

EXPLANATORY STATEMENT

Select Legislative Instrument 2006 No. 328

Issued by the authority of the Attorney-General

Copyright Act 1968

Copyright Amendment Regulations 2006 (No. 1)

The *Copyright Act 1968* (the Act) grants and determines the scope of copyright in Australia.

Subsection 249(1) of the Act provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters that are required or permitted by the Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 249(2) of the Act provides that the Governor-General may make regulations prescribing the doing of an act by a person for the purposes of subsections 116AN(9) and 132APC(9), which relate to circumventing an access control technological protection measure (TPM).

The *Copyright Regulations 1969* (the Principal Regulations) prescribe matters relating to, among other things, notices required to be given by the Act.

The purpose of the amendments to the Principal Regulations is to (a) establish an infringement notice scheme which underpins the new strict liability offences in the Act and (b) provide additional exceptions to liability for circumventing an access control TPM.

The *Copyright Amendment Act 2006* (the Amendment Act) contains 12 schedules which include major reforms to the Act. The amendments implement Government decisions arising from several copyright reviews finalised in 2005-06, obligations under the Australia-United States Free Trade Agreement and other policy initiatives.

Schedule 1 to the Amendment Act makes amendments to the Act to create indictable, summary and strict liability offences. These amendments give a wider range of enforcement options depending on the seriousness of the relevant conduct.

The Regulations amend the Principal Regulations by providing for an infringement notice scheme which underpins the strict liability offences in the Act. The scheme enables a person who is alleged to have committed an offence of strict liability to pay a penalty and, in some cases, also forfeit infringing copies or devices used in making infringing copies as part of the alleged commission of the offence, to the Commonwealth as an alternative to prosecution.

Schedule 12 to the Amendment Act makes amendments to the Act to implement the AUSFTA obligations in relation to TPMs under the Australia-United States Free Trade Agreement. TPMs are technical locks used by copyright owners to control access to and use of their works.

The amendments introduce civil and criminal liability for the act of circumventing an access control TPM and strengthen existing liability for dealings in circumvention devices. The liability scheme is balanced by a number of specific exceptions to liability in the Amendment Act. The Amendment Act also allows for the making of additional exceptions to liability for the act of circumventing a TPM.

In its *Review of TPM Exceptions*, the House of Representatives Standing Committee on Legal and Constitutional Affairs identified a number of additional exceptions and recommended these be included in subordinate legislation.

The Regulations provide for additional exceptions to liability for circumventing an access control TPM. These exceptions benefit particular users of copyright material such as educational institutions, libraries and archives, broadcasters and institutions assisting persons with a print disability. The amendments to the Principal Regulations provide the necessary copyright balance to the liability provisions in the Act.

Subsections 249(3)-(9) of the Act specify conditions which need to be satisfied before the power to make regulations relating to TPMs may be exercised. A regulation prescribing the doing of an act can be made when a submission is made to the Minister and the Minister recommends to the Governor-General that the act be prescribed. However, the Minister may only make a recommendation when the criteria in subsection 249(4) are met; those criteria have been satisfied in relation to the Regulations.

Details of the Regulations are provided in the [Attachment](#).

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on 1 January 2007.

Subsections 4(1) and 4(2A) of the *Acts Interpretation Act 1901* read together provide that regulations may be made between the passing and the commencement of legislation upon which they rely for their authority, as long as such regulations are not expressed to commence before that legislation. The schedules to the Amendment Act noted above are due to commence on 1 January 2007.

The Australian Government consulted with copyright owner and user stakeholders as well as relevant law enforcement bodies on the amendments.

Details of the Copyright Amendment Regulations 2006 (No. 1)

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Copyright Amendment Regulations 2006 (No. 1)*

Regulation 2 – Commencement

This regulation provides that the Regulations commence on 1 January 2007, to coincide with the commencement of the relevant provisions of the *Copyright Amendment Act 2006* which amends the *Copyright Act 1968* (the Act).

