

AARNet Pty Ltd

Policy relating to material accessible through APL's Networks

Date: 1 August 2012

1. Preamble, Application of Policy

1.1 Under the terms of each Access Agreement entered into between APL and a Customer, each Customer has agreed, among other things:

- (a) to comply with APL's *Policy on Allowed Access to AARNet*, and other applicable APL policies in relation to the use of the Services, of which APL notifies its Customers, in writing, from time to time;
- (b) that the telecommunications and other services made available through APL's Networks:
 - (i) will be used or allowed to be used only for lawful purposes and in accordance with all applicable laws, regulations and codes of conduct;
 - (ii) will not be used, or be allowed to be used:
 - (A) to infringe another person's rights (including that person's intellectual property rights);
 - (B) in a manner that may expose APL to liability;
 - (C) to transmit, publish or communicate any defamatory, offensive, abusive, indecent or menacing material; and/or
 - (D) to violate or infringe any duty or obligation owed to any person under law.

1.2 For the purposes of each Access Agreement between APL and a Customer, this is a policy applicable in relation to the use of the Services and, in respect of all existing Access Agreements will become binding on that Customer:

- (a) 30 days from the date on which each Customer receives notification of this policy, in the case of Customers who, as at the date of this policy, have already entered into an Access Agreement; and
- (b) immediately in the case of a Customer who enters into an Access Agreement with APL on or after the date of this policy.

1.3 This policy (**Policy**) regulates the storage of, and access to, certain types of Content on APL's Networks or servers and, in particular:

- (a) relates to:
 - (i) a Customers' obligations in relation to the storage of copyright material on APL's networks or servers; and
 - (ii) the procedures followed by APL in relation to Takedown Notices received from owners of copyright material or the ACMA;

- (b) outlines APL's procedure following receipt of notification that its service is being, or may be, used to infringe copyright;
- (c) prescribes certain requirements with the intent of facilitating the intent of the Broadcasting Act; and
- (d) sets out the rights of Customers and End-Users in relation to Takedown Notices.

1.4 In this Policy:

- (a) **Access Agreement** in respect of a given Customer of APL, means any agreement between APL and that Customer pursuant to which that Customer is granted access to, and use of, AARNet and Services made available through AARNet, and/or other carriage services provided by APL from time to time.
- (b) **Access Policy** means the *Policy on Allowed Access to AARNet* dated 1 January 2005, and includes all modifications or amendments to, or replacement versions of, that document made by APL in its discretion from time to time.
- (c) **ACMA** means the Australian Communications and Media Authority;
- (d) **APL** means AARNet Pty Ltd;
- (e) **APL's Networks** means the Australian Academic and Research Network comprising the APL-managed State and Territory networks including servers, fibre, equipment and telecommunications infrastructure, within Australia, connected to each other and to other networks nationally and internationally.
- (f) **Authorised User** in respect of a Customer of APL, means an individual who is:
 - (i) a student, officer, employee, contractor, invitee or agent of that Customer; or
 - (ii) a staff member or academic of an educational or research institution who is visiting that Customer,

and is authorised to access and use APL's Networks, or any services made available through APL's networks or servers, by that Customer.

- (g) **Broadcasting Act** means the *Broadcasting Services Act 1992* (Cth.);
- (h) **Business Day** for the purposes of the exercise of a right or discretion, or fulfilment of an obligation, under this Policy, means a day that is not a Saturday, Sunday or public holiday in the place in or at which that right or discretion is to be exercised, or that obligation fulfilled, as the case may be;
- (i) **Classification Act** means the *Classification (Publications, Films and Computer Games) Act 1995* (Cth.);
- (j) **Code** means the Internet Industry Association's (**IIA**) Codes for Industry Co-regulation in Areas of Internet and Mobile Content, as updated, amended or replaced from time to time;
- (k) **Content** means any content or material in any form that can be stored and accessed electronically;

