



Copyright Amendment (Parallel Importation) Act 2003

No. 34, 2003

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

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Copyright Act 1968



Copyright Amendment (Parallel Importation) Act 2003

No. 34, 2003

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

[Assented to 15 April 2003]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Copyright Amendment (Parallel Importation) Act 2003*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	15 April 2003
2. Schedule 1	The day on which this Act receives the Royal Assent	15 April 2003
3. Schedule 2	The first anniversary of the day on which this Act receives the Royal Assent	
4. Schedule 3, items 1 to 3	Immediately after the commencement of the <i>Copyright Amendment (Digital Agenda) Act 2000</i>	4 March 2001
5. Schedule 3, item 4	Immediately after the commencement of Schedule 1 to this Act	15 April 2003
6. Schedule 3, item 5	Immediately after the commencement of the <i>Copyright Amendment (Digital Agenda) Act 2000</i>	4 March 2001
7. Schedule 3, item 6	Immediately after the commencement of Schedule 1 to this Act	15 April 2003
8. Schedule 3, item 7	Immediately after the commencement of the <i>Copyright Amendment (Digital Agenda) Act 2000</i>	4 March 2001
9. Schedule 3, items 8 and 9	Immediately after the commencement of Schedule 1 to this Act	15 April 2003
10. Schedule 4	The 28th day after the day on which this Act receives the Royal Assent	13 May 2003

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (1) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Computer software

Copyright Act 1968

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

Omit the word and paragraphs after “but does not”, substitute “include any label, packaging or container on which the olympic symbol (within the meaning of the *Olympic Insignia Protection Act 1987*) is reproduced.”.

2 Subsection 10(1) (at the end of the definition of *accessory*)

Add:

Note: See also section 10AD for an expanded meaning of *accessory* in relation to certain imported articles.

3 Subsection 10(1)

Insert:

electronic literary or music item means:

- (a) a book in electronic form; or
 - (b) a periodical publication in electronic form; or
 - (c) sheet music in electronic form;
- regardless of whether there is a printed form.

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

Add:

- ; or (i) a non-infringing copy of a computer program whose importation does not infringe that copyright; or
- (j) a non-infringing copy of an electronic literary or music item whose importation does not infringe that copyright.

5 Subsection 10(1) (paragraph (c) of the definition of *non-infringing accessory*)

After “that is”, insert “, or is”.

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

Repeal the definition, substitute:

non-infringing copy:

- (a) in relation to a sound recording, has the meaning given by section 10AA; and
- (b) in relation to a computer program, has the meaning given by section 10AB; and
- (c) in relation to an electronic literary or music item, has the meaning given by section 10AC.

7 Subsection 10(1)

Insert:

qualifying country means:

- (a) a country that is a party to the International Convention for the Protection of Literary and Artistic Works concluded at Berne on 9 September 1886 as revised from time to time; or
- (b) a country that is a member of the World Trade Organization and has a law that provides consistently with the TRIPS Agreement for:
 - (i) the ownership and duration of copyright or a related right in works, sound recordings and cinematograph films; and
 - (ii) the owner of the copyright or related right to have rights relating to the reproduction of the work, sound recording or cinematograph film.

8 After section 10AA

Insert:

10AB *Non-infringing copy of a computer program*

A copy of a computer program is a *non-infringing copy* only if:

- (a) it is made in a qualifying country; and
- (b) its making did not constitute an infringement of any copyright in a work under a law of that country.

10AC *Non-infringing copy of an electronic literary or music item*

A copy of an electronic literary or music item is a *non-infringing copy* only if:

- (a) it is made in a qualifying country; and
- (b) its making did not constitute an infringement of any copyright in a work, or in a published edition of a work, under a law of that country.

10AD *Accessories to imported articles*

Accessories

- (1) If a person imports into Australia:
 - (a) an article that has embodied in it a copy of a computer program; or
 - (b) an article that has embodied in it a copy of an electronic literary or music item;
 a copy of any work or other subject matter (other than a feature film) that is on, embodied in, or included with, the article on its importation is taken to be an *accessory* to the article.

