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The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

## **Copyright Amendment Bill 2006**

**No.     , 2006**

*(Attorney-General)*

**A Bill for an Act to amend the *Copyright Act 1968*,  
and for related purposes**

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## Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedule(s).....	3
<b>Schedule 1—Criminal laws</b>		4
Part 1—Main amendments		4
	<i>Copyright Act 1968</i>	4
Part 2—Amendment contingent on the Archives Amendment Act 2006		78
	<i>Copyright Act 1968</i>	78
<b>Schedule 2—Presumptions</b>		79
	<i>Copyright Act 1968</i>	79
<b>Schedule 3—Technologically neutral definitions</b>		86
	<i>Copyright Act 1968</i>	86
<b>Schedule 4—Civil remedies and commercial-scale infringement online</b>		89
	<i>Copyright Act 1968</i>	89
<b>Schedule 5—Customs seizure of imported infringing copies</b>		91
	<i>Copyright Act 1968</i>	91
<b>Schedule 6—Exceptions to infringement of copyright</b>		94
Part 1—Recording broadcasts for replaying at more convenient time		94
	<i>Copyright Act 1968</i>	94
Part 2—Reproducing copyright material in different format for private use		96
	<i>Copyright Act 1968</i>	96
Part 3—Use of copyright material for certain purposes		104
	<i>Copyright Act 1968</i>	104
Part 4—Fair dealing for research or study		107
	<i>Copyright Act 1968</i>	107

---

Part 5—Official copying of library and archive material	108
<i>Copyright Act 1968</i>	108
<b>Schedule 7—Maker of communication</b>	116
<i>Copyright Act 1968</i>	116
<b>Schedule 8—Responses to Digital Agenda review</b>	117
Part 1—Communication in the course of educational instruction	117
<i>Copyright Act 1968</i>	117
Part 2—Educational copying of communications of free-to-air broadcasts	118
Division 1—Main amendments	118
<i>Copyright Act 1968</i>	118
Division 2—Consequential amendments	118
<i>Copyright Act 1968</i>	118
Part 3—Insubstantial parts of works in electronic form	119
<i>Copyright Act 1968</i>	119
Part 4—Electronic anthologies	121
<i>Copyright Act 1968</i>	121
Part 5—Active caching for educational purposes	122
<i>Copyright Act 1968</i>	122
<b>Schedule 9—Unauthorised access to encoded broadcasts</b>	123
<i>Copyright Act 1968</i>	123
<b>Schedule 10—Copyright Tribunal: amendments commencing first</b>	138
Part 1—Remuneration required by Parts VA and VB	138
<i>Copyright Act 1968</i>	138
Part 2—Declarations of collecting societies	140
<i>Copyright Act 1968</i>	140
Part 3—Tribunal name	153
<i>Copyright Act 1968</i>	153

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---

Part 4—Registrar	154
<i>Copyright Act 1968</i>	154
<b>Schedule 11—Copyright Tribunal: amendments commencing second</b>	157
Part 1—Licences and licence schemes	157
Division 1—Voluntary licences	157
<i>Copyright Act 1968</i>	157
Division 2—Substituting licence schemes	158
<i>Copyright Act 1968</i>	158
Division 3—Involvement of Australian Competition and Consumer Commission	162
<i>Copyright Act 1968</i>	162
Part 2—Distribution of amounts collected by declared collecting societies	164
<i>Copyright Act 1968</i>	164
Part 3—Manner of paying royalty for copying musical works	170
<i>Copyright Act 1968</i>	170
Part 4—Records notices	171
<i>Copyright Act 1968</i>	171
Part 5—Alternative dispute resolution	175
<i>Copyright Act 1968</i>	175
Part 6—Determination of questions relating to Parts VA and VB	181
<i>Copyright Act 1968</i>	181
<b>Schedule 12—Technological protection measures</b>	184
Part 1—Main amendments	184
<i>Copyright Act 1968</i>	184
Part 2—Amendments contingent on the Archives Amendment Act 2006	213

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1     **A Bill for an Act to amend the *Copyright Act 1968*,**  
2     **and for related purposes**

3     The Parliament of Australia enacts:

4     **1 Short title**

5             This Act may be cited as the *Copyright Amendment Act 2006*.

6     **2 Commencement**

7             (1) Each provision of this Act specified in column 1 of the table  
8                 commences, or is taken to have commenced, in accordance with  
9                 column 2 of the table. Any other statement in column 2 has effect  
10                according to its terms.

11

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1, Part 1	1 January 2007.	1 January 2007
3. Schedule 1, Part 2	The later of: (a) immediately after the commencement of Part 1 of Schedule 1 to this Act; and (b) the time the <i>Archives Amendment Act 2006</i> commences.  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
4. Schedules 2 to 5	1 January 2007.	1 January 2007
5. Schedules 6 to 8	The day on which this Act receives the Royal Assent.	
6. Schedule 9	The 28th day after the day on which this Act receives the Royal Assent.	
7. Schedule 10	The day on which this Act receives the Royal Assent.	
8. Schedule 11	Immediately after the commencement of Schedule 10.	
9. Schedule 12, Part 1	Immediately after the commencement of the provisions covered by table item 2.	
10. Schedule 12, Part 2	The later of: (a) immediately after the commencement of Part 1 of Schedule 12 to this Act; and (b) immediately after the commencement of Schedule 1 to the <i>Archives Amendment Act 2006</i> .  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	



1  
2 **Schedule 1—Criminal laws**

3 **Part 1—Main amendments**

4 *Copyright Act 1968*

5 **1 At the end of section 49**

6 Add:

7 Note: Under section 203F, it is an offence to make a false or misleading  
8 declaration for the purposes of this section. Sections 203A, 203D and  
9 203G create offences relating to the keeping of declarations made for  
10 the purposes of this section.

11 **2 At the end of section 50**

12 Add:

13 Note: Under section 203F, it is an offence to make a false or misleading  
14 declaration for the purposes of this section. Sections 203A, 203D and  
15 203G create offences relating to the keeping of declarations made for  
16 the purposes of this section.

17 **3 At the end of subsection 51A(4)**

18 Add:

19 Note: Under section 203F, it is an offence to make a false or misleading  
20 declaration for the purposes of this section. Sections 203A, 203D and  
21 203G create offences relating to the keeping of declarations made for  
22 the purposes of this section.

23 **4 At the end of subsection 110B(3)**

24 Add:

25 Note: Under section 203F, it is an offence to make a false or misleading  
26 declaration for the purposes of this section. Sections 203A, 203D and  
27 203G create offences relating to the keeping of declarations made for  
28 the purposes of this section.

29 **5 Subsection 126B(8)**

30 Repeal the subsection.

31 **6 Section 132**

32 Repeal the section, substitute:



1 **Subdivision A—Preliminary**

2 **132AA Definitions**

3 In this Division:

4 *article* includes a reproduction or copy of a work or other  
5 subject-matter, being a reproduction or copy in electronic form.

6 *copyright material* means:

- 7 (a) a work; or  
8 (b) a published edition of a work; or  
9 (c) a sound recording; or  
10 (d) a cinematograph film; or  
11 (e) a television or sound broadcast; or  
12 (f) a work that is included in a sound recording, a cinematograph  
13 film or a television or sound broadcast.

14 *distribute*, except in Subdivision E, includes distribute by way of  
15 communication.

16 *place of public entertainment* includes premises that are occupied  
17 principally for purposes other than public entertainment but are  
18 from time to time made available for hire for purposes of public  
19 entertainment.

20 *profit* does not include any advantage, benefit, or gain, that:

- 21 (a) is received by a person; and  
22 (b) results from, or is associated with, the person's private or  
23 domestic use of any copyright material.

24 **132AB Geographical application**

- 25 (1) Subdivisions B, C, D, E and F apply only to acts done in Australia.  
26 (2) This section has effect despite section 14.1 (Standard geographical  
27 jurisdiction) of the *Criminal Code*.

1 **Subdivision B—Substantial infringement on a commercial scale**

2 **132AC Commercial-scale infringement prejudicing copyright owner**

3 *Indictable offence*

- 4 (1) A person commits an offence if:  
5 (a) the person engages in conduct; and  
6 (b) the conduct results in one or more infringements of the  
7 copyright in a work or other subject-matter; and  
8 (c) the infringement or infringements have a substantial  
9 prejudicial impact on the owner of the copyright; and  
10 (d) the infringement or infringements occur on a commercial  
11 scale.

- 12 (2) An offence against subsection (1) is punishable on conviction by a  
13 fine of not more than 550 penalty units or imprisonment for not  
14 more than 5 years, or both.

15 Note: A corporation may be fined up to 5 times the amount of the maximum  
16 fine (see subsection 4B(3) of the *Crimes Act 1914*).

17 *Summary offence*

- 18 (3) A person commits an offence if:  
19 (a) the person engages in conduct; and  
20 (b) the conduct results in one or more infringements of the  
21 copyright in a work or other subject-matter; and  
22 (c) the infringement or infringements have a substantial  
23 prejudicial impact on the owner of the copyright and the  
24 person is negligent as to that fact; and  
25 (d) the infringement or infringements occur on a commercial  
26 scale and the person is negligent as to that fact.

27 Penalty: 120 penalty units or imprisonment for 2 years, or both.

- 28 (4) An offence against subsection (3) is a summary offence, despite  
29 section 4G of the *Crimes Act 1914*.

1 *Determining whether infringements occur on commercial scale*

- 2 (5) In determining whether one or more infringements occur on a  
3 commercial scale for the purposes of paragraph (1)(d) or (3)(d), the  
4 following matters are to be taken into account:  
5 (a) the volume and value of any articles that are infringing  
6 copies that constitute the infringement or infringements;  
7 (b) any other relevant matter.

8 *Defence relating to law enforcement and national security*

- 9 (6) This section does not apply in respect of anything lawfully done  
10 for the purposes of law enforcement or national security by or on  
11 behalf of:  
12 (a) the Commonwealth or a State or Territory; or  
13 (b) an authority of the Commonwealth or of a State or Territory.

14 Note: A defendant bears an evidential burden in relation to the matter in  
15 subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

16 *Defence for certain public institutions etc.*

- 17 (7) This section does not apply in respect of anything lawfully done by  
18 the following in performing their functions:  
19 (a) a library (other than a library that is conducted for the profit,  
20 direct or indirect, of an individual or individuals);  
21 (b) a body mentioned in:  
22 (i) paragraph (a) of the definition of *archives* in subsection  
23 10(1); or  
24 (ii) subsection 10(4);  
25 (c) an educational institution;  
26 (d) a public non-commercial broadcaster, including:  
27 (i) a body that provides a national broadcasting service  
28 within the meaning of the *Broadcasting Services Act*  
29 *1992*; and  
30 (ii) a body that holds a community broadcasting licence  
31 within the meaning of that Act.

32 Note 1: A library that is owned by a person conducting a business for profit  
33 might not itself be conducted for profit (see section 18).

34 Note 2: A defendant bears an evidential burden in relation to the matter in  
35 subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

1 **Subdivision C—Infringing copies**

2 **132AD Making infringing copy commercially**

3 *Indictable offence*

- 4 (1) A person commits an offence if:  
5 (a) the person makes an article, with the intention of:  
6 (i) selling it; or  
7 (ii) letting it for hire; or  
8 (iii) obtaining a commercial advantage or profit; and  
9 (b) the article is an infringing copy of a work or other  
10 subject-matter; and  
11 (c) copyright subsists in the work or other subject-matter when  
12 the article is made.
- 13 (2) An offence against subsection (1) is punishable on conviction by a  
14 fine of not more than 550 penalty units or imprisonment for not  
15 more than 5 years, or both.

16 Note 1: A corporation may be fined up to 5 times the amount of the maximum  
17 fine (see subsection 4B(3) of the *Crimes Act 1914*).

18 Note 2: If the infringing copy was made by converting the work or other  
19 subject-matter from a hard copy or analog form into a digital or other  
20 electronic machine-readable form, there is an aggravated offence with  
21 a higher maximum penalty under section 132AK.

22 *Summary offence*

- 23 (3) A person commits an offence if:  
24 (a) the person makes an article, with the intention of:  
25 (i) selling it; or  
26 (ii) letting it for hire; or  
27 (iii) obtaining a commercial advantage or profit; and  
28 (b) the article is an infringing copy of a work or other  
29 subject-matter and the person is negligent as to that fact; and  
30 (c) copyright subsists in the work or other subject-matter when  
31 the article is made and the person is negligent as to that fact.

32 Penalty: 120 penalty units or imprisonment for 2 years, or both.

1 (4) An offence against subsection (3) is a summary offence, despite  
2 section 4G of the *Crimes Act 1914*.

3 *Strict liability offence*

- 4 (5) A person commits an offence if:  
5 (a) the person makes an article in preparation for, or in the  
6 course of:  
7 (i) selling it; or  
8 (ii) letting it for hire; or  
9 (iii) obtaining a commercial advantage or profit; and  
10 (b) the article is an infringing copy of a work or other  
11 subject-matter; and  
12 (c) copyright subsists in the work or other subject-matter when  
13 the article is made.

14 Penalty: 60 penalty units.

15 (6) Subsection (5) is an offence of strict liability.

16 Note: For strict liability, see section 6.1 of the *Criminal Code*.

17 **132AE Selling or hiring out infringing copy**

18 *Indictable offence*

- 19 (1) A person commits an offence if:  
20 (a) the person sells an article or lets an article for hire; and  
21 (b) the article is an infringing copy of a work or other  
22 subject-matter; and  
23 (c) copyright subsists in the work or other subject-matter at the  
24 time of the sale or letting.

25 (2) An offence against subsection (1) is punishable on conviction by a  
26 fine of not more than 550 penalty units or imprisonment for not  
27 more than 5 years, or both.

28 Note 1: A corporation may be fined up to 5 times the amount of the maximum  
29 fine (see subsection 4B(3) of the *Crimes Act 1914*).

30 Note 2: If the infringing copy was made by converting the work or other  
31 subject-matter from a hard copy or analog form into a digital or other  
32 electronic machine-readable form, there is an aggravated offence with  
33 a higher maximum penalty under section 132AK.

1                                    *Summary offence*

- 2                    (3) A person commits an offence if:  
3                            (a) the person sells an article or lets an article for hire; and  
4                            (b) the article is an infringing copy of a work or other  
5    subject-matter and the person is negligent as to that fact; and  
6                            (c) copyright subsists in the work or other subject-matter at the  
7    time of the sale or letting and the person is negligent as to  
8    that fact.

9                                    Penalty: 120 penalty units or imprisonment for 2 years, or both.

- 10                    (4) An offence against subsection (3) is a summary offence, despite  
11    section 4G of the *Crimes Act 1914*.

12                                    *Strict liability offence*

- 13                    (5) A person commits an offence if:  
14                            (a) the person sells an article or lets an article for hire; and  
15                            (b) the article is an infringing copy of a work or other  
16    subject-matter; and  
17                            (c) copyright subsists in the work or other subject-matter at the  
18    time of the sale or letting.

19                                    Penalty: 60 penalty units.

- 20                    (6) Subsection (5) is an offence of strict liability.

21                                    Note:            For strict liability, see section 6.1 of the *Criminal Code*.

22                    **132AF Offering infringing copy for sale or hire**

23                                    *Indictable offences*

- 24                    (1) A person commits an offence if:  
25                            (a) the person by way of trade offers or exposes an article for  
26    sale or hire; and  
27                            (b) the article is an infringing copy of a work or other  
28    subject-matter; and  
29                            (c) copyright subsists in the work or other subject-matter at the  
30    time of the offer or exposure.

- 31                    (2) A person commits an offence if:

- 1 (a) the person offers or exposes an article for sale or hire, with  
2 the intention of obtaining a commercial advantage or profit;  
3 and  
4 (b) the article is an infringing copy of a work or other  
5 subject-matter; and  
6 (c) copyright subsists in the work or other subject-matter at the  
7 time of the offer or exposure.

8 (3) An offence against subsection (1) or (2) is punishable on  
9 conviction by a fine of not more than 550 penalty units or  
10 imprisonment for not more than 5 years, or both.

11 Note 1: A corporation may be fined up to 5 times the amount of the maximum  
12 fine (see subsection 4B(3) of the *Crimes Act 1914*).

13 Note 2: If the infringing copy was made by converting the work or other  
14 subject-matter from a hard copy or analog form into a digital or other  
15 electronic machine-readable form, there is an aggravated offence with  
16 a higher maximum penalty under section 132AK.

17 *Summary offences*

18 (4) A person commits an offence if:

- 19 (a) the person by way of trade offers or exposes an article for  
20 sale or hire; and  
21 (b) the article is an infringing copy of a work or other  
22 subject-matter and the person is negligent as to that fact; and  
23 (c) copyright subsists in the work or other subject-matter at the  
24 time of the offer or exposure and the person is negligent as to  
25 that fact.

26 Penalty: 120 penalty units or imprisonment for 2 years, or both.

27 (5) A person commits an offence if:

- 28 (a) the person offers or exposes an article for sale or hire, with  
29 the intention of obtaining a commercial advantage or profit;  
30 and  
31 (b) the article is an infringing copy of a work or other  
32 subject-matter and the person is negligent as to that fact; and  
33 (c) copyright subsists in the work or other subject-matter at the  
34 time of the offer or exposure and the person is negligent as to  
35 that fact.

36 Penalty: 120 penalty units or imprisonment for 2 years, or both.

1 (6) An offence against subsection (4) or (5) is a summary offence,  
2 despite section 4G of the *Crimes Act 1914*.

3 *Strict liability offences*

4 (7) A person commits an offence if:

- 5 (a) the person by way of trade offers or exposes an article for  
6 sale or hire; and  
7 (b) the article is an infringing copy of a work or other  
8 subject-matter; and  
9 (c) copyright subsists in the work or other subject-matter at the  
10 time of the offer or exposure.

11 Penalty: 60 penalty units.

12 (8) A person commits an offence if:

- 13 (a) the person offers or exposes an article for sale or hire, in  
14 preparation for, or in the course of, obtaining a commercial  
15 advantage or profit; and  
16 (b) the article is an infringing copy of a work or other  
17 subject-matter; and  
18 (c) copyright subsists in the work or other subject-matter at the  
19 time of the offer or exposure.

20 Penalty: 60 penalty units.

21 (9) Subsections (7) and (8) are offences of strict liability.

22 Note: For strict liability, see section 6.1 of the *Criminal Code*.

23 **132AG Exhibiting infringing copy in public commercially**

24 *Indictable offences*

25 (1) A person commits an offence if:

- 26 (a) the person by way of trade exhibits an article in public; and  
27 (b) the article is an infringing copy of a work or other  
28 subject-matter; and  
29 (c) copyright subsists in the work or other subject-matter at the  
30 time of the exhibition.

31 (2) A person commits an offence if:



- 1 (a) the person exhibits an article in public, with the intention of  
2 obtaining a commercial advantage or profit; and  
3 (b) the article is an infringing copy of a work or other  
4 subject-matter; and  
5 (c) copyright subsists in the work or other subject-matter at the  
6 time of the exhibition.

- 7 (3) An offence against subsection (1) or (2) is punishable on  
8 conviction by a fine of not more than 550 penalty units or  
9 imprisonment for not more than 5 years, or both.

10 Note 1: A corporation may be fined up to 5 times the amount of the maximum  
11 fine (see subsection 4B(3) of the *Crimes Act 1914*).

12 Note 2: If the infringing copy was made by converting the work or other  
13 subject-matter from a hard copy or analog form into a digital or other  
14 electronic machine-readable form, there is an aggravated offence with  
15 a higher maximum penalty under section 132AK.

16 *Summary offences*

- 17 (4) A person commits an offence if:  
18 (a) the person by way of trade exhibits an article in public; and  
19 (b) the article is an infringing copy of a work or other  
20 subject-matter and the person is negligent as to that fact; and  
21 (c) copyright subsists in the work or other subject-matter at the  
22 time of the exhibition and the person is negligent as to that  
23 fact.

24 Penalty: 120 penalty units or imprisonment for 2 years, or both.

- 25 (5) A person commits an offence if:  
26 (a) the person exhibits an article in public, with the intention of  
27 obtaining a commercial advantage or profit; and  
28 (b) the article is an infringing copy of a work or other  
29 subject-matter and the person is negligent as to that fact; and  
30 (c) copyright subsists in the work or other subject-matter at the  
31 time of the exhibition and the person is negligent as to that  
32 fact.

33 Penalty: 120 penalty units or imprisonment for 2 years, or both.

- 34 (6) An offence against subsection (4) or (5) is a summary offence,  
35 despite section 4G of the *Crimes Act 1914*.

*Strict liability offences*

- 1  
2 (7) A person commits an offence if:  
3 (a) the person by way of trade exhibits an article in public; and  
4 (b) the article is an infringing copy of a work or other  
5 subject-matter; and  
6 (c) copyright subsists in the work or other subject-matter at the  
7 time of the exhibition.

8 Penalty: 60 penalty units.

- 9 (8) A person commits an offence if:  
10 (a) the person exhibits an article in public in preparation for, or  
11 in the course of, obtaining a commercial advantage or profit;  
12 and  
13 (b) the article is an infringing copy of a work or other  
14 subject-matter; and  
15 (c) copyright subsists in the work or other subject-matter at the  
16 time of the exhibition.

17 Penalty: 60 penalty units.

- 18 (9) Subsections (7) and (8) are offences of strict liability.

19 Note: For strict liability, see section 6.1 of the *Criminal Code*.

20 **132AH Importing infringing copy commercially**

21 *Indictable offence*

- 22 (1) A person commits an offence if:  
23 (a) the person imports an article into Australia, with the intention  
24 of doing any of the following with the article:  
25 (i) selling it;  
26 (ii) letting it for hire;  
27 (iii) by way of trade offering or exposing it for sale or hire;  
28 (iv) offering or exposing it for sale or hire to obtain a  
29 commercial advantage or profit;  
30 (v) distributing it for trade;  
31 (vi) distributing it to obtain a commercial advantage or  
32 profit;

- 1 (vii) distributing it to an extent that will affect prejudicially  
2 the owner of the copyright in the work or other  
3 subject-matter of which the article is an infringing copy;  
4 (viii) by way of trade exhibiting it in public;  
5 (ix) exhibiting it in public to obtain a commercial advantage  
6 or profit; and  
7 (b) the article is an infringing copy of a work or other  
8 subject-matter; and  
9 (c) copyright subsists in the work or other subject-matter at the  
10 time of the import.

- 11 (2) An offence against this section is punishable on conviction by a  
12 fine of not more than 650 penalty units or imprisonment for not  
13 more than 5 years, or both.

14 Note 1: A corporation may be fined up to 5 times the amount of the maximum  
15 fine (see subsection 4B(3) of the *Crimes Act 1914*).

16 Note 2: If the infringing copy was made by converting the work or other  
17 subject-matter from a hard copy or analog form into a digital or other  
18 electronic machine-readable form, there is an aggravated offence with  
19 a higher maximum penalty under section 132AK.

20 *Summary offence*

- 21 (3) A person commits an offence if:  
22 (a) the person imports an article into Australia, with the intention  
23 of doing any of the following with the article:  
24 (i) selling it;  
25 (ii) letting it for hire;  
26 (iii) by way of trade offering or exposing it for sale or hire;  
27 (iv) offering or exposing it for sale or hire to obtain a  
28 commercial advantage or profit;  
29 (v) distributing it for trade;  
30 (vi) distributing it to obtain a commercial advantage or  
31 profit;  
32 (vii) distributing it to an extent that will affect prejudicially  
33 the owner of the copyright in the work or other  
34 subject-matter of which the article is an infringing copy;  
35 (viii) by way of trade exhibiting it in public;  
36 (ix) exhibiting it in public to obtain a commercial advantage  
37 or profit; and

- 1 (b) the article is an infringing copy of a work or other  
2 subject-matter and the person is negligent as to that fact; and  
3 (c) copyright subsists in the work or other subject-matter at the  
4 time of the import and the person is negligent as to that fact.

5 Penalty: 120 penalty units or imprisonment for 2 years, or both.

- 6 (4) An offence against subsection (3) is a summary offence, despite  
7 section 4G of the *Crimes Act 1914*.

8 *Strict liability offence*

- 9 (5) A person commits an offence if:  
10 (a) the person imports an article into Australia in preparation for,  
11 or in the course of, doing any of the following with the  
12 article:  
13 (i) selling it;  
14 (ii) letting it for hire;  
15 (iii) by way of trade offering or exposing it for sale or hire;  
16 (iv) offering or exposing it for sale or hire to obtain a  
17 commercial advantage or profit;  
18 (v) distributing it for trade;  
19 (vi) distributing it to obtain a commercial advantage or  
20 profit;  
21 (vii) distributing it to an extent that will affect prejudicially  
22 the owner of the copyright in the work or other  
23 subject-matter of which the article is an infringing copy;  
24 (viii) by way of trade exhibiting it in public;  
25 (ix) exhibiting it in public to obtain a commercial advantage  
26 or profit; and  
27 (b) the article is an infringing copy of a work or other  
28 subject-matter; and  
29 (c) copyright subsists in the work or other subject-matter at the  
30 time of the import.

31 Penalty: 60 penalty units.

- 32 (6) Subsection (5) is an offence of strict liability.

33 Note: For strict liability, see section 6.1 of the *Criminal Code*.

1 **132AI Distributing infringing copy**

2 *Indictable offences*

- 3 (1) A person commits an offence if:  
4 (a) the person distributes an article, with the intention of:  
5 (i) trading; or  
6 (ii) obtaining a commercial advantage or profit; and  
7 (b) the article is an infringing copy of a work or other  
8 subject-matter; and  
9 (c) copyright subsists in the work or other subject-matter at the  
10 time of the distribution.
- 11 (2) A person commits an offence if:  
12 (a) the person distributes an article; and  
13 (b) the article is an infringing copy of a work or other  
14 subject-matter; and  
15 (c) copyright subsists in the work or other subject-matter at the  
16 time of the distribution; and  
17 (d) the extent of the distribution affects prejudicially the owner  
18 of the copyright.
- 19 (3) An offence against subsection (1) or (2) is punishable on  
20 conviction by a fine of not more than 550 penalty units or  
21 imprisonment for not more than 5 years, or both.

22 Note 1: A corporation may be fined up to 5 times the amount of the maximum  
23 fine (see subsection 4B(3) of the *Crimes Act 1914*).

24 Note 2: If the infringing copy was made by converting the work or other  
25 subject-matter from a hard copy or analog form into a digital or other  
26 electronic machine-readable form, there is an aggravated offence with  
27 a higher maximum penalty under section 132AK.

28 *Summary offences*

- 29 (4) A person commits an offence if:  
30 (a) the person distributes an article, with the intention of:  
31 (i) trading; or  
32 (ii) obtaining a commercial advantage or profit; and  
33 (b) the article is an infringing copy of a work or other  
34 subject-matter and the person is negligent as to that fact; and

1 (c) copyright subsists in the work or other subject-matter at the  
2 time of the distribution and the person is negligent as to that  
3 fact.

4 Penalty: 120 penalty units or imprisonment for 2 years, or both.

5 (5) A person commits an offence if:

6 (a) the person distributes an article; and

7 (b) the article is an infringing copy of a work or other  
8 subject-matter and the person is negligent as to that fact; and

9 (c) copyright subsists in the work or other subject-matter at the  
10 time of the distribution and the person is negligent as to that  
11 fact; and

12 (d) the extent of the distribution affects prejudicially the owner  
13 of the copyright and the person is negligent as to that fact.

14 Penalty: 120 penalty units or imprisonment for 2 years, or both.

15 (6) An offence against subsection (4) or (5) is a summary offence,  
16 despite section 4G of the *Crimes Act 1914*.

17 *Strict liability offences*

18 (7) A person commits an offence if:

19 (a) the person distributes an article in preparation for, or in the  
20 course of:

21 (i) trading; or

22 (ii) obtaining a commercial advantage or profit; and

23 (b) the article is an infringing copy of a work or other  
24 subject-matter; and

25 (c) copyright subsists in the work or other subject-matter at the  
26 time of the distribution.

27 Penalty: 60 penalty units.

28 (8) A person commits an offence if:

29 (a) the person distributes an article; and

30 (b) the article is an infringing copy of a work or other  
31 subject-matter; and

32 (c) copyright subsists in the work or other subject-matter at the  
33 time of the distribution; and

1 (d) the extent of the distribution affects prejudicially the owner  
2 of the copyright.

3 Penalty: 60 penalty units.

4 (9) Subsections (7) and (8) are offences of strict liability.

5 Note: For strict liability, see section 6.1 of the *Criminal Code*.

## 6 **132AJ Possessing infringing copy for commerce**

### 7 *Indictable offence*

8 (1) A person commits an offence if:

- 9 (a) the person possesses an article, with the intention of doing  
10 any of the following with the article:
- 11 (i) selling it;
  - 12 (ii) letting it for hire;
  - 13 (iii) by way of trade offering or exposing it for sale or hire;
  - 14 (iv) offering or exposing it for sale or hire to obtain a  
15 commercial advantage or profit;
  - 16 (v) distributing it for trade;
  - 17 (vi) distributing it to obtain a commercial advantage or  
18 profit;
  - 19 (vii) distributing it to an extent that will affect prejudicially  
20 the owner of the copyright in the work or other  
21 subject-matter of which the article is an infringing copy;
  - 22 (viii) by way of trade exhibiting it in public;
  - 23 (ix) exhibiting it in public to obtain a commercial advantage  
24 or profit; and
- 25 (b) the article is an infringing copy of a work or other  
26 subject-matter; and
- 27 (c) copyright subsists in the work or other subject-matter at the  
28 time of the possession.

29 (2) An offence against subsection (1) is punishable on conviction by a  
30 fine of not more than 550 penalty units or imprisonment for not  
31 more than 5 years, or both.

32 Note 1: A corporation may be fined up to 5 times the amount of the maximum  
33 fine (see subsection 4B(3) of the *Crimes Act 1914*).

34 Note 2: If the infringing copy was made by converting the work or other  
35 subject-matter from a hard copy or analog form into a digital or other

1 electronic machine-readable form, there is an aggravated offence with  
2 a higher maximum penalty under section 132AK.

3 *Summary offence*

- 4 (3) A person commits an offence if:
- 5 (a) the person possesses an article, with the intention of doing  
6 any of the following with the article:
    - 7 (i) selling it;
    - 8 (ii) letting it for hire;
    - 9 (iii) by way of trade offering or exposing it for sale or hire;
    - 10 (iv) offering or exposing it for sale or hire to obtain a  
11 commercial advantage or profit;
    - 12 (v) distributing it for trade;
    - 13 (vi) distributing it to obtain a commercial advantage or  
14 profit;
    - 15 (vii) distributing it to an extent that will affect prejudicially  
16 the owner of the copyright in the work or other  
17 subject-matter of which the article is an infringing copy;
    - 18 (viii) by way of trade exhibiting it in public;
    - 19 (ix) exhibiting it in public to obtain a commercial advantage  
20 or profit; and
  - 21 (b) the article is an infringing copy of a work or other  
22 subject-matter and the person is negligent as to that fact; and
  - 23 (c) copyright subsists in the work or other subject-matter at the  
24 time of the possession and the person is negligent as to that  
25 fact.

26 Penalty: 120 penalty units or imprisonment for 2 years, or both.

- 27 (4) An offence against subsection (3) is a summary offence, despite  
28 section 4G of the *Crimes Act 1914*.

29 *Strict liability offence*

- 30 (5) A person commits an offence if:
- 31 (a) the person possesses an article in preparation for, or in the  
32 course of, doing any of the following with the article:
    - 33 (i) selling it;
    - 34 (ii) letting it for hire;
    - 35 (iii) by way of trade offering or exposing it for sale or hire;



- 1 (iv) offering or exposing it for sale or hire to obtain a  
2 commercial advantage or profit;  
3 (v) distributing it for trade;  
4 (vi) distributing it to obtain a commercial advantage or  
5 profit;  
6 (vii) distributing it to an extent that will affect prejudicially  
7 the owner of the copyright in the work or other  
8 subject-matter of which the article is an infringing copy;  
9 (viii) by way of trade exhibiting it in public;  
10 (ix) exhibiting it in public to obtain a commercial advantage  
11 or profit; and  
12 (b) the article is an infringing copy of a work or other  
13 subject-matter; and  
14 (c) copyright subsists in the work or other subject-matter at the  
15 time of the possession.

16 Penalty: 60 penalty units.

17 (6) Subsection (5) is an offence of strict liability.

18 Note: For strict liability, see section 6.1 of the *Criminal Code*.

19 **132AK Aggravated offence—work etc. converted to digital form**

20 (1) An indictable offence against a provision (the *basic offence*  
21 *provision*) of this Subdivision (except sections 132AL and  
22 132AM) relating to an infringing copy is an *aggravated offence* if  
23 the infringing copy was made by converting a work or other  
24 subject-matter from a hard copy or analog form into a digital or  
25 other electronic machine-readable form.

26 (2) An aggravated offence is punishable on conviction by a fine of not  
27 more than 850 penalty units or imprisonment for not more than 5  
28 years, or both.

29 Note: A corporation may be fined up to 5 times the amount of the maximum  
30 fine (see subsection 4B(3) of the *Crimes Act 1914*).

31 (3) To prove an aggravated offence, the prosecution must prove that  
32 the defendant was reckless with respect to the circumstance that the  
33 infringing copy was made by converting a work or other  
34 subject-matter from a hard copy or analog form into a digital or  
35 other electronic machine-readable form.



1 (d) copyright subsists in the work or other subject-matter at the  
2 time of the making of the device and the person is negligent  
3 as to that fact.

4 Penalty: 120 penalty units or imprisonment for 2 years, or both.

5 (5) A person commits an offence if:

6 (a) the person possesses a device; and

7 (b) the device is to be used for copying a work or other  
8 subject-matter; and

9 (c) the copy will be an infringing copy and the person is  
10 negligent as to that fact; and

11 (d) copyright subsists in the work or other subject-matter at the  
12 time of the possession and the person is negligent as to that  
13 fact.

14 Penalty: 120 penalty units or imprisonment for 2 years, or both.

15 (6) To avoid doubt, recklessness is the fault element for the  
16 circumstance in paragraphs (4)(b) and (5)(b) that the device is to be  
17 used for copying a work or other subject-matter.

18 (7) An offence against subsection (4) or (5) is a summary offence,  
19 despite section 4G of the *Crimes Act 1914*.

20 *Strict liability offences*

21 (8) A person commits an offence if:

22 (a) the person makes a device; and

23 (b) the device is to be used for copying a work or other  
24 subject-matter; and

25 (c) the copy will be an infringing copy; and

26 (d) copyright subsists in the work or other subject-matter at the  
27 time of the making of the device.

28 Penalty: 60 penalty units.

29 (9) A person commits an offence if:

30 (a) the person possesses a device; and

31 (b) the device is to be used for copying a work or other  
32 subject-matter; and

33 (c) the copy will be an infringing copy; and

1 (d) copyright subsists in the work or other subject-matter at the  
2 time of the possession.

3 Penalty: 60 penalty units.

4 (10) Subsections (8) and (9) are offences of strict liability.

5 Note: For strict liability, see section 6.1 of the *Criminal Code*.

6 *No need to prove which work etc. is to be copied*

7 (11) In a prosecution for an offence against this section, it is not  
8 necessary to prove which particular work or other subject-matter is  
9 intended to be, or will be, copied using the device.

## 10 **132AM Advertising supply of infringing copy**

11 *Summary offence*

12 (1) A person commits an offence if:

13 (a) the person, by any means, publishes, or causes to be  
14 published, an advertisement for the supply in Australia of a  
15 copy (whether from within or outside Australia) of a work or  
16 other subject-matter; and

17 (b) the copy is, or will be, an infringing copy.

18 Penalty: 30 penalty units or imprisonment for 6 months, or both.

19 *Location of supply of copy by communication resulting in creation  
20 of copy*

21 (2) For the purposes of this section, a communication of a work or  
22 other subject-matter that, when received and recorded, will result  
23 in the creation of a copy of the work or other subject-matter is  
24 taken to constitute the supply of a copy of the work or other  
25 subject-matter at the place where the copy will be created.

## 26 **Subdivision D—Airing of works, sound recordings and films**

### 27 **132AN Causing work to be performed publicly**

28 *Indictable offence*

29 (1) A person commits an offence if:

- 1 (a) the person causes a literary, dramatic or musical work to be  
2 performed; and  
3 (b) the performance is in public at a place of public  
4 entertainment; and  
5 (c) the performance infringes copyright in the work.

- 6 (2) An offence against subsection (1) is punishable on conviction by a  
7 fine of not more than 550 penalty units or imprisonment for not  
8 more than 5 years, or both.

9 Note: A corporation may be fined up to 5 times the amount of the maximum  
10 fine (see subsection 4B(3) of the *Crimes Act 1914*).

11 *Summary offence*

- 12 (3) A person commits an offence if:  
13 (a) the person causes a literary, dramatic or musical work to be  
14 performed; and  
15 (b) the performance is in public at a place of public  
16 entertainment; and  
17 (c) the performance infringes copyright in the work and the  
18 person is negligent as to that fact.

19 Penalty: 120 penalty units or imprisonment for 2 years, or both.

- 20 (4) An offence against subsection (3) is a summary offence, despite  
21 section 4G of the *Crimes Act 1914*.

22 *Strict liability offence*

- 23 (5) A person commits an offence if:  
24 (a) the person causes a literary, dramatic or musical work to be  
25 performed; and  
26 (b) the performance is in public at a place of public  
27 entertainment; and  
28 (c) the performance infringes copyright in the work.

29 Penalty: 60 penalty units.

- 30 (6) Subsection (5) is an offence of strict liability.