- (l) **Copyright Act** means the *Copyright Act 1968* (Cth.);
- (m) **Counter-notice** has the meaning given to that term in Part 3A of the Copyright Act;
- (n) **Customer** means an entity or institution who has an Access Agreement with APL, and has access and use of APL's Networks, or any services made available through APL's Networks or servers, transmits internet data over APL's Networks and stores Content, or directs Content to be stored, on APL's Networks or servers;
- (o) **End-User** in respect of a given Customer, means any person (including, without limitation, persons who are Authorised Users or students, officers, employees, contractors, invitees or agents of a Third Party User) who accesses, or is permitted by that Customer, to access any APL's Networks, or any services made available through APL's Networks or servers;
- (p) **IIA Safety Page** means the Safety Page in respect of the IIA under the Code;
- (q) **Infringing Content** has the meaning given in item 2.1(c);
- (r) **Minor** means an End-User who is under the age of 18;
- (s) **Offending Content** has the meaning given in item 2.1;
- (t) **Owner** means an owner of copyright or their agent(s);
- (u) **Prohibited Content** has the meaning given in item 2.1(d);
- (v) **Restricted Content** means Content classified R 18+¹ or MA 15+² under the Classification Act, or Content likely to be so classified;
- (w) **Site** means any website stored, or directed to be stored, on APL's networks or servers that is accessible by End-Users or the public; and
- (x) **Takedown Notice** means:
 - (i) a notice issued by an Owner under Part 3A of the Copyright Act; or
 - (ii) a final or interim take-down notice issued by the ACMA under Schedule 5 of the Broadcasting Act.
- (y) **Third Party User** in respect of a given Customer, means an entity or institution (other than that Customer) whose activities or functions are such that, under the Access Policy, it is permitted to be connected to APL's Networks, and (subject to the terms of the Access Policy) is authorised under the Access Agreement to access the services made available through APL's Networks, and includes individuals that are students, officers, employees, contractors, invitees or agents of such entity or institution, who are permitted by that entity or institution to access those services.

¹ Such content includes depictions of simulated sexual activity, material containing strong, realistic violence and other material dealing with intense adult themes.

² Such content includes material containing strong depictions of nudity, implied sexual activity, drug use or violence, very frequent or very strong coarse language, and other material that is strong in impact.

2. Customers' obligations in relation Content

2.1 Without limiting its obligations under its Access Agreement, a Customer of APL must not, and must not permit its End-Users to:

- (a) store, or direct to be stored on APL's Networks or servers, or otherwise download through the use of APL's Networks; or
- (b) link to or reference from APL's Networks or servers,

any Content that:

- (c) may, or may be likely to, infringe a persons rights as an owner or licensee of the copyright in a work, sound recording, cinematograph film, television or sound broadcast, published edition of work or in any item, thing or product in which copyright subsists under the Copyright Act (**'Infringing Content'**); or
- (d) is in contravention of any Australian State, Territory or Commonwealth law (including without limitation any Content that is classified 'RC' or 'X18+' under the Classification Act, or is likely to be so classified under the Classification Act³) (**'Prohibited Content'**),

(collectively **'Offending Content'**).

2.2 Without limiting its rights and/or remedies under the applicable Access Agreement, if a Customer of APL fails to comply with item 2.1 of this Policy:

- (a) APL may remove the Offending Content in accordance with this Policy; and
- (b) direct that that Customer to take such action as is necessary to prevent the storage of, linking to, and/or downloading of, such Offending Content within the time period specified in that direction, which direction may include the revocation of rights to access and use any or all Services that were granted to the person or persons responsible for the storage of, and/or linking to, such Offending Content.

