

---

## EMPLOYMENT

NOVEMBER 2011

---

---

## PREVENTING ILLEGAL INTERNET DOWNLOADS - AN EMPLOYER'S GUIDE

---



**Rob Towner**  
PARTNER

Last week, Telecom, Orcon, TelstraClear and Vodafone each confirmed receipt of multiple detection notices relating to the illegal downloading of music. Orcon and TelstraClear have received further notices this week.

The notices were issued under a new internet copyright infringement regime, introduced by the Copyright (Infringing File Sharing) Amendment Act 2011 (**Amendment Act**) which came into force on 1 September this year.

In turn, the respective recipient internet service providers (**ISPs**) (eg Telecom and Vodafone) are required to serve notices on their account holders who are responsible for the infringements and may or may not be employers.

### How does the new regime affect employers?

Under the new law, an employer could be liable in respect of an employee's infringing use of the internet at work.

The Amendment Act provides for copyright owners to complain to an ISP about infringement of their copyright by illegal "file sharing". File sharing is defined as uploading and downloading material from the internet, using an application or network

that enables simultaneous sharing of material between multiple users. It includes, for example, downloading songs, films, television programmes and software. Where this is done in breach of copyright, it will constitute an infringement under the Act.

An ISP, on receiving a complaint, must identify the internet account holder (which in a work context will be the employer, not the individual employee user), and issue an appropriate infringement notice in accordance with a "three strike" process.

The three types of infringement notices are as follows:

- First detection notice for a first infringement;
- Warning for a second infringement;
- Enforcement notice for a third infringement.

If an enforcement notice is issued, the aggrieved copyright owner can bring a claim in the Copyright Tribunal against the account holder for compensation of up to \$15,000. In addition, in a provision not yet in force, the Amendment Act empowers the District Court on application to order the suspension of an account holder's internet access for up to 6 months.

To view all our publications or update your details please visit our website: [www.bellgully.com](http://www.bellgully.com)

For further information, please contact your usual Bell Gully adviser or:

**Rob Towner**

64 9 916 8902  
[rob.towner@bellgully.com](mailto:rob.towner@bellgully.com)

**Tim Clarke**

64 9 916 8347  
[tim.clarke@bellgully.com](mailto:tim.clarke@bellgully.com)

## Key tips for employers – prevention is better than cure

Employers will want to ensure that:

- policies on internet use address “file sharing” for this purpose, and set out clearly the consequences for employees of any breach, including disciplinary action;
- internet policies have been properly promulgated;
- employees are aware of and understand the potential implications if they upload or download music, videos or other material in which a third party has copyright;
- sufficient protection is in place in relation to internet use by employees and others in the workplace (both while at work and remotely) in terms of restricting or blocking access to certain websites and/or monitoring use of the internet;
- security systems are in place which enable the identification of a particular internet user within the organisation.

What if an employer is issued a detection notice? It will be necessary to quickly identify the employee who for example downloaded the music, and then for the employee to be spoken to. It may be that a discussion and reprimand will be sufficient to put an end to the employee’s unacceptable behaviour, but depending on what has actually been done and whether it is a first or subsequent occasion, it may be necessary to initiate a disciplinary procedure. Of course, if the employee denies that they were responsible, a wider investigation may be required.

There is also a right under the Amendment Act to challenge an infringement notice in certain circumstances and within a prescribed time frame.

Disclaimer: This publication is necessarily brief and general in nature. You should seek professional advice before taking any further action in relation to the matters dealt with in this publication.

All rights reserved © Bell Gully 2011