31 Note: For strict liability, see section 6.1 of the *Criminal Code*.

1 **132AO Causing recording or film to be heard or seen in public**

2 *Indictable offence*

- 3 (1) A person commits an offence if:  
4 (a) the person causes:  
5 (i) a sound recording to be heard; or  
6 (ii) images from a cinematograph film to be seen; or  
7 (iii) sound from a cinematograph film to be heard; and  
8 (b) the hearing or seeing occurs in public at a place of public  
9 entertainment; and  
10 (c) causing the hearing or seeing infringes copyright in the  
11 recording or film.

- 12 (2) An offence against subsection (1) is punishable on conviction by a  
13 fine of not more than 550 penalty units or imprisonment for not  
14 more than 5 years, or both.

15 Note: A corporation may be fined up to 5 times the amount of the maximum  
16 fine (see subsection 4B(3) of the *Crimes Act 1914*).

17 *Summary offence*

- 18 (3) A person commits an offence if:  
19 (a) the person causes:  
20 (i) a sound recording to be heard; or  
21 (ii) images from a cinematograph film to be seen; or  
22 (iii) sound from a cinematograph film to be heard; and  
23 (b) the hearing or seeing occurs in public at a place of public  
24 entertainment; and  
25 (c) causing the hearing or seeing infringes copyright in the  
26 recording or film and the person is negligent as to that fact.

27 Penalty: 120 penalty units or imprisonment for 2 years, or both.

- 28 (4) An offence against subsection (3) is a summary offence, despite  
29 section 4G of the *Crimes Act 1914*.

30 *Strict liability offence*

- 31 (5) A person commits an offence if:  
32 (a) the person causes:
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- 1 (i) a sound recording to be heard; or  
2 (ii) images from a cinematograph film to be seen; or  
3 (iii) sound from a cinematograph film to be heard; and  
4 (b) the hearing or seeing occurs in public at a place of public  
5 entertainment; and  
6 (c) causing the hearing or seeing infringes copyright in the  
7 recording or film.

8 Penalty: 60 penalty units.

9 (6) Subsection (5) is an offence of strict liability.

10 Note: For strict liability, see section 6.1 of the *Criminal Code*.

## 11 **Subdivision F—Electronic rights management information**

### 12 **132AQ Removing or altering electronic rights management** 13 **information**

#### 14 *Indictable offence*

- 15 (1) A person commits an offence if:  
16 (a) copyright subsists in a work or other subject-matter; and  
17 (b) either:  
18 (i) the person removes, from a copy of the work or  
19 subject-matter, any electronic rights management  
20 information that relates to the work or subject-matter; or  
21 (ii) the person alters any electronic rights management  
22 information that relates to the work or subject-matter;  
23 and  
24 (c) the person does so without the permission of the owner or  
25 exclusive licensee of the copyright; and  
26 (d) the removal or alteration will induce, enable, facilitate or  
27 conceal an infringement of the copyright.

28 (2) An offence against subsection (1) is punishable on conviction by a  
29 fine of not more than 550 penalty units or imprisonment for not  
30 more than 5 years, or both.

31 Note: A corporation may be fined up to 5 times the amount of the maximum  
32 fine (see subsection 4B(3) of the *Crimes Act 1914*).

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*Summary offence*

- (3) A person commits an offence if:
- (a) copyright subsists in a work or other subject-matter; and
  - (b) either:
    - (i) the person removes, from a copy of the work or subject-matter, any electronic rights management information that relates to the work or subject-matter; or
    - (ii) the person alters any electronic rights management information that relates to the work or subject-matter; and
  - (c) the person does so without the permission of the owner or exclusive licensee of the copyright; and
  - (d) the removal or alteration will induce, enable, facilitate or conceal an infringement of the copyright and the person is negligent as to that result.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (4) An offence against subsection (3) is a summary offence, despite section 4G of the *Crimes Act 1914*.

*Strict liability offence*

- (5) A person commits an offence if:
- (a) copyright subsists in a work or other subject-matter; and
  - (b) either:
    - (i) the person removes, from a copy of the work or subject-matter, any electronic rights management information that relates to the work or subject-matter; or
    - (ii) the person alters any electronic rights management information that relates to the work or subject-matter; and
  - (c) the person does so without the permission of the owner or exclusive licensee of the copyright; and
  - (d) the removal or alteration will induce, enable, facilitate or conceal an infringement of the copyright.

Penalty: 60 penalty units.

- (6) Subsection (5) is an offence of strict liability.



1 Note: For strict liability, see section 6.1 of the *Criminal Code*.

2 **132AR Distributing, importing or communicating copies after**  
3 **removal or alteration of electronic rights management**  
4 **information**

5 *Indictable offence*

- 6 (1) A person commits an offence if:
- 7 (a) copyright subsists in a work or other subject-matter; and
  - 8 (b) the person does any of the following acts in relation to the  
9 work or subject-matter:
    - 10 (i) distributes a copy of the work or subject-matter with the  
11 intention of trading or obtaining a commercial  
12 advantage or profit;
    - 13 (ii) imports a copy of the work or subject-matter into  
14 Australia with the intention of trading or obtaining a  
15 commercial advantage or profit;
    - 16 (iii) communicates a copy of the work or subject-matter to  
17 the public; and
  - 18 (c) the person does so without the permission of the owner or  
19 exclusive licensee of the copyright; and
  - 20 (d) either:
    - 21 (i) any electronic rights management information that  
22 relates to the work or subject-matter has been removed  
23 from the copy of the work or subject-matter; or
    - 24 (ii) any electronic rights management information that  
25 relates to the work or subject-matter has been altered;  
26 without the permission of the owner or exclusive licensee of  
27 the copyright; and
  - 28 (e) the person knows that the information has been removed or  
29 altered without that permission; and
  - 30 (f) the act referred to in paragraph (b) will induce, enable,  
31 facilitate or conceal an infringement of the copyright.
- 32 (2) An offence against subsection (1) is punishable on conviction by a  
33 fine of not more than 550 penalty units or imprisonment for not  
34 more than 5 years, or both.

35 Note: A corporation may be fined up to 5 times the amount of the maximum  
36 fine (see subsection 4B(3) of the *Crimes Act 1914*).

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*Summary offence*

- (3) A person commits an offence if:
- (a) copyright subsists in a work or other subject-matter; and
  - (b) the person does any of the following acts in relation to the work or subject-matter:
    - (i) distributes a copy of the work or subject-matter with the intention of trading or obtaining a commercial advantage or profit;
    - (ii) imports a copy of the work or subject-matter into Australia with the intention of trading or obtaining a commercial advantage or profit;
    - (iii) communicates a copy of the work or subject-matter to the public; and
  - (c) the person does so without the permission of the owner or exclusive licensee of the copyright; and
  - (d) either:
    - (i) any electronic rights management information that relates to the work or subject-matter has been removed from the copy of the work or subject-matter; or
    - (ii) any electronic rights management information that relates to the work or subject-matter has been altered;
  - (e) the act referred to in paragraph (b) will induce, enable, facilitate or conceal an infringement of the copyright and the person is negligent as to that result.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (4) An offence against subsection (3) is a summary offence, despite section 4G of the *Crimes Act 1914*.

*Strict liability offence*

- (5) A person commits an offence if:
- (a) copyright subsists in a work or other subject-matter; and
  - (b) the person does any of the following acts in relation to the work or subject-matter:

- 1 (i) distributes a copy of the work or subject-matter in  
2 preparation for, or in the course of, trading or for  
3 obtaining a commercial advantage or profit;  
4 (ii) imports a copy of the work or subject-matter into  
5 Australia in preparation for, or in the course of, trading  
6 or in preparation for, or in the course of, obtaining a  
7 commercial advantage or profit;  
8 (iii) communicates a copy of the work or subject-matter to  
9 the public; and  
10 (c) the person does so without the permission of the owner or  
11 exclusive licensee of the copyright; and  
12 (d) either:  
13 (i) any electronic rights management information that  
14 relates to the work or subject-matter has been removed  
15 from the copy of the work or subject-matter; or  
16 (ii) any electronic rights management information that  
17 relates to the work or subject-matter has been altered;  
18 without the permission of the owner or exclusive licensee of  
19 the copyright; and  
20 (e) the act referred to in paragraph (b) will induce, enable,  
21 facilitate or conceal an infringement of the copyright.

22 Penalty: 60 penalty units.

23 (6) Subsection (5) is an offence of strict liability.

24 Note: For strict liability, see section 6.1 of the *Criminal Code*.

25 **132AS Distributing or importing electronic rights management**  
26 **information**

27 *Indictable offence*

- 28 (1) A person commits an offence if:  
29 (a) copyright subsists in a work or other subject-matter; and  
30 (b) the person does either of the following acts in relation to  
31 electronic rights management information that relates to the  
32 work or subject-matter:  
33 (i) distributes the electronic rights management  
34 information with the intention of trading or obtaining a  
35 commercial advantage or profit;

- 1 (ii) imports the electronic rights management information  
2 into Australia with the intention of trading or obtaining  
3 a commercial advantage or profit; and  
4 (c) the person does so without the permission of the owner or  
5 exclusive licensee of the copyright; and  
6 (d) either:  
7 (i) the information has been removed from a copy of the  
8 work or subject-matter without the permission of the  
9 owner or exclusive licensee of the copyright; or  
10 (ii) the information has been removed from a copy of the  
11 work or subject-matter with the permission of the owner  
12 or exclusive licensee of the copyright but the  
13 information has been altered without that permission;  
14 and  
15 (e) the person knows that the information has been removed or  
16 altered without that permission; and  
17 (f) the act referred to in paragraph (b) will induce, enable,  
18 facilitate or conceal an infringement of the copyright.

- 19 (2) An offence against subsection (1) is punishable on conviction by a  
20 fine of not more than 550 penalty units or imprisonment for not  
21 more than 5 years, or both.

22 Note: A corporation may be fined up to 5 times the amount of the maximum  
23 fine (see subsection 4B(3) of the *Crimes Act 1914*).

24 *Summary offence*

- 25 (3) A person commits an offence if:  
26 (a) copyright subsists in a work or other subject-matter; and  
27 (b) the person does either of the following acts in relation to  
28 electronic rights management information that relates to the  
29 work or subject-matter:  
30 (i) distributes the electronic rights management  
31 information with the intention of trading or obtaining a  
32 commercial advantage or profit;  
33 (ii) imports the electronic rights management information  
34 into Australia with the intention of trading or obtaining  
35 a commercial advantage or profit; and  
36 (c) the person does so without the permission of the owner or  
37 exclusive licensee of the copyright; and  
38 (d) either:
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- 1 (i) the information has been removed from a copy of the  
2 work or subject-matter without the permission of the  
3 owner or exclusive licensee of the copyright; or  
4 (ii) the information has been removed from a copy of the  
5 work or subject-matter with the permission of the owner  
6 or exclusive licensee of the copyright but the  
7 information has been altered without that permission;  
8 and  
9 (e) the act referred to in paragraph (b) will induce, enable,  
10 facilitate or conceal an infringement of the copyright and the  
11 person is negligent as to that result.

12 Penalty: 120 penalty units or imprisonment for 2 years, or both.

- 13 (4) An offence against subsection (3) is a summary offence, despite  
14 section 4G of the *Crimes Act 1914*.

15 *Strict liability offence*

- 16 (5) A person commits an offence if:  
17 (a) copyright subsists in a work or other subject-matter; and  
18 (b) the person does either of the following acts in relation to  
19 electronic rights management information that relates to the  
20 work or subject-matter:  
21 (i) distributes the electronic rights management  
22 information in preparation for, or in the course of,  
23 trading or in preparation for, or in the course of,  
24 obtaining a commercial advantage or profit;  
25 (ii) imports the electronic rights management information  
26 into Australia in preparation for, or in the course of,  
27 trading or in preparation for, or in the course of,  
28 obtaining a commercial advantage or profit; and  
29 (c) the person does so without the permission of the owner or  
30 exclusive licensee of the copyright; and  
31 (d) either:  
32 (i) the information has been removed from a copy of the  
33 work or subject-matter without the permission of the  
34 owner or exclusive licensee of the copyright; or  
35 (ii) the information has been removed from a copy of the  
36 work or subject-matter with the permission of the owner  
37 or exclusive licensee of the copyright but the

1 information has been altered without that permission;  
2 and

3 (e) the act referred to in paragraph (b) will induce, enable,  
4 facilitate or conceal an infringement of the copyright.

5 Penalty: 60 penalty units.

6 (6) Subsection (5) is an offence of strict liability.

7 Note: For strict liability, see section 6.1 of the *Criminal Code*.

## 8 **132AT Defences**

### 9 *Law enforcement and national security*

10 (1) This Subdivision does not apply in respect of anything lawfully  
11 done for the purposes of law enforcement or national security by or  
12 on behalf of:

13 (a) the Commonwealth or a State or Territory; or

14 (b) an authority of the Commonwealth or of a State or Territory.

15 Note: A defendant bears an evidential burden in relation to the matter in  
16 subsection (1) (see subsection 13.3(3) of the *Criminal Code*).

### 17 *Certain public institutions etc.*

18 (2) This Subdivision does not apply in respect of anything lawfully  
19 done by the following in performing their functions:

20 (a) a library (other than a library that is conducted for the profit,  
21 direct or indirect, of an individual or individuals);

22 (b) a body mentioned in:

23 (i) paragraph (a) of the definition of *archives* in subsection  
24 10(1); or

25 (ii) subsection 10(4);

26 (c) an educational institution;

27 (d) a public non-commercial broadcaster, including:

28 (i) a body that provides a national broadcasting service  
29 within the meaning of the *Broadcasting Services Act*  
30 1992; and

31 (ii) a body that holds a community broadcasting licence  
32 within the meaning of that Act.

33 Note 1: A library that is owned by a person conducting a business for profit  
34 might not itself be conducted for profit (see section 18).

1 Note 2: A defendant bears an evidential burden in relation to the matter in  
2 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

### 3 **Subdivision G—Evidence**

#### 4 **132AU Prosecution to prove profit**

5 (1) This section applies if, in the prosecution of an offence against this  
6 Division, either of the following questions is relevant:

- 7 (a) whether the defendant intended to obtain a profit;  
8 (b) whether the defendant did something for, in preparation for,  
9 or in the course of, obtaining a profit.

10 (2) The burden of proving that any advantage, benefit or gain does not  
11 result from, or is not associated with, any private or domestic use  
12 of any copyright material is on the prosecution.

13 Note: For the purposes of this Division, section 132AA defines *profit* as not  
14 including any advantage, benefit, or gain, that:

- 15 (a) is received by a person; and  
16 (b) results from, or is associated with, the person's private or  
17 domestic use of any copyright material.

#### 18 **7 Subsection 132A(1)**

19 Omit “section 132”, substitute “this Division, except section 132AM,”.

#### 20 **8 Sections 133 and 133A**

21 Repeal the sections, substitute:

### 22 **Subdivision H—Extra court orders**

#### 23 **133 Destruction or delivery up of infringing copies etc.**

24 (1) This section applies if:

- 25 (a) a person is charged before a court with an offence against this  
26 Division, except section 132AM, whether or not the person is  
27 convicted of the offence; and  
28 (b) the person possesses an article that appears to the court to be  
29 any of the following:  
30 (i) a circumvention device used or intended to be used in  
31 conduct constituting an offence against Subdivision E;  
32 (ii) an infringing copy;
-

- 1 (iii) a device or equipment used or intended to be used for  
2 making infringing copies.
- 3 (2) The court may order that the article be destroyed, delivered up to  
4 the owner of the copyright concerned or dealt with as the court  
5 thinks fit.

6 **Subdivision I—Procedure and jurisdiction**

7 **133A Courts in which offences may be prosecuted**

- 8 (1) Prosecutions for offences against this Division may be brought in  
9 the Federal Court of Australia or in any other court of competent  
10 jurisdiction.
- 11 (2) However, the Federal Court of Australia does not have jurisdiction  
12 to hear or determine prosecutions for indictable offences, despite  
13 section 15C of the *Acts Interpretation Act 1901*.
- 14 (3) The Federal Court of Australia has jurisdiction to hear and  
15 determine prosecutions of the following offences against this  
16 Division:  
17 (a) summary offences;  
18 (b) offences of strict liability.

19 **133B Infringement notices**

- 20 (1) The regulations may make provision enabling a person who is  
21 alleged to have committed an offence of strict liability against this  
22 Division to pay a penalty to the Commonwealth as an alternative to  
23 prosecution.
- 24 (2) The penalty must equal one-fifth of the maximum fine that a court  
25 could impose on the person as a penalty for that offence.

26 **9 Application of amendments of Division 5 of Part V**

27 The amendments of Division 5 of Part V of the *Copyright Act 1968* by  
28 this Part apply to things occurring after the commencement of this Part.

29 **10 Subsections 135L(4) and 135ZY(4)**

30 Omit “\$500”, substitute “5 penalty units”.



1 **11 Paragraph 136(2)(d)**

2 Omit “proceedings brought in respect of an alleged contravention of  
3 subsection 132(5) or (5AA)”, substitute “a prosecution of an offence  
4 against Subdivision D of Division 5 of Part V”.

5 **12 Saving**

6 (1) Despite the amendment of paragraph 136(2)(d) of the *Copyright Act*  
7 *1968* by this Part, that paragraph, as in force before the amendment,  
8 applies after that amendment to proceedings brought in respect of an  
9 alleged contravention of subsection 132(5) or (5AA) of that Act as in  
10 force before that amendment.

11 (2) That paragraph applies in that way whether the proceedings were started  
12 before or after that amendment.

13 **13 Sections 172 and 173**

14 Repeal the sections, substitute:

15 **172 Offences by witnesses**

16 *Failing to appear*

- 17 (1) A person commits an offence if:
- 18 (a) the person has been summoned to appear as a witness before  
19 the Tribunal; and
  - 20 (b) there has been tendered to the person an amount of money at  
21 least equal to the expenses the person could reasonably be  
22 expected to incur in connection with appearing as a witness;  
23 and
  - 24 (c) the person fails to appear in obedience to the summons.

25 Penalty: 30 penalty units or imprisonment for 6 months, or both.

26 *Failing to produce document or article summoned*

- 27 (2) A person commits an offence if:
- 28 (a) the person has been summoned to produce a document or  
29 article to the Tribunal; and
  - 30 (b) there has been tendered to the person an amount of money at  
31 least equal to the expenses the person could reasonably be

1 expected to incur in connection with producing the document  
2 or article; and

3 (c) the person fails to produce the document or article.

4 Penalty: 30 penalty units or imprisonment for 6 months, or both.

5 *Refusal to swear or affirm*

6 (3) A person commits an offence if:

7 (a) the person appears before the Tribunal; and

8 (b) the person refuses to be sworn or to make an affirmation.

9 Penalty: 30 penalty units or imprisonment for 6 months, or both.

10 *Refusal to answer questions or produce documents as required*

11 (4) A person commits an offence if:

12 (a) the person appears before the Tribunal; and

13 (b) the Tribunal requires the person to answer a question or  
14 produce a document or article; and

15 (c) the person refuses to answer the question or produce the  
16 document or article.

17 Penalty: 30 penalty units or imprisonment for 6 months, or both.

18 *General defence of reasonable excuse*

19 (5) Subsection (1), (2), (3) or (4) does not apply if the person has a  
20 reasonable excuse.

21 Note: A defendant bears an evidential burden in relation to the matter in  
22 subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

## 23 **173 Offences relating to the Tribunal**

24 *Insulting a member*

25 (1) A person commits an offence if:

26 (a) the person engages in conduct; and

27 (b) the person's conduct insults or disturbs a member in the  
28 exercise of his or her powers or functions as a member.

29 Penalty: 30 penalty units or imprisonment for 6 months, or both.

1 *Interrupting proceedings of the Tribunal*

- 2 (2) A person commits an offence if:  
3 (a) the person engages in conduct; and  
4 (b) the person's conduct interrupts the proceedings of the  
5 Tribunal.

6 Penalty: 30 penalty units or imprisonment for 6 months, or both.

7 *Using insulting language*

- 8 (3) A person commits an offence if:  
9 (a) the person uses insulting language towards another person;  
10 and  
11 (b) the other person is a member.

12 Penalty: 30 penalty units or imprisonment for 6 months, or both.

13 *Creating a disturbance*

- 14 (4) A person commits an offence if:  
15 (a) the person engages in conduct; and  
16 (b) the person's conduct creates a disturbance in or near a place  
17 where the Tribunal is sitting.

18 Penalty: 30 penalty units or imprisonment for 6 months, or both.

19 *Taking part in creating or continuing a disturbance*

- 20 (5) A person commits an offence if:  
21 (a) the person takes part in creating or continuing a disturbance;  
22 and  
23 (b) the disturbance is in or near a place where the Tribunal is  
24 sitting.

25 Penalty: 30 penalty units or imprisonment for 6 months, or both.

26 *Contravention of direction limiting publication of evidence*

- 27 (6) A person commits an offence if:  
28 (a) the person engages in conduct; and  
29 (b) the conduct contravenes a direction of the Tribunal under  
30 paragraph 163(2)(b).

1                   Penalty: 30 penalty units or imprisonment for 6 months, or both.

2                   *Contempt of Tribunal*

3                   (7) A person commits an offence if:

- 4                   (a) the person engages in conduct; and  
5                   (b) the person's conduct would, if the Tribunal were a court of  
6                   record, constitute a contempt of that court.

7                   Penalty: 30 penalty units or imprisonment for 6 months, or both.

8                   *Definition of engage in conduct*

9                   (8) In this section:

10                   *engage in conduct* means:

- 11                   (a) do an act; or  
12                   (b) omit to perform an act.

13                   **14 Application of new sections 172 and 173**

14                   Sections 172 and 173 of the *Copyright Act 1968*, as amended by this  
15                   Part, apply to acts (including refusals) occurring after the  
16                   commencement of this Part and failures first occurring after the  
17                   commencement of this Part.

18                   **15 Subsection 195A(2)**

19                   Repeal the subsection.

20                   **16 Transitional provision—regulations for subsection**  
21                   **195A(2)**

22                   (1) This item applies to a regulation that:

- 23                   (a) was made for the purposes of subsection 195A(2) of the  
24                   *Copyright Act 1968*; and  
25                   (b) was in force immediately before the repeal of that subsection.

26                   (2) On and after the commencement of this Part, the regulation has effect  
27                   for the purposes of subsection 203A(1) and section 203G (so far as they  
28                   relate to a declaration made for the purposes of section 49, 50, 51A or  
29                   110B) of the *Copyright Act 1968*, as amended by this Part, as if the  
30                   period prescribed by the regulation were prescribed for those purposes.

1 (3) This item does not prevent the amendment or repeal of the regulation.

2 (4) This item has effect despite the repeal of subsection 195A(2) of the  
3 *Copyright Act 1968* by this Part.

4 **17 Sections 203A and 203D**

5 Repeal the sections, substitute:

6 **203A Offence—failing to keep declarations relating to copying in**  
7 **library or archives**

8 (1) A person commits an offence if:

9 (a) at a time, the person is:

10 (i) ultimately responsible for administering a library or  
11 archives; or

12 (ii) the officer in charge of a library or archives; and

13 (b) that time is:

14 (i) after an authorized officer of a library or archives  
15 reproduced or copied all or part of a work or other  
16 subject-matter under section 49, 50, 51A or 110B; and

17 (ii) after a written declaration was made for the purpose of  
18 that section in relation to the reproduction or copying;  
19 and

20 (iii) before the end of the period prescribed by the  
21 regulations for the keeping of the declaration; and

22 (c) at that time, the declaration is not kept in the records of the  
23 library or archives.

24 Penalty: 5 penalty units.

25 (2) Subsection (1) does not apply if:

26 (a) the person is the officer in charge of a library or archives and  
27 proves that:

28 (i) the reproduction or copying took place before the day  
29 the person became the officer in charge; and

30 (ii) on that day the declaration was not in the possession of  
31 the person administering the library or archives; or

32 (b) the person proves that the person took all reasonable  
33 precautions, and exercised due diligence, to ensure the  
34 declaration was kept in the records of the library or archives.

1 Note: The person bears a legal burden in relation to a matter in  
2 subsection (2) (see section 13.4 of the *Criminal Code*).

3 (3) Subsection (1) is an offence of strict liability.

4 Note: For strict liability, see section 6.1 of the *Criminal Code*.

5 (4) The person cannot be convicted of more than one offence under  
6 this section in relation to the one declaration.

7 Note: Section 203G makes early destruction or disposal of the declaration an  
8 offence.

### 9 **203D Offence—not arranging declarations chronologically**

10 (1) A person commits an offence if:

11 (a) the person is:

12 (i) ultimately responsible for administering a library or  
13 archives; or

14 (ii) the officer in charge of a library or archives; and

15 (b) the person's records include 2 or more declarations made for  
16 the purposes of one or more of sections 49, 50, 51A or 110B  
17 in relation to reproduction or copying by an authorized  
18 officer of the library or archives; and

19 (c) the declarations are not arranged in the records in the order  
20 reflecting the dates on which the declarations were made.

21 Penalty: 5 penalty units.

22 (2) Subsection (1) does not apply if the person proves that the person  
23 took all reasonable precautions, and exercised due diligence, to  
24 ensure that the declarations were arranged in the records in the  
25 order reflecting the dates on which the declarations were made.

26 (3) Subsection (1) is an offence of strict liability.

27 Note: For strict liability, see section 6.1 of the *Criminal Code*.

### 28 **18 Application of new sections 203A and 203D**

29 Sections 203A and 203D of the *Copyright Act 1968*, as amended by this  
30 Part, apply to persons who are:

31 (a) ultimately responsible for administering libraries or archives;  
32 or

33 (b) officers in charge of libraries or archives;

34 on or after the commencement of this Part.

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1 **19 Subsection 203E(6)**

2 Repeal the subsection, substitute:

3 (6) A person commits an offence if:

4 (a) the person is:

5 (i) ultimately responsible for administering a library or  
6 archives; or

7 (ii) the officer in charge of a library or archives; and

8 (b) another person (the *inspector*) attends at the premises of the  
9 library or archives for the purpose of exercising his or her  
10 powers under subsection (4); and

11 (c) the inspector is not provided with all reasonable facilities and  
12 assistance for the effective exercise of those powers.

13 Penalty: 5 penalty units.

14 **20 Subsection 203E(10)**

15 Repeal the subsection, substitute:

16 (10) A person (the *defendant*) commits an offence if:

17 (a) the defendant makes a record of information, or divulges or  
18 communicates information; and

19 (b) the information was acquired by the defendant either in the  
20 course of an inspection the defendant made under  
21 subsection (4) or because it was divulged or communicated to  
22 the defendant either:

23 (i) by another person who acquired the information in the  
24 course of an inspection he or she made under  
25 subsection (4); or

26 (ii) in one of a series of divulgements or communications  
27 by different persons that started with a divulgement or  
28 communication of the information by a person who  
29 acquired it the course of an inspection he or she made  
30 under subsection (4).

31 Penalty: 5 penalty units.

32 **21 Subsection 203E(11)**

33 Repeal the subsection, substitute:

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- 1 (11) Subsection (10) does not apply if the defendant makes the record,  
2 divulgement or communication with the intention of:  
3 (a) informing the owner of the copyright in a work or other  
4 subject-matter that a copy has been made of the work or other  
5 subject-matter; or  
6 (b) enforcing a right that a person has under this Act in  
7 connection with a work or other subject-matter in which  
8 copyright subsists; or  
9 (c) ensuring compliance with a provision of Division 5 of  
10 Part III or with a provision of this Part.

11 Note: The defendant bears an evidential burden in relation to the matter in  
12 subsection (11) (see subsection 13.3(3) of the *Criminal Code*).

## 13 **22 Application of new subsections 203E(10) and (11)**

14 The repeal and substitution of subsections 203E(10) and (11) of the  
15 *Copyright Act 1968* by this Part apply to the recording, divulgement or  
16 communication of information by the defendant after the  
17 commencement of this Part (whether the information was acquired by  
18 the defendant before, on or after the commencement of this Part).

## 19 **23 Sections 203F and 203G**

20 Repeal the sections, substitute:

### 21 **203F False and misleading declarations**

22 A person commits an offence if:

- 23 (a) the person makes a declaration for the purposes of section 49,  
24 50, 51A or 110B; and  
25 (b) the declaration is false or misleading in a material particular.

26 Penalty: 5 penalty units.

### 27 **203G Offence—disposing of or destroying certain declarations**

28 A person commits an offence if:

- 29 (a) the person disposes of, destroys, or causes the disposal or  
30 destruction of, a declaration made for the purposes of  
31 section 49, 50, 51A or 110B; and  
32 (b) the period prescribed by the regulations for the keeping of the  
33 declaration has not ended.



1                   Penalty: 5 penalty units.

2           **24 Application of new sections 203F and 203G**

3                   Sections 203F and 203G of the *Copyright Act 1968*, as amended by this  
4                   Part, apply to acts done after the commencement of this Part.

5           **25 Subsection 203H(4)**

6                   Repeal the subsection, substitute:

7                   (4) A person commits an offence if:

8                   (a) the person:

9                   (i) makes a notation described in subsection (1) on a  
10                   reproduction of a work or part of a work; or

11                   (ii) makes a notation described in subsection (2) on a copy  
12                   of a sound recording or cinematograph film; or

13                   (iii) attaches a notation described in subsection (2) to a copy  
14                   of a sound recording or cinematograph film; and

15                   (b) a statement in the notation is false or misleading in a material  
16                   particular.

17                   Penalty: 5 penalty units.

18           **26 Application of new subsection 203H(4)**

19                   The repeal and substitution of subsection 203H(4) of the *Copyright Act*  
20                   *1968* by this Part apply to acts done after the commencement of this  
21                   Part.

22           **27 Subsection 248A(1)**

23                   Insert:

24                   *20-year protection period* of a performance means the period:

25                   (a) beginning on the day when the performance was given; and

26                   (b) ending at the end of 20 calendar years after the calendar year  
27                   in which the performance was given.

28           **28 Subsection 248A(1)**

29                   Insert:

30                   *50-year protection period* of a performance means the period:

31                   (a) beginning on the day when the performance was given; and

1 (b) ending at the end of 50 calendar years after the calendar year  
2 in which the performance was given.

3 **29 Subsection 248CA(1)**

4 Omit “subsections (2) and”, substitute “subsection”.

5 **30 Subsection 248CA(2)**

6 Repeal the subsection.

7 **31 Paragraphs 248CA(4)(b) to (h)**

8 Repeal the paragraphs, substitute:

- 9 (b) section 248PA;  
10 (c) section 248PB;  
11 (d) section 248PE;  
12 (e) section 248PF;  
13 (f) section 248PG;  
14 (g) section 248PI;  
15 (h) section 248PJ;  
16 (i) section 248PK;  
17 (j) section 248PL;  
18 (k) section 248PM.

19 **32 Subsection 248F(1)**

20 Repeal the subsection, substitute:

21 (1) This Part, except Subdivisions A, B and C of Division 3, applies to  
22 acts done on or after 1 October 1989 in relation to a performance  
23 given on or after that day.

24 Note 1: That day was the day this Part commenced.

25 Note 2: Sections 248P and 248QA apply Subdivisions A and B of Division 3  
26 to acts done at or after the time those Subdivisions commence as a  
27 result of Part 1 of Schedule 1 to the *Copyright Amendment Act 2006*.  
28 Subdivision C of that Division is merely ancillary to those  
29 Subdivisions.

30 **33 Sections 248P, 248Q, 248QA, 248QB and 248S**

31 Repeal the sections, substitute:

1 **Subdivision A—General offences**

2 **248P Scope of this Subdivision**

- 3 (1) This Subdivision applies to acts done in Australia on or after the  
4 commencement of this Subdivision.

5 Note: This Subdivision commenced when it was included in this Act by  
6 Part 1 of Schedule 1 to the *Copyright Amendment Act 2006*.

- 7 (2) This section has effect despite section 14.1 (Standard geographical  
8 jurisdiction) of the *Criminal Code*.

9 **248PA Unauthorised direct recording during protection period**

10 *Indictable offence*

- 11 (1) A person commits an offence if:  
12 (a) the person makes a direct recording of a performance; and  
13 (b) the recording is made during the protection period of the  
14 performance; and  
15 (c) the recording is made without the authority of the performer.

16 Note: Under section 248CA, the protection period of a performance is:

- 17 (a) a 20-year protection period so far as this section relates to a  
18 cinematograph film of the performance; and  
19 (b) a 50-year protection period so far as this section relates to a  
20 sound recording of the performance.

- 21 (2) An offence against subsection (1) is punishable on conviction by a  
22 fine of not more than 550 penalty units or imprisonment for not  
23 more than 5 years, or both.

24 Note: A corporation may be fined up to 5 times the amount of the maximum  
25 fine (see subsection 4B(3) of the *Crimes Act 1914*).

26 *Summary offence*

- 27 (3) A person commits an offence if:  
28 (a) the person makes a direct recording of a performance; and  
29 (b) the recording is made during the protection period of the  
30 performance; and  
31 (c) the recording is made without the authority of the performer  
32 and the person is negligent as to that fact.

1 Penalty: 120 penalty units or imprisonment for 2 years, or both.

2 (4) An offence against subsection (3) is a summary offence, despite  
3 section 4G of the *Crimes Act 1914*.

4 *Strict liability offence*

5 (5) A person commits an offence if:

6 (a) the person makes a direct recording of a performance; and

7 (b) the recording is made during the protection period of the  
8 performance; and

9 (c) the recording is made without the authority of the performer.

10 Penalty: 60 penalty units.

11 (6) Subsection (5) is an offence of strict liability.

12 Note: For strict liability, see section 6.1 of the *Criminal Code*.

### 13 **248PB Unauthorised indirect recording during protection period**

14 *Indictable offence*

15 (1) A person commits an offence if:

16 (a) the person makes an indirect recording of a performance; and

17 (b) the recording is made during the protection period of the  
18 performance; and

19 (c) the recording is made without the authority of the performer.

20 Note: Under section 248CA, the protection period of a performance is:

21 (a) a 20-year protection period so far as this section relates to a  
22 cinematograph film of the performance; and

23 (b) a 50-year protection period so far as this section relates to a  
24 sound recording of the performance.

25 (2) An offence against subsection (1) is punishable on conviction by a  
26 fine of not more than 550 penalty units or imprisonment for not  
27 more than 5 years, or both.

28 Note: A corporation may be fined up to 5 times the amount of the maximum  
29 fine (see subsection 4B(3) of the *Crimes Act 1914*).

30 *Summary offence*

31 (3) A person commits an offence if:

---

- 1 (a) the person makes an indirect recording of a performance; and  
2 (b) the recording is made during the protection period of the  
3 performance; and  
4 (c) the recording is made without the authority of the performer  
5 and the person is negligent as to that fact.

6 Penalty: 120 penalty units or imprisonment for 2 years, or both.

- 7 (4) An offence against subsection (3) is a summary offence, despite  
8 section 4G of the *Crimes Act 1914*.

9 *Strict liability offence*

- 10 (5) A person commits an offence if:  
11 (a) the person makes an indirect recording of a performance; and  
12 (b) the recording is made during the protection period of the  
13 performance; and  
14 (c) the recording is made without the authority of the performer.

15 Penalty: 60 penalty units.

- 16 (6) Subsection (5) is an offence of strict liability.

17 Note: For strict liability, see section 6.1 of the *Criminal Code*.

18 *Defence*

- 19 (7) Subsection (1), (3) or (5) does not apply if the recording was made  
20 solely for the person's private and domestic use.

21 Note: A defendant bears an evidential burden in relation to the matter in  
22 subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

23 **248PC Unauthorised communication to public during 20-year**  
24 **protection period**

25 *Indictable offence*

- 26 (1) A person commits an offence if:  
27 (a) the person communicates a performance to the public; and  
28 (b) the communication is made during the 20-year protection  
29 period of the performance; and  
30 (c) the communication is made without the authority of the  
31 performer; and
-

1 (d) the communication is made either directly from the live  
2 performance or from an unauthorised recording of the  
3 performance.

4 (2) An offence against subsection (1) is punishable on conviction by a  
5 fine of not more than 550 penalty units or imprisonment for not  
6 more than 5 years, or both.

7 Note: A corporation may be fined up to 5 times the amount of the maximum  
8 fine (see subsection 4B(3) of the *Crimes Act 1914*).

9 *Summary offence*

10 (3) A person commits an offence if:  
11 (a) the person communicates a performance to the public; and  
12 (b) the communication is made during the 20-year protection  
13 period of the performance; and  
14 (c) the communication is made without the authority of the  
15 performer and the person is negligent as to that fact; and  
16 (d) the communication is made either directly from the live  
17 performance or from an unauthorised recording of the  
18 performance.

19 Penalty: 120 penalty units or imprisonment for 2 years, or both.

20 (4) An offence against subsection (3) is a summary offence, despite  
21 section 4G of the *Crimes Act 1914*.

22 *Strict liability offence*

23 (5) A person commits an offence if:  
24 (a) the person communicates a performance to the public; and  
25 (b) the communication is made during the 20-year protection  
26 period of the performance; and  
27 (c) the communication is made without the authority of the  
28 performer; and  
29 (d) the communication is made either directly from the live  
30 performance or from an unauthorised recording of the  
31 performance.

32 Penalty: 60 penalty units.

33 (6) Subsection (5) is an offence of strict liability.

1 Note: For strict liability, see section 6.1 of the *Criminal Code*.

2 *Defence*

3 (7) To avoid doubt, subsections (1), (3) and (5) do not apply to the  
4 communication to the public of an authorised recording of the  
5 performance.

6 Note 1: A defendant bears an evidential burden in relation to the matter in  
7 subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

8 Note 2: An educational or other institution can also copy and communicate a  
9 broadcast of a performance without contravening this section in some  
10 circumstances (see sections 135E and 135F).