Regulation 3 – Amendment of Copyright Regulations 1969

This regulation provides that Schedule 1 amends the *Copyright Regulations 1969* (the Principal Regulations).

Schedule 1 – Amendments

Item [1] – After Part 3A

New Part 3B Technological protection measures

This item inserts new Part 3B—‘Technological protection measures’ after Part 3A of the Principal Regulations.

New regulation 20Y

New regulation 20Y inserts a definition of ‘copyright material’ as a work or other subject-matter in which copyright subsists. ‘Work’ is defined in subsection 10(1) of the Act and includes a literary, dramatic, musical or artistic work. As to whether copyright subsists in a work refer to Part III, Division 1 of the Act. ‘Other subject-matter’ refers to the subject-matter other than works protected under Part IV of the Act. These include sound recordings, cinematograph films, sound and television broadcasts and published editions. As to whether copyright subsists in other subject matter, refer to Part IV, Division 3 of the Act.

New regulation 20Z

New regulation 20Z provides that for paragraphs 116AN(9)(c) and 132APC(9)(c) of the Act the doing of acts listed in Schedule 10A is prescribed. Subsection 116AN(9) allows for exceptions to liability for the act of circumventing an access control technological protection measure (TPM) contained in subsection 116AN(1). Subsection 132APC(9) allows for a defence to liability for the act of circumventing an access control TPM contained in subsection 132APC(1). Subsections 116AN(1) or 132APC(1) will not apply to the person if they satisfy the requirements of

subsections 116AN(9) or 132APC(9) respectively. The prescribed acts referred to in paragraphs 116AN(9)(c) and 132APC(9)(c) are one of those requirements. The prescribed acts are listed in Schedule 10A.

Although new regulation 20Z provides for the creation of additional exceptions to liability for the act of circumventing an access control TPM, there are no corresponding exceptions for dealings in circumvention devices. This intentional limitation on the availability of devices is required by the Australia – United States Free Trade Agreement (AUSFTA). To exercise these exceptions, a person can make or import a device only for their own use.

Item [2] – Regulation 23JB

This item substitutes a new regulation 23JB. The regulation specifies the prescribed message required under subsection 135ZQ(3) of the Act.

Subsection 135ZQ(3) provides an exception to subsection 135ZQ(1) which provides that the copyright in a published literary or dramatic work will not be infringed if a relevant reproduction or relevant communication of the work, or part of the work, is made by, or on behalf of, a body administering an institution assisting persons with a print disability, for use by a person with a print disability. Subsection 135ZQ(3) provides that in order for subsection 135ZQ(1) to apply to the making of a relevant reproduction, being a record embodying a sound recording in analogue form, a sound recording of the prescribed message must be embodied on the record immediately before the beginning of the sound recording.

Unlike the former prescribed message, the new prescribed message does not state that the sound recording must ‘be destroyed ... not later than 3 months after the day on which it was made’. This amendment reflects the 1998 amendment to section 135ZQ of the Act that removed the requirement to destroy the sound recording within 3 months.

New regulation 23JB stipulates two prescribed messages that may be used for subsection 135ZQ(3) of the Act. The first is for a sound recording made in reliance on section 135ZQ of the Act (paragraph (a)). The second is for a sound recording made in reliance on section 135ZQ of the Act and made solely for use in the making of a reproduction or communication under section 135ZP of the Act for a person with a print disability (paragraph (b)). Section 135ZP of the Act concerns multiple reproduction and communication of works by institutions assisting persons with a print disability.

Item [3] – Paragraph 23JC(1)

Item 3 requires the words ‘For the purposes of’ to be omitted from paragraph 23JC(1) and replaced with the word ‘For’. This amendment gives effect to improved drafting style and provides consistency with the wording of new regulation 23JB.

