the giving of warnings to temporary suspensions of access if it concludes that there is any non-compliance or likely non-compliance with its policies/user terms. In cases where warnings are given Universities might consider a period during which they do some monitoring of the use of University Systems by the person in question to

check for additional infringing activity. This would be made known to the offender and the possibility of such a sanction made known more generally.

- 7.3 It will be important that when Universities become aware of non-compliance with policies in this area that they do take appropriate action. Students and staff should become aware through news of such actions that the University has both the power to impose sanctions and the resolve to do so in appropriate cases. It is suggested that any review in this area considers whether there is an appropriate range of disciplinary processes and sanctions, whether the "offences" are defined in terms that make them unnecessarily difficult or time-consuming to prove or otherwise put too high an onus on the University, how quickly they could be actioned in relatively straightforward cases, and whether they are also appropriate for more serious or repeat offenders.

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Schedule A

Sample Take Down Notice

- (i) Rights Holder(s): *[insert name details]*
- (ii) The Rights Holder(s) own(s) or is the exclusive licensee of copyright in the following recording(s) and/or musical work(s) as evidenced by the labels, packaging, marks and certificates associated therewith: *[insert description of recording/work or if multiple recordings/works, attach a schedule containing a representative list]*:
- (iii) The Rights Holder(s) has a good faith belief based on reasonable grounds that the following material (**Infringing Material**) has been copied and/or distributed without the permission of the Rights Holder: *[insert description and location of the Infringing Material]*:
- (iv) I am an officer or employee of the Rights Holder(s) and have been authorised by the Rights Holder(s) to make this statement and to request that the recipient of this statement take the steps set out in [paragraphs 6.3 and/or 6.4] of the [University Policy].

Signed by (*Authorised Representative of the Rights Holder(s)*):

Date:

Name: (*please print*)