11 **248PD Playing unauthorised recording publicly during 20-year**  
12 **protection period**

13 *Indictable offence*

- 14 (1) A person commits an offence if:  
15 (a) the person causes a recording of a performance to be heard or  
16 seen in public; and  
17 (b) the recording is heard or seen in public during the 20-year  
18 protection period of the performance; and  
19 (c) the recording is unauthorised.

20 (2) An offence against subsection (1) is punishable on conviction by a  
21 fine of not more than 550 penalty units or imprisonment for not  
22 more than 5 years, or both.

23 Note: A corporation may be fined up to 5 times the amount of the maximum  
24 fine (see subsection 4B(3) of the *Crimes Act 1914*).

25 *Summary offence*

- 26 (3) A person commits an offence if:  
27 (a) the person causes a recording of a performance to be heard or  
28 seen in public; and  
29 (b) the recording is heard or seen in public during the 20-year  
30 protection period of the performance; and  
31 (c) the recording is unauthorised and the person is negligent as to  
32 that fact.

33 Penalty: 120 penalty units or imprisonment for 2 years, or both.

1 (4) An offence against subsection (3) is a summary offence, despite  
2 section 4G of the *Crimes Act 1914*.

3 *Strict liability offence*

- 4 (5) A person commits an offence if:  
5 (a) the person causes a recording of a performance to be heard or  
6 seen in public; and  
7 (b) the recording is heard or seen in public during the 20-year  
8 protection period of the performance; and  
9 (c) the recording is unauthorised.

10 Penalty: 60 penalty units.

11 (6) Subsection (5) is an offence of strict liability.

12 Note: For strict liability, see section 6.1 of the *Criminal Code*.

13 **248PE Possessing equipment to make or copy unauthorised**  
14 **recording**

15 *Indictable offence*

- 16 (1) A person commits an offence if:  
17 (a) the person possesses a plate or recording equipment,  
18 intending it to be used for making:  
19 (i) an unauthorised recording of a performance; or  
20 (ii) a copy of an unauthorised recording of a performance;  
21 and  
22 (b) the possession occurs during the protection period of the  
23 performance.

24 Note: Under section 248CA, the protection period of a performance is:

- 25 (a) a 20-year protection period so far as this section relates to a  
26 cinematograph film of the performance; and  
27 (b) a 50-year protection period so far as this section relates to a  
28 sound recording of the performance.

29 (2) An offence against subsection (1) is punishable on conviction by a  
30 fine of not more than 550 penalty units or imprisonment for not  
31 more than 5 years, or both.

32 Note: A corporation may be fined up to 5 times the amount of the maximum  
33 fine (see subsection 4B(3) of the *Crimes Act 1914*).



1                    *Summary offence*

- 2                    (3) A person commits an offence if:
- 3                        (a) the person possesses a plate or recording equipment; and
- 4                        (b) the plate or equipment is to be used for making:
- 5                                (i) a recording of a performance; or
- 6                                (ii) a copy of an unauthorised recording of a performance;
- 7                                        and
- 8                        (c) either:
- 9                                (i) the recording to be made using the plate or equipment
- 10                                        will be an unauthorised recording of the performance; or
- 11                                (ii) the recording to be copied using the plate or equipment
- 12                                        is an unauthorised recording of the performance;
- 13                                        and the person is negligent as to that fact; and
- 14                        (d) the possession occurs during the protection period of the
- 15                                        performance.

16                    Penalty: 120 penalty units or imprisonment for 2 years, or both.

- 17                    (4) To avoid doubt, recklessness is the fault element for the
- 18                        circumstance that the plate or equipment is to be used for making:
- 19                                (a) a recording of a performance; or
- 20                                (b) a copy of an unauthorised recording of a performance.
- 21                    (5) An offence against subsection (3) is a summary offence, despite
- 22                        section 4G of the *Crimes Act 1914*.

23                    *Strict liability offence*

- 24                    (6) A person commits an offence if:
- 25                        (a) the person possesses a plate or recording equipment; and
- 26                        (b) the plate or equipment is to be used for making:
- 27                                (i) a recording of a performance; or
- 28                                (ii) a copy of an unauthorised recording of a performance;
- 29                                        and
- 30                        (c) either:
- 31                                (i) the recording to be made using the plate or equipment
- 32                                        will be an unauthorised recording of the performance; or
- 33                                (ii) the recording to be copied using the plate or equipment
- 34                                        is an unauthorised recording of the performance; and

1 (d) the possession occurs during the protection period of the  
2 performance.

3 Penalty: 60 penalty units.

4 (7) Subsection (6) is an offence of strict liability.

5 Note: For strict liability, see section 6.1 of the *Criminal Code*.

6 *No need to prove which performance or recording is to be involved*

7 (8) In a prosecution for an offence against this section, it is not  
8 necessary to prove:

9 (a) which particular performance is intended to be, or will be,  
10 recorded using the device; or

11 (b) which particular recording is intended to be, or will be,  
12 copied using the device.

### 13 **248PF Copying unauthorised recording**

#### 14 *Indictable offence*

15 (1) A person commits an offence if:

16 (a) the person makes a copy of a recording of a performance; and

17 (b) the copy is made during the protection period of the  
18 performance; and

19 (c) the recording is an unauthorised recording.

20 Note: Under section 248CA, the protection period of a performance is:

21 (a) a 20-year protection period so far as this section relates to a  
22 cinematograph film of the performance; and

23 (b) a 50-year protection period so far as this section relates to a  
24 sound recording of the performance.

25 (2) An offence against subsection (1) is punishable on conviction by a  
26 fine of not more than 550 penalty units or imprisonment for not  
27 more than 5 years, or both.

28 Note: A corporation may be fined up to 5 times the amount of the maximum  
29 fine (see subsection 4B(3) of the *Crimes Act 1914*).

#### 30 *Summary offence*

31 (3) A person commits an offence if:

32 (a) the person makes a copy of a recording of a performance; and

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- 1 (b) the copy is made during the protection period of the  
2 performance; and  
3 (c) the recording is an unauthorised recording and the person is  
4 negligent as to that fact.

5 Penalty: 120 penalty units or imprisonment for 2 years, or both.

- 6 (4) An offence against subsection (3) is a summary offence, despite  
7 section 4G of the *Crimes Act 1914*.

8 *Strict liability offence*

- 9 (5) A person commits an offence if:  
10 (a) the person makes a copy of a recording of a performance; and  
11 (b) the copy is made during the protection period of the  
12 performance; and  
13 (c) the recording is an unauthorised recording.

14 Penalty: 60 penalty units.

- 15 (6) Subsection (5) is an offence of strict liability.

16 Note: For strict liability, see section 6.1 of the *Criminal Code*.

17 **248PG Unauthorised copying of exempt recording**

18 *Indictable offence*

- 19 (1) A person commits an offence if:  
20 (a) the person makes a copy of a recording of a performance; and  
21 (b) the copy is made during the protection period of the  
22 performance; and  
23 (c) the copy is made without the authority of the performer; and  
24 (d) the recording is an exempt recording; and  
25 (e) the copy is not an exempt recording.

26 Note: Under section 248CA, the protection period of a performance is:

- 27 (a) a 20-year protection period so far as this section relates to a  
28 cinematograph film of the performance; and  
29 (b) a 50-year protection period so far as this section relates to a  
30 sound recording of the performance.

1 (2) An offence against subsection (1) is punishable on conviction by a  
2 fine of not more than 550 penalty units or imprisonment for not  
3 more than 5 years, or both.

4 Note: A corporation may be fined up to 5 times the amount of the maximum  
5 fine (see subsection 4B(3) of the *Crimes Act 1914*).

6 *Summary offence*

7 (3) A person commits an offence if:  
8 (a) the person makes a copy of a recording of a performance; and  
9 (b) the copy is made during the protection period of the  
10 performance; and  
11 (c) the copy is made without the authority of the performer and  
12 the person is negligent as to that fact; and  
13 (d) the recording is an exempt recording; and  
14 (e) the copy is not an exempt recording and the person is  
15 negligent as to that fact.

16 Penalty: 120 penalty units or imprisonment for 2 years, or both.

17 (4) An offence against subsection (3) is a summary offence, despite  
18 section 4G of the *Crimes Act 1914*.

19 *Strict liability offence*

20 (5) A person commits an offence if:  
21 (a) the person makes a copy of a recording of a performance; and  
22 (b) the copy is made during the protection period of the  
23 performance; and  
24 (c) the copy is made without the authority of the performer; and  
25 (d) the recording is an exempt recording; and  
26 (e) the copy is not an exempt recording.

27 Penalty: 60 penalty units.

28 (6) Subsection (5) is an offence of strict liability.

29 Note: For strict liability, see section 6.1 of the *Criminal Code*.

1 **248PH Unauthorised copying of authorised sound recording**

2 *Indictable offence*

- 3 (1) A person commits an offence if:
- 4 (a) the person makes a copy of a sound recording of a
  - 5 performance, intending that the copy be used in a
  - 6 sound-track; and
  - 7 (b) the copy is made during the 20-year protection period of the
  - 8 performance; and
  - 9 (c) the copy is made without the authority of the performer; and
  - 10 (d) the sound recording is an authorised sound recording; and
  - 11 (e) the making of the sound recording was not authorised for the
  - 12 purpose of use in that or any other sound-track.
- 13 (2) An offence against subsection (1) is punishable on conviction by a
- 14 fine of not more than 550 penalty units or imprisonment for not
- 15 more than 5 years, or both.

16 Note: A corporation may be fined up to 5 times the amount of the maximum  
17 fine (see subsection 4B(3) of the *Crimes Act 1914*).

18 *Summary offence*

- 19 (3) A person commits an offence if:
- 20 (a) the person makes a copy of a sound recording of a
  - 21 performance, intending that the copy be used in a
  - 22 sound-track; and
  - 23 (b) the copy is made during the 20-year protection period of the
  - 24 performance; and
  - 25 (c) the copy is made without the authority of the performer and
  - 26 the person is negligent as to that fact; and
  - 27 (d) the sound recording is an authorised sound recording; and
  - 28 (e) the making of the sound recording was not authorised for the
  - 29 purpose of use in that or any other sound-track and the person
  - 30 is negligent as to that fact.

31 Penalty: 120 penalty units or imprisonment for 2 years, or both.

- 32 (4) An offence against subsection (3) is a summary offence, despite
- 33 section 4G of the *Crimes Act 1914*.

1 *Strict liability offence*

- 2 (5) A person commits an offence if:  
3 (a) the person makes a copy of a sound recording of a  
4 performance in preparation for use in a sound-track; and  
5 (b) the copy is made during the 20-year protection period of the  
6 performance; and  
7 (c) the copy is made without the authority of the performer; and  
8 (d) the sound recording is an authorised sound recording; and  
9 (e) the making of the sound recording was not authorised for the  
10 purpose of use in that or any other sound-track.

11 Penalty: 60 penalty units.

- 12 (6) Subsection (5) is an offence of strict liability.

13 Note: For strict liability, see section 6.1 of the *Criminal Code*.

14 **248PI Selling etc. unauthorised recording**

15 *Indictable offence*

- 16 (1) A person commits an offence if:  
17 (a) the person does any of the following acts:  
18 (i) sells a recording of a performance;  
19 (ii) lets for hire a recording of a performance;  
20 (iii) by way of trade offers or exposes for sale or hire a  
21 recording of a performance; and  
22 (b) the act is done during the protection period of the  
23 performance; and  
24 (c) the recording is an unauthorised recording.

25 Note: Under section 248CA, the protection period of a performance is:

- 26 (a) a 20-year protection period so far as this section relates to a  
27 cinematograph film of the performance; and  
28 (b) a 50-year protection period so far as this section relates to a  
29 sound recording of the performance.

- 30 (2) An offence against subsection (1) is punishable on conviction by a  
31 fine of not more than 550 penalty units or imprisonment for not  
32 more than 5 years, or both.

33 Note: A corporation may be fined up to 5 times the amount of the maximum  
34 fine (see subsection 4B(3) of the *Crimes Act 1914*).

1                    *Summary offence*

- 2            (3) A person commits an offence if:  
3                (a) the person does any of the following acts:  
4                    (i) sells a recording of a performance;  
5                    (ii) lets for hire a recording of a performance;  
6                    (iii) by way of trade offers or exposes for sale or hire a  
7                          recording of a performance; and  
8                (b) the act is done during the protection period of the  
9                          performance; and  
10                (c) the recording is an unauthorised recording and the person is  
11                          negligent as to that fact.

12                          Penalty: 120 penalty units or imprisonment for 2 years, or both.

- 13            (4) An offence against subsection (3) is a summary offence, despite  
14                          section 4G of the *Crimes Act 1914*.

15                    *Strict liability offence*

- 16            (5) A person commits an offence if:  
17                (a) the person does any of the following acts:  
18                    (i) sells a recording of a performance;  
19                    (ii) lets for hire a recording of a performance;  
20                    (iii) by way of trade offers or exposes for sale or hire a  
21                          recording of a performance; and  
22                (b) the act is done during the protection period of the  
23                          performance; and  
24                (c) the recording is an unauthorised recording.

25                          Penalty: 60 penalty units.

- 26            (6) Subsection (5) is an offence of strict liability.

27                          Note:        For strict liability, see section 6.1 of the *Criminal Code*.

28            **248PJ Distributing unauthorised recording**

29                    *Indictable offences*

- 30            (1) A person commits an offence if:
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**Schedule 1** Criminal laws  
**Part 1** Main amendments

---

- 1 (a) the person distributes a recording of a performance, with the  
2 intention of trading; and  
3 (b) the distribution occurs during the protection period of the  
4 performance; and  
5 (c) the recording is an unauthorised recording.

6 Note: Under section 248CA, the protection period of a performance is:

- 7 (a) a 20-year protection period so far as this section relates to a  
8 cinematograph film of the performance; and  
9 (b) a 50-year protection period so far as this section relates to a  
10 sound recording of the performance.

- 11 (2) A person commits an offence if:  
12 (a) the person distributes a recording of a performance; and  
13 (b) the distribution occurs during the protection period of the  
14 performance; and  
15 (c) the distribution will affect prejudicially the financial interests  
16 of the performer in the performance; and  
17 (d) the recording is an unauthorised recording.
- 18 (3) An offence against subsection (1) or (2) is punishable on  
19 conviction by a fine of not more than 550 penalty units or  
20 imprisonment for not more than 5 years, or both.

21 Note: A corporation may be fined up to 5 times the amount of the maximum  
22 fine (see subsection 4B(3) of the *Crimes Act 1914*).

23 *Summary offences*

- 24 (4) A person commits an offence if:  
25 (a) the person distributes a recording of a performance, with the  
26 intention of trading; and  
27 (b) the distribution occurs during the protection period of the  
28 performance; and  
29 (c) the recording is an unauthorised recording and the person is  
30 negligent as to that fact.

31 Penalty: 120 penalty units or imprisonment for 2 years, or both.

- 32 (5) A person commits an offence if:  
33 (a) the person distributes a recording of a performance; and  
34 (b) the distribution occurs during the protection period of the  
35 performance; and



- 1 (c) the distribution will affect prejudicially the financial interests  
2 of the performer in the performance; and  
3 (d) the recording is an unauthorised recording and the person is  
4 negligent as to that fact.

5 Penalty: 120 penalty units or imprisonment for 2 years, or both.

- 6 (6) An offence against subsection (4) or (5) is a summary offence,  
7 despite section 4G of the *Crimes Act 1914*.

8 *Strict liability offences*

- 9 (7) A person commits an offence if:  
10 (a) the person distributes a recording of a performance in  
11 preparation for, or in the course of, trade; and  
12 (b) the distribution occurs during the protection period of the  
13 performance; and  
14 (c) the recording is an unauthorised recording.

15 Penalty: 60 penalty units.

- 16 (8) A person commits an offence if:  
17 (a) the person distributes a recording of a performance; and  
18 (b) the distribution occurs during the protection period of the  
19 performance; and  
20 (c) the distribution will affect prejudicially the financial interests  
21 of the performer in the performance; and  
22 (d) the recording is an unauthorised recording.

23 Penalty: 60 penalty units.

- 24 (9) Subsections (7) and (8) are offences of strict liability.

25 Note: For strict liability, see section 6.1 of the *Criminal Code*.

26 **248PK Commercial possession or import of unauthorised recording**

27 *Indictable offence*

- 28 (1) A person commits an offence if:  
29 (a) the person possesses, or imports into Australia, a recording of  
30 a performance, with the intention of doing any of the  
31 following:

**Schedule 1** Criminal laws  
**Part 1** Main amendments

---

- 1 (i) selling the recording;  
2 (ii) letting the recording for hire;  
3 (iii) by way of trade offering or exposing the recording for  
4 sale or hire;  
5 (iv) distributing the recording either for the purpose of trade  
6 or to an extent that will affect prejudicially the financial  
7 interests of the performer in the performance; and  
8 (b) the possession or import occurs during the protection period  
9 of the performance; and  
10 (c) the recording is an unauthorised recording.

11 Note: Under section 248CA, the protection period of a performance is:

- 12 (a) a 20-year protection period so far as this section relates to a  
13 cinematograph film of the performance; and  
14 (b) a 50-year protection period so far as this section relates to a  
15 sound recording of the performance.

- 16 (2) An offence against subsection (1) is punishable on conviction by a  
17 fine of not more than 550 penalty units or imprisonment for not  
18 more than 5 years, or both.

19 Note: A corporation may be fined up to 5 times the amount of the maximum  
20 fine (see subsection 4B(3) of the *Crimes Act 1914*).

21 *Summary offence*

- 22 (3) A person commits an offence if:  
23 (a) the person possesses, or imports into Australia, a recording of  
24 a performance, with the intention of doing any of the  
25 following:  
26 (i) selling the recording;  
27 (ii) letting the recording for hire;  
28 (iii) by way of trade offering or exposing the recording for  
29 sale or hire;  
30 (iv) distributing the recording either for the purpose of trade  
31 or to an extent that will affect prejudicially the financial  
32 interests of the performer in the performance; and  
33 (b) the possession or import occurs during the protection period  
34 of the performance; and  
35 (c) the recording is an unauthorised recording and the person is  
36 negligent as to that fact.

1 Penalty: 120 penalty units or imprisonment for 2 years, or both.

- 2 (4) An offence against subsection (3) is a summary offence, despite  
3 section 4G of the *Crimes Act 1914*.

4 *Strict liability offence*

- 5 (5) A person commits an offence if:  
6 (a) the person possesses, or imports into Australia, a recording of  
7 a performance in preparation for, or in the course of, doing  
8 any of the following:  
9 (i) selling the recording;  
10 (ii) letting the recording for hire;  
11 (iii) by way of trade offering or exposing the recording for  
12 sale or hire;  
13 (iv) distributing the recording either for trade or to an extent  
14 that will affect prejudicially the financial interests of the  
15 performer in the performance; and  
16 (b) the possession or import occurs during the protection period  
17 of the performance; and  
18 (c) the recording is an unauthorised recording.

19 Penalty: 60 penalty units.

- 20 (6) Subsection (5) is an offence of strict liability.

21 Note: For strict liability, see section 6.1 of the *Criminal Code*.

22 **248PL Exhibiting unauthorised recording in public by way of trade**

23 *Indictable offence*

- 24 (1) A person commits an offence if:  
25 (a) the person by way of trade exhibits in public a recording of a  
26 performance; and  
27 (b) the exhibition occurs during the protection period of the  
28 performance; and  
29 (c) the recording is an unauthorised recording.

30 Note: Under section 248CA, the protection period of a performance is:

- 31 (a) a 20-year protection period so far as this section relates to a  
32 cinematograph film of the performance; and

**Schedule 1** Criminal laws  
**Part 1** Main amendments

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1 (b) a 50-year protection period so far as this section relates to a  
2 sound recording of the performance.

3 (2) An offence against subsection (1) is punishable on conviction by a  
4 fine of not more than 550 penalty units or imprisonment for not  
5 more than 5 years, or both.

6 Note: A corporation may be fined up to 5 times the amount of the maximum  
7 fine (see subsection 4B(3) of the *Crimes Act 1914*).

8 *Summary offence*

9 (3) A person commits an offence if:

10 (a) the person by way of trade exhibits in public a recording of a  
11 performance; and

12 (b) the exhibition occurs during the protection period of the  
13 performance; and

14 (c) the recording is an unauthorised recording and the person is  
15 negligent as to that fact.

16 Penalty: 120 penalty units or imprisonment for 2 years, or both.

17 (4) An offence against subsection (3) is a summary offence, despite  
18 section 4G of the *Crimes Act 1914*.

19 *Strict liability offence*

20 (5) A person commits an offence if:

21 (a) the person by way of trade exhibits in public a recording of a  
22 performance; and

23 (b) the exhibition occurs during the protection period of the  
24 performance; and

25 (c) the recording is an unauthorised recording.

26 Penalty: 60 penalty units.

27 (6) Subsection (5) is an offence of strict liability.

28 Note: For strict liability, see section 6.1 of the *Criminal Code*.

1 **248PM Importing unauthorised recording for exhibition by way of**  
2 **trade**

3 *Indictable offence*

- 4 (1) A person commits an offence if:  
5 (a) the person imports into Australia a recording of a  
6 performance, with the intention of exhibiting the recording in  
7 public by way of trade; and  
8 (b) the import occurs during the protection period of the  
9 performance; and  
10 (c) the recording is an unauthorised recording.

11 Note: Under section 248CA, the protection period of a performance is:

- 12 (a) a 20-year protection period so far as this section relates to a  
13 cinematograph film of the performance; and  
14 (b) a 50-year protection period so far as this section relates to a  
15 sound recording of the performance.

- 16 (2) An offence against subsection (1) is punishable on conviction by a  
17 fine of not more than 550 penalty units or imprisonment for not  
18 more than 5 years, or both.

19 Note: A corporation may be fined up to 5 times the amount of the maximum  
20 fine (see subsection 4B(3) of the *Crimes Act 1914*).

21 *Summary offence*

- 22 (3) A person commits an offence if:  
23 (a) the person imports into Australia a recording of a  
24 performance, with the intention of exhibiting the recording in  
25 public by way of trade; and  
26 (b) the import occurs during the protection period of the  
27 performance; and  
28 (c) the recording is an unauthorised recording and the person is  
29 negligent as to that fact.

30 Penalty: 120 penalty units or imprisonment for 2 years, or both.

- 31 (4) An offence against subsection (3) is a summary offence, despite  
32 section 4G of the *Crimes Act 1914*.

1                    *Strict liability offence*

- 2                    (5) A person commits an offence if:
- 3                         (a) the person imports into Australia a recording of a
- 4                                 performance, in preparation for exhibiting the recording in
- 5                                 public by way of trade; and
- 6                         (b) the import occurs during the protection period of the
- 7                                 performance; and
- 8                         (c) the recording is an unauthorised recording.

9                    Penalty: 60 penalty units.

- 10                   (6) Subsection (5) is an offence of strict liability.

11                   Note:         For strict liability, see section 6.1 of the *Criminal Code*.

12                   **Subdivision B—Acts relating to sound recordings of**

13                   **performances given before 1 July 1995**

14                   **248QA Scope of this Subdivision**

- 15                   (1) This Subdivision applies to an act done in Australia on or after the
- 16                                 commencement of this Subdivision, in relation to a performance
- 17                                 given at any time before 1 July 1995.

18                   Note 1:         That day was the day on which Part 4 of the *Copyright (World Trade*

19                                 *Organization Amendments) Act 1994* commenced.

20                   Note 2:         This Subdivision commenced when it was included in this Act by

21                                 Part 1 of Schedule 1 to the *Copyright Amendment Act 2006*.

- 22                   (2) This Subdivision has effect despite section 14.1 (Standard
- 23                                 geographical jurisdiction) of the *Criminal Code*.

24                   **248QB Possessing equipment for copying unauthorised sound**

25                   **recording**

26                   *Indictable offence*

- 27                   (1) A person commits an offence if:
- 28                         (a) the person possesses a plate or recording equipment,
- 29                                 intending it to be used for making a copy of an unauthorised
- 30                                 sound recording of a performance; and
- 31                         (b) the possession occurs during the 50-year protection period of
- 32                                 the performance.

1 (2) An offence against subsection (1) is punishable on conviction by a  
2 fine of not more than 550 penalty units or imprisonment for not  
3 more than 5 years, or both.

4 Note: A corporation may be fined up to 5 times the amount of the maximum  
5 fine (see subsection 4B(3) of the *Crimes Act 1914*).

6 *Summary offence*

7 (3) A person commits an offence if:  
8 (a) the person possesses a plate or recording equipment; and  
9 (b) the plate or recording equipment is to be used for making a  
10 copy of a sound recording of a performance; and  
11 (c) the recording is an unauthorised recording of the  
12 performance and the person is negligent as to that fact; and  
13 (d) the possession occurs during the 50-year protection period of  
14 the performance.

15 Penalty: 120 penalty units or imprisonment for 2 years, or both.

16 (4) To avoid doubt, recklessness is the fault element for the  
17 circumstance that the plate or recording equipment is to be used for  
18 making a copy of a sound recording of a performance.

19 (5) An offence against subsection (3) is a summary offence, despite  
20 section 4G of the *Crimes Act 1914*.

21 *Strict liability offence*

22 (6) A person commits an offence if:  
23 (a) the person possesses a plate or recording equipment; and  
24 (b) the plate or recording equipment is to be used for making a  
25 copy of a sound recording of a performance; and  
26 (c) the recording is an unauthorised recording of the  
27 performance; and  
28 (d) the possession occurs during the 50-year protection period of  
29 the performance.

30 Penalty: 60 penalty units.

31 (7) Subsection (6) is an offence of strict liability.

32 Note: For strict liability, see section 6.1 of the *Criminal Code*.

1                                    *No need to prove which recording is to be copied*

2                                    (8) In a prosecution for an offence against this section, it is not  
3                                    necessary to prove which particular recording is intended to be, or  
4                                    will be, copied using the device.

5                                    **248QC Copying unauthorised sound recording**

6                                    *Indictable offence*

- 7                                    (1) A person commits an offence if:  
8                                    (a) the person makes a copy of a sound recording of a  
9                                    performance; and  
10                                    (b) the copy is made during the 50-year protection period of the  
11                                    performance; and  
12                                    (c) the recording is an unauthorised recording.
- 13                                    (2) An offence against subsection (1) is punishable on conviction by a  
14                                    fine of not more than 550 penalty units or imprisonment for not  
15                                    more than 5 years, or both.

16                                    Note:            A corporation may be fined up to 5 times the amount of the maximum  
17                                    fine (see subsection 4B(3) of the *Crimes Act 1914*).

18                                    *Summary offence*

- 19                                    (3) A person commits an offence if:  
20                                    (a) the person makes a copy of a sound recording of a  
21                                    performance; and  
22                                    (b) the copy is made during the 50-year protection period of the  
23                                    performance; and  
24                                    (c) the recording is an unauthorised recording and the person is  
25                                    negligent as to that fact.

26                                    Penalty: 120 penalty units or imprisonment for 2 years, or both.

- 27                                    (4) An offence against subsection (3) is a summary offence, despite  
28                                    section 4G of the *Crimes Act 1914*.

29                                    *Strict liability offence*

- 30                                    (5) A person commits an offence if:  
31                                    (a) the person makes a copy of a sound recording of a  
32                                    performance; and



- 1 (b) the copy is made during the 50-year protection period of the  
2 performance; and  
3 (c) the recording is an unauthorised recording.

4 Penalty: 60 penalty units.

- 5 (6) Subsection (5) is an offence of strict liability.

6 Note: For strict liability, see section 6.1 of the *Criminal Code*.

7 **248QD Selling etc. unauthorised sound recording**

8 *Indictable offence*

- 9 (1) A person commits an offence if:  
10 (a) the person does any of the following acts:  
11 (i) sells a sound recording of a performance;  
12 (ii) lets for hire a sound recording of a performance;  
13 (iii) by way of trade offers or exposes for sale or hire a  
14 sound recording of a performance; and  
15 (b) the act is done during the 50-year protection period of the  
16 performance; and  
17 (c) the recording is an unauthorised recording.
- 18 (2) An offence against subsection (1) is punishable on conviction by a  
19 fine of not more than 550 penalty units or imprisonment for not  
20 more than 5 years, or both.

21 Note: A corporation may be fined up to 5 times the amount of the maximum  
22 fine (see subsection 4B(3) of the *Crimes Act 1914*).

23 *Summary offence*

- 24 (3) A person commits an offence if:  
25 (a) the person does any of the following acts:  
26 (i) sells a sound recording of a performance;  
27 (ii) lets for hire a sound recording of a performance;  
28 (iii) by way of trade offers or exposes for sale or hire a  
29 sound recording of a performance; and  
30 (b) the act is done during the 50-year protection period of the  
31 performance; and  
32 (c) the recording is an unauthorised recording and the person is  
33 negligent as to that fact.
-

1 Penalty: 120 penalty units or imprisonment for 2 years, or both.

2 (4) An offence against subsection (3) is a summary offence, despite  
3 section 4G of the *Crimes Act 1914*.

4 *Strict liability offence*

5 (5) A person commits an offence if:

6 (a) the person does any of the following acts:

7 (i) sells a sound recording of a performance;

8 (ii) lets for hire a sound recording of a performance;

9 (iii) by way of trade offers or exposes for sale or hire a  
10 sound recording of a performance; and

11 (b) the act is done during the 50-year protection period of the  
12 performance; and

13 (c) the recording is an unauthorised recording.

14 Penalty: 60 penalty units.

15 (6) Subsection (5) is an offence of strict liability.

16 Note: For strict liability, see section 6.1 of the *Criminal Code*.

## 17 **248QE Distributing unauthorised sound recording**

18 *Indictable offences*

19 (1) A person commits an offence if:

20 (a) the person distributes a sound recording of a performance,  
21 with the intention of trade; and

22 (b) the distribution occurs during the 50-year protection period  
23 of the performance; and

24 (c) the recording is an unauthorised recording.

25 (2) A person commits an offence if:

26 (a) the person distributes a sound recording of a performance;  
27 and

28 (b) the distribution occurs during the 50-year protection period  
29 of the performance; and

30 (c) the distribution will affect prejudicially the financial interests  
31 of the performer in the performance; and

32 (d) the recording is an unauthorised recording.

1 (3) An offence against subsection (1) or (2) is punishable on  
2 conviction by a fine of not more than 550 penalty units or  
3 imprisonment for not more than 5 years, or both.

4 Note: A corporation may be fined up to 5 times the amount of the maximum  
5 fine (see subsection 4B(3) of the *Crimes Act 1914*).

6 *Summary offences*

7 (4) A person commits an offence if:

- 8 (a) the person distributes a sound recording of a performance,  
9 with the intention of trade; and  
10 (b) the distribution occurs during the 50-year protection period  
11 of the performance; and  
12 (c) the recording is an unauthorised recording and the person is  
13 negligent as to that fact.

14 Penalty: 120 penalty units or imprisonment for 2 years, or both.

15 (5) A person commits an offence if:

- 16 (a) the person distributes a sound recording of a performance;  
17 and  
18 (b) the distribution occurs during the 50-year protection period  
19 of the performance; and  
20 (c) the distribution will affect prejudicially the financial interests  
21 of the performer in the performance; and  
22 (d) the recording is an unauthorised recording and the person is  
23 negligent as to that fact.

24 Penalty: 120 penalty units or imprisonment for 2 years, or both.

25 (6) An offence against subsection (4) or (5) is a summary offence,  
26 despite section 4G of the *Crimes Act 1914*.

27 *Strict liability offences*

28 (7) A person commits an offence if:

- 29 (a) the person distributes a sound recording of a performance in  
30 preparation for, or in the course of, trade; and  
31 (b) the distribution occurs during the 50-year protection period  
32 of the performance; and  
33 (c) the recording is an unauthorised recording.

1                   Penalty: 60 penalty units.

2           (8) A person commits an offence if:

- 3                   (a) the person distributes a sound recording of a performance;  
4                                   and  
5                   (b) the distribution occurs during the 50-year protection period  
6                                   of the performance; and  
7                   (c) the distribution will affect prejudicially the financial interests  
8                                   of the performer in the performance; and  
9                   (d) the recording is an unauthorised recording.

10                   Penalty: 60 penalty units.

11           (9) Subsections (7) and (8) are offences of strict liability.

12                   Note:       For strict liability, see section 6.1 of the *Criminal Code*.

13           **248QF Commercial possession or import of unauthorised sound**  
14                   **recording**

15                   *Indictable offence*

16           (1) A person commits an offence if:

- 17                   (a) the person possesses, or imports into Australia, a sound  
18                                   recording of a performance, with the intention of doing any  
19                                   of the following:  
20                                   (i) selling the recording;  
21                                   (ii) letting the recording for hire;  
22                                   (iii) by way of trade offering or exposing the recording for  
23   sale or hire;  
24                                   (iv) distributing the recording either for the purpose of trade  
25   or to an extent that will affect prejudicially the financial  
26   interests of the performer in the performance; and  
27                   (b) the possession or import occurs during the 50-year protection  
28                                   period of the performance; and  
29                   (c) the recording is an unauthorised recording.

30           (2) An offence against subsection (1) is punishable on conviction by a  
31                   fine of not more than 550 penalty units or imprisonment for not  
32                   more than 5 years, or both.

33                   Note:       A corporation may be fined up to 5 times the amount of the maximum  
34                                   fine (see subsection 4B(3) of the *Crimes Act 1914*).

1                    *Summary offence*

- 2            (3) A person commits an offence if:
- 3                    (a) the person possesses, or imports into Australia, a sound  
4                                recording of a performance, with the intention of doing any  
5                                of the following:
- 6                                (i) selling the recording;
- 7                                (ii) letting the recording for hire;
- 8                                (iii) by way of trade offering or exposing the recording for  
9    sale or hire;
- 10                                (iv) distributing the recording either for the purpose of trade  
11    or to an extent that will affect prejudicially the financial  
12    interests of the performer in the performance; and
- 13                    (b) the possession or import occurs during the 50-year protection  
14                                period of the performance; and
- 15                    (c) the recording is an unauthorised recording and the person is  
16                                negligent as to that fact.

17                    Penalty: 120 penalty units or imprisonment for 2 years, or both.

- 18            (4) An offence against subsection (3) is a summary offence, despite  
19                                section 4G of the *Crimes Act 1914*.

20                    *Strict liability offence*

- 21            (5) A person commits an offence if:
- 22                    (a) the person possesses, or imports into Australia, a sound  
23                                recording of a performance in preparation for, or in the  
24                                course of, doing any of the following:
- 25                                (i) selling the recording;
- 26                                (ii) letting the recording for hire;
- 27                                (iii) by way of trade offering or exposing the recording for  
28    sale or hire;
- 29                                (iv) distributing the recording either for trade or to an extent  
30    that will affect prejudicially the financial interests of the  
31    performer in the performance; and
- 32                    (b) the possession or import occurs during the 50-year protection  
33                                period of the performance; and
- 34                    (c) the recording is an unauthorised recording.

35                    Penalty: 60 penalty units.

1 (6) Subsection (5) is an offence of strict liability.

2 Note: For strict liability, see section 6.1 of the *Criminal Code*.

3 **248QG Exhibiting unauthorised sound recording in public by way**  
4 **of trade**

5 *Indictable offence*

6 (1) A person commits an offence if:

7 (a) the person by way of trade exhibits in public a sound  
8 recording of a performance; and

9 (b) the exhibition occurs during the 50-year protection period of  
10 the performance; and

11 (c) the recording is an unauthorised recording.

12 (2) An offence against subsection (1) is punishable on conviction by a  
13 fine of not more than 550 penalty units or imprisonment for not  
14 more than 5 years, or both.

15 Note: A corporation may be fined up to 5 times the amount of the maximum  
16 fine (see subsection 4B(3) of the *Crimes Act 1914*).

17 *Summary offence*

18 (3) A person commits an offence if:

19 (a) the person by way of trade exhibits in public a sound  
20 recording of a performance; and

21 (b) the exhibition occurs during the 50-year protection period of  
22 the performance; and

23 (c) the recording is an unauthorised recording and the person is  
24 negligent as to that fact.

25 Penalty: 120 penalty units or imprisonment for 2 years, or both.

26 (4) An offence against subsection (3) is a summary offence, despite  
27 section 4G of the *Crimes Act 1914*.

28 *Strict liability offence*

29 (5) A person commits an offence if:

30 (a) the person by way of trade exhibits in public a sound  
31 recording of a performance; and

- 1 (b) the exhibition occurs during the 50-year protection period of  
2 the performance; and  
3 (c) the recording is an unauthorised recording.

4 Penalty: 60 penalty units.

- 5 (6) Subsection (5) is an offence of strict liability.

6 Note: For strict liability, see section 6.1 of the *Criminal Code*.

7 **248QH Importing unauthorised sound recording for exhibition by**  
8 **way of trade**

9 *Indictable offence*

- 10 (1) A person commits an offence if:  
11 (a) the person imports into Australia a sound recording of a  
12 performance, with the intention of exhibiting the recording in  
13 public by way of trade; and  
14 (b) the import occurs during the 50-year protection period of the  
15 performance; and  
16 (c) the recording is an unauthorised recording.  
17 (2) An offence against subsection (1) is punishable on conviction by a  
18 fine of not more than 550 penalty units or imprisonment for not  
19 more than 5 years, or both.

20 Note: A corporation may be fined up to 5 times the amount of the maximum  
21 fine (see subsection 4B(3) of the *Crimes Act 1914*).

22 *Summary offence*

- 23 (3) A person commits an offence if:  
24 (a) the person imports into Australia a sound recording of a  
25 performance, with the intention of exhibiting the recording in  
26 public by way of trade; and  
27 (b) the import occurs during the 50-year protection period of the  
28 performance; and  
29 (c) the recording is an unauthorised recording and the person is  
30 negligent as to that fact.

