

## COPYRIGHT AMENDMENT ACT 1986 No. 78, 1986

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#### TABLE OF PROVISIONS

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COPYRIGHT AMENDMENT ACT 1986 No. 78 of 1986 - LONG TITLE

An Act to amend the law relating to copyright

COPYRIGHT AMENDMENT ACT 1986 No. 78 of 1986 - SECT 1

Short title, &c.

(Assented to 24 June 1986)

1. (1) This Act may be cited as the Copyright Amendment Act 1986.

(2) The Copyright Act 1968\*1\* is in this Act referred to as the Principal  
Act.

(Minister's second reading speech made in-

House of Representatives on 21 MAY !(\*^

Senate on 29 May 1986)

\*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, 61 and 113, 1981; Nos. 26, 80 and 154, 1982; Nos. 7, 80, 91 and 136, 1983; Nos. 43 and 165, 1984; and Nos. 65 and 67, 1985.

## COPYRIGHT AMENDMENT ACT 1986 No. 78 of 1986 - SECT 2

### Commencement

2. (1) Subject to sub-section (2), this Act shall come into operation on a day to be fixed by Proclamation.

(2) Sections 14 to 19 (inclusive) shall come into operation on the twenty-eighth day after the day on which this Act receives the Royal Assent.

## COPYRIGHT AMENDMENT ACT 1986 No. 78 of 1986 - SECT 3

### Interpretation

3. Section 10 of the Principal Act is amended-

(a) by inserting ", other than from point to point," after "means broadcast" in the definition of "broadcast" in sub-section (1);

(b) by omitting from sub-section (1) the definitions of "holder of a licence for a broadcasting station" and "holder of a licence for a television station" and substituting the following definitions:

"holder of a radio licence' means the holder of a subsisting television licence under the Broadcasting Act 1942;

"holder of a television licence' means the holder of a subsisting television licence under the Broadcasting Act 1942;

(c) by inserting after the definition of "institution assisting handicapped readers" in sub-section (1) the following definition:

"institution assisting intellectually handicapped persons' means-

(a) an educational institution; or

(b) any other institution, not being an institution conducted for the profit, direct or indirect, of an individual or individuals, that has its principal function, or one of its principal functions, the provision of assistance to intellectually handicapped persons and in relation to which a declaration under paragraph 10A (1) (d) is in force;"

(d) by inserting after sub-section (1) the following sub-section:

"(1A) For the purpose of the definition of 'broadcast' in sub-section (1), a broadcast shall be taken to be from point to point if it is intended by the broadcaster to be received only by particular equipment at a particular locatio.";

(e) by omitting from paragraph (3) (d) "or an institution assisting handicapped readers" and substituting ",an institution assisting handicapped readers or an institution assisting intellectually handicapped persons";

(f) by omitting from sub-paragraph (3) (d) (i) "and" (last occurring);

(g) by inserting after sub-paragraph (3) (d) (ii) the following word and sub-paragraph"

"; and (iii) the relevant records in respect of copies, within the meaning of Part X, of eligible items, within the meaning of that Part, made by or on behalf of the body administering the institution in reliance on section 200A,";

(h) by omitting from paragraph (3) (f) "or an institution assisting handicapped readers" and substituting ", an institution assisting handicapped readers or an institution assisting intellectually handicapped persons";

(j) by inserting after paragraph (3) (h) the following paragraph:

"(ha) a reference to an intellectually handicapped person's copy, in relation to the whole or a part of an eligible item within the meaning of Part X, shall be read as a reference to a copy, within the meaning of that Part, of an eligible item, or of a part of an eligible item, as the case may be, made by, or on behalf of, the body administering an institution assisting intellectually handicapped persons, being a copy that is made for the sole

purpose of use in the provision, whether by the institution or otherwise, of assistance to an intellectually handicapped person or persons;"

(k) by omitting from sub-paragraph (3) (m) (i) "or" (last occurring);

(m) by inserting after sub-paragraph (3) (m) (i) the following sub-paragraph:

"(ia) of an intellectually handicapped person's copy of the whole or a part of an eligible item; or"; and

(n) by inserting in sub-paragraph (3) (m) (ii) "or cinematograph film" after "recording".

#### COPYRIGHT AMENDMENT ACT 1986 No. 78 of 1986 - SECT 4

##### Declarations and notices relating to certain bodies and institutions

4. Section 10A of the Principal Act is amended-

(a) by omitting from paragraph (1) (b) "or"; and

(b) by adding at the end of sub-section (1) the following word and paragraph:

"; or (d) declare an institution to be, for the purposes of this Act, an institution assisting intellectually handicapped persons."

#### COPYRIGHT AMENDMENT ACT 1986 No. 78 of 1986 - SECT 5

##### Provisions relating to the making of a work or other subject-matter

5. Section 22 of the Principal Act is amended-

(a) by inserting in sub-section (5) ", subject to sub-section (6)," after "shall"; and

(b) by adding at the end the following sub-section:

"(6) Where a television broadcast or sound broadcast made by a person from  
from  
a satellite, wherever located, consists of material transmitted from the earth to the satellite (whether directly or by means of another satellite) the

broadcast shall, for the purposes of this Act, be deemed to have been made by the person at the time when, and from the place from which, the material was so transmitted from the earth."

