

Procedural guidelines for takedown

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The purpose of these procedures is to provide a standard framework and consistent approach for NSLA libraries to consider takedown requests, and ensure that public information about the takedown process is accessible.¹

Within scope: collection materials made available on NSLA library websites and on third-party websites with which we have a formal agreement, or non-collection materials that have been uploaded to such services by library staff.²

Out of scope: materials uploaded to library services by third parties without moderation by the institution. Institutions providing hosting services that allow third parties to upload material directly will need to comply with requirements of the *Copyright Amendment (Service Providers) Act 2018* and should refer to the Australian Libraries Copyright Committee's [compliance checklist](#).³

NSLA library websites will provide a clear and visible takedown statement, which should provide details on the process for submitting takedown requests (including format and information requirements), timeframes and potential outcomes.⁴

Organisational responsibility for the management of takedown requests will be established according to the institutional requirements of each NSLA member, but will require a designated position for inquiries, for example the copyright officer or collection manager, and this information should be made available on the library's website.

Upon receipt of a request an acknowledgement will be issued, usually within three working days, and advice provided on how the request will be processed. This will be followed by an initial assessment and access to the material may be temporarily removed, blocked or deindexed pending further investigation of the validity of the request.

All efforts will be made to achieve a quick resolution to the satisfaction of both parties with the following possible outcomes:

- access to the material is restored unchanged on the library's website
- access to the material is restored with changes
- access to the material is removed.

¹ These guidelines have been modelled on current practices of national collecting institutions including the British Library, the National Archives of Australia, the National Archives (UK), and Archives New Zealand.

² Given the complexity of the online environment, when a valid complaint results in the takedown of material the processes involved in removing material may take time and it may be beyond a NSLA library's control to ensure that they are comprehensive or permanently successful on platforms other than those under the direct control of the library.

³ A hosting service would, for instance include a site that allows users to upload material. It does not include any service where the institution is responsible for selecting or uploading material, or where content is moderated before being uploaded.

⁴ The takedown statement should identify the elements required by the Library to process a complaint, i.e. all complaints must be submitted in writing and include: full contact details of complainant; full details of material, including the exact and full URL for the material; reason for the complaint (privacy, defamation). In addition copyright complaints must provide proof of their rights and a warranty that they are the rights holder or authorised representative. Library contact details – postal address and email – for takedown complaints must also be provided.

If a library becomes aware that it will not be able to make a decision within a reasonable timeframe it should seek to advise the complainant.

Where practicable, when access to the material is altered, removed or blocked by a NSLA library, the reason for the decision and action taken will be acknowledged as openly as possible.

Access to collection material that has been removed, blocked or deindexed online may remain accessible onsite.

Takedown decisions will be reviewed as a matter of course. Where the circumstances of the original takedown request have changed over time, this may result in the reinstatement of collection material online.

Takedown requests should be assessed according to criteria, including whether:

- online access to the material is in breach of copyright law.
- online access to the material contravenes conditions imposed by the donor
- the material is defamatory, offensive or objectionable under Australian law
- the material is a breach of privacy legislation or includes personal information about someone who is still alive and continued online access to it would cause serious invasion of privacy or harm.⁵
- removal of the work would undermine freedom of speech
- there is a need to mitigate harm and legal liability
- online access to the material is in breach of protocols maintaining the right of Indigenous peoples to determine access provisions for heritage materials which reflect their history, culture, language and perspectives.⁶
- the material is subject to a suppression order or other legal restriction relating to availability
- the material is 'commercial in confidence' or includes protected government data
- the material breaches specific jurisdictional legislation and related exemptions.

Institutions may be obliged to terminate a client's account or access to a particular service if they consistently infringe copyright (see following process template: Copyright infringement repeat offenders).

External legal advice should be sought when necessary.

Records relating to takedown requests and outcomes should be maintained by individual NSLA members. Following the resolution of the request, member libraries should provide information (with sensitive and/or removal of confidential information removed) to the NSLA office within 10 working days for inclusion on the central takedown register.

⁵ In this context NSLA has referenced the 2014 Australian Law Reform Commission's report into *Serious Invasions of Privacy in the Digital Era* requirements to assess the impact of a range of criteria such as reasonable expectations of privacy within the online environment, public interest, and intentionality.

⁶ [The Aboriginal and Torres Strait Islander Protocols for Libraries, Archives and Information Services](#).

Related legislation/documents

Defamation

[Defamation Act 2005 \(NSW\)](#)

[Defamation Act 2005 \(Vic\)](#)

[Defamation Act 2005 \(SA\)](#)

[Defamation Act 2005 \(WA\)](#)

[Defamation Act 2005 \(Qld\)](#)

[Defamation Act 2005 \(Tas\)](#)

[Civil Law \(Wrongs\) Act 2002 \(ACT\)](#)

[Defamation Act 2006 \(NT\)](#)

Copyright

[Copyright Act 1968 \(Cth\)](#);

[Copyright Amendment \(Service Providers\) Act 2018](#)

Privacy

[Privacy Act 1988 \(Cth\)](#)

[Privacy and Data Protection Act 2014 \(Vic\)](#)

[Information Privacy Act 2014 \(ACT\)](#)

[Information Act \(NT\)](#)

[Information Privacy Act 2009 \(Qld\)](#)

[Privacy and Personal Information Act 1988 \(NSW\)](#)

[Personal Information Protection Act 2004 \(Tas\)](#)

[Freedom of Information Act 1992 \(WA\)](#)

Other

[The Aboriginal and Torres Strait Islander Protocols for Libraries, Archives and Information Services](#)

[ALCC Online Service Provider Safe Harbours - Guide for Libraries and Archives](#)

[Trade Practices Act 1975 \(Cth\)](#)

Process template: Copyright infringement repeat offenders

The institution will terminate a client's [account/access to a particular service] if it becomes aware⁷ that:

1. the client has been found by an Australian court to have infringed copyright on at least three occasions using the institutions' service by any means. The institution may issue a warning notice or short suspension following the first and second occasion before a permanent termination of the client's account is enacted; or
2. the client makes a (written) admission that they have infringed copyright on at least three occasions using the institutions' service. The institution may issue a warning notice or short suspension following the first and second occasion before a permanent termination of the client's account is enacted; or
3. The institution takes down material uploaded by the client on its services at least three times within a twelve-month period from the first takedown as a result of:
 - a. a credible takedown notice received from a copyright owner/licensee alleging that this material infringes copyright; or
 - b. the institution itself becoming aware that the material is likely to infringe copyright.

Note: An allegation of copyright infringement, either by the copyright owner/licensee or by the institution, will not count towards this provision if the client successfully challenges the claim.

The institution will not terminate a client's [account/access to a particular service] if:

1. the account / service was used by a person other than the client, and without the customer's knowledge or consent; or
2. [insert other reasons specific to the institution].

The institution will reinstate a client's [account/access to a particular service] if:

1. the person successfully appeals the termination on review which entitles them to have their account reinstated by the institution; or
2. [insert other reasons specific to the institution].

⁷ This may be by notification by a copyright owner, or other means.