



# Site Blocking & Copyright Infringement

In this fact sheet we give a brief overview of the site blocking laws under section 115A of the *Copyright Act 1968*, which give the Federal Court of Australia the power to order a carriage service provider to block access to a foreign website that has the primary purpose or effect of infringing, or facilitating an infringement of, copyright.

Our [Copyright Essentials](#) book provides in-depth guidance on the provisions of the *Copyright Act 1968* (Cth) (Copyright Act) set out in this fact sheet. It is available for purchase from our website: [copyright.org.au](http://copyright.org.au). Information about our education programs is available [here](#).

The purpose of this fact sheet is to give general introductory information about copyright. If you need to know how the law applies in a particular situation, please get advice from a lawyer.

Our fact sheets [Websites & Copyright](#), [Infringement: What Can I Do?](#), [Protecting Your Copyright](#), and [Geo-blocking, VPNs & Copyright](#) may also be relevant.

## Key points

- In June 2015, the Copyright Act was amended to allow copyright owners to seek an injunction against a carriage service provider to block access to foreign websites that have the primary purpose or effect of infringing, or facilitating the infringement of, copyright.
- In December 2018, the Copyright Act was amended further to expand the threshold test for site-blocking orders, extend the provision to search engines, and allow for more responsive court orders to be made.
- The scheme is similar to other regimes that operate overseas.
- The first decision under the new laws was made in December 2016, granting an injunction against a number of overseas websites facilitating copyright infringement.

### 1. How does the site blocking power work?

A new section 115A was inserted into the Copyright Act by the *Copyright Amendment (Online Infringement) Act 2015* (Amendment Act). This section provides that a copyright owner may apply to the court for an injunction against a carriage service provider to take reasonable steps to disable access to an online location outside Australia. The section was amended in 2018 to address efficiencies after an open consultation period.

A carriage service provider is regulated under the *Telecommunications Act 1997* (Cth) and is a provider of communications services, for example telephone services or internet access services.

Companies such as Telstra and iiNet are carriage service providers. A carriage service provider is not liable for any costs in relation to proceedings brought under section 115A unless the carriage service provider appears and takes part in the proceedings.

If an injunction is granted, the court has the power to limit the duration of the injunction, or upon application rescind or vary the injunction.

## **2. Threshold matters**

Before granting an injunction, the court must be satisfied that:

- the carriage service provider provides access to an online location outside Australia
- the online location infringes, or facilitates an infringement of, copyright, and
- the primary purpose, or the primary effect, of the online location is infringing, or facilitating an infringement, of copyright (whether or not in Australia).

### **2.1 Online location outside Australia**

Section 115A provides for blocking of “online locations”. The Revised Explanatory Memorandum states the term “online location” is intentionally broad and includes, but is not limited to, a website, and would also accommodate future technologies.

Importantly, the power is to block access to online locations which are outside Australia’s jurisdiction. For the purposes of proceedings under section 115A, an online location is presumed to be outside Australia unless the contrary is established.

Under the 2018 amendments, it is possible for a section 115A injunction to also require that search engines such as Google take reasonable steps not to provide search results within Australia for online locations subject to a section 115A injunction. In recognition of how a website can be moved to different domain names, the 2018 amendments also provide that where an injunction is granted, it is possible for the parties involved to agree to extend the injunction to include new domain names associated with the blocked online location, without having to apply to court.

### **2.2 Infringes, or facilitates infringement, of copyright**

The [Revised Explanatory Memorandum](#) provides examples of online locations that infringe, or facilitate an infringement of, copyright:

“a website provides torrent files that facilitate the download and upload of copyright material without the permission of the copyright owner. It would also include websites that provide links to, or host, infringing material, as well as online storage services that are used to store infringing material.”

Cases heard under section 115A have successfully blocked torrent sites, unauthorised streaming sites, and domain names that facilitate unauthorised streaming of films, TV shows, and TV broadcasts to smart device apps.

### **2.3 Primary purpose or primary effect**

The online location must have the primary purpose, or the primary effect, of either infringing copyright, or facilitating an infringement of copyright. By covering both the purpose and the effect of an online location, a court can consider a range of factors, including but not limited to the intent of the online location’s operator, in deciding whether to grant an injunction.

This primary purpose or primary effect test also means that legitimate foreign websites that provide legitimate copyright material, but are not licensed in Australia, would not be blocked. For example, the copyright owner of a film might licence their film to show on a website in Canada, but not

Australia. If that Canadian website is accessible in Australia, this would be an infringement of copyright in the film. However, because the film is made available by the Canadian licensee, the purpose of the Canadian website is not to infringe copyright, and while copyright infringement may be an effect of the website, it is not the primary effect. The copyright owner would not be able to apply for an injunction to block access to the website in Australia.