#### COPYRIGHT AMENDMENT ACT 1986 No. 78 of 1986 - SECT 6

6. After section 47 of the Principal Act the following section is inserted

in Division 4 of Part III:

Sound broadcasts by holders of print-handicapped radio licences

"47A. (1) The making of a sound broadcast of, or of an adaptation of, a published literary or dramatic work does not constitute an infringement of copyright in the work if-

(a) the broadcast is made by a person being the holder of a print-handicapped radio licence and is made under the licence; and  
(b) there is made by or on behalf of the person, as soon as practicable after the making of the broadcast, a record of the making of the broadcast that-

(i) sets out the time and date of the making of the broadcast;  
(ii) identifies the work; and  
(iii) contains particulars of such other matters in relation to the work

or in relation to the broadcast as are prescribed.

"(2) For the purposes of paragraph (1) (b), a record of the making of a broadcast-

(a) may be made in writing or in any other manner prescribed by the regulations; and

(b) if it is made in writing, shall be in accordance with the form prescribed by the regulations.

"(3) Where, at any time before the expiration of the prescribed retention period after the making by a person of a sound broadcast of a literary or dramatic work in reliance on sub-section (1), a record made for the purposes of paragraph (1) (b) in relation to the making of the sound broadcast is not retained by the person, the person is guilty of an offence punishable, upon conviction, by a fine not exceeding \$500.

"(4) It is a defence to a prosecution of a person under sub-section (3) in relation to the retention of a record if the person satisfies the court that he or she took all reasonable precautions, and exercised due diligence, to ensure the retention of the record.

"(5) A person is not liable to be convicted twice of an offence against sub-section (3) in relation to the retention of the same record.

"(6) The owner of the copyright in a literary or dramatic work, or the agent of such an owner, may notify in writing a person who holds or held a print-handicapped radio licence that the owner or agent wishes to inspect-

(a) all the records of the person made by or on behalf of the person for the purposes of paragraph (1) (b); or

(b) such of those records as relate to the works of a specified author, on a day specified in the notice, being a day (other than a Saturday, Sunday or public holiday) not less than 7 days after the day on which the notice is given.

"(7) Where a person who receives a notice under sub-section (6) does not, without reasonable excuse, allow the owner or agent to inspect the records to which the notice relates during business hours on the day specified in the notice, the person is guilty of an offence punishable, upon conviction, by a fine not exceeding \$500.

"(8) Where-

(a) a sound broadcast of, or of an adaptation of, a literary or dramatic work is made by a person (in this sub-section referred to as the 'licence holder') being the holder of a print-handicapped radio licence;

(b) by virtue of sub-section (1), the making of the sound broadcast does

not infringe copyright in the work; and

(c) the owner of the copyright in the work makes a request in writing at any time during the prescribed retention period after the making of the sound broadcast for payment for the making of the sound broadcast, the licence holder shall pay to the owner of the copyright such an amount by way of equitable remuneration for the making of the sound broadcast as is agreed upon between the owner of the copyright and the licence holder or, in default of agreement, as is determined by the Copyright Tribunal on the application of either the owner of the copyright or the licence holder.

"(9) Where the Copyright Tribunal has under sub-section (8) determined the amount of equitable remuneration payable by a person to the owner of the copyright in a work, the owner of the copyright may recover that amount from the person in a court of competent jurisdiction as a debt due to the owner of the copyright.

"(10) Nothing in this section affects the right of the owner of the copyright in a literary or dramatic work to grant a licence authorising a person being the holder of a print-handicapped radio licence to make sound broadcasts of, or of adaptations of, the work without infringement of that copyright.

"(11) In this section-

(a) 'prescribed retention period' means the period prescribed by the regulations for the purposes of this paragraph; and

(b) 'print-handicapped radio licence' means a licence in force under the Broadcasting Act 1942, the Radiocommunications Act 1983 or the Wireless Telegraphy Act 1905, being a licence that was granted for the purpose of authorising the making of sound broadcasts to persons who by reason of old age, disability or literacy problems are unable to handle books or newspapers or to read or comprehend written material."



## Copying of works for preservation and other purposes

7. Section 51A of the Principal Act is amended by omitting sub-section (5) and substituting the following sub-section:

"(5) Where a copy (including a microform copy) of an unpublished work is made under sub-section (1) by or on behalf of the officer in charge of a library or archives for the purpose of research that is being, or is to be, carried out at another library or archives, the supply of the copy by or on behalf of the officer to the other library or archives does not, for any purpose of this Act, constitute the publication of the work."

## COPYRIGHT AMENDMENT ACT 1986 No. 78 of 1986 - SECT 8

### Television broadcasts and sound broadcasts in which copyright subsists

8. Section 91 of the Principal Act is amended-

(a) by omitting sub-paragraph (a) (ii) and substituting the following sub-paragraph:

"(ii) the holder of a television licence; or"; and

(b) by omitting sub-paragraph (b) (ii) and substituting the following sub-paragraph:

"(ii) the holder of a radio licence; or".

## COPYRIGHT AMENDMENT ACT 1986 No. 78 of 1986 - SECT 9

### Ownership of copyright in television broadcasts and sound broadcasts

9. Section 99 of the Principal Act is amended by omitting from paragraph (b)

"licence for a television station, a holder of a licence for a broadcasting station" and substituting "television licence, a holder of a radio licence".

## COPYRIGHT AMENDMENT ACT 1986 No. 78 of 1986 - SECT 10

10. After section 100 of the Principal Act, the following section is inserted in Division 6 of Part IV:

Interpretation

"100A. In this Division, 'audio-visual item' means a sound recording, a cinematograph film, a sound broadcast or a television broadcast."