Item [4] – Subparagraph 23JC(1)(b)

This item substitutes a new subparagraph 23JC(1)(b). The previous requirement that ‘the reproduction is to be destroyed not later than 3 months after the day on which it was made’ is not included in the new paragraph 23JC(1)(b). The omission of this requirement is to reflect the 1998 amendment to section 135ZQ of the Act that removed the requirement to destroy the sound recording within 3 months.

Item [5] – Regulation 23JD

Item 5 substitutes a new regulation 23JD. The regulation specifies the prescribed message required under subsection 135ZT(3) of the Act.

Subsection 135ZT(3) provides an exception to subsection 135ZT(1) which provides that the copyright in an eligible item or in a television broadcast is not infringed if a copy or communication of the whole or a part of the eligible item or broadcast is made by, or on behalf of, a body administering an institution assisting persons with an intellectual disability if it is made for use by a person with an intellectual disability. Subsection 135ZT(3) provides that in order for subsection 135ZT(1) to apply to the making of a record embodying a sound recording in analog form of the whole or part of an eligible item, a sound recording of the prescribed message must have been embodied on the record immediately before the beginning of the sound.

New regulation 23JD stipulates two prescribed messages that may be used for subsection 135ZT(3) of the Act. The first is for a sound recording made in reliance on section 135ZT of the Act (paragraph (a)). The second is for a sound recording made in reliance on section 135ZT of the Act and solely for use in the making of a copy or communication for a person with an intellectual disability.

Unlike the former prescribed message, the new prescribed message does not state that the sound recording must ‘be destroyed ... not later than 3 months after the day on which it was made’. This amendment reflects the 1998 amendment to section 135ZT of the Act that removed the requirement to destroy the sound recording within 3 months.

Item [6] – Paragraph 23JE(b)

This item substitutes a new paragraph 23JE(b). The previous requirement that ‘the copy is to be destroyed not later than 3 months after the day on which it was made’ is not included in the new paragraph 23JE(b). This amendment reflects the 1998 amendment to section 135ZT of the Act that removed the requirement to destroy the sound recording within 3 months

Item [7] – After Part 6

Item 7 inserts a new Part 6A, which establishes the infringement notice scheme that is provided for under new sections 133B and 248SA of the Act. The regulations in Part 6A comply with the Australian Government’s *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers* and administrative law requirements.

New Part 6A Infringement notices and forfeiture of infringing copies and devices

Division 6A.1

Division 6A.1 deals with various preliminary matters, including the purpose of the Part and definitions.

New regulation 23M – Purpose of Part

Subregulation 23M(1) provides that the purpose of the new Part 6A is to establish an infringement notice scheme. The scheme allows a person who is alleged to have committed a strict liability offence against Division 5 of Part V of the Act, or Subdivision A or B of Division 3 of Part XIA of the Act, to pay a fine to the Commonwealth, rather than being prosecuted for the alleged offence before a court.

For an alleged offence against Division 5 of Part V of the Act (except for subsections 132AR(5), 132 AS(5) and 132AQ(5)) the scheme allows a person who is alleged to have committed a strict liability offence against that Division may also forfeit infringing copies or devices used in making infringing copies, as part of the alleged commission of the offence, to the Commonwealth as an alternative to prosecution.

Subregulation 23M(2) provides that Part 6A does not:

- (a) require an infringement notice to be given to a person if the person has allegedly committed an infringement notice offence; or
- (b) preclude a person who is alleged to have committed an infringement notice offence from being prosecuted before a court if the person was not issued with an infringement notice for the alleged offence; or
- (c) preclude a person who has been issued with an infringement notice, but who has not paid the fine for the alleged offence within the required time, from being prosecuted before a court; or
- (d) limit or otherwise affect the penalty that may be imposed by a court on a person for an infringement notice offence.

New regulation 23N - Definitions

Regulation 23N defines the terms ‘authorised officer’, ‘infringement notice’, ‘infringement notice offence’, ‘infringing article’, ‘infringing device’, ‘nominated person’, and ‘recipient’ for Part 6A.

