



Copyright Amendment Regulations 2006 (No. 1)¹

Select Legislative Instrument 2006 No. 328

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Copyright Act 1968*.

Dated 13 December 2006

P. M. JEFFERY
Governor-General

By His Excellency's Command

PHILIP RUDDOCK
Attorney-General

1 Name of Regulations

These Regulations are the *Copyright Amendment Regulations 2006 (No. 1)*.

2 Commencement

These Regulations commence on 1 January 2007.

3 Amendment of *Copyright Regulations 1969*

Schedule 1 amends the *Copyright Regulations 1969*.

Schedule 1 Amendments

(regulation 3)

[1] After Part 3A

insert

Part 3B Technological protection measures

20Y Meaning of *copyright material*

In this Part:

copyright material means a work or other subject-matter in which copyright subsists.

20Z Prescribed acts

For paragraphs 116AN (9) (c) and 132APC (9) (c) of the Act, the doing of the acts mentioned in Schedule 10A is prescribed.

[2] Regulation 23JB

substitute

23JB Prescribed message (Act s 135ZQ (3))

For subsection 135ZQ (3) of the Act, the prescribed message is:

- (a) ‘This is a sound recording made on [*day on which the recording was made*] in reliance on section 135ZQ of the *Copyright Act 1968*.’; or
- (b) ‘This is a sound recording made on [*day on which the recording was made*] in reliance on section 135ZQ of the *Copyright Act 1968*, solely for use in the making of a reproduction or communication under section 135ZP of that Act for a person with a print disability.’

[3] Subregulation 23JC (1)

omit

- (1) For the purposes of

insert

For

[4] Paragraph 23JC (1) (b)

substitute

- (b) in any other case:
 - (i) the name of the institution for which the administering body made the reproduction or caused it to be made; and
 - (ii) a reference to section 135ZQ of the Act; and
 - (iii) the day on which the reproduction was made.

[5] Regulation 23JD

substitute

23JD Prescribed message (Act s 135ZT (3))

For subsection 135ZT (3) of the Act, the prescribed message is:

- (a) ‘This is a sound recording made on [*day on which the recording was made*] in reliance on section 135ZT of the *Copyright Act 1968*.’; or
- (b) ‘This is a sound recording made on [*day on which the recording was made*] in reliance on section 135ZT of the *Copyright Act 1968*, solely for use in the making of a copy or communication for a person with an intellectual disability.’

[6] Paragraph 23JE (b)

substitute

- (b) in any other case:
 - (i) the name of the institution for which the administering body made the copy or caused it to be made; and
 - (ii) a reference to section 135ZT of the Act; and
 - (iii) the day on which the copy was made.

[7] **After Part 6**

insert

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

Division 6A.1 Preliminary

23M Purpose of Part

- (1) The purpose of this Part is to set up a scheme, as an alternative to prosecution, to enable a person who is alleged to have committed an offence of strict liability against Division 5 of Part V of the Act, or Subdivision A or B of Division 3 of Part XIA of the Act, to:
- (a) pay a penalty, specified in an infringement notice for the alleged offence, to the Commonwealth; and
 - (b) for an alleged offence against a provision of Division 5 of Part V of the Act (except subsections 132AQ (5), 132AR (5) and 132AS (5)), agree to forfeit to the Commonwealth:
 - (i) each article (if any), in the person's possession at the time and place of the issue of the infringement notice for the alleged offence, that is alleged to be an infringing copy of a work or other subject-matter and that is alleged to have been involved in the commission of the offence; and
 - (ii) each device (if any), in the person's possession at the time and place of the issue of the infringement notice for the alleged offence, that is alleged to have been made to be used for making an infringing copy of a work or other subject-matter and that is alleged to have been involved in the commission of the offence.

- (2) This Part does not:
- (a) require an infringement notice to be given to a person for the alleged commission of an offence; or
 - (b) affect the liability of a person to prosecution for the commission of an alleged offence if an infringement notice is not given to the person for the offence; or
 - (c) affect the liability of a person to prosecution for the commission of an alleged offence if an infringement notice is given to the person for the offence and the person does not pay the penalty stated in the notice for the offence in accordance with regulation 23U; or
 - (d) limit or otherwise affect the penalty that may be imposed by a court on a person for an offence.