2.3 Without limiting the generality of item 2.2(b), APL may:

- (a) direct a Customer to suspend the access to services provided through APL's networks or servers of an End User or End Users responsible for storing, or directing the storage of, Offending Content on APL's Networks or servers, or otherwise downloading such Offending Content through the use of APL's Networks or servers (**'Relevant End User(s)'**). APL may nominate the period of suspension, and conditions for the reinstatement of such access, with which that Customer must procure compliance by the Relevant End User(s); and
- (b) in a case where a particular Relevant End User is found to have stored, or directed the storage of, Offending Content on APL's Network or servers, or otherwise downloaded such Offending Content through the use of APL's Networks or servers, on three or more occasions, direct that the Customer terminate that Relevant End User's access to services provided through APL's Networks or servers.

2.4 APL may issue directions under items 2.2 and/or 2.3 where:

³ Such content includes real depictions of actual sexual activity, child pornography, depictions of bestiality, material containing excessive violence or sexual violence, detailed instruction in crime, violence or drug use, and/or material that advocates the doing of a terrorist act

- (a) it has actual knowledge that a failure to comply with item 2.1 has occurred;
- (b) it receives information or evidence from a third party (including an Owner) suggesting that a failure to comply with item 2.1 has occurred and the Customer does not provide to APL, within 5 Business Days of receiving a notification from APL containing the information or evidence it has received from that third party:
 - (i) a statement confirming that the failure has been rectified, which statement must indicate what steps have been taken to rectify such failure; or
 - (ii) a notice disputing that a failure to comply with item 2.1 has occurred, and providing grounds for such dispute, supported by evidence; or
- (c) in the particular circumstances, it is reasonable for APL to do so.

2.5 Each Customer must comply with a direction issued by APL under items 2.2 and/or 2.3. A failure to comply with such a direction will be treated by APL as providing grounds for it to suspend that Customer's access to APL's Networks. If the Customer fails to comply with such directions on two or more occasions in a 12-month period, such failures will be deemed a breach of the provisions of the Access Agreement relating to permitted use, which that Customer has failed to rectify, and APL may terminate the Access Agreement with that Customer for cause.

3. Removal of Offending Content

3.1 All correspondence in relation to Takedown Notices (including correspondence from the ACMA) should be directed to the person nominated from time to time on APL's website as the 'designated representative' authorised to receive notifications and notices under Part 3A of Schedule 1 to the *Copyright Regulations 1969* (see - http://www.aarnet.edu.au/library/Takedown_Policy.pdf).

3.2 If APL:

- (a) receives a Takedown Notice; or
- (b) otherwise becomes aware that Content on its networks or servers may, or may link or refer to, Offending Content,

APL will:

- (c) to the extent it is able to do so, remove or disable access to the Offending Content;
- (d) irrespective of whether APL removes or disables access to such Offending Content, if a Takedown Notice was issued in respect of the Offending Content:
 - (i) inform the Customer responsible for the Offending Content, or whose particular End User, or End Users, are responsible for the Offending Content, that a Takedown Notice was received, and that the Customer may be in breach of its Access Agreement, and/or the Access Policy; and
 - (ii) send to that Customer a copy of the Takedown Notice; and
- (e) send to the Customer a notice stating that:
 - (i) where the Offending Content has been removed or disable, the Content has been removed; and

- (ii) in respect of Infringing Content, within three (3) months of being informed of the removal, the Customer may issue a Counter-notice under the Copyright Regulations 1969 (Cth) (and in accordance with item 4) to dispute the removal.

3.3 APL will take reasonable steps to identify the Customer responsible for the Offending Content, but where it is unable to do so, APL will not take any further action beyond that required by item 3.2(c).

3.4 APL is not obliged to investigate a given Takedown Notice, or verify that the person issuing such a Takedown Notice has good or reasonable grounds for so doing.

4. Rights of Customer to issue Counter-notices

4.1 A Customer whose Content has been removed or disabled may issue APL with a Counter-notice under the Copyright Regulations 1969 (Cth) within three (3) months of being made aware of the removal, in the relevant form specified in Schedule 10 of the Copyright Act.