31 Penalty: 120 penalty units or imprisonment for 2 years, or both.

1 (4) An offence against subsection (3) is a summary offence, despite  
2 section 4G of the *Crimes Act 1914*.

3 *Strict liability offence*

4 (5) A person commits an offence if:

5 (a) the person imports into Australia a sound recording of a  
6 performance in preparation for exhibiting the recording in  
7 public by way of trade; and

8 (b) the import occurs during the 50-year protection period of the  
9 performance; and

10 (c) the recording is an unauthorised recording.

11 Penalty: 60 penalty units.

12 (6) Subsection (5) is an offence of strict liability.

13 Note: For strict liability, see section 6.1 of the *Criminal Code*.

## 14 **Subdivision C—Prosecution and infringement notices**

### 15 **248R Courts in which offences may be prosecuted**

16 (1) Prosecutions for offences against Subdivision A or B may be  
17 brought in the Federal Court of Australia or in any other court of  
18 competent jurisdiction.

19 (2) However, the Federal Court of Australia does not have jurisdiction  
20 to hear or determine prosecutions for indictable offences, despite  
21 section 15C of the *Acts Interpretation Act 1901*.

22 (3) The Federal Court of Australia has jurisdiction to hear and  
23 determine prosecutions of the following offences against  
24 Subdivision A or B:

25 (a) summary offences;

26 (b) offences of strict liability.

### 27 **248S Protection against multiple proceedings for same act**

28 If a single act done in relation to a performance is an offence  
29 against Subdivision A and an offence against Subdivision B, only  
30 one of the offences may be prosecuted.



1     **248SA Infringement notices**

2             (1) The regulations may make provision enabling a person who is  
3                 alleged to have committed an offence of strict liability against  
4                 Subdivision A or B to pay a penalty to the Commonwealth as an  
5                 alternative to prosecution.

6             (2) The penalty must equal one-fifth of the maximum fine that a court  
7                 could impose on the person as a penalty for that offence.

8     **Subdivision D—Destruction or delivery up of unauthorised**  
9             **recordings**

1

2 **Part 2—Amendment contingent on the Archives**  
3 **Amendment Act 2006**

4 ***Copyright Act 1968***

5 **34 Paragraphs 132AC(7)(b) and 132AT(2)(b)**

6 Repeal the paragraphs, substitute:

7 (b) a body or person mentioned in:

8 (i) paragraph (a) or (aa) of the definition of *archives* in  
9 subsection 10(1); or

10 (ii) subsection 10(4);

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1  
2  
3

## Schedule 2—Presumptions

4

### *Copyright Act 1968*

5

#### **1 Subsection 126A(2)**

6 Omit “the label or mark is admissible as prima facie evidence of the  
7 facts so stated”, substitute “that year and place are presumed to be as  
8 stated on the label or mark, unless the contrary is established”.

9 Note: The heading to section 126A is altered by omitting “**Evidence in relation**” and  
10 substituting “**Presumptions relating**”.

11

#### **2 Subsection 126A(3)**

12 Omit “the certificate or other document is admissible as prima facie  
13 evidence of the facts so stated”, substitute “that year and place are  
14 presumed to be as stated in the certificate or document, unless the  
15 contrary is established”.

16

#### **3 Subsection 126B(2)**

17 Omit “the label or mark is admissible as prima facie evidence of the  
18 facts so stated”, substitute “the person is presumed to have been the  
19 owner of the copyright at the time, unless the contrary is established”.

20 Note: The heading to section 126B is altered by omitting “**Evidence in relation**” and  
21 substituting “**Presumptions relating**”.

22

#### **4 Subsection 126B(3)**

23 Omit “the certificate or other document is admissible as prima facie  
24 evidence of the facts so stated”, substitute “the person is presumed to  
25 have been the owner of the copyright at the time, unless the contrary is  
26 established”.

27

#### **5 Subsection 126B(5)**

28 Omit “the document is admissible as prima facie evidence of the facts  
29 so stated”, substitute “the matters described in subparagraphs (b)(i), (ii)  
30 and (iii) are presumed to be as stated in the document, unless the  
31 contrary is established”.

32

#### **6 Subsection 126B(6)**

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1 Omit “the document is admissible as prima facie evidence of the facts  
2 so stated”, substitute “the matters described in subparagraphs (b)(i), (ii),  
3 (iii) and (iv) are presumed to be as stated in the document, unless the  
4 contrary is established”.

5 **7 Section 130**

6 Repeal the section, substitute:

7 **129A Presumptions relating to computer programs**

- 8 (1) This section applies to an action under this Part relating to  
9 copyright in a literary work that is a computer program if:  
10 (a) articles or things embodying all or part of the program have  
11 been supplied (by sale or otherwise) to the public; and  
12 (b) at the time of the supply, the articles or things, or their  
13 containers, bore a label or other mark consisting of the letter  
14 “C” in a circle accompanied by a specified year and the name  
15 of a person.
- 16 (2) It is presumed that:  
17 (a) the computer program is an original literary work; and  
18 (b) the computer program was first published in the year; and  
19 (c) the person was the owner of copyright in the program when  
20 and where the articles, things or containers were labelled or  
21 marked;  
22 unless the contrary is established.
- 23 (3) A presumption about a person under subsection (2) does not imply  
24 that the person was the only owner of copyright in the program  
25 when and where the articles, things or containers were labelled or  
26 marked.

27 **130 Presumptions relating to sound recordings**

- 28 (1) This section applies to an action under this Part relating to  
29 copyright in a sound recording if:  
30 (a) records embodying all or part of the recording have been  
31 supplied (by sale or otherwise) to the public; and  
32 (b) at the time of the supply, the records or their containers bore  
33 a label or other mark.

1 (2) If the label or mark contained a statement described in an item of  
 2 the table, the matter described in the item is presumed, unless the  
 3 contrary is established.  
 4

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**Statements and matters presumed unless the contrary is established**

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<b>Item</b>	<b>Statement</b>	<b>Matter presumed</b>
1	A specified person was the maker of the recording	The person was the maker of the recording
2	The recording was first published in a specified year	The recording was first published in the year
3	The recording was first published in a specified country	The recording was first published in the country

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5 (3) If the label or mark consisted of the letter “P” in a circle  
 6 accompanied by a specified year and the name of a person, it is  
 7 presumed that:  
 8 (a) the recording was first published in the year; and  
 9 (b) the person was the owner of copyright in the recording when  
 10 and where the records or containers were labelled or marked;  
 11 unless the contrary is established.

12 (4) A presumption about a person under this section does not imply  
 13 that the person was:  
 14 (a) the only maker of the recording; or  
 15 (b) the only owner of copyright in the recording when and where  
 16 the records or containers were labelled or marked.

**8 Section 131**

Before “Where”, insert “(1)”.

Note: The heading to section 131 is replaced by the heading “**Presumptions relating to films**”.

**9 At the end of section 131**

Add:

23 (2) Subsection (3) applies to an action under this Part relating to  
 24 copyright in a cinematograph film, if:  
 25 (a) articles or things embodying the film have been supplied  
 26 commercially; and

1 (b) at the time of the supply, the articles or things, or their  
2 containers, bore a label or other mark consisting of the letter  
3 "C" in a circle accompanied by a specified year and the name  
4 of a person.

5 (3) It is presumed that:

6 (a) the film was first made in the year; and

7 (b) the person was the owner of copyright in the film when and  
8 where the articles, things or containers were labelled or  
9 marked;

10 unless the contrary is established.

11 (4) A presumption about a person under subsection (3) does not imply  
12 that the person was the only owner of copyright in the film when  
13 and where the articles, things or containers were labelled or  
14 marked.

#### 15 **10 Subsection 132A(2)**

16 Omit "the label or mark is admissible as prima facie evidence of the  
17 facts so stated", substitute "that year and place are presumed to be as  
18 stated on the label or mark, unless the contrary is established".

#### 19 **11 Subsection 132A(3)**

20 Omit "the label or mark is admissible as prima facie evidence of the  
21 facts so stated", substitute "the person is presumed to have been the  
22 owner of the copyright at the time, unless the contrary is established".

#### 23 **12 Subsection 132A(4)**

24 Omit "the certificate or other document is admissible as prima facie  
25 evidence of the facts so stated", substitute "that year and place are  
26 presumed to be as stated in the certificate or document, unless the  
27 contrary is established".

#### 28 **13 Subsections 132A(5)**

29 Omit "the certificate or other document is admissible as prima facie  
30 evidence of the facts so stated", substitute "the person is presumed to  
31 have been the owner of the copyright at the time, unless the contrary is  
32 established".

#### 33 **14 Section 132B**

34 Repeal the section, substitute:

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---

**132AAA Presumptions relating to computer programs**

- 1  
2 (1) This section applies to a prosecution for an offence against this  
3 Division, except section 132AM, relating to copyright in a literary  
4 work that is a computer program if:  
5 (a) articles or things embodying all or part of the program have  
6 been supplied (by sale or otherwise) to the public; and  
7 (b) at the time of the supply, the articles or things, or their  
8 containers, bore a label or other mark consisting of the letter  
9 "C" in a circle accompanied by a specified year and the name  
10 of a person.
- 11 (2) It is presumed that:  
12 (a) the computer program is an original literary work; and  
13 (b) the computer program was first published in the year; and  
14 (c) the person was the owner of copyright in the program when  
15 and where the articles, things or containers were labelled or  
16 marked;  
17 unless the contrary is established.
- 18 (3) A presumption about a person under subsection (2) does not imply  
19 that the person was the only owner of copyright in the program  
20 when and where the articles, things or containers were labelled or  
21 marked.

**132B Presumptions relating to sound recordings**

- 22  
23 (1) This section applies to a prosecution for an offence against this  
24 Division, except section 132AM, relating to copyright in a sound  
25 recording if:  
26 (a) records embodying all or part of the recording have been  
27 supplied (by sale or otherwise) to the public; and  
28 (b) at the time of the supply, the records or their containers bore  
29 a label or other mark.
- 30 (2) If the label or other mark contained a statement described in an  
31 item of the table, the matter described in the item is presumed,  
32 unless the contrary is established.  
33

---

**Statements and matters to be presumed unless the contrary is established**

<b>Item</b>	<b>Statement</b>	<b>Matter presumed</b>
1	A specified person was the maker of the recording	The person was the maker of the recording
2	The recording was first published in a specified year	The recording was first published in the year
3	The recording was first published in a specified country	The recording was first published in the country

- 1 (3) If the label or mark consisted of the letter “P” in a circle  
2 accompanied by a specified year and the name of a person, it is  
3 presumed that:  
4 (a) the recording was first published in the year; and  
5 (b) the person was the owner of copyright in the recording when  
6 and where the records or containers were labelled or marked;  
7 unless the contrary is established.
- 8 (4) A presumption about a person under this section does not imply  
9 that the person was:  
10 (a) the only maker of the recording; or  
11 (b) the only owner of copyright in the recording when and where  
12 the records or containers were labelled or marked.

**132C Presumptions relating to films**

*Presumption about film maker*

- 15 (1) Subsection (2) applies to a prosecution for an offence against this  
16 Division, except section 132AM, relating to copyright in a  
17 cinematograph film if:  
18 (a) copies of the film were made available to the public; and  
19 (b) a person’s name appeared on the copies in such a way as to  
20 imply that the person was the maker of the film; and  
21 (c) if the person is not a body corporate—the name is his or her  
22 true name or a name by which he or she is commonly known.
- 23 (2) It is presumed that:  
24 (a) the person is the maker of the film; and  
25 (b) the person made the film in circumstances to which  
26 subsection 98(3) does not apply;



1 unless the contrary is established.

2 *Presumption about time of making and owner of copyright*

3 (3) Subsection (4) applies to a prosecution for an offence against this  
4 Division, except section 132AM, relating to copyright in a  
5 cinematograph film, if:

6 (a) articles or things embodying the film have been supplied  
7 commercially; and

8 (b) at the time of the supply, the articles or things, or their  
9 containers, bore a label or other mark consisting of the letter  
10 "C" in a circle accompanied by a specified year and the name  
11 of a person.

12 (4) It is presumed that:

13 (a) the film was first made in the year; and

14 (b) the person was the owner of copyright in the film when and  
15 where the articles, things or containers were labelled or  
16 marked;

17 unless the contrary is established.

18 (5) A presumption about a person under subsection (4) does not imply  
19 that the person was the only owner of copyright in the film when  
20 and where the articles, things or containers were labelled or  
21 marked.

22 **15 Application**

23 The amendments made by this Schedule apply in relation to legal  
24 proceedings (whether civil or criminal) started after the commencement  
25 of this Schedule.

1  
2 **Schedule 3—Technologically neutral**  
3 **definitions**  
4

5 ***Copyright Act 1968***

6 **1 Subsection 10(1) (definition of *infringing copy*)**

7 After “being an article”, insert “(which may be an electronic  
8 reproduction or copy of the work, recording, film, broadcast or  
9 edition)”.

10 **2 Subsection 10(1) (definition of *record*)**

11 Repeal the definition, substitute:

12 *record* includes a disc, tape, paper, electronic file or other device in  
13 which sounds are embodied.

14 **3 At the end of section 38**

15 Add:

16 (3) In this section:

17 *article* includes a reproduction or copy of a work or other  
18 subject-matter, being a reproduction or copy in electronic form.

19 **4 At the end of section 44D**

20 Add:

21 (4) The definition of *article* in section 38 does not affect this section.

22 **5 Section 44E**

23 Before “The copyright”, insert “(1)”.

24 **6 At the end of section 44E**

25 Add:

26 (2) The definition of *article* in section 38 does not affect this section.

27 **7 Section 44F**

28 Before “The copyright”, insert “(1)”.

---

1 **8 At the end of section 44F**

2 Add:

3 (2) The definition of *article* in section 38 does not affect this section.

4 **9 At the end of section 103**

5 Add:

6 (3) In this section:

7 *article* includes a reproduction or copy of a work or other  
8 subject-matter, being a reproduction or copy in electronic form.

9 **10 At the end of section 112C**

10 Add:

11 (3) The definition of *article* in section 103 does not affect this section.

12 **11 At the end of section 112D**

13 Add:

14 (4) The definition of *article* in section 103 does not affect this section.

15 **12 Section 112DA**

16 Before “If”, insert “(1)”.

17 **13 At the end of section 112DA**

18 Add:

19 (2) The definition of *article* in section 103 does not affect this section.

20 **14 Section 130A**

21 Before “In an action”, insert “(1)”.

22 **15 At the end of section 130A**

23 Add:

24 (2) The definition of *article* in sections 38 and 103 does not affect this  
25 section.

26 **16 Section 130B**

---

1           Before “In an action”, insert “(1)”.

2       **17 At the end of section 130B**

3           Add:

4           (2) The definition of *article* in section 38 does not affect this section.

5       **18 Section 130C**

6           Before “In an action”, insert “(1)”.

7       **19 At the end of section 130C**

8           Add:

9           (2) The definition of *article* in sections 38 and 103 does not affect this  
10           section.

11       **20 Application**

12           The amendments made by this Schedule apply to acts done after the  
13           commencement of this Schedule.

---

1  
2 **Schedule 4—Civil remedies and**  
3 **commercial-scale infringement online**  
4

5 *Copyright Act 1968*

6 **1 At the end of section 115**

7 Add:

8 *Consideration for relief for electronic commercial infringement*

9 (5) Subsection (6) applies to a court hearing an action for infringement  
10 of copyright if the court is satisfied that:

11 (a) the infringement (the *proved infringement*) occurred

12 (whether as a result of the doing of an act comprised in the  
13 copyright, the authorising of the doing of such an act or the  
14 doing of another act); and

15 (b) the proved infringement involved a communication of a work  
16 or other subject-matter to the public; and

17 (c) because the work or other subject-matter was communicated  
18 to the public, it is likely that there were other infringements  
19 (the *likely infringements*) of the copyright by the defendant  
20 that the plaintiff did not prove in the action; and

21 (d) taken together, the proved infringement and likely  
22 infringements were on a commercial scale.

23 (6) The court may have regard to the likelihood of the likely  
24 infringements (as well as the proved infringement) in deciding  
25 what relief to grant in the action.

26 (7) In determining for the purposes of paragraph (5)(d) whether, taken  
27 together, the proved infringement and the likely infringements  
28 were on a commercial scale, the following matters are to be taken  
29 into account:

30 (a) the volume and value of any articles that:

31 (i) are infringing copies that constitute the proved  
32 infringement; or

33 (ii) assuming the likely infringements actually occurred,  
34 would be infringing copies constituting those  
35 infringements;

1 (b) any other relevant matter.

2 (8) In subsection (7):

3 *article* includes a reproduction or copy of a work or other  
4 subject-matter, being a reproduction or copy in electronic form.

5 **2 Application**

6 The amendment made by this Schedule applies to actions started after  
7 the commencement of this Schedule.

1  
2 **Schedule 5—Customs seizure of imported**  
3 **infringing copies**  
4

5 *Copyright Act 1968*

6 **1 Paragraph 135(5)(a)**

7 Omit “2”, substitute “4”.

8 **2 Application**

9 The amendment of section 135 of the *Copyright Act 1968* by this  
10 Schedule applies in relation to notices given under that section after the  
11 commencement of this Schedule.

12 **3 Section 135AA**

13 Repeal the section, substitute:

14 **135AA Decision not to seize unless expenses are covered**

- 15 (1) Subject to subsection (2), the CEO may decide not to seize the  
16 copies under subsection 135(7) unless he or she has been given by  
17 the objector (or by one or more of the objectors) a written  
18 undertaking acceptable to the CEO to repay to the Commonwealth  
19 the expenses of seizing the copies.
- 20 (2) The CEO may decide not to seize the copies under subsection  
21 135(7) unless he or she has been given by the objector (or one or  
22 more of the objectors), instead of an undertaking, security in an  
23 amount that the CEO considers sufficient to repay to the  
24 Commonwealth the expenses of seizing the copies if:
- 25 (a) an amount payable under an undertaking given by the  
26 objector (or one or more of the objectors) in relation to other  
27 copies has not been paid in accordance with the undertaking;  
28 and
- 29 (b) the CEO considers it reasonable in all the circumstances to  
30 require the security.
- 31 (3) An undertaking may be withdrawn or varied if the CEO consents  
32 in writing to a written request from the objector or objectors to do  
33 so.

1 (4) In this section:

2 *expenses of seizing the copies* means the expenses that may be  
3 incurred by the Commonwealth if the copies were seized.

4 **4 Section 135AJ**

5 Repeal the section, substitute:

6 **135AJ Failure to meet Commonwealth's expenses of seizure**

7 (1) If an amount payable under an undertaking in relation to copies  
8 covered by a notice given under section 135 is not paid in  
9 accordance with the undertaking, the CEO may decide not to seize  
10 copies covered by the notice until the amount owing is paid.

11 (2) An amount not paid under an undertaking:  
12 (a) is a debt due by the objector, or by the objectors jointly or  
13 each of them separately, to the Commonwealth; and  
14 (b) may be recovered by an action taken in a court of competent  
15 jurisdiction.

16 (3) If the amount paid under an undertaking in relation to copies  
17 covered by a notice given under section 135 is in accordance with  
18 the undertaking but is not sufficient to meet the expenses incurred  
19 by the Commonwealth as a result of the action taken by the CEO  
20 under this Division because of the notice, the amount of the  
21 difference between those expenses and the amount paid:  
22 (a) is a debt due by the objector, or by the objectors jointly or  
23 each of them separately, to the Commonwealth; and  
24 (b) may be recovered by an action taken in a court of competent  
25 jurisdiction.

26 (4) If security given under subsection 135AA(2) by the objector or  
27 objectors who gave notice under section 135 is not sufficient to  
28 meet the expenses incurred by the Commonwealth as a result of the  
29 action taken by the CEO under this Division because of the notice,  
30 the amount of the difference between those expenses and the  
31 amount of security:  
32 (a) is a debt due by the objector, or by the objectors jointly or  
33 each of them separately, to the Commonwealth; and  
34 (b) may be recovered by an action taken in a court of competent  
35 jurisdiction.



1 **5 Paragraph 195B(1)(c)**

2 After “135AA”, insert “or 135AJ”.

3 **6 Transitional provision**

4 (1) This item applies if:

- 5 (a) before the commencement of this item, a notice under  
6 section 135 of the unamended Copyright Act was in force in  
7 relation to goods; and  
8 (b) before the commencement of this item, a deposit or security  
9 described in section 135AA of that Act was made or given to  
10 be applied towards the expenses of the Commonwealth  
11 incurred in relation to the goods under Division 7 of Part V  
12 of that Act; and  
13 (c) after the commencement of this item, the CEO has been  
14 given a written undertaking described in subsection  
15 135AA(1) of the amended Copyright Act to repay those  
16 expenses to the Commonwealth; and  
17 (d) the undertaking is in force.

18 (2) On application in writing to the CEO by the objector or objectors  
19 concerned, the CEO must:

- 20 (a) if none of the deposit or security has been applied towards  
21 the expenses mentioned in paragraph (1)(b)—return the sum  
22 deposited or security to the person who gave it; or  
23 (b) otherwise—refund the amount of the balance of the deposit  
24 or security to the person who gave it.

25 (3) In this item:

26 *amended Copyright Act* means the *Copyright Act 1968* as in force  
27 immediately after the commencement of this item.

28 *CEO* means the Chief Executive Officer of Customs.

29 *unamended Copyright Act* means the *Copyright Act 1968* as in force  
30 immediately before the commencement of this item.

1  
2 **Schedule 6—Exceptions to infringement of**  
3 **copyright**

4 **Part 1—Recording broadcasts for replaying at more**  
5 **convenient time**

6 *Copyright Act 1968*

7 **1 Section 111**

8 Repeal the section, substitute:

9 **111 Recording broadcasts for replaying at more convenient time**

- 10 (1) This section applies if a person makes a cinematograph film or  
11 sound recording of a broadcast:  
12 (a) in domestic premises; and  
13 (b) solely for private and domestic use by watching or listening  
14 to the material broadcast at a time more convenient than the  
15 time when the broadcast is made.

16 *Making the film or recording does not infringe copyright*

- 17 (2) The making of the film or recording does not infringe copyright in  
18 the broadcast or in any work or other subject-matter included in the  
19 broadcast.

20 Note: Even though the making of the film or recording does not infringe that  
21 copyright, that copyright may be infringed if a copy of the film or  
22 recording is made.

23 *Dealing with embodiment of film or recording*

- 24 (3) Subsection (2) is taken never to have applied if an article or thing  
25 embodying the film or recording is:  
26 (a) sold; or  
27 (b) let for hire; or  
28 (c) by way of trade offered or exposed for sale or hire; or  
29 (d) distributed for the purpose of trade or otherwise.

30 Note: If the article or thing embodying the film or recording is dealt with as  
31 described in subsection (3), then copyright may be infringed not only

1 by the making of the article or thing but also by the dealing with the  
2 article or thing.

3 (4) To avoid doubt, paragraph (3)(d) does not apply to a loan of the  
4 article or thing by the lender to a member of the lender's family or  
5 household for the member's private and domestic use.

6 **2 Subsection 248A(1) (after paragraph (a) of the definition of**  
7 ***exempt recording*)**

8 Insert:

9 or (aaa) an indirect cinematograph film or sound recording of a  
10 performance, being a film or recording that:

- 11 (i) is made from a communication that is a broadcast of the  
12 performance; and  
13 (ii) is made in domestic premises; and  
14 (iii) is made solely for private and domestic use by watching  
15 or listening to the performance at a time more  
16 convenient than the time when the broadcast is made; or

17 **3 Subsection 248A(1) (at the end of paragraphs (aa) to (m) of**  
18 **the definition of *exempt recording*)**

19 Add "or".

20 **4 Subsection 248C(1A)**

21 After "paragraph", insert "(aaa)".

22 **5 Subsection 248C(2)**

23 After "(a)", insert "(aaa)".

1

2 **Part 2—Reproducing copyright material in different**  
3 **format for private use**

4 ***Copyright Act 1968***

5 **6 After section 43B**

6 Insert:

7 **43C Reproducing works in books, newspapers and periodical**  
8 **publications in different form for private use**

9 (1) This section applies if:

- 10 (a) the owner of a book, newspaper or periodical publication  
11 makes from it a reproduction (the *main copy*) of a work  
12 contained in the book, newspaper or periodical publication;  
13 and  
14 (b) the main copy is made for his or her private and domestic use  
15 instead of the work as contained in the book, newspaper or  
16 periodical publication; and  
17 (c) the main copy embodies the work in a form different from  
18 the form in which the work is embodied in the book,  
19 newspaper or periodical publication; and  
20 (d) the book, newspaper or periodical publication itself is not an  
21 infringing copy of either the work or a published edition of  
22 the work; and  
23 (e) at the time the owner makes the main copy, he or she has not  
24 made, and is not making, another copy that embodies the  
25 work in a form substantially identical to the form of the main  
26 copy.

27 For this purpose, disregard a temporary reproduction of the work  
28 incidentally made as a necessary part of the technical process of  
29 making the main copy.

30 (2) The making of the main copy is not an infringement of copyright in  
31 the work or a published edition of the work.

32 *Dealing with main copy may make it an infringing copy*

33 (3) Subsection (2) is taken never to have applied if the main copy is:

- 1 (a) sold; or  
2 (b) let for hire; or  
3 (c) by way of trade offered or exposed for sale or hire; or  
4 (d) distributed for the purpose of trade or otherwise.

5 Note: If the main copy is dealt with as described in subsection (3), then  
6 copyright may be infringed not only by the making of the main copy  
7 but also by the dealing with the main copy.

- 8 (4) To avoid doubt, paragraph (3)(d) does not apply to a loan of the  
9 main copy by the lender to a member of the lender's family or  
10 household for the member's private and domestic use.

11 *Reproducing work from main copy may infringe copyright*

- 12 (5) Subsection (2) does not prevent the main copy from being an  
13 infringing copy for the purpose of working out whether this section  
14 applies again in relation to the making of another reproduction of  
15 the work from the main copy.

16 *Disposal of book etc. may make the main copy an infringing copy*

- 17 (6) Subsection (2) is taken never to have applied if the owner of the  
18 book, newspaper or periodical publication disposes of it (in the  
19 form from which the main copy was made) to another person.

20 *Status of temporary reproduction*

- 21 (7) If subsection (2) applies to the making of the main copy only as a  
22 result of disregarding the incidental making of a temporary  
23 reproduction of the work as a necessary part of the technical  
24 process of making the main copy, then:  
25 (a) if the temporary reproduction is destroyed at the first  
26 practicable time during or after the making of the main  
27 copy—the making of the temporary reproduction does not  
28 infringe copyright in the work or a published edition of the  
29 work; or  
30 (b) if the temporary reproduction is not destroyed at that time—  
31 the making of the temporary reproduction is taken always to  
32 have infringed copyright (if any) subsisting in the work and  
33 the published edition of the work from which the main copy  
34 was made.

35 **7 After Division 4A of Part III**

---

1                   Insert:

2                   **Division 4B—Acts not constituting infringements of**  
3                   **copyright in artistic works**

4                   **47J Reproducing photograph in different format for private use**

5                   (1) This section applies if:

- 6                   (a) the owner of a photograph (the *original photograph*) makes a  
7                   reproduction (the *main copy*) of it for his or her private and  
8                   domestic use instead of the original photograph; and  
9                   (b) the original photograph itself is not an infringing copy of a  
10                  work or published edition of a work; and  
11                  (c) either:  
12                   (i) the original photograph is in hardcopy form and the  
13                   main copy is in electronic form; or  
14                   (ii) the original photograph is in electronic form and the  
15                   main copy is in hardcopy form; and  
16                  (d) at the time the owner makes the main copy, he or she has not  
17                  made, and is not making, another reproduction of the original  
18                  photograph that embodies the original photograph in a form  
19                  substantially identical to the form of the main copy.

20                  For this purpose, disregard a temporary reproduction of the original  
21                  photograph incidentally made as a necessary part of the technical  
22                  process of making the main copy.

23                  (2) The making of the main copy is not an infringement of copyright:

- 24                   (a) in the original photograph; or  
25                   (b) in a work, or published edition of a work, included in the  
26                   original photograph.

27                   *Dealing with main copy may make it an infringing copy*

28                  (3) Subsection (2) is taken never to have applied if the main copy is:

- 29                   (a) sold; or  
30                   (b) let for hire; or  
31                   (c) by way of trade offered or exposed for sale or hire; or  
32                   (d) distributed for the purpose of trade or otherwise.

1 Note: If the main copy is dealt with as described in subsection (3), then  
2 copyright may be infringed not only by the making of the main copy  
3 but also by the dealing with the main copy.

4 (4) To avoid doubt, paragraph (3)(d) does not apply to a loan of the  
5 main copy by the lender to a member of the lender’s family or  
6 household for the member’s private and domestic use.

7 *Reproducing main copy may infringe copyright*

8 (5) Subsection (2) does not prevent the main copy from being an  
9 infringing copy for the purpose of working out whether this section  
10 applies again in relation to the making of a reproduction of the  
11 main copy.

12 *Disposal of original may make the main copy an infringing copy*

13 (6) Subsection (2) is taken never to have applied if the owner of the  
14 original photograph disposes of it to another person.

15 *Status of temporary reproduction*

16 (7) If subsection (2) applies to the making of the main copy only as a  
17 result of disregarding the incidental making of a temporary  
18 reproduction of the original photograph as a necessary part of the  
19 technical process of making the main copy, then:

20 (a) if the temporary reproduction is destroyed at the first  
21 practicable time during or after the making of the main  
22 copy—the making of the temporary reproduction does not  
23 infringe copyright in the original photograph or a work, or  
24 published edition of a work, included in the original  
25 photograph; or

26 (b) if the temporary reproduction is not destroyed at that time—  
27 the making of the temporary reproduction is taken always to  
28 have infringed copyright (if any) subsisting in the original  
29 photograph or a work, or published edition of a work,  
30 included in the original photograph.

31 **8 After section 109**

32 Insert:

1 **109A Copying sound recording in different format for private use**

2 (1) This section applies if:

- 3 (a) the owner of a record embodying a sound recording makes a  
4 copy (the *main copy*) of the sound recording for his or her  
5 private and domestic use instead of the record; and  
6 (b) the record was not made by downloading over the Internet a  
7 digital recording of a radio broadcast or similar program; and  
8 (c) the record is not an infringing copy of the sound recording, a  
9 broadcast or a literary, dramatic or musical work included in  
10 the sound recording; and  
11 (d) the format in which sounds are embodied in the main copy  
12 differs from the format in which sounds are embodied in the  
13 record; and  
14 (e) at the time the owner makes the main copy, he or she has not  
15 made, and is not making, another copy that embodies sounds  
16 in a format substantially identical to the format in which they  
17 are embodied in the main copy.

18 For this purpose, disregard a temporary copy of the sound  
19 recording incidentally made as a necessary part of the technical  
20 process of making the main copy.

21 (2) The making of the main copy is not an infringement of copyright in  
22 the sound recording embodied in the record or in a literary,  
23 dramatic or musical work or other subject-matter included in the  
24 sound recording.

25 *Dealing with main copy may make it an infringing copy*

26 (3) Subsection (2) is taken never to have applied if the main copy is:  
27 (a) sold; or  
28 (b) let for hire; or  
29 (c) by way of trade offered or exposed for sale or hire; or  
30 (d) distributed for the purpose of trade or otherwise.

31 Note: If the main copy is dealt with as described in subsection (3), then  
32 copyright may be infringed not only by the making of the main copy  
33 but also by the dealing with the main copy.

34 (4) To avoid doubt, paragraph (3)(d) does not apply to a loan of the  
35 main copy by the lender to a member of the lender's family or  
36 household for the member's private and domestic use.



1                    *Copying main copy may infringe copyright*

2                    (5) Subsection (2) does not prevent the main copy from being an  
3                    infringing copy for the purpose of working out whether this section  
4                    applies again in relation to the making of another copy of the sound  
5                    recording from the main copy.

6                    *Disposal of record may make the main copy an infringing copy*

7                    (6) Subsection (2) is taken never to have applied if the owner of the  
8                    record disposes of it to another person.

9                    *Status of temporary copy*

10                  (7) If subsection (2) applies to the making of the main copy only as a  
11                  result of disregarding the incidental making of a temporary copy of  
12                  the sound recording as a necessary part of the technical process of  
13                  making the main copy, then:

14                  (a) if the temporary copy is destroyed at the first practicable time  
15                  during or after the making of the main copy—the making of  
16                  the temporary copy does not infringe copyright in the sound  
17                  recording or in any work or other subject-matter included in  
18                  the sound recording; or

19                  (b) if the temporary copy is not destroyed at that time—the  
20                  making of the temporary copy is taken always to have  
21                  infringed copyright (if any) subsisting in the sound recording  
22                  and in any work or other subject-matter included in the sound  
23                  recording.

## 24                  **9 After section 110**

25                  Insert:

### 26                  **110AA Copying cinematograph film in different format for private** 27                  **use**

28                  (1) This section applies if:

29                  (a) the owner of videotape embodying a cinematograph film in  
30                  analog form makes a copy (the *main copy*) of the film in  
31                  electronic form for his or her private and domestic use  
32                  instead of the videotape; and

**Schedule 6** Exceptions to infringement of copyright

**Part 2** Reproducing copyright material in different format for private use

---

1 (b) the videotape itself is not an infringing copy of the film or of  
2 a broadcast, sound recording, work or published edition of a  
3 work; and

4 (c) at the time the owner makes the main copy, he or she has not  
5 made, and is not making, another copy that embodies the film  
6 in an electronic form substantially identical to the electronic  
7 form in which the film is embodied in the main copy.

8 For this purpose, disregard a temporary copy of the film  
9 incidentally made as a necessary part of the technical process of  
10 making the main copy.

11 (2) The making of the main copy is not an infringement of copyright in  
12 the cinematograph film or in a work or other subject-matter  
13 included in the film.

14 *Dealing with main copy may make it an infringing copy*

15 (3) Subsection (2) is taken never to have applied if the main copy is:

- 16 (a) sold; or  
17 (b) let for hire; or  
18 (c) by way of trade offered or exposed for sale or hire; or  
19 (d) distributed for the purpose of trade or otherwise.

20 Note: If the main copy is dealt with as described in subsection (3), then  
21 copyright may be infringed not only by the making of the main copy  
22 but also by the dealing with the main copy.

23 (4) To avoid doubt, paragraph (3)(d) does not apply to a loan of the  
24 main copy by the lender to a member of the lender's family or  
25 household for the member's private and domestic use.

26 *Disposal of videotape may make the main copy an infringing copy*

27 (5) Subsection (2) is taken never to have applied if the owner of the  
28 videotape disposes of it to another person.

29 *Status of temporary copy*

30 (6) If subsection (2) applies to the making of the main copy only as a  
31 result of disregarding the incidental making of a temporary copy of  
32 the film as a necessary part of the technical process of making the  
33 main copy, then:

- 34 (a) if the temporary copy is destroyed at the first practicable time  
35 during or after the making of the main copy—the making of
-

- 1                   the temporary copy does not infringe copyright in the film or  
2                   in any work or other subject-matter included in the film; or  
3           (b) if the temporary copy is not destroyed at that time—the  
4           making of the temporary copy is taken always to have  
5           infringed copyright (if any) subsisting in the film and in any  
6           work or other subject-matter included in the film.

1

2

## Part 3—Use of copyright material for certain purposes

3

4

### *Copyright Act 1968*

5

#### 10 After section 200AA

6

Insert:

7

#### 200AB Use of works and other subject-matter for certain purposes

8

(1) The copyright in a work or other subject-matter is not infringed by a use of the work or other subject-matter if all the following conditions exist:

9

10

11

(a) the circumstances of the use (including those described in paragraphs (b), (c) and (d)) amount to a special case;

12

13

(b) the use is covered by subsection (2), (3), (4) or (5);

14

15

(c) the use does not conflict with a normal exploitation of the work or other subject-matter;

16

17

(d) the use does not unreasonably prejudice the legitimate interests of the owner of the copyright or a person licensed by the owner of the copyright.

18

19

*Use by body administering library or archives*

20

(2) This subsection covers a use that:

21

(a) is made by or on behalf of the body administering a library or archives; and

22

23

(b) is made for the purpose of maintaining or operating the library or archives (including operating the library or archives to provide services of a kind usually provided by a library or archives); and

24

25

26

(c) is not made partly for the purpose of the body obtaining a commercial advantage.

27

28

29

*Use by body administering educational institution*

30

(3) This subsection covers a use that:

31

(a) is made by or on behalf of a body administering an educational institution; and

32

- 1 (b) is made for the purpose of giving educational instruction; and  
2 (c) is not made partly for the purpose of the body obtaining a  
3 commercial advantage.

4 *Use by or for person with a disability*

- 5 (4) This subsection covers a use that meets all the following  
6 conditions:

- 7 (a) the use is made by:  
8 (i) a person with a disability that causes difficulty in  
9 reading, viewing or hearing the work or other  
10 subject-matter in a particular form; or  
11 (ii) someone else;  
12 (b) the use is made for the purpose of the person obtaining a  
13 reproduction or copy of the work or other subject-matter in  
14 another form, or with a feature, that reduces the difficulty;  
15 (c) the use is not made partly for the purpose of obtaining a  
16 commercial advantage.

17 *Use for parody or satire*

- 18 (5) This subsection covers a use for the purpose of parody or satire.

19 *This section does not apply if under another provision the use does*  
20 *not, or might not, infringe copyright*

- 21 (6) Subsection (1) does not apply if, because of another provision of  
22 this Act:

- 23 (a) the use is not an infringement of copyright; or  
24 (b) the use would not be an infringement of copyright assuming  
25 the conditions or requirements of that other provision were  
26 met.

