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The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

## **Copyright Amendment (Online Infringement) Bill 2018**

**No.     , 2018**

*(Communications and the Arts)*

**A Bill for an Act to amend the *Copyright Act 1968*,  
and for related purposes**



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1     **A Bill for an Act to amend the *Copyright Act 1968*,**  
2     **and for related purposes**

3     The Parliament of Australia enacts:

4     **1 Short title**

5                 This Act is the *Copyright Amendment (Online Infringement) Act*  
6                 2018.

7     **2 Commencement**

8                 (1) Each provision of this Act specified in column 1 of the table  
9                 commences, or is taken to have commenced, in accordance with  
10                column 2 of the table. Any other statement in column 2 has effect  
11                according to its terms.  
12



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## Schedule 1—Amendments

### *Copyright Act 1968*

#### **1 Section 115A (heading)**

Repeal the heading, substitute:

#### **115A Injunctions relating to online locations outside Australia**

#### **2 Subsections 115A(1) and (2)**

Repeal the subsections, substitute:

##### *Application for an injunction*

- (1) The owner of a copyright may apply to the Federal Court of Australia to grant an injunction that requires a carriage service provider to take such steps as the Court considers reasonable to disable access to an online location outside Australia that:
  - (a) infringes, or facilitates an infringement, of the copyright; and
  - (b) has the primary purpose or the primary effect of infringing, or facilitating an infringement, of copyright (whether or not in Australia).
- (2) The application under subsection (1) may also request that the injunction require an online search engine provider (other than a provider that is covered by a declaration under subsection (8B)) to take such steps as the Court considers reasonable so as not to provide a search result that refers users to the online location.

##### *Granting the injunction*

- (2A) The Court may grant the injunction in the terms, and subject to the conditions, that the Court considers appropriate.

Note 1: For the matters that the Court may take into account when determining whether to grant the injunction, see subsection (5).

Note 2: The terms and conditions of the injunction that apply to a carriage service provider under subsection (1) may be different from those that apply to an online search engine provider under subsection (2).

- (2B) Without limiting subsection (2A), the injunction may:
-

- 1 (a) require the carriage service provider to take reasonable steps  
2 to do either or both of the following:
- 3 (i) block domain names, URLs and IP addresses that  
4 provide access to the online location and that are  
5 specified in the injunction;
- 6 (ii) block domain names, URLs and IP addresses that the  
7 carriage service provider and the owner of the copyright  
8 agree, in writing, have started to provide access to the  
9 online location after the injunction is made; and
- 10 (b) require the online search engine provider to take reasonable  
11 steps to do either or both of the following:
- 12 (i) not provide search results that include domain names,  
13 URLs and IP addresses that provide access to the online  
14 location and that are specified in the injunction;
- 15 (ii) not provide search results that include domain names,  
16 URLs and IP addresses that the online search engine  
17 provider and the owner of the copyright agree, in  
18 writing, have started to provide access to the online  
19 location after the injunction is made.

20 **3 After paragraph 115A(3)(b)**

21 Insert:

- 22 (ba) if the application under subsection (1) also sought for the  
23 injunction to apply against an online search engine  
24 provider—the online search engine provider; and

25 **4 After paragraph 115A(4)(a)**

26 Insert:

- 27 (aa) if the application under subsection (1) also sought for the  
28 injunction to apply against an online search engine  
29 provider—the online search engine provider; and

30 **5 Paragraph 115A(5)(a)**

31 Omit “(1)(c)”, substitute “(1)(b)”.

32 **6 After paragraph 115A(5)(e)**

33 Insert:

- 34 (ea) if the application under subsection (1) also sought for the  
35 injunction to apply against an online search engine



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1 provider—whether not providing search results that refer  
2 users to the online location is a proportionate response in the  
3 circumstances;

4 **7 After paragraph 115A(5)(g)**

5 Insert:

6 (ga) if the application under subsection (1) also sought for the  
7 injunction to apply against an online search engine  
8 provider—whether it is in the public interest not to provide  
9 search results that refer users to the online location;

10 **8 After subsection 115A(5)**

11 Insert:

12 *Presumption that the online location is outside Australia*

13 (5A) For the purposes of the proceedings, the online location is  
14 presumed to be outside Australia, unless the contrary is  
15 established.

16 **9 After subsection 115A(8)**

17 Insert:

18 (8A) An application under subsection (7) must not request the Court to  
19 vary the injunction so that it applies to an online search engine  
20 provider that is covered by a declaration under subsection (8B).

21 *Declarations excluding online search engine providers*

22 (8B) The Minister may, by legislative instrument, declare that:

- 23 (a) a particular online search engine provider; or  
24 (b) an online search engine provider that is a member of a  
25 particular class;

26 must not be specified in an application under subsection (1) or (7).

27 **10 Subsection 115A(9)**

28 Omit “The carriage service provider”, substitute “A carriage service  
29 provider or, if applicable, an online search engine provider”.

1 **11 Subsection 131A(2)**

2 Omit “against carriage service providers providing access”, substitute  
3 “relating”.

4 **12 Application of amendments**

5 The amendments made by this Schedule apply to applications under  
6 section 115A of the *Copyright Act 1968* that are made on and after the  
7 commencement of this Schedule for:

- 8 (a) the making of an injunction under that section after that  
9 commencement; or  
10 (b) the varying or rescinding of an injunction that is made under  
11 that section before or after that commencement.