

March 2010

**LG Law**

## Copyright (Infringing File Sharing) Amendment Bill

A bill repealing section 92A of the Copyright Act was introduced to Parliament on 23 February 2010. The bill is intended to put in place a fair and balanced process to deal with online copyright infringement by unauthorised file sharing. It replaces a scheme which was delayed thanks to a barrage of criticism fearful of the drastic consequences of unwarranted disconnections.

The bill sets out a three notice process which first seeks to educate the offender on illegal file sharing and, if that fails, to provide a system under which copyright owners can enforce their rights.

The new system is a compromise designed to reduce the need for drastic steps damaging business. However, large employers and operators of facilities giving public access to the internet, such as public libraries and i-sites, need to remember that an ultimate sanction of disconnection is still available.

Under the new regime the copyright owner may request the internet service provider (ISP) to give an alleged infringing account owner a notice to stop infringing. This first notice informs the account owner that an infringing activity has occurred and that it is illegal. A second and third notice may be sent if the account holder ignores these notices and continues infringing.

After issuing the third notice the copyright holder can seek reparation of up to \$15,000 from the copyright tribunal. They can also take court action to have the ISP account holder disconnected for up to six months.

Account holders will have the right to challenge any notice and to make submissions on whether they have infringed the copyright and any penalty.

The bill includes a clear exclusion of all liability for the ISPs provided they follow the procedures required of them. However, providers of internet access to the public such as public libraries, universities and i sites have been clearly excluded from this exception. These parties not only risk disconnection but also liability for the infringement itself.

This bill is a second attempt to deal with this issue and is the result of considerable consultation. A scheme along these lines is therefore likely.

Councils should review their employment policies to ensure that they are in a position to prevent any further infringement by an employee after the first notice. Councils should also review their policies and processes relating to any service providing internet access to members of the public, such as in their

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libraries or i-sites, with a view to reducing the chances of the public indulging in illegal file sharing while using these services.

When considering an application for disconnection the court will be required to take all factors into account, including the impact of the disconnection on any business. We feel that an important community or business function operating such policies and practices is unlikely to be at any real risk of disconnection.

If you would like any assistance with this review or any further information on the bill please contact **John Ferner** (t: 09 979 2153 - e: [ferner@brookfields.co.nz](mailto:ferner@brookfields.co.nz)) in our commercial team.

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