27 Example 1: Paragraph (a)—Without using an appliance adapted for producing  
28 multiple copies or an appliance that can produce copies by  
29 reprographic reproduction, a school teacher reproduces a literary work  
30 in the course of educational instruction. Under subsection 200(1), the  
31 reproduction is not an infringement of copyright in the work, so this  
32 section does not apply.

33 Example 2: Paragraph (b)—A body administering an institution assisting persons  
34 with a print disability makes a Braille version of a published literary  
35 work. Under subsection 135ZP(2), making such a version does not  
36 infringe copyright in the work if certain conditions (relating to  
37 remuneration etc.) are met, so this section does not apply.

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*Definitions*

(7) In this section:

*conflict with a normal exploitation* has the same meaning as in Article 13 of the TRIPS Agreement.

*special case* has the same meaning as in Article 13 of the TRIPS Agreement.

*unreasonably prejudice the legitimate interests* has the same meaning as in Article 13 of the TRIPS Agreement.

*use* includes any act that would infringe copyright apart from this section.

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2 **Part 4—Fair dealing for research or study**

3 *Copyright Act 1968*

4 **11 Subsections 40(3) and (4)**

5 Repeal the subsections, substitute:

6 (3) Despite subsection (2), a reproduction, for the purpose of research  
7 or study, of all or part of a literary, dramatic or musical work, or of  
8 an adaptation of such a work, contained in an article in a periodical  
9 publication is taken to be a fair dealing with the work or adaptation  
10 for the purpose of research or study.

11 (4) Subsection (3) does not apply if another article in the publication is  
12 also reproduced for the purpose of different research or a different  
13 course of study.

14 (5) Despite subsection (2), a reproduction, for the purpose of research  
15 or study, of a literary, dramatic or musical work, or of an  
16 adaptation of such a work, that:

17 (a) is not contained in an article in a periodical publication; and

18 (b) is either:

19 (i) a work described in subsection 10(2) contained in a  
20 published edition described in that subsection; or

21 (ii) a work described in subsection 10(2A) in electronic  
22 form;

23 is a fair dealing with the work or adaptation for the purpose of  
24 research or study if, and only if, the reproduction is taken under  
25 whichever of those subsections is relevant to contain only a  
26 reasonable portion of the work or adaptation.

27 Note 1: Subsection 10(2) explains when a copy is taken to contain only a  
28 reasonable portion of a literary, dramatic or musical work (other than  
29 a computer program) contained in a published edition of that work that  
30 is an edition of not less than 10 pages.

31 Note 2: Subsection 10(2A) explains when a reproduction of one of the  
32 following works is taken to contain only a reasonable portion of the  
33 work:

34 (a) a published literary work (other than a computer program or an  
35 electronic compilation, such as a database) in electronic form;

36 (b) a published dramatic work in electronic form.

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## Part 5—Official copying of library and archive material

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### *Copyright Act 1968*

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#### **12 At the end of subsections 49(2) and (2C)**

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Add:

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Note: The reproduction could be made from another reproduction of the article or published work in the collection of the library or archives that was made without infringing copyright because of subsection 51A(1), to replace the article or published work because it was damaged, had deteriorated or had been lost or stolen.

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#### **13 Subsection 49(4)**

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Omit “relate to the same subject matter”, substitute “are requested for the same research or course of study”.

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#### **14 After subsection 49(5)**

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Insert:

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(5AA) For the purposes of subsection (5), if the characteristics of the work are such that subsection 10(2) or (2A) is relevant to the question whether the reproduction contains only a reasonable portion of the work, then that question is to be determined solely by reference to subsection 10(2) or (2A) and not by reference to the ordinary meaning of *reasonable portion*.

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(5AB) For the purposes of paragraph (5)(b), in determining whether a reproduction (not being a second-hand reproduction) of the work cannot be obtained within a reasonable time at an ordinary commercial price, the authorized officer must take into account:

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(a) the time by which the person requesting the reproduction requires it; and

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(b) the time within which a reproduction (not being a second-hand reproduction) of the work at an ordinary commercial price could be delivered to the person; and

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(c) whether an electronic reproduction of the work can be obtained within a reasonable time at an ordinary commercial price.

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1 **15 Subsection 49(9) (definition of *library*)**

2 Repeal the definition, substitute:

3 *library* means a library all or part of whose collection is accessible  
4 to members of the public directly or through interlibrary loans.

5 **16 Subsection 49(9)**

6 Insert:

7 *archives* means an archives all or part of whose collection is  
8 accessible to members of the public.

9 **17 At the end of subsection 50(2)**

10 Add:

11 Note: The reproduction could be made from another reproduction of the  
12 article or published work in the collection of the other library that was  
13 made without infringing copyright because of subsection 51A(1), to  
14 replace the article or published work because it was damaged, had  
15 deteriorated or had been lost or stolen.

16 **18 Subsection 50(6)**

17 Omit “subsection (4)”, substitute “subsection (3)”.

18 **19 After subsection 50(7B)**

19 Insert:

20 (7BA) For the purposes of subsections (7A) and (7B), if the  
21 characteristics of the work are such that subsection 10(2) or (2A) is  
22 relevant to the question whether the reproduction contains only a  
23 reasonable portion of the work, then that question is to be  
24 determined solely by reference to subsection 10(2) or (2A) and not  
25 by reference to the ordinary meaning of *reasonable portion*.

26 (7BB) For the purposes of subparagraphs (7A)(e)(ii) and (7B)(e)(ii), (iii)  
27 and (iv), in determining whether a copy of the work, the work, the  
28 portion of the work or the article (as appropriate) cannot be  
29 obtained within a reasonable time at an ordinary commercial price,  
30 the authorized officer must take into account:

31 (a) the time by which the person requesting the reproduction  
32 under section 49 requires the reproduction; and

- 1 (b) the time within which a reproduction (not being a  
2 second-hand reproduction) of the work at an ordinary  
3 commercial price could be delivered to the person; and  
4 (c) whether the copy, work, portion or article can be obtained in  
5 electronic form within a reasonable time at an ordinary  
6 commercial price.

7 **20 Subsection 50(7C)**

8 Omit “subsection (4)”, substitute “subsection (3)”.

9 **21 Subsections 50(8) and (9)**

10 Repeal the subsections, substitute:

- 11 (8) Subsection (4) does not apply to a reproduction or communication  
12 of all or part of 2 or more articles that are contained in the same  
13 periodical publication and that have been requested for the same  
14 purpose unless:  
15 (a) the purpose is the one described in paragraph (1)(aa)  
16 (assisting a member of a Parliament perform his or her  
17 duties); or  
18 (b) the purpose is the one described in paragraph (1)(b)  
19 (supplying a reproduction to a person requesting it under  
20 section 49 for research or study) and the reproduction of the  
21 articles was requested under section 49 for the same research  
22 or course of study.

23 **22 Subsection 50(10)**

24 Insert:

25 *library* means:

- 26 (a) a library all or part of whose collection is accessible to  
27 members of the public directly or through interlibrary loans;  
28 or  
29 (b) a library whose principal purpose is to provide library  
30 services for members of a Parliament; or  
31 (c) an archives all or part of whose collection is accessible to  
32 members of the public.

33 **23 Subsection 51A(4)**

34 Repeal the subsection, substitute:

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- 1 (4) Subsection (1) does not apply in relation to a work held in  
2 published form in the collection of a library or archives unless an  
3 authorized officer of the library or archives has, after reasonable  
4 investigation, made a declaration:
- 5 (a) stating that he or she is satisfied that a copy (not being a  
6 second-hand copy) of the work, or of the edition in which the  
7 work is held in the collection, cannot be obtained within a  
8 reasonable time at an ordinary commercial price; and
- 9 (b) if he or she is satisfied that a copy (not being a second-hand  
10 copy) of another edition of the work can be obtained within a  
11 reasonable time at an ordinary commercial price—stating  
12 why the reproduction should be made from the copy of the  
13 work held in the collection.

#### 14 **24 Subsection 51A(6)**

15 Insert:

16 *administrative purposes* means purposes directly related to the  
17 care or control of the collection.

#### 18 **25 Subsection 51A(6)**

19 Insert:

20 *officers of the library or archives* includes volunteers assisting  
21 with the care or control of the collection.

#### 22 **26 After section 51A**

23 Insert:

#### 24 **51B Copying significant works in key cultural institutions’** 25 **collections**

- 26 (1) This section applies in relation to a work held in the collection of a  
27 library or archives if:
- 28 (a) under a law of the Commonwealth or a State or Territory, the  
29 body administering the library or archives has the function of  
30 developing and maintaining the collection; and
- 31 (b) an authorized officer of the library or archives is satisfied that  
32 the work is of historical or cultural significance to Australia.

1                                    *Manuscript*

2                    (2) If the work is held in the form of a manuscript, the copyright in the  
3                    work is not infringed by an authorized officer of the library or  
4                    archives making a single reproduction of the work from the  
5                    manuscript.

6                                    *Original artistic work*

7                    (3) If the work is held in the form of an original artistic work, the  
8                    copyright in the work is not infringed by an authorized officer of  
9                    the library or archives making a comprehensive photographic  
10                  reproduction of the work from the original artistic work if the  
11                  officer is satisfied that a photographic reproduction (not being a  
12                  second-hand reproduction) of the work cannot be obtained within a  
13                  reasonable time at an ordinary commercial price.

14                                  *Published work*

15                  (4) If the work is held in published form, the copyright in the work is  
16                  not infringed by an authorized officer of the library or archives  
17                  making a single reproduction of the work from the copy held in the  
18                  collection if the officer is satisfied that:  
19                          (a) a copy (not being a second-hand copy) of the work, or of the  
20                          edition in which the work is held in the collection, cannot be  
21                          obtained within a reasonable time at an ordinary commercial  
22                          price; and  
23                          (b) if the officer is satisfied that a copy (not being a second-hand  
24                          copy) of another edition of the work can be obtained within a  
25                          reasonable time at an ordinary commercial price—it is  
26                          appropriate that the reproduction should be made from the  
27                          copy of the work held in the collection.

28                                  *Electronic copies and commercial availability*

29                  (5) In determining for the purposes of subsection (3) or (4) whether a  
30                  reproduction or copy (not being a second-hand reproduction or  
31                  copy) of the work, or of a particular edition of the work, cannot be  
32                  obtained within a reasonable time at an ordinary commercial price,  
33                  the authorized officer must take into account whether an electronic  
34                  copy of the work or edition can be obtained within a reasonable  
35                  time at an ordinary commercial price.

1 *Relationship with the rest of this Division*

2 (6) This section does not limit the rest of this Division. The rest of this  
3 Division does not limit this section.

4 **27 After section 110B**

5 Insert:

6 **110BA Copying significant recordings and films in key cultural**  
7 **institutions' collections**

- 8 (1) This section applies in relation to a sound recording or  
9 cinematograph film held in the collection of a library or archives if:  
10 (a) under a law of the Commonwealth or a State or Territory, the  
11 body administering the library or archives has the function of  
12 developing and maintaining the collection; and  
13 (b) an authorized officer of the library or archives is satisfied that  
14 the recording or film is of historical or cultural significance  
15 to Australia.

16 *First record, or unpublished record, embodying sound recording*

- 17 (2) If the sound recording is held in the form of the first record, or an  
18 unpublished record, embodying the recording, copyright in the  
19 recording is not infringed by an authorized officer of the library or  
20 archives making a single copy of the recording from the record.

21 *Published sound recording*

- 22 (3) If the sound recording is held in published form, the copyright in  
23 the recording is not infringed by an authorized officer of the library  
24 or archives making a single copy of the recording from the  
25 published record if the officer is satisfied that a copy of the  
26 recording (not being a second-hand copy) cannot be obtained  
27 within a reasonable time at an ordinary commercial price.

28 *First copy, or unpublished copy, of film*

- 29 (4) If the cinematograph film is held in the form of the first copy, or an  
30 unpublished copy, of the film, copyright in the film is not infringed  
31 by an authorized officer of the library or archives making a single  
32 copy of the film from the first copy or unpublished copy.

1 *Published film*

- 2 (5) If the cinematograph film is held in a published form, copyright in  
3 the film is not infringed by an authorized officer of the library or  
4 archives making a single copy of the film from the published copy  
5 held in the collection if the officer is satisfied that a copy of the  
6 film (not being a second-hand copy) cannot be obtained within a  
7 reasonable time at an ordinary commercial price.

8 *Commercial availability of copy of recording or film*

- 9 (6) For the purposes of subsections (3) and (5), in determining whether  
10 a copy (not being a second-hand copy) cannot be obtained within a  
11 reasonable time at an ordinary commercial price, the authorized  
12 officer must take into account whether an electronic copy can be  
13 obtained within a reasonable time at an ordinary commercial price.

14 *Work or other subject-matter included in recording or film*

- 15 (7) If under this section, copyright in the sound recording or  
16 cinematograph film is not infringed by the making of a copy of the  
17 recording or film, the making of that copy does not infringe  
18 copyright in any work or other subject-matter included in the  
19 recording or film.

20 *Relationship with the rest of this Division*

- 21 (8) This section does not limit any of the other provisions of this  
22 Division that provide that an act (however described) does not  
23 infringe copyright. Those other provisions do not limit this section.

24 **28 Subparagraphs 112(a)(ii) and (b)(ii)**

25 After “51A,” insert “51B,”.

26 **29 After section 112A**

27 Insert:

28 **112AA Copying significant published editions in key cultural**  
29 **institutions’ collections**

- 30 (1) This section applies in relation to a published edition of one or  
31 more works held in the collection of a library or archives if:

- 1 (a) under a law of the Commonwealth or a State or Territory, the  
2 body administering the library or archives has the function of  
3 developing and maintaining the collection; and  
4 (b) an authorized officer of the library or archives is satisfied that  
5 the edition is of historical or cultural significance to  
6 Australia.

7 *Published editions*

- 8 (2) The copyright in the published edition is not infringed by an  
9 authorized officer of the library or archives making a single  
10 facsimile copy of the edition from the copy held in the collection if  
11 the officer is satisfied that a copy or facsimile copy of the edition  
12 (not being a second-hand copy) cannot be obtained within a  
13 reasonable time at an ordinary commercial price.
- 14 (3) In determining whether a copy (not being a second-hand copy)  
15 cannot be obtained within a reasonable time at an ordinary  
16 commercial price, the authorized officer must take into account  
17 whether an electronic copy of the edition can be obtained within a  
18 reasonable time at an ordinary commercial price.

19 *Works in published editions*

- 20 (4) If, under this section, copyright in the published edition is not  
21 infringed by the making of a facsimile copy of the edition, the  
22 making of that copy does not infringe copyright in any of the  
23 works in the published edition.

24 *Relationship with the rest of this Division*

- 25 (5) This section does not limit any of the other provisions of this  
26 Division that provide that an act (however described) does not  
27 infringe copyright. Those other provisions do not limit this section.

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## Schedule 7—Maker of communication

### *Copyright Act 1968*

#### **1 After subsection 22(6)**

Insert:

(6A) To avoid doubt, for the purposes of subsection (6), a person is not responsible for determining the content of a communication merely because the person takes one or more steps for the purpose of:

- (a) gaining access to what is made available online by someone else in the communication; or
- (b) receiving the electronic transmission of which the communication consists.

Example: A person is not responsible for determining the content of the communication to the person of a web page merely because the person clicks on a link to gain access to the page.



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2 **Schedule 8—Responses to Digital Agenda**  
3 **review**

4 **Part 1—Communication in the course of educational**  
5 **instruction**

6 *Copyright Act 1968*

7 **1 After section 28**

8 Insert:

9 **28A Communication of works or other subject-matter in the course**  
10 **of educational instruction**

- 11 (1) A communication of a sound recording or cinematograph film, and  
12 of any work included in the recording or film, is taken for the  
13 purposes of this Act not to be a communication to the public if:  
14 (a) the communication is made:  
15 (i) at the request of a teacher in the course of giving  
16 educational instruction that is not given for profit; or  
17 (ii) at the request of a student in the course of receiving  
18 such instruction; and  
19 (b) the communication is made in the course of enabling the  
20 recording to be heard or the film to be seen in class or  
21 otherwise in the presence of an audience limited to persons  
22 who:  
23 (i) are taking part in the instruction; or  
24 (ii) are otherwise directly connected with the place where  
25 the instruction is given.
- 26 (2) For the purposes of subsection (1), educational instruction given by  
27 a teacher at a place of education that is not conducted for profit is  
28 not taken to be given for profit merely because the teacher receives  
29 remuneration for giving the instruction.
- 30 (3) For the purposes of subsection (1), a person is not taken to be  
31 directly connected with a place where instruction is given merely  
32 because he or she is a parent or guardian of a student who receives  
33 instruction at that place.

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2 **Part 2—Educational copying of communications of**  
3 **free-to-air broadcasts**

4 **Division 1—Main amendments**

5 *Copyright Act 1968*

6 **2 Subsection 10(1)**

7 Insert:

8 *free-to-air broadcast* means a broadcast delivered by a national  
9 broadcasting service, commercial broadcasting service or  
10 community broadcasting service within the meaning of the  
11 *Broadcasting Services Act 1992*.

12 **3 After section 135B**

13 Insert:

14 **135C Extended operation of this Part**

15 This Part, and the rest of this Act so far as it relates to this Part or  
16 to a provision of this Part, apply in relation to a communication of  
17 the content of a free-to-air broadcast, by the broadcaster making  
18 the content available online at or after the time of the broadcast, in  
19 the same way as they apply in relation to the broadcast.

20 **Division 2—Consequential amendments**

21 *Copyright Act 1968*

22 **4 Subsection 98(7) (definition of *free-to-air broadcast*)**

23 Repeal the definition.

24 **5 Section 135ZZI (definition of *free-to-air broadcast*)**

25 Repeal the definition.

26 **6 Subsection 153M(5)**

27 Omit “, *free-to-air broadcast*”.

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**Part 3—Insubstantial parts of works in electronic form**

***Copyright Act 1968***

**7 Subsection 135ZMB(2)**

Repeal the subsection, substitute:

*No exception for more than 2 pages or 1% of the number of pages*

(1A) Subsection (1) does not apply to the reproduction or communication if all the following circumstances exist:

- (a) the published electronic form of the literary or dramatic work from which the reproduction or communication is made contains pages whose content is unlikely to change regardless of the system used to view, reproduce or communicate them;
- (b) the reproduction or communication is of more than 2 of those pages without altering any of their content (in terms of the work);
- (c) there are more than 200 pages in that form of the work;
- (d) the number of pages reproduced or communicated exceeds 1% of the number of pages in that form of the work.

*No exception for more than 1% of words if work is not paginated*

(2) Subsection (1) does not apply to the reproduction or communication if both the following circumstances exist:

- (a) the circumstance in paragraph (1A)(a) does not exist;
- (b) the reproduction or communication is of more than 1% of the number of words in the work.

Note 1: The following heading to subsection 135ZMB(1) is inserted “*Exception from infringement*”.

Note 2: The following heading to subsection 135ZMB(3) is inserted “*No exception for dealing with another part within 14 days*”.

Note 3: The following heading to subsection 135ZMB(4) is inserted “*No exception for putting another part online at same time*”.

**8 At the end of section 135ZMB**

**Schedule 8** Responses to Digital Agenda review  
**Part 3** Insubstantial parts of works in electronic form

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1           Add:

2                     *Non-continuous passages are different parts*

3           (5) For the purposes of this section, passages from the work that are  
4                 not continuous are all different parts of the work.

5           (6) Subsection (5) does not affect by implication the meaning of a  
6                 reference outside this section to a part of a work.

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2 **Part 4—Electronic anthologies**

3 *Copyright Act 1968*

4 **9 After section 135ZMD**

5 Insert:

6 **135ZMDA Reproduction and communication of works from**  
7 **electronic anthologies by educational institutions**

8 Reproduction or communication of all or part of a literary or  
9 dramatic work does not infringe copyright in the work if:

- 10 (a) the work is contained in an anthology published in electronic  
11 form; and  
12 (b) the published electronic form of the anthology from which  
13 the reproduction or communication is made contains pages  
14 whose content is unlikely to change regardless of the system  
15 used to view, reproduce or communicate them; and  
16 (c) the work occupies not more than 15 of those pages; and  
17 (d) the reproduction or communication is made by or on behalf  
18 of a body administering an educational institution; and  
19 (e) a remuneration notice given by or on behalf of the body to  
20 the relevant collecting society is in force; and  
21 (f) the reproduction or communication is made solely for the  
22 educational purposes of the institution or of another  
23 educational institution; and  
24 (g) the body complies with subsection 135ZX(1) or (3) or  
25 section 135ZXA in relation to each reproduction or  
26 communication.

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2 **Part 5—Active caching for educational purposes**

3 ***Copyright Act 1968***

4 **10 After section 200**

5 Insert:

6 **200AAA Caching on server for educational purposes**

7 (1) This section applies if:

- 8 (a) copyright subsists in a work or other subject-matter; and  
9 (b) a communication of the work or other subject-matter is made  
10 so that there is a reproduction of the work or other  
11 subject-matter on a server:  
12 (i) that is operated by or on behalf of a body administering  
13 an educational institution; and  
14 (ii) that makes the work or other subject-matter available, in  
15 connection with a course of educational instruction  
16 given by staff of the institution to students, to those staff  
17 and students in a way that is intended to limit the  
18 availability, using the server, to those staff and students.

19 (2) The copyright is not infringed by:

- 20 (a) the making of that reproduction of the work or other  
21 subject-matter; or  
22 (b) a communication, using the server, of the work or other  
23 subject-matter to any of those staff or students for the  
24 purposes of giving or receiving the educational instruction.

25 (3) Subsection (2) does not apply, and is taken never to have applied,  
26 if the reproduction remains on the server after the end of the  
27 course.

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# **Schedule 9—Unauthorised access to encoded broadcasts**

## *Copyright Act 1968*

### **1 Part VAA**

Repeal the Part, substitute:

## **Part VAA—Unauthorised access to encoded broadcasts**

### **Division 1—Preliminary**

#### **135AL Definitions**

In this Part:

*action* means a proceeding of a civil nature between parties, including a counterclaim.

*broadcaster* means a person who makes an encoded broadcast.

*channel provider* means a person who:

- (a) packages a channel (which might include programs produced by the person); and
- (b) supplies a broadcaster with the channel; and
- (c) carries on a business that involves the supply of the channel;

where, apart from any breaks for the purposes of the transmission of incidental matter, the channel is broadcast as part of an encoded broadcast service.

*decoder* means a device (including a computer program) designed or adapted to decrypt, or facilitate the decryption of, an encoded broadcast.

*encoded broadcast* means:

- (a) a subscription broadcast; or
- (b) a broadcast (except a radio broadcast or subscription broadcast) that is encrypted and is delivered by a commercial

1 broadcasting service, or a national broadcasting service,  
2 within the meaning of the *Broadcasting Services Act 1992*.

3 ***subscription broadcast*** means a broadcast that is encrypted and is  
4 made available by the broadcaster only to persons authorised by  
5 the broadcaster to access the broadcast in intelligible form.

6 ***unauthorised decoder*** means a device (including a computer  
7 program) designed or adapted to decrypt, or facilitate the  
8 decryption of, an encoded broadcast without the authorisation of  
9 the broadcaster.

## 10 **135AM Counterclaim**

11 In the application of this Part in relation to a counterclaim,  
12 references to the defendant are to be read as references to the  
13 plaintiff.

## 14 **135AN This Part does not apply to law enforcement activity etc.**

15 This Part does not apply in relation to anything lawfully done for  
16 the purposes of law enforcement or national security by or on  
17 behalf of:

- 18 (a) the Commonwealth or a State or Territory; or  
19 (b) an authority of the Commonwealth or of a State or Territory.

20 Note: A defendant in proceedings for an offence against this Part bears an  
21 evidential burden in relation to the matter in this section (see  
22 subsection 13.3(3) of the *Criminal Code*).

## 23 **Division 2—Actions**

### 24 **Subdivision A—Actions relating to unauthorised decoders**

#### 25 **135AOA Making or dealing with unauthorised decoder**

- 26 (1) A channel provider, or anyone with an interest in the copyright in  
27 either an encoded broadcast or the content of an encoded  
28 broadcast, may bring an action against a person if:  
29 (a) the person does any of the acts described in subsection (2)  
30 with an unauthorised decoder; and  
31 (b) the person knows, or ought reasonably to know, that the  
32 unauthorised decoder will be used to enable someone to gain
-



1 access to an encoded broadcast without the authorisation of  
2 the broadcaster.

3 (2) The acts with the unauthorised decoder are as follows:

- 4 (a) making the unauthorised decoder;
- 5 (b) selling the unauthorised decoder or letting it for hire;
- 6 (c) by way of trade, or with the intention of obtaining a  
7 commercial advantage or profit, offering or exposing the  
8 unauthorised decoder for sale or hire;
- 9 (d) exhibiting the unauthorised decoder in public by way of trade  
10 or with the intention of obtaining a commercial advantage or  
11 profit;
- 12 (e) distributing the unauthorised decoder (including by exporting  
13 it from Australia) for the purpose of trade, or for a purpose  
14 that will prejudicially affect a channel provider or anyone  
15 with an interest in the copyright in either an encoded  
16 broadcast or the content of an encoded broadcast;
- 17 (f) importing the unauthorised decoder into Australia for the  
18 purpose of:
  - 19 (i) selling the unauthorised decoder or letting it for hire; or
  - 20 (ii) by way of trade, or with the intention of obtaining a  
21 commercial advantage or profit, offering or exposing  
22 the unauthorised decoder for sale or hire; or
  - 23 (iii) exhibiting the unauthorised decoder in public by way of  
24 trade or with the intention of obtaining a commercial  
25 advantage or profit; or
  - 26 (iv) distributing the unauthorised decoder for the purpose of  
27 trade, or for a purpose that will prejudicially affect a  
28 channel provider or anyone with an interest in the  
29 copyright in either an encoded broadcast or the content  
30 of an encoded broadcast;
- 31 (g) making the unauthorised decoder available online to an  
32 extent that will prejudicially affect a channel provider or  
33 anyone with an interest in the copyright in either an encoded  
34 broadcast or the content of an encoded broadcast.

35 (3) The action may be brought only within 6 years of the act.

36 (4) In an action under this section it must be presumed that the  
37 defendant knew, or ought reasonably to have known, that the

1 unauthorised decoder would be used as described in  
2 paragraph (1)(b), unless the defendant proves otherwise.

3 **Subdivision B—Actions relating to decoders for subscription**  
4 **broadcasts**

5 **135AOB Making decoder available online**

- 6 (1) This section permits an action to be brought against a person if:  
7 (a) a decoder was supplied (to the person or someone else) by, or  
8 with the authorisation of, the broadcaster (the *supplying*  
9 *broadcaster*) of a subscription broadcast; and  
10 (b) the person makes the decoder available online to an extent  
11 that will prejudicially affect any of the following persons (the  
12 *affected parties*):  
13 (i) anyone with an interest in the copyright in a  
14 subscription broadcast by the supplying broadcaster;  
15 (ii) anyone with an interest in the copyright in the content of  
16 a subscription broadcast by the supplying broadcaster;  
17 (iii) a channel provider who supplies the supplying  
18 broadcaster with a channel for a subscription broadcast;  
19 and  
20 (c) the person knows, or ought reasonably to know, that the  
21 decoder will be used to enable someone to gain access to a  
22 subscription broadcast without the authorisation of the  
23 broadcaster.
- 24 (2) The action may be brought by any of the affected parties but only  
25 within 6 years of the person first making the decoder available  
26 online as described in paragraph (1)(b).
- 27 (3) In an action under this section it must be presumed that the  
28 defendant knew, or ought reasonably to have known, that the  
29 decoder would be used as described in paragraph (1)(c), unless the  
30 defendant proves otherwise.

1 **Subdivision C—Actions for unauthorised access to encoded**  
2 **broadcasts**

3 **135AOC Causing unauthorised access**

- 4 (1) This section permits an action to be brought against a person if:  
5 (a) without the authorisation of the broadcaster of an encoded  
6 broadcast, the person does an act causing the person or  
7 anyone else to gain access in intelligible form to the  
8 broadcast or sounds or images from the broadcast; and  
9 (b) the access will prejudicially affect any of the following  
10 persons (the *affected parties*):  
11 (i) anyone with an interest in the copyright in an encoded  
12 broadcast by the broadcaster;  
13 (ii) anyone with an interest in the copyright in the content of  
14 an encoded broadcast by the broadcaster;  
15 (iii) a channel provider who supplies the broadcaster with a  
16 channel for an encoded broadcast; and  
17 (c) the person knows, or ought reasonably to know, that the  
18 access is not authorised by the broadcaster.

19 Note: Paragraph (a)—examples of causing a person to gain access to the  
20 broadcast or sounds or images from the broadcast include:

- 21 (a) using, or authorising the use of, a decoder so the person gains  
22 access to the broadcast, sounds or images; and  
23 (b) distributing, or authorising the distribution of, the sounds or  
24 images to the person after they are obtained from the broadcast  
25 using a decoder.

26 (2) The action may be brought by any of the affected parties but only  
27 within 6 years of the act.

- 28 (3) Subsection (1) does not apply to:  
29 (a) an act consisting merely of one or more of the following:  
30 (i) starting the playing of sounds or images in or from the  
31 broadcast on a device (for example by switching the  
32 device on);  
33 (ii) listening to sounds in or from the broadcast and/or  
34 seeing images in or from the broadcast;  
35 (iii) distributing the sounds or images within a single  
36 dwelling that is occupied by a single household and is  
37 the subject of an arrangement involving a member of

- 1 the household and the broadcaster about authorisation of  
2 private access to the broadcast; or  
3 (b) access to the sounds or images gained from:  
4 (i) a cinematograph film, or sound recording, made of the  
5 encoded broadcast; or  
6 (ii) a copy of such a film or recording.
- 7 Note: Paragraph (b)—the making of such a film, recording or copy may be  
8 an infringement of copyright: see paragraphs 87(a) and (b) and  
9 section 101.

### 10 **135AOD Unauthorised commercial use of subscription broadcast**

- 11 (1) This section permits an action to be brought against a person if:  
12 (a) without the authorisation of the broadcaster of a subscription  
13 broadcast, the person uses the broadcast, or sounds or images  
14 from the broadcast, by way of trade or with the intention of  
15 obtaining a commercial advantage or profit; and  
16 (b) the use prejudicially affects any of the following persons (the  
17 *affected parties*):  
18 (i) anyone with an interest in the copyright in the  
19 broadcast;  
20 (ii) anyone with an interest in the copyright in any content  
21 of the broadcast;  
22 (iii) the channel provider who supplied the broadcaster with  
23 the channel for the broadcast; and  
24 (c) the person knows, or ought reasonably to know, that the use  
25 is not authorised by the broadcaster.
- 26 (2) The action may be brought by any of the affected parties but only  
27 within 6 years of the use.

### 28 **Subdivision D—Court orders**

#### 29 **135AOE Relief**

- 30 (1) The relief that a court may grant in an action under this Division  
31 includes an injunction (subject to the terms, if any, the court thinks  
32 fit) and either damages or an account of profits.
- 33 (2) In assessing damages, the court may award such additional  
34 damages as it considers appropriate, having regard to:

- 1 (a) the flagrancy with which the defendant did any of the  
2 relevant acts; and  
3 (b) the need to deter acts similar to the relevant acts; and  
4 (c) any benefit shown in an action under Subdivision A or B to  
5 have accrued to the defendant as a result of making or  
6 dealing with the decoder; and  
7 (d) any benefit shown in an action under Subdivision C to have  
8 accrued to the defendant or any trade or business carried on  
9 by, or in association with, the defendant; and  
10 (e) all other relevant matters.

11 **135AOF Destruction of decoder**

12 In an action under this Division, the court may order that the  
13 relevant decoder (if any) be destroyed or dealt with as specified in  
14 the order.

15 **Subdivision E—Jurisdiction and appeals**

16 **135AP Exercise of jurisdiction**

17 The jurisdiction of the Supreme Court of a State or Territory in an  
18 action under the Part is to be exercised by a single Judge of the  
19 Court.

20 **135AQ Appeals**

- 21 (1) Subject to subsection (2), a decision of a court of a State or  
22 Territory (however constituted) under this Part is final and  
23 conclusive.  
24 (2) An appeal lies from a decision of a court of a State or Territory  
25 under this Part:  
26 (a) to the Federal Court of Australia; or  
27 (b) by special leave of the High Court, to the High Court.

28 **135AR Jurisdiction of Federal Court of Australia**

29 Jurisdiction is conferred on the Federal Court of Australia with  
30 respect to actions under this Part.

1 **135AS Jurisdiction of Federal Magistrates Court**

2 Jurisdiction is conferred on the Federal Magistrates Court with  
3 respect to actions under this Part.

4 **Division 3—Offences**

5 **Subdivision A—Offences**

6 **135ASA Making unauthorised decoder**

- 7 (1) A person commits an offence if:
- 8 (a) the person makes an unauthorised decoder; and
- 9 (b) the unauthorised decoder will be used to enable a person to  
10 gain access to an encoded broadcast without the authorisation  
11 of the broadcaster.
- 12 (2) An offence against subsection (1) is punishable on conviction by a  
13 fine of not more than 550 penalty units or imprisonment for not  
14 more than 5 years, or both.

15 Note: A corporation may be fined up to 5 times the amount of the maximum  
16 fine (see subsection 4B(3) of the *Crimes Act 1914*).

17 **135ASB Selling or hiring unauthorised decoder**

- 18 (1) A person commits an offence if:
- 19 (a) the person sells or lets for hire an unauthorised decoder; and
- 20 (b) the unauthorised decoder will be used to enable a person to  
21 gain access to an encoded broadcast without the authorisation  
22 of the broadcaster.
- 23 (2) An offence against subsection (1) is punishable on conviction by a  
24 fine of not more than 550 penalty units or imprisonment for not  
25 more than 5 years, or both.

26 Note: A corporation may be fined up to 5 times the amount of the maximum  
27 fine (see subsection 4B(3) of the *Crimes Act 1914*).

28 **135ASC Offering unauthorised decoder for sale or hire**

- 29 (1) A person commits an offence if:
-

- 1 (a) with the intention of obtaining a commercial advantage or  
2 profit, the person offers or exposes an unauthorised decoder  
3 for sale or hire; and  
4 (b) the unauthorised decoder will be used to enable a person to  
5 gain access to an encoded broadcast without the authorisation  
6 of the broadcaster.

- 7 (2) A person commits an offence if:  
8 (a) the person offers or exposes an unauthorised decoder for sale  
9 or hire; and  
10 (b) the offer or exposure is by way of trade; and  
11 (c) the unauthorised decoder will be used to enable a person to  
12 gain access to an encoded broadcast without the authorisation  
13 of the broadcaster.

- 14 (3) An offence against subsection (1) or (2) is punishable on  
15 conviction by a fine of not more than 550 penalty units or  
16 imprisonment for not more than 5 years, or both.

17 Note: A corporation may be fined up to 5 times the amount of the maximum  
18 fine (see subsection 4B(3) of the *Crimes Act 1914*).

19 **135ASD Commercially exhibiting unauthorised decoder in public**

- 20 (1) A person commits an offence if:  
21 (a) the person exhibits an unauthorised decoder in public with  
22 the intention of obtaining a commercial advantage or profit;  
23 and  
24 (b) the unauthorised decoder will be used to enable a person to  
25 gain access to an encoded broadcast without the authorisation  
26 of the broadcaster.

- 27 (2) A person commits an offence if:  
28 (a) the person exhibits an unauthorised decoder in public; and  
29 (b) the exhibition is by way of trade; and  
30 (c) the unauthorised decoder will be used to enable a person to  
31 gain access to an encoded broadcast without the authorisation  
32 of the broadcaster.

- 33 (3) An offence against subsection (1) or (2) is punishable on  
34 conviction by a fine of not more than 550 penalty units or  
35 imprisonment for not more than 5 years, or both.

1 Note: A corporation may be fined up to 5 times the amount of the maximum  
2 fine (see subsection 4B(3) of the *Crimes Act 1914*).

3 **135ASE Importing unauthorised decoder commercially**

4 (1) A person commits an offence if:

- 5 (a) the person imports an unauthorised decoder into Australia  
6 with the intention of doing any of the following with the  
7 unauthorised decoder:
- 8 (i) selling the unauthorised decoder;
  - 9 (ii) letting the unauthorised decoder for hire;
  - 10 (iii) offering or exposing the unauthorised decoder for sale  
11 or hire, by way of trade or to obtain a commercial  
12 advantage or profit;
  - 13 (iv) exhibiting the unauthorised decoder in public by way of  
14 trade or to obtain a commercial advantage or profit;
  - 15 (v) distributing the unauthorised decoder for trade;
  - 16 (vi) distributing the unauthorised decoder to obtain a  
17 commercial advantage or profit;
  - 18 (vii) distributing the unauthorised decoder in preparation for,  
19 or in the course of, engaging in an activity that will  
20 prejudicially affect a channel provider or anyone with  
21 an interest in the copyright in either an encoded  
22 broadcast or the content of an encoded broadcast; and
- 23 (b) the unauthorised decoder will be used to enable a person to  
24 gain access to an encoded broadcast without the authorisation  
25 of the broadcaster.

26 (2) An offence against subsection (1) is punishable on conviction by a  
27 fine of not more than 550 penalty units or imprisonment for not  
28 more than 5 years, or both.

29 Note: A corporation may be fined up to 5 times the amount of the maximum  
30 fine (see subsection 4B(3) of the *Crimes Act 1914*).

