



Copyright Amendment (Digital Agenda) Act 2000

No. 110, 2000



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

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Copyright Amendment (Digital Agenda) Act 2000

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

[Assented to 4 September 2000]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Copyright Amendment (Digital Agenda) Act 2000*.

2 Commencement

- (1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.

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- (2) If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

3 Object of the Act

The object of this Act is to amend the *Copyright Act 1968* so as to:

- (a) ensure the efficient operation of relevant industries in the online environment by:
 - (i) promoting the creation of copyright material and the exploitation of new online technologies by allowing financial rewards for creators and investors; and
 - (ii) providing a practical enforcement regime for copyright owners; and
 - (iii) promoting access to copyright material online; and
- (b) promote certainty for communication and information technology industries that are investing in and providing online access to copyright material; and
- (c) provide reasonable access and certainty for end users of copyright material online; and
- (d) ensure that cultural and educational institutions can access, and promote access to, copyright material in the online environment on reasonable terms, including having regard to the benefits of public access to the material and the provision of adequate remuneration to creators and investors; and
- (e) ensure that the relevant global technical standards which form the basis of new communication and information technologies, such as the Internet, are not jeopardised.

4 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Amendment of the Copyright Act 1968

1 Subsection 10(1) (definition of *broadcast*)

Repeal the definition, substitute:

broadcast means a communication to the public delivered by a broadcasting service within the meaning of the *Broadcasting Services Act 1992*.

Note: A broadcasting service does not include the following:

- (a) a service (including a teletext service) that provides only data or only text (with or without associated images); or
- (b) a service that makes programs available on demand on a point-to-point basis, including a dial-up service.

2 Subsection 10(1)

Insert:

carriage service provider has the same meaning as in the *Telecommunications Act 1997*.

3 Subsection 10(1)

Insert:

carrier has the same meaning as in the *Telecommunications Act 1997*.

4 Subsection 10(1)

Insert:

circumvention device means a device (including a computer program) having only a limited commercially significant purpose or use, or no such purpose or use, other than the circumvention, or facilitating the circumvention, of an effective technological protection measure.

5 Subsection 10(1)

Insert:

circumvention service means a service, the performance of which has only a limited commercially significant purpose, or no such purpose or use, other than the circumvention, or facilitating the circumvention, of an effective technological protection measure.

6 Subsection 10(1)

Insert:

communicate means make available online or electronically transmit (whether over a path, or a combination of paths, provided by a material substance or otherwise) a work or other subject-matter.

7 Subsection 10(1) (definition of *computer program*)

Repeal the definition, substitute:

computer program means a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result.

9 Subsection 10(1)

Insert:

electronic rights management information means:

- (a) information attached to, or embodied in, a copy of a work or other subject-matter that:
 - (i) identifies the work or subject-matter, and its author or copyright owner; or
 - (ii) identifies or indicates some or all of the terms and conditions on which the work or subject-matter may be used, or indicates that the use of the work or subject-matter is subject to terms or conditions; or
- (b) any numbers or codes that represent such information in electronic form.

10 Subsection 10(1) (paragraph (e) of the definition of *infringing copy*)

Omit “reproduction”, substitute “facsimile copy”.

12 Subsection 10(1) (paragraph (a) of the definition of *literary work*)

Omit “(whether or not in a visible form)”.

13 Subsection 10(1) (definition of *manuscript*)

Repeal the definition, substitute:

manuscript, in relation to a literary, dramatic or musical work, means the document embodying the work as initially prepared by the author, whether the document is in hardcopy form, electronic form or any other form.

14 Subsection 10(1)

Insert:

reception equipment means equipment whose operation, either alone or together with other equipment, enables people to hear or see a work or other subject-matter that is communicated.

15 Subsection 10(1)

Insert:

retransmission, in relation to a broadcast, means a retransmission of the broadcast, where:

- (a) the content of the broadcast is unaltered (even if the technique used to achieve retransmission is different to the technique used to achieve the original transmission); and
- (b) either:
 - (i) in any case—the retransmission is simultaneous with the original transmission; or
 - (ii) if the retransmission is in an area that has, wholly or partly, different local time to the area of the original transmission—the retransmission is delayed until no later than the equivalent local time.

15A Subsection 10(1)

Insert:

simulcasting means simultaneously broadcasting a broadcasting service in both analog and digital form in accordance with the requirements of the *Broadcasting Services Act 1992* or of any prescribed legislative provisions relating to digital broadcasting.

15B Subsection 10(1)

Insert:

technological protection measure means a device or product, or a component incorporated into a process, that is designed, in the ordinary course of its operation, to prevent or inhibit the infringement of copyright in a work or other subject-matter by either or both of the following means:

- (a) by ensuring that access to the work or other subject matter is available solely by use of an access code or process (including decryption, unscrambling or other transformation of the work or other subject-matter) with the authority of the owner or licensee of the copyright;
- (b) through a copy control mechanism.

16 Subsection 10(1)

Insert:

to the public means to the public within or outside Australia.

17 Subsection 10(1) (definition of *wireless telegraphy*)

Repeal the definition.

18 Subsection 10(1) (definition of *wireless telegraphy apparatus*)

Repeal the definition.

19 Subsection 10(2)

After “musical work”, insert “(other than a computer program)”.

20 After subsection 10(2)

Insert:

(2A) Without limiting the meaning of the expression *reasonable portion* in this Act, if a person makes a reproduction of a part of:

- (a) a published literary work (other than a computer program or an electronic compilation, such as a database); or
- (b) a published dramatic work;

being a work that is in electronic form, the reproduction is taken to contain only a reasonable portion of the work if:

- (c) the number of words copied does not exceed, in the aggregate, 10% of the number of words in the work; or
 - (d) if the work is divided into chapters—the number of words copied exceeds, in the aggregate, 10% of the number of words in the work, but the reproduction contains only the whole or part of a single chapter of the work.
- (2B) If a published literary or dramatic work is contained in a published edition of the work and is separately available in electronic form, a reproduction of a part of the work is taken to contain only a reasonable portion of the work if it is taken to do so either under subsection (2) or (2A), whether or not it does so under both of them.
- (2C) If:
- (a) a person makes a reproduction of a part of a published literary or dramatic work; and
 - (b) the reproduction is taken to contain only a reasonable portion of the work under subsection (2) or (2A);
- subsection (2) or (2A) does not apply in relation to any subsequent reproduction made by the person of any other part of the same work.

21 At the end of subsection 10(4)

Add:

Example: Museums and galleries are examples of bodies that could have collections covered by paragraph (b) of the definition of *archives*.

23 After subsection 21(1)

Insert:

- (1A) For the purposes of this Act, a work is taken to have been reproduced if it is converted into or from a digital or other electronic machine-readable form, and any article embodying the work in such a form is taken to be a reproduction of the work.

Note: The reference to the conversion of a work into a digital or other electronic machine-readable form includes the first digitisation of the work.

24 Subsection 21(2)

Repeal the subsection, substitute:

- (2) Subsections (1) and (1A) apply in relation to an adaptation of a work in the same way as they apply in relation to a work.

25 At the end of section 21

Add:

- (5) For the purposes of this Act, a computer program is taken to have been reproduced if:
- (a) an object code version of the program is derived from the program in source code by any process, including compilation; or
 - (b) a source code version of the program is derived from the program in object code by any process, including decompilation;
- and any such version is taken to be a reproduction of the program.
- (6) For the purposes of this Act, a sound recording or cinematograph film is taken to have been copied if it is converted into or from a digital or other electronic machine-readable form, and any article embodying the recording or film in such a form is taken to be a copy of the recording or film.

Note: The reference to the conversion of a sound recording or cinematograph film into a digital or other electronic machine-readable form includes the first digitisation of the recording or film.

Note: The heading to section 21 is replaced by the heading “**Reproduction and copying of works and other subject-matter**”.

26 Subsections 22(5) and (6)

Repeal the subsections, substitute:

- (5) For the purposes of this Act, a broadcast is taken to have been made by the person who provided the broadcasting service by which the broadcast was delivered.
- (6) For the purposes of this Act, a communication other than a broadcast is taken to have been made by the person responsible for determining the content of the communication.

27 Subsection 25(3)

Omit “simultaneously making a further transmission”, substitute “making a retransmission”.

28 Subsection 25(5)

Repeal the subsection.

29 Section 26

Repeal the section.

30 Paragraph 27(1)(a)

Omit “operation of wireless telegraphy apparatus”, substitute “use of reception equipment”.

31 Subsection 27(2)

Repeal the subsection, substitute:

- (2) For the purposes of this Act, the communication of a work or other subject-matter to the public does not constitute:
- (a) performance; or
 - (b) causing visual images to be seen or sounds to be heard.

32 Subsection 27(3)

Omit “receiving apparatus” (wherever occurring), substitute “reception equipment”.

33 Subsection 27(3)

Omit “conveyed by the transmission of electromagnetic signals (whether over paths provided by a material substance or not), the operation of any apparatus by which the signals are transmitted”, substitute “communicated, the operation of any equipment by which the images or sounds are communicated”.

34 Subsection 27(4)

Omit “apparatus” (wherever occurring), substitute “equipment”.

35 Subparagraphs 31(1)(a)(iv) and (v)

Repeal the subparagraphs, substitute:

- (iv) to communicate the work to the public;

36 Subparagraph 31(1)(a)(vii)

Omit “(v)”, substitute “(iv)”.

37 Subparagraphs 31(1)(b)(iii) and (iv)

Repeal the subparagraphs, substitute:

(iii) to communicate the work to the public; and

38 Subsection 33(3)

Omit “literary,”, insert “literary work (other than a computer program) or a”.

39 After subsection 36(1)

Insert:

(1A) In determining, for the purposes of subsection (1), whether or not a person has authorised the doing in Australia of any act comprised in the copyright in a work, without the licence of the owner of the copyright, the matters that must be taken into account include the following:

- (a) the extent (if any) of the person’s power to prevent the doing of the act concerned;
- (b) the nature of any relationship existing between the person and the person who did the act concerned;
- (c) whether the person took any reasonable steps to prevent or avoid the doing of the act, including whether the person complied with any relevant industry codes of practice.

40 Subsection 36(2)

Omit “the last preceding subsection”, substitute “this section”.

41 Paragraph 39A(a)

Omit “for the making, by reprographic reproduction of copies of documents”, substitute “(including a computer)”.

42 After section 39A

Insert:

39B Communication by use of certain facilities

A person (including a carrier or carriage service provider) who provides facilities for making, or facilitating the making of, a communication is not taken to have authorised any infringement of copyright in a work merely because another person uses the

facilities so provided to do something the right to do which is included in the copyright.

42A Subsection 40(2)

Omit “copying”, substitute “reproducing”.

42B Paragraph 40(2)(e)

Omit “copied”, substitute “reproduced”.

42C Subsection 40(3)

Omit “copying”, substitute “reproducing”.

42D Subsection 40(4)

Repeal the subsection, substitute:

- (4) Subsection (3) does not apply to a dealing by way of reproducing the whole or a part of an article in a periodical publication if another article in that publication, being an article dealing with a different subject matter, is also reproduced.

43 Paragraph 42(1)(b) and subsection 42(2)

Omit “broadcasting”, substitute “a communication”.

44 Subsection 42(3)

Repeal the subsection.

45 After section 43

Insert:

43A Temporary reproductions made in the course of communication

- (1) The copyright in a work, or an adaptation of a work, is not infringed by making a temporary reproduction of the work or adaptation as part of the technical process of making or receiving a communication.
- (2) Subsection (1) does not apply in relation to the making of a temporary reproduction of a work, or an adaptation of a work, as

part of the technical process of making a communication if the making of the communication is an infringement of copyright.

46 Section 46

Omit “wireless telegraphy apparatus”, substitute “reception equipment”.

46A At the end of section 47

Add:

(7) In this section:

broadcasting does not include simulcasting.

46B After section 47

Insert:

47AA Reproduction for the purpose of simulcasting

- (1) If the broadcasting of a literary, dramatic or musical work, or of an adaptation of such a work, would not for any reason constitute an infringement of the copyright in the work, but the making of a sound recording or a cinematograph film of the work or adaptation would, apart from this subsection, constitute such an infringement, the copyright in the work is not infringed by the making of such a recording or film solely for the purpose of simulcasting the work or adaptation in digital form.
- (2) Subsection (1) does not apply in relation to a recording or film if a record embodying the recording or a copy of the film is used for a purpose other than:
 - (a) the simulcasting of the work or adaptation in circumstances that do not for any reason constitute an infringement of the copyright in the work; or
 - (b) the making of further records embodying the recording or further copies of the film for the purpose of simulcasting the work or adaptation in such circumstances.
- (3) Subsection (1) does not apply in relation to a recording or film unless all records embodying the recording, or all copies of the film, made under that subsection are destroyed on or before the relevant date specified in the regulations.

- (4) For the purposes of subsection (3), the regulations may specify different dates in relation to different classes of sound recordings or cinematograph films.

46C Before section 47B

Insert:

47AB Meaning of *computer program*

In this Division:

computer program includes any literary work that is:

- (a) incorporated in, or associated with, a computer program; and
- (b) essential to the effective operation of a function of that computer program.

46D Paragraph 47B(1)(a)

Omit “made in the course”, substitute “incidentally and automatically made as part of the technical process”.

46E Paragraph 47B(2)(b)

Repeal the paragraph, substitute:

- (b) contrary to an express direction or licence given by, or on behalf of, the owner of the copyright in the computer program to the owner or licensee of the copy from which the reproduction is made when the owner or licensee of that copy acquired it.

46F Paragraph 47B(3)(a)

Omit “made in the course”, substitute “incidentally and automatically made as part of the technical process”.

46G At the end of section 47B

Add:

- (5) In this section:

reproduction, in relation to a computer program, does not include a version of the program of the kind referred to in paragraph 21(5)(b).

46H Subsection 47C(2)

Omit “is not infringed by the making of a reproduction of the work”, substitute “, and in any work or other subject-matter held together with the program on the same computer system, is not infringed by the making of a reproduction of the program, or of such a work or other subject-matter”.

46I Paragraph 47D(1)(b)

After “licensee”, insert “, or a person acting on behalf of the owner or licensee,”.

47 At the end of section 47C

Add:

(6) In this section:

reproduction, in relation to a computer program, does not include a version of the program of the kind referred to in paragraph 21(5)(b).

48 Subsection 49(1)

Omit “copy” (wherever occurring), substitute “reproduction”.

Note: The heading to section 49 is altered by omitting “**Copying**” and substituting “**Reproducing and communicating works**”.

49 Paragraph 49(1)(a)

Omit “publication; and”, substitute “publication, being a periodical publication or a published work held in the collection of a library or archives; and”.

50 Subsection 49(2)

Omit “copy” (wherever occurring), substitute “reproduction”.