23N Definitions

In this Part:

authorised officer means:

- (a) a member of the Australian Federal Police, within the meaning of the *Australian Federal Police Act 1979*; or
- (b) a member of the police force (however described) of a State or Territory.

infringement notice means an infringement notice under regulation 23P.

infringement notice offence means an offence of strict liability under:

- (a) Division 5 of Part V of the Act; or
- (b) Subdivision A or B of Division 3 of Part XIA of the Act.

infringing article, in relation to an offence of strict liability against a provision of Division 5 of Part V of the Act (except subsections 132AQ (5), 132AR (5) and 132AS (5)), means an article that is alleged to be an infringing copy of a work or other subject-matter and that is alleged to have been involved in the commission of the offence.

infringing device, in relation to an offence of strict liability against a provision of Division 5 of Part V of the Act (except subsections 132AQ (5), 132AR (5) and 132AS (5)), means a device that is alleged to have been made to be used for making an infringing copy of a work or other subject-matter and that is alleged to have been involved in the commission of the offence.

nominated person, in relation to an infringement notice, means the person specified in the notice as the nominated person.

recipient, in relation to an infringement notice, means the person to whom the notice is given under subregulation 23P (1).

Division 6A.2 Forfeiture of infringing articles and devices

23O Forfeiture of infringing articles and devices

- (1) This regulation applies if:
 - (a) an authorised officer has reasonable grounds to believe that a person has committed an offence of strict liability against a provision of Division 5 of Part V of the Act (except subsections 132AQ (5), 132AR (5) and 132AS (5)); and
 - (b) the person possesses, at the time and place that the authorised officer forms the belief mentioned in paragraph (a), an infringing article or an infringing device in relation to the alleged offence.
- (2) The authorised person may inform the person (either orally or by written notice) that the person may avoid prosecution for the alleged offence if:
 - (a) the person agrees to forfeit, and does forfeit, to the Commonwealth all infringing articles and devices that the person possesses at that time and place in relation to the alleged offence; and
 - (b) the person pays the penalty specified in an infringement notice for the alleged offence in accordance with regulation 23U; and

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- (c) the infringement notice for the alleged offence is not withdrawn.
- (3) If the person agrees to forfeit to the Commonwealth all infringing articles and devices that the person possesses at that time and place in relation to the alleged offence, the authorised officer:
- (a) may take possession of the infringing articles and devices; and
 - (b) must give the person a receipt for the infringing articles and devices taken into possession.
- (4) If the person pays the penalty specified in an infringement notice for the alleged offence, the nominated person must cause all infringing articles and devices in relation to the alleged offence that the person agreed to forfeit, and did forfeit, to the Commonwealth to be destroyed.

Note An infringement notice relating to an offence against a provision of Division 5 of Part V of the Act (except subsections 132AQ (5), 132AR (5) and 132AS (5)) may not be given if the recipient does not agree to forfeit to the Commonwealth all infringing articles and devices in the person's possession at that time and place in relation to the alleged offence — see regulation 23P.

Division 6A.3 Infringement notices

Subdivision 6A.3.1 Contents of infringement notices

23P When an infringement notice can be given

- (1) If:
- (a) an authorised officer has reasonable grounds to believe that a person has committed an infringement notice offence; and
 - (b) for an offence against a provision of Division 5 of Part V of the Act (except subsections 132AQ (5), 132AR (5) and 132AS (5)), the person has agreed to forfeit, and has forfeited, to the Commonwealth all infringing articles and devices in relation to the alleged offence in the person's possession at the time and place that the authorised officer forms the belief mentioned in paragraph (a);

the authorised officer may give to the person an infringement notice relating to the alleged offence.

- (2) An infringement notice relating to an alleged offence must be given within 12 months after the day on which the offence is alleged to have been committed.
- (3) If an infringement notice given to a person in relation to the alleged commission of a particular offence is withdrawn, an authorised officer may give the person a new infringement notice in relation to that alleged commission.

Example for subregulation (3)

An infringement notice given to a person in relation to the alleged commission of a particular offence may be withdrawn and a new infringement notice given to the person in relation to that alleged commission if the original infringement notice contained an error.

