



## **Appendix G - Suggested amendments from ARIA<sup>1</sup>**

Insert after section 115 (3) the following:

(3A) (a) Where, in an action for infringement of copyright brought against a carrier or carriage service provider, it is established that an infringement was committed, but it is further established that the circumstances described in the following paragraph existed with respect to the infringement, the plaintiff is not entitled under this section to any damages against the defendant carrier or carriage service provider in respect of the infringement, nor to any account of profits in respect of the infringement.

(b) The circumstances described in the preceding paragraph are:

- (i) The infringement consisted solely of making a temporary reproduction of the work or adaptation as part of the technical process of communicating the work or adaptation to subscribers who subsequently request it, and with respect to such infringement the carrier or carriage service provider:
  - (A) did not modify the content of the work or adaptation; and
  - (B) complied with refreshing requirements in accordance with a generally accepted industry protocol; and
  - (C) did not interfere with technology that returns hit information to the site owner; and
  - (D) limited the subscriber's access in accordance with any access conditions imposed by the site owner; and

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<sup>1</sup> Australian Record Industry Association, correspondence to the Committee dated 9 November 1999.

- (E) removed blocked access to the reproduction upon notification from the owner of the copyright in the work or adaptation; or
- (ii) The infringement consisted solely of acts necessary for the transmission of the work or adaptation or other subject matter in a communication network, or providing access to such a network, and with respect to such infringement the carrier or carriage service provider:
  - (A) did not initiate the communication; and
  - (B) did not select the recipient of the communication; and
  - (C) did not select or modify the work or adaptation in the course of transmission; and
  - (D) did not store any reproductions involved in the infringement for any longer than reasonably necessary to carry out the communication; or
- (iii) The infringement consisted solely of the electronic storage of a reproduction of a work or adaptation or other subject matter at the request of a subscriber of the carrier or carriage service provider, and with the respect to such infringement the carrier or carriage service provider:
  - (A) did not have actual knowledge that the reproduction was infringing, and was not aware of facts or circumstances from which it was apparent that the reproduction was infringing; and
  - (B) upon obtaining such knowledge or awareness, acted expeditiously to remove or to disable access the stored reproduction; and
  - (C) did not receive a financial benefit directly attributable to the infringement.