31 **135ASF Distributing unauthorised decoder**

32 (1) A person commits an offence if:

- 33 (a) the person distributes (including by exporting from Australia)  
34 an unauthorised decoder with the intention of:
- 35 (i) trading; or
  - 36 (ii) obtaining a commercial advantage or profit; or



- 1 (iii) engaging in any other activity that will prejudicially  
2 affect a channel provider or anyone with an interest in  
3 the copyright in either an encoded broadcast or the  
4 content of an encoded broadcast; and  
5 (b) the unauthorised decoder will be used to enable a person to  
6 gain access to an encoded broadcast without the authorisation  
7 of the broadcaster.

- 8 (2) An offence against subsection (1) is punishable on conviction by a  
9 fine of not more than 550 penalty units or imprisonment for not  
10 more than 5 years, or both.

11 Note: A corporation may be fined up to 5 times the amount of the maximum  
12 fine (see subsection 4B(3) of the *Crimes Act 1914*).

13 **135ASG Making unauthorised decoder available online**

- 14 (1) A person commits an offence if:  
15 (a) the person makes an unauthorised decoder available online;  
16 and  
17 (b) the unauthorised decoder is made available online to an  
18 extent that will prejudicially affect a channel provider or  
19 anyone with an interest in the copyright in either an encoded  
20 broadcast or the content of an encoded broadcast; and  
21 (c) the unauthorised decoder will be used to enable a person to  
22 gain access to an encoded broadcast without the authorisation  
23 of the broadcaster.

- 24 (2) An offence against subsection (1) is punishable on conviction by a  
25 fine of not more than 550 penalty units or imprisonment for not  
26 more than 5 years, or both.

27 Note: A corporation may be fined up to 5 times the amount of the maximum  
28 fine (see subsection 4B(3) of the *Crimes Act 1914*).

29 **135ASH Making decoder available online for subscription broadcast**

- 30 (1) A person commits an offence if:  
31 (a) a decoder was supplied (to the person or anyone else) by, or  
32 with the authorisation of, the broadcaster of a subscription  
33 broadcast; and  
34 (b) the person makes the decoder available online; and

- 1 (c) the decoder is made available online without the  
2 authorisation of the broadcaster; and  
3 (d) the decoder will be used to enable a person to gain access to a  
4 subscription broadcast without the authorisation of the  
5 broadcaster; and  
6 (e) the decoder is made available online to an extent that will  
7 prejudicially affect any of the following:  
8 (i) anyone with an interest in the copyright in a  
9 subscription broadcast by the broadcaster;  
10 (ii) anyone with an interest in the copyright in the content of  
11 a subscription broadcast by the broadcaster;  
12 (iii) a channel provider who supplies the broadcaster with a  
13 channel for a subscription broadcast.
- 14 (2) An offence against subsection (1) is punishable on conviction by a  
15 fine of not more than 550 penalty units or imprisonment for not  
16 more than 5 years, or both.

17 Note: A corporation may be fined up to 5 times the amount of the maximum  
18 fine (see subsection 4B(3) of the *Crimes Act 1914*).

19 **135ASI Unauthorised access to subscription broadcast etc.**

20 A person commits an offence if:

- 21 (a) the person does an act; and  
22 (b) the act (either alone or in conjunction with other acts) results  
23 in the person gaining access in intelligible form to a  
24 subscription broadcast or sounds or images from a  
25 subscription broadcast; and  
26 (c) the access is not authorised by the broadcaster and the person  
27 knows that; and  
28 (d) the act does not consist merely of one or more of the  
29 following:  
30 (i) starting the playing of sounds or images in or from the  
31 broadcast on a device (for example by switching the  
32 device on);  
33 (ii) listening to sounds in or from the broadcast and/or  
34 seeing images in or from the broadcast;  
35 (iii) distributing the sounds or images within a single  
36 dwelling that is occupied by a single household and is  
37 the subject of an arrangement involving a member of

1 the household and the broadcaster about authorisation of  
2 private access to the broadcast; and

- 3 (e) the access to the sounds or images is not gained from:  
4 (i) a cinematograph film, or sound recording, made of the  
5 encoded broadcast; or  
6 (ii) a copy of such a film or recording.

7 Note: The making of such a film, recording or copy may be an  
8 infringement of copyright: see paragraphs 87(a) and (b) and  
9 section 101.

10 Penalty: 60 penalty units.

11 **135ASJ Causing unauthorised access to encoded broadcast etc.**

- 12 (1) A person commits an offence if:  
13 (a) the person does an act; and  
14 (b) the act is done by way of trade; and  
15 (c) the act results in the person or anyone else gaining access in  
16 intelligible form to an encoded broadcast or sounds or images  
17 from an encoded broadcast; and  
18 (d) the access is not authorised by the broadcaster; and  
19 (e) the access to the sounds or images is not gained from:  
20 (i) a cinematograph film, or sound recording, made of the  
21 encoded broadcast; or  
22 (ii) a copy of such a film or recording.

23 Note: Paragraph (e)—the making of such a film, recording or copy may be  
24 an infringement of copyright: see paragraphs 87(a) and (b) and  
25 section 101.

- 26 (2) A person commits an offence if:  
27 (a) the person does an act with the intention of obtaining a  
28 commercial advantage or profit; and  
29 (b) the act results in the person or anyone else gaining access in  
30 intelligible form to an encoded broadcast or sounds or images  
31 from an encoded broadcast; and  
32 (c) the access is not authorised by the broadcaster; and  
33 (d) the access to the sounds or images is not gained from:  
34 (i) a cinematograph film, or sound recording, made of the  
35 encoded broadcast; or  
36 (ii) a copy of such a film or recording.

1 Note: Paragraph (e)—the making of such a film, recording or copy may be  
2 an infringement of copyright: see paragraphs 87(a) and (b) and  
3 section 101.

- 4 (3) A person commits an offence if:  
5 (a) the person does an act; and  
6 (b) the act results in anyone else gaining access in intelligible  
7 form to an encoded broadcast or sounds or images from an  
8 encoded broadcast; and  
9 (c) the access is not authorised by the broadcaster and the person  
10 knows that; and  
11 (d) the act does not consist merely of one or more of the  
12 following:  
13 (i) starting the playing of sounds or images in or from the  
14 broadcast on a device (for example by switching the  
15 device on);  
16 (ii) distributing the sounds or images within a single  
17 dwelling that is occupied by a single household and is  
18 the subject of an arrangement involving a member of  
19 the household and the broadcaster about authorisation of  
20 private access to the broadcast; and  
21 (e) the access to the sounds or images is not gained from:  
22 (i) a cinematograph film, or sound recording, made of the  
23 encoded broadcast; or  
24 (ii) a copy of such a film or recording.

25 Note: Paragraph (e)—the making of such a film, recording or copy may be  
26 an infringement of copyright: see paragraphs 87(a) and (b) and  
27 section 101.

- 28 (4) An offence against subsection (1), (2) or (3) is punishable on  
29 conviction by a fine of not more than 550 penalty units or  
30 imprisonment for not more than 5 years, or both.

31 Note: A corporation may be fined up to 5 times the amount of the maximum  
32 fine (see subsection 4B(3) of the *Crimes Act 1914*).

## 33 Subdivision B—Prosecutions

### 34 135ATA Courts in which offences may be prosecuted

- 35 (1) Prosecutions for offences against this Division may be brought in  
36 the Federal Court of Australia or in any other court of competent  
37 jurisdiction.

1 (2) However, the Federal Court of Australia does not have jurisdiction  
2 to hear or determine prosecutions for indictable offences, despite  
3 section 15C of the *Acts Interpretation Act 1901*.

4 (3) The Federal Court of Australia has jurisdiction to hear and  
5 determine prosecutions of summary offences against this Division.

6 (4) Also, section 4J (except subsection 4J(2)) of the *Crimes Act 1914*  
7 applies in relation to the Federal Court of Australia and an  
8 indictable offence against this Division in the way in which that  
9 section would apply if that court were a court of summary  
10 jurisdiction.

11 Note: Section 4J of the *Crimes Act 1914* lets a court of summary jurisdiction  
12 try indictable offences in certain circumstances and subject to limits  
13 on the penalties the court can impose.

## 14 **Subdivision C—Further orders by court**

### 15 **135AU Destruction etc. of unauthorised decoders**

16 (1) The court trying a person for an offence against this Division may  
17 order that any article in the person's possession that appears to the  
18 court to be an unauthorised decoder be destroyed or otherwise dealt  
19 with as specified in the order.

20 (2) The court may make the order whether the person is convicted of  
21 the offence or not.

## 22 **2 Application**

23 Part VAA of the *Copyright Act 1968* as amended by this Schedule  
24 applies to acts done on or after the commencement of this Schedule.

1  
2 **Schedule 10—Copyright Tribunal:**  
3 **amendments commencing first**

4 **Part 1—Remuneration required by Parts VA and VB**

5 *Copyright Act 1968*

6 **1 After subsection 135J(4)**

7 Insert:

8 (4A) To avoid doubt, an annual amount (whether for one or more  
9 institutions administered by the administering body) may be  
10 determined for the purposes of subsection (1) by reference to  
11 amounts for copies and communications that differ on one or both  
12 of the following bases:

- 13 (a) different classes of works, performances, sound recordings or  
14 cinematograph films included in broadcasts;  
15 (b) different classes of students of an institution administered by  
16 the administering body.

17 **2 Subsection 135ZV(2)**

18 Repeal the subsection, substitute:

- 19 (2) For the purposes of subsection (1), different amounts may be  
20 determined (whether by agreement or by the Copyright Tribunal)  
21 in relation to:  
22 (a) different classes of works or eligible items; or  
23 (b) different institutions administered by the administering body;  
24 or  
25 (c) different classes of students of an institution administered by  
26 the administering body.

27 **3 After subsection 135ZW(4)**

28 Insert:

29 (4A) To avoid doubt, an annual amount (whether for one or more  
30 institutions administered by the administering body) may be  
31 determined for the purposes of subsection (1) by reference to

- 1 amounts for licensed copies that differ on one or both of the  
2 following bases:  
3 (a) different classes of works or eligible items;  
4 (b) different classes of students of an institution administered by  
5 the administering body.

1

2 **Part 2—Declarations of collecting societies**

3 ***Copyright Act 1968***

4 **4 Subsections 135P(1) and (2)**

5 Repeal the subsections, substitute:

6 (1) A body may apply to the Minister to be declared as the collecting  
7 society.

8 (1A) After receiving the application, the Minister must do one of the  
9 following:

10 (a) declare the body to be the collecting society, by notice in the  
11 *Gazette*;

12 (b) refuse to declare the body to be the collecting society;

13 (c) refer the application to the Copyright Tribunal in the way  
14 prescribed by the regulations and notify the body of the  
15 referral.

16 (1B) A declaration made under paragraph (1A)(a) is not a legislative  
17 instrument.

18 (1C) If the Minister refers the application to the Copyright Tribunal, the  
19 Tribunal may declare the body to be the collecting society.

20 Note: Section 153BAB sets out the procedure of the Copyright Tribunal in  
21 dealing with the reference.

22 (2) Only one body can be declared to be the collecting society at a  
23 time. The body cannot be declared to be the collecting society  
24 while another body is declared to be the collecting society.

25 Note: The heading to section 135P is altered by omitting “**The**” and substituting “**Declaration**  
26 **of the**”.

27 **5 Saving**

28 (1) The declaration of the collecting society for Part VA of the *Copyright*  
29 *Act 1968* in force just before the commencement of this Part continues  
30 to have effect on and after that commencement despite the repeal of  
31 subsection 135P(1) of that Act by this Part.



1 (2) Subitem (1) does not prevent revocation of the declaration after that  
2 commencement.

3 **6 Subsection 135P(3)**

4 Omit “Attorney-General shall”, substitute “Minister and the Copyright  
5 Tribunal must”.

6 **7 At the end of paragraphs 135P(3)(a) and (b)**

7 Add “and”.

8 **8 At the end of subparagraphs 135P(3)(d)(i), (ii) and (iii)**

9 Add “and”.

10 **9 Section 135Q**

11 Omit “The Attorney-General may, by notice in the *Gazette*, revoke the  
12 declaration of a body as the collecting society if satisfied that the  
13 body:”, substitute “(1) This section applies if the Minister is satisfied  
14 that the body declared as the collecting society:”.

15 **10 At the end of paragraphs 135Q(a) and (b)**

16 Add “or”.

17 **11 At the end of section 135Q**

18 Add:

19 (2) The Minister may:

20 (a) by notice in the *Gazette*, revoke the declaration; or

21 (b) refer the question whether the declaration should be revoked  
22 to the Copyright Tribunal in the way prescribed by the  
23 regulations.

24 (3) If the Minister refers the question to the Copyright Tribunal, the  
25 Tribunal may revoke the declaration if it is satisfied that any of  
26 paragraphs (1)(a), (b), (c) and (d) applies to the body.

27 Note: Section 153BAC sets out the procedure of the Copyright Tribunal in  
28 dealing with the reference.

29 **12 Sections 135R and 135S**

30 Omit “Attorney-General” (wherever occurring), substitute “Minister”.

1 **13 Subsection 135ZZB(1)**

2 Repeal the subsection, substitute:

3 (1) A body may apply to the Minister to be declared as a collecting  
4 society for all relevant copyright owners or for specified classes of  
5 relevant copyright owners.

6 (1A) After receiving the application, the Minister must do one of the  
7 following:

8 (a) declare the body to be a collecting society, by notice in the  
9 *Gazette*;

10 (b) refuse to declare the body to be a collecting society;

11 (c) refer the application to the Copyright Tribunal in the way  
12 prescribed by the regulations and notify the body of the  
13 referral.

14 (1B) A declaration made under paragraph (1A)(a) is not a legislative  
15 instrument.

16 (1C) If the Minister refers the application to the Copyright Tribunal, the  
17 Tribunal may declare the body to be a collecting society.

18 Note: Section 153DC sets out the procedure of the Copyright Tribunal in  
19 dealing with the reference.

20 (1D) A declaration of the body as a collecting society must declare the  
21 body to be:

22 (a) the collecting society for all relevant copyright owners; or

23 (b) the collecting society for classes of relevant copyright owners  
24 specified in the declaration.

25 **14 Subsection 135ZZB(2)**

26 Omit “Where the Attorney-General declares a body to be the collecting  
27 society for a specified class of copyright owners and subsequently  
28 declares another body”, substitute “If a body is declared to be the  
29 collecting society for a specified class of copyright owners and another  
30 body is subsequently declared”.

31 **15 Subsection 135ZZB(3)**

32 Omit “Attorney-General shall”, substitute “Minister and the Copyright  
33 Tribunal must”.

34 **16 At the end of paragraphs 135ZZB(3)(a) and (b)**

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1 Add “and”.

2 **17 At the end of subparagraphs 135ZZB(3)(d)(i), (ii) and (iii)**

3 Add “and”.

4 **18 Subsection 135ZZB(4)**

5 Omit “Where the Attorney-General”, substitute “If the Minister or the  
6 Copyright Tribunal”.

7 **19 Subsection 135ZZB(4)**

8 Omit “Attorney-General” (second occurring), substitute “Minister and  
9 the Copyright Tribunal”.

10 **20 Saving**

11 (1) The declaration of a collecting society for Part VB of the *Copyright Act*  
12 *1968* in force just before the commencement of this Part continues to  
13 have effect on and after that commencement despite the repeal of  
14 subsection 135ZZB(1) of that Act by this Part.

15 (2) Subitem (1) does not prevent revocation of the declaration after that  
16 commencement.

17 **21 Section 135ZZC**

18 Omit “The Attorney-General may, by notice in the *Gazette*, revoke the  
19 declaration of a body as a collecting society if satisfied that the body:”,  
20 substitute “(1) This section applies if the Minister is satisfied that a  
21 body declared as a collecting society:”.

22 **22 At the end of paragraphs 135ZZC(a) and (b)**

23 Add “or”.

24 **23 At the end of section 135ZZC**

25 Add:

26 (2) The Minister may:

27 (a) by notice in the *Gazette*, revoke the declaration; or

28 (b) refer the question whether the declaration should be revoked  
29 to the Copyright Tribunal in the way prescribed by the  
30 regulations.

1 (3) If the Minister refers the question to the Copyright Tribunal, the  
2 Tribunal may revoke the declaration if it is satisfied that any of  
3 paragraphs (1)(a), (b), (c) and (d) applies to the body.

4 Note: Section 153DD sets out the procedure of the Copyright Tribunal in  
5 dealing with the reference.

## 6 **24 Sections 135ZZD and 135ZZE**

7 Omit “Attorney-General” (wherever occurring), substitute “Minister”.

## 8 **25 Subsection 135ZZT(1)**

9 Repeal the subsection, substitute:

10 (1) A body may apply to the Minister to be declared as a collecting  
11 society for all relevant copyright owners or for specified classes of  
12 relevant copyright owners.

13 (1A) After receiving the application, the Minister must do one of the  
14 following:

15 (a) declare the body to be a collecting society, by notice in the  
16 *Gazette*;

17 (b) refuse to declare the body to be a collecting society;

18 (c) refer the application to the Copyright Tribunal in the way  
19 prescribed by the regulations and notify the body of the  
20 referral.

21 (1B) A declaration made under paragraph (1A)(a) is not a legislative  
22 instrument.

23 (1C) If the Minister refers the application to the Copyright Tribunal, the  
24 Tribunal may declare the body to be a collecting society.

25 Note: Section 153P sets out the procedure of the Copyright Tribunal in  
26 dealing with the reference.

27 (1D) A declaration of the body as a collecting society must declare the  
28 body to be:

29 (a) the collecting society for all relevant copyright owners; or

30 (b) the collecting society for classes of relevant copyright owners  
31 specified in the declaration.

## 32 **26 Subsection 135ZZT(2)**

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1 Omit “Where the Attorney-General declares a body to be the collecting  
2 society for a specified class of copyright owners and subsequently  
3 declares another body”, substitute “If a body is declared to be the  
4 collecting society for a specified class of copyright owners and another  
5 body is subsequently declared”.

6 **27 Subsection 135ZZT(3)**

7 Omit “Attorney-General”, substitute “Minister and the Copyright  
8 Tribunal”.

9 **28 Subsection 135ZZT(4)**

10 Omit “Attorney-General” (first occurring), substitute “Minister or the  
11 Copyright Tribunal”.

12 **29 Subsection 135ZZT(4)**

13 Omit “Attorney-General” (second occurring), substitute “Minister and  
14 the Copyright Tribunal”.

15 **30 Saving**

- 16 (1) A declaration of a collecting society for Part VC of the *Copyright Act*  
17 *1968* in force just before the commencement of this Part continues to  
18 have effect on and after that commencement despite the repeal of  
19 subsection 135ZZT(1) of that Act by this Part.
- 20 (2) Subitem (1) does not prevent revocation of the declaration after that  
21 commencement.

22 **31 Section 135ZZU**

23 Omit “The Attorney-General may, by notice in the *Gazette*, revoke the  
24 declaration of a body as a collecting society if satisfied that the body:”,  
25 substitute “(1) This section applies if the Minister is satisfied that a  
26 body declared as a collecting society:”.

27 **32 At the end of section 135ZZU**

28 Add:

- 29 (2) The Minister may:  
30 (a) by notice in the *Gazette*, revoke the declaration; or

1 (b) refer the question whether the declaration should be revoked  
2 to the Copyright Tribunal in the way prescribed by the  
3 regulations.

4 (3) If the Minister refers the question to the Copyright Tribunal, the  
5 Tribunal may revoke the declaration if it is satisfied that any of  
6 paragraphs (1)(a), (b), (c) and (d) applies to the body.

7 Note: Section 153Q sets out the procedure of the Copyright Tribunal in  
8 dealing with the reference.

9 **33 Sections 135ZZV and 135ZZW**

10 Omit “Attorney-General” (wherever occurring), substitute “Minister”.

11 **34 Before section 148**

12 Insert:

13 **Subdivision A—Preliminary**

14 **35 Before section 149**

15 Insert:

16 **Subdivision B—Applications relating to Parts III and IV**

17 **36 Before section 153A**

18 Insert:

19 **Subdivision C—Applications and references relating to**  
20 **Part VA**

21 **37 After section 153BA**

22 Insert:

23 **153BAB References relating to declaration of collecting society**

24 (1) This section has effect if the Minister refers to the Copyright  
25 Tribunal under section 135P an application of a body to be  
26 declared the collecting society.

27 (2) The parties to the reference are the applicant and any person made  
28 a party by the Tribunal.

- 1 (3) The Tribunal may make a person a party if:  
2 (a) the person asks to be made a party; and  
3 (b) the Tribunal thinks that the person has a sufficient interest in  
4 the question whether the applicant should be declared to be  
5 the collecting society (including whether subsection 135P(2)  
6 prevents the applicant from being declared to be the  
7 collecting society because another body is declared to be the  
8 collecting society).
- 9 (4) After giving each party an opportunity of presenting its case, the  
10 Tribunal must:  
11 (a) declare the applicant to be the collecting society under  
12 section 135P; or  
13 (b) reject the application.
- 14 (5) If the Tribunal declares the applicant to be the collecting society  
15 under section 135P, the Registrar must publish notice of the  
16 declaration in the *Gazette*.

17 **153BAC References relating to revocation of declaration of**  
18 **collecting society**

- 19 (1) This section has effect if the Minister refers to the Copyright  
20 Tribunal under section 135Q the question whether the declaration  
21 of a body as the collecting society should be revoked.
- 22 (2) The parties to the reference are:  
23 (a) the Minister; and  
24 (b) the collecting society; and  
25 (c) any person made a party by the Tribunal.
- 26 (3) The Tribunal may make a person a party if:  
27 (a) the person asks to be made a party; and  
28 (b) the Tribunal thinks that the person has a sufficient interest in  
29 the question whether the declaration of the collecting society  
30 should be revoked.
- 31 (4) After giving each party an opportunity of presenting its case, the  
32 Tribunal must:  
33 (a) revoke the declaration of the collecting society under  
34 section 135Q; or  
35 (b) refuse to revoke the declaration.

- 1 (5) If the Tribunal revokes the declaration of the collecting society:  
2 (a) the revocation must specify the day on which it takes effect;  
3 and  
4 (b) the Registrar must publish notice of the revocation in the  
5 *Gazette*.

6 **Subdivision D—Applications and references relating to**  
7 **Part VB**

8 **38 After section 153DA**

9 Insert:

10 **153DC References relating to declaration of collecting society**

- 11 (1) This section has effect if the Minister refers to the Copyright  
12 Tribunal under section 135ZZB an application of a body to be  
13 declared a collecting society.
- 14 (2) The parties to the reference are the applicant and any person made  
15 a party by the Tribunal.
- 16 (3) The Tribunal may make a person a party if:  
17 (a) the person asks to be made a party; and  
18 (b) the Tribunal thinks that the person has a sufficient interest in  
19 either or both of the following questions:  
20 (i) whether the applicant should be declared to be a  
21 collecting society for all relevant copyright owners (as  
22 defined in Part VB) or a particular class of relevant  
23 copyright owners;  
24 (ii) whether another body should cease to be the collecting  
25 society for any of the relevant copyright owners (as  
26 defined in Part VB) if the applicant is declared to be a  
27 collecting society.
- 28 (4) After giving each party an opportunity of presenting its case, the  
29 Tribunal must:  
30 (a) declare the applicant to be a collecting society under  
31 section 135ZZB; or  
32 (b) reject the application.



- 1 (5) If the Tribunal declares the applicant to be the collecting society  
2 under section 135ZZB, the Registrar must publish notice of the  
3 declaration in the *Gazette*.

4 **153DD References relating to revocation of declaration of collecting**  
5 **society**

- 6 (1) This section has effect if the Minister refers to the Copyright  
7 Tribunal under section 135ZZC the question whether the  
8 declaration of a body as a collecting society should be revoked.
- 9 (2) The parties to the reference are:  
10 (a) the Minister; and  
11 (b) the collecting society; and  
12 (c) any person made a party by the Tribunal.
- 13 (3) The Tribunal may make a person a party if:  
14 (a) the person asks to be made a party; and  
15 (b) the Tribunal thinks that the person has a sufficient interest in  
16 the question whether the declaration of the collecting society  
17 should be revoked.
- 18 (4) After giving each party an opportunity of presenting its case, the  
19 Tribunal must:  
20 (a) revoke the declaration of the collecting society under  
21 section 135ZZC; or  
22 (b) refuse to revoke the declaration.
- 23 (5) If the Tribunal revokes the declaration of the collecting society:  
24 (a) the revocation must specify the day on which it takes effect;  
25 and  
26 (b) the Registrar must publish notice of the revocation in the  
27 *Gazette*.

28 **39 Before section 153E**

29 Insert:

30 **Subdivision E—Applications relating to Part VII**

31 **40 Before section 153L**

32 Insert:

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1 **Subdivision F—Applications relating to declarations of**  
2 **institutions**

3 **41 Before section 153M**

4 Insert:

5 **Subdivision G—Applications and references relating to**  
6 **Part VC**

7 **42 After section 153N**

8 Insert:

9 **153P References relating to declaration of collecting society**

- 10 (1) This section has effect if the Minister refers to the Copyright  
11 Tribunal under section 135ZZT an application of a body to be  
12 declared a collecting society.
- 13 (2) The parties to the reference are the applicant and any person made  
14 a party by the Tribunal.
- 15 (3) The Tribunal may make a person a party if:  
16 (a) the person asks to be made a party; and  
17 (b) the Tribunal thinks that the person has a sufficient interest in  
18 either or both of the following questions:  
19 (i) whether the applicant should be declared to be a  
20 collecting society for all relevant copyright owners (as  
21 defined in Part VC) or a particular class of relevant  
22 copyright owners;  
23 (ii) whether another body should cease to be the collecting  
24 society for any of the relevant copyright owners (as  
25 defined in Part VC) if the applicant is declared to be a  
26 collecting society.
- 27 (4) After giving each party an opportunity of presenting its case, the  
28 Tribunal must:  
29 (a) declare the applicant to be a collecting society under  
30 section 135ZZT; or  
31 (b) reject the application.

- 1 (5) If the Tribunal declares the applicant to be the collecting society  
2 under section 135ZZT, the Registrar must publish notice of the  
3 declaration in the *Gazette*.

4 **153Q References relating to revocation of declaration of collecting**  
5 **society**

- 6 (1) This section has effect if the Minister refers to the Copyright  
7 Tribunal under section 135ZZU the question whether the  
8 declaration of a body as a collecting society should be revoked.
- 9 (2) The parties to the reference are:  
10 (a) the Minister; and  
11 (b) the collecting society; and  
12 (c) any person made a party by the Tribunal.
- 13 (3) The Tribunal may make a person a party if:  
14 (a) the person asks to be made a party; and  
15 (b) the Tribunal thinks that the person has a sufficient interest in  
16 the question whether the declaration of the collecting society  
17 should be revoked.
- 18 (4) After giving each party an opportunity of presenting its case, the  
19 Tribunal must:  
20 (a) revoke the declaration of the collecting society under  
21 section 135ZZU; or  
22 (b) refuse to revoke the declaration.
- 23 (5) If the Tribunal revokes the declaration of the collecting society:  
24 (a) the revocation must specify the day on which it takes effect;  
25 and  
26 (b) the Registrar must publish notice of the revocation in the  
27 *Gazette*.

28 **43 Before section 154**

29 Insert:

30 **Subdivision H—References and applications relating to licences**  
31 **and licence schemes**

32 **44 Before section 160**

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1           Insert:

2           **Subdivision I—General provisions**

3           **45 Paragraphs 195B(1)(a) and (b)**

4           Omit “a body or institution under subsection 10A(1), 135P(1) or  
5           135ZZB(1);”, substitute “an institution under subsection 10A(1);”.

6           **46 At the end of subsection 195B(1)**

7           Add:

- 8                           ; (e) a decision of the Minister under paragraph 135P(1A)(b),  
9                           135ZZB(1A)(b) or 135ZZT(1A)(b) refusing to declare a  
10                          body as a collecting society;  
11                          (f) a decision of the Minister under paragraph 135Q(2)(a),  
12                          135ZZC(2)(a) or 135ZZU(2)(a) revoking a declaration of a  
13                          body as a collecting society.

14           **47 Subsection 195B(2)**

15           Omit “body or”.

16           **48 Paragraph 195B(2)(c)**

17           Omit “body or”.

1

2 **Part 3—Tribunal name**

3 *Copyright Act 1968*

4 **49 Subsection 10(1) (definition of *the Copyright Tribunal*)**

5 Omit “Copyright Tribunal established”, substitute “Copyright Tribunal  
6 of Australia provided for”.

7 **50 Part VI (heading)**

8 Repeal the heading, substitute:

9 **Part VI—Copyright Tribunal of Australia**

10 **51 Section 138**

11 After “existence”, insert “as the Copyright Tribunal of Australia”.

1

2 **Part 4—Registrar**

3 ***Copyright Act 1968***

4 **52 Subsection 10(1)**

5 Insert:

6 *Registrar* means the Registrar of the Tribunal provided for by  
7 section 170.

8 **53 Subsections 153F(8), 153G(7) and 153J(5)**

9 Omit “Secretary to the Tribunal”, substitute “Registrar”.

10 **54 Subsection 167(2)**

11 Repeal the subsection, substitute:

12 (2) A member or the Registrar may summon a person to appear before  
13 the Tribunal to give evidence.

14 (3) A member or the Registrar may summon a person to produce  
15 specified documents or articles to the Tribunal by producing the  
16 documents or articles to a specified person at a specified time at a  
17 specified place.

18 **55 Saving**

19 The repeal and substitution of subsection 167(2) of the *Copyright Act*  
20 *1968* by this Part does not affect a summons issued under that  
21 subsection before the commencement of this Part.

22 **56 Section 168**

23 Omit “Secretary to the Tribunal.”, substitute “Registrar.”.

24 **57 Section 170**

25 Repeal the section, substitute:

26 **170 Registrar**

27 (1) There is to be a Registrar of the Tribunal.

1 (2) The Registrar is to be a person engaged under the *Public Service*  
2 *Act 1999*, or a person whose services are made available under an  
3 arrangement made under that Act, who is appointed as the  
4 Registrar by the Minister by written instrument.

5 *Remuneration as public servant*

6 (3) The office of Registrar is not a public office for the purposes of the  
7 *Remuneration Tribunal Act 1973*.

8 *Resignation*

9 (4) The Registrar may resign his or her appointment by giving the  
10 Minister a written resignation.

11 *Termination of appointment*

12 (5) The Minister may terminate, by writing signed by him or her, the  
13 appointment of the Registrar.

14 (6) The appointment of the Registrar is terminated if the Registrar  
15 ceases to be engaged under the *Public Service Act 1999* or to be a  
16 person whose services are made available under an arrangement  
17 made under that Act.

18 *Acting appointment*

19 (7) The President may appoint a person engaged under the *Public*  
20 *Service Act 1999*, or a person whose services are made available  
21 under an arrangement made under that Act, to act as the Registrar:

22 (a) during a vacancy in the office of Registrar (whether or not an  
23 appointment has previously been made to the office); or

24 (b) during any period, or during all periods, when the Registrar is  
25 absent from duty or from Australia or is, for any reason,  
26 unable to perform the duties of the office.

27 (8) Anything done by or in relation to a person purporting to act under  
28 this section is not invalid merely because:

29 (a) the occasion for the appointment had not arisen; or

30 (b) there was a defect or irregularity in connection with the  
31 appointment; or

32 (c) the appointment had ceased to have effect; or

33 (d) the occasion to act had not arisen or had ceased.

1 **170A Other staff of the Tribunal**

2 Any staff needed to assist the Tribunal must be persons engaged  
3 under the *Public Service Act 1999* or persons whose services are  
4 made available under arrangements made under that Act.

5 **58 Transitional provision**

6 The person who was the Secretary to the Tribunal immediately before  
7 the commencement of this Part, is taken to have been appointed on that  
8 commencement as the Registrar under section 170 of the *Copyright Act*  
9 *1968* as amended by this Part.

10 **59 Before subsection 171(2)**

11 Insert:

12 (1B) The Registrar has in the performance of his or her duty as Registrar  
13 under section 167, 174 or 175, the same protection and immunity  
14 as a Justice of the High Court.

15 Note: The heading to section 171 is replaced by the heading “**Protecting persons connected**  
16 **with Tribunal proceedings**”.

17 **60 Subsection 174(2A)**

18 Omit “Secretary to the Tribunal”, substitute “Registrar”.

19 **61 Saving**

20 The amendment of subsection 174(2A) of the *Copyright Act 1968* by  
21 this Part does not affect the evidentiary value, in proceedings after the  
22 commencement of the amendment, of a certificate described in that  
23 subsection that was signed before the commencement of the  
24 amendment.

25 **62 Section 175**

26 Omit “Secretary to the Tribunal”, substitute “Registrar”.

27 **63 Saving**

28 The amendment of section 175 of the *Copyright Act 1968* by this Part  
29 does not affect the evidentiary value, in proceedings after that  
30 commencement, of a document described in that section that was  
31 certified before the commencement of the amendment.



1  
2 **Schedule 11—Copyright Tribunal:**  
3 **amendments commencing second**

4 **Part 1—Licences and licence schemes**

5 **Division 1—Voluntary licences**

6 *Copyright Act 1968*

7 **1 Subsection 136(1) (definition of *licence*)**

8 Repeal the definition, substitute:

9 *licence* means a licence granted by or on behalf of the owner or  
10 prospective owner of the copyright in a work or other  
11 subject-matter to do an act comprised in the copyright.

12 **2 Subsection 136(1) (definition of *licensor*)**

13 Repeal the definition, substitute:

14 *licensor* means a person or body that may grant (as owner,  
15 prospective owner or exclusive licensee of the relevant copyright,  
16 or on behalf of others) licences relating to a substantial number of  
17 works, sound recordings, cinematograph films, broadcasts, or  
18 published editions of works, that are of a particular kind but were  
19 made by different persons.

20 **3 Application and transitional provisions**

21 (1) The amendments made by this Division apply in relation to licences  
22 granted before, on or after the commencement of the amendments and  
23 in relation to licence schemes formulated before, on or after that  
24 commencement.

25 (2) However, if proceedings in the Tribunal under section 154, 155, 156 or  
26 157 of the *Copyright Act 1968* had been started but not completed  
27 before the commencement of the amendments made by this Division,  
28 the proceedings may be continued after that commencement as if the  
29 amendments had not been made.

1 **Division 2—Substituting licence schemes**

2 ***Copyright Act 1968***

3 **4 Subsection 154(4)**

4 Omit “, either confirming or varying the scheme,”, substitute “,  
5 confirming or varying the scheme or substituting for the scheme another  
6 scheme proposed by one of the parties.”.

7 **5 Subsections 154(7) and (8)**

8 Repeal the subsections, substitute:

9 (7) The scheme reflecting the Tribunal’s order:

10 (a) comes into operation when the order is made, if the scheme  
11 referred to the Tribunal had not already come into operation;  
12 and

13 (b) operates as long as the order remains in force.

14 This subsection has effect despite anything in the scheme referred  
15 to the Tribunal.

16 Note: Depending on the Tribunal’s order, the scheme reflecting the order  
17 will be the scheme confirmed by the order, the scheme as varied by  
18 the order or the scheme substituted by the order for the scheme  
19 referred to the Tribunal.

20 **6 Subsection 155(5)**

21 Repeal the subsection, substitute:

22 (5) The Tribunal must consider the matter in dispute, give the parties  
23 an opportunity of presenting their cases then make an order that the  
24 Tribunal considers reasonable in the circumstances doing one of  
25 the following to the scheme so far as it relates to the relevant class:

26 (a) confirming it;

27 (b) varying it;

28 (c) substituting for it another scheme proposed by one of the  
29 parties.

30 This subsection has effect to subsection (4).

31 **7 Subsection 155(10)**

32 Repeal the subsection, substitute:

1 (10) The scheme reflecting the Tribunal's order operates as long as the  
2 order remains in force, despite anything in the scheme referred to  
3 the Tribunal.

4 Note: Depending on the Tribunal's order, the scheme reflecting the order  
5 will be the scheme confirmed by the order, the scheme as varied by  
6 the order or the scheme substituted by the order for the scheme  
7 referred to the Tribunal.

8 **8 Subsection 156(1)**

9 Omit "again", substitute "reflecting the order".

10 **9 Subsection 156(2)**

11 Omit "licence".

12 **10 Subsection 156(2)**

13 Omit "again".

14 **11 Subsection 156(4)**

15 Repeal the subsection, substitute:

16 (4) The Tribunal must consider the matter in dispute, give the parties  
17 an opportunity of presenting their cases then make an order that the  
18 Tribunal considers reasonable in the circumstances doing one of  
19 the following to the scheme so far as it is referred to the Tribunal  
20 under subsection (1):

21 (a) confirming it;

22 (b) varying it;

23 (c) substituting for it another scheme proposed by one of the  
24 parties.

25 This subsection has effect to subsection (5).

26 **12 Subsection 157(6)**

27 Repeal the subsection, substitute:

28 *Letting parties present their cases*

29 (6) The Tribunal must give the applicant, the licensor concerned and  
30 each other party (if any) to the application an opportunity of  
31 presenting their cases.

1 *Order dealing with application under subsection (1)*

- 2 (6A) If the Tribunal is satisfied that the claim of an applicant under  
3 subsection (1) is well-founded, the Tribunal must either:  
4 (a) make an order specifying, in respect of the matters specified  
5 in the order, the charges, if any, and the conditions, that the  
6 Tribunal considers to be applicable in accordance with the  
7 licence scheme in relation to the applicant; or  
8 (b) order that the applicant be granted a licence in the terms  
9 proposed by the applicant, the licensor concerned or another  
10 party to the application.

11 *Order dealing with application under subsection (2) or (3)*

- 12 (6B) If the Tribunal is satisfied that the claim of an applicant under  
13 subsection (2) or (3) is well-founded, the Tribunal must either:  
14 (a) make an order specifying, in respect of the matters specified  
15 in the order, the charges, if any, and the conditions, that the  
16 Tribunal considers reasonable in the circumstances in relation  
17 to the applicant; or  
18 (b) order that the applicant be granted a licence in the terms  
19 proposed by the applicant, the licensor concerned or another  
20 party to the application.

