



What is file sharing?

Put simply, file sharing is making digitally stored information (like movies, music and software) available for others to access across the internet. There are many different ways that file sharing can occur. One of the most common ways to do this is by using peer-to-peer computer networks, which is a way of describing a series of computers which are all able to link directly to each other.

The BitTorrent system is an example of a peer-to-peer network that allows users to search and locate files from a series of computers across the network, and then download those files onto their own computer.

What's this law for?

The Copyright (Infringing File Sharing) Amendment Act was passed by Parliament to create a notice-based regime aimed at reducing infringing file sharing on the Internet. There were three key objectives.

The first was to let people know that they were facing infringement allegations. By doing so, they would be less likely to infringe in that way. The set up assumes that people feel they "won't get caught" - and that getting a notice in the email saying they had been detected as allegedly infringing copyright would deter people from doing so.

The second was to further deter people who received repeated notices from continued infringement by providing for a fast-track judicial process that could lead to a fine of up to \$15,000 for repeated infringement of copyright through file sharing.

The third was to give copyright holders a faster and cheaper means of enforcing their rights than was available through the Court system under the earlier Copyright Act provisions. (They can still use the Court system if they choose.)

What is infringing file sharing?

Not all file sharing is illegal. If you create original work, and choose to share it across the internet, then you are not breaking the law. Creative commons provides a system of open licensing which allows individuals to protect their copyright while allowing the free exchange of their work. You can find out more about New Zealand's Creative Commons licensing by visiting their website at http://wiki.creativecommons.org/New_Zealand.

The law says that infringing means "an incidence of file sharing that involves the infringement of copyright in a work". Put simply, if a movie, a piece of music, a piece of software or any other digital file is protected by a copyright that does not allow sharing or public use, then you MAY NOT download them, or make them available to others to download. If you do, then you will be in breach of the law.

Description of and link to the Act

The main piece of legislation involved is the Copyright (Infringing File Sharing) Amendment Act 2011. You can get a copy of the Act on the Internet here:

<http://legislation.govt.nz/act/public/2011/0011/latest/DLM2764312.html>

The Act sets out the steps involved in the new process:

- it defines the purpose of the regime and defines terms like infringing file sharing, Internet Protocol address provider (usually your ISP), rights owner, the various types of notices and so on.
- it requires ISPs to send notices to their account holders if they receive a properly formatted notice from a rights holder, provided the fee is paid.
- it sets out what has to be in the notices rights holders send IPAPs, and in the notices IPAPs send to account holders.
- how account holders can challenge infringement notices they have been sent
- enforcement action rights holders can take in the Copyright Tribunal, and how the Tribunal does its job.
- a provision to give the District Court to order the suspension of someone's Internet account for up to six months (but this is not yet in effect, and will only come into effect if the Government decides to implement it).
- A few other miscellaneous articles.

The Act forms part of the whole Copyright Act 1994, which you can also find online through the links section of this website.

Your rights; Challenging notices

If you receive a notice that alleges file infringing and you do not accept that you have done so, you can challenge the notice.

The way to do this is explained in the notice, and involves you replying to the organisation that sent you the notice (your ISP) using whatever system they have. This may be by return email or via a form on their website.

You also have the right to respond directly to the copyright owner or their agent. We recommend you do not take this approach. If you reply through your ISP, you remain anonymous to the rights holder. If you contact them directly, they then know who you are and have your contact details, and could send you notices outside the protections set up by the filesharing law.

Your rights;The Copyright Tribunal

If you have received the three notices set out under this regime, you can be taken to the Copyright Tribunal.

The Tribunal is a government body that can determine whether the evidence that says you infringed copyright stacks up, and then impose penalties on you -- of up to \$15,000. Like other Tribunals the aim of it (compared with a Court) is to be fairly informal and low key. This means that there are no lawyers involved - you are able to represent yourself at the Tribunal if you like.

The Tribunal can make decisions based on papers, that is, without a real life meeting with you and with rights holders.

If you are notified that a rights holder is taking proceedings against you in the Tribunal, but think you have not infringed copyright, you have to say so to the Tribunal. If you don't raise any objection, then the Tribunal is entitled to treat the allegations against you as fact, and will probably proceed to impose a penalty on you.

We can't stress this strongly enough: unless you respond to explain why you think you didn't conduct any infringement, or why the notices sent to you are not valid, you will risk a financial penalty.

Like all New Zealand tribunals, you have the right to be treated with respect, and if there is a hearing, the Tribunal will listen to you with respect. While you won't be represented by a lawyer, neither will the rights holder seeking a penalty against you, unless the Tribunal decides otherwise.

Your responsibilities

Infringing file sharing is against the law. You are responsible for decisions you make about the use of copyright material. Our advice is to only use material that you have the right to use - that you have bought or obtained by legitimate means.

This law makes you responsible for everything that happens on your Internet account. Anybody using the Internet provided by you (e.g. family members around the house, friends or visitors using any WiFi you let them access) could engage in file sharing - either knowingly or by mistake. They are not liable: you are.

If your computer or Internet connection are not secure, you may find yourself being sent notices under this law through someone else's actions.