COPYRIGHT AMENDMENT ACT 1986 No. 78 of 1986 - SECT 11

11. After section 103 of the Principal Act the following sections are inserted:

Fair dealing for purpose of criticism or review

"103A. A fair dealing with an audio-visual item does not constitute an infringement of the copyright in the item or in any work or other audio-visual item included in the item if it is for the purpose of criticism or review, whether of the first-mentioned audio-visual item, another audio-visual item or a work, and a sufficient acknowledgement of the first-mentioned audio-visual item is made.

Fair dealing for purpose of reporting news

"103B. (1) A fair dealing with an audio-visual item does not constitute an infringement of the copyright in the item or in any work or other audio-visual item included in the item if-

- (a) it is for the purpose of, or is associated with, the reporting of news in a newspaper, magazine or similar periodical and a sufficient acknowledgement of the first-mentioned audio-visual item is made; or
- (b) it is for the purpose of, or is associated with, the reporting of news by means of broadcasting or in a cinematograph film.

"(2) This section applies where an audio-visual item being a cinematograph film is caused to be transmitted to subscribers to a diffusion service in like manner as it applies where such an item is broadcast."

COPYRIGHT AMENDMENT ACT 1986 No. 78 of 1986 - SECT 12

12. After section 110 of the Principal Act the following sections are inserted:

Copying of unpublished sound recordings and cinematograph films in libraries or archives

"110A. Where, at a time more than 50 years after the time at which, or the expiration of the period during which, a sound recording or cinematograph film was made, copyright subsists in the sound recording or cinematograph film but-

(a) the sound recording or cinematograph film has not been published; and  
(b) a record embodying the sound recording, or a copy of the cinematograph film, is kept in the collection of a library or archives where it is, subject to any regulations governing that collection, accessible to the public, the copyright in the sound recording or cinematograph film and in any work or other subject-matter included in the sound recording or cinematograph film is not infringed-

(c) by the making of a copy 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 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 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.

Copying of sound recordings and cinematograph films for preservation and other purposes

"110B. (1) Subject to sub-section (3), where a copy of a sound recording, being a sound recording that forms, or formed, part of the collection of a library or archives, is made by or on behalf of the officer in charge of the library or archives-

(a) if the sound recording is held in the collection in the form of a first

record-for the purpose of preserving the record against loss or deterioration or for the purpose of research that is being, or is to be, carried out at the library or archives in which the record is held or at another library or archives;

(b) if the sound recording is held in the collection in a published form but has been damaged or has deteriorated-for the purpose of replacing the sound recording; or

(c) if the sound recording has been held in the collection in a published form but has been lost or stolen-for the purpose of replacing the sound recording, the making of the copy does not infringe copyright in the sound recording or in any work or other subject-matter included in the sound recording.

"(2) Subject to sub-section (3), where a copy of a cinematograph film, being a cinematograph film that forms, or formed, part of the collection of a library or archives, is made by or on behalf of the officer in charge of the library or archives-

(a) if the cinematograph film is held in the collection in the form of a first copy-for the purpose of preserving the copy against loss or deterioration or for the purpose of research that is being, or is to be, carried out at the library or archives in which the copy is held or at another library or archives;

(b) if the cinematograph film is held in the collection in a published form but has been damaged or has deteriorated-for the purpose of replacing the cinematograph film; or

(c) if the cinematograph film has been held in the collection in a published form but has been lost or stolen-for the purpose of replacing the cinematograph film, the making of the copy does not infringe copyright in the cinematograph film or in any work or other subject-matter included in the cinematograph film.

"(3) Sub-section (1) does not apply in relation to a sound recording, and sub-section (2) does not apply in relation to a cinematograph film, held in a

published form in the collection of a library or archives unless an authorised officer of the library or archives has, after reasonable investigation, made a declaration stating that he or she is satisfied that a copy (not being a second-hand copy) of the sound recording or cinematograph film, as the case may be, cannot be obtained within a reasonable time at an ordinary commercial price.

"(4) Where a copy of an unpublished sound recording or an unpublished cinematograph film is made under sub-section (1) or (2) by or on behalf of the officer in charge of a library or archives for the purpose of research that is being, or is to be, carried out at another library or archives, the supply of the copy by or on behalf of the officer to the other library or archives does not, for any purpose of this Act, constitute the publication of the sound recording or cinematograph film or of any work or other subject-matter included in the sound recording or cinematograph film."

#### COPYRIGHT AMENDMENT ACT 1986 No. 78 of 1986 - SECT 13

##### Reproductions of editions of work

13. Section 112 of the Principal Act is amended-

- (a) by inserting in sub-paragraphs (a) (ii) and (b) (ii) "or an intellectually handicapped person's copy" after "handicapped reader's copy";
- (b) by omitting from sub-paragraphs (a) (ii) and (b) (ii) "or 182A" and substituting ", 182A or 200A"; and
- (c) by inserting in sub-paragraph (b) (ii) "or intellectually handicapped persons' copies" after "handicapped readers' copies".

#### COPYRIGHT AMENDMENT ACT 1986 No. 78 of 1986 - SECT 14

##### Repeal of heading and substitution of new heading

14. The heading to Division 4 of Part V of the Principal Act is omitted and the following heading is substituted:

"Division 4-Proof of facts in civil actions".