Division 6A.2 – Forfeiture of infringing articles and devices

Division 6A2 deals with the forfeiture of infringing articles and devices.

New Regulation 23O - Forfeiture of infringing articles and devices

Subregulations 23O(1) and (2) provide that a person who is alleged to have committed an offence of strict liability against Division 5 of Part V of the Act (except for strict liability offences in relation to electronic rights management information in subsections 132AR(5), 132 AS(5) and 132AQ(5)) and possesses infringing copies

and/or other devices may avoid prosecution for the alleged offence by doing two things. The person is required to forfeit those items to the Commonwealth and pay the penalty in the infringement notice.

Subregulation 23O(3) provides that if the person forfeits all the infringing articles and devices that the person possesses, the authorised officer may take them and is required to issue a receipt for those items.

Subregulation 23O(4) provides that if the person pays the penalty in the infringement notice, the nominated person must cause all the infringing articles and devices forfeited to the Commonwealth to be destroyed.

The regulation provides that articles and devices are only destroyed if the infringement notice is paid. This is to ensure that such material will not be destroyed where there is a likelihood that the matter will go to court and the articles and devices will be required as evidence, or in the circumstances where a recipient seeks withdrawal of a notice and the notice is withdrawn.

Subdivision 6A.3.1 – Contents of infringement notices

Subdivision 6A.3.1 deals with the contents of infringement notices.

New regulation 23P – When an infringement notice can be given

Subregulation 23P(1) allows an authorised officer to give a person an infringement notice if the authorised officer has reasonable grounds to believe that the person has committed an infringement notice offence.

For an offence against Division 5 of Part V of the Act (except for subsections 132AR(5), 132 AS(5) and 132AQ(5)) where the person has forfeited all infringing copies and devices in relation to the alleged offence, the authorised officer may give a person an infringement notice relating to the alleged offence.

Subregulation 23P(2) stipulates that an infringement notice relating to an alleged infringement notice offence must be given within 12 months after the day on which the offence is alleged to have been committed.

Subregulation 23P(3) provides that if an infringement notice given to a person for the alleged commission of a particular infringement notice offence is withdrawn, an authorised officer may give the person a new infringement notice for the alleged commission of the offence. An example for subregulation (3) is provided. If an infringement notice given to a person in relation to the alleged commission of a particular offence was withdrawn because it contained an error, a new infringement notice can be given to the person in respect of the alleged commission of the offence.

A note to regulation 23P clarifies that the way in which an infringement notice can be given is governed by regulation 27.

New regulation 23Q – Contents of an infringement notice

Regulation 23Q requires an infringement notice to be in accordance with the prescribed form set out in Schedule 11C to the Regulations. It also allows for an infringement notice to contain any other information that the authorised officer who

issued the notice thinks is necessary to be included. For example, the authorised officer may wish to include additional, relevant descriptions of the conduct alleged to constitute the offence.

Subdivision 6A.3.2 - Penalties

New regulation 23R – Amount of penalty if infringement notice issued

Paragraph (a) of regulation 23Q provides that the penalty payable for the alleged commission of an infringement notice offence is 12 penalty units for an individual. Paragraph (b) provides that the penalty payable for a body corporate is 60 penalty units. A penalty unit is currently \$110.

These penalties are one-fifth of the maximum penalty for the strict liability offences, as is set out in new subsections 133B(2) and 248SA(2) of the Act.

New regulation 23S – Extension of time to pay penalty

Subregulation 23S(1) provides that a person who has received an infringement notice may, within 28 days of receiving an infringement notice, apply in writing to a nominated person for an extension of time in which to pay the penalty stated in the notice. The extension sought can be up to 28 days.

An application for an extension of time in which to pay the penalty for an infringement notice offence under subregulation 23S(1) must, under subregulation 23S(2), specify the unique identification code of the infringement notice and also set out the reasons for the application.