Note: See also sections 44C and 112C (about the non-infringement of copyright in works or other subject matter that are accessories to imported articles).

Definition

(2) In this section:

feature film means a cinematograph film that:

- (a) is produced wholly or principally:
 - (i) for exhibition to the public in cinemas or by way of television broadcasting; or
 - (ii) for sale or rental to the public where it is reasonable to assume that the viewing of the film (without electronic interactive involvement with the film) would be the primary object of any such sale or rental; and
- (b) is more than 20 minutes in duration.

Interpretation

(3) This section does not limit the meaning of *accessory* in subsection 10(1).

9 Subsection 44C(1)

After “which is”, insert “, or is”.

10 At the end of subsection 44C(1)

Add:

Note: See the definition of *accessory* in subsection 10(1) and see also section 10AD for an expanded meaning of *accessory* in relation to certain imported articles.

11 Subsection 44C(2)

After “that is”, insert “, or is”.

12 After section 44D

Insert:

44E Importation and sale etc. of copies of computer programs

The copyright in a literary work:

- (a) that is a computer program; and
- (b) that has been published in Australia or a qualifying country; is not infringed by a person who:
- (c) imports into Australia an article that has embodied in it a non-infringing copy of the program; or
- (d) does an act mentioned in section 38 involving an article that has embodied in it a non-infringing copy of the program and that has been imported into Australia by anyone.

Note: Section 130B deals with the burden of proof a defendant bears in a civil action for infringement of copyright.

44F Importation and sale etc. of copies of electronic literary or music items

The copyright in a work:

- (a) that is, or is part of, an electronic literary or music item; and
- (b) that has been published in Australia or a qualifying country;
is not infringed by a person who:
- (c) imports into Australia an article that has embodied in it a non-infringing copy of the electronic literary or music item; or
- (d) does an act mentioned in section 38 involving an article that has embodied in it a non-infringing copy of the electronic literary or music item and that has been imported into Australia by anyone.

Note: Section 130C deals with the burden of proof a defendant bears in a civil action for infringement of copyright.

13 Subsection 102(1)

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

14 Subsection 103(1)

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

15 At the end of subsection 112C(1)

Add:

Note: See the definition of *accessory* in subsection 10(1) and see also section 10AD for an expanded meaning of *accessory* in relation to certain imported articles.

16 After section 112D

Insert:

112DA Importation and sale etc. of copies of electronic literary or music items

If, in relation to a published edition of a work:

- (a) the work is, or is part of, an electronic literary or music item; and
- (b) the edition has been published in Australia or a qualifying country;
then the copyright in the published edition is not infringed by a person who:
- (c) imports into Australia an article that has embodied in it a non-infringing copy of the electronic literary or music item; or
- (d) does an act mentioned in section 103 involving an article that has embodied in it a non-infringing copy of the electronic literary or music item and that has been imported into Australia by anyone.

Note: Section 130C deals with the burden of proof a defendant bears in a civil action for infringement of copyright.

17 After section 130A

Insert:

130B Acts relating to imported copies of computer programs

In an action by a plaintiff for infringement of copyright described in section 37 or 38:

- (a) relating to the plaintiff's copyright in a literary work that is a computer program; and
 - (b) involving an article that has embodied in it a copy of the program;
- it must be presumed, unless the defendant proves otherwise, that the copy is not a non-infringing copy so far as it relates to the plaintiff's copyright.

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

130C Acts relating to imported copies of electronic literary or music items

In an action by a plaintiff for infringement of copyright described in section 37, 38, 102 or 103:

- (a) relating to the plaintiff's copyright in a work, or in a published edition of a work, that is, or is part of, an electronic literary or music item; and
 - (b) involving an article that has embodied in it a copy of the electronic literary or music item;
- it must be presumed, unless the defendant proves otherwise, that the copy is not a non-infringing copy so far as it relates to the plaintiff's copyright.