23Q Contents of infringement notice

An infringement notice:

- (a) must be in accordance with the form set out in Schedule 11C; and
- (b) may contain any other information that the authorised officer who gives it thinks necessary.

Subdivision 6A.3.2 Penalties

23R Amount of penalty if infringement notice given

The penalty payable under an infringement notice for the alleged commission of an infringement notice offence is:

- (a) for an individual — 12 penalty units; and
- (b) for a body corporate — 60 penalty units.

23S Extension of time to pay penalty

- (1) Within 28 days after receiving an infringement notice, the recipient may apply, in writing, to the nominated person for a further period of up to 28 days in which to pay the penalty stated in the notice.

- (2) The application must:
 - (a) specify the infringement notice's unique identification code; and
 - (b) set out the reasons for the application.
- (3) Within 14 days after receiving the application, the nominated person must:
 - (a) grant or refuse a further period not longer than the period sought (but less than 28 days); and
 - (b) notify the recipient in writing of the decision and, if the decision is a refusal, the reasons for the decision.

23T Payment of penalty by instalments

- (1) Within 28 days after receiving an infringement notice, the recipient may apply, in writing, to the nominated person for permission to pay the amount of the infringement notice penalty by instalments.
- (2) The application must:
 - (a) specify the infringement notice's unique identification code; and
 - (b) set out the reasons for the application; and
 - (c) specify the amount and frequency of the instalments that the recipient proposes to pay.
- (3) Within 14 days after receiving the application, the nominated person must:
 - (a) grant or refuse to grant permission for payment by instalments; and
 - (b) give the recipient written notice of the decision, including:
 - (i) if permission is granted — the amount and frequency of the instalments); and
 - (ii) if permission is refused — the reasons for refusal.

23U Time for payment of penalty

The penalty stated in an infringement notice must be paid:

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

23V Effect of payment of penalty and forfeiture of infringing articles and devices

- (1) The effects mentioned in subregulation (3) apply in relation to an alleged offence against a provision of Subdivision A or B of Division 3 of Part XIA of the Act, or against subsection 132AQ (5), 132AR (5) or 132AS (5) of the Act, if:
 - (a) an infringement notice is given in relation to the alleged offence; and
 - (b) the infringement notice is not withdrawn; and
 - (c) the recipient pays the penalty stated in the notice in accordance with regulation 23U.

- (2) The effects mentioned in subregulation (3) apply in relation to an alleged offence against a provision of Division 5 of Part V of the Act (except subsections 132AQ (5), 132AR (5) and 132AS (5)) if:
 - (a) an infringement notice is given in relation to the alleged offence; and
 - (b) the infringement notice is not withdrawn; and
 - (c) the recipient pays the penalty stated in the notice in accordance with regulation 23U; and
 - (d) the recipient agrees to forfeit, and has forfeited, to the Commonwealth all infringing articles and devices that the recipient possessed in relation to the alleged offence at the time and place at which the infringement notice was given.
- (3) The effects are:
 - (a) any liability of the recipient for the alleged offence is discharged; and
 - (b) no prosecution may be brought against the recipient for the alleged offence; and
 - (c) the recipient is not taken to have admitted guilt of 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

23W Withdrawal of infringement notice by nominated person

- (1) Within 28 days after receiving an infringement notice, the recipient may apply, in writing, to the nominated person for the infringement notice to be withdrawn.
- (2) The application must:
 - (a) specify the infringement notice's unique identification code; and
 - (b) set out the reasons for the application.

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- (3) Within 14 days after receiving the application, the nominated person must:
 - (a) withdraw or refuse to withdraw the notice; and
 - (b) notify the recipient in writing of the decision and, if the decision is a refusal, the reasons for the decision.
 - (4) Without limiting subregulation (3), the nominated person may withdraw the infringement notice after taking into account:
 - (a) whether the recipient has been previously convicted of an offence against the Act; or
 - (b) the circumstances in which the offence specified in the notice is alleged to have been committed; or
 - (c) whether an infringement notice has previously been given to the recipient in relation to an offence of the same kind as the offence specified in the notice, and in relation to which the recipient paid the penalty under the notice; or
 - (d) any other relevant matter.
 - (5) If the nominated person has not withdrawn, or refused to withdraw, the notice within the period mentioned in subregulation (3), the nominated person is taken to have refused to withdraw the notice.
 - (6) Application may be made to the Administrative Appeals Tribunal for review of a decision of the nominated person to refuse to withdraw an infringement notice.

