

CHANGES TO THE COPYRIGHT ACT 1968

December 2006

There have been several important changes recently made to copyright law in Australia. The *Copyright Amendment Act 2006* was proclaimed on 11 December 2006 and unless otherwise stated this is when the changes came into force. The main changes are summarised below.

Private Copying

The copying of broadcasts for later use has previously been illegal. Now two exceptions have been introduced recognising that some private use does not breach the copyright owner's economic incentives. Introducing this into our Act aligns it with international standards and the test found in the Australia United States Free Trade Agreement (AUSFTA).

1. Recording Broadcasts to play later – Time Shifting

The current section 111 limits the recording of broadcasts to live-to-air broadcasts; this section is to be repealed. The new section 111 will allow consumers to record broadcast content so they can watch it later. Thus, it will not be a breach of copyright for people to record TV or radio programs and play them at another time.

There are a number of conditions included to protect the copyright owner. These include:

- The recording is meant only for temporary use, not to be played over and over.
- No further copies can be made.
- The recording is only to be played in domestic premises.
- The recording may be loaned to a member of the family or household but not for general loan.
- There is a restriction on some dealings including selling, letting for hire, offering for sale or hire or distributing the copy for trade or other purposes.

As soon as a person who has made a copy receives commercial benefit from the recording, copyright is immediately breached.

2. Format Shifting

Previously this area has not been recognised in the *Copyright Act 1968* and the copying of copyright material for example from a legally purchased CD to one's iPod was a breach of copyright. However, with changes in technology and the introduction of formats such as DVDs and MP3 players, this area needed to be addressed.

The new Bill has introduced sections 43C, 47J, 109A and 110AA. These sections allow material to be format-shifted. For example a CD can be copied on to an MP3 player.

The amendments allow consumers to make a 'main copy' of their original material. A 'main copy' is the final copy. For example, in order to copy a CD to an MP3 player, the CD must first be copied onto a computer. The computer copy is considered to be a 'temporary copy' and the main copy is the one made on the MP3 player. The copyright owner is protected in that individuals must not make multiple copies and only the owner of the original may make a copy.

A 'main copy' will become an infringing copy if it is sold or given to another person. This provision is designed to prevent serial copying and seeks to protect the copyright owner by allowing only one main copy to be made from each original.

Use of Copyright Materials

The Bill has created exceptions for the use of copyright materials.

Libraries (or archives)

Libraries are allowed to officially copy materials for the purpose of providing services to their users (s200AB). They are also allowed to copy material of cultural significance if this material is not commercially available; however this is restricted to reproduction.

Educational institutions

Previously, with some exceptions relating to "fair use", use of material in an educational setting has been deemed a 'communication to the public', infringing copyright laws. Now the Act has been amended to provide that when copyright materials are used for teaching purposes, as long as there is no commercial benefit, copyright infringement will not occur.

The statutory licence applicable to educational institutions is currently limited to the copying of broadcast material. With the proliferation of access to materials on-line, it has been decided that the statutory licence to use materials will be extended to apply to on-line materials.

Disability

A person with a disability is allowed to reproduce material in a different format if the person cannot access it in the manner it is presented.

It is permissible for a fee to be recovered for the services provided by libraries, educational institutions and those helping the disabled, for example translating books in Braille. However a profit or commercial gain may not be made from these services.

Parody and Satire

A new fair dealing provision in regard to parody and satire has been introduced. Parody is the imitation of work, where it may be necessary to include parts from the original. Satire uses copyright materials to draw attention to characteristics for the purpose of irony and ridicule. Using copyright materials for these purposes will no longer constitute infringement as long as it is 'reasonable' in the circumstances.

Research

The previous fair dealing provisions have been amended to clarify dealings with copyright material in connection with research or study. It is now taken that copying an article for the purpose of research or study is fair dealing. If the copy is not an article, the current 10% reasonable proportion standard still applies.

Maker of Communication

Section 22(6A) has been clarified to provide that a person who merely accesses or receives an electronic communication on-line from another person is not responsible for the content.

Copyright Piracy (from 1 January 2007)

The strict liability offences in the Act have been narrowed so as to target those who distribute copies of material with the intent of commercial gain. The Act has amended the offences in the *Copyright Act 1968* so the offences do not extend to people undertaking everyday activities without criminal intent. The Act creates a wider range of enforcement options depending on the seriousness of the conduct.

Technological Protection Measures (from 1 January 2007)

Technological protection measures are used to prevent copyright materials from being accessed or copies made. They can also restrict the use of copyright materials in certain markets (eg. DVD region encoding). For example, the manufacturer of an electronic games console may include in the console software that prevents a game purchased in the United States being played on a console bought in Australia. The purpose is that the manufacturer wants to control the sale of games in each region. Currently it is prohibited to import, deal and manufacture devices to circumvent these measures, but it is not illegal to use them.

The amendments tighten the law relating to circumvention devices, making it illegal to use, manufacture, supply or provide a service which circumvents a technological protection measure. Any breaches will lead to civil and possible criminal liability.

There are limited exceptions where a circumvention device may be used. The amendment allows copyright owners to take legal action against anyone who uses, supplies, manufactures or provides a service to circumvent a technological protection measure. Criminal offences have also been included and apply to those who circumvent technological protection measures with the intention of obtaining a commercial advantage or profit.

These amendments to the Act will bring Australia into line with its obligations under the AUSFTA.

If you require further information, please contact Brett Cowell.