

FAQ on COPYRIGHT (INFRINGING FILE SHARING) AMENDMENT ACT 2011 (THE “ACT”)

1. Do AUT staff and students have to comply with AUT policy and Copyright Law

The answer is yes. Staff and students are obligated to comply with all AUT’s policy as well as NZ Law.

2. Infringement: What is file sharing and what does infringement mean in this context?

file sharing is where—

- *“(a) material is uploaded via, or downloaded from, the Internet using an application or network that enables the simultaneous sharing of material between multiple users; and*
- *(b) uploading and downloading may, but need not, occur at the same time”*

“infringement means an incidence of file sharing that involves the infringement of copyright in a work by a user”¹

3. Examples of infringements

The scope of the changes are focussed on copyright infringements by online file sharing using peer-to-peer [P2P] networks and applications. For example the downloading and sharing of music and video material are usually prohibited and represent an area of risk to infringe. There are exceptions though and the link below provides useful information on YouTube, steaming music and downloading files from online file lockers like MediaFire and 4shared.

<http://3strikes.net.nz/information/faqs>

4. The Act refers to account holders. Are AUT staff members and students internet account holders?

Yes any staff or students who have been given an Internet account are internet account holders under the Act. Staff and students are provided with unique login identity to their account, along with the tools [PC, Laptop and other devices], which is given a unique internet address, to enable the user to access and use AUT’s internet services and devices in conducting their work or study.

5. Is the use of an account secure?

Yes it is, provided that the username and especially password is not shared with anyone else. To safeguard the usage of internet accounts these details should not be shared with others. As a further precautionary measure ICT Services prompt staff members regularly to change their passwords.

¹ [Copyright \(Infringing File Sharing\) Amendment Act 2011 \(The “Act”\) Section 122 A \(1\)](#)

6. Can someone else use/misuse my internet account?

Yes they can, if your identity is stolen or you have shared this with others. If you suspect someone has stolen your ID you should change your password and advise the ICT Services Desk.

7. Who is responsible for the use of an internet account?

*All users or account holders are accountable for the activity carried out under their Internet account. This is a crucial point because the user as account holder is ultimately responsible for the usage of their account under the Act. Legal action by the **rights owner**² will be against the account holder and not against AUT.*

8. How seriously does AUT view a breach in copyright/file sharing infringements?

Very seriously. People and Organisation may become involved if AUT receives a first infringement notice from a rights holder, and the account holder can expect People and Organisation's involvement if AUT receives a second[repeat] infringement notice for the same account holder. Disciplinary action will be taken under the AUT's Employee Discipline Policy for employees and appropriate action for contract workers.

***Students** will be disciplined under the AUT's [Complaints Procedure and Discipline Statute](#). The seriousness is apparent if you read with care the process to be followed by AUT [as **ISP**³ and **IPAP**⁴] to comply with the Act.*

9. What are the main elements of the process referred to?

- In the event of unlawful downloading of copyrighted material, as detected by the copyright owner, AUT will receive copyright infringement notices and as ISP and IPAP to staff and students is obligated to serve certain types of infringement notices [see next paragraph] to internet account holders as prescribed by the Act.*
- The first infringement notice is called a “**detection notice**”. The second is called a “**warning notice**” and the third and last an “**enforcement notice**”. The second and third notices will be served by AUT on account holders after repeat infringements by the same account holder are established. All these actions are triggered by receiving infringement notices from the same **rights owner**⁵.*

² **Rights Owner** means a Copyright owner or a person acting as an agent for one or more copyright owners.

³ **ISP** is an Internet Service Provider

⁴ **IPAP** is an Internet Protocol Address Provider

⁵ **Rights Owner** means a Copyright owner or a person acting as an agent for one or more copyright owners.

- Each notice brings with it certain obligations to both AUT as ISP and IPAP but also to AUT as employer. People and Organisation [HR] or the Dean in the case of a student will be informed of the different notices after confirmation that a specific account has been used in infringing copyright. Offending staff can expect People and Organisation to personally communicate with them on the issue of breaching AUT policy and NZ Law shortly after a “warning notice” of a repeat infringement is received. The same will happen when an “enforcement notice” is received. However People and Organisation may become involved in the event of an initial “detection notice” being received.
- After the third notice or “**enforcement notice**” is served on an account holder the copyright owner may take enforcement action against the account holder by doing either or both of the following:

“ (a) applying to the Tribunal for an order under section 122O against the account holder:

(b) applying to a District Court for an order under section 122P against the account holder”⁶

It should be noted that legal action is taken against the account holder [Staff or student] and not against the ISP or IPAP, which is AUT in this instance.

- The outcome of the Tribunal hearing could end up in a payment by the account holder to the rights owner. The maximum amount payable is \$15,000.
- Repeat infringements may lead to suspension of the internet account and internet use of the staff member or student.
- Repeat infringes by staff will lead to appropriate intervention by People and Organisation.

10. Communication on all alleged offences

- Will a staff member or student receive a **legitimate infringement notice** directly from the rights owner?
 - No, never. All notices will be served on the University as the ISP and IPAP. Head of Policy’s Office will work with ICT Services to identify the account holder and then involve either People and Organisation or the DEAN and the account holder in any further action. **Account holders should not directly communicate with any so called copyright owner [rights owner] on an alleged copyright infringement.** AUT will maintain a single channel of communication with copyright owners to ensure user’s rights are protected and AUT’s reputation as a law abiding organisation is safeguarded.
- Will AUT disclose any personal information regarding the account holder to the rights owner?
 - Not until obligated to by law.
- Will AUT disclose personal information to the Tribunal?

⁶ [Copyright \(Infringing File Sharing\) Amendment Act 2011 \(The “Act”\) Section 122I](#)

- *Yes, but only when ordered by the Tribunal after an **enforcement notice** has been served in accordance with the Act.*

11. If you have any questions please contact

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