COPYRIGHT AMENDMENT ACT 1986 No. 78 of 1986 - SECT 15

Offences

15. Section 132 of the Principal Act is amended-

(a) by omitting from sub-sections (1) and (2) "he knows" and substituting "the person knows, or ought reasonably to know,";

(b) by inserting after sub-section (2) the following sub-section:

"(2A) A person shall not, at a time when copyright subsists in a work, have in his or her possession an article for the purpose of-

(a) selling, letting for hire, or by way of trade offering or exposing for sale or hire, the article;

(b) distributing the article for the purpose of trade, or for any other purpose to an extent that will affect prejudicially the owner of the copyright in the work; or

(c) by way of trade exhibiting the article in public, if the person knows, or ought reasonably to know, the article to be an infringing copy of the work.";

(c) by omitting from sub-section (3) "his possession a plate knowing that it" and substituting "his or her possession a plate that the person knows, or ought reasonably to know,";

(d) by omitting from sub-section (4) "The last three preceding sub-sections" and substituting "The preceding provisions of this section";

(e) by omitting from sub-section (5) "in public, knowing" and substituting "in public at a place of public entertainment, if the person knows, or ought reasonably to know,";

(f) by inserting after sub-section (5) the following sub-section:

"(5AA) A person shall not cause-

(a) a sound recording to be heard in public at a place of public entertainment; or

(b) a cinematograph film, in so far as it consists of visual images, to be seen in public at a place of public entertainment or, in so far as it consists of sounds, to be heard in public at such a place,

if the person knows, or ought reasonably to know, that copyright subsists in the sound recording or the cinematograph film and that the copyright will thereby be infringed."; and

(g) by adding at the end the following sub-section:

"(9) In this section, '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."

## COPYRIGHT AMENDMENT ACT 1986 No. 78 of 1986 - SECT 16

### Penalties

16. Section 133 of the Principal Act is amended-

(a) by omitting sub-sections (1), (2) and (3) and substituting the following sub-sections:

"(1) A contravention by a person of sub-section (1), (2) or (2A) of section 132 is an offence punishable on summary conviction by-

(a) if it is the first conviction of the person of an offence by reason of a contravention of that section and the article or each article to which the contravention relates is an infringing copy of a work or other subject-matter other than a cinematograph film-a fine not exceeding-

(i) if the person is a natural person-\$500; or

(ii) if the person is a body corporate-\$2,500,

for the article, or for each article, to which the offence relates;

(b) if it is the first conviction of the person of an offence by reason of a contravention of that section and the article or each article to which the contravention relates is an infringing copy of a cinematograph film-

(i) if the person is a natural person-a fine not exceeding \$1,500 for the article, or for each article, to which the offence relates or imprisonment for a period not exceeding 2 years, or both; or

(ii) if the person is a body corporate-a fine not exceeding \$7,500 for the article, or for each article, to which the offence relates;

(c) if it is not the first conviction of the person of an offence by reason of a contravention of that section and the article or each article to which the contravention relates is an infringing copy of a work or other subject-matter other than a cinematograph film-

(i) if the person is a natural person-a fine not exceeding \$500 for the article, or for each article, to which the offence relates or imprisonment for a period not exceeding 6 months, or both; or

(ii) if the person is a body corporate-a fine not exceeding \$5,000 for the article, or for each article, to which the offence relates; and

(d) if it is not the first conviction of the person of an offence by reason of a contravention of that section and the article or each article to which the contravention relates is an infringing copy of a cinematograph film-

(i) if the person is a natural person-a fine not exceeding \$1,500 for the article, or for each article, to which the offence relates or imprisonment for a period not exceeding 5 years, or both; or

(ii) if the person is a body corporate-a fine not exceeding \$15,000 for the article, or for each article, to which the offence relates.

"(2) Where a fine is imposed upon a person by virtue of sub-section (1) in relation to an offence committed by the person and there is more than one



article to which the offence relates-

(a) where the person is prosecuted before the Federal Court of Australia-the fine imposed in respect of that offence shall not exceed-

- (i) if the person is a natural person-\$50,000; or
- (ii) if the person is a body corporate-\$250,000; and

(b) where the person is prosecuted before any other court-the fine imposed in respect of that offence shall not exceed-

- (i) if the person is a natural person-\$10,000; or
- (ii) if the person is a body corporate-\$50,000.

"(3) A contravention by a person of sub-section (3), (5) or (5AA) of

section 132 is an offence punishable upon summary conviction by-

(a) where it is the first conviction of the person of an offence by reason of a contravention of that section-a fine not exceeding-

- (i) if the person is a natural person-\$1,500; or
- (ii) if the person is a body corporate-\$7,500; and

(b) in any other case-

(i) if the person is a natural person-a fine not exceeding \$1,500 or imprisonment for a period not exceeding 6 months, or both; or

(ii) if the person is a body corporate-a fine not exceeding \$15,000.";

(b) by omitting from sub-section (4) "the last preceding section may, whether he" and substituting "section 132 may, whether the person"; and

(c) by omitting from sub-section (4) "his possession" and substituting "the possession of the person".

COPYRIGHT AMENDMENT ACT 1986 No. 78 of 1986 - SECT 17

Advertisement for supply of infringing copies of computer programs

17. Section 133A of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

"(1) Where-

(a) a person, by any means, publishes, or causes to be published, in Australia an advertisement for the supply in Australia (whether from within or outside Australia) of a copy of a computer program; and

(b) the person knows, or ought reasonably to know, that the copy is, or will be, an infringing copy, the person is guilty of an offence punishable upon conviction by-

(c) where it is the first conviction of the person of an offence against this sub-section (including this sub-section as in force before the commencement of section 17 of the Copyright Amendment Act 1986)-

(i) if the person is a natural person-a fine not exceeding \$1,500; or

(ii) if the person is a body corporate-a fine not exceeding \$7,500; and

(d) in any other case-

(i) if the person is a natural person-a fine not exceeding \$1,500 or imprisonment for a period not exceeding 6 months, or both; or

(ii) if the person is a body corporate-a fine not exceeding \$15,000."