51 Paragraph 49(2A)(a)

Repeal the paragraph, substitute:

- (a) a request to be supplied with a reproduction of an article, or part of an article, contained in a periodical publication, or of the whole or a part of a published work other than an article contained in a periodical publication, being a periodical

publication or a published work held in the collection of a library or archives; and

52 Paragraph 49(2A)(b)

Omit “copy” (wherever occurring), substitute “reproduction”.

53 Subsections 49(2C), (3), (4) and (5)

Omit “copy” (wherever occurring), substitute “reproduction”.

54 After subsection 49(5)

Insert:

(5A) If an article contained in a periodical publication, or a published work (other than an article contained in a periodical publication) is acquired, in electronic form, as part of a library or archives collection, the officer in charge of the library or archives may make it available online within the premises of the library or archives in such a manner that users cannot, by using any equipment supplied by the library or archives:

- (a) make an electronic reproduction of the article or work; or
- (b) communicate the article or work.

55 Subsections 49(6) and (7)

Omit “copy” (wherever occurring), substitute “reproduction”.

56 After subsection 49(7)

Insert:

(7A) Subsections (6) and (7) do not apply to the making under subsection (2) or (2C) of an electronic reproduction of:

- (a) an article, or a part of an article, contained in a periodical publication; or
- (b) the whole or part of a published work, other than such an article;

in relation to a request under this section for communication to the person who made the request unless:

- (c) before or when the reproduction is communicated to the person, the person is notified in accordance with the regulations:

- (i) that the reproduction has been made under this section and that the article or work might be subject to copyright protection under this Act; and
- (ii) about such other matters (if any) as are prescribed; and
- (d) as soon as practicable after the reproduction is communicated to the person, the reproduction made under subsection (2) or (2C) and held by the library or archives is destroyed.

(7B) It is not an infringement of copyright in an article contained in a periodical publication, or of copyright in a published work, to communicate it in accordance with subsection (2), (2C) or (5A).

57 Subsection 49(9)

Repeal the subsection, substitute:

(9) In this section:

library does not include a library that is conducted for the profit, direct or indirect, of an individual or individuals.

supply includes supply by way of a communication.

58 Subsection 50(1)

Omit “copy” (wherever occurring), substitute “reproduction”.

Note: The heading to section 50 is altered by omitting “**Copying**” and substituting “**Reproducing and communicating works**”.

59 Subsection 50(1)

Omit “publication:”, substitute “publication, being a periodical publication or a published work held in the collection of a library:”.

60 Subsection 50(2)

Omit “copy” (wherever occurring), substitute “reproduction”.

61 Subsection 50(3)

Omit “a copy of the whole or a part of a work”, substitute “a reproduction of the whole or part of a work (including an article contained in a periodical publication)”.

62 Paragraphs 50(3)(a) and (b)

Omit “copy” (wherever occurring), substitute “reproduction”.

63 Subsection 50(4)

Repeal the subsection, substitute:

- (4) Subject to this section, if a reproduction of the whole or a part of an article contained in a periodical publication, or of any other published work, is, by virtue of subsection (3), taken to have been made on behalf of an authorised officer of a library, the copyright in the article or other work is not infringed:
- (a) by the making of the reproduction; or
 - (b) if the work is supplied under subsection (2) by way of a communication—by the making of the communication.

63A Subsections 50(6) and (7)

Omit “copy” (wherever occurring), substitute “reproduction”.

64 Subsection 50(7A)

Repeal the subsection, substitute:

(7A) If:

- (a) a reproduction is made of the whole of a work (other than an article contained in a periodical publication) or of a part of such a work, being a part that contains more than a reasonable portion of the work; and
- (b) the work from which the reproduction is made is in hardcopy form; and
- (c) the reproduction is supplied under subsection (2) to the officer in charge of a library;

subsection (4) does not apply in relation to the reproduction unless:

- (d) in a case where the principal purpose of the library is to provide library services for members of a Parliament—the reproduction is so supplied for the purpose of assisting a person who is a member of that Parliament in the performance of the person’s duties as such a member; or
- (e) as soon as practicable after the request under subsection (1) relating to the reproduction is made, an authorized officer of the library makes a declaration:
 - (i) setting out particulars of the request (including the purpose for which the reproduction was requested); and
 - (ii) stating that, after reasonable investigation, the authorized officer is satisfied that a copy (not being a

second-hand copy) of the work cannot be obtained within a reasonable time at an ordinary commercial price.

(7B) If:

- (a) a reproduction is made of the whole of a work (including an article contained in a periodical publication) or of a part of such a work, whether or not the part contains more than a reasonable portion of the work; and
- (b) the work from which the reproduction is made is in electronic form; and
- (c) the reproduction is supplied under subsection (2) to the officer in charge of a library;

subsection (4) does not apply in relation to the reproduction unless:

- (d) in a case where the principal purpose of the library is to provide library services for members of a Parliament—the reproduction is so supplied for the purpose of assisting a person who is a member of that Parliament in the performance of the person's duties as such a member; or
- (e) as soon as practicable after the request under subsection (1) relating to the reproduction is made, an authorized officer of the library makes a declaration:
 - (i) setting out particulars of the request (including the purpose for which the reproduction was requested); and
 - (ii) if the reproduction is of the whole, or of more than a reasonable portion, of a work other than an article—stating that, after reasonable investigation, the authorised officer is satisfied that the work cannot be obtained in electronic form within a reasonable time at an ordinary commercial price; and
 - (iii) if the reproduction is of a reasonable portion, or less than a reasonable portion, of a work other than an article—stating that, after reasonable investigation, the authorised officer is satisfied that the portion cannot be obtained in electronic form, either separately or together with a reasonable amount of other material, within a reasonable time at an ordinary commercial price; and
 - (iv) if the reproduction is of the whole or of a part of an article—stating that, after reasonable investigation, the authorised officer is satisfied that the article cannot be

obtained on its own in electronic form within a reasonable time at an ordinary commercial price.

(7C) If:

- (a) a reproduction is made in electronic form by or on behalf of an authorised officer of a library of the whole of a work (including an article contained in a periodical publication) or of a part of such a work; and
- (b) the reproduction is supplied under subsection (2) to the officer in charge of another library;

subsection (4) does not apply in relation to the reproduction unless, as soon as practicable after the reproduction is supplied to the other library the reproduction made for the purpose of the supply and held by the first-mentioned library is destroyed.

65 Subsection 50(8)

Omit “copy”, substitute “reproduction or communication”.

66 At the end of section 50

Add:

(10) In this section:

supply includes supply by way of a communication.

67 Subsection 51(1)

Omit “and more than 75 years after the time at which, or the expiration of the period during which, the work was made,”.

68 Paragraph 51(1)(b)

Omit “copy”, substitute “reproduction”.

69 Paragraphs 51(1)(c) and (d)

Repeal the paragraphs, substitute:

- (c) by the making or communication of a reproduction of the work by a person for the purposes of research or study or with a view to publication; or
- (d) by the making or communication of a reproduction of the work by, or on behalf of, the officer in charge of the library or archives if the reproduction is supplied (whether by way of communication or otherwise) to a person who satisfies the

officer in charge of the library or archives that the person requires the reproduction for the purposes of research or study, or with a view to publication, and that the person will not use it for any other purpose.

Note: The heading to section 51 is altered by omitting “**Copying of**” and substituting “**Reproducing and communicating**”.

70 Subsection 51(2)

Repeal the subsection, substitute:

- (2) If the manuscript, or a reproduction, of an unpublished thesis or other similar literary work is kept in a library of a university or other similar institution, or in an archives, the copyright in the thesis or other work is not infringed by the making or communication of a reproduction of the thesis or other work by or on behalf of the officer in charge of the library or archives if the reproduction is supplied (whether by communication or otherwise) to a person who satisfies an authorized officer of the library or archives that he or she requires the reproduction for the purposes of research or study.

71 Subsection 51AA(1)

After “the making”, insert “or communication”.

Note: The heading to section 51AA is altered by omitting “**Copying of**” and substituting “**Reproducing and communicating**”.

72 Subsection 51AA(2) (definitions of *reference copy*, *replacement copy* and *working copy*)

Omit “a copy”, substitute “a reproduction”.

73 Subsection 51A(1)

After “the making”, insert “or communicating”.

Note: The heading to section 51A is altered by omitting “**Copying of**” and substituting “**Reproducing and communicating**”.

74 Subsection 51A(1)

Omit “copy (including a microform copy)”, substitute “reproduction”.

75 Subsections 51A(2) and (3)

Repeal the subsections, substitute:

- (2) The copyright in a work that is held in the collection of a library or archives is not infringed by the making, by or on behalf of the officer in charge of the library or archives, of a reproduction of the work for administrative purposes.
- (3) The copyright in a work that is held in the collection of a library or archives is not infringed by the communication, by or on behalf of the officer in charge of the library or archives, of a reproduction of the work made under subsection (2) to officers of the library or archives by making it available online to be accessed through the use of a computer terminal installed within the premises of the library or archives with the approval of the body administering the library or archives.
- (3A) The copyright in an original artistic work that is held in the collection of a library or archives is not infringed in the circumstances described in subsection (3B) by the communication, by or on behalf of the officer in charge of the library or archives, of a preservation reproduction of the work by making it available online to be accessed through the use of a computer terminal:
- (a) that is installed within the premises of the library or archives; and
 - (b) that cannot be used by a person accessing the work to make an electronic copy or a hardcopy of the reproduction, or to communicate the reproduction.
- (3B) The circumstances in which the copyright in the original artistic work is not infringed because of subsection (3A) are that either:
- (a) the work has been lost, or has deteriorated, since the preservation reproduction of the work was made; or
 - (b) the work has become so unstable that it cannot be displayed without risk of significant deterioration.

76 Subsection 51A(5)

Omit “copy (including a microform copy)”, substitute “reproduction”.

77 Subsection 51A(5)

Omit “of the copy”, substitute “or communication of the reproduction”.

78 At the end of section 51A

Add:

(6) In this section:

preservation reproduction, in relation to an artistic work, means a reproduction of the work made under subsection (1) for the purpose of preserving the work against loss or deterioration.

79 Subsection 52(3)

Repeal the subsection, substitute:

- (3) If a work, or part of a work, has been published and, because of this section, the publication is taken not to be an infringement of the copyright in the work, the copyright in the work is not infringed by a person who, after the publication took place:
- (a) broadcasts the work, or that part of the work; or
 - (b) electronically transmits the work, or that part of the work (other than in a broadcast) for a fee payable to the person who made the transmission; or
 - (c) performs the work, or that part of the work, in public; or
 - (d) makes a record of the work, or that part of the work.

80 Section 69

Repeal the section.

81 Paragraph 85(1)(c)

Repeal the paragraph, substitute:

- (c) to communicate the recording to the public;

82 Paragraphs 86(c) and (d)

Repeal the paragraphs, substitute:

- (c) to communicate the film to the public.

83 At the end of paragraph 87(c)

Add “or communicate it to the public otherwise than by broadcasting it”.

84 Section 88

Omit “, by a means that includes a photographic process, a reproduction”, substitute “a facsimile copy”.

85 Sections 91 and 91A

Repeal the sections, substitute:

91 Television broadcasts and sound broadcasts in which copyright subsists

Subject to this Act, copyright subsists in a television broadcast or sound broadcast made from a place in Australia:

- (a) under the authority of a licence or a class licence under the *Broadcasting Services Act 1992*; or
- (b) by the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation.

86 Section 99

Repeal the section, substitute:

99 Ownership of copyright in television broadcasts and sound broadcasts

Subject to Parts VII and X, the maker of a television broadcast or sound broadcast is the owner of any copyright subsisting in the broadcast.

87 After subsection 101(1)

Insert:

- (1A) In determining, for the purposes of subsection (1), whether or not a person has authorised the doing in Australia of any act comprised in a copyright subsisting by virtue of this Part without the licence of the owner of the copyright, the matters that must be taken into account include the following:
 - (a) the extent (if any) of the person's power to prevent the doing of the act concerned;
 - (b) the nature of any relationship existing between the person and the person who did the act concerned;
 - (c) whether the person took any other reasonable steps to prevent or avoid the doing of the act, including whether the person complied with any relevant industry codes of practice.

88 Paragraph 103B(1)(b)

Omit "broadcasting", substitute "a communication".

89 Subsection 103B(2)

Repeal the subsection.

90 After section 104A

Insert:

104B Infringing copies made on machines installed in libraries and archives

If:

- (a) a person makes an infringing copy of, or of part of, an audio-visual item or a published edition of a work on a machine (including a computer), being a machine installed by or with the approval of the body administering a library or archives on the premises of the library or archives, or outside those premises for the convenience of persons using the library or archives; and
- (b) there is affixed to, or in close proximity to, the machine, in a place readily visible to persons using the machine, a notice of the prescribed dimensions and in accordance with the prescribed form;

neither the body administering the library or archives, nor the officer in charge of the library or archives, is taken to have authorised the making of the infringing copy merely because the copy was made on that machine.

90A At the end of section 107

Add:

- (7) In this section:

broadcasting does not include simulcasting.

91 Paragraphs 110A(c) and (d)

Repeal the paragraphs, substitute:

- (c) by the making of a copy or the communication of the sound recording or cinematograph film by a person for the purpose of research or study or with a view to publication; or
- (d) by the making of a copy or the communication of the sound recording or cinematograph film by, or on behalf of, the

officer in charge of the library or archives if the copy is supplied or communicated to a person who satisfies the officer that he or she requires the copy for the purpose of research or study, or with a view to publication and that he or she will not use it for any other purpose.

Note: The heading to section 110A is altered by omitting “**Copying of**” and substituting “**Copying and communicating**”.

92 After subsection 110B(2)

Insert:

(2A) The copyright in a sound recording or cinematograph film that forms, or formed, part of the collection of a library or archives, or in any work or other subject-matter included in such a sound recording or film, is not infringed by the communication, by or on behalf of the officer in charge of the library or archives, of a copy of the sound recording or film made under subsection (1) or (2) to officers of the library or archives by making it available online to be accessed through the use of a computer terminal installed within the premises of the library or archives with the approval of the body administering the library or archives.

(2B) If:

- (a) a copy of a sound recording or a cinematograph film is made by or on behalf of the officer in charge of a library or archives under this section; and
- (b) the copy is made for the purpose of research that is being, or is to be, carried out at another library or archives;

the copyright in the sound recording or film, or in any work or other subject-matter included in it, is not infringed by the communication, by or on behalf of the officer in charge, of the copy to the other library or archives by making it available online to be accessed through the use of a computer terminal installed within the premises of the other library or archives with the approval of the body administering the other library or archives.

Note: The heading to section 110B is altered by omitting “**Copying of**” and substituting “**Copying and communicating**”.

93 Subsection 110B(4)

Omit “of the copy”, substitute “or communication of the copy”.

