

House of Representatives
Supplementary Order Paper

Tuesday, 12 April 2011

**Copyright (Infringing File Sharing) Amendment
Bill**

Proposed amendments

Hon Simon Power, in Committee, to move the following amendments:

Clause 2

To omit “**1 July 2011**” (line 5 on page 2) and substitute “**1 September 2011**”.

Clause 7: new section 122MA

Subsection (1): to omit “an infringement notice is conclusive evidence of the following:” (lines 27 and 28 on page 17) and substitute “in relation to an infringement notice, it is presumed—”.

Subsection (1)(a): to omit “.” (line 31 on page 17) and substitute “; and”.

Subsection (1)(b): to omit “.” (line 33 on page 17) and substitute “; and”.

Subsection (2): to omit “submit evidence, or give reasons, that show that” (lines 36 and 37 on page 17) and substitute “submit evidence that, or give reasons why,”.

Subsection (3): to insert after “must satisfy the Tribunal that” (line 5 on page 18) “, in relation to the relevant infringement or notice,”.

Clause 7: new section 122PB

Subsection (2): to omit “31 July 2013” (line 19 on page 21) and substitute “30 September 2013”.

Clause 7: new section 122Q

Subsection (4): to omit “**31 December 2011**” (line 36 on page 22) and substitute “31 December 2012”.

New clause 9A

To insert the following clause after *clause 9* (after line 26 on page 23):

9A Sittings of Tribunal

Section 213(2) is amended by omitting “all” and substituting “at least 3”.

Explanatory note

This Supplementary Order Paper amends the Copyright (Infringing File Sharing) Amendment Bill in 3 ways.

The first amendment is to the commencement date, to postpone commencement until 1 September 2011. Amendments to *new sections 122PB and 122Q* are consequential upon this change.

The second amendment is to clarify the intention of *new section 122MA*, which was included on the recommendation of the Commerce Select Committee. The new section was intended to provide that, in proceedings against an account holder relating to infringement notices, the Copyright Tribunal is entitled to presume that the infringements have occurred as recorded in the notices, and that the notices were properly issued, unless or until the account holder gives evidence or reasons indicating otherwise. However, the wording of the section may have implied that the account holder had to actually disprove the presumptions. This is not what was intended. All that an account holder needs to do is submit evidence or give reasons why the presumptions do not apply. It is then up to the rights owner to satisfy the Copyright Tribunal that the presumptions do in fact apply.

The third amendment consequentially amends section 213(2) of the Copyright Act 1994. The Bill increases the number of members of the Copyright Tribunal from 3 to 5. This amendment changes the current requirement that all members of the Tribunal must be present at sittings to a requirement that at least 3 must be present.