#### COPYRIGHT AMENDMENT ACT 1986 No. 78 of 1986 - SECT 18

18. After section 134 of the Principal Act the following section is inserted:

Affidavit evidence of subsistence and ownership of copyright

"134A. (1) At the trial of a cause, being-

(a) an action brought by virtue of this Part; or

(b) a prosecution for an offence against this Act, proof of either or both of the following matters:

(c) the subsistence, at a particular time, of copyright in the work or other subject-matter to which the action or prosecution relates;

(d) the ownership, at a particular time, of the copyright in that work or other subject-matter, may, subject to sub-section (2), be given by affidavit.

"(2) If a party to a cause referred to in sub-section (1) desires in good

faith that the person who made an affidavit referred to in that sub-section that is proposed to be used in the cause be cross-examined with respect to the matters in the affidavit, the affidavit may not be used in the cause unless the person appears as a witness for such cross-examination or the court in which the cause is being tried, in its discretion, permits the affidavit to be used without the person so appearing."

#### COPYRIGHT AMENDMENT ACT 1986 No. 78 of 1986 - SECT 19

##### Interpretation

19. Section 136 of the Principal Act is amended by inserting in paragraph (2) (d) "or (5AA)" after "sub-section 132 (5)".

#### COPYRIGHT AMENDMENT ACT 1986 No. 78 of 1986 - SECT 20

20. (1) Section 149A of the Principal Act is repealed and the following section is substituted:

Applications to Tribunal under sections 47A, 53B, 53D and 200A

"149A. (1) This section applies to any application made to the Tribunal under sub-section 47A (8), 53B (11), 53D (10) or 200A (5) for the determining of an amount payable by a person or body by way of equitable remuneration to an owner of copyright for the making of a sound broadcast, copy, handicapped reader's copy or intellectually handicapped person's copy.

"(2) The parties to an application to which this section applies are the person or body, and the owner of the copyright, referred to in sub-section (1).

"(3) Where an application to which this section applies is made to the Tribunal, the Tribunal shall consider the application and, after giving the parties to the application opportunities of presenting their cases, shall make an order determining the amount that it considers to be payable by the person or body by way of equitable remuneration to the owner of the copyright for the

making of the sound broadcast, copy, handicapped reader's copy or intellectually handicapped person's copy, as the case requires."

(2) The amendments made by sub-section (1) apply to applications made after the commencement of this section.

#### COPYRIGHT AMENDMENT ACT 1986 No. 78 of 1986 - SECT 21

Applications to Tribunal for determination of amounts payable for

broadcasting

published sound recordings

21. Section 152 of the Principal Act is amended-

(a) by omitting paragraphs (b) and (c) of the definition of "broadcaster" in sub-section (1) and substituting the following paragraphs:

"(b) the holder of a radio licence;

(c) the holder of a television licence; or";

(b) by omitting from sub-section (8) "licence for a broadcasting station" and substituting "radio licence"; and

(c) by omitting from sub-section (9) "licence for a broadcasting station" and substituting "radio licence".

#### COPYRIGHT AMENDMENT ACT 1986 No. 78 of 1986 - SECT 22

Costs of proceedings

22. Section 174 of the Principal Act is amended-

(a) by inserting after sub-section (1) the following sub-section:

"(1A) In taxing or settling under sub-section (1) the amount of the costs,

or of a part of the costs, of any proceedings before the Tribunal incurred by a party, the Tribunal or the person or persons taxing or settling those costs, as the case may be, shall allow so much only of the amount as in the opinion of the Tribunal or the person or persons, as the case may be, would be allowed

if the proceedings were proceedings before the Federal Court of Australia and the costs were taxed under the Federal Court Rules."; and

(b) by inserting after sub-section (2) the following sub-section:

"(2A) In any proceedings before a court under sub-section (2) for the recovery of costs directed by the Tribunal to be paid to a party, a certificate signed by the Secretary to the Tribunal that states that the costs have been taxed or the amount of the costs has been settled and sets out the amount of the costs as so taxed or settled is prima facie evidence of the matters stated in the certificate."

#### COPYRIGHT AMENDMENT ACT 1986 No. 78 of 1986 - SECT 23

##### Application of Act to countries other than Australia

23. Section 184 of the Principal Act is amended by omitting from paragraph (1) (f) "licence for a television station, by a holder of a licence for a broadcasting station" and substituting "television licence, by a holder of a radio licence".

#### COPYRIGHT AMENDMENT ACT 1986 No. 78 of 1986 - SECT 24

##### Interpretation

24. Section 195A of the Principal Act is amended-

(a) by omitting from sub-section (2) "that was made in reliance on section 49, 50, 51A, 53B or 53D" and substituting ", an eligible item or another subject-matter that was made in reliance on section 49, 50, 51A, 53B, 53D, 110B or 200A";

(b) by omitting sub-section (3) and substituting the following sub-section:

"(3) A reference in this Part to an educational institution, to an institution assisting handicapped readers or to an institution assisting intellectually handicapped persons includes a reference to an institution that has at any time been an educational institution, an institution assisting

handicapped readers or an institution assisting intellectually handicapped persons, as the case may be."; and

(c) by adding at the end the following sub-section:

"(5) In this Part-

(a) a reference to an eligible item is a reference to-

(i) a published literary, dramatic, musical or artistic work;

(ii) a published sound recording or cinematograph film; or

(iii) a sound broadcast or television broadcast;

(b) a reference to a copy of an eligible item being a

literary, dramatic or musical work is a reference to any of the following:

(i) a reproduction in a material form;

(ii) an adaptation;

(iii) a reproduction in a material form of an adaptation,  
of the work;

(c) a reference to a copy of an eligible item being an artistic work is a reference to a reproduction in a material form of the work;

(d) a reference to a copy of an eligible item being a sound recording or a cinematograph film is a reference to a copy of the sound recording or cinematograph film; and

(e) a reference to a copy of an eligible item being a television broadcast or a sound broadcast is a reference to a copy of a cinematograph film of the broadcast or to a record embodying a sound recording of the broadcast."

