

# NEW AUSTRALIAN COPYRIGHT LAWS

## COMMERCIAL-SCALE ELECTRONIC INFRINGEMENTS

The power of a court to act against commercial-scale online piracy has been enhanced.

New sub-ss 115(5), (6), (7) and (8) give a court enhanced powers to grant relief to copyright owners in civil actions involving commercial-scale electronic infringements. They are designed to capture infringements that occur through peer-to-peer file sharing or by way of hypertext linking or downloads from remote websites.

The new provisions do not affect the current powers courts have to grant relief eg injunctions or damages (including additional damages) or an account of profits.

### Operation of provisions

A court has additional power to grant relief in civil actions where it is satisfied that:

- the respondent has committed an infringement (including by authorisation)
- it involved a communication of a work or other subject-matter to the public
- because of this communication it is likely there were other infringements of the copyright by the defendant that the plaintiff did not prove, and
- taken together, the proven infringement, and the likely infringements, occurred on a commercial scale.

Where a court is satisfied of these matters, it may have regard to the high probability of the likely infringements (as well as the proven infringements) in deciding what relief to grant in the action.

The determination of 'commercial-scale' is not limited to proven infringements. Likely infringements may be taken into account. However, the plaintiff is required to establish that an infringement has occurred. A court may then have regard to likely infringements in the determination of scale.

A court may consider certain matters in determining if the infringement has occurred 'on a commercial scale' (see sub-s 115(7)). This includes the volume and value of articles that are infringing copies constituting the proven infringements, or infringing copies constituting the likely infringements, assuming they actually occurred.

**This fact sheet provides general information only and is not a substitute for professional legal advice.**



**Australian Government**  
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