Note Under section 27A of the *Administrative Appeals Tribunal Act 1975*, the decision-maker must 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.

23X Withdrawal of infringement notice by authorised officer

- (1) An authorised officer may withdraw an infringement notice given by him or her without an application under regulation 23W having been made.
- (2) Without limiting subregulation (1), the authorised officer may withdraw the infringement notice after taking into account a matter mentioned in paragraph 23W (4) (a), (b), (c) or (d).

23Y Notice of withdrawal of infringement notices

A notice withdrawing an infringement notice:

- (a) must include the following information:
 - (i) the full name, or surname and initials, and address of the recipient;
 - (ii) the date the infringement notice was given;
 - (iii) the infringement notice's unique identification code; and
- (b) must state that the notice is withdrawn.

23Z Refund of penalty

If an infringement notice is withdrawn after the penalty stated in it has been paid, the Commonwealth must refund the amount of the penalty to the person who paid it.

[8] Subregulation 27 (1)

omit everything before paragraph (a), insert

- (1) A document that is required or permitted by these Regulations to be served on a person in Australia (whether 'serve', 'give', 'send' or any other expression is used) may be served on the person:

[9] After Schedule 10*insert***Schedule 10A Prescribed acts**

(regulation 20Z)

Item	Topic	Description of prescribed act
1	Interoperability with computer programs	<p>1.1 The reproduction or adaptation by a person of a computer program of a kind mentioned in section 47D of the Act to achieve interoperability of an independently created article with the program or any other program in the circumstances mentioned in that section</p> <p><i>Note</i> For the doing of an act to achieve interoperability with an independently created computer program, see subsections 116AN (3) and 132APC (3) of the Act</p>
2	Educational institutions	2.1 The reproduction or communication by, or on the premises of, an educational institution of copyright material of a kind, and in the circumstances, mentioned in Division 2A of Part VB of the Act
3	Assistance to persons with a print disability	3.1 The reproduction or communication by an institution assisting persons with a print disability for provision of assistance to those persons of copyright material of a kind, and in the circumstances, mentioned in Division 3 of Part VB of the Act
4	Libraries or archives	<p>4.1 The reproduction or communication by a library of a kind mentioned in section 49 of the Act, or archives, of part or the whole of an article or published work to a person for research or study in the circumstances mentioned in that section</p> <p>4.2 The reproduction or communication by a library or archives of part or the whole of an article or published work to another library or archives in the circumstances mentioned in section 50 of the Act</p>

Item	Topic	Description of prescribed act
4.3		<p>The reproduction or communication by a library or archives of:</p> <ul style="list-style-type: none"> (a) a work for a purpose, and in the circumstances, mentioned in section 51A of the Act; and (b) an unpublished sound recording or cinematograph film for research or study, or with a view to publication, in the circumstances mentioned in section 110A of the Act; and (c) a sound recording or cinematograph film for the preservation or replacement of the sound recording or cinematograph film, or for research, in the circumstances mentioned in section 110B of the Act
5	Sound recordings for broadcasting	<p>5.1 The making of a copy of a sound recording in association with other matter solely for broadcasting it in the circumstances mentioned in section 107 of the Act</p> <p>5.2 The broadcasting of a sound recording in the circumstances mentioned in section 109 of the Act</p>
6	Malfunctioning technological protection measures	<p>6.1 The gaining of access to copyright material to which a technological protection measure has been applied if:</p> <ul style="list-style-type: none"> (a) the technological protection measure is not operating normally; and (b) a replacement technological protection measure is not reasonably available

Item	Topic	Description of prescribed act
6.2		<p>The gaining of access to copyright material that is protected by a technological protection measure that interferes with or damages a product in which it is installed (the <i>host product</i>) or another product used in conjunction with the host product:</p> <p>(a) to prevent damage, or further damage, to the host product or another product by the technological protection measure; or</p> <p>(b) to repair the host product or another product (if circumvention of the technological protection measure is necessary to enable the repair to be carried out)</p>

[10] After Schedule 11B

insert

Schedule 11C Form of infringement notice

(regulation 23Q)

COMMONWEALTH OF AUSTRALIA

Copyright Regulations 1969

INFRINGEMENT NOTICE

Date of issue:

Unique identification code:

TO [*name and address of recipient*]:

1. I, [*name of authorised officer giving the infringement notice*], give this infringement notice under regulation 23P of the *Copyright Regulations 1969*.

