

Takedown position statement and guidelines

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National and State Libraries Australasia (NSLA) is committed to the principles of freedom of expression and universal access to information and knowledge. These principles are fundamental to the library profession and recognised as pivotal components of our democratic traditions; represent a major driving force in the creation of new ideas and innovation; and support cultural understanding and sustainable socio-economic development.¹

Responding to the proliferation of digital technologies and enhanced community expectations for ‘anywhere, anytime’ access to information, libraries are continuing to build and deliver online collections, providing the greatest possible access to local and global communities.

NSLA libraries have mandated roles to collect and preserve cultural heritage, provide open and equitable access to information, and support the growth of knowledge and ideas. Given these responsibilities, materials provided online will be taken down (or have other access restrictions imposed) only in extraordinary circumstances.

In making collections available online NSLA libraries act to respect jurisdictional legal considerations. However, NSLA recognises that despite best efforts there may be occasions when material made available online is considered to breach copyright or other relevant law or contains information that is culturally sensitive.

As a means of promoting a consistent response to takedown requests, NSLA libraries agree to take into account the following general principles:

- The broadest possible online access to collection materials will be provided.
- Permanent access restrictions, deindexing or takedown will be considered as an exceptional response.
- Requests for access restrictions, deindexing or takedown will take into account the relationship of the requestor to the material.
- Requests for access restrictions, deindexing or takedown will take into account specific jurisdictional legislation and related exemptions.
- Access restrictions or takedown of material made available online should, as far as practical, be openly acknowledged with a statement noting the takedown.
- As circumstances change, or after a period of time, online material that has been taken down, restricted or deindexed should be reviewed and may be reinstated.

In terms of copyright infringements, Australia has legislated to extend safe harbours protection to include cultural, educational and disability groups where they provide online services to the public².

¹ NSLA is a signatory to the 2014 [Lyon Declaration on Access and Development](#) and supports the [United Nations 2030 Agenda for Sustainable Development](#).

² Further information regarding the Australian *Copyright Amendment (Service Providers) Act 2018* is available at <https://alacc.org.au/safe-harbour-guide-for-libraries-and-archives/>.



Guidelines

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.³

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.⁴

Out of scope: materials uploaded to library services by third parties without moderation by the institution; materials harvested in the capture of a library's website where there is no agreement with the library for this capture. 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 and Archive Copyright Coalition's Guide for Libraries and Archives](#).⁵

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.⁶

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 contact for enquiries and information on how to request a takedown to be 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.

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

Where practicable, when access to the material is altered, removed or blocked by a NSLA library, this will be acknowledged as openly as possible.

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

³ These guidelines were originally modelled on the practices of national collecting institutions including the British Library, the National Archives of Australia, the National Archives (UK), and Archives New Zealand.

⁴ 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.

⁵ 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.

⁶ 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.

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 or New Zealand 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 harm⁷
- 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 perspectives⁸
- removal of the work would undermine freedom of speech
- there is a need to mitigate harm and legal liability
- 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 process template later in this document for use in conjunction with the Australian *Copyright Amendment (Service Providers) Act 2018*).

External legal advice should be sought when necessary.

Records relating to takedown requests and outcomes should be maintained by individual NSLA libraries. Following the resolution of the request, member libraries should provide information (with sensitive and/or confidential information removed) to the NSLA office quarterly.

⁷ In this context NSLA is referencing the [2021 Australian Attorney General's review of the Privacy Act](#) particularly in relation to the risk of adverse impact or harm (p.87).

⁸ See the NSLA [Position Statement: Indigenous Cultural and Intellectual Property](#) and [Te mauri o te mātauranga: purihia, tiakina! | Principles for the care and preservation of Māori materials](#) from the National Library of New Zealand.

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 \(NT\)](#)

[Defamation Act 1992 \(NZ\)](#)

Copyright

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

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

[Copyright Act 1994 \(NZ\)](#)

Privacy

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

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

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

[Information Act 2002 \(NT\)](#)

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

[Privacy and Personal Information Protection Act 1998 \(NSW\)](#)

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

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

[Cabinet Administrative Instruction \(Information Privacy Principles Instruction\) \(SA\)](#)

[Privacy Act 2020 \(NZ\)](#)

Other

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

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

[Online Safety Act 2021 \(Cth\)](#)

[Australian e-Safety Commissioner](#)

[Harmful Digital Communications Act 2015 \(NZ\)](#)

[Films, Videos, and Publications Classification Act 1993 \(NZ\)](#)

Template for use in conjunction with the Australian legislation Copyright Amendment (Service Providers) Act 2018

The institution will terminate a client's [account/access to a particular service] if it becomes aware⁹ 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].

⁹ This may be by notification by a copyright owner, or other means.