93A After section 110B

Insert:

110C Making of a copy of a sound recording or cinematograph film for the purpose of simulcasting

- (1) If the broadcasting of a sound recording or a cinematograph film would not for any reason constitute an infringement of the copyright in the recording or film, but the making of a copy of the recording or film would, apart from this section, constitute an infringement of the copyright, the copyright is not infringed by the making of a copy of the recording or film if:
 - (a) the recording or film from which the copy is made is in analog form; and
 - (b) the copy is made solely for the purpose of simulcasting the recording or film in digital form.
- (2) Subsection (1) does not apply in relation to a copy of a recording or film if the copy is used for a purpose other than:
 - (a) the simulcasting of the recording or film in circumstances that do not for any reason constitute an infringement of the copyright in the recording or film; or
 - (b) the making of further copies of the recording or film for the purpose of simulcasting the recording or film in such circumstances.
- (3) Subsection (1) does not apply in relation to a copy of a recording or film unless all copies of the recording or film made under that subsection are destroyed on or before the relevant date specified in the regulations.
- (4) For the purposes of subsection (3), the regulations may specify different dates in relation to different classes of sound recordings or cinematograph films.

94 After section 111

Insert:

111A Temporary copy made in the course of communication

- (1) A copyright subsisting under this Part is not infringed by making a temporary copy of an audio-visual item as part of the technical process of making or receiving a communication.
- (2) Subsection (1) does not apply in relation to the making of a temporary copy of an audio-visual item as part of the technical process of making a communication if the making of the communication is an infringement of copyright.

95 After section 112D

Insert:

112E Communication by use of certain facilities

A person (including a carrier or carriage service provider) who provides facilities for making, or facilitating the making of, a communication is not taken to have authorised any infringement of copyright in an audio-visual item merely because another person uses the facilities so provided to do something the right to do which is included in the copyright.

96 Part V (heading)

Repeal the heading, substitute:

Part V—Remedies and offences

96A Paragraph 115(4)(b)

Repeal the paragraph, substitute:

- (b) the court is satisfied that it is proper to do so, having regard to:
 - (i) the flagrancy of the infringement; and
 - (ii) whether the infringement involved the conversion of a work or other subject-matter from hardcopy or analog form into a digital or other electronic machine-readable form; and
 - (iii) any benefit shown to have accrued to the defendant by reason of the infringement; and
 - (iv) all other relevant matters;

97 Paragraph 116(1)(b)

After “device”, insert “(including a circumvention device)”.

98 After section 116

Insert:

**Division 2A—Actions in relation to circumvention devices
and electronic rights management information**

**116A Importation, manufacture etc. of circumvention device and
provision etc. of circumvention service**

- (1) Subject to subsections (2), (3) and (4), this section applies if:
- (a) a work or other subject-matter is protected by a technological protection measure; and
 - (b) a person does any of the following acts without the permission of the owner or exclusive licensee of the copyright in the work or other subject-matter:
 - (i) makes a circumvention device capable of circumventing, or facilitating the circumvention of, the technological protection measure;
 - (ii) sells, lets for hire, or by way of trade offers or exposes for sale or hire or otherwise promotes, advertises or markets, such a circumvention device;
 - (iii) distributes such a circumvention device for the purpose of trade, or for any other purpose that will affect prejudicially the owner of the copyright;
 - (iv) exhibits such a circumvention device in public by way of trade;
 - (v) imports such a circumvention device into Australia for the purpose of:
 - (A) selling, letting for hire, or by way of trade offering or exposing for sale or hire or otherwise promoting, advertising or marketing, the device; or
 - (B) distributing the device for the purpose of trade, or for any other purpose that will affect prejudicially the owner of the copyright; or
 - (C) exhibiting the device in public by way of trade;

- (vi) makes such a circumvention device available online to an extent that will affect prejudicially the owner of the copyright;
 - (vii) provides, or by way of trade promotes, advertises or markets, a circumvention service capable of circumventing, or facilitating the circumvention of, the technological protection measure; and
 - (c) the person knew, or ought reasonably to have known, that the device or service would be used to circumvent, or facilitate the circumvention of, the technological protection measure.
- (2) This section does not apply in relation to anything lawfully done for the purposes of law enforcement or national security by or on behalf of:
- (a) the Commonwealth or a State or Territory; or
 - (b) an authority of the Commonwealth or of a State or Territory.
- (3) This section does not apply in relation to the supply of a circumvention device or a circumvention service to a person for use for a permitted purpose if:
- (a) the person is a qualified person; and
 - (b) the person gives the supplier before, or at the time of, the supply a declaration signed by the person:
 - (i) stating the name and address of the person; and
 - (ii) stating the basis on which the person is a qualified person; and
 - (iii) stating the name and address of the supplier of the circumvention device or circumvention service; and
 - (iv) stating that the device or service is to be used only for a permitted purpose by a qualified person; and
 - (v) identifying the permitted purpose by reference to one or more of sections 47D, 47E, 47F, 48A, 49, 50, 51A and 183 and Part VB; and
 - (vi) stating that a work or other subject-matter in relation to which the person proposes to use the device or service for a permitted purpose is not readily available to the person in a form that is not protected by a technological protection measure.
- (4) This section does not apply in relation to the making or importing of a circumvention device:
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- (a) for use only for a permitted purpose relating to a work or other subject-matter that is not readily available in a form that is not protected by a technological protection measure; or
 - (b) for the purpose of enabling a person to supply the device, or to supply a circumvention service, for use only for a permitted purpose.
- (4A) For the purposes of paragraphs (3)(b) and (4)(a), a work or other subject-matter is taken not to be readily available if it is not available in a form that lets a person do an act relating to it that is not an infringement of copyright in it as a result of section 47D, 47E, 47F, 48A, 49, 50, 51A or 183 or Part VB.
- (5) If this section applies, the owner or exclusive licensee of the copyright may bring an action against the person.
- (6) In an action under subsection (5), it must be presumed that the defendant knew, or ought reasonably to have known, that the circumvention device or service to which the action relates would be used for a purpose referred to in paragraph (1)(c) unless the defendant proves otherwise.
- (7) For the purposes of this section, a circumvention device or a circumvention service is taken to be used for a permitted purpose only if:
- (a) the device or service is used for the purpose of doing an act comprised in the copyright in a work or other subject-matter; and
 - (b) the doing of the act is not an infringement of the copyright in the work or other subject-matter under section 47D, 47E, 47F, 48A, 49, 50, 51A or 183 or Part VB.
- (8) In this section:
- qualified person** means:
- (a) a person referred to in paragraph 47D(1)(a), 47E(1)(a) or 47F(1)(a); or
 - (b) a person who is an authorized officer for the purposes of section 48A, 49, 50 or 51A; or
 - (c) a person authorised in writing by the Commonwealth or a State for the purposes of section 183; or

- (d) a person authorised in writing by a body administering an institution (within the meaning of Part VB) to do on behalf of the body an act that is not an infringement of copyright because of that Part.

supply means:

- (a) in relation to a circumvention device—sell the device, let it for hire, distribute it or make it available online; and
 - (b) in relation to a circumvention service—provide the service.
- (9) The defendant bears the burden of establishing the matters referred to in subsections (3), (4) and (4A).

116B Removal or alteration of electronic rights management information

- (1) This section applies if:
 - (a) a person removes or alters any electronic rights management information attached to a copy of a work or other subject-matter in which copyright subsists; and
 - (b) the person does so without the permission of the owner or exclusive licensee of the copyright; and
 - (c) the person knew, or ought reasonably to have known, that the removal or alteration would induce, enable, facilitate or conceal an infringement of the copyright in the work or other subject-matter.
- (2) If this section applies, the owner or exclusive licensee of the copyright may bring an action against the person.
- (3) In an action under subsection (2), it must be presumed that the defendant knew, or ought reasonably to have known, that the removal or alteration to which the action relates would have the effect referred to in paragraph (1)(c) unless the defendant proves otherwise.

116C Commercial dealings etc. with works whose electronic rights management information is removed or altered

- (1) This section applies if:
 - (a) a person does any of the following acts in relation to a work or other subject-matter in which copyright subsists without
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the permission of the owner or exclusive licensee of the copyright:

- (i) distributes for the purpose of trade a copy of the work or other subject-matter;
 - (ii) imports into Australia a copy of the work or other subject-matter for the purpose of trade;
 - (iii) communicates a copy of the work or other subject-matter to the public; and
- (b) any electronic rights management information attached to the copy has been removed or altered; and
- (c) the person knew that the electronic rights management information had been so removed or altered without the permission of the owner or exclusive licensee of the copyright; and
- (d) the person knew, or ought reasonably to have known, that the act referred to in paragraph (a) that was done by the person would induce, enable, facilitate or conceal an infringement of the copyright in the work or other subject-matter.
- (2) If this section applies, the owner or exclusive licensee of the copyright may bring an action against the person.
- (3) In an action under subsection (2), it must be presumed that the defendant:
- (a) had the knowledge referred to in paragraph (1)(c); and
 - (b) knew, or ought reasonably to have known, that the doing of the act to which the action relates would have the effect referred to in paragraph (1)(d);
- unless the defendant proves otherwise.

116D Remedies in actions under sections 116A, 116B and 116C

- (1) The relief that a court may grant in an action under section 116A, 116B or 116C includes an injunction (subject to such terms, if any, as the court thinks fit) and either damages or an account of profits.
- (2) If, in an action under section 116A, 116B or 116C, the court is satisfied that it is proper to do so, having regard to:
 - (a) the flagrancy of the defendant's actions that are the subject of the action; and

- (b) any benefit shown to have accrued to the defendant as a result of those acts; and
 - (c) any other relevant matters;
- the court may, in assessing damages, award such additional damages as it considers appropriate in the circumstances.

100 Subsection 132(5A)

Repeal the subsection, substitute:

- (5A) A person must not provide, or by way of trade promote, advertise or market, a circumvention service if the person knows, or is reckless as to whether, the service will be used to circumvent, or facilitate the circumvention of, a technological protection measure.
- (5B) A person must not:
 - (a) make a circumvention device; or
 - (b) sell, let for hire, or by way of trade offer or expose for sale or hire, or otherwise promote, advertise or market, a circumvention device; or
 - (c) distribute a circumvention device with the intention of trading, or engaging in any other activity that will affect prejudicially an owner of copyright; or
 - (d) by way of trade exhibit a circumvention device in public; or
 - (e) import a circumvention device into Australia with the intention of:
 - (i) selling, letting for hire, or by way of trade offering or exposing for sale or hire, or otherwise promoting, advertising or marketing, the device; or
 - (ii) distributing the device for trading, or for engaging in any other activity that will affect prejudicially an owner of copyright; or
 - (iii) exhibiting the device in public by way of trade; or
 - (f) make a circumvention device available online to an extent that will affect prejudicially an owner of copyright;if the person knows, or is reckless as to whether, the device will be used to circumvent, or facilitate the circumvention of, a technological protection measure.
- (5C) A person must not remove or alter any electronic rights management information attached to a copy of a work or other subject-matter in which copyright subsists, except with the

permission of the owner or exclusive licensee of the copyright, if the person knows, or is reckless as to whether, the removal or alteration will induce, enable, facilitate or conceal an infringement of the copyright in the work or other subject-matter.

(5D) A person must not:

- (a) distribute a copy of a work or other subject-matter in which copyright subsists with the intention of trading; or
- (b) import into Australia a copy of such a work or other subject-matter with the intention mentioned in paragraph (a); or
- (c) communicate to the public a copy of such a work or other subject-matter;

without the permission of the owner or exclusive licensee of the copyright if any electronic rights management information attached to the copy has been removed or altered and the person:

- (d) knows that the electronic rights management information has been so removed or altered without the permission of the owner or exclusive licensee of the copyright; and
- (e) knows, or is reckless as to whether, the doing of the act referred to in paragraph (a), (b) or (c) will induce, enable, facilitate or conceal an infringement of the copyright in the work or other subject-matter.

(5E) Subsections (5A) and (5B) do not apply in respect of anything lawfully done for the purposes of law enforcement or national security by or on behalf of:

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

(5F) Subsections (5A) and (5B) do not apply in relation to the supply of a circumvention device or a circumvention service to a person for use for a permitted purpose if:

- (a) the person is a qualified person; and
- (b) the person gives the supplier before, or at the time of, the supply a declaration signed by the person:
 - (i) stating the name and address of the person; and
 - (ii) stating the basis on which the person is a qualified person; and
 - (iii) stating the name and address of the supplier of the circumvention device or circumvention service; and

- (iv) stating that the device or service is to be used only for a permitted purpose by a qualified person; and
 - (v) identifying the permitted purpose by reference to one or more of sections 47D, 47E, 47F, 48A, 49, 50, 51A and 183 and Part VB; and
 - (vi) stating that a work or other subject-matter in relation to which the person proposes to use the device or service for a permitted purpose is not readily available to the person in a form that is not protected by a technological protection measure.
- (5G) Subsection (5B) does not apply in relation to the making or importing of a circumvention device:
- (a) for use only for a permitted purpose relating to a work or other subject-matter that is not readily available in a form that is not protected by a technological protection measure; or
 - (b) to enable a person to supply the device, or to supply a circumvention service, for use only for a permitted purpose.
- (5GA) For the purposes of paragraphs (5F)(b) and (5G)(a), a work or other subject-matter is taken not to be readily available if it is not available in a form that lets a person do an act relating to it that is not an infringement of copyright in it as a result of section 47D, 47E, 47F, 48A, 49, 50, 51A or 183 or Part VB.
- (5H) For the purposes of this section, a circumvention device or a circumvention service is taken to be used for a permitted purpose only if:
- (a) the device or service is used to do an act comprised in the copyright in a work or other subject-matter; and
 - (b) the act is done with the licence of the owner or exclusive licensee of the copyright, or is not an infringement of the copyright in the work or other subject-matter under section 47D, 47E, 47F, 48A, 49, 50, 51A or 183 or Part VB.
- (5J) The only burden of proof that the defendant bears in respect of subsection (5E), (5F) or (5G) is the burden of adducing or pointing to evidence that suggests a reasonable possibility that the act or matter in question was done or existed.

100A After subsection 132(6)

Insert:

(6AA) If:

- (a) a person contravenes subsection (1), (2) or (2A); and
- (b) the article to which the contravention relates is an infringing copy because it was made by converting a work or other subject-matter from hardcopy or analog form into a digital or other electronic machine-readable form;

the person is guilty of an offence punishable on summary conviction by a fine of not more than 850 penalty units and/or imprisonment for not more than 5 years.

(6AB) If:

- (a) a person contravenes subsection (1), (2) or (2A); and
- (b) subsection (6AA) does not apply;

the person 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.

101 Subsection 132(6A)

Omit “(1), (2), (2A), (3), (5) or (5AA)”, substitute “(3), (5), (5AA), (5A), (5B), (5C) or (5D)”.

