

**COPYRIGHT AMENDMENT ACT 1991 No. 174, 1991**

**COPYRIGHT AMENDMENT ACT 1991 No. 174 of 1991 - LONG  
TITLE**

An Act to amend the Copyright Act 1968

**COPYRIGHT AMENDMENT ACT 1991 No. 174 of 1991 - SECT 1**

**Short title etc.**

(Assented to 23 December 1991)

1. (1) This Act may be cited as the Copyright Amendment Act 1991.

(2) In this Act, "Principal Act" means the Copyright Act 1968.\*1\*

(Minister's second reading speech made in-

House of Representatives on 17 October 1990

Senate on 16 May 1991)

\*1\* No. 63, 1968, as amended. For previous amendments, see No. 216,  
1973; Nos.

37 and 91, 1976; No. 160, 1977; No. 19, 1979; No. 154, 1980; Nos. 42  
and 61,

1981; No. 113, 1981 (as amended by No. 154, 1982); Nos. 26, 80 and 154,  
1982;

Nos. 7, 80, 91 and 136, 1983; Nos. 43 and 165, 1984; Nos. 65 and 67,  
1985;

Nos. 78 and 168, 1986; No. 23, 1987; No. 146, 1988; and Nos. 28 and 32,  
1989.

## **COPYRIGHT AMENDMENT ACT 1991 No. 174 of 1991 - SECT 2**

### **Interpretation**

2. Section 10 of the Principal Act is amended:

(a) by adding ", but does not include a non-infringing book whose importation does not constitute an infringement of that copyright under section 44A or 112A" at the end of the definition of "infringing copy" in subsection (1);

(b) by inserting in subsection (1) the following definition:

" `non-infringing book' means a book made (otherwise than under a compulsory licence) in a country specified in regulations made for the purposes of subsection 184 (1), being a book whose making did not constitute an infringement of any copyright subsisting in a work, or in a published edition of a work, under a law of that country;".

## **COPYRIGHT AMENDMENT ACT 1991 No. 174 of 1991 - SECT 3**

### **Infringement by importation for sale or hire**

3. Section 37 of the Principal Act is amended:

(a) by omitting "The copyright" and substituting "Subject to section 44A, the copyright";

(b) by omitting "where, to his knowledge," and substituting "if the importer knew, or ought reasonably to have known, that".

## **COPYRIGHT AMENDMENT ACT 1991 No. 174 of 1991 - SECT 4**

### **Infringement by sale and other dealings**

4. Section 38 of the Principal Act is amended:

(a) by omitting from subsection (1) "The copyright" and substituting

"Subject to section 44A, the copyright";

(b) by omitting from subsection (1) "where, to his knowledge," and substituting "if the importer knew, or ought reasonably to have known, that".

## **COPYRIGHT AMENDMENT ACT 1991 No. 174 of 1991 - SECT 5**

5. After section 44 of the Principal Act the following section and note are inserted in Division 3 of Part III:

Importation etc. of books

"44A. (1) The copyright in an overseas work first published on or after the commencing day is not infringed by a person who, without the licence of the owner of the copyright, imports a non-infringing book into Australia for a purpose mentioned in paragraph 37 (a), (b) or (c).

"(2) Subject to this section, the copyright in:

(a) an overseas work first published before the commencing day; or

(b) a work first published in Australia, whether before, on or after the commencing day; is not infringed by a person who, without the licence of the owner of the

copyright, imports a copy (in this subsection called the 'imported copy') of a hardback or paperback version of a non-infringing book into Australia for a purpose mentioned in paragraph 37 (a), (b) or (c) if:

(c) the person had ordered in writing from the copyright owner, or the owner's licensee or agent, one or more copies of that version of the book (not being second-hand copies or more copies than were needed to satisfy the person's reasonable requirements); and

(d) when the person ordered the imported copy, the original order mentioned in paragraph (c) had not been withdrawn or cancelled by, or with the consent of, the person and:

(i) at least 7 days had elapsed since the person placed the original order and the copyright owner, licensee or agent had not notified the

person in writing that the original order would be filled within 90 days after it was placed; or

(ii) at least 90 days had elapsed since the person placed the original order and the copyright owner, licensee or agent had not filled the order.

