



Copyright Amendment Act (No. 2) 1998

No. 105, 1998



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An Act to amend the *Copyright Act 1968*, and for related purposes

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An Act to amend the *Copyright Act 1968*, and for related purposes

[Assented to 30 July 1998]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Copyright Amendment Act (No. 2) 1998*.

2 Commencement

- (1) This Act commences on the day on which it receives the Royal Assent.
- (2) However, this Act commences immediately after the commencement of item 1 of Schedule 3 to the *Copyright Amendment Act (No. 1) 1998* if that Act receives the Royal Assent

on a day that is the same as, or later than, the day on which this Act receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Parallel importation of records

Copyright Act 1968

1 Subsection 10(1) (at the end of the definition of *infringing copy*)

Add:

; or (h) a non-infringing copy of a sound recording whose importation does not infringe that copyright.

2 Subsection 10(1)

Insert:

non-infringing copy of a sound recording has the meaning given by section 10AA.

3 After section 10

Insert:

10AA *Non-infringing copy of a sound recording*

Minimum requirements

- (1) A copy of a sound recording is a *non-infringing copy* only if it is made by or with the consent of:
 - (a) the owner of the copyright or related right in the sound recording in the country (the *copy country*) in which the copy was made; or
 - (b) the owner of the copyright or related right in the sound recording in the country (the *original recording country*) in which the sound recording was made, if the law of the copy country did not provide for copyright or a related right in sound recordings when the sound recording was made; or
 - (c) the maker of the sound recording, if neither the law of the copy country nor the law of the original recording country (whether those countries are different or not) provided for

copyright or a related right in sound recordings when the sound recording was made.

Extra requirements for copies of recordings of works subject to Australian copyright

- (2) If the sound recording is of a work that is a literary, dramatic or musical work in which copyright subsists in Australia, the copy is a **non-infringing copy** only if:
- (a) copyright subsists in the work under the law of the copy country; and
 - (b) the making of the copy does not infringe the copyright in the work under the law of the copy country; and
 - (c) the copy country meets the requirements of subsection (3).
- To avoid doubt, the requirements of this subsection are additional to those of subsection (1).

Requirements for copy country

- (3) The copy country mentioned in subsection (2) must:
- (a) be a party to the International Convention for the Protection of Literary and Artistic Works concluded at Berne on 9 September 1886 as revised from time to time; or
 - (b) be a member of the World Trade Organization and have a law that provides consistently with the TRIPS Agreement for:
 - (i) the ownership and duration of copyright in literary, dramatic and musical works; and
 - (ii) the owner of the copyright in the work to have rights relating to the reproduction of the work.

Australian copyright may result from Act or regulations

- (4) For the purposes of subsection (2) it does not matter whether the copyright in the work subsists in Australia as a result of this Act or as a result of the regulations made for the purposes of section 184.

4 At the end of Division 3 of Part III

Add:

44D Import of non-infringing copy of sound recording does not infringe copyright in works recorded

- (1) The copyright in a literary, dramatic or musical work is not infringed by a person who:
- (a) imports into Australia a non-infringing copy of a sound recording of the work; or
 - (b) does an act described in section 38 involving an article that is a non-infringing copy of a sound recording of the work and has been imported into Australia by anyone.

Note: In a civil action for infringement of copyright, a copy of a sound recording is presumed not to be a non-infringing copy of the sound recording unless the defendant proves it is. See section 130A.

- (2) This section applies to a copy of a sound recording only if, when the copy is imported into Australia, the sound recording has been published:
- (a) in Australia; or
 - (b) in another country (the *publication country*) by or with the consent of:
 - (i) the owner of the copyright or related right in the sound recording in the publication country; or
 - (ii) the owner of the copyright or related right in the sound recording in the country (the *original recording country*) in which the sound recording was made, if the law of the publication country did not provide for copyright or a related right in sound recordings when publication occurred; or
 - (iii) the maker of the sound recording, if neither the law of the publication country nor the law of the original recording country (whether those countries are different or not) provided for copyright or a related right in sound recordings when publication occurred.

Note: Subsection 29(6) deals with unauthorised publication.

- (3) In subsection (2):

owner of the copyright or related right in the sound recording means the owner at the time publication of the sound recording occurred.

- (4) The copyright in a work a copy of which is on, or embodied in, a non-infringing accessory to a non-infringing copy of a sound recording is not infringed by importing the accessory with the copy.
- (5) Section 38 does not apply to a copy of a work, being a copy that is on, or embodied in, a non-infringing accessory to a non-infringing copy of a sound recording, if the importation of the accessory is not an infringement of copyright in the work.