101A Subsection 132(9)

Repeal the subsection, substitute:

(9) In this section:

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

distribute includes distribute by way of communication.

place of public entertainment includes any premises that are occupied principally for purposes other than public entertainment but are from time to time made available for hire for purposes of public entertainment.

qualified person means:

- (a) a person referred to in paragraph 47D(1)(a), 47E(1)(a) or 47F(1)(a); or

- (b) a person who is an authorised officer for the purposes of section 48A, 49, 50 or 51A; or
- (c) a person authorised in writing by the Commonwealth or a State for the purposes of section 183; or
- (d) a person authorised in writing by a body administering an institution (within the meaning of Part VB) to do on behalf of the body an act that is not an infringement of copyright because of that Part.

supply means:

- (a) in relation to a circumvention device—sell the device, let it for hire, distribute it or make it available online; and
 - (b) in relation to a circumvention service—provide the service.
- (10) In the definition of *infringing copy* in subsection 10(1) as that definition has effect for the purposes of this section, the expression “article” has the meaning given by subsection (9) of this section.

102 Subsection 133(4)

After “appears to the court”, insert “to be a circumvention device used or intended to be used in contravention of that section, or”.

102A Section 134

After “of a device”, insert “(including a circumvention device)”.

103 At the end of section 134

Add:

- (2) An action may not be brought under section 116A, 116B or 116C in respect of an act done by a person if more than 6 years have elapsed from the time when the act was done.

104 After Part V

Insert:

Part VAA—Broadcast decoding devices

Division 1—Preliminary

135AL Definitions

In this Part:

action means a proceeding of a civil nature between parties, and includes a counterclaim.

broadcast decoding device means a device (including a computer program) that is designed or adapted to enable a person to gain access to an encoded broadcast without the authorisation of the broadcaster by circumventing, or facilitating the circumvention of, the technical means or arrangements that protect access in an intelligible form to the broadcast.

broadcaster means a person who makes an encoded broadcast.

encoded broadcast means:

- (a) a broadcast that is made available only to persons who have the prior authorisation of the broadcaster and only on payment by such persons of subscription fees (whether periodically or otherwise); or
- (b) a broadcast (other than a radio broadcast or a broadcast to which paragraph (a) applies) delivered by a broadcasting service that is a commercial or national broadcasting service within the meaning of the *Broadcasting Services Act 1992*; being a broadcast, access to which in an intelligible form is protected by a technical measure or arrangement (including a computer program).

135AM Counterclaim

In the application of this Part in relation to a counterclaim, references to the defendant are to be read as references to the plaintiff.

Division 2—Action in relation to broadcast decoding devices

135AN Actions in relation to the manufacture of and dealing with broadcast decoding devices

- (1) Subject to subsection (2), this section applies if:
- (a) a broadcaster makes an encoded broadcast; and
 - (b) a person does any of the following acts without the permission of the broadcaster:
 - (i) makes a broadcast decoding device;
 - (ii) sells, lets for hire, or by way of trade offers or exposes for sale or hire, a broadcast decoding device;
 - (iii) distributes a broadcast decoding device for the purpose of trade, or for any other purpose that will affect prejudicially the broadcaster;
 - (iv) exhibits a broadcast decoding device in public by way of trade;
 - (v) imports a broadcast decoding device into Australia for the purpose of:
 - (A) selling, letting for hire, or by way of trade offering or exposing for sale or hire, the device; or
 - (B) distributing the device for the purpose of trade, or for any other purpose that will affect prejudicially the broadcaster; or
 - (C) exhibiting the device in public by way of trade;
 - (vi) makes a broadcast decoding device available online to an extent that will affect prejudicially the broadcaster; and
 - (c) the person knew, or ought reasonably to have known, that the device would be used to enable a person to gain access to an encoded broadcast without the authorisation of the broadcaster.
- (2) This section does not apply in relation to anything lawfully done for the purposes of law enforcement or national security by or on behalf of:
- (a) the Commonwealth or a State or Territory; or

- (b) an authority of the Commonwealth or of a State or Territory.
- (3) Subject to subsection (8), if this section applies, the broadcaster may bring an action against the person.
- (4) The relief that a court may grant in an action under this section includes an injunction (subject to such terms, if any, as the court thinks fit) and either damages or an account of profits.
- (5) If, in an action under this section, the court is satisfied that it is proper to do so, having regard to:
 - (a) the flagrancy with which the defendant did any of the acts described in paragraph (1)(b); and
 - (b) any benefit shown to have accrued to the defendant as a result of making or dealing with the relevant broadcast decoding device; and
 - (c) all other relevant matters;the court may, in assessing damages, award such additional damages as it considers appropriate in the circumstances.
- (6) If, in an action under this section, the court is satisfied that it is proper to do so, having regard to all relevant matters, the court may, by order, direct that the relevant broadcast decoding device be destroyed or otherwise dealt with as specified in the order.
- (7) In an action under this section it must be presumed that the defendant knew, or ought reasonably to have known, that the broadcast decoding device would be used for the purpose referred to in paragraph (1)(c) unless the defendant proves otherwise.
- (8) An action cannot be brought against a person under this section in respect of any act described in paragraph (1)(b) after the expiration of 6 years from the time when the person did the act.

135ANA Actions in relation to the use of broadcast decoding devices for commercial purposes

- (1) Subject to subsection (2), this section applies if:
 - (a) a broadcaster makes an encoded broadcast; and
 - (b) a person uses, or authorises the use of, a broadcast decoding device to gain access to an encoded broadcast without the authorisation of the broadcaster; and
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- (c) the person so uses, or authorises the use of, the device for the purposes of, or in connection with, a trade or business carried on by, or in association with, the person; and
 - (d) the person knew, or ought reasonably to have known, that the broadcaster had not authorised the person to gain access to the broadcast by so using, or authorising the use of, the device.
- (2) This section does not apply in relation to anything lawfully done for the purposes of law enforcement or national security by or on behalf of:
 - (a) the Commonwealth or a State or Territory; or
 - (b) an authority of the Commonwealth or of a State or Territory.
- (3) Subject to subsection (7), if this section applies, the broadcaster may bring an action against the person.
- (4) The relief that a court may grant in an action under this section includes an injunction (subject to such terms, if any, as the court thinks fit) and either damages or an account of profits.
- (5) If, in an action under this section, the court is satisfied that it is proper to do so, having regard to:
 - (a) the flagrancy with which the defendant did an act described in paragraph (1)(b); and
 - (b) any benefit shown to have accrued to the defendant, or to the trade or business carried on by, or in association with, the defendant, as a result of the use of the broadcast decoding device; and
 - (c) all other relevant matters;the court may, in assessing damages, award such additional damages as it considers appropriate in the circumstances.
- (6) If, in an action under this section, the court is satisfied that it is proper to do so, having regard to all relevant matters, the court may, by order, direct that the relevant broadcast decoding device be destroyed or otherwise dealt with as specified in the order.
- (7) An action cannot be brought against a person under this section in respect of an act described in paragraph (1)(b) after the expiration of 6 years from the time when the person did the act.

Division 3—Jurisdiction and appeals

135AP Exercise of jurisdiction

The jurisdiction of the Supreme Court of a State or Territory in an action under the Part is to be exercised by a single Judge of the Court.

135AQ Appeals

- (1) Subject to subsection (2), a decision of a court of a State or Territory (however constituted) under this Part is final and conclusive.
- (2) An appeal lies from a decision of a court of a State or Territory under this Part:
 - (a) to the Federal Court of Australia; or
 - (b) by special leave of the High Court, to the High Court.

135AR Jurisdiction of Federal Court of Australia

Jurisdiction is conferred on the Federal Court of Australia with respect to actions under this Part.

Division 4—Offences

135AS Offences

- (1) A person must not:
 - (a) make a broadcast decoding device; or
 - (b) sell, let for hire, or by way of trade offer or expose for sale or hire, a broadcast decoding device; or
 - (c) distribute a broadcast decoding device with the intention of trading, or engaging in any other activity that will affect prejudicially a broadcaster; or
 - (d) exhibit a broadcast decoding device in public by way of trade; or
 - (e) import a broadcast decoding device into Australia with the intention of:
 - (i) selling, letting for hire, or by way of trade, offering or exposing for sale or hire, the device; or

- (ii) distributing the device for trading, or for engaging in any other activity that will affect prejudicially a broadcaster; or
 - (iii) exhibiting the device in public by way of trade; or
 - (f) make a broadcast decoding device available on-line to an extent that will affect prejudicially a broadcaster;
- if the person knows, or is reckless as to whether, the device will be used to enable a person to gain access to an encoded broadcast without the authorisation of the broadcaster.
- (2) Subsection (1) does not apply in respect of anything lawfully done for the purposes of law enforcement or national security by or on behalf of:
 - (a) the Commonwealth or a State or Territory; or
 - (b) an authority of the Commonwealth or of a State or Territory.
 - (3) The only burden of proof that a defendant bears in respect of subsection (2) is the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter in question existed.
 - (4) A person who contravenes subsection (1) 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.

135AT Prosecutions

- (1) Prosecutions for offences against section 135AS may be brought in the Federal Court of Australia or in any other court of competent jurisdiction.
- (2) Jurisdiction is conferred on the Federal Court of Australia to hear and determine prosecutions for offences against section 135AS.

135AU Destruction etc. of devices

The court before which a person is charged with an offence against section 135AS may, whether the person is convicted of the offence or not, order that any article in the possession of the person that appears to the court to be a broadcast decoding device be destroyed or otherwise dealt with in such manner as the court thinks fit.

105 Part VA (heading)

Repeal the heading, substitute:

**Part VA—Copying and communication of
broadcasts by educational and other
institutions**

105A Section 135A

Insert:

agreed notice means a remuneration notice specifying that the amount of equitable remuneration payable to the collecting society by the administering body giving the notice is to be assessed on the basis of an agreed system.

106 Section 135A (definition of *preview copy*)

Omit “transmission”, substitute “broadcast”.

107 Section 135A (definition of *transmission*)

Repeal the definition.

108 Paragraph 135B(a)

Omit “transmission” (wherever occurring), substitute “broadcast”.

Note: The heading to section 135B is replaced by the heading “**Copies and communications of broadcasts**”.

108A Paragraph 135B(b)

Repeal the paragraph, substitute:

- (b) a reference to the making of a copy of a broadcast is a reference to the making of a copy of the whole or a part of the broadcast; and
- (c) a reference to the communication of a copy of a broadcast is a reference to the communication of a copy of the whole or a part of the broadcast.

108B Division 2 of Part VA (heading)

Repeal the heading, substitute:

Division 2—Copying and communication of broadcasts

109 Subsection 135E(1)

Omit “transmission” (wherever occurring), substitute “broadcast”.

Note: The heading to section 135E is replaced by the heading “**Copying and communication of broadcasts by educational institutions etc.**”.

109A Subsection 135E(1)

After “by the making”, insert “or communication”.

109B Paragraphs 135E(1)(b) and (c)

After “copy” (wherever occurring), insert “or communication”.

109C Paragraph 135E(1)(d)

Repeal the paragraph, substitute:

- (d) the administering body complies with subsection 135K(1) or (3), or section 135KA, as the case requires, in relation to the copy or communication.

109D Subsection 135E(2)

Omit “copy of a transmission”, substitute “copy, or communication of a copy, of a broadcast”.

109E At the end of subsection 135E(2)

Add “or communication”.

110 Subsections 135F(1) and (2)

Omit “transmission” (wherever occurring), substitute “broadcast”.

110A At the end of section 135F

Add:

- (7) The copyright in a broadcast, or in any work, sound recording or cinematograph film included in a broadcast, is not infringed by the communication of a preview copy of the broadcast if:
 - (a) the communication is made solely to enable an administering body to decide whether or not that copy should be retained:
 - (i) for the educational purposes of the institution administered by it; or

- (ii) for use in the provision of assistance to persons with an intellectual disability by the institution administered by it; and
- (b) the communication is made only to the extent necessary for the purpose mentioned in paragraph (a); and
- (c) the communication is made within the preview period.

Note: The heading to section 135F is replaced by the heading “**Making and communication of preview copies**”.

111 Subsection 135G(1)

Repeal the subsection, substitute:

- (1) An administering body may, by notice in writing given to the collecting society by it, or on its behalf, undertake to pay equitable remuneration to the society for:
 - (a) copies of broadcasts made by it, or on its behalf, while the notice is in force; and
 - (b) communications of such copies made by it, or on its behalf, while the notice is in force.

111A Subsection 135G(2)

Omit “or a sampling system”, substitute “, a sampling system or an agreed system”.

112 Subsection 135H(1)

Repeal the subsection, substitute:

- (1) If a records notice is given by, or on behalf of, an administering body, the amount of equitable remuneration payable to the collecting society by the administering body for:
 - (a) each copy of a broadcast made by, or on behalf of, the administering body while the notice is in force; and
 - (b) each communication of such a copy of a broadcast made by or on behalf of the administering body while the notice is in force;is such amount as is determined by agreement between the administering body and the collecting society or, failing such agreement, by the Copyright Tribunal on application made by either of them.

112A At the end of subsection 135H(1A)

Add “and for the communication by, or on behalf of that body, of a copy of the broadcast”.

113 Paragraph 135H(2)(a)

Omit “transmissions”, substitute “broadcasts”.

113A At the end of section 135H

Add:

(3) If:

- (a) a broadcast is copied by, or on behalf of, an administering body, or is taken under this subsection to have been so copied; and
- (b) the copy is communicated by, or on behalf of, the body by being made available online, or is taken under this subsection to have been so communicated; and
- (c) the copy remains so available online for longer than the prescribed period;

then, when that period ends:

- (d) the broadcast is taken to have been copied again by, or on behalf of, the body; and
 - (e) the copy mentioned in paragraph (a) is taken to have been communicated again by, or on behalf of, the body by making it available online for a further prescribed period.
- (4) For the purposes of subsection (1), an amount of equitable remuneration must be determined (whether by agreement or by the Copyright Tribunal) having regard to:
- (a) copies and communications to which paragraphs (3)(d) and (e) apply; and
 - (b) such matters (if any) as are prescribed; and
 - (c) such other matters (if any) as are relevant in the circumstances.

(5) In this section:

prescribed period means the period of 12 months, or if another period is agreed between the relevant administering body and collecting society for the purposes of subsection (3), that other period.

114 Subsection 135J(1)

Repeal the subsection, substitute:

- (1) If a sampling notice is given by, or on behalf of, an administering body, the amount of equitable remuneration payable to the collecting society by the administering body for:
- (a) copies of broadcasts made by, or on behalf of, the administering body while the notice is in force; and
 - (b) communications of such copies made by, or on behalf of, the administering body while the notice is in force;
- is such annual amount as is determined by agreement between the administering body and the collecting society or, failing such agreement, by the Copyright Tribunal on application made by either of them.