## COPYRIGHT AMENDMENT ACT 1986 No. 78 of 1986 - SECT 25

### Reception of broadcasts

25. Section 199 of the Principal Act is amended-

(a) by omitting from paragraph (7) (a) "licence for a television station" and substituting "television licence"; and

(b) by omitting from paragraph (7) (b) "licence for a broadcasting station"

and substituting "radio licence".

## COPYRIGHT AMENDMENT ACT 1986 No. 78 of 1986 - SECT 26

26. After section 200 of the Principal Act the following section is inserted:

Copying of eligible items by institutions assisting intellectually  
handicapped  
persons

"200A. (1) The copyright in an eligible item or in any work or other subject-matter included in the eligible item is not infringed by the making, by or on behalf of the body administering an institution assisting intellectually handicapped persons, of a copy of the whole or a part of the eligible item, if the copy is made for the sole purpose of use in the provision, whether by the institution or otherwise, of assistance to an intellectually handicapped person or persons.

"(2) Sub-section (1) does not apply to the making of a copy of the whole or a part of-

(a) an eligible item being a work that has been separately published in a form that would be suitable for use in the provision of the assistance referred to in that sub-section; or

(b) an eligible item not being a work, unless the person who makes the copy or causes the copy to be made is satisfied after reasonable investigation that-

(c) in the case of an eligible item to which paragraph (a) applies-no copy (not being a second-hand copy) of the eligible item in a form suitable for use in the provision of the assistance referred to in sub-section (1) can be obtained within a reasonable time at an ordinary commercial price; or

(d) in the case of an eligible item to which paragraph (b) applies-no copy (not being a second-hand copy) of the eligible item alone can be obtained within a reasonable time at an ordinary commercial price.

"(3) Sub-section (1) does not apply to the making of a copy of the whole or a part of an eligible item by or on behalf of a body administering an institution, unless there is made, by or on behalf of that body, as soon as practicable after the making of the copy, a record of the making of the copy setting out-

(a) if the copy is a copy of the whole or a part of an article contained in a periodical publication-

(i) if the International Standard Serial Number in respect of the periodical publication is recorded in the periodical publication-that number;

(ii) if the International Standard Serial Number in respect of the publication is not so recorded-the name of the periodical publication;

(iii) the title or description of the article;

(iv) the name of the author of the article (if that name is known);

(v) the volume, or volume and number, as the case requires, of the periodical publication containing the article;

(vi) the page numbers of the pages in that volume, or in that number of that volume, that have been copied or, in a case where a page so copied does not bear a page number, such description of the page as will enable it to be identified;

(vii) the date on which the copy was made;

(viii) the form in which the copy was made; and

(ix) particulars of such other matters as are prescribed;

(b) if the copy is a copy of the whole or a part of a work other than an article contained in a periodical publication-

(i) if the International Standard Book Number in respect of the work is recorded in the edition of the work copied-that number;

(ii) if the International Standard Book Number in respect of the work is not so recorded-

(a) the title or description of the work;

(b) the name of the publisher of the edition of the work; and

(c) the name of the author of the work (if that name is known);



(iii) the page numbers of the pages in the edition of the work that have been copied or, in a case where a page so copied does not bear a page number, such description of the page as will enable it to be identified;

(iv) the date on which the copy was made;

(v) the form in which the copy was made; and

(vi) particulars of such other matters as are prescribed; and

(c) in any other case-particulars of such matters as are prescribed.

"(4) For the purposes of sub-section (3), a record of the making of a copy of the whole or a part of an eligible item-

(a) may be kept in writing or in any other manner prescribed by the regulations; and

(b) if it is kept in writing shall be in accordance with the prescribed form.

"(5) Where a copy of the whole or a part of an eligible item is made by or on behalf of the body administering an institution and, by virtue of this section, the making of the copy does not infringe copyright in the eligible item, the body shall, if the owner of the copyright in the eligible item makes a request in writing, at any time during the prescribed retention period after the making of the copy, for payment for the making of the copy, pay to the owner such an amount by way of equitable remuneration for the making of the copy as is agreed upon between the owner and the body, or in default of agreement, such an amount as is determined by the Copyright Tribunal on the application of either the owner or the body.

"(6) Where the Copyright Tribunal has determined the amount of equitable remuneration payable under this section to the owner of the copyright in an eligible item by the body administering an institution, the owner may recover that amount from the body in a court of competent jurisdiction as a debt due to the owner.

"(7) Subject to sub-section (8), the copyright in an eligible item is not infringed by the making, by or on behalf of the body administering an

institution assisting intellectually handicapped persons, of a copy of the whole or a part of the eligible item, if the copy is so made in order to be used in the making, by or on behalf of that body, of an intellectually handicapped person's copy of the whole or the part, as the case may be, of the eligible item.