The [Revised Explanatory Memorandum](#) states that the test is not intended to capture Virtual Private Networks (VPNs) that are “promoted and used for legitimate purposes”, or merely used to access legitimate copyright material distributed in a foreign geographic market. Our fact sheet [Geo-blocking, VPNs & Copyright](#) provides further guidance on the law as it relates to the internet and jurisdiction.

### **3. Matters to take into account**

Section 115A(5) provides that in determining whether to grant an injunction, the court may take the following matters into account:

- the flagrancy of the infringement, or the flagrancy of the facilitation of the infringement
- whether the online location makes available or contains directories, indexes or categories of the means to infringe, or facilitate an infringement of, copyright
- whether the owner or operator of the online location demonstrates a disregard for copyright generally
- whether access to the online location has been disabled by orders from any court of another country or territory on the ground of or related to copyright infringement
- whether disabling access to the online location is proportionate response in the circumstances
- the impact on any person, or class or persons, likely to be affected by the grant of the injunction
- whether it is in the public interest to disable access to the online location
- whether the owner of the copyright notified the carriage service provider and person operating the online location that they have made an application for an injunction
- any other remedies under the Copyright Act
- any other matter prescribed by the Copyright Regulations, and
- any other relevant matter.

### **4. The site blocking process**

To get an injunction to block a website, a copyright owner must apply to the Federal Court. At the same time, the copyright owner must notify both the carriage service provider and (where possible) the relevant website operator that a site blocking application has been made.

While a carriage service provider can decide to appear in court to resist a site blocking order, they do not have to do so. In most cases the court proceedings are likely to take place without oral evidence and will not require a carriage service provider to appear in court.

The carriage service provider is only required to take reasonable steps to block the website when it receives an order from the court to do so. The court may limit the duration of the block or rescind or vary the block if someone applies to the court to do so.

### **5. Costs**

A carriage service provider is not liable for any costs in relation to proceedings brought under section 115A unless it chooses to appear and take part in the court proceedings and is unsuccessful.

## 6. Section 115A in action

### 6.1 Roadshow Films Pty Ltd v Telstra Corporation Ltd [2016] FCA 1503

The first decision under section 115A was brought by Roadshow Films together with a number of Hollywood film companies against Australian ISPs including Telstra, Optus, TPG and iiNet. The film companies were seeking a section 115A order to block access to SolarMovie, an overseas website providing unauthorised online streaming of films and TV shows. At the same time, Foxtel Management filed a separate case against the same ISPs, applying for a section 115A injunction against overseas websites The Pirate Bay, Torrentz, isoHunt, and TorrentHound, which provide torrent files to enable copyright infringement of films and TV shows (*Foxtel Management Pty Ltd v TPG Internet Pty Ltd & Ors*).

The two cases were heard concurrently over the course of 2016. The operators of the websites did not seek to join the proceedings, and the majority of the arguments between the parties was over the costs and responsibility of implementing a site-block.

The Federal Court handed down a single judgment for both cases on 15 December 2016. In both matters, it ordered that:

- the ISPs must take reasonable steps to disable access to the named websites, and reroute any connection attempts to a webpage explaining that access has been disabled by court order for facilitating copyright infringement
- the injunction be subject to court oversight, including allowing the operators of the blocked websites be permitted to apply to vary or stop the injunction if they so wish, and
- the applicants pay a portion of the ISPs' compliance costs. The quantum was based on the estimation of Optus (\$1,500) and TPG (\$50 per domain name), rather than Telstra's estimation of some \$10,000 in set-up costs. The applicants were also ordered to pay the ISPs' agreed costs of putting on further evidence.

The judge ordered that the injunctions were to last for three years and may be extended upon application from the content-owners. The ISPs were given 15 days from the date of decision to implement the site blocks. The operators of the affected websites could, at any point during the injunction period, apply to have the court order varied.

### 6.2 Subsequent decisions on the 2015 legislation

There were a number of cases brought under section 115A against websites such as Demonoid, LimeTorrents, EZTV, and Project FreeTV. All websites either facilitate the download of torrent files or host unauthorised online streams of film and TV shows. Other cases have targeted domain names that facilitate unauthorised streaming of TV shows and movies through smart device apps. Cases are generally successful with orders granted on terms largely similar to those set down in the first section 115A case.

### 6.3 The review and 2018 amendments

A review into the operation of section 115A commenced in February 2018 and received [twenty submissions from a range of stakeholders](#), including the Australian Copyright Council. A report of the consultation was released on 26 November 2018.

In October 2018 the Federal Government introduced amendments to make section 115A more effective, with appropriate safeguards. These amendments were passed as the *Copyright Amendment (Online Infringement) Act 2018* and commenced on 11 December 2018.