114A Subsection 135J(1A)

Omit “transmissions made by or on behalf of that body”, substitute “broadcasts made by, or on behalf of, that body and for communications by, or on behalf of, that body of such copies”.

114B After subsection 135J(1A)

Insert:

- (1B) If:
- (a) a broadcast is copied by, or on behalf of, an administering body, or is taken under this subsection to have been so copied; and
 - (b) the copy is communicated by, or on behalf of, the body by being made available online, or is taken under this subsection to have been so communicated; and
 - (c) the copy remains so available online for longer than the prescribed period;
- then, when that period ends:
- (d) the broadcast is taken to have been copied again by, or on behalf of, the body; and
 - (e) the copy mentioned in paragraph (a) is taken to have been communicated again by, or on behalf of, the body by making it available online for a further prescribed period.

114C Subsection 135J(2)

Repeal the subsection, substitute:

- (2) The annual amount referred to in subsection (1) must be determined (whether by agreement or by the Copyright Tribunal) having regard to:
- (a) copies and communications to which paragraphs (1B)(d) and (e) apply; and
 - (b) the extent to which other copies of broadcasts are made and communicated by, or on behalf of, the administering body in a particular period; and
 - (c) such matters (if any) as are prescribed; and
 - (d) such other matters (if any) as are relevant in the circumstances.

114D Subsection 135J(3)

Omit “of transmissions”, substitute “of broadcasts and the communication of those copies,”.

115 Subsection 135J(5)

Omit “transmission”, substitute “broadcast, or communication of a copy of a broadcast,”.

115A At the end of section 135J

Add:

- (6) In this section:

prescribed period means the period of 12 months, or if another period is agreed between the relevant administering body and collecting society for the purposes of subsection (1B), that other period.

115AB After section 135J

Insert:

135JA Agreed notice

- (1) If an agreed notice is given by, or on behalf of an administering body, the amount of equitable remuneration payable to the collecting society by the administering body for:

- (a) copies of broadcasts made by, or on behalf of, the administering body while the notice is in force; and
 - (b) communications of such copies made by, or on behalf of, the administering body while the notice is in force;
- is an amount (whether an annual amount or otherwise) determined by agreement between the administering body and the collecting society or, failing such agreement, by the Copyright Tribunal on application made by either of them.
- (2) If a determination has been made by the Tribunal under subsection (1), either the administering body or the collecting society may, at any time after 12 months from the day on which the determination was made, apply to the Tribunal under that subsection for a new determination of the amount of equitable remuneration payable to the collecting society by the administering body for copies of broadcasts made and communicated by, or on behalf of, that body.
 - (3) Subject to subsection (5), the matters and processes constituting an agreed system, and any matters that are necessary or convenient to be assessed or taken into account for the purposes of the system, must be determined by agreement between the administering body and the collecting society or, failing such agreement, by the Copyright Tribunal on application made by either of them.
 - (4) If:
 - (a) a broadcast is copied by, or on behalf of, an administering body, or is taken under this subsection to have been so copied; and
 - (b) the copy is communicated by, or on behalf of, the body by being made available online, or is taken under this subsection to have been so communicated; and
 - (c) the copy remains so available online for longer than the prescribed period;then, when that period ends:
 - (d) the broadcast is taken to have been copied again by, or on behalf of, the body; and
 - (e) the copy mentioned in paragraph (a) is taken to have been communicated again by, or on behalf of, the body by making it available online for a further prescribed period.
 - (5) An agreed system (whether determined by agreement or by the Copyright Tribunal) must require the assessment of an amount of

equitable remuneration by a method or process that takes account of copies and communications to which paragraphs (4)(d) and (e) apply.

(6) For the purposes of subsection (1), different amounts may be determined (whether by agreement or by the Copyright Tribunal) in relation to different institutions administered by the administering body.

(7) If:

(a) an agreed notice is given by, or on behalf of, an administering body to the collecting society; and

(b) during any period, the administering body does not comply with one or more of the requirements of the agreed system determined under this section in relation to the notice;

subsections 135E(1) and 135F(1) do not apply to any copy of a broadcast, or communication of a copy of a broadcast, made by, or on behalf of, the administering body during that period.

(8) In this section:

prescribed period means the period of 12 months or, if another period is agreed between the relevant administering body and collecting society for the purposes of subsection (4), that other period.

116 Paragraph 135K(1)(a)

Omit “of a transmission”, substitute “in analog form of a broadcast”.

116A Paragraph 135K(1)(b)

Omit “transmission”, substitute “broadcast, and each communication of such a copy,”.

116B Paragraph 135K(1)(c)

After “copy”, insert “or communication”.

116C Subsection 135K(2)

Omit “For the purposes of subsection (1), a record of the copying of a transmission:”, substitute “A record of the kind referred to in paragraph (1)(b):”.

116D Subsection 135K(3)

Omit “of a transmission”, substitute “in analog form of a broadcast”.

116E After section 135K

Insert:

135KA Notice requirements in respect of communications

If a remuneration notice is given by, or on behalf of, an administering body to a collecting society in respect of communication of copies of broadcasts made by, or on behalf of, the body while the remuneration notice is in force, the body must, except in such circumstances (if any) as are prescribed:

- (a) give a notice, in accordance with the regulations, in relation to each such communication made by it, or on its behalf, while the remuneration notice is in force, containing:
 - (i) statements to the effect that the communication has been made under this Part and that any work or other subject-matter contained in the communication might be subject to copyright protection under this Act; and
 - (ii) such other information or particulars (if any) as are prescribed; and
- (b) in the case of each such communication made by it, or on its behalf, while the remuneration notice is in force—take all reasonable steps to ensure that the communication can only be received or accessed by persons entitled to receive or access it (for example, teachers or persons receiving educational instruction or other assistance provided by the relevant institution); and
- (c) comply with such other requirements (if any) as are prescribed in relation to each such communication made by it, or on its behalf, while the remuneration notice is in force.

117 Paragraph 135L(1)(a)

Omit “of transmissions”, substitute “of broadcasts and communication of such copies”.

117A Paragraph 135L(1)(b)

Omit “of copies of transmissions”, substitute “and communication of copies of broadcasts”.

118 Subsection 135N(1)

Omit “or 135J, as the case may be, for copies of transmissions”, substitute “, 135J or 135JA, as the case may be, for copies of broadcasts and communications of such copies”.

118A Subparagraph 135P(3)(d)(i)

Omit “or 135J”, substitute “, 135J or 135JA”.

119 Subsections 135U(1) and (2)

Omit “transmission” (wherever occurring), substitute “broadcast”.

120 Section 135V

Omit “transmissions”, substitute “broadcasts”.

121 Subsection 135W(1)

Omit “transmissions”, substitute “broadcasts”.

122 Section 135Z

Repeal the section, substitute:

135Z Relevant copyright owner may authorise copying etc.

Nothing in this Part affects the right of the owner of the copyright in a broadcast, or in a work, sound recording or cinematograph film included in a broadcast, to grant a licence authorising an administering body to make, or cause to be made, a copy of the broadcast, sound recording or film, or a reproduction of the work and to communicate, or cause to be communicated, that copy or reproduction, without infringing that copyright.

123 Section 135ZA

Omit “of a copy of a transmission”, substitute “or communication of a copy of a broadcast”.

124 Part VB (heading)

Repeal the heading, substitute:

Part VB—Reproducing and communicating works etc. by educational and other institutions

125 Section 135ZB

Insert:

electronic use notice means a remuneration notice specifying that the amount of remuneration payable in respect of licensed copies in electronic form, or licensed communications, made by, or on behalf of, the administering body giving the notice is to be assessed on the basis of an electronic use system.

126 Section 135ZB (paragraph (a) of the definition of *licensed copy*)

Repeal the paragraph, substitute:

- (a) a reproduction of the whole or a part of the work, being a reproduction that is made by, or on behalf of, a body administering an educational institution in reliance on section 135ZJ, 135ZK, 135ZL, 135ZMC or 135ZMD;

127 Section 135ZB (paragraph (b) of the definition of *licensed copy*)

Omit “or a photographic version”, substitute “, a photographic version or an electronic version”.

128 Section 135ZB

Insert:

licensed communication means a communication made by, or on behalf of, a body administering an institution in reliance on section 135ZMC, 135ZMD, 135ZP or 135ZS.

129 Section 135ZB (definition of *records notice*)

Omit “to the collecting society by”, substitute “in respect of licensed copies made in hardcopy form or analog form by, or on behalf of,”.

130 Section 135ZB(definition of *sampling notice*)

Omit “to the collecting society by”, substitute “in respect of licensed copies made in hardcopy form or analog form by, or on behalf of,”.

131 At the end of Division 1 of Part VB

Add:

135ZFA Licensed communications

For the purposes of this Part, a reference to a licensed communication of a work, or part of a work, or other subject-matter includes a reference to a licensed communication of a licensed copy of the work or other subject-matter.

132 Division 2 of Part VB (heading)

Repeal the heading, substitute:

Division 2—Reproduction by educational institutions of works that are in hardcopy form

133 Before section 135ZG

Insert:

135ZGA Application of Division

- (1) This Division applies in relation to the reproduction of a work (including an article contained in a periodical publication), or part of a work, and to the copying of a published edition of a work, or part of such an edition, only if the reproduction or copy is made from a document that is in hardcopy form.
- (2) For the purposes of this Division:
 - (a) a reference to a reproduction of a work (including an article contained in a periodical publication), or a part of a work, is to be read as a reference to a reproduction of that work or part made from a document that is in hardcopy form; and
 - (b) a reference to a facsimile copy of a printed published edition of a work, or part of such an edition, is to be read as a reference to a facsimile copy of that edition or part made from a document that is in hardcopy form.

134 Subsection 135ZG(1)

Omit “copies of a page or pages of the work in an edition of the work if the copying”, substitute “reproductions of a page or pages of the work in an edition of the work if the reproduction”.

Note: The heading to section 135ZG is replaced by the heading “**Multiple reproduction of insubstantial parts of works that are in hardcopy form**”.

135 Subsection 135ZG(2)

Omit “copy”, substitute “reproduction”.

136 Subsection 135ZG(3)

Omit “copy”, substitute “reproduction”.

137 Paragraph 135ZG(3)(b)

Omit “copied”, substitute “reproduced”.

138 Subsection 135ZG(4)

Omit “copy” (wherever occurring), substitute “reproduction”.

139 Section 135ZH

Repeal the section, substitute:

135ZH Copying of printed published editions by educational institutions

The copyright in a printed published edition of a work (being a work in which copyright does not subsist) is not infringed by the making of one or more facsimile copies of the whole or a part of the edition, if the copy, or each of the copies, is made in the course of the making of a reproduction of the whole or a part of the work by, or on behalf of, a body administering an educational institution for the educational purposes of that institution or of another educational institution.

140 Subsection 135ZJ(1)

Omit “periodical publication is not infringed by the making of one or more copies”, substitute “printed periodical publication is not infringed by the making of one or more reproductions”.

Note: The heading to section 135ZJ is replaced by the heading “**Multiple reproduction of printed periodical articles by educational institutions**”.

141 Paragraph 135ZJ(1)(b)

Omit “copy is made”, substitute “reproduction is carried out”.

142 Paragraph 135ZJ(1)(c)

Repeal the paragraph, substitute:

- (c) the body complies with subsection 135ZX(1) or (3) or section 135ZXA, as the case requires, in relation to each reproduction.

143 Subsection 135ZJ(2)

Omit “copies”, substitute “reproductions”.

144 Section 135ZK

Repeal the section, substitute:

135ZK Multiple reproduction of works published in printed anthologies

The copyright in a literary or dramatic work, being a work contained in a printed published anthology of works and comprising not more than 15 pages in that anthology, is not infringed by the making of one or more reproductions of the whole or part of the work by, or on behalf of, a body administering an educational institution if:

- (a) a remuneration notice given by, or on behalf of, the body to the relevant collecting society is in force; and
- (b) the reproduction is carried out solely for the educational purposes of the institution or of another educational institution; and
- (c) the body complies with subsection 135ZX(1) or (3) or section 135ZXA, as the case requires, in relation to each reproduction.

145 Subsection 135ZL(1)

Omit “copies”, substitute “reproductions”.

Note: The heading to section 135ZL is replaced by the heading “**Multiple reproduction of works that are in hardcopy form by educational institutions**”.

146 Paragraph 135ZL(1)(b)

Omit “copy is made”, substitute “reproduction is carried out”.

147 Paragraph 135ZL(1)(c)

Repeal the paragraph, substitute:

- (c) the body complies with subsection 135ZX(1) or (3) or section 135ZXA, as the case requires, in relation to each reproduction.

148 Subsection 135ZL(2)

Omit “copies” (wherever occurring), substitute “reproductions”.

149 Subsection 135ZM(1)

Omit “copy” (wherever occurring), substitute “reproduction”.

Note: The heading to section 135ZM is replaced by the heading “**Application of Division to certain illustrations that are in hardcopy form**”.

150 Paragraph 135ZM(2)(a)

Omit “copy” (wherever occurring), substitute “reproduction”.

151 After Division 2 of Part VB

Insert:

Division 2A—Reproduction and communication of works that are in electronic form

135ZMA Application of Division

- (1) This Division applies in relation to the reproduction of a work (including articles contained in periodical publications) or part of a work, only if the reproduction is made from an electronic form of the work.
- (2) For the purposes of this Division, a reference to a reproduction of a work (including an article contained in a periodical publication), or a part of a work, is to be read as a reference to a reproduction made from an electronic form of the work or part.

135ZMB Multiple reproduction and communication of insubstantial parts of works that are in electronic form

- (1) Subject to this section, copyright in a published literary or dramatic work is not infringed by:
- (a) the making of one or more reproductions of a part of the work; or
 - (b) communicating a part of the work;
- if the reproduction or communication is carried out on the premises of an educational institution for the purposes of a course of study provided by it.
- (2) Subsection (1) does not apply to the reproduction or communication of more than 1% of the total number of words in the work.
- (3) If:
- (a) a person makes, or causes to be made, a reproduction of a part of a work or communicates a part of a work; and
 - (b) subsection (1) applies to the making of the reproduction or to the communication;
- that subsection does not apply to the making by, or on behalf of, that person of a reproduction or to the communication by that person, of any other part of that work within 14 days after the day on which the previous reproduction or the first communication of the work was made.
- (4) If:
- (a) a person communicates a part of a work by making the part available online; and
 - (b) subsection (1) applies to the communication;
- that subsection does not apply to the making available online by that person of any other part of that work while the part previously made available online continues to be so available.