Note 1: Sections 37 and 38 deal with infringement of copyright in a work by commercial importation and dealings involving articles.

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

18 Subsection 135(10)

Omit "112A or 112D", substitute "44E, 44F, 112A, 112D or 112DA".

19 After section 198

Insert:

198A Non-infringement of trade mark in relation to the importation of copyright material

- (1) A person who uses a registered trade mark in relation to imported goods that are similar to goods in respect of which the trade mark is registered does not infringe the trade mark if:
 - (a) the importation would have constituted an infringement of copyright except for the operation of a parallel importation provision; and
 - (b) the trade mark was applied to, or in relation to, the goods before the importation (whether the mark was applied before or after the commencement of this section); and

- (c) the trade mark was applied by, or with the consent of:
 - (i) a person who, at the time the mark was applied, was the registered owner of the mark; or
 - (ii) a person who, at the time the mark was applied, was the owner of the mark in the place where the mark was applied and who had been a registered owner of the mark at any time before then.
- (2) Unless the contrary intention appears, an expression used in this section has the same meaning as in the *Trade Marks Act 1995*.
- (3) In this section:

parallel importation provision means:

- (a) section 44E, 44F or 112DA; or
- (b) section 44C or 112C (in so far as that section applies in relation to an accessory to an article of the kind mentioned in subsection 10AD(1)).

20 Application

The amendments made by this Schedule apply in relation to the following:

- (a) works, or published editions of works, published before or after the commencement of this Schedule;
- (b) copies of computer programs imported into Australia after the commencement of this Schedule (regardless of whether they were made before or after the commencement of this Schedule);
- (c) copies of electronic literary or music items imported into Australia after the commencement of this Schedule (regardless of whether they were made before or after the commencement of this Schedule).

Schedule 3—Other amendments

Copyright Act 1968

1 Subsection 10(1) (definition of circumvention device)

Omit “effective”.

2 Subsection 10(1) (definition of circumvention service)

Omit “effective”.

3 Subsection 10(1) (definition of technological protection measure)

Omit “licensee”, substitute “exclusive licensee”.

4 After paragraph 10AD(1)(b)

Insert:

or (c) an article that has embodied in it a copy of a sound recording;

5 Paragraph 39A(a)

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

6 Subsections 44D(4) and (5)

Repeal the subsections.

7 Paragraphs 53(b) and (c)

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

Note: The heading to section 153C is altered by omitting “**section 135ZZV**” and substituting “**section 135ZV**”.

8 Subsection 198A(3) (paragraph (a) of the definition of parallel importation provision)

Omit “44E, 44F or 112DA”, substitute “44D, 44E, 44F, 112D or 112DA”.

9 Application

The amendments made by items 4 and 6 of this Schedule apply in relation to copies of sound recordings imported into Australia after the commencement of this item (regardless of whether they were made before or after the commencement of this item).

Schedule 4—Enforcement

Copyright Act 1968

1 After subparagraph 115(4)(b)(i)

Insert:

- (ia) the need to deter similar infringements of copyright; and
- (ib) the conduct of the defendant after the act constituting the infringement or, if relevant, after the defendant was informed that the defendant had allegedly infringed the plaintiff's copyright; and

2 After section 126

Insert:

126A Evidence in relation to subsistence of copyright

- (1) This section applies to an action under this Part in which the defendant puts in issue the question whether copyright subsists in the work or other subject matter to which the action relates.

Labels or marks

- (2) If a copy of the work or other subject matter, or the packaging or container in which the copy is packaged or contained, bears a label or mark stating the year and place of the first publication, or of the making, of the work or other subject matter, then the label or mark is admissible as prima facie evidence of the facts so stated.

Foreign certificates

- (3) If a certificate or other document issued in a qualifying country in accordance with a law of that country states the year and place of the first publication, or of the making, of the work or other subject matter, then the certificate or other document is admissible as prima facie evidence of the facts so stated.
- (4) For the purposes of this section, a document purporting to be a certificate or document referred to in subsection (3) is, unless the contrary intention is established, taken to be such a certificate or document.