4.2 If APL receives a Counter-notice:

- (a) where a Takedown Notice had been issued in respect of the Content, APL will send the relevant Owner a copy of the Counter-notice, together with a notice stating that if the Owner does not bring an action seeking a court order to restrain the allegedly infringing activity within ten (10) days after the notice was sent, APL will restore or enable access to the Content; or
- (b) where no Takedown Notice had been issued in respect of the Content, and APL is satisfied on the basis of the information contained in the Counter-notice that the Content is not, or it not likely to be, infringing, APL will restore or enable access to the Content.

5. Compliance with governmental authorities and law enforcement

APL will:

- (a) to the extent it is required to do so under the *Telecommunications Act*, or the *Broadcasting Act*, comply with directions, standards, orders or other legislative requirements of, or made under, those Acts in respect of Content;
- (b) act in accordance with the directions of any relevant government authority in relation to any Content;
- (c) subject to any applicable laws, comply with all reasonable requirements of any law enforcement or regulatory agency in investigating any Content that may be Prohibited Content;
- (d) take reasonable steps to ensure that it does not accept any newsgroup feeds related to or linked with Prohibited Content; and
- (e) take any other action necessary to comply with any applicable laws in relation to Content,

and Customers agree to comply with any directions issued by APL that are directed at ensuring that it is able to do the things listed in paragraphs (a) to (e) of this item 5.

6. Access to APL Networks by Minors

Preamble

- 6.1 Under all Access Agreements, it is the Customer that elects or authorises which individuals may become End Users, and the Customer assumes full responsibility and liability not only for that election, but also for the use of APL Networks, and services provided through APL's Networks or servers, by such End Users.
- 6.2 Notwithstanding item 6.1, APL considers that certain steps should be undertaken by Customers to safeguard the interests of Minors who are, or may be, permitted to access and use APL Networks, or to services provided through APL's Networks or servers.

Requirements

- 6.3 A Customer must implement a process through which the Customer makes reasonable enquiries, in respect of each individual who is an End User, or prospective End User, to determine whether or not that individual is a Minor. For those End Users (or prospective End Users) who are students, officers, employees, contractors, invitees or agents of Third Party Users, a Customer will satisfy this requirement by ensuring that such Third Party Users undertake such reasonable enquiries.
- 6.4 APL acknowledges and accepts that what will constitute reasonable enquiries will vary depending on the nature of the operations or activities of the relevant Customer, and the individuals to whom access will be provided. By way only of guidance, reasonable enquiries in respect of End Users who are employees, teaching staff or contractors of a Customer may involve little more than cross-checking payroll or tax information provided by such individuals. For End Users who are students (whether enrolled by the Customer or merely using the facilities of that Customer), reasonable enquiries ought to involve the relevant individual providing an accepted form of identification that shows the age of that individual. If a Customer is a school, or provider of education or research services used by school-age children, any reasonable enquiries will be required only in respect of those individuals that assert or claim that they are not Minors, and again such enquiries ought to involve the relevant individual providing an accepted form of identification that shows the age of that individual.
- 6.5 In respect of End Users, or prospective End Users that are Minors, Customers must either:
- (a) ensure that such individuals are not permitted to use APL's Networks, and/or services provided through APL's Networks or servers, unless a parent or legal guardian provides a written consent for that individual to have such access; or
 - (b) where such consent has not been provided, or the procurement of such consent is not practicable in the circumstances, ensure that the use of APL Networks, and/or services provided through APL's Networks or servers, but such individuals is supervised by a teacher or other responsible adult.
- 6.6 Customers that store, or direct to be stored, Restricted Content on APL's Networks or servers must use reasonable endeavours to:
- (a) place a prominent notice on their Sites or other promotional materials stating that Minors should obtain the consent of a parent, guardian, teacher or other responsible adult prior to accessing any Restricted Content;

- (b) use appropriate warnings and/or labelling systems for Restricted Content according to any requirements of the Classification Act, or any guidelines issued under the Classification Act; and
- (c) take steps to inform End-Users about minimising the risks associated with internet chat rooms, forums or bulletin boards (for example by providing End-Users with an easily accessible link to the IIA Safety Page).