Subregulation 23S(3) provides that within 14 days of receiving an application for an extension of time to pay an infringement notice penalty, the nominated person must:

- (a) grant or refuse an extension that is not longer than the extension sought (but less than 28 days); and
- (b) notify the recipient of the infringement notice (ie the person who made the application for an extension) in writing of the decision made and, if the decision is a refusal, the reasons for the decision.

New regulation 23T – Payment of penalty by instalments

Subregulation 23T(1) provides that a person who has received an infringement notice may, within 28 days of receiving an infringement notice, apply in writing to the nominated person for permission to pay the amount of the infringement notice penalty in instalments.

Allowing payment of a penalty by instalment is consistent with Commonwealth criminal law policy, including the Australian Government's *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers* and the Australian Law Reform Commission's Report 95: *Principled Regulation*, which recommended this as a standard provision (recommendations 12.8(m) and 31-2).

An application to pay the amount of the infringement notice penalty in instalments under subregulation 23T(1) must, under subregulation 23T(2), specify the unique

identification code of the infringement notice, set out the reasons for the application and specify the amount and frequency of the instalments that the recipient proposes to pay.

Subregulation 23T(3) provides that within 14 days of receiving an application to pay the amount of the infringement notice penalty by instalments, the nominated person must:

- (c) grant or refuse to grant permission for payment by instalments, and
- (d) notify the recipient, in writing, of the decision, including:
 - (i) if permission to pay the penalty in instalments is granted, the amount and frequency of the instalments, and
 - (ii) if permission to pay the penalty in instalments is refused, the reasons for the refusal.

New regulation 23U – Time for payment of penalty

Regulation 23U provides that the penalty stated in an infringement notice must be paid:

- (a) within 28 days after the day on which the notice is served on the recipient; or
- (b) if the recipient applies for an extension of time in which to pay the penalty, and the application is granted – within the further period of time allowed; or
- (c) if the recipient applies for an extension of time in which to pay the penalty and the application is refused – within 7 days after the notice of the refusal is served on the recipient; or
- (d) if the recipient applies for permission to pay the penalty by instalments, and permission is granted – in accordance with that permission; or
- (e) if the recipient applies for permission to pay the penalty by instalments, and permission is refused – within 7 days after the notice of the refusal is given to the recipient; or
- (f) if the recipient applies for the infringement notice to be withdrawn, and the application is refused – within 28 days after the notice of the refusal is served on the person.

New regulation 23V – Effect of payment of penalty and forfeiture of infringing articles and devices

Subregulations 23V(1) and (3) provide that if the recipient of an infringement notice for an alleged offence against a provision of Subdivision A or B of Division 3 of Part XIA of the Act, or against subsections 132AR(5), 132 AS(5) and 132AQ(5) and pays the penalty stated in the notice:

- (a) the recipient's liability for the alleged offence is discharged; and

- (b) the recipient cannot be prosecuted for the alleged offence; and
- (c) payment of the penalty does not imply that the recipient has admitted guilt for the alleged offence; and
- (d) the recipient is not taken to have been convicted of the offence.

Subregulations 23V(2) and (3) provide that if a person who has allegedly committed an offence against Division 5 of Part V of the Act (except subsections 132AR(5), 132AS(5) and 132AQ(5)) and pays an infringement notice issued to them and forfeits each infringing article or device to the Commonwealth:

- (a) the recipient's liability for the alleged offence is discharged; and
- (b) the recipient cannot be prosecuted for the alleged offence; and
- (c) payment of the penalty does not imply that the recipient has admitted guilt for the alleged offence; and
- (d) the recipient is not taken to have been convicted of the offence.

Subdivision 6A.3.3 – Withdrawal of infringement notices

Subdivision 6A.3.3 deals with the withdrawal of infringement notices by a nominated person or an authorised officer. It also deals with a notice of withdrawal of infringement notices and the refund of any penalty paid by the recipient of an infringement notice that is later withdrawn.