5 Subsections 102(1) and 103(1)

Omit “and 112C”, substitute “, 112C and 112D”.

6 At the end of Division 6 of Part IV

Add:

112D Import of non-infringing copy of a sound recording does not infringe copyright in the sound recording

- (1) The copyright in a sound recording is not infringed by a person who:
 - (a) imports into Australia a non-infringing copy of the sound recording; or
 - (b) does an act described in section 103 involving an article that is a non-infringing copy of the sound recording and has been imported into Australia by anyone.

Note: In a civil action for infringement of copyright, a copy of a sound recording is presumed not to be a non-infringing copy of the sound recording unless the defendant proves it is. See section 130A.

- (2) This section applies to a copy of a sound recording only if, when the copy is imported into Australia, the sound recording has been published:
 - (a) in Australia; or
 - (b) in another country (the *publication country*) by or with the consent of:
 - (i) the owner of the copyright or related right in the sound recording in the publication country; or

- (ii) the owner of the copyright or related right in the sound recording in the country (the ***original recording country***) in which the sound recording was made, if the law of the publication country did not provide for copyright or a related right in sound recordings when publication occurred; or
- (iii) the maker of the sound recording, if neither the law of the publication country nor the law of the original recording country (whether those countries are different or not) provided for copyright or a related right in sound recordings when publication occurred.

Note: Subsection 29(6) deals with unauthorised publication.

- (3) In subsection (2):

owner of the copyright or related right in the sound recording means the owner at the time publication of the sound recording occurred.

7 After section 130

Insert:

130A Acts relating to imported copies of sound recordings

In an action for infringement of copyright described in section 37, 38, 102 or 103 by an act involving an article that is a copy of a sound recording, it must be presumed that the copy is not a non-infringing copy unless the defendant proves that the copy is a non-infringing copy.

Note 1: Sections 37 and 38 deal with infringement of copyright in literary, dramatic and musical works (among other things) by commercial importation and dealings involving articles.

Note 2: Sections 102 and 103 deal with infringement of copyright in sound recordings (among other things) by commercial importation and dealings involving articles.

8 Subsection 135(10)

Omit “44A or 112A”, substitute “44A, 44D, 112A or 112D”.

9 Application

Schedule 1 Parallel importation of records

The amendments made by this Schedule apply in relation to copies of sound recordings imported into Australia after the commencement of this Act.

Schedule 2—Amendment of penalties

Copyright Act 1968

1 After subsection 132(6)

Insert:

- (6A) A person who contravenes subsection (1), (2), (2A), (3), (5) or (5AA) is guilty of an offence punishable on summary conviction by a fine of not more than 550 penalty units and/or imprisonment for not more than 5 years.

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

2 Subsections 133(1), (2) and (3)

Repeal the subsections.

Note: The heading to section 133 is replaced by the heading “**Destruction or delivery up of infringing copies etc.**”.

3 Paragraphs 133A(1)(c) and (d)

Repeal the paragraphs, substitute:

- (c) a fine not exceeding 15 penalty units and/or imprisonment for not more than 6 months, if the person is an individual; or
(d) a fine not exceeding 150 penalty units, if the person is a body corporate.

4 After subsection 248P(7)

Insert:

- (7A) A person who contravenes subsection (1), (2), (3), (4), (5) or (6) is guilty of an offence punishable on summary conviction by a fine of not more than 550 penalty units and/or imprisonment for not more than 5 years.

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

5 At the end of section 248Q

Add:

- (8) A person who contravenes subsection (1), (2), (3), (4) or (6) is guilty of an offence punishable on summary conviction by a fine of not more than 550 penalty units and/or imprisonment for not more than 5 years.

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

6 At the end of section 248QA

Add:

- (6) A person who contravenes subsection (2), (3), (4) or (5) is guilty of an offence punishable on summary conviction by a fine of not more than 550 penalty units and/or imprisonment for not more than 5 years.

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

7 Sections 248QB and 248R

Repeal the sections, substitute:

248QB Protection against multiple prosecutions for same act

If a single act done in relation to a performance is an offence against either section 248P or 248Q and an offence against section 248QA, only one of the offences may be prosecuted.

*[Minister's second reading speech made in—
House of Representatives on 20 November 1997
Senate on 27 November 1997]*

(211/97)