2. I have reasonable grounds to believe that you have committed the following offence:

[Details of alleged offence, including the provision of the Act that creates the offence, the nature of the offence, the time and date of the alleged offence, and the place of the alleged offence.]

Penalty under this notice

3. The penalty for the alleged offence under this notice is 12 penalty units for an individual or 60 penalty units for a body corporate. This penalty can be paid by [methods of payment].
- *4. If you pay the penalty stated in this notice within the time for payment mentioned below then (unless this notice is subsequently withdrawn and any penalty paid refunded):
- *4. If you have agreed to forfeit, and have forfeited, to the Commonwealth all infringing articles and devices in your possession in relation to the alleged offence at the time and place that this notice is issued, and you pay the penalty stated in this notice within the time for payment mentioned below, then (unless this notice is subsequently withdrawn and any penalty paid refunded):
- (a) any liability you have for the commission of the alleged offence will be discharged; and
 - (b) you will not be prosecuted for the alleged offence; and
 - (c) you will not be taken to have admitted guilt in respect of the alleged offence; and
 - (d) you will not be taken to have been convicted of the alleged offence.

* *Omit if not applicable*

Consequences of failure to pay penalty under this notice

5. If you do not pay the penalty specified in this notice within the time for payment mentioned below, you may be prosecuted for the alleged offence.
6. The maximum penalty that a court may impose for this offence is 60 penalty units for an individual and 300 penalty units for a body corporate.

Time for payment

7. The time for payment is:
- (a) within 28 days after the date of this notice; or
 - (b) if you apply for a further period of time in which to pay the penalty, and the application is granted — within the further period allowed; or
 - (c) if you apply for a further period of time in which to pay the penalty, and the application is refused — within 7 days after the date you receive the notice of refusal; or
 - (d) if you apply for permission to pay the penalty by instalments, and that permission is granted — in accordance with the permission; or
 - (e) if you apply for permission to pay the penalty by instalments, and that permission is refused — within 7 days after the date you receive the notice of refusal; or
 - (f) if you apply for the notice to be withdrawn, and the application is refused — within 28 days after the date you receive the notice of refusal.

Further penalty for continuing offence

8. If the commission of the alleged offence continues beyond [*date of alleged offence*], a further penalty may be imposed even if the penalty imposed by this notice is paid.

Contacting the [*relevant police force*]

9. The [*name of the police force*] may be contacted by: [*methods of contact*].

Applying to have this notice withdrawn

10. Within 28 days after you receive this notice, you may apply to [*name and/or position title*] (the ***nominated person***) to have this notice withdrawn.

Applying for more time to pay the penalty under this notice

11. Within 28 days after you receive this notice, you may apply to the nominated person for a further period of up to 28 days in which to pay the penalty under this notice.

Applying to pay the penalty under this notice by instalments

12. Within 28 days after you receive this notice, you may apply to the nominated person for permission to pay the penalty under this notice by instalments.

Requirements for applications

13. An application to have this notice withdrawn, or for more time to pay the penalty under this notice, or for permission to pay the penalty under this notice by instalments:
 - (a) must be in writing; and
 - (b) must include the unique identification code set out at the top of this notice; and
 - (c) must include your reasons for making the application; and
 - (d) for an application for permission to pay the penalty under this notice by instalments — include the proposed amount and frequency of instalments; and
 - (e) may be made by [*methods of making application*].

Signature of authorised officer issuing the notice:

[11] Further amendments

The following provisions are amended by omitting ‘For the purposes of’ and inserting ‘For’:

- regulation 23JA
- regulation 23JE
- subregulation 23JF (1)
- subregulation 23JG (1)
- subregulation 23JG (2)
- subregulation 23JG (3)

- regulation 23JH
- regulation 23JK
- regulation 23JL
- subregulation 23JM (1).

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.