### 6.4 Decisions on the amended legislation

There have been a number of applications to the Federal Court made by applicants in the *Roadshow Films* case referred to above, with orders sought in substantially similar terms to those in previous applications. In *Roadshow Films Pty Ltd v Telstra Corporation Ltd [2019] FCA 1328* the

applicants sought a shorter timeframe in which to approach the Court to have the orders extended at the end of the initial period than had been ordered in previous similar cases. The Court held that a reduction from six months to two months provided sufficient time for the owners and operators of websites to respond while also reducing the costs that might otherwise be incurred. Blocked online locations or websites may change, including in response to the making of orders under section 115A, and a shorter period would enable more up-to-date evidence to be provided when the Court is considering an extension application.

There have been similar subsequent applications for site-blocking orders in response to new websites (that host infringing material) and new carriage service providers. See, for example, *Roadshow Films Pty Ltd v Telstra Corporation Limited* [2022] FCA 1468.

## Frequently Asked Questions (FAQs)

### Can VPNs be blocked under section 115A?

Ordinary commercial providers of VPNs are highly unlikely to be affected by section 115A. This is because most VPN providers do not infringe copyright nor facilitate the infringement of copyright. Further, most VPN providers do not have the primary purpose of infringing copyright. However, if a VPN provider explicitly marketed itself as a means to access infringing copyright and set its service up with the primary purpose of facilitating copyright infringement by its subscribers, then a copyright owner might be able to obtain an injunction against that VPN. See our fact sheet [Geo-blocking, VPNs & Copyright](#) for further guidance.

### Will section 115A affect my ability to access legitimate content?

Section 115A is aimed at disrupting access to commercial-scale copyright infringement. If you purchase, access or subscribe to legitimate, licensed copyright material, this provision will not disrupt your access.

### A foreign website is infringing my copyright, what can I do?

If the foreign website operates a takedown notice scheme (e.g. the DMCA notice scheme required of US-based websites), this is the best place to start. This will have your copyright material taken down from the website. See our fact sheet [Protecting Your Copyright](#) and [Infringement: What Can I Do?](#) for further guidance on enforcing your copyright online.

If the website does not contain a takedown notice scheme and is infringing your copyright, then for more serious infringements, you might consider making an application to the court to have the website blocked. Court processes can be expensive, so try to ensure you have legal advice and representation before you seek an injunction under section 115A.

### What should an ISP do if it gets a letter of demand?

If you are an ISP who receives a letter of demand from a copyright owner under section 115A, you should respond promptly and professionally. You may also want to seek independent legal advice.

If a copyright owner has sent you a letter of demand under section 115A but has not made a court application, there is no obligation on you to take steps to block any websites. Similarly, if a copyright owner has applied to the court for an injunction under section 115A but an injunction has not yet been granted, you do not need to take steps to block any websites.

If a copyright owner sends you a letter of demand and says that they have successfully sought a court injunction under section 115A, you should ask them to send you a sealed copy of the order so that you may properly comply with it and take reasonable steps to block the relevant websites.

### Are there other ways that an ISP could be made to block overseas websites?

There are other laws under which Australian government agencies can require an ISP to either block, or at least offer customers an internet filter for, an overseas website. These include the *Telecommunications Act 1997* (Cth), the *Broadcasting Services Act 1992* (Cth), and the Interactive Gambling Industry Code (as per the *Interactive Gambling Act 2001* (Cth)).

As the Australian Copyright Council only provides information on copyright law, further advice on these laws should be sought from a lawyer in private practice who has the relevant expertise.

### Further information

We also have a range of other fact sheets on a number of topics and publish books that focus on specific interest groups. Check our website for information about our publications [here](#) and details of our seminar/webinar program [here](#).

We can provide this fact sheet in an accessible format or in hard copy on request.

An Australian Copyright Council lawyer may be able to give you free preliminary legal advice about an issue not addressed in a fact sheet. This service is primarily for professional creators and arts organisations but is also available to staff of educational institutions and libraries. For further information about the service, see [Legal Advice](#) on our website [copyright.org.au](http://copyright.org.au).

### Reproducing this fact sheet

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### About Us

The Australian Copyright Council is an independent, not-for-profit, non-government organisation. Founded in 1968, we represent the peak bodies for professional artists and content creators working in Australia's creative industries and Australia's major copyright collecting societies. Our objectives include:

- to assist creators and other copyright owners to exercise their rights effectively
- to raise awareness in the community about the importance of copyright
- to identify and research areas of copyright law which are inadequate or unfair
- to seek changes to law and practice to enhance the effectiveness and fairness of copyright
- to foster co-operation amongst bodies representing creators and owners of copyright.

The Australian Copyright Council respectfully acknowledges the Gadigal people, the owners and custodians of the land on which our office is located. We pay our respects to the elders and to all First Nations elders: past, present and emerging. This always was and always will be Aboriginal land.



The Australian Copyright Council has been assisted by the Australian Government through the Australia Council, its arts funding and advisory body.

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