21 *Order dealing with application under subsection (4)*

- 22 (6C) If the Tribunal is satisfied that the claim of an applicant under  
23 subsection (4) is well-founded, the Tribunal must either:  
24 (a) make an order specifying, in respect of the matters specified  
25 in the order, the charges, if any, and the conditions, that the  
26 Tribunal considers reasonable in the circumstances in relation  
27 to persons who:  
28 (i) are specified in the order (whether by reference to a  
29 class or otherwise); and  
30 (ii) were represented by the applicant or were parties to the  
31 application; or  
32 (b) order that a licence be granted, in the terms proposed by the  
33 applicant, the licensor concerned or another party to the  
34 application, to each person who:  
35 (i) is specified in the order (whether by reference to a class  
36 or otherwise); and

1 (ii) was represented by the applicant or was a party to the  
2 application.

3 Note 1: The following heading to subsection 157(1) is inserted "*Refusal or failure to grant*  
4 *licence under licence scheme*".

5 Note 2: The following heading to subsection 157(2) is inserted "*Licence scheme sets*  
6 *unreasonable charges or conditions for case*".

7 Note 3: The following heading to subsection 157(3) is inserted "*No licence scheme and licensor*  
8 *refuses or fails to grant reasonable licence*".

9 Note 4: The following heading to subsection 157(5) is inserted "*Other parties to application*".

10 Note 5: The following heading to subsection 157(7) is inserted "*Definition of refusal or failure*  
11 *to grant a licence*".

### 12 **13 Subsection 159(1)**

13 Omit "as confirmed or varied by" (first occurring), substitute  
14 "reflecting".

### 15 **14 Subsection 159(1)**

16 Omit "the scheme, as confirmed or varied by the order", substitute "that  
17 scheme".

### 18 **15 Paragraph 159(2)(a)**

19 Omit "licence scheme as confirmed or varied by", substitute "scheme  
20 reflecting".

### 21 **16 Paragraph 159(2)(b)**

22 Omit "as so confirmed or varied".

### 23 **17 Subsection 159(3)**

24 Omit "licence" (first occurring).

### 25 **18 Subsection 159(3)**

26 Omit ", as confirmed or varied by", substitute "reflecting".

### 27 **19 Subsection 159(3)**

28 Omit "thing", substitute "thing,".

### 29 **20 At the end of section 159**

30 Add:

1 (7) To avoid doubt, subsections (4) and (5) do not apply to an order  
2 that a person be granted a licence.

3 *Order under section 157 that person be granted licence*

4 (8) A person whom the Tribunal has ordered under section 157 be  
5 granted a licence in the terms proposed by the applicant, the  
6 licensor concerned or another party to the application under that  
7 section:

8 (a) is taken, for the purpose of proceedings for infringement of  
9 copyright, to have been granted the licence in those terms;  
10 and

11 (b) is liable to pay the owner of the copyright concerned the  
12 amount of any charges that would be payable if the person  
13 had been granted the licence in those terms.

14 Note: Paragraph (a)—if those terms made the licence subject to conditions  
15 and the person did not comply with the conditions, the licence will not  
16 give the person a defence in the proceedings.

17 (9) The owner of the copyright may recover the amount described in  
18 paragraph (8)(b) from the person in a court of competent  
19 jurisdiction as a debt due to the owner.

20 Note 1: The following heading to subsection 159(1) is inserted "*Order under section 154. 155*  
21 *or 156*".

22 Note 2: The following heading to subsection 159(4) is inserted "*Order under section 157*  
23 *specifying conditions and charges*".

24 **Division 3—Involvement of Australian Competition and**  
25 **Consumer Commission**

26 ***Copyright Act 1968***

27 **21 At the end of subsection 154(2)**

28 Add:

29 ; and (c) the Australian Competition and Consumer Commission, if  
30 the Tribunal makes the Commission a party to the reference  
31 under section 157B.

32 **22 At the end of paragraph 155(2)(a)**

33 Add "and".

1 **23 At the end of subsection 155(2)**

2 Add:

3 ; and (d) the Australian Competition and Consumer Commission, if  
4 the Tribunal makes the Commission a party to the reference  
5 under section 157B.

6 **24 At the end of paragraph 156(3)(a)**

7 Add “and”.

8 **25 At the end of subsection 156(3)**

9 Add:

10 ; and (d) the Australian Competition and Consumer Commission, if  
11 the Tribunal makes the Commission a party to the reference  
12 under section 157B.

13 **26 At the end of subsection 157(5)**

14 Add:

15 Note: Under section 157B, the Tribunal may also make the Australian  
16 Competition and Consumer Commission a party to the application.

17 **27 After section 157**

18 Insert:

19 **157A Tribunal may have regard to ACCC guidelines**

20 In making a decision on a reference or application under this  
21 Subdivision, the Tribunal may have regard to relevant guidelines  
22 (if any) made by the Australian Competition and Consumer  
23 Commission.

24 **157B Tribunal may make ACCC party to reference or application**

25 The Tribunal may make the Australian Competition and Consumer  
26 Commission a party to a reference or application made under this  
27 Subdivision if:

- 28 (a) the Commission asks to be made a party to the reference or  
29 application; and  
30 (b) the Tribunal is satisfied that it is appropriate that the  
31 Commission be a party to the reference or application.

1

2 **Part 2—Distribution of amounts collected by**  
3 **declared collecting societies**

4 *Copyright Act 1968*

5 **28 At the end of Division 3 of Part VA**

6 Add:

7 **135SA Applying to Tribunal for review of distribution arrangement**

- 8 (1) The collecting society or a member of the collecting society may  
9 apply to the Copyright Tribunal for review of the arrangement  
10 adopted, or proposed to be adopted, by the collecting society for  
11 distributing amounts it collects in a period.
- 12 (2) If the Tribunal makes an order under section 153BAD varying the  
13 arrangement or substituting for it another arrangement, the  
14 arrangement reflecting the Tribunal's order has effect as if it had  
15 been adopted in accordance with the collecting society's rules.

16 **29 At the end of Division 6 of Part VB**

17 Add:

18 **135ZZEA Applying to Tribunal for review of distribution**  
19 **arrangement**

- 20 (1) A collecting society or a member of a collecting society may apply  
21 to the Copyright Tribunal for review of the arrangement adopted,  
22 or proposed to be adopted, by the collecting society for distributing  
23 amounts it collects in a period.
- 24 (2) If the Tribunal makes an order under section 153DE varying the  
25 arrangement or substituting for it another arrangement, the  
26 arrangement reflecting the Tribunal's order has effect as if it had  
27 been adopted in accordance with the collecting society's rules.

28 **30 At the end of Division 3 of Part VC**

29 Add:

---



1 **135ZZWA Applying to Tribunal for review of distribution**  
2 **arrangement**

- 3 (1) A collecting society or a member of a collecting society may apply  
4 to the Copyright Tribunal for review of the arrangement adopted,  
5 or proposed to be adopted, by the collecting society for distributing  
6 amounts it collects in a period.
- 7 (2) If the Tribunal makes an order under section 153R varying the  
8 arrangement or substituting for it another arrangement, the  
9 arrangement reflecting the Tribunal's order has effect as if it had  
10 been adopted in accordance with the collecting society's rules.

11 **31 At the end of Subdivision C of Division 3 of Part VI**

12 Add:

13 **153BAD Review of collecting society's distribution arrangement**

- 14 (1) This section has effect if an application is made to the Tribunal  
15 under section 135SA for review of an arrangement adopted, or  
16 proposed to be adopted, by the collecting society for distributing  
17 amounts it collects in a period.
- 18 (2) The parties to the application are:  
19 (a) the applicant; and  
20 (b) the collecting society (if it is not the applicant); and  
21 (c) a member of the collecting society, or an organization  
22 claiming to be representative of members of the collecting  
23 society, that the Tribunal makes a party to the application.
- 24 (3) The Tribunal may make a member of the collecting society, or an  
25 organization claiming to be representative of members of the  
26 collecting society, a party to the application if:  
27 (a) the member or organization asks to be made a party; and  
28 (b) the Tribunal is satisfied that the member or organization has  
29 a substantial interest in the arrangement.
- 30 (4) The Tribunal must consider the application, give the parties an  
31 opportunity of presenting their cases then make an order:  
32 (a) confirming the arrangement; or  
33 (b) varying the arrangement; or

1 (c) substituting for the arrangement another arrangement for  
2 distributing amounts the collecting society collects in the  
3 period.

4 (5) In this section:

5 *collecting society* has the same meaning as in Part VA.

6 **32 At the end of Subdivision D of Division 3 of Part VI**

7 Add:

8 **153DE Review of collecting society's distribution arrangement**

9 (1) This section has effect if an application is made to the Tribunal  
10 under section 135ZZEA for review of an arrangement adopted, or  
11 proposed to be adopted, by a collecting society for distributing  
12 amounts it collects in a period.

13 (2) The parties to the application are:

14 (a) the applicant; and

15 (b) the collecting society (if it is not the applicant); and

16 (c) a member of the collecting society, or an organization  
17 claiming to be representative of members of the collecting  
18 society, that the Tribunal makes a party to the application.

19 (3) The Tribunal may make a member of the collecting society, or an  
20 organization claiming to be representative of members of the  
21 collecting society, a party to the application if:

22 (a) the member or organization asks to be made a party; and

23 (b) the Tribunal is satisfied that the member or organization has  
24 a substantial interest in the arrangement.

25 (4) The Tribunal must consider the application, give the parties an  
26 opportunity of presenting their cases then make an order:

27 (a) confirming the arrangement; or

28 (b) varying the arrangement; or

29 (c) substituting for the arrangement another arrangement for  
30 distributing amounts the collecting society collects in the  
31 period.

32 (5) In this section:

1 *collecting society* has the same meaning as in Part VB.

2 **33 At the end of Subdivision E of Division 3 of Part VI**

3 Add:

4 **153KA Review of collecting society's distribution arrangement**

- 5 (1) This section has effect if an application is made to the Tribunal  
6 under section 183F for review of an arrangement adopted, or  
7 proposed to be adopted, by a collecting society for distributing  
8 amounts it collects in a period.
- 9 (2) The parties to the application are:  
10 (a) the applicant; and  
11 (b) the collecting society (if it is not the applicant); and  
12 (c) a member of the collecting society, or an organization  
13 claiming to be representative of members of the collecting  
14 society, that the Tribunal makes a party to the application.
- 15 (3) The Tribunal may make a member of the collecting society, or an  
16 organization claiming to be representative of members of the  
17 collecting society, a party to the application if:  
18 (a) the member or organization asks to be made a party; and  
19 (b) the Tribunal is satisfied that the member or organization has  
20 a substantial interest in the arrangement.
- 21 (4) The Tribunal must consider the application, give the parties an  
22 opportunity of presenting their cases then make an order:  
23 (a) confirming the arrangement; or  
24 (b) varying the arrangement; or  
25 (c) substituting for the arrangement another arrangement for  
26 distributing amounts the collecting society collects in the  
27 period.
- 28 (5) In this section:  
29 *collecting society* has the same meaning as in Division 2 of  
30 Part VII.

31 **34 At the end of Subdivision G of Division 3 of Part VI**

32 Add:

---

1 **153R Review of collecting society's distribution arrangement**

- 2 (1) This section has effect if an application is made to the Tribunal  
3 under section 135ZZWA for review of an arrangement adopted, or  
4 proposed to be adopted, by a collecting society for distributing  
5 amounts it collects in a period.
- 6 (2) The parties to the application are:  
7 (a) the applicant; and  
8 (b) the collecting society (if it is not the applicant); and  
9 (c) a member of the collecting society, or an organization  
10 claiming to be representative of members of the collecting  
11 society, that the Tribunal makes a party to the application.
- 12 (3) The Tribunal may make a member of the collecting society, or an  
13 organization claiming to be representative of members of the  
14 collecting society, a party to the application if:  
15 (a) the member or organization asks to be made a party; and  
16 (b) the Tribunal is satisfied that the member or organization has  
17 a substantial interest in the arrangement.
- 18 (4) The Tribunal must consider the application, give the parties an  
19 opportunity of presenting their cases then make an order:  
20 (a) confirming the arrangement; or  
21 (b) varying the arrangement; or  
22 (c) substituting for the arrangement another arrangement for  
23 distributing amounts the collecting society collects in the  
24 period.
- 25 (5) In this section:  
26 *collecting society* has the same meaning as in Part VC.

27 **35 At the end of Division 2 of Part VII**

28 Add:

29 **183F Applying to Tribunal for review of distribution arrangement**

- 30 (1) A collecting society or a member of a collecting society may apply  
31 to the Copyright Tribunal for review of the arrangement adopted,  
32 or proposed to be adopted, by the collecting society for distributing  
33 amounts it collects in a period.
-

- 1 (2) If the Tribunal makes an order under section 153KA varying the  
2 arrangement or substituting for it another arrangement, the  
3 arrangement reflecting the Tribunal's order has effect as if it had  
4 been adopted in accordance with the collecting society's rules.

1

2

## **Part 3—Manner of paying royalty for copying musical works**

3

4

### ***Copyright Act 1968***

5

#### **36 Subparagraph 55(1)(d)(ii)**

6

Repeal the subparagraph, substitute:

7

- (ii) the prescribed royalty is paid to the owner of the copyright in the manner agreed between the manufacturer and the owner of the copyright or, failing such agreement, determined by the Copyright Tribunal under section 152B.

8

9

10

11

12

#### **37 Application**

13

Subparagraph 55(1)(d)(ii) of the *Copyright Act 1968* as amended by this Part applies to an agreement about the manner of payment of a prescribed royalty whether the agreement was made before, on or after the commencement of this Part.

14

15

16

17

#### **38 Subsection 59(5)**

18

Repeal the subsection.

1

2 **Part 4—Records notices**

3 ***Copyright Act 1968***

4 **39 At the end of paragraph 135K(1)(a)**

5 Add “and”.

6 Note: The following heading to subsection 135K(1) is inserted “*If records notice is given*”.

7 **40 Paragraphs 135K(1)(b), (c) and (d)**

8 Repeal the paragraphs, substitute:

9 (b) establish and maintain a records system determined by:

10 (i) agreement between the body and the collecting society;

11 or

12 (ii) failing such agreement, the Copyright Tribunal on the  
13 application of either of them.

14 **41 Subsection 135K(2)**

15 Repeal the subsection, substitute:

16 (2) Sections 135E and 135F do not apply to a copy of a broadcast, or a  
17 communication of a copy of a broadcast, made by or on behalf of  
18 the body during a period in which the body does not comply with  
19 one or more of the requirements of the records system.

20 Note: The following heading to subsection 135K(3) is inserted “*If sampling notice is given*”.

21 **42 Application**

22 (1) The amendments of section 135K of the *Copyright Act 1968* made by  
23 this Part apply in relation to a records notice given on or after the  
24 commencement of those amendments.

25 (2) Those amendments also apply in relation to a records notice given by or  
26 on behalf of an administering body before that commencement, if the  
27 body and the collecting society make an agreement determining a  
28 records system. In that case, the amendments apply at and after the time  
29 the agreement comes into force.

30 Note: While those amendments do not apply, subsections 135K(1) and (2) of the *Copyright*  
31 *Act 1968*, as in force before the commencement of those amendments, apply (as well as  
32 regulations made for the purposes of those subsections).

- 1 (3) In this item:  
2 *administering body* has the meaning given by section 135A of the  
3 *Copyright Act 1968*.  
4 *collecting society* has the meaning given by section 135A of the  
5 *Copyright Act 1968*.  
6 *records notice* has the meaning given by section 135A of the *Copyright*  
7 *Act 1968*.

8 **43 Subsection 135X(1)**

9 Repeal the subsection.

10 **44 Subsection 135X(2)**

11 Omit “(2)”.

12 **45 Subsection 135Y(1)**

13 Omit “(1)” (first occurring).

14 **46 Subsection 135Y(2)**

15 Repeal the subsection.

16 **47 At the end of paragraph 135ZX(1)(a)**

17 Add “and”.

18 Note: The following heading to subsection 135ZX(1) is inserted “*If records notice is given*”.

19 **48 Paragraphs 135ZX(1)(b), (c) and (d)**

20 Repeal the paragraphs, substitute:

21 (b) establish and maintain a records system determined by:

- 22 (i) agreement between the body and the relevant collecting  
23 society; or  
24 (ii) failing such agreement, the Copyright Tribunal on the  
25 application of either of them.

26 **49 Subsection 135ZX(2)**

27 Repeal the subsection, substitute:

- 28 (2) Sections 135ZJ, 135ZK, 135ZL, 135ZMC, 135ZMD, 135ZMDA,  
29 135ZP and 135ZS do not apply to a reproduction or copy of a work  
30 or other subject-matter made in hardcopy form or analog form by  
31 or on behalf of the body during a period in which the body does not



1                   comply with one or more of the requirements of the records  
2                   system.

3       Note:     The following heading to subsection 135ZX(3) is inserted “*If sampling notice is given*”.

4       **50 Subsection 135ZX(4)**

5                   Omit “or (b)”.

6       Note:     The following heading to subsection 139ZX(4) is inserted “*Regulations relevant to*  
7                   *records notices and sampling notices*”.

8       **51 Subsection 135ZX(4)**

9                   Omit “or particulars”.

10       **52 Application**

11       (1)       The amendments of section 135ZX of the *Copyright Act 1968* made by  
12               this Part apply in relation to a records notice given on or after the  
13               commencement of those amendments.

14       (2)       Those amendments also apply in relation to a records notice given by or  
15               on behalf of an administering body before that commencement, if the  
16               body and the relevant collecting society make an agreement  
17               determining a records system. In that case, the amendments apply at and  
18               after the time the agreement comes into force.

19       Note:     While those amendments do not apply, subsections 135ZX(1), (2) and (4) of the  
20               *Copyright Act 1968*, as in force before the commencement of those amendments, apply  
21               (as well as regulations made for the purposes of those subsections).

22       (3)       In this item:

23               *administering body* has the meaning given by section 135ZB of the  
24               *Copyright Act 1968*.

25               *records notice* has the meaning given by section 135ZB of the  
26               *Copyright Act 1968*.

27               *relevant collecting society* has the meaning given by section 135ZB of  
28               the *Copyright Act 1968*.

29       **53 After section 153BA**

30               Insert:

1 **153BAA Application to the Tribunal under subsection 135K(1)**

- 2 (1) The parties to an application to the Tribunal under paragraph  
3 135K(1)(b) for the determination of a records system are the  
4 collecting society and the administering body concerned.
- 5 (2) If an application is made to the Tribunal under paragraph  
6 135K(1)(b), the Tribunal must consider the application and, after  
7 giving the parties to the application an opportunity of presenting  
8 their cases, must make an order determining the records system.
- 9 (3) In determining a records system, the Tribunal must have regard to  
10 such matters (if any) as are prescribed.
- 11 (4) In this section:

12 *administering body* has the same meaning as in Part VA.

13 *collecting society* has the same meaning as in Part VA.

14 **54 After section 153DA**

15 Insert:

16 **153DB Application to the Tribunal under subsection 135ZX(1)**

- 17 (1) The parties to an application to the Tribunal under paragraph  
18 135ZX(1)(b) for the determination of a records system are the  
19 relevant collecting society and the administering body concerned.
- 20 (2) If an application is made to the Tribunal under paragraph  
21 135ZX(1)(b), the Tribunal must consider the application and, after  
22 giving the parties to the application an opportunity of presenting  
23 their cases, must make an order determining the records system.
- 24 (3) In determining a records system, the Tribunal must have regard to  
25 such matters (if any) as are prescribed.
- 26 (4) In this section:

27 *administering body* has the same meaning as in Part VB.

28 *relevant collecting society* has the same meaning as in Part VB.

1

2 **Part 5—Alternative dispute resolution**

3 *Copyright Act 1968*

4 **55 Subsection 10(1)**

5 Insert:

6 *alternative dispute resolution processes* means procedures and  
7 services for the resolution of disputes, and includes:

- 8 (a) conferencing; and  
9 (b) mediation; and  
10 (c) neutral evaluation; and  
11 (d) case appraisal; and  
12 (e) conciliation; and  
13 (f) procedures or services specified in the regulations;

14 but does not include:

- 15 (g) arbitration; or  
16 (h) court procedures or services.

17 Paragraphs (b) to (f) of this definition do not limit paragraph (a) of  
18 this definition.

19 **56 After Division 4 of Part VI**

20 Insert:

21 **Division 4A—Alternative dispute resolution processes**

22 **169A Referral of proceeding for alternative dispute resolution**  
23 **process**

24 (1) If an application or reference is made to the Tribunal, the President  
25 or a Deputy President may:

- 26 (a) direct the holding of a conference of the parties or their  
27 representatives in relation to the proceeding, or any part of  
28 the proceeding or any matter arising out of the proceeding; or  
29 (b) direct that the proceeding, or any part of the proceeding or  
30 any matter arising out of the proceeding, be referred for a

- 1 particular alternative dispute resolution process (other than  
2 conferencing).
- 3 (2) The President may also direct the holding of conferences of the  
4 parties or their representatives in the case of applications or  
5 references made to the Tribunal that are of a kind specified in the  
6 direction.
- 7 (3) The President may also direct that proceedings be referred for a  
8 particular alternative dispute resolution process (other than  
9 conferencing) in the case of applications or references made to the  
10 Tribunal that are of a kind specified in the direction.
- 11 (4) A direction may be given under a particular paragraph of  
12 subsection (1):
- 13 (a) whether or not a direction has previously been given under  
14 the same or the other paragraph of that subsection in relation  
15 to the proceeding; and
- 16 (b) whether or not a direction under subsection (2) or (3) has  
17 applied.
- 18 (5) If a direction under this section is applicable to:
- 19 (a) a proceeding; or  
20 (b) a part of a proceeding; or  
21 (c) a matter arising out of a proceeding;
- 22 each party must act in good faith in relation to the conduct of the  
23 alternative dispute resolution process concerned.

24 **169B Directions by President or Deputy President**

- 25 (1) The President or a Deputy President may give directions about  
26 alternative dispute resolution processes.
- 27 (2) Directions under subsection (1) may relate to:
- 28 (a) the procedure to be followed in the conduct of an alternative  
29 dispute resolution process; and
- 30 (b) the person who is to conduct an alternative dispute resolution  
31 process; and
- 32 (c) the procedure to be followed when an alternative dispute  
33 resolution process ends.
- 34 (3) Subsection (2) does not limit subsection (1).

- 1 (4) The President or a Deputy President may at any time vary or  
2 revoke a direction under subsection (1).
- 3 (5) A person is not entitled to conduct an alternative dispute resolution  
4 process unless the person is:  
5 (a) a member; or  
6 (b) the Registrar; or  
7 (c) a person whose services are made available, under an  
8 arrangement made by the Registrar and the Registrar of the  
9 Federal Court of Australia, to conduct the process; or  
10 (d) a person engaged under section 169G.

11 **169C Agreement about the terms of a decision etc.**

- 12 (1) If:  
13 (a) in the course of an alternative dispute resolution process  
14 under this Division, agreement is reached between the parties  
15 or their representatives as to the terms of a decision of the  
16 Tribunal:  
17 (i) in the proceeding; or  
18 (ii) in relation to the part of the proceeding; or  
19 (iii) in relation to the matter arising out of the proceeding;  
20 that would be acceptable to the parties; and  
21 (b) the terms of the agreement are reduced to writing, signed by  
22 or on behalf of the parties and lodged with the Tribunal; and  
23 (c) 7 days pass after lodgment, and none of the parties has  
24 notified the Tribunal in writing that he or she wishes to  
25 withdraw from the agreement; and  
26 (d) the Tribunal is satisfied that a decision in the terms of the  
27 agreement or consistent with those terms would be within the  
28 powers of the Tribunal;  
29 the Tribunal may, if it appears to it to be appropriate to do so, act  
30 in accordance with whichever of subsection (2) or (3) is relevant in  
31 the particular case.
- 32 (2) If the agreement reached is an agreement as to the terms of a  
33 decision of the Tribunal in the proceeding, the Tribunal may,  
34 without giving the parties an opportunity of presenting their cases,  
35 make a decision in accordance with those terms.
- 36 (3) If the agreement relates to:
-

- 1 (a) a part of the proceeding; or  
2 (b) a matter arising out of the proceeding;  
3 the Tribunal may, in its decision in the proceeding, give effect to  
4 the terms of the agreement without giving the parties an  
5 opportunity of presenting their cases so far as they relate only to  
6 the part or matter to which the agreement relates.

7 **169D Evidence not admissible**

- 8 (1) Evidence of anything said, or any act done, at an alternative  
9 dispute resolution process under this Division is not admissible:  
10 (a) in any court; or  
11 (b) in any proceedings before a person authorised by a law of the  
12 Commonwealth or of a State or Territory to hear evidence; or  
13 (c) in any proceedings before a person authorised by the consent  
14 of the parties to hear evidence.

15 *Exceptions*

- 16 (2) Subsection (1) does not apply so as to prevent the admission, at the  
17 hearing of a proceeding before the Tribunal, of particular evidence  
18 if the parties agree to the evidence being admissible at the hearing.
- 19 (3) Subsection (1) does not apply so as to prevent the admission, at the  
20 hearing of a proceeding before the Tribunal, of:  
21 (a) a case appraisal report prepared by a person conducting an  
22 alternative dispute resolution process under this Division; or  
23 (b) a neutral evaluation report prepared by a person conducting  
24 an alternative dispute resolution process under this Division;  
25 unless a party to the proceeding notifies the Tribunal before the  
26 hearing that he or she objects to the report being admissible at the  
27 hearing.

28 **169E Eligibility of person conducting alternative dispute resolution**  
29 **process to sit as a member of the Tribunal**

- 30 If:  
31 (a) an alternative dispute resolution process under this Division  
32 in relation to a proceeding is conducted by a member of the  
33 Tribunal; and

1 (b) a party (the *objector*) to the proceeding notifies the Tribunal,  
2 before any party to the proceeding is given an opportunity of  
3 presenting its case, that the objector objects to that member  
4 participating in the proceeding;  
5 that member is not entitled to be a member of the Tribunal as  
6 constituted for the purposes of the proceeding.

7 **169F Participation by telephone etc.**

8 The person conducting an alternative dispute resolution process  
9 under this Division may allow a person to participate by:

- 10 (a) telephone; or  
11 (b) closed-circuit television; or  
12 (c) any other means of communication.

13 **169G Engagement of persons to conduct alternative dispute**  
14 **resolution processes**

- 15 (1) The Registrar may, on behalf of the Commonwealth, engage  
16 persons as consultants to conduct one or more kinds of alternative  
17 dispute resolution processes under this Division.  
18 (2) The Registrar must not engage a person under subsection (1) unless  
19 the Registrar is satisfied, having regard to the person's  
20 qualifications and experience, that the person is a suitable person to  
21 conduct the relevant kind or kinds of alternative dispute resolution  
22 processes under this Division.

23 **57 Application**

24 Division 4A of Part VI of the *Copyright Act 1968* applies in relation to  
25 applications and references made to the Copyright Tribunal on or after  
26 the commencement of the Division.

27 **58 After subsection 171(1)**

28 Insert:

- 29 (1A) An alternative dispute resolution practitioner has, in the  
30 performance of his or her duties as an alternative dispute resolution  
31 practitioner under this Act, the same protection and immunity as a  
32 Justice of the High Court.

1 **59 At the end of section 171**

2 Add:

3 (4) In this section:

4 *alternative dispute resolution practitioner* means a person who  
5 conducts an alternative dispute resolution process under  
6 Division 4A.



1

2

## **Part 6—Determination of questions relating to Parts VA and VB**

3

4

### ***Copyright Act 1968***

5

#### **60 After section 135J**

6

Insert:

7

#### **135JAA Determination of questions relating to this Division or the collecting society's rules**

8

9

(1) This section applies if:

10

(a) it is necessary or convenient to determine a question to facilitate future compliance by an administering body or the collecting society with this Division or the provisions of the collecting society's rules described in paragraph 135P(3)(d); and

11

12

13

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15

(b) the question is not determined by another provision of this Part or regulations made for the purposes of this Part; and

16

17

(c) determination of the question affects both the administering body and the collecting society.

18

19

Note: An example of such a question might be whether there should be a particular sampling system to provide information to enable the collecting society to determine how to distribute amounts it collects.

20

21

22

(2) The question must be determined by agreement between the collecting society and the administering body or, failing such agreement, by the Tribunal on the application of either of them.

23

24

25

(3) If, during a period, the administering body does not comply with the agreement or order of the Tribunal determining the question, sections 135E and 135F do not apply to a copy of a broadcast, or communication of a copy of a broadcast, made by or on behalf of the administering body during the period.

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#### **61 After section 135ZW**

31

Insert:

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1 **135ZWAA Determination of questions relating to this Part or a**  
2 **collecting society's rules**

3 (1) This section applies if:

- 4 (a) it is necessary or convenient to determine a question to  
5 facilitate future compliance by an administering body or a  
6 collecting society with:  
7 (i) section 135ZJ, 135ZK, 135ZL, 135ZMC, 135ZMD,  
8 135ZMDA, 135ZP, 135ZQ, 135ZS or 135ZT; or  
9 (ii) this Division; or  
10 (iii) the provisions of a collecting society's rules described  
11 in paragraph 135ZZB(3)(d); and  
12 (b) the question is not determined by another provision of this  
13 Part or regulations made for the purposes of this Part; and  
14 (c) determination of the question affects both the administering  
15 body and the collecting society.

16 Note: An example of such a matter might be a sampling system to provide  
17 information to enable a collecting society to determine how to  
18 distribute amounts it collects.

19 (2) The question must be determined by agreement between the  
20 collecting society and the administering body or, failing such  
21 agreement, by the Tribunal on the application of either of them.

22 (3) If, during a period, the administering body does not comply with  
23 the agreement or order of the Tribunal determining the question,  
24 sections 135ZJ, 135ZK, 135ZL, 135ZMC, 135ZMD, 135ZMDA,  
25 135ZP, 135ZQ, 135ZS and 135ZT do not apply to a reproduction,  
26 copy or communication of a work or other subject-matter made  
27 during that period by or on behalf of the administering body.

28 **62 After section 153B**

29 Insert:

30 **153BAAA Application to the Tribunal under subsection 135JAA(2)**

31 (1) The parties to an application to the Tribunal under subsection  
32 135JAA(2) for the determination of a question are the collecting  
33 society and the administering body concerned.

34 (2) If an application is made to the Tribunal under subsection  
35 135JAA(2), the Tribunal must consider the application and, after

1 giving the parties to the application an opportunity of presenting  
2 their cases, must make an order determining the question.

3 (3) In determining the question, the Tribunal must have regard to such  
4 matters (if any) as are prescribed.

5 (4) In this section:

6 *administering body* has the same meaning as in Part VA.

7 *collecting society* has the same meaning as in Part VA.

## 8 **63 After section 153D**

9 Insert:

### 10 **153DAA Application to the Tribunal under subsection 135ZWAA(2)**

11 (1) The parties to an application to the Tribunal under subsection  
12 135ZWAA(2) for the determination of a question are the collecting  
13 society and the administering body concerned.

14 (2) If an application is made to the Tribunal under subsection  
15 135ZWAA(2), the Tribunal must consider the application and,  
16 after giving the parties to the application an opportunity of  
17 presenting their cases, must make an order determining the  
18 question.

19 (3) In determining the question, the Tribunal must have regard to such  
20 matters (if any) as are prescribed.

21 (4) In this section:

22 *administering body* has the same meaning as in Part VB.

23 *collecting society* has the same meaning as in Part VB.

1  
2 **Schedule 12—Technological protection**  
3 **measures**

4 **Part 1—Main amendments**

5 *Copyright Act 1968*

6 **1 Subsection 10(1)**

7 Insert:

8 *access control technological protection measure* means a device,  
9 product, technology or component (including a computer program)  
10 that:

11 (a) is used in Australia or a qualifying country:

12 (i) by, with the permission of, or on behalf of, the owner or  
13 the exclusive licensee of the copyright in a work or  
14 other subject-matter; and

15 (ii) in connection with the exercise of the copyright; and

16 (b) in the normal course of its operation, controls access to the  
17 work or other subject-matter;

18 but does not include such a device, product, technology or  
19 component to the extent that it:

20 (c) if the work or other subject-matter is a cinematograph film or  
21 computer program (including a computer game)—controls  
22 geographic market segmentation by preventing the playback  
23 in Australia of a non-infringing copy of the work or other  
24 subject-matter acquired outside Australia; or

25 (d) if the work is a computer program that is embodied in a  
26 machine or device—restricts the use of goods (other than the  
27 work) or services in relation to the machine or device.

28 For the purposes of this definition, *computer program* has the  
29 same meaning as in section 47AB.

30 **2 Subsection 10(1) (definition of *circumvention device*)**

31 Repeal the definition, substitute:

1            ***circumvention device*** for a technological protection measure  
2            means a device, component or product (including a computer  
3            program) that:

- 4            (a) is promoted, advertised or marketed as having the purpose or  
5            use of circumventing the technological protection measure;  
6            or  
7            (b) has only a limited commercially significant purpose or use,  
8            or no such purpose or use, other than the circumvention of  
9            the technological protection measure; or  
10           (c) is primarily or solely designed or produced to enable or  
11           facilitate the circumvention of the technological protection  
12           measure.

13           For the purposes of this definition, ***computer program*** has the  
14           same meaning as in section 47AB.

### 15    **3 Subsection 10(1) (definition of *circumvention service*)**

16           Repeal the definition, substitute:

17           ***circumvention service*** for a technological protection measure  
18           means a service that:

- 19           (a) is promoted, advertised or marketed as having the purpose or  
20           use of circumventing the technological protection measure;  
21           or  
22           (b) has only a limited commercially significant purpose or use,  
23           or no such purpose or use, other than the circumvention of  
24           the technological protection measure; or  
25           (c) is primarily or solely designed or produced to enable or  
26           facilitate the circumvention of the technological protection  
27           measure.

### 28    **4 Subsection 10(1)**

29           Insert:

30           ***controls access***: a device, product, technology or component  
31           (including a computer program) ***controls access*** to a work or other  
32           subject-matter if it requires the application of information or a  
33           process, with the permission of the owner or exclusive licensee of  
34           the copyright in the work or other subject-matter, to gain access to  
35           the work or other subject-matter.

1 **5 Subsection 10(1) (definition of *technological protection***  
2 ***measure*)**

3 Repeal the definition, substitute:

4 ***technological protection measure*** means:

- 5 (a) an access control technological protection measure; or  
6 (b) a device, product, technology or component (including a  
7 computer program) that:

- 8 (i) is used in Australia or a qualifying country by, with the  
9 permission of, or on behalf of, the owner or the  
10 exclusive licensee of the copyright in a work or other  
11 subject-matter; and  
12 (ii) in the normal course of its operation, prevents, inhibits  
13 or restricts the doing of an act comprised in the  
14 copyright;

15 but does not include such a device, product, technology or  
16 component to the extent that it:

- 17 (iii) if the work or other subject-matter is a cinematograph  
18 film or computer program (including a computer  
19 game)—controls geographic market segmentation by  
20 preventing the playback in Australia of a non-infringing  
21 copy of the work or other subject-matter acquired  
22 outside Australia; or  
23 (iv) if the work is a computer program that is embodied in a  
24 machine or device—restricts the use of goods (other  
25 than the work) or services in relation to the machine or  
26 device.

27 For the purposes of this definition, *computer program* has the  
28 same meaning as in section 47AB.

29 **6 Section 100AG (after table item 2)**

30 Insert:

- 31
- |    |  |  |
|----|--|--|
| 2A | the action is brought under<br>section 116AN, 116AO or 116AP | (a) damages (other than additional<br>damages); or<br>(b) an account of profits; or<br>(c) destruction or delivery up of a<br>circumvention device |
|----|--|--|

32 **7 Section 100AG (table item 3)**

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1 Omit “116A,”.

2 **8 Division 2A of Part V (heading)**

3 Repeal the heading, substitute:

4 **Division 2A—Actions in relation to technological**  
5 **protection measures and electronic rights**  
6 **management information**

7 **9 Section 116A**

8 Repeal the section, substitute:

9 **Subdivision A—Technological protection measures**

10 **116AK Definitions**

11 In this Subdivision, *computer program* has the same meaning as in  
12 section 47AB.

13 **116AL Interaction of this Subdivision with Part VAA**

14 This Subdivision does not apply to encoded broadcasts (within the  
15 meaning of Part VAA).

16 **116AM Geographical application**

- 17 (1) This Subdivision applies to acts done in Australia.  
18 (2) This section does not, by implication, affect the interpretation of  
19 any other provision of this Act.

20 **116AN Circumventing an access control technological protection**  
21 **measure**

- 22 (1) An owner or exclusive licensee of the copyright in a work or other  
23 subject-matter may bring an action against a person if:  
24 (a) the work or other subject-matter is protected by an access  
25 control technological protection measure; and  
26 (b) the person does an act that results in the circumvention of the  
27 access control technological protection measure; and

1 (c) the person knows, or ought reasonably to know, that the act  
2 would have that result.

3 *Exception—permission*

4 (2) Subsection (1) does not apply to the person if the person has the  
5 permission of the copyright owner or exclusive licensee to  
6 circumvent the access control technological protection measure.

7 *Exception—interoperability*

8 (3) Subsection (1) does not apply to the person if:  
9 (a) the person circumvents the access control technological  
10 protection measure to enable the person to do an act; and  
11 (b) the act:  
12 (i) relates to a copy of a computer program (the *original*  
13 *program*) that is not an infringing copy and that was  
14 lawfully obtained; and  
15 (ii) will not infringe the copyright in the original program;  
16 and  
17 (iii) will be done for the sole purpose of achieving  
18 interoperability of an independently created computer  
19 program with the original program or any other  
20 program; and  
21 (c) the information will not be readily available to the person  
22 from another source when the act is done.