New regulation 23W – Withdrawal of infringement notice by nominated person

Subregulation 23W(1) allows the recipient of an infringement notice to apply, in writing, to the nominated person for the infringement notice to be withdrawn. The application must be made within 28 days of receipt of the infringement notice.

Under subregulation 23W(2), an application for an infringement notice to be withdrawn must specify the unique identification code of the infringement notice and must also set out the reasons for the application.

Subregulation 23W(3) requires the nominated person, within 14 days of receiving an application for withdrawal of an infringement notice, to:

- (a) withdraw or refuse to withdraw the notice; and
- (b) notify the recipient of the infringement notice (ie the person who made the application) in writing of the decision and, if the decision is a refusal, the reasons for the decision.

Subregulation 23W(4) allows the nominated person to withdraw the infringement notice after taking into account:

- (a) any previous convictions of the recipient for an offence against the Act; or
- (b) the circumstances in which the offence specified in the infringement notice is alleged to have been committed; or

- (c) whether an infringement notice has previously been given to the recipient for an offence of the same kind as the offence specified in the notice in question, and in relation to which the recipient paid the penalty under the notice; or
- (d) any other relevant matter.

Subregulation 23W(4) is expressed as not limiting paragraph 23W(3).

Subregulation 23W(5) provides that if the nominated person has not withdrawn or refused to withdraw the notice within the period set out in paragraph 23W(3), the nominated person is taken to have refused to withdraw the notice.

Subregulation 23W(6) provides for an application to be made to the Administrative Appeals Tribunal for review of a decision of the nominated person to refuse to withdraw an infringement notice. This paragraph conforms with section 27A of the *Administrative Appeals Tribunal Act 1975*, which requires a decision-maker to give to any person whose interests are affected by the decision notice, in writing or otherwise, of the making of the decision and the person's right to have the decision reviewed.

New regulation 23X – Withdrawal of infringement notice by authorised officer

Subregulation 23X(1) allows an authorised officer to withdraw an infringement notice issued by him or her without an application for withdrawal having been made by the recipient of the infringement notice under regulation 23X.

Subregulation 23X(2) allows the authorised officer to withdraw the infringement notice after taking into account the matters listed in paragraph 23X(4), being:

- (a) any previous convictions of the recipient for an offence against the Act; or
- (b) the circumstances in which the offence specified in the infringement notice is alleged to have been committed; or
- (c) whether an infringement notice has previously been given to the recipient for an offence of the same kind as the offence specified in the notice in question, and in relation to which the recipient paid the penalty under the notice; or
- (d) any other relevant matter.

This paragraph is expressed not to limit subregulation 23X(1).

New regulation 23Y – Notice of withdrawal of infringement notices

Paragraph (a) of regulation 23Y stipulates the information that must be included in a notice withdrawing an infringement notice:

- (i) the full name, or surname and initials, and address of the recipient; and
- (ii) the date of issue of the infringement notice; and
- (iii) the infringement notice's unique identification code.

Paragraph (b) requires a notice withdrawing an infringement notice to state that the infringement notice is withdrawn.

New regulation 23Z – Refund of penalty

Regulation 23Z provides that if an infringement notice is withdrawn after the penalty stated in the notice has been paid, the Commonwealth must refund the amount of the penalty to the person who paid it.

Item [8] – Subregulation 27(1)

Item 8 amends subregulation 27(1) to include reference to other expressions for service, such as ‘give’, ‘send’, or ‘any other expression’. The amendment is needed because of the range of expressions used through the regulations. It also aligns the provision more closely with section 28A of the *Acts Interpretation Act 1901*.

Item [9] – After Schedule 10

This item inserts new Schedule 10A – ‘Prescribed acts’ after Schedule 10 of the Principal Regulations. Schedule 10A includes a table which lists the prescribed acts mentioned in regulation 20Z. The table has three columns, the table item number, the topic and a description of the prescribed act.