"(3) The copyright in a published work (whether first published before, on or after the commencing day) is not infringed by a person who, without the licence of the owner of the copyright, imports a single copy of a non-infringing book into Australia if the importation is for the purpose of filling a written order, or a verifiable telephone order, by a customer of the person and:

(a) in the case of a written order, the order contains a statement, signed by the customer; or

(b) in the case of a telephone order, the customer makes a verifiable statement; to the effect that the customer does not intend to use the book for a purpose mentioned in paragraph 37 (a), (b) or (c).

"(4) The copyright in a published work (whether first published before, on or after the commencing day) is not infringed by a person who, without the licence of the owner of the copyright, imports 2 or more copies of a non-infringing book into Australia if:

(a) the importation is for the purpose of filling a written order, or a verifiable telephone order, placed with the person by or on behalf of a library, other than a library conducted for the profit (direct or indirect) of a person or organization; and

(b) in the case of a written order - the order contains a statement, signed by the person placing the order, to the effect that the library does not intend to use any of the books for a purpose mentioned in paragraph 37 (a),

(b) or (c); and

(c) in the case of a telephone order - the person placing the order makes a verifiable statement to the effect referred to in paragraph (b); and

(d) the number of copies so imported is not more than the number of copies so ordered.

"(5) Without limiting the ways in which a telephone order under subsection (3) or (4), or a statement under paragraph (3) (b) or (4) (c) relating to such an order, may be verified, such an order or statement is, for the purposes of this section, taken to be verifiable if the person who takes the order, or to whom the statement is made, makes a written note of the details of the order or statement when, or immediately after, the order is placed, or the statement is made, as the case may be.

"(6) Where:

(a) a book is imported into Australia for a purpose mentioned in paragraph 37 (a), (b) or (c); and

(b) the importation does not, under this section, constitute an infringement of copyright in a published work;  
the use of the book for any such purpose does not constitute an infringement of the copyright in the work and subsection 38 (1) does not apply to the book.

"(7) Subsection (2) does not apply to the importation of a copy of a hardback version of a non-infringing book into Australia if the copyright owner, or his or her licensee or agent, is able to supply in Australia enough copies of a paperback version of the book to fill any reasonable order.

"(8) For the purposes of paragraph (2) (d), a copyright owner, licensee or agent is not taken to have filled an order by a person for one or more copies of a version of a book unless and until the copyright owner, licensee or agent sends the copy, or all of the copies, as the case requires, to the person.

"(9) In this section:

`book' does not include:

(a) a book whose main content is one or more musical works, with or without any related literary, dramatic or artistic work; or

(b) a manual sold with computer software for use in connection with that software; or

(c) a periodical publication;

`commencing day' means the day on which the Copyright Amendment Act 1991 commences;

`overseas work' means a work:

(a) that was first published in a country other than Australia; and

(b) that was not published in Australia within 30 days after its first publication in that other country.

"Note: A work may, for the purposes of this Act, be `first published' in Australia if it is published in Australia within 30 days of an earlier publication elsewhere. For the meaning of `first publication', see section 29 and, in particular, subsection 29 (5).".

## **COPYRIGHT AMENDMENT ACT 1991 No. 174 of 1991 - SECT 6**

### **Infringement by importation for sale or hire**

6. Section 102 of the Principal Act is amended:

(a) by omitting "A copyright" and substituting "Subject to section 112A, a copyright";

(b) by omitting "where, to his knowledge," and substituting "if the importer knew, or ought reasonably to have known, that".

## **COPYRIGHT AMENDMENT ACT 1991 No. 174 of 1991 - SECT 7**

### **Infringement by sale and other dealings**

7. Section 103 of the Principal Act is amended:

(a) by omitting from subsection (1) "A copyright" and substituting "Subject to section 112A, a copyright";

(b) by omitting from subsection (1) "where, to his knowledge," and substituting "if the importer knew, or ought reasonably to have known, that".

## **COPYRIGHT AMENDMENT ACT 1991 No. 174 of 1991 - SECT 8**

8. After section 112 of the Principal Act the following section and note are inserted in Division 6 of Part IV:

Importation and sale etc. of books

"112A. (1) The copyright in an overseas edition first published on or after the commencing day, is not infringed by a person who, without the licence of the owner of the copyright, imports a non-infringing book into Australia for a purpose mentioned in paragraph 102 (a), (b) or (c).

