

COPYRIGHT AMENDMENT ACT 1984 NO. 43, 1984

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Copyright Amendment Act 1984 No. 43 of 1984 - LONG TITLE

An Act to amend the law relating to copyright

Copyright Amendment Act 1984 No. 43 of 1984

- SECT 1 Short title, &c.

(Assented to 15 June 1984)

1. (1) This Act may be cited as the Copyright Amendment Act 1984.

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

1 Act 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; and Nos. 7, 80, 91 and 136,
1983.

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- SECT 2 Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

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- SECT 3 Interpretation

3. Section 10 of the Principal Act is amended-

(a) by inserting after paragraph (b) of the definition of "adaptation" in sub-section (1) the following paragraph:

"(ba) in relation to a literary work being a computer program-a version of the work (whether or not in the language, code or notation in which the work was originally expressed) not being a reproduction of the work;"

(b) by inserting after the definition of "cinematograph film" in sub-section (1) the following definition:

" 'computer program' means an expression, in any language, code or notation, of a set of instructions (whether with or without related information) intended, either directly or after either or both of the following:

(a) conversion to another language, code or notation;

(b) reproduction in a different material form,

to cause a device having digital information processing capabilities to perform a particular function;"

(c) by omitting paragraph (a) of the definition of "infringing copy" in sub-section (1) and substituting the following paragraph:

"(a) in relation to a work-a reproduction of the work, or of an adaptation of the work, not being a copy of a cinematograph film of the work or adaptation;"

(d) by omitting paragraph (e) of the definition of "infringing copy" in sub-section (1) and substituting the following paragraph:

"(e) in relation to a published edition of a work-a reproduction of the edition,";

(e) by omitting "imported article" from the definition of "infringing copy" in sub-section (1) and substituting "article imported without the licence of the owner of the copyright";

(f) by omitting the definition of "literary work" in sub-section (1) and substituting the following definition:

" 'literary work' includes-

(a) a table, or compilation, expressed in words, figures or symbols (whether or not in a visible form); and

(b) a computer program or compilation of computer programs;";

and

(g) by inserting after the definition of "manuscript" in sub-section (1)

the following definition:

" 'material form', in relation to a work or an adaptation of a work, includes any form (whether visible or not) of storage from which the work or adaptation, or a substantial part of the work or adaptation, can be reproduced;".

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- SECT 4

4. After section 43 of the Principal Act the following section is inserted:

Back-up copy of computer program

"43A. (1) Subject to sub-section (2), the copyright in a literary work being a computer program is not infringed by the making of a reproduction of the work, or of a computer program being an adaptation of the work, if-

(a) the reproduction is made by, or on behalf of, the owner of the copy (in this section referred to as the 'original copy') from which the reproduction is made; and

(b) the reproduction is made for the purpose only of being used, by or on behalf of the owner of the original copy, in lieu of the original copy in the event that the original copy is lost, destroyed or rendered unusable.

"(2) Sub-section (1) does not apply to the making of a reproduction of a computer program, or of an adaptation of a computer program-

(a) from an infringing copy of the computer program; or

(b) contrary to an express direction by or on behalf of the owner of the copyright in the computer program given to the owner of the original copy not later than the time when the owner of the original copy acquired the original copy.

"(3) For the purposes of this section-

(a) a reference to a copy of a computer program or of an adaptation of a computer program is a reference to any article in which the computer program or adaptation is reproduced in a material form; and

(b) a reference to an express direction, in relation to a copy of a computer program or of an adaptation of a computer program, includes a reference to a clearly legible direction printed on the copy or on a package in which the copy is supplied."

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- SECT 5 Offences

5. Section 132 of the Principal Act is amended by inserting after sub-section (5) the following sub-section:

"(5A) For the purposes of this section, a transmission by a person of a computer program that is received and recorded so as to result in the creation of an infringing copy of the computer program shall be deemed to be a distribution by the person of that infringing copy."

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- SECT 6

6. After section 133 of the Principal Act the following section is inserted:

Advertisement for supply of infringing copies of computer programs

"133A. (1) A person shall not, by any means, publish, or cause 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 if the person believes, or has reasonable grounds for believing, that the copy is, or will be, an infringing copy.

Penalty: For a first offence, \$1,500 and for a second or subsequent offence, \$1,500 or imprisonment for 6 months.

"(2) For the purposes of this section, a transmission of a computer program that, when received and recorded, will result in the creation of a copy of the computer program shall be deemed to constitute the supply of a copy of the computer program at the place where the copy will be created.

"(3) Prosecutions for offences against this section may be brought in the Federal Court of Australia or in any other court of competent jurisdiction.".

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- SECT 7 Application and transitional

7. (1) Subject to this section, the amendments made by this Act extend to works and other subject matter made before the commencement of this Act.

(2) Where, by virtue only of the amendments made by this Act, copyright subsists in a work that was made before the commencement of this Act-

(a) nothing done before the commencement of this Act shall be taken to constitute an infringement of that copyright;

(b) nothing done in relation to the work before the commencement of this Act shall be taken to constitute an offence against section 132 of the Principal Act; and

(c) without limiting the generality of paragraph (a), a reproduction of the work, or of an adaptation of the work, made in, or imported into, Australia before the commencement of this Act shall not be taken to be an infringing copy of the work.

(3) For the purposes of this section, a work the making of which extended over a period shall be deemed not to have been made before the commencement of this Act unless the making of it was completed before the commencement of this Act.