135ZMC Multiple reproduction and communication of periodical articles that are in electronic form by education institutions

- (1) Subject to this section, the copyright in an article contained in a periodical publication is not infringed by:
-

- (a) the making of one or more reproductions of the whole or a part of the article; or
 - (b) the communication of the whole or a part of the article; by, or on behalf of, a body administering an educational institution if:
 - (c) a remuneration notice given by, or on behalf of, the body to the relevant collecting society is in force; and
 - (d) the reproduction or communication is carried out solely for the educational purposes of the institution or of another educational institution; and
 - (e) the body complies with subsection 135ZX(1) or (3) or section 135ZXA, as the case requires, in relation to each reproduction or communication.
- (2) This section does not apply in relation to the reproduction or communication of, or of parts of, 2 or more articles contained in the same periodical publication unless the articles relate to the same subject-matter.

135ZMD Multiple reproduction and communication of works that are in electronic form by educational institutions

- (1) Subject to this section, the copyright in a literary, dramatic, musical or artistic work (other than an article contained in a periodical publication) is not infringed by:
- (a) the making of one or more reproductions of the whole or a part of the work; or
 - (b) the communication of the whole or a part of the work; by, or on behalf of, a body administering an educational institution if:
 - (c) a remuneration notice given by, or on behalf of, the body to the relevant collecting society is in force; and
 - (d) the reproduction or communication is carried out solely for the educational purposes of the institution or of another educational institution; and
 - (e) the body complies with subsection 135ZX(1) or (3) or section 135ZXA, as the case requires, in relation to each reproduction or communication.
- (2) This section does not apply in relation to the reproduction or communication of:
-

- (a) the whole, or of more than a reasonable portion of, a literary or dramatic work; or
 - (b) the whole, or of more than 10% of, a musical work;
- that has been separately published unless the person who makes the reproduction or communication, or causes it to be made, for, or on behalf of, the body is satisfied, after reasonable investigation, that the work is not available in electronic form within a reasonable time at an ordinary commercial price.
- (3) If:
- (a) a person communicates a part of a work by or on behalf of a body administering an educational institution, by making the part available online; and
 - (b) subsection (1) applies to the communication;
- that subsection does not apply to the making available online by, or on behalf of, that body of any other part of that work while the part previously made available online continues to be so available.

135ZME Application of Division to certain illustrations in electronic form

- (1) If an article or other literary, dramatic or musical work that is in electronic form is accompanied by an artistic work or artistic works in electronic form provided for the purpose of explaining or illustrating the article or other work, the preceding sections of this Division apply as if:
- (a) where any of those sections provides that the copyright in the article or other work is not infringed—the reference to that copyright included a reference to any copyright in the artistic work or artistic works; and
 - (b) a reference to a reproduction or communication of an article or other work included a reference to a reproduction or communication of the article or other work together with a reproduction or communication of the artistic work or artistic works; and
 - (c) a reference to a reproduction or communication of a part of an article or other work included a reference to a reproduction or communication of that part of the article or other work together with a reproduction or communication of the artistic work or artistic works provided for the purpose of explaining or illustrating that part.

- (2) If:
- (a) remuneration is paid under this Part in respect of:
 - (i) the reproduction or communication of the whole or part of an article (other than a part that is an artistic work) contained in a periodical publication; or
 - (ii) the reproduction or communication of the whole or part of a literary, dramatic or musical work, other than an article contained in a periodical publication; and
 - (b) the reproduction or communication is not an infringement of the copyright in the article or work because of section 135ZMC or 135ZMD; and
 - (c) the reproduction that is made or communicated includes an artistic work or artistic works provided for the purpose of explaining or illustrating the article or work;
- the amount of the remuneration must be divided among the owner or owners of the copyright in the artistic work or artistic works and the owner or owners of the copyright in the article or other literary, dramatic or musical work or works.
- (3) The division of an amount of remuneration under subsection (2) is to be carried out as agreed between the relevant copyright owners or, failing such agreement, as determined by the Copyright Tribunal on application made by any of them.

152 Division 3 of Part VB (heading)

Repeal the heading, substitute:

Division 3—Reproduction and communication of works by institutions assisting persons with a print disability

153 Section 135ZN

Repeal the section, substitute:

135ZN Copying published editions by institutions assisting persons with a print disability

The copyright in a published edition of a work (being a work in which copyright does not subsist) is not infringed by the making of one or more facsimile copies of the whole or a part of the edition if

the copy, or each of the copies, is made in the course of the making of a reproduction of the whole or a part of the work by, or on behalf of, a body administering an institution assisting persons with a print disability for use in the provision, whether by the institution or otherwise, of assistance to such persons.

154 Subsection 135ZP(1)

After “making”, insert “or communication”.

Note: The heading to section 135ZP is altered by omitting “**copying**” and substituting “**reproduction and communication**”.

155 Paragraph 135ZP(1)(b)

After “is made”, insert “, or each communication is carried out”.

156 Paragraph 135ZP(1)(c)

Repeal the paragraph, substitute:

- (c) the body complies with subsection 135ZX(1) or (3) or section 135ZXA, as the case requires, in relation to each copy or communication.

157 Subsection 135ZP(2)

Repeal the subsection, substitute:

- (2) The copyright in a published literary or dramatic work is not infringed by the making or communication by, or on behalf of, a body administering an institution assisting persons with a print disability, of one or more Braille versions, large-print versions, photographic versions or electronic versions of the work or of a part of the work if:
 - (a) a remuneration notice given by, or on behalf of, the body to the relevant collecting society is in force; and
 - (b) each version is made, or each communication is carried out, solely for the purpose of the provision, whether by the institution or otherwise of assistance to persons with a print disability; and
 - (c) the body complies with subsection 135ZX(1) or (3) or section 135ZXA, as the case requires, in relation to each version or communication.

158 After subsection 135ZP(6)

Insert:

- (6A) Subsection (2) does not apply to the making or communication of an electronic version of the work, or of a part of the work, unless the person who makes or communicates the version, or causes the version to be made, or communicated, for, or on behalf of, a body administering an institution assisting persons with a print disability is satisfied, after reasonable investigation, that an electronic version of the work, being a version that has been separately published, is not available within a reasonable time at an ordinary commercial price.

159 Subsections 135ZQ(1) and (2)

Repeal the subsections, substitute:

- (1) Subject to this section, the copyright in a published literary or dramatic work is not infringed by the making by, or on behalf of, a body administering an institution assisting persons with a print disability, of a relevant reproduction or a relevant communication of the work, or of a part of the work, if the reproduction or communication is made solely for use in the making by, or on behalf of that body, of a reproduction or communication of the work, or of a part of the work, under section 135ZP for a person with a print disability.

(2) If:

- (a) a relevant reproduction or a relevant communication of a work, or of a part of a work, is made by, or on behalf of, a body administering an institution assisting persons with a print disability; and
- (b) the reproduction or communication is used otherwise than for use in the making by, or on behalf of that body, of a reproduction or communication of the work, or a part of the work, under section 135ZP for a person with a print disability;

subsection (1) does not apply, and is taken to never have applied, to the making of the relevant reproduction or relevant communication.

Note: The heading to section 135ZQ is altered by inserting “**and relevant communications**” after “**relevant reproductions**”.

160 Subsection 135ZQ(3)

After “embodying a sound recording”, insert “in analog form”.

161 Subsection 135ZQ(4)

After “a relevant reproduction”, insert “in hardcopy form”.

162 Subsection 135ZQ(4A)

After “relevant reproduction” (wherever occurring), insert “or relevant communication”.

163 Paragraph 135ZQ(4B)(b)

After “reproduced”, insert “or communicated”.

164 Paragraph 135ZQ(4B)(c)

After “reproduction”, insert “or communication”.

165 Subsection 135ZQ(5)

Repeal the subsection, substitute:

(5) In this section:

relevant communication, in relation to a work or part of a work, means:

- (a) the communication of a sound recording of the work, or part of the work; or
- (b) the communication of an electronic version of the work.

relevant reproduction, in relation to a work or part of a work, means:

- (a) a reproduction of the work, or part of the work; or
- (b) a record embodying a sound recording of the work, or part of the work; or
- (c) a Braille version, a large-print version, a photographic version or an electronic version of the work, or part of the work.

166 Division 4 of Part VB (heading)

Repeal the heading, substitute:

**Division 4—Reproduction and communication of works
etc. by institutions assisting persons with an
intellectual disability**

167 Section 135ZR

Repeal the section, substitute:

**135ZR Copying of published editions by institutions assisting
persons with an intellectual disability**

The copyright in a published edition of a work (being a work in which copyright does not subsist) is not infringed by the making of one or more facsimile copies of the whole or a part of the edition in the course of making one or more reproductions of the whole or a part of the work by, or on behalf of, a body administering an institution assisting persons with an intellectual disability for use in the provision, whether by the institution or otherwise, of assistance to such persons.

168 Subsection 135ZS(1)

After “the making”, insert “or communication”.

Note: The heading to section 135ZS is altered by inserting “**and communication**” after “**Copying**”.

169 At the end of paragraph 135ZS(1)(a)

Add “and”.

170 Paragraphs 135ZS(1)(b) and (c)

Repeal the paragraphs, substitute:

- (b) the copying or communication is carried out solely for the purpose of use in the provision, whether by the institution or otherwise, of assistance to persons with an intellectual disability; and
- (c) the body complies with subsection 135ZX(1) or (3) or section 135ZXA, as the case requires, in relation to the copy or communication.

171 Subsection 135ZS(2)

After “the making”, insert “or communication”.

172 Subsection 135ZS(2)

Omit “makes the copy, or causes the copy to be made”, substitute “makes the copy or communication, or causes the copy or communication to be made”.

173 Paragraphs 135ZS(2)(c) and (d)

After “obtained”, insert “or is available electronically”.

174 Subsection 135ZT(1)

After “copy” (wherever occurring), insert “or communication”.

Note: The heading to section 135ZT is replaced by the heading “**Making of copies etc. for use in making copies or communications for a person with an intellectual disability**”.

175 Subsection 135ZT(2)

After “copy” (wherever occurring), insert “or communication”.

176 Subsection 135ZT(3)

After “embodying a sound recording”, insert “in analog form”.

177 Subsection 135ZT(4)

After “a copy”, insert “, in hardcopy form or analog form,”.

178 Subsection 135ZU(1)

After “licensed copies”, insert “and licensed communications”.

179 Subsection 135ZU(1)

After “being copies”, insert “and communications”.

180 Subsection 135ZU(2)

Omit “or a sampling system”, substitute “, a sampling system or an electronic use system”.

181 After subsection 135ZU(2)

Insert:

(2A) An administering body may give either a records notice or a sampling notice in respect of licensed copies made in hardcopy form or analog form, but may only give an electronic use notice in

respect of licensed copies made in electronic form, or in respect of licensed communications.

184 Subsection 135ZW(5)

Omit all the words after “sections”, substitute “135ZJ, 135ZK, 135ZL, 135ZMC, 135ZMD, 135ZP and 135ZS do not apply to any reproduction or copy of a work or other subject-matter made during that period by, or on behalf of, the administering body, being a reproduction or copy to which the sampling notice applies”.

185 After section 135ZW

Insert:

135ZWA Electronic use notices

- (1) If an electronic use notice is given by, or on behalf of, an administering body, the amount of equitable remuneration payable to the relevant collecting society by the administering body for licensed copies and licensed communications made by it, or on its behalf, while the notice is in force is an amount (whether an amount per year or otherwise) determined by agreement between the administering body and the collecting society or, failing such agreement, by the Copyright Tribunal on application made by either of them.
 - (2) The matters and processes constituting an electronic use system, and any matters that are necessary or convenient to be assessed or taken into account for the purposes of the system, must be determined by agreement between the administering body and the relevant collecting society or, failing such agreement, by the Copyright Tribunal on application made by either of them.
- (2A) If:
- (a) a work is reproduced by, or on behalf of, an administering body, or is taken under this subsection to have been so reproduced; and
 - (b) the reproduction is communicated by, or on behalf of, the body by being made available online, or is taken under this subsection to have been so communicated; and
 - (c) the reproduction remains so available online for longer than the prescribed period;

then, when that period ends:

- (d) the work is taken to have been reproduced again by, or on behalf of, the body; and
 - (e) the reproduction mentioned in paragraph (a) is taken to have been communicated again by, or on behalf of, the body by making it available online for a further prescribed period.
- (2B) An electronic use system (whether determined by agreement or by the Copyright Tribunal) must require the assessment of an amount of equitable remuneration by a method or process that takes account of reproductions and communications to which paragraphs (2A)(d) and (e) apply.
- (2C) Subject to subsection (2B) but without limiting subsection (2), an electronic use system (whether determined by agreement or by the Copyright Tribunal) may be based upon a records system, a sampling system or any other process or system.
- (2D) For the purposes of subsection (1), different amounts may be determined (whether by agreement or by the Copyright Tribunal) in relation to different institutions administered by the administering body.
- (3) If:
- (a) an electronic use notice is given by, or on behalf of, an administering body to a collecting society; and
 - (b) during any period the administering body does not comply with one or more of the requirements of the electronic use system determined under this section in relation to the notice;
- sections 135ZJ, 135ZK, 135ZL, 135ZMC, 135ZMD, 135ZP and 135ZS do not apply to any reproduction, copy or communication of a work or other subject-matter made during that period by, or on behalf of, the administering body, being a reproduction, copy or communication to which the electronic use notice applies.
- (4) In this section:
- prescribed period*** means the period of 12 months, or if another is agreed between the relevant administering body and collecting society for the purposes of subsection (2A), that other period.

186 Subsection 135ZX(1)

After “to a collecting society”, insert “in respect of licensed copies made in hardcopy form or analog form”.

Note: The heading to section 135ZX is replaced by the heading “**Records notices and sampling notices: marking and record-keeping requirements**”.

187 Paragraphs 135ZX(1)(a) and (b)

After “each”, insert “such”.

188 Subsection 135ZX(3)

Repeal the subsection, substitute:

- (3) If a sampling notice is given by, or on behalf of, an administering body to a collecting society in respect of licensed copies made in hardcopy form or analog form, the administering body must mark, or cause to be marked, in accordance with the regulations, each such licensed copy made by it, or on its behalf, while the notice is in force, or any container in which such a copy is kept.

189 After section 135ZX

Insert:

135ZXA Electronic use notices: notice requirements etc.

If an electronic use notice is given by, or on behalf of, an administering body to a collecting society, in respect of licensed copies made in electronic form or licensed communications, the administering body must:

- (a) give a notice, in accordance with the regulations, in relation to each such copy or communication made by it, or on its behalf, while the electronic use notice is in force, containing:
 - (i) statements to the effect that the copy or communication has been made under this Part and that any work or other subject-matter contained in the copy or communication might be subject to copyright protection under this Act; and
 - (ii) such other information or particulars (if any) as are prescribed; and
- (b) in the case of each such communication made by it, or on its behalf, while the electronic use notice is in force—take all reasonable steps to ensure that the communication can only be received or accessed by persons entitled to receive or

access it (for example, teachers or persons receiving educational instruction or other assistance provided by the relevant institution); and

- (c) comply with such other requirements (if any) as are prescribed in relation to each such copy or communication made by it, or on its behalf, while the electronic use notice is in force.