"(8) Where-

(a) a copy of the whole or a part of an eligible item is made in order to be used in the making of an intellectually handicapped person's copy of the whole or the part of the eligible item, as the case may be; and

(b) the copy-

(i) is used otherwise than as mentioned in paragraph (a); or

(ii) is not destroyed within 3 months after its making,

sub-section (7) does not apply, and shall be deemed never to have applied, in relation to the making of the copy.

"(9) Notwithstanding any other provision of this Act, copyright shall not vest in the maker of an intellectually handicapped person's copy of the whole or a part of an eligible item by reason of the making of the copy.

"(10) Nothing in this section affects the right of the owner of copyright in an eligible item to grant a licence authorising the body administering an institution assisting intellectually handicapped persons to make, or cause to be made, a copy of the whole or a part of the eligible item without infringement of that copyright."

#### COPYRIGHT AMENDMENT ACT 1986 No. 78 of 1986 - SECT 27

Retention of records and declarations in relation to copies made by libraries, archives or institutions

27. Section 203A of the Principal Act is amended-

(a) by omitting from sub-section (1) "in reliance on section 49, 50 or 51A" and substituting "or other subject-matter in reliance on section 49, 50, 51A or 110B";

- (b) by omitting from paragraph (2) (a) "or" (last occurring);
- (c) by inserting after paragraph (2) (b) the following word and paragraph:  
"; or (c) the making of an intellectually handicapped person's copy of  
the  
whole or a part of an eligible item in reliance on section 200A by or on  
behalf of the body administering an institution assisting intellectually  
handicapped persons,";
- (d) by inserting in sub-section (3) "or of an eligible item" after "work";  
and
- (e) by omitting from paragraph (5) (a) "or handicapped reader's copy of a  
work, or of a part of a work" and substituting ", a handicapped reader's copy  
or an intellectually handicapped person's copy of a work, an eligible item or  
another subject-matter, or of a part of a work or of an eligible item".

#### COPYRIGHT AMENDMENT ACT 1986 No. 78 of 1986 - SECT 28

Certain institutions may elect to deposit copying records with central records authorities

28. (1) Section 203B of the Principal Act is amended-

(a) by omitting sub-sections (1), (2) and (3) and substituting the  
following sub-sections:

"(1) The body administering an institution may, by notice in writing  
given to the Attorney-General, elect to deposit the records of the institution  
relating to any copying done in reliance on sections 53B, 53D and 200A with  
the central records authority specified in the notice and, upon the making of  
that election, the central records authority so specified becomes, for the  
purposes of this Act, the central records authority of the institution.

"(2) An election made by notice under sub-section (1) is of no effect  
unless the central records authority specified in the notice is a body  
corporate or, if it is not a body corporate, is administered by the body  
making the election.";

(b) by omitting from sub-section (4) "or (2)";

(c) by omitting from sub-section (5) "or (2) to deposit the records of the institution relating to copying done under section 53B or 53D" and substituting "to deposit the records of the institution relating to copying done in reliance on sections 53B, 53D and 200A";

(d) by omitting from sub-paragraph (5) (a) (ii) "a work or a part of a work" and substituting "the whole or a part of a work or of an eligible item";

(e) by omitting from sub-section (6) "or 53D" and substituting ", 53D or 200A"; and

(f) by omitting from sub-section (7) "or 53D" and substituting ", 53D and 200A".

(2) An election made before the commencement of this section in accordance with sub-section 203B (1) or (2) of the Principal Act shall, on and after the commencement of this section, be taken to have been made in accordance with sub-section 203B (1) of the Principal Act as in force on and after the commencement of this section.

#### COPYRIGHT AMENDMENT ACT 1986 No. 78 of 1986 - SECT 29

##### Retention of copying records by central records authorities

29. Section 203C of the Principal Act is amended-

(a) by inserting in sub-section (1) ", or in respect of the making of an intellectually handicapped person's copy of an eligible item in reliance on section 200A," after "53D"; and

(b) by inserting in sub-section (2) "or of an eligible item" after "work".

#### COPYRIGHT AMENDMENT ACT 1986 No. 78 of 1986 - SECT 30

##### Arrangement of declarations and records

30. Section 203D of the Principal Act is amended-

(a) by inserting in sub-section (1) "or other subject-matter" after "works";

(b) by omitting from sub-section (1) "and 51A" and substituting ", 51A and 110B";

(c) by omitting sub-section (2) and substituting the following sub-section:

"(2) Where the copying records of an educational institution, an institution assisting handicapped readers or an institution assisting intellectually handicapped persons are not arranged in such a manner as to allow a person to inspect all of those records that relate to any works and eligible items by the same author or maker without having to inspect any such records that relate to any works and eligible items by another author or maker, the body administering the institution and the custodian in charge of the copying records of the institution are each guilty of an offence, punishable, upon conviction, by a fine not exceeding \$500."; and

(d) by omitting sub-section (4) and substituting the following sub-section:

"(4) Where the copying records of an educational institution, an institution assisting handicapped readers or an institution assisting intellectually handicapped persons, being copying records that are deposited with a central records authority, are not arranged in such a manner as to allow a person to inspect all the records of the institution that relate to any works and eligible items by the same author or maker without having to inspect any records of the institution that relate to any works and eligible items by another author or maker, or any copying records of another institution that are deposited with the authority, the body administering the central records authority and the officer-in-charge of the central records authority are each guilty of an offence, punishable upon conviction, by a fine not exceeding \$500.".