23 *Exception—encryption research*

24 (4) Subsection (1) does not apply to the person if:  
25 (a) the person circumvents the access control technological  
26 protection measure to enable:  
27 (i) the person; or  
28 (ii) if the person is a body corporate—an employee of the  
29 person;  
30 to do an act; and  
31 (b) the act:  
32 (i) relates to a copy of a work or other subject-matter that is  
33 not an infringing copy and that was lawfully obtained;  
34 and

---



- 1 (ii) will not infringe the copyright in the work or other  
2 subject-matter; and  
3 (iii) will be done for the sole purpose of identifying and  
4 analysing flaws and vulnerabilities of encryption  
5 technology; and  
6 (c) the person or employee is:  
7 (i) engaged in a course of study at an educational  
8 institution in the field of encryption technology; or  
9 (ii) employed, trained or experienced in the field of  
10 encryption technology; and  
11 (d) the person or employee:  
12 (i) has obtained permission from the owner or exclusive  
13 licensee of the copyright to do the act; or  
14 (ii) has made, or will make, a good faith effort to obtain  
15 such permission.

16 In this subsection, **encryption technology** means the scrambling  
17 and descrambling of information using mathematical formulas or  
18 algorithms.

19 *Exception—computer security testing*

- 20 (5) Subsection (1) does not apply to the person if:  
21 (a) the person circumvents the access control technological  
22 protection measure to enable the person to do an act; and  
23 (b) the act:  
24 (i) relates to a copy of a computer program that is not an  
25 infringing copy; and  
26 (ii) will not infringe the copyright in the computer program;  
27 and  
28 (iii) will be done for the sole purpose of testing,  
29 investigating or correcting the security of a computer,  
30 computer system or computer network; and  
31 (iv) will be done with the permission of the owner of the  
32 computer, computer system or computer network.

33 *Exception—online privacy*

- 34 (6) Subsection (1) does not apply to the person if:  
35 (a) the person circumvents the access control technological  
36 protection measure to enable the person to do an act; and

- 1 (b) the act:  
2 (i) relates to a copy of a work or other subject-matter that is  
3 not an infringing copy; and  
4 (ii) will not infringe the copyright in the work or other  
5 subject-matter; and  
6 (iii) will be done for the sole purpose of identifying and  
7 disabling an undisclosed capability to collect or  
8 disseminate personally identifying information about  
9 the online activities of a natural person; and  
10 (iv) will not affect the ability of the person or any other  
11 person to gain access to the work or other subject-matter  
12 or any other work or subject-matter.

13 *Exception—law enforcement and national security*

- 14 (7) Subsection (1) does not apply in relation to anything lawfully done  
15 for the purposes of:  
16 (a) law enforcement; or  
17 (b) national security; or  
18 (c) performing a statutory function, power or duty;  
19 by or on behalf of the Commonwealth, a State or a Territory, or an  
20 authority of one of those bodies.

21 *Exception—libraries etc.*

- 22 (8) Subsection (1) does not apply to the person if:  
23 (a) the person circumvents the access control technological  
24 protection measure to enable the person to do an act; and  
25 (b) the person is:  
26 (i) a library (other than a library that is conducted for the  
27 profit, direct or indirect, of an individual or individuals);  
28 or  
29 (ii) a body mentioned in paragraph (a) of the definition of  
30 **archives** in subsection 10(1), or in subsection 10(4); or  
31 (iii) an educational institution; and  
32 (c) the act will be done for the sole purpose of making an  
33 acquisition decision in relation to the work or other  
34 subject-matter; and  
35 (d) the work or other subject-matter will not be otherwise  
36 available to the person when the act is done.

1 Note: A library that is owned by a person conducting a business for profit  
2 might not itself be conducted for profit (see section 18).

3 *Exception—prescribed acts*

- 4 (9) Subsection (1) does not apply to the person if:  
5 (a) the person circumvents the access control technological  
6 protection measure to enable the person to do an act; and  
7 (b) the act will not infringe the copyright in a work or other  
8 subject-matter; and  
9 (c) the doing of the act by the person is prescribed by the  
10 regulations.

11 Note: For the making of regulations prescribing the doing of an act by a  
12 person, see section 249.

13 *Burden of proof*

- 14 (10) The defendant bears the burden of establishing the matters referred  
15 to in subsections (2) to (9).

16 **116AO Manufacturing etc. a circumvention device for a**  
17 **technological protection measure**

- 18 (1) An owner or exclusive licensee of the copyright in a work or other  
19 subject-matter may bring an action against a person if:  
20 (a) the person does any of the following acts with a device:  
21 (i) manufactures it with the intention of providing it to  
22 another person;  
23 (ii) imports it into Australia with the intention of providing  
24 it to another person;  
25 (iii) distributes it to another person;  
26 (iv) offers it to the public;  
27 (v) provides it to another person;  
28 (vi) communicates it to another person; and  
29 (b) the person knows, or ought reasonably to know, that the  
30 device is a circumvention device for a technological  
31 protection measure; and  
32 (c) the work or other subject-matter is protected by the  
33 technological protection measure.

1                                    *Exception - no promotion, advertising etc.*

- 2            (2) Subsection (1) does not apply to the person if:
- 3                    (a) the device is a circumvention device for the technological  
4                                    protection measure only because it was promoted, advertised  
5                                    or marketed as having the purpose of circumventing the  
6                                    technological protection measure; and
- 7                    (b) both of the following apply:
- 8                                    (i) the person did not do such promoting, advertising or  
9                                    marketing;
- 10                                    (ii) the person did not direct or request (expressly or  
11                                    impliedly) another person to do such promoting,  
12                                    advertising or marketing.

13                                    *Exception—interoperability*

- 14            (3) Subsection (1) does not apply to the person if:
- 15                    (a) the circumvention device will be used to circumvent the  
16                                    technological protection measure to enable the doing of an  
17                                    act; and
- 18                    (b) the act:
- 19                                    (i) relates to a copy of a computer program (the *original*  
20                                    *program*) that is not an infringing copy and that was  
21                                    lawfully obtained; and
- 22                                    (ii) will not infringe the copyright in the original program;  
23                                    and
- 24                                    (iii) will be done for the sole purpose of achieving  
25                                    interoperability of an independently created computer  
26                                    program with the original program or any other  
27                                    program; and
- 28                    (c) the information will not be readily available to the person  
29                                    doing the act from another source when the act is done.

30                                    *Exception—encryption research*

- 31            (4) Subsection (1) does not apply to the person if:
- 32                    (a) the technological protection measure is an access control  
33                                    technological protection measure; and
- 34                    (b) the circumvention device will be used to circumvent the  
35                                    access control technological protection measure to enable a  
36                                    person (the *researcher*) to do an act; and

- 1 (c) the act:  
2 (i) relates to a copy of a work or other subject-matter that is  
3 not an infringing copy and that was lawfully obtained;  
4 and  
5 (ii) will not infringe the copyright in the work or other  
6 subject-matter; and  
7 (iii) will be done for the sole purpose of identifying and  
8 analysing flaws and vulnerabilities of encryption  
9 technology; and  
10 (d) the researcher is:  
11 (i) engaged in a course of study at an educational  
12 institution in the field of encryption technology; or  
13 (ii) employed, trained or experienced in the field of  
14 encryption technology; and  
15 (e) the researcher:  
16 (i) has obtained permission from the owner or exclusive  
17 licensee of the copyright to do the act; or  
18 (ii) has made, or will make, a good faith effort to obtain  
19 such permission.

20 In this subsection, **encryption technology** means the scrambling  
21 and descrambling of information using mathematical formulas or  
22 algorithms.

23 *Exception—computer security testing*

- 24 (5) Subsection (1) does not apply to the person if:  
25 (a) the technological protection measure is an access control  
26 technological protection measure; and  
27 (b) the circumvention device will be used to circumvent the  
28 access control technological protection measure to enable the  
29 doing of an act; and  
30 (c) the act:  
31 (i) relates to a copy of a computer program that is not an  
32 infringing copy; and  
33 (ii) will not infringe the copyright in the computer program;  
34 and  
35 (iii) will be done for the sole purpose of testing,  
36 investigating or correcting the security of a computer,  
37 computer system or computer network; and
-

- 1 (iv) will be done with the permission of the owner of the  
2 computer, computer system or computer network.

3 *Exception—law enforcement and national security*

- 4 (6) Subsection (1) does not apply in relation to anything lawfully done  
5 for the purposes of:  
6 (a) law enforcement; or  
7 (b) national security; or  
8 (c) performing a statutory function, power or duty;  
9 by or on behalf of the Commonwealth, a State or a Territory, or an  
10 authority of one of those bodies.

11 *Burden of proof*

- 12 (7) The defendant bears the burden of establishing the matters referred  
13 to in subsections (2) to (6).

14 **116AP Providing etc. a circumvention service for a technological**  
15 **protection measure**

- 16 (1) An owner or exclusive licensee of the copyright in a work or other  
17 subject-matter may bring an action against a person if:  
18 (a) the person:  
19 (i) provides a service to another person; or  
20 (ii) offers a service to the public; and  
21 (b) the person knows, or ought reasonably to know, that the  
22 service is a circumvention service for a technological  
23 protection measure; and  
24 (c) the work or other subject-matter is protected by the  
25 technological protection measure.

26 *Exception - no promotion, advertising etc.*

- 27 (2) Subsection (1) does not apply to the person if:  
28 (a) the service is a circumvention service for the technological  
29 protection measure only because it was promoted, advertised  
30 or marketed as having the purpose of circumventing the  
31 technological protection measure; and  
32 (b) both of the following apply:

- 1 (i) the person did not do such promoting, advertising or  
2 marketing;  
3 (ii) the person did not direct or request (expressly or  
4 impliedly) another person to do such promoting,  
5 advertising or marketing.

6 *Exception—interoperability*

- 7 (3) Subsection (1) does not apply to the person if:  
8 (a) the circumvention service will be used to circumvent a  
9 technological protection measure to enable the doing of an  
10 act; and  
11 (b) the act:  
12 (i) relates to a copy of a computer program (the *original*  
13 *program*) that is not an infringing copy and that was  
14 lawfully obtained; and  
15 (ii) will not infringe the copyright in the original program;  
16 and  
17 (iii) will be done for the sole purpose of achieving  
18 interoperability of an independently created computer  
19 program with the original program or any other  
20 program; and  
21 (c) the information will not be readily available to the person  
22 doing the act from another source when the act is done.

23 *Exception—encryption research*

- 24 (4) Subsection (1) does not apply to the person if:  
25 (a) the technological protection measure is an access control  
26 technological protection measure; and  
27 (b) the circumvention service will be used to circumvent the  
28 access control technological protection measure to enable a  
29 person (the *researcher*) to do an act; and  
30 (c) the act:  
31 (i) relates to a copy of a work or other subject-matter that is  
32 not an infringing copy and that was lawfully obtained;  
33 and  
34 (ii) will not infringe the copyright in the work or other  
35 subject-matter; and

- 1 (iii) will be done for the sole purpose of identifying and  
2 analysing flaws and vulnerabilities of encryption  
3 technology; and  
4 (d) the researcher is:  
5 (i) engaged in a course of study at an educational  
6 institution in the field of encryption technology; or  
7 (ii) employed, trained or experienced in the field of  
8 encryption technology; and  
9 (e) the researcher:  
10 (i) has obtained permission from the owner or exclusive  
11 licensee of the copyright to do the act; or  
12 (ii) has made, or will make, a good faith effort to obtain  
13 such permission.

14 In this subsection, *encryption technology* means the scrambling  
15 and descrambling of information using mathematical formulas or  
16 algorithms.

17 *Exception—computer security testing*

- 18 (5) Subsection (1) does not apply to the person if:  
19 (a) the technological protection measure is an access control  
20 technological protection measure; and  
21 (b) the circumvention service will be used to circumvent the  
22 access control technological protection measure to enable the  
23 doing of an act; and  
24 (c) the act:  
25 (i) relates to a copy of a computer program that is not an  
26 infringing copy; and  
27 (ii) will not infringe the copyright in the computer program;  
28 and  
29 (iii) will be done for the sole purpose of testing,  
30 investigating or correcting the security of a computer,  
31 computer system or computer network; and  
32 (iv) will be done with the permission of the owner of the  
33 computer, computer system or computer network.

34 *Exception—law enforcement and national security*

- 35 (6) Subsection (1) does not apply in relation to anything lawfully done  
36 for the purposes of:



- 1 (a) law enforcement; or  
2 (b) national security; or  
3 (c) performing a statutory function, power or duty;  
4 by or on behalf of the Commonwealth, a State or a Territory, or an  
5 authority of one of those bodies.

6 *Burden of proof*

- 7 (7) The defendant bears the burden of establishing the matters referred  
8 to in subsections (2) to (6).

9 **116AQ Remedies in actions under this Subdivision**

- 10 (1) Without limiting the relief that a court may grant in an action under  
11 this Subdivision, the relief may include:  
12 (a) an injunction, subject to such terms, if any, as the court  
13 thinks fit; and  
14 (b) damages or an account of profits; and  
15 (c) if the doing of an act, which is the subject of the action,  
16 involved a circumvention device—an order that the  
17 circumvention device be destroyed or dealt with as specified  
18 in the order.
- 19 (2) In assessing damages, the court may award such additional  
20 damages as it considers appropriate, having regard to:  
21 (a) the flagrancy of the defendant's acts that are the subject of  
22 the action; and  
23 (b) the need to deter similar acts; and  
24 (c) the conduct of the defendant after the acts or, if relevant, after  
25 the defendant was informed that the defendant had allegedly  
26 done an act that would be the subject of an action under this  
27 Subdivision; and  
28 (d) any benefit shown to have accrued to the defendant as a  
29 result of those acts; and  
30 (e) any other relevant matters.
- 31 (3) If:  
32 (a) an action has been commenced against a person under this  
33 Subdivision; and  
34 (b) the doing of an act by the person, which is the subject of the  
35 action, involved a device; and
-

1 (c) the device appears to the court to be a circumvention device;  
2 the court may order that the device be delivered up to the court  
3 upon such conditions as the court considers appropriate.

4 (4) This section does not, by implication, affect the interpretation of  
5 any other provision of this Act.

6 **Subdivision B—Electronic rights management information**

7 **10 Subsections 116D(1) and (2)**

8 Omit “section 116A, 116B, 116C or 116CA”, substitute “this  
9 Subdivision”.

10 Note: The heading to section 116D is altered by omitting “sections 116A, 116B, 116C and  
11 116CA” and substituting “this Subdivision”.

12 **11 After Subdivision D of Division 5 of Part V**

13 Insert:

14 **Subdivision E—Technological protection measures**

15 **132APA Definitions**

16 In this Subdivision, *computer program* has the same meaning as in  
17 section 47AB.

18 **132APB Interaction of this Subdivision with Part VAA**

19 This Subdivision does not apply to encoded broadcasts (within the  
20 meaning of Part VAA).

21 **132APC Circumventing an access control technological protection  
22 measure**

- 23 (1) A person commits an offence if:  
24 (a) the person engages in conduct; and  
25 (b) the conduct results in the circumvention of a technological  
26 protection measure; and  
27 (c) the technological protection measure is an access control  
28 technological protection measure; and  
29 (d) the person engages in the conduct with the intention of  
30 obtaining a commercial advantage or profit.

1 Penalty: 60 penalty units.

2 *Defence—permission*

3 (2) Subsection (1) does not apply to the person if the person has the  
4 permission of the copyright owner or exclusive licensee to  
5 circumvent the access control technological protection measure.

6 Note: A defendant bears an evidential burden in relation to the matter in  
7 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

8 *Defence—interoperability*

9 (3) Subsection (1) does not apply to the person if:

- 10 (a) the person circumvents the access control technological  
11 protection measure to enable the person to do an act; and  
12 (b) the act:  
13 (i) relates to a copy of a computer program (the **original**  
14 **program**) that is not an infringing copy and that was  
15 lawfully obtained; and  
16 (ii) will not infringe the copyright in the original program;  
17 and  
18 (iii) will be done for the sole purpose of achieving  
19 interoperability of an independently created computer  
20 program with the original program or any other  
21 program; and  
22 (c) the information will not be readily available to the person  
23 from another source when the act is done.

24 Note: A defendant bears an evidential burden in relation to the matter in  
25 subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

26 *Defence—encryption research*

27 (4) Subsection (1) does not apply to the person if:

- 28 (a) the person circumvents the access control technological  
29 protection measure to enable:  
30 (i) the person; or  
31 (ii) if the person is a body corporate—an employee of the  
32 person;  
33 to do an act; and  
34 (b) the act:

- 1 (i) relates to a copy of a work or other subject-matter that is  
2 not an infringing copy and that was lawfully obtained;  
3 and  
4 (ii) will not infringe the copyright in the work or other  
5 subject-matter; and  
6 (iii) will be done for the sole purpose of identifying and  
7 analysing flaws and vulnerabilities of encryption  
8 technology; and  
9 (c) the person or employee is:  
10 (i) engaged in a course of study at an educational  
11 institution in the field of encryption technology; or  
12 (ii) employed, trained or experienced in the field of  
13 encryption technology; and  
14 (d) the person or employee:  
15 (i) has obtained permission from the owner or exclusive  
16 licensee of the copyright to do the act; or  
17 (ii) has made, or will make, a good faith effort to obtain  
18 such permission.

19 In this subsection, **encryption technology** means the scrambling  
20 and descrambling of information using mathematical formulas or  
21 algorithms.

22 Note: A defendant bears an evidential burden in relation to the matter in  
23 subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

24 *Defence—computer security testing*

- 25 (5) Subsection (1) does not apply to the person if:  
26 (a) the person circumvents the access control technological  
27 protection measure to enable the person to do an act; and  
28 (b) the act:  
29 (i) relates to a copy of a computer program that is not an  
30 infringing copy; and  
31 (ii) will not infringe the copyright in the computer program;  
32 and  
33 (iii) will be done for the sole purpose of testing,  
34 investigating or correcting the security of a computer,  
35 computer system or computer network; and  
36 (iv) will be done with the permission of the owner of the  
37 computer, computer system or computer network.

1 Note: A defendant bears an evidential burden in relation to the matter in  
2 subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

3 *Defence—online privacy*

4 (6) Subsection (1) does not apply to the person if:

5 (a) the person circumvents the access control technological  
6 protection measure to enable the person to do an act; and

7 (b) the act:

8 (i) relates to a copy of a work or other subject-matter that is  
9 not an infringing copy; and

10 (ii) will not infringe the copyright in the work or other  
11 subject-matter; and

12 (iii) will be done for the sole purpose of identifying and  
13 disabling an undisclosed capability to collect or  
14 disseminate personally identifying information about  
15 the online activities of a natural person; and

16 (iv) will not affect the ability of the person or any other  
17 person to gain access to the work or other subject-matter  
18 or any other work or subject-matter.

19 Note: A defendant bears an evidential burden in relation to the matter in  
20 subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

21 *Defence—law enforcement and national security*

22 (7) Subsection (1) does not apply in relation to anything lawfully done  
23 for the purposes of:

24 (a) law enforcement; or

25 (b) national security; or

26 (c) performing a statutory function, power or duty;

27 by or on behalf of the Commonwealth, a State or a Territory, or an  
28 authority of one of those bodies.

29 Note: A defendant bears an evidential burden in relation to the matter in  
30 subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

31 *Defence—libraries etc.*

32 (8) Subsection (1) does not apply in respect of anything lawfully done  
33 by the following bodies in performing their functions:

34 (a) a library (other than a library that is conducted for the profit,  
35 direct or indirect, of an individual or individuals);

- 1 (b) a body mentioned in:  
2 (i) paragraph (a) of the definition of *archives* in subsection  
3 10(1); or  
4 (ii) subsection 10(4);  
5 (c) an educational institution;  
6 (d) a public non-commercial broadcaster (including a body that  
7 provides a national broadcasting service, within the meaning  
8 of the *Broadcasting Services Act 1992*, and a body that holds  
9 a community broadcasting licence within the meaning of that  
10 Act).

11 Note 1: A library that is owned by a person conducting a business for profit  
12 might not itself be conducted for profit (see section 18).

13 Note 2: A defendant bears an evidential burden in relation to the matter in  
14 subsection (8) (see subsection 13.3(3) of the *Criminal Code*).

15 *Defence—prescribed acts*

- 16 (9) Subsection (1) does not apply to the person if:  
17 (a) the person circumvents the access control technological  
18 protection measure to enable the person to do an act; and  
19 (b) the act will not infringe the copyright in a work or other  
20 subject-matter; and  
21 (c) the doing of the act by the person is prescribed by the  
22 regulations.

23 Note 1: A defendant bears an evidential burden in relation to the matter in  
24 subsection (9) (see subsection 13.3(3) of the *Criminal Code*).

25 Note 2: For the making of regulations prescribing the doing of an act by a  
26 person, see section 249.

27 **132APD Manufacturing etc. a circumvention device for a**  
28 **technological protection measure**

- 29 (1) A person commits an offence if:  
30 (a) the person does any of the following acts with a device:  
31 (i) manufactures it with the intention of providing it to  
32 another person;  
33 (ii) imports it into Australia with the intention of providing  
34 it to another person;  
35 (iii) distributes it to another person;  
36 (iv) offers it to the public;

- 1 (v) provides it to another person;  
2 (vi) communicates it to another person; and  
3 (b) the person does the act with the intention of obtaining a  
4 commercial advantage or profit; and  
5 (c) the device is a circumvention device for a technological  
6 protection measure.

7 Penalty: 550 penalty units or imprisonment for 5 years, or both.

8 *Defence—no promotion, advertising etc.*

- 9 (2) Subsection (1) does not apply to the person if:  
10 (a) the device is a circumvention device for the technological  
11 protection measure only because it was promoted, advertised  
12 or marketed as having the purpose of circumventing the  
13 technological protection measure; and  
14 (b) both of the following apply:  
15 (i) the person did not do such promoting, advertising or  
16 marketing;  
17 (ii) the person did not direct or request (expressly or  
18 impliedly) another person to do such promoting,  
19 advertising or marketing.

20 Note: A defendant bears an evidential burden in relation to the matter in  
21 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

22 *Defence—interoperability*

- 23 (3) Subsection (1) does not apply to the person if:  
24 (a) the circumvention device will be used to circumvent the  
25 technological protection measure to enable the doing of an  
26 act; and  
27 (b) the act:  
28 (i) relates to a copy of a computer program (the ***original***  
29 ***program***) that is not an infringing copy and that was  
30 lawfully obtained; and  
31 (ii) will not infringe the copyright in the original program;  
32 and  
33 (iii) will be done for the sole purpose of achieving  
34 interoperability of an independently created computer  
35 program with the original program or any other  
36 program; and

**Schedule 12** Technological protection measures  
**Part 1** Main amendments

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1 (c) the information will not be readily available to the person  
2 doing the act from another source when the act is done.

3 Note: A defendant bears an evidential burden in relation to the matter in  
4 subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

5 *Defence—encryption research*

6 (4) Subsection (1) does not apply to the person if:

7 (a) the technological protection measure is an access control  
8 technological protection measure; and

9 (b) the circumvention device will be used to circumvent the  
10 access control technological protection measure to enable a  
11 person (the *researcher*) to do an act; and

12 (c) the act:

13 (i) relates to a copy of a work or other subject-matter that is  
14 not an infringing copy and that was lawfully obtained;  
15 and

16 (ii) will not infringe the copyright in the work or other  
17 subject-matter; and

18 (iii) will be done for the sole purpose of identifying and  
19 analysing flaws and vulnerabilities of encryption  
20 technology; and

21 (d) the researcher is:

22 (i) engaged in a course of study at an educational  
23 institution in the field of encryption technology; or

24 (ii) employed, trained or experienced in the field of  
25 encryption technology; and

26 (e) the researcher:

27 (i) has obtained permission from the owner or exclusive  
28 licensee of the copyright to do the act; or

29 (ii) has made, or will make, a good faith effort to obtain  
30 such permission.

31 In this subsection, *encryption technology* means the scrambling  
32 and descrambling of information using mathematical formulas or  
33 algorithms.

34 Note: A defendant bears an evidential burden in relation to the matter in  
35 subsection (4) (see subsection 13.3(3) of the *Criminal Code*).



1 *Defence—computer security testing*

- 2 (5) Subsection (1) does not apply to the person if:
- 3 (a) the technological protection measure is an access control
  - 4 technological protection measure; and
  - 5 (b) the circumvention device will be used to circumvent the
  - 6 access control technological protection measure to enable the
  - 7 doing of an act; and
  - 8 (c) the act:
    - 9 (i) relates to a copy of a computer program that is not an
    - 10 infringing copy; and
    - 11 (ii) will not infringe the copyright in the computer program;
    - 12 and
    - 13 (iii) will be done for the sole purpose of testing,
    - 14 investigating or correcting the security of a computer,
    - 15 computer system or computer network; and
    - 16 (iv) will be done with the permission of the owner of the
    - 17 computer, computer system or computer network.

18 Note: A defendant bears an evidential burden in relation to the matter in  
19 subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

20 *Defence—law enforcement and national security*

- 21 (6) Subsection (1) does not apply in relation to anything lawfully done
- 22 for the purposes of:
- 23 (a) law enforcement; or
  - 24 (b) national security; or
  - 25 (c) performing a statutory function, power or duty;
- 26 by or on behalf of the Commonwealth, a State or a Territory, or an
- 27 authority of one of those bodies.

28 Note: A defendant bears an evidential burden in relation to the matter in  
29 subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

30 *Defence—libraries etc.*

- 31 (7) Subsection (1) does not apply in respect of anything lawfully done
- 32 by the following bodies in performing their functions:
- 33 (a) a library (other than a library that is conducted for the profit,
  - 34 direct or indirect, of an individual or individuals);
  - 35 (b) a body mentioned in:

- 1 (i) paragraph (a) of the definition of *archives* in subsection  
2 10(1); or  
3 (ii) subsection 10(4);  
4 (c) an educational institution;  
5 (d) a public non-commercial broadcaster (including a body that  
6 provides a national broadcasting service, within the meaning  
7 of the *Broadcasting Services Act 1992*, and a body that holds  
8 a community broadcasting licence within the meaning of that  
9 Act).

10 Note 1: A library that is owned by a person conducting a business for profit  
11 might not itself be conducted for profit (see section 18).

12 Note 2: A defendant bears an evidential burden in relation to the matter in  
13 subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

14 **132APE Providing etc. a circumvention service for a technological**  
15 **protection measure**

- 16 (1) A person commits an offence if:  
17 (a) the person:  
18 (i) provides a service to another person; or  
19 (ii) offers a service to the public; and  
20 (b) the person does so with the intention of obtaining a  
21 commercial advantage or profit; and  
22 (c) the service is a circumvention service for a technological  
23 protection measure.

24 Penalty: 550 penalty units or imprisonment for 5 years, or both.

25 *Defence—no promotion, advertising etc.*

- 26 (2) Subsection (1) does not apply to the person if:  
27 (a) the service is a circumvention service for the technological  
28 protection measure only because it was promoted, advertised  
29 or marketed as having the purpose of circumventing the  
30 technological protection measure; and  
31 (b) both of the following apply:  
32 (i) the person did not do such promoting, advertising or  
33 marketing;

- 1 (ii) the person did not direct or request (expressly or  
2 impliedly) another person to do such promoting,  
3 advertising or marketing.

4 Note: A defendant bears an evidential burden in relation to the matter in  
5 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

6 *Defence—interoperability*

- 7 (3) Subsection (1) does not apply to the person if:  
8 (a) the circumvention service will be used to circumvent a  
9 technological protection measure to enable the doing of an  
10 act; and  
11 (b) the act:  
12 (i) relates to a copy of a computer program (the ***original***  
13 ***program***) that is not an infringing copy and that was  
14 lawfully obtained; and  
15 (ii) will not infringe the copyright in the original program;  
16 and  
17 (iii) will be done for the sole purpose of achieving  
18 interoperability of an independently created computer  
19 program with the original program or any other  
20 program; and  
21 (c) the information will not be readily available to the person  
22 doing the act from another source when the act is done.

23 Note: A defendant bears an evidential burden in relation to the matter in  
24 subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

25 *Defence—encryption research*

- 26 (4) Subsection (1) does not apply to the person if:  
27 (a) the technological protection measure is an access control  
28 technological protection measure; and  
29 (b) the circumvention service will be used to circumvent the  
30 access control technological protection measure to enable a  
31 person (the ***researcher***) to do an act; and  
32 (c) the act:  
33 (i) relates to a copy of a work or other subject-matter that is  
34 not an infringing copy and that was lawfully obtained;  
35 and  
36 (ii) will not infringe the copyright in the work or other  
37 subject-matter; and
-

- 1 (iii) will be done for the sole purpose of identifying and  
2 analysing flaws and vulnerabilities of encryption  
3 technology; and  
4 (d) the researcher is:  
5 (i) engaged in a course of study at an educational  
6 institution in the field of encryption technology; or  
7 (ii) employed, trained or experienced in the field of  
8 encryption technology; and  
9 (e) the researcher:  
10 (i) has obtained permission from the owner or exclusive  
11 licensee of the copyright to do the act; or  
12 (ii) has made, or will make, a good faith effort to obtain  
13 such permission.

14 In this subsection, *encryption technology* means the scrambling  
15 and descrambling of information using mathematical formulas or  
16 algorithms.

17 Note: A defendant bears an evidential burden in relation to the matter in  
18 subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

19 *Defence—computer security testing*

- 20 (5) Subsection (1) does not apply to the person if:  
21 (a) the technological protection measure is an access control  
22 technological protection measure; and  
23 (b) the circumvention service will be used to circumvent the  
24 access control technological protection measure to enable the  
25 doing of an act; and  
26 (c) the act:  
27 (i) relates to a copy of a computer program that is not an  
28 infringing copy; and  
29 (ii) will not infringe the copyright in the computer program;  
30 and  
31 (iii) will be done for the sole purpose of testing,  
32 investigating or correcting the security of a computer,  
33 computer system or computer network; and  
34 (iv) will be done with the permission of the owner of the  
35 computer, computer system or computer network.

36 Note: A defendant bears an evidential burden in relation to the matter in  
37 subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

1 *Defence—law enforcement and national security*

- 2 (6) Subsection (1) does not apply in relation to anything lawfully done  
3 for the purposes of:  
4 (a) law enforcement; or  
5 (b) national security; or  
6 (c) performing a statutory function, power or duty;  
7 by or on behalf of the Commonwealth, a State or a Territory, or an  
8 authority of one of those bodies.

9 Note: A defendant bears an evidential burden in relation to the matter in  
10 subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

11 *Defence—libraries etc.*

- 12 (7) Subsection (1) does not apply in respect of anything lawfully done  
13 by the following bodies in performing their functions:  
14 (a) a library (other than a library that is conducted for the profit,  
15 direct or indirect, of an individual or individuals);  
16 (b) a body mentioned in:  
17 (i) paragraph (a) of the definition of *archives* in subsection  
18 10(1); or  
19 (ii) subsection 10(4);  
20 (c) an educational institution;  
21 (d) a public non-commercial broadcaster (including a body that  
22 provides a national broadcasting service, within the meaning  
23 of the *Broadcasting Services Act 1992*, and a body that holds  
24 a community broadcasting licence within the meaning of that  
25 Act).

26 Note 1: A library that is owned by a person conducting a business for profit  
27 might not itself be conducted for profit (see section 18).

28 Note 2: A defendant bears an evidential burden in relation to the matter in  
29 subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

30 **12 Subsection 134(2)**

31 Omit “116A”, substitute “116AN, 116AO, 116AP”.

32 **13 After section 202**

33 Insert:

1       **202A Groundless threats of legal proceedings in relation to**  
2                               **technological protection measures**

- 3               (1) If a person (the *first person*) threatens another person with an  
4               action under Subdivision A of Division 2A of Part V, a person  
5               aggrieved may bring an action against the first person.

6               Note:       Subdivision A of Division 2A of Part V establishes causes of action  
7                               that relate to circumventing an access control technological protection  
8                               measure (section 116AN), manufacturing etc. a circumvention device  
9                               for a technological protection measure (section 116AO) and providing  
10                              etc. a circumvention service for a technological protection measure  
11                              (section 116AP).

- 12              (2) An action may be brought under this section whether or not the  
13              first person is the owner or exclusive licensee of the copyright in  
14              the work or other subject-matter to which the threatened action  
15              relates.

- 16              (3) The mere notification that a work or other subject-matter is  
17              protected by a technological protection measure does not constitute  
18              a threat of an action within the meaning of this section.

- 19              (4) In an action under this section, the orders a court may make  
20              include the following:

- 21                      (a) an order declaring that the threat is unjustifiable;  
22                      (b) an order granting an injunction restraining the first person  
23                               from continuing to make the threat;  
24                      (c) an order awarding such damages (if any) for loss that the  
25                               person aggrieved has suffered as a result of the making of the  
26                               threat.

- 27              (5) The court must not make an order under subsection (4) if the first  
28              person satisfies the court that an action under Subdivision A of  
29              Division 2A of Part V has reasonable prospects of success.

- 30              (6) Nothing in this section renders a barrister or solicitor of the High  
31              Court, or of the Supreme Court of a State or Territory, liable to an  
32              action under this section in respect of an act done in his or her  
33              professional capacity on behalf of a client.

- 34              (7) If an action under this section is brought:

- 35                      (a) the first person may apply, by way of counterclaim, for relief  
36                               to which he or she would be entitled in an action under  
37                               Subdivision A of Division 2A of Part V; and

1 (b) the provisions of Part V apply as if the counterclaim were an  
2 action brought by the first person under that Subdivision.

3 Note: The heading to section 202 is altered by adding at the end “**in relation to copyright**  
4 **infringement**”.

#### 5 **14 Section 249**

6 Before “The Governor-General”, insert “(1)”.

7 Note: The following heading to subsection 249(1) is inserted “*General regulation-making*  
8 *power*”.

#### 9 **15 At the end of section 249**

10 Add:

11 *Regulations in relation to technological protection measures*

12 (2) Without limiting subsection (1), the Governor-General may make  
13 regulations prescribing the doing of an act by a person for the  
14 purposes of subsections 116AN(9) and 132APC(9).

15 Note: For prescription of acts and persons by class, see subsection 13(3) of  
16 the *Legislative Instruments Act 2003*.

17 (3) However, the Governor-General must not make a regulation  
18 prescribing the doing of an act by a person unless the Minister  
19 makes a recommendation to prescribe the doing of the act by the  
20 person.

21 (4) The Minister may only make a recommendation to prescribe the  
22 doing of an act by a person if:  
23 (a) a submission has been made (whether before or after the  
24 commencement of this section) to prescribe the doing of the  
25 act by the person; and  
26 (b) the doing of the act by the person will not infringe the  
27 copyright in a work or other subject-matter; and  
28 (c) the doing of the act by the person is in relation to a particular  
29 class of works or other subject-matter; and  
30 (d) an actual or likely adverse impact on the doing of the act by  
31 the person has been credibly demonstrated; and  
32 (e) the adequacy of the protection and the effectiveness of the  
33 remedies provided by Subdivision A of Division 2A of  
34 Part V and Subdivision E of Division 5 of Part V would not

1 be impaired if the doing of the act by the person were  
2 prescribed.

3 Note: For the purposes of paragraph (a), it is not necessary for the person  
4 who made the submission to be the person in relation to whom the act  
5 is prescribed.

6 (5) If a submission has been made to prescribe the doing of an act by a  
7 person, the Minister must make a decision whether to recommend  
8 the prescription of the doing of the act by the person as soon as  
9 practicable after receiving the submission, but in any case, within 4  
10 years of receiving it.

11 (6) The Governor-General may make regulations varying or revoking  
12 regulations made under subsection (2).

13 (7) However, the Governor-General must not make a regulation  
14 varying or revoking a regulation made under subsection (2) unless  
15 the Minister makes a recommendation to vary or revoke the  
16 regulation.

17 (8) The Minister may make a recommendation to vary or revoke a  
18 regulation made under subsection (2) only if:  
19 (a) a submission has been made to vary or revoke the regulation;  
20 and  
21 (b) an actual or likely adverse impact on the doing of the act by  
22 the person that is the subject of the regulation can no longer  
23 be credibly demonstrated; and  
24 (c) the adequacy of the protection and the effectiveness of the  
25 remedies provided by Subdivision A of Division 2A of  
26 Part V and Subdivision E of Division 5 of Part V would be  
27 impaired if the regulation were not varied or revoked.

28 (9) If a submission has been made to vary or revoke a regulation made  
29 under subsection (2), the Minister must make a decision whether to  
30 recommend the variation or revocation of the regulation as soon as  
31 practicable after receiving the submission, but in any case, within 4  
32 years of receiving it.

## 33 **16 Application of amendments**

34 The amendments made by this Part apply to acts done on or after the  
35 commencement of this Part.



1

2

## **Part 2—Amendments contingent on the Archives Amendment Act 2006**

3

4

### **17 Subparagraph 116AN(8)(b)(ii)**

5

Repeal the subparagraph, substitute:

6

- (ii) a body or person mentioned in paragraph (a) or (aa) of the definition of *archives* in subsection 10(1), or in subsection 10(4);

7

8

9

### **18 Paragraphs 132APC(8)(b), 132APD(7)(b) and 132APE(7)(b)**

10

Repeal the paragraphs, substitute:

11

(b) a body or person mentioned in:

12

- (i) paragraph (a) or (aa) of the definition of *archives* in subsection 10(1); or

13

14

- (ii) subsection 10(4);