190 Paragraph 135ZY(1)(a)

After “licensed copying”, insert “or licensed communication”.

191 Paragraph 135ZY(1)(b)

After “licensed copies”, insert “or licensed communications”.

192 Subsection 135ZZA(1)

Omit “or 135ZW, as the case may be, for licensed copies”, substitute “, 135ZW or 135ZWA, as the case may be, for licensed copies or licensed communications”.

193 Subparagraph 135ZZB(3)(d)(i)

Omit “or 135ZW”, substitute “, 135ZW or 135ZWA”.

194 Subsection 135ZZF(1)

Omit “copies”, substitute “a copy or communication”.

195 Subsection 135ZZF(2)

Repeal the subsection, substitute:

- (2) Nothing in this Part affects the right of the owner of the copyright in a work to grant a licence authorising the body administering an institution assisting persons with a print disability to do any of the following without infringement of that copyright:
 - (a) make, or cause to be made, a sound recording of, or a Braille, large-print, photographic or electronic version of, the whole or a part of the work;
 - (b) communicate, or cause to be communicated, the whole or a part of the work.

196 Subsection 135ZZF(3)

After “copy”, insert “or communication”.

197 Section 135ZZG

After “copy” (wherever occurring), insert “or communication”.

198 Subsection 135ZZH(1)

Omit all the words after “made”, substitute “or communicated, the prescribed provision does not apply, and is taken never to have applied, to the making or communication of the copy, record or version”.

199 Subsection 135ZZH(2)

After “135ZL(1),”, insert “135ZMB(1), 135ZMC(1), 135ZMD(1),”.

200 After Part VB

Insert:

Part VC—Retransmission of free-to-air broadcasts

Division 1—Preliminary

135ZZI Definitions

In this Part:

collecting society means a body that is, for the time being, declared to be a collecting society under section 135ZZT.

delayed retransmission, in relation to a free-to-air broadcast, means a retransmission of the broadcast in an area that has, wholly or partly, different local time to the area of the original transmission and that is delayed until no later than the equivalent local time.

free-to-air broadcast means a broadcast delivered by a national broadcasting service, commercial broadcasting service or community broadcasting service within the meaning of the *Broadcasting Services Act 1992*.

notice holder means the person who is, for the time being, appointed to be the notice holder under section 135ZZX.

relevant collecting society, in relation to a remuneration notice, means a collecting society for owners of copyright in the same

kind of work or other subject-matter as that to which the remuneration notice relates.

relevant copyright owner means the owner of the copyright in a work, a sound recording or a cinematograph film.

remuneration notice means a notice referred to in section 135ZZL.

retransmitter means a person who makes a retransmission of a free-to-air broadcast.

rules, in relation to a collecting society, means the provisions of the memorandum and articles of association of the society.

135ZZJ Operation of collecting society rules

This Part applies to a collecting society despite anything in the rules of the society, but nothing in this Part affects those rules so far as they can operate together with this Part.

135ZZJA Application of Part

This Part does not apply in relation to a retransmission of a free-to-air broadcast if the retransmission takes place over the Internet.

Division 2—Retransmission of free-to-air broadcasts

135ZZK Retransmission of free-to-air broadcasts

- (1) The copyright in a work, sound recording or cinematograph film included in a free-to-air broadcast is not infringed by the retransmission of the broadcast if:
 - (a) a remuneration notice given by, or on behalf of, the retransmitter to the relevant collecting society is in force; and
 - (b) the free-to-air broadcast was made by a broadcaster specified in the remuneration notice; and
 - (c) the retransmitter complies with section 135ZZN.
- (2) The copyright in a work, sound recording or cinematograph film included in a free-to-air broadcast is not infringed by the making of a copy of the broadcast for the sole purpose of enabling a delayed retransmission of the broadcast to be made.

- (3) Subsection (2) does not apply if the retransmission of the broadcast would infringe the copyright in the broadcast.
- (4) If a copy of a broadcast made for the purpose referred to in subsection (2) is not destroyed within 7 days after it is made, subsection (2) does not apply, and is taken never to have applied, in relation to the making of the copy.
- (5) In this section, a reference to the making of a copy of a free-to-air broadcast is a reference to making a cinematograph film or sound recording of the broadcast, or a copy of such a film or sound recording.

135ZZL Remuneration notices

- (1) A retransmitter may, by notice in writing given to the relevant collecting society by, or on behalf of, the retransmitter, undertake to pay equitable remuneration to the society for retransmissions of free-to-air broadcasts by specified broadcasters, being retransmissions made by, or on behalf of, the retransmitter while the notice is in force.
- (2) A remuneration notice must specify that the amount of equitable remuneration is to be assessed on the basis of the records to be kept by the retransmitter under section 135ZZN.
- (3) A remuneration notice comes into force on the day on which it is given to the collecting society, or on such earlier day as is specified in the notice, and remains in force until it is revoked.

135ZZM Amount of equitable remuneration

- (1) If a retransmitter gives a remuneration notice to a collecting society, the amount of equitable remuneration payable to the collecting society for each retransmission made by, or on behalf of, the retransmitter while the notice is in force is the amount determined by agreement between the retransmitter and the collecting society or, failing such agreement, by the Copyright Tribunal on application made by either of them.
- (2) If a determination has been made by the Copyright Tribunal under subsection (1), either the retransmitter or the collecting society may, at any time after 12 months from the day on which the

determination was made, apply to the Tribunal under that subsection for a new determination payable to the collecting society by the retransmitter for retransmissions made by, or on behalf of, the retransmitter.

- (3) For the purposes of subsection (1), different amounts may be determined (whether by agreement or by the Copyright Tribunal) in relation to different classes of works, sound recordings or cinematograph films included in retransmissions.

135ZZN Record system

- (1) If a remuneration notice is given to a collecting society by, or on behalf of, a retransmitter, the retransmitter must establish and maintain a record system.
- (2) The record system must provide for a record to be kept of the title of each program included in each retransmission made by, or on behalf of, the retransmitter of each broadcast made by each broadcaster specified in the remuneration notice.
- (3) Subject to subsection (2), the record system must be determined by agreement between the retransmitter and the collecting society or, failing such agreement, by the Copyright Tribunal on application made by either of them.

135ZZP Inspection of records etc.

- (1) If a remuneration notice is or has been in force, the collecting society to which it was given may, in writing, notify the relevant retransmitter that the society wishes, on a day specified in the notice, being an ordinary working day of the retransmitter specified in the notice, not earlier than 7 days after the day on which the notice is given, to do such of the following things as are specified in the notice:
 - (a) assess the number of retransmissions carried out at the premises of the retransmitter;
 - (b) inspect all the relevant records held at those premises that relate to the making of retransmissions in reliance on section 135ZZK;

- (c) inspect such other records held at those premises as are relevant to the assessment of the amount of equitable remuneration payable by the retransmitter to the society.
- (2) Subject to section 135ZZQ, if a collecting society gives a notice, a person authorised in writing by the society may, during the ordinary working hours of the retransmitter on the day specified in the notice (but not before 10 am or after 3 pm), carry out the assessment, or inspect the records, to which the notice relates and, for that purpose, may enter the premises of the retransmitter.
- (3) A retransmitter must take all reasonable precautions, and exercise reasonable diligence, to ensure that a person referred to in subsection (2) who attends the premises of the retransmitter for the purpose of exercising the powers conferred by that subsection is provided with all reasonable and necessary facilities and assistance for the effective exercise of those powers.
- (4) A retransmitter who contravenes subsection (3) is guilty of an offence punishable, on conviction, by a fine not exceeding 10 penalty units.

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*.

135ZZQ Identity cards

- (1) The chief executive officer (however described) of a collecting society must issue an identity card in the prescribed form to each person authorised by the society for the purposes of subsection 135ZZP(2). The identity card must contain a recent photograph of the authorised person.
- (2) If an authorised person who attends or enters premises for the purpose of exercising powers conferred by subsection 135ZZP(2) fails to produce his or her identity card when asked to do so by a person apparently in charge of the premises, the authorised person must not enter or remain on the premises or exercise any other powers under subsection 135ZZP(2) at the premises.
- (3) A person is guilty of an offence punishable on conviction by a fine not exceeding 1 penalty unit if:
- (a) the person has been issued with an identity card; and
 - (b) the person stops being an authorised person; and

- (c) the person does not, immediately after he or she stops being an authorised person, return the identity card to the relevant collecting society.
- (4) An authorised person must carry his or her identity card at all times when exercising powers under subsection 135ZZP(2).

135ZZR Revocation of remuneration notice

A remuneration notice may be revoked at any time by the relevant retransmitter by notice in writing given to the collecting society to which the remuneration notice was given, and the revocation takes effect at the end of 3 months after the date of the notice, or on such later day as is specified in it.

135ZZS Request for payment of equitable remuneration

- (1) Subject to this section, where a remuneration notice is or has been in force, the collecting society to which the notice was given may, by notice in writing given to the relevant retransmitter, request the retransmitter to pay to the society, within a reasonable time after the date of the notice, the amount of equitable remuneration specified in the notice, being an amount payable under section 135ZZM for retransmissions made by, or on behalf of, the retransmitter while the remuneration notice is or was in force.
- (2) If an amount specified in a request under subsection (1) is not paid in accordance with the request, it may be recovered from the retransmitter by the collecting society in the Federal Court of Australia or any other court of competent jurisdiction as a debt due to the society.

Division 3—Collecting societies

135ZZT Collecting societies

- (1) Subject to this section, the Attorney-General may, by notice in the *Gazette*, declare the body named in the notice to be the collecting society for all relevant copyright owners, or for such classes of relevant copyright owners as are specified in the notice.
- (2) Where the Attorney-General declares a body to be the collecting society for a specified class of copyright owners and subsequently

declares another body to be the collecting society for that class of copyright owners:

- (a) the first-mentioned collecting society ceases to be the collecting society for that class of copyright owners on the day on which the subsequent declaration is made; and
 - (b) any remuneration notice given to that collecting society ceases to be in force to the extent to which it relates to relevant copyright owners included in that class of copyright owners.
- (3) The Attorney-General must not declare a body to be a collecting society unless:
- (a) it is a company limited by guarantee and incorporated under a law in force in a State or Territory relating to companies; and
 - (b) all persons who are included in a class of relevant copyright owners to be specified in the declaration, or their agents, are entitled to become its members; and
 - (c) its rules prohibit the payment of dividends to its members; and
 - (d) its rules contain such other provisions as are prescribed, being provisions necessary to ensure that the interests of members of the collecting society who are relevant copyright owners, or their agents, are protected adequately, including, in particular, provisions about:
 - (i) the collection of amounts of equitable remuneration payable under section 135ZZM; and
 - (ii) the payment of the administrative costs of the collecting society out of amounts collected by it; and
 - (iii) the distribution of amounts collected by the collecting society; and
 - (iv) the holding on trust by the collecting society of amounts for relevant copyright owners who are not its members; and
 - (v) access to records of the collecting society by its members.
- (4) If the Attorney-General has declared a body to be the collecting society for a specified class of copyright owners, the Attorney-General may refuse to declare another body to be the collecting society for that class of copyright owners unless satisfied

that to do so would be in the interests of those copyright owners, having regard to the number of members of the first-mentioned society, the scope of its activities and such other considerations as are relevant.

135ZZU Revocation of declaration

The Attorney-General may, by notice in the *Gazette*, revoke the declaration of a body as a collecting society if satisfied that the body:

- (a) is not functioning adequately as a collecting society; or
- (b) is not acting in accordance with its rules or in the best interests of those of its members who are relevant copyright owners, or their agents; or
- (c) has altered its rules so that they no longer comply with paragraphs 135ZZT(3)(c) and (d); or
- (d) has refused or failed, without reasonable excuse, to comply with section 135ZZV or 135ZZW.

135ZZV Annual report and accounts

- (1) A collecting society must, as soon as practicable after the end of each financial year, prepare a report of its operations during that financial year and send a copy of the report to the Attorney-General.
- (2) The Attorney-General must cause a copy of the report sent to the Attorney-General under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after the receipt of the report by the Attorney-General.
- (3) A collecting society must keep accounting records correctly recording and explaining the transactions of the society (including any transactions as trustee) and the financial position of the society.
- (4) The accounting records must be kept in such a manner as will enable true and fair accounts of the society to be prepared from time to time and those accounts to be conveniently and properly audited.
- (5) A collecting society must, as soon as practicable after the end of each financial year, cause its accounts to be audited by an auditor

who is not a member of the society, and must send to the Attorney-General a copy of its accounts as so audited.

- (6) A collecting society must give its members reasonable access to copies of all reports and audited accounts prepared by it under this section.
- (7) This section does not affect any obligations of a collecting society relating to the preparation and lodging of annual returns or accounts under the law under which it is incorporated.

135ZZW Amendment of rules

A collecting society must, within 21 days after it alters its rules, send a copy of the rules as so altered to the Attorney-General, together with a statement setting out the effect of the alteration and the reasons why it was made.

Division 4—Interim retransmissions

135ZZX Appointment of notice holder

The Attorney-General may, by notice in the *Gazette*, appoint a person to be the notice holder for the purposes of this Division.

135ZZY Retransmitting before declaration of collecting society

The copyright in any work, sound recording or cinematograph film included in a retransmission of a free-to-air broadcast is not infringed by the making of the retransmission if:

- (a) at the time the retransmission is made, a collecting society has not been declared; and
- (b) a notice given by the retransmitter by whom, or on whose behalf, the retransmission was made to the notice holder under subsection 135ZZZ(1) is in force; and
- (c) the retransmitter complies with section 135ZZN.

135ZZZ Notices by retransmitters

- (1) A retransmitter may at any time before the declaration of the first collecting society, by notice in writing given to the notice holder by, or on behalf of, the retransmitter, undertake to pay equitable

remuneration to a collecting society, when it is declared, for retransmissions made by, or on behalf of, the retransmitter while the notice is in force.

- (2) A notice must specify that the amount of equitable remuneration is to be assessed on the basis of the records to be kept by the retransmitter under section 135ZZN.
- (3) A notice comes into force on the day on which it is given to the notice holder, or on such later day as is specified in the notice, and remains in force until it is revoked.
- (4) A notice may be revoked at any time by the retransmitter by notice in writing given to the notice holder, and the revocation takes effect on the date of the notice of revocation or on such later date as is specified in it.

135ZZZA Record keeping requirements

If a retransmitter gives a notice to the notice holder under section 135ZZZ, sections 135ZZM and 135ZZN apply as if:

- (a) references to a collecting society were references to the notice holder; and
- (b) references to a remuneration notice were references to a notice under section 135ZZZ.