COPYRIGHT AMENDMENT ACT 1986 No. 78 of 1986 - SECT 31

Inspection of records and declarations retained by libraries, archives or institutions

31. Section 203E of the Principal Act is amended-

(a) by inserting in sub-section (1) ", sound recording or cinematograph film" after "in a work";

(b) by omitting from sub-paragraphs (1) (a) (i) and (ii) "or 51A, of copies of works or parts of works" and substituting ", 51A or 110B, of copies of works or parts of works or of copies of other subject-matter";

(c) by omitting from paragraph (1) (b) "in reliance on section 51A" and substituting "or of copies of other subject-matter in reliance on section 51A or 110B";

(d) by omitting sub-section (2) and substituting the following sub-section:

"(2) The owner of the copyright in a work or in an eligible item, or the agent of such an owner, may notify the custodian in charge of the copying records of an educational institution, an institution assisting handicapped readers or an institution assisting intellectually handicapped persons (not being, in any case, an institution that deposits its copying records with a central records authority), in writing, that the owner or agent, as the case may be, wishes to inspect-

(a) all the relevant records of the institution that relate to the making, in reliance on section 53B, 53D or 200A, of-

(i) copies, or handicapped readers' copies, of works or parts of works; or

(ii) intellectually handicapped persons' copies of eligible items or parts of eligible items; or

(b) such of those records as relate to any works and eligible items by a specified author or maker, on a day specified in the notice, being an ordinary working day of the institution not less than 7 days after the date of the giving of the notice.";

(e) by omitting from paragraph (3) (a) all words after "53B" and substituting the following:

", 53D or 200A, of-

(i) copies, or handicapped readers' copies, of works or parts of works;

or

(ii) intellectually handicapped persons' copies of eligible items or parts of eligible items; or";

(f) by omitting from sub-section (7) "educational institution, an institution assisting handicapped readers" and substituting "institution"; and

(g) by inserting in sub-section (10) "or other subject-matter" after "work"(wherever occurring).

#### COPYRIGHT AMENDMENT ACT 1986 No. 78 of 1986 - SECT 32

Additional offences in relation to the making and retention of records and declarations

32. Section 203F of the Principal Act is amended-

(a) by omitting from sub-section (1) "or 53D" and substituting ", 53D, 110B or 200A";

(b) by omitting from sub-section (2) "in reliance on section 49, 50, 51A or 53B or" and substituting "or other subject-matter in reliance on section 49, 50, 51A, 53B or 110B,"; and

(c) by inserting in sub-section (2) "or in relation to the making of a copy of the whole or a part of an eligible item in reliance on section 200A" after "53D".

#### COPYRIGHT AMENDMENT ACT 1986 No. 78 of 1986 - SECT 33

Return of copying records deposited with a central records authority

33. Section 203G of the Principal Act is amended by omitting from sub-section (1) "or (2)".

#### COPYRIGHT AMENDMENT ACT 1986 No. 78 of 1986 - SECT 34

Notation of certain copies, &c.

34. Section 203H of the Principal Act is amended-

(a) by inserting after sub-section (1) the following sub-section:

"(2) In proceedings against a person or body for infringement of copyright

in a sound recording, a cinematograph film or an eligible item in connection with the making, by or on behalf of an institution, of a copy of the sound recording, cinematograph film or eligible item, or a part of the eligible item, the person or body is not entitled to rely on section 110B or 200A as justification for the making of the copy unless, at or about the time the copy was made, there was made on, or attached to, the copy a notation-

(a) stating that the copy was made on behalf of that institution and setting out the date on which the copy was made; and

(b) in the case of a copy that was made in reliance on sub-section 200A (7)-stating that the copy was made in reliance on that sub-section.";

(b) by omitting from paragraph (4) (a) "or" (last occurring);

(c) by inserting after paragraph (4) (a) the following paragraph:

"(aa) makes on, or attaches to, a copy of a sound recording, a cinematograph film or an eligible item, or of a part of an eligible item, a notation of the kind referred to in sub-section (2); or";

(d) by inserting in sub-section (5) "(2)," after "sub-sections (1),";

(e) by omitting from paragraphs (5) (a), (b) and (c) "where a copy of a work, or of a part of a work" and substituting "where a copy of a work, a sound recording, a cinematograph film or an eligible item, or of a part of a work or an eligible item";

(f) by omitting from paragraph (5) (c) "and" (last occurring);

(g) by adding at the end of sub-section (5) the following word and paragraph:

"; and (e) where a copy of a sound recording, a cinematograph film or an



eligible item, or of a part of an eligible item, is made by or on behalf of the body administering an institution, the copy shall be deemed to have been made on behalf of the institution."; and

(h) by inserting after sub-section (9) the following sub-sections:

"(9A) The production, in any proceedings-

(a) for infringement of copyright in a sound recording, a cinematograph film or an eligible item;

(b) before the Copyright Tribunal on application made under sub-section 200A (5); or

(c) for a contravention of this Act,

of a copy of a sound recording, a cinematograph film or an eligible item, or of a part of an eligible item, bearing, or to which there is attached, a notation of the kind referred to in sub-section (2), is prima facie evidence of the matters stated in the notation.

"(9B) For the purposes of sub-section (9A), where a copy of a sound recording, a cinematograph film or an eligible item, or of a part of an eligible item, bears, or where there is attached to such a copy, a notation of the kind referred to in sub-section (2), the notation shall, unless the contrary is proved, be deemed to have been made on or attached to the copy at or about the time the copy was made."