Table item 1 Interoperability with computer programs

New table item 1 implements an exception to liability for circumventing an access control TPM for activities currently permitted by section 47D of the Act which are not already covered by the specific exception to liability for the act of circumventing an access control TPM in subsections 116AN(3) and 132APC(3) of the Act.

New table item 1 prescribes activities which relate to making interoperable products. The prescribed activity described in paragraph 1.1 of table item 1 is where a person reproduces or adapts a computer program to achieve interoperability between a computer program and an independently created article (ie a computer product). This is a non-infringing use of copyright material under section 47D of the Act. ‘Computer program’ has the same meaning as that used for section 47D of the Act. This means that the definition in section 47AB of the Act also applies to this paragraph. That definition extends the definition of computer program to include a literary work that is incorporated in, or associated with, a computer program and is essential to the operation of that computer program. In order to exercise this exception the person must comply with the conditions outlined in section 47D.

The note to paragraph 1.1 of table item 1 refers to the corresponding exception for interoperability between computer programs in subsections 116AN(3) and 132APC(3) of the Act. Those sections implement the specific exception for interoperable activities contained in Article 17.4.7(e)(i) of the AUSFTA. The AUSFTA exception only applies to interoperability between computer programs and does not apply to interoperability between computer programs and articles.

Table item 2 Educational institutions

New table item 2 implements an exception to liability for circumventing an access control TPM for the reproduction and communication of copyright material by educational institutions.

New paragraph 2.1 of table item 2 prescribes the activity of reproducing or communicating copyright material where that activity is carried out by, or on the premises of, an educational institution. New paragraph 2.1 of table item 2 allows the circumvention of an access control TPM in order to undertake reproduction and communication allowed under Division 2A of Part VB of the Act. In order to exercise this exception, the institution must comply with the obligations outlined in that Division. In this paragraph the definition of 'copyright material' is limited to copyright material which is covered by Division 2A of Part VB, that is, works.

Table item 3 Assistance to persons with a print disability

New table item 3 implements an exception to liability for circumventing an access control TPM for the use of copyright material by institutions assisting those with a print disability.

New paragraph 3.1 of table item 3 prescribes the activity of reproducing or communicating copyright material for persons with a print disability where that activity is carried out by an institution assisting persons with a print disability. New paragraph 3.1 of table item 3 allows the circumvention of an access control TPM in order to undertake reproduction and communication allowed under Division 3 of Part VB of the Act. In order to exercise this exception, the institution must comply with the obligations outlined in that Division. In this paragraph the definition of 'copyright material' is limited to that copyright material which is covered by Division 3, Part VB, that is, published editions and literary or dramatic works.

Table item 4 Libraries or archives

New table item 4 implements an exception to liability for circumventing access control TPMs in relation to certain uses of copyright material by libraries and archives.

New paragraph 4.1 of table item 4 prescribes the act of reproducing or communicating articles or published works to a person for research or study by a library or archive. New paragraph 4.1 of table item 4 allows the circumvention of an access control TPM in order to undertake reproduction or communication allowed under section 49. In order to exercise this exception the library must comply with the obligations outlined in section 50. As such, note that the paragraph only applies to those libraries to which section 49 applies.

New paragraph 4.2 of table item 4 prescribes the act of reproducing or communicating articles or published works by a library or archives to another library or archives. New paragraph 4.2 of table item 4 allows the circumvention of an access control TPM in order to undertake reproduction or communication allowed under section 50. In order to exercise this exception the library or archive must comply with the obligations outlined in section 50.

New subparagraph 4.3(a) of table item 4 prescribes the act of reproducing or communicating unpublished works by libraries and archives. New subparagraph 4.3(a) of table item 4 allows the circumvention of an access control TPM in order to undertake reproduction or communication allowed under section 51A. In order to exercise this exception the library or archive must comply with the obligations outlined in section 51A.