"(2) Subject to this section, the copyright in:

(a) an overseas edition first published before the commencing day;  
or

(b) a published edition of a work, being an edition first published in Australia, whether before, on or after the commencing day;  
is not infringed by a person who, without the licence of the owner of the copyright, imports a copy (in this subsection called the 'imported copy') of a hardback or paperback version of a non-infringing book into Australia for a purpose mentioned in paragraph 102 (a), (b) or (c) if:

(c) the person had ordered in writing from the copyright owner, or the owner's licensee or agent, one or more copies of that version of the book (not being second-hand copies or more copies than were needed to satisfy the person's reasonable requirements); and

(d) when the person ordered the imported copy, the original order mentioned in paragraph (c) had not been withdrawn or cancelled by, or with the consent of, the person and:

(i) at least 7 days had elapsed since the person placed the original order and the copyright owner, licensee or agent had not notified the person in writing that the original order would be filled within 90 days after it was placed; or

(ii) at least 90 days had elapsed since the person placed the original order and the copyright owner, licensee or agent had not filled the order.

"(3) The copyright in a published edition of a work (whether the edition was first published before, on or after the commencing day) is not infringed by a person who, without the licence of the owner of the copyright, imports a single copy of a non-infringing book into Australia if the importation is for the purpose of filling a written order, or a verifiable telephone order, by a customer of the person and:

(a) in the case of a written order, the order contains a statement, signed by the customer; or

(b) in the case of a telephone order, the customer makes a verifiable statement;

to the effect that the customer does not intend to use the book for a purpose mentioned in paragraph 102 (a), (b) or (c).

"(4) The copyright in a published edition of a work (whether the edition was first published before, on or after the commencing day) is not infringed by a person who, without the licence of the owner of the copyright, imports 2 or more copies of a non-infringing book into Australia if:

(a) the importation is for the purpose of filling a written order, or a verifiable telephone order, placed with the person by or on behalf of a library, other than a library conducted for the profit (direct or indirect) of a person or organisation; and

(b) in the case of a written order - the order contains a statement, signed by the person placing the order, to the effect that the library does not intend to use any of the books for a purpose mentioned in paragraph 102 (a), (b) or (c); and

(c) in the case of a telephone order - the person placing the order makes a verifiable statement to the effect referred to in paragraph (b); and

(d) the number of copies so imported is not more than the number of copies so ordered.

"(5) Without limiting the ways in which a telephone order under subsection (3) or (4), or a statement under paragraph (3) (b) or (4) (c) relating to such an order, may be verified, such an order or statement is, for the purposes of this section, taken to be verifiable if the person who takes the order, or to whom the statement is made, makes a written note of the details of the order or statement when, or immediately after, the order is placed, or the statement is made, as the case may be.

"(6) Where:

(a) a book is imported into Australia for a purpose mentioned in paragraph 102 (a), (b) or (c); and

(b) the importation does not, under this section, constitute an



infringement of copyright in a published edition of a work; the use of the book for any such purpose does not constitute an infringement of the copyright in the edition and subsection 103 (1) does not apply to the book.

"(7) Subsection (2) does not apply to the importation of a copy of a hardback version of a non-infringing book into Australia if the copyright owner, or his or her licensee or agent, is able to supply in Australia enough copies of a paperback version of the book to fill any reasonable order.

"(8) For the purposes of paragraph (2) (d), a copyright owner, licensee or agent is not taken to have filled an order by a person for one or more copies of a version of a book unless and until the copyright owner, licensee or agent sends the copy, or all of the copies, as the case requires, to the person.

"(9) In this section:

`book' does not include:

(a) a book whose main content is one or more musical works, with or without any related literary, dramatic or artistic work; or

(b) a manual sold with computer software for use in connection with that software; or

(c) a periodical publication;

`commencing day' means the day on which the Copyright Amendment Act 1991 commences;

`overseas edition' means a published edition of a work, being an edition:

(a) that was first published in a country other than Australia; and

(b) that was not published in Australia within 30 days after its first publication in that other country.

"Note: An edition of a work may, for the purposes of this Act, be `first published' in Australia if it is published in Australia within 30 days of an earlier publication elsewhere. For the meaning of `first publication', see section 29 and, in particular, subsection 29 (5).".