126B Evidence in relation to ownership of copyright

- (1) This section applies to an action under this Part in which the defendant puts in issue the question of the plaintiff's ownership of copyright in the work or other subject matter to which the action relates.

Labels or marks

- (2) If a copy of the work or other subject matter, or the packaging or container in which the copy is packaged or contained, bears a label or mark stating that a person was the

owner of copyright in the work or other subject matter at a particular time, then the label or mark is admissible as prima facie evidence of the facts so stated.

Foreign certificates

- (3) If a certificate or other document issued in a qualifying country in accordance with a law of that country states that a person was the owner of copyright in the work or other subject matter at a particular time, then the certificate or other document is admissible as prima facie evidence of the facts so stated.
- (4) For the purposes of this section, a document purporting to be a certificate or document referred to in subsection (3) is, unless the contrary intention is established, taken to be such a certificate or document.

Chains of ownership

- (5) If:
 - (a) subsection (2) or (3) applies; and
 - (b) the plaintiff produces a document stating the following:
 - (i) each subsequent owner of the copyright the subject of the action (including the plaintiff's ownership);
 - (ii) the date each subsequent owner became the owner of that copyright;
 - (iii) a description of the transaction resulting in each subsequent owner becoming the owner of that copyright;

then the document is admissible as prima facie evidence of the facts so stated.

- (6) If:
 - (a) neither subsection (2) nor (3) applies; and
 - (b) the plaintiff produces a document stating the following:
 - (i) the original owner of the copyright the subject of the action;
 - (ii) each subsequent owner of that copyright (including the plaintiff's ownership);
 - (iii) the date each owner became the owner of that copyright;
 - (iv) a description of the transaction resulting in each owner becoming the owner of that copyright;

then the document is admissible as prima facie evidence of the facts so stated.

Offence

- (7) A person is guilty of an offence if:
 - (a) the person produces a document under subsection (5) or (6); and
 - (b) the person is reckless as to whether the document is false or misleading.

Penalty: 30 penalty units.

- (8) Strict liability applies to the element of the offence against subsection (7) that the document is produced under subsection (5) or (6).

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

3 Section 130

Omit “first so”.

4 Section 130

Omit “that label or mark is sufficient evidence of the facts so stated except in so far as the contrary is established”, substitute “then the label or mark is admissible as prima facie evidence of the facts so stated”.

5 At the end of section 130

Add:

- (2) In an action brought by virtue of this Part in relation to copyright in a sound recording, if:
- (a) records embodying the recording or a part of the recording have been supplied (whether by sale or otherwise) to the public; and
 - (b) at the time when records embodying the recording or part of the recording were supplied, the records or their containers bore a label or other mark consisting of the letter “P” in a circle accompanied by a specified year and the name of a person;
- then the label or mark is admissible as prima facie evidence that the recording was first published in that specified year and that the named person was the owner of copyright in the recording in the place and at the time at which the label or mark was affixed to the records or their containers.

6 At the end of Division 4A of Part V

Add:

131D Jurisdiction of Federal Magistrates Court

Jurisdiction is conferred on the Federal Magistrates Court with respect to civil actions under this Part.

7 Subsection 132(6AB)

Repeal the subsection, substitute:

(6AB) If:

- (a) either:
 - (i) a person contravenes subsection (1) because of the doing of an act referred to in paragraph (1)(a), (b) or (c); or
 - (ii) a person contravenes subsection (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.

(6AC) If:

- (a) a person contravenes subsection (1) because of the doing of an act referred to in paragraph (1)(d); 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 650 penalty units and/or imprisonment for not more than 5 years.

8 After section 132

Insert:

132A Presumptions in relation to subsistence and ownership of copyright

- (1) This section applies to a prosecution for an offence against section 132 in relation to a work or other subject matter.