135ZZZB Effect of declaration of collecting society

- (1) If:
 - (a) as a result of the declaration of one or more collecting societies, there is a society for all relevant copyright owners; and
 - (b) a notice under section 135ZZZ was in force immediately before the day on which the declaration came into force;then, on and after that day, the notice ceases to have effect as such a notice, but is taken, for the purposes of this Part, to be a remuneration notice that:
 - (c) was given by the relevant retransmitter to the collecting society, or to each of the collecting societies, as the case may be; and
 - (d) came into force on the same day as the notice came into force.

- (2) If:
- (a) one or more collecting societies are declared for one or more, but not for all, classes of relevant copyright owners; and
 - (b) a notice was in force immediately before the day on which the declaration came into force;
- then, on and after that day:
- (c) the notice ceases to have effect as such a notice in relation to the relevant copyright owners in the class or classes of copyright owners for whom a collecting society is declared, but is taken, for the purposes of this Part, to be a remuneration notice that:
 - (i) was given by the relevant retransmitter to the collecting society or to each of the collecting societies, as the case may be; and
 - (ii) came into force on the same day as the notice came into force; and
 - (d) the notice continues to have effect as such a notice in relation to all other relevant copyright owners.
- (3) When a notice is, under this section, taken to be a remuneration notice, the relevant retransmitter must cause copies of all records made under section 135ZZN on or after the day on which the notice is taken to have come into force to be sent to the relevant collecting society within 21 days after the declaration of the collecting society.

Division 5—Miscellaneous

135ZZZC Relevant copyright owner may authorise retransmitting

Nothing in this Part affects the right of the owner of the copyright in a work, sound recording or cinematograph film included in a free-to-air broadcast to grant a licence authorising a retransmitter to make, or cause to be made, a retransmission of the free-to-air broadcast without infringing that copyright.

135ZZZD Copyright not to vest under this Part

Despite any other provision of this Act, the retransmission of a free-to-air broadcast by, or on behalf of, a retransmitter that is not

an infringement of copyright under this Part, does not vest copyright in any work or other subject-matter in any person.

135ZZZE Licence to retransmit does not authorise copyright infringements

The owner of the copyright in a free-to-air broadcast is not taken, for the purpose of this Act, to have authorised the infringement of copyright in any work, sound recording or cinematograph film included in the broadcast merely because the owner licences the retransmission of the broadcast.

201 Subsection 136(1) (paragraphs (a) and (b) of the definition of *licence*)

Repeal the paragraphs, substitute:

- (a) in the case of a literary, dramatic or musical work—a licence to perform the work or an adaptation of the work in public, to broadcast the work or an adaptation of the work, to make a sound recording or cinematograph film of the work or an adaptation of the work for the purposes of broadcasting the work or adaptation, or to electronically transmit the work or an adaptation of the work (other than in a broadcast) for a fee payable to the person who made the transmission; or
- (b) in the case of a sound recording—a licence to cause the recording to be heard in public, to make a copy of the sound recording for the purposes of broadcasting the recording, or to broadcast the recording in a broadcast transmitted for a fee payable to the person who made the broadcast.

202 Subsection 152(1) (paragraph (c) of the definition of *broadcaster*)

Omit “1992; or”, substitute “1992.”.

203 Subsection 152(1) (paragraph (d) of the definition of *broadcaster*)

Repeal the paragraph.

203A Subsection 153A(1)

Repeal the subsection, substitute:

- (1) The parties to an application to the Tribunal under section 135H, subsection 135J(1) or subsection 135JA(1) for the determination of the amount of equitable remuneration payable to the collecting society by an administering body for the making or communication, by or on behalf of that body, of a copy of a broadcast are the society and the body.

Note: The heading to section 153A is altered by omitting “or subsection 135J(1)” and substituting “, subsection 135J(1) or subsection 135JA(1)”.

203B Subsection 153A(2)

Omit “or subsection 135J(1)”, substitute “, subsection 135J(1) or subsection 135JA(1)”.

203C Subsection 153A(2)

After “the making”, insert “and communicating”.

203D Paragraph 153A(3)(a)

After “are made”, insert “and communicated”.

203E Subsection 153A(4)

After “broadcasts”, insert “, and to communications of such copies,”.

203F Subsection 153A(5)

Omit “, *broadcast, collecting society* and *institution*”, substitute “and *collecting society*”.

204 After section 153B

Insert:

153BA Application to the Tribunal under subsection 135JA(3)

- (1) The parties to an application to the Tribunal under subsection 135JA(3) for the determination of an agreed system are the collecting society and the administering body concerned.
- (2) If an application is made to the Tribunal under subsection 135JA(3), the Tribunal must consider the application and, after giving the parties to the application an opportunity of presenting their cases, must make an order determining the agreed system.

(3) In determining an agreed system, the Tribunal must have regard to such matters (if any) as are prescribed.

(4) In this section:

administering body and *collecting society* have the same meanings as in Part VA.

204A Before section 153C

Insert:

153BB Application to the Tribunal under subsection 135ZME(3)

- (1) The parties to an application to the Tribunal under subsection 135ZME(3) for the determination of the division of an amount of remuneration are the relevant copyright owners.
- (2) If an application is made to the Tribunal for a determination under subsection 135ZME(3), the Tribunal must consider the application and, after giving the parties to the application an opportunity to present their cases, must make an order determining the division of the amount to which the application relates between the parties in such manner as it thinks equitable.
- (3) In making an order, the Tribunal may have regard to such matters (if any) as are prescribed.

205 Subsection 153C(1)

After “135ZW(1)”, insert “or 135ZWA(1)”.

Note: The heading to section 153C is replaced by the heading “**Applications to the Tribunal under section 135ZZV or subsection 135ZW(1) or 135ZWA(1)**”.

206 Subsection 153C(1)

After “copies”, insert “or licensed communications”.

207 Subsection 153C(2)

After “135ZW(1)”, insert “or 135ZWA(1)”.

208 At the end of subsection 153C(2)

Add “or licensed communication”.

209 Subsection 153C(5)

Repeal the subsection, substitute:

(5) In this section:

administering body, collecting society, licensed communication
and *licensed copy* have the same meanings as in Part VB.

210 After section 153D

Insert:

153DA Applications to the Tribunal under subsection 135ZWA(2)

- (1) The parties to an application to the Tribunal under subsection 135ZWA(2) for the determination of an electronic use system to be used in relation to licensed copies or licensed communications made by, or on behalf of, an administering body, or any other relevant matters, are the relevant collecting society and the body.
- (2) If an application is made to the Tribunal for a determination under subsection 135ZWA(2), the Tribunal must consider the application and, after giving the parties to the application an opportunity to present their cases, must make an order determining the matter that is the subject of the application.
- (3) In making an order, the Tribunal may have regard to such matters (if any) as are prescribed.
- (4) In this section:

administering body, collecting society, licensed communication
and *licensed copy* have the same meanings as in Part VB.

211 After section 153L

Insert:

153M Applications to the Tribunal under subsection 135ZZM(1)

- (1) The parties to an application to the Tribunal under subsection 135ZZM(1) for the determination of the amount of equitable remuneration payable to a collecting society by a retransmitter for the making, by or on behalf of the retransmitter, of a retransmission of a free-to-air broadcast are the society and the retransmitter.

- (2) On an application to the Tribunal under subsection 135ZZM(1), the Tribunal must consider the application and, after giving the parties an opportunity to present their cases, make an order determining the amount that it considers to be equitable remuneration for the making of retransmissions of free-to-air broadcasts.
- (3) In making an order, the Tribunal may have regard to such matters (if any) as are prescribed.
- (4) An order may be expressed to have effect in relation to retransmissions of free-to-air broadcasts made in reliance on section 135ZZK before the day on which the order is made.
- (5) In this section, *collecting society*, *free-to-air broadcast* and *retransmitter* have the same meanings as in Part VC.

153N Applications to Tribunal under subsection 135ZZN(3)

- (1) The parties to an application to the Tribunal under subsection 135ZZN(3) for the determination of a record system are the collecting society and the retransmitter concerned.
- (2) On an application to the Tribunal under subsection 135ZZN(3), the Tribunal must consider the application and, after giving the parties an opportunity to present their cases, make an order determining the record system.
- (3) In this section, *collecting society* and *retransmitter* have the same meanings as in Part VC.

212 Subsection 183(11)

Omit “copying”, substitute “reproduction, copying or communication”.

213 Paragraph 184(1)(f)

Omit “, by a person authorised to make the broadcasts by a class licence determined by that Authority under that Act or by a person prescribed for the purposes of subparagraph 91(a)(iii) or 91(c)(iii)”, substitute “or by a person authorised to make the broadcast by a class licence determined by that Authority under that Act”.

214 Subsection 199(4)

Repeal the subsection.

215 Subsection 199(5)

Omit “either of the last two preceding subsections, the person causing the cinematograph film to be seen or heard, or the work, adaptation or cinematograph film to be transmitted, as the case may be, infringed the copyright concerned”, substitute “subsection (3), the person causing the cinematograph film to be seen or heard infringed the copyright in the film”.

216 Subsection 199(6)

Repeal the subsection, substitute:

- (6) For the purposes of this section, a broadcast, in relation to a cinematograph film, is an authorised broadcast only if it is made by, or with the licence of, the owner of the copyright in the film.

217 Subsection 199(7)

Repeal the subsection, substitute:

- (7) A reference in this section to a broadcast must be read as a reference to a broadcast made by the Australian Broadcasting Corporation, by the Special Broadcasting Service Corporation, by the holder of a licence allocated by the Australian Broadcasting Authority under the *Broadcasting Services Act 1992*, or by a person authorised to make the broadcast by a class licence determined by that Authority under that Act.

217A After section 203F

Insert:

203G Additional offences relating to declarations under subsections 116A(3) and 132(5F)

- (1) A person must not, under subsection 116A(3) or 132(5F), make a declaration, knowing the declaration to be false or misleading in a material particular.

Penalty: Imprisonment for 12 months.

- (2) A person must not, under subsection 116A(3) or 132(5F), make a declaration, being reckless as to whether the declaration is false or misleading in a material particular.

Penalty: Imprisonment for 6 months.

- (3) A person must not dispose of or destroy, or cause to be disposed of or destroyed, a declaration under subsection 116A(3) or 132(5F), being a declaration whose prescribed retention period has not expired, if the person knows, or is reckless as to whether, that period has not expired.

Penalty: Imprisonment for 6 months.

218 Subsection 203H(1)

Omit “copy” (wherever occurring), substitute “reproduction”.

219 Paragraph 203H(4)(a)

Omit “a copy”, substitute “on a reproduction”.

220 Subsection 203H(5)

Repeal the subsection, substitute:

- (5) For the purposes of subsections (1) and (2):
- (a) if a reproduction of the whole or part of a work, or a copy of a sound recording or a cinematograph film:
 - (i) is made, or caused to be made, by an authorized officer of a library; or
 - (ii) is made by, or on behalf of, the officer in charge of a library;
being a library of an institution, the reproduction or copy is taken to have been made on behalf of the institution; and
 - (b) if a reproduction of the whole or part of a work, or a copy of a sound recording or a cinematograph film:
 - (i) is made, or caused to be made, by an authorized officer of a library; or
 - (ii) is made by, or on behalf of, the officer in charge of a library;
being a library that is not a library of an institution:
 - (iii) the reproduction or copy is taken to have been made on behalf of the person or body administering the library; and
 - (iv) those subsections apply as if references to an institution were references to that person or body; and

- (c) if a reproduction of the whole or part of a work, or a copy of a sound recording or a cinematograph film:
 - (i) is made, or caused to be made, by an authorized officer of archives; or
 - (ii) is made by, or on behalf of, the officer in charge of archives;then:
 - (iii) the reproduction or copy is taken to have been made by or on behalf of the person or body administering the archives; and
 - (iv) those subsections apply as if references to an institution were references to that person or body; and
- (d) if a reproduction, or a record embodying a sound recording, of the whole or part of a work is made by or on behalf of the body administering an institution, the reproduction or record is taken to have been made on behalf of the institution; and
- (e) if a copy of a sound recording or a cinematograph film is made by or on behalf of the body administering an institution, the copy is taken to have been made on behalf of the institution.

221 Subsections 203H(6) and (7)

Omit “copy” (wherever occurring), substitute “reproduction”.

222 Subsection 203H(10)

Repeal the subsection, substitute:

(10) In this section:

reproduction, in relation to a work, or part of a work, includes a microform copy, a Braille version, a large print version, or a photographic version of the work, or of the part of the work.

223 Paragraphs 246(3)(b) and (c)

Repeal the paragraphs, substitute:

- (b) the exclusive right to communicate the work or an adaptation of the work to the public.

224 Subsection 248A(1) (definition of *indirect*)

Omit all the words after “the performance”.

225 Section 248E

Repeal the section.

226 Paragraphs 248G(1)(a), (b) and (c)

Repeal the paragraphs, substitute:

- (a) makes a direct or indirect recording of the performance; or
- (b) broadcasts or re-broadcasts the performance, either directly from the live performance or from an unauthorised recording of it.

227 Subsection 248G(3)

Omit “, or causes an authorised recording of a performance to be transmitted to subscribers to a diffusion service,”.

228 Subsection 248P(4)

Repeal the subsection.

229 Subsection 248P(7A)

Omit “(4),”.

230 Subsection 248P(8)

Repeal the subsection, substitute:

- (8) A person who broadcasts or re-broadcasts an authorised recording of a performance without the authority of the performer does not, by doing so, contravene subsection (3).

Schedule 2—Transitional provisions

1 Definitions

In this Schedule:

broadcasting right, in relation to a work or other subject-matter, means the exclusive right under the Copyright Act to broadcast the work or other subject-matter.

cable transmission right, in relation to a work or other subject-matter, means the exclusive right under the Copyright Act to cause the work or other subject-matter, or a television program that includes it, to be transmitted to subscribers to a diffusion service.

commencing day means the day on which this Act commences.

Copyright Act means the *Copyright Act 1968*, as in force immediately before the commencing day.

2 Application of communication right

Subject to this Schedule, on and after the commencing day:

- (a) the exclusive right to communicate a work or other subject-matter to the public under the Copyright Act as amended by this Act applies in relation to all works and other subject-matter (other than published editions of works) in which copyright subsisted immediately before the commencing day; and
- (b) the Copyright Act as so amended applies to all such works and other subject-matter in the same way as it applies in relation to an original work or other subject-matter made on or after that day.

3 Assignments and licences

A licence, contract or arrangement (including an assignment of copyright) that was in force immediately before the commencing day continues to have effect on and after that day in so far as it relates to the broadcasting right or cable transmission right in a work or other subject-matter, but subject to any contrary intention, as if the Copyright Act had not been amended by this Act, and the Copyright Act applies in relation to the licence, contract or arrangement accordingly.

*[Minister's second reading speech made in—
House of Representatives on 2 September 1999
Senate on 14 August 2000]*

(173/99)