New subparagraph 4.3(b) of table item 4 prescribes the act of reproducing or communicating unpublished sound recordings or films by libraries and archives for the purposes of research or study. New subparagraph 4.3(b) of table item 4 allows the circumvention of an access control TPM in order to undertake reproduction or communication allowed under section 110A. In order to exercise this exception the library or archive must comply with the obligations outlined in section 110A.

New subparagraph 4.3(c) of table item 4 prescribes the act of reproducing or communicating sound recordings or films for their preservation or certain other purposes. New subparagraph 4.3(c) of table item 4 allows the circumvention of an access control TPM in order to undertake reproduction or communication allowed under section 110B. In order to exercise this exception the library or archive must comply with the obligations outlined in section 110B.

Table item 5 *Sound recordings for broadcasting*

New paragraphs 5.1 and 5.2 of table item 5 implement an exception to liability for circumventing an access control TPM for the inclusion of copyright material in broadcasts and the reproduction of copyright material for broadcasting purposes.

New paragraph 5.1 of table item 5 prescribes the activity of making a copy of a sound recording for the purposes of broadcasting it. New paragraph 5.1 of table item 5 allows the circumvention of an access control TPM in order to undertake copying allowed under section 107. In order to exercise this exception the broadcaster must comply with the obligations outlined in section 107.

New paragraph 5.2 of table item 5 prescribes the activity of broadcasting a sound recording. New paragraph 5.2 of table item 5 allows the circumvention of an access control TPM in order to undertake broadcasting allowed under section 109. In order to exercise this exception the broadcaster must comply with the obligations outlined in section 109.

Table item 6 *Malfunctioning technological protection measures*

New paragraphs 6.1 and 6.2 of table item 6 implement an exception to liability for circumventing an access control TPM in relation to malfunctioning TPMs.

New paragraph 6.1 of table item 6 prescribes the activity of accessing copyright material where a TPM is ‘not operating normally’ (subparagraph 6.1(a)) and ‘a replacement TPM is not reasonably available’ (subparagraph 6.1(b)). New paragraph 6.1 of table item 6 allows the circumvention of an access control TPM in these circumstances. ‘Not operating normally’ is intended to cover TPMs which are obsolete, lost, damaged, defective, malfunctioning or unusable. A replacement TPM

is reasonably available if it is available within a reasonable time at an ordinary commercial price.

New paragraph 6.2 of table item 6 prescribes the activity of accessing copyright material protected by a TPM to prevent damage to a product or to repair a product on which the TPM is installed. New paragraph 6.2 of table item 6 allows the circumvention of an access control TPM in these circumstances. There is some overlap between this exception and the exceptions in subsections 116AN(5) and 132APC(5) of the Act which allow for the circumvention of an access control TPM where that TPM protects a program that causes a security vulnerability in a computer, computer system or computer network. In comparison to the exceptions in the Act, new paragraph 6.2 of table item 6 applies in a wider range of circumstances because it is not confined to computer programs, networks or systems and is not limited to the sole purpose of testing, investigating or correcting the security of computer programs, networks or systems.

Item [10] - After Schedule 11B

Item 10 inserts Schedule 11C after Schedule 11B. Schedule 11C prescribes the form an infringement notice must take in accordance with regulation 23P. The infringement notice must address issues such as the name and address of the recipient, the name of the authorised officer issuing the infringement notice, a description of the offence the recipient is alleged to have committed, the penalty and consequences for failure to pay the penalty, the time for payment, ability to apply to have the notice withdrawn, ability to apply for more time to pay the penalty and the requirements for these applications.

Section 25C of the *Acts Interpretation Act 1901* provides that strict compliance with a form is not required and that substantial compliance is sufficient.

Item [11] – Amendments to give effect to improved drafting style

Item 11 amends various regulations in Part 5A by omitting the words ‘For the purposes of’ and inserting the word ‘For’. These amendments give effect to improved drafting style and provide consistency with the wording of other regulations.