Labels or marks

- (2) If a copy of the work or other subject matter, or the packaging or container in which the copy is packaged or contained, bears a label or mark stating the year and place of the first publication, or of the making, of the work or other subject matter, then the label or mark is admissible as prima facie evidence of the facts so stated.
- (3) If a copy of the work or other subject matter, or the packaging or container in which the copy is packaged or contained, bears a label or mark stating that a person was the owner of copyright in the work or other subject matter at a particular time, then the label or mark is admissible as prima facie evidence of the facts so stated.

Foreign certificates

- (4) If a certificate or other document issued in a qualifying country in accordance with a law of that country states the year and place of the first publication, or of the making, of the work or other subject matter, then the certificate or other document is admissible as prima facie evidence of the facts so stated.
- (5) If a certificate or other document issued in a qualifying country in accordance with a law of that country states that a person was the owner of copyright in the work or other subject matter at a particular time, then the certificate or other document is admissible as prima facie evidence of the facts so stated.
- (6) For the purposes of this section, a document purporting to be a certificate or document referred to in subsection (4) or (5) is, unless the contrary intention is established, taken to be such a certificate or document.

132B Evidence in relation to sound recordings

- (1) In a prosecution for an offence against section 132 in relation to a sound recording, if:

- (a) records embodying the recording or a part of the recording have been supplied (whether by sale or otherwise) to the public; and
- (b) at the time when records embodying the recording or part of the recording were supplied, the records or their containers bore a label or other mark containing a statement:
 - (i) that a person specified on the label or mark was the maker of the recording; or
 - (ii) that the recording was first published in a year specified on the label or mark; or
 - (iii) that the recording was first published in a country specified on the label or mark;

then the label or mark is admissible as prima facie evidence of the facts so stated.

- (2) In a prosecution for an offence against section 132 in relation to a sound recording, if:
 - (a) records embodying the recording or a part of the recording have been supplied (whether by sale or otherwise) to the public; and
 - (b) at the time when records embodying the recording or part of the recording were supplied, the records or their containers bore a label or other mark consisting of the letter “P” in a circle accompanied by a specified year and the name of a person;

then the label or mark is admissible as prima facie evidence that the recording was first published in that specified year and that the named person was the owner of copyright in the recording in the place and at the time at which the label or mark was affixed to the records or their containers.

9 Paragraph 133A(1)(a)

Omit “computer program”, substitute “work or other subject matter”.

Note: The heading to section 133A is altered by omitting “**computer programs**” and substituting “**works or other subject matter**”.

10 Subsection 133A(2)

Repeal the subsection, substitute:

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

11 At the end of Division 3 of Part VAA

Add:

135ARA Jurisdiction of Federal Magistrates Court

Jurisdiction is conferred on the Federal Magistrates Court with respect to civil actions under this Part.

12 At the end of section 195AZC

Add:

- (5) The Federal Magistrates Court has jurisdiction with respect to matters arising under this Part.

13 After section 248M

Insert:

248MA Jurisdiction of Federal Magistrates Court

Jurisdiction is conferred on the Federal Magistrates Court with respect to actions under section 248J.

14 Application

- (1) The amendments made by items 1, 2, 3, 4 and 5 apply to actions brought after the commencement of those items.
- (2) The amendments made by items 6, 11, 12 and 13 apply in relation to matters or actions instituted after the commencement of those items.
- (3) The amendment made by item 7 applies to acts and omissions that take place after the commencement of that item.
- (4) The amendment made by item 8 applies to prosecutions brought after the commencement of that item.
- (5) The amendments made by items 9 and 10 apply in relation to publications after the commencement of those items.

15 Review of operation of this Schedule

- (1) The Minister must cause a review of the operation of the amendments made by this Schedule to be carried out as soon as practicable after the fourth anniversary of the commencement of this Schedule.
- (2) The Minister must cause a copy of the report of the review to be laid before each House of the Parliament within 15 sitting days of that House after the report is completed.

*[Minister's second reading speech made in—
House of Representatives on 13 March 2002
Senate on 10 December 2002]*
