Copyright Amendment Bill 2006

(Government)

(1) Schedule 1, item 6, page 23 (line 20), omit “offences”, substitute “offence”.

[strict liability offences]

(2) Schedule 1, item 6, page 23 (line 29) to page 24 (line 3), omit subsection 132AL(9).

[strict liability offences]

(3) Schedule 1, item 6, page 24 (line 4), omit “Subsections (8) and (9) are offences”, substitute “Subsection (8) is an offence”.

[strict liability offences]

(4) Schedule 1, item 6, page 25 (lines 22 to 31), omit subsections 132AN(5) and (6).

[strict liability offences]

(5) Schedule 1, item 33, page 48 (lines 4 to 12), omit subsections 248PA(5) and (6).

[strict liability offences]

(6) Schedule 1, item 33, page 53 (line 23) to page 54 (line 5), omit subsections 248PE(6) and (7).

[strict liability offences]

(7) Schedule 1, item 33, page 67 (lines 21 to 32), omit subsections 248QB(6) and (7).

[strict liability offences]

(8) Schedule 3, page 87 (after line 3), after item 8, insert:

8A Before subsection 54(1)

Insert:

(1A) In this Division:

record means a disc, tape, paper or other device in which sounds are embodied.
(9) Schedule 6, page 94 (before line 7), before item 1, insert:

**1A Subsection 10(1)**

Insert:

*private and domestic use* means private and domestic use on or off domestic premises.

(10) Schedule 6, item 1, page 94 (after line 15), at the end of subsection 111(1), add:

Note: Subsection 10(1) defines broadcast as a communication to the public delivered by a broadcasting service within the meaning of the Broadcasting Services Act 1992.

(11) Schedule 6, item 1, page 94 (line 29), at the end of subsection 111(3), add:

; or (e) used for causing the film or recording to be seen or heard in public; or

(f) used for broadcasting the film or recording.

(12) Schedule 6, item 8, page 100 (line 1) to page 101 (line 23), omit section 109A, substitute:

**109A Copying sound recordings for private and domestic use**

(1) This section applies if:

(a) the owner of a copy (the *earlier copy*) of a sound recording makes another copy (the *later copy*) of the sound recording using the earlier copy; and

(b) the sole purpose of making the later copy is the owner’s private and domestic use of the later copy with a device that:

(i) is a device that can be used to cause sound recordings to be heard; and

(ii) he or she owns; and

(c) the earlier copy was not made by downloading over the Internet a digital recording of a radio broadcast or similar program; and

(d) the earlier copy is not an infringing copy of the sound recording, a broadcast or a literary, dramatic or musical work included in the sound recording.

(2) The making of the later copy does not infringe copyright in the sound recording, or in a literary, dramatic or musical work or other subject-matter included in the sound recording.

(3) Subsection (2) is taken never to have applied if the earlier copy or the later copy is:

(a) sold; or

(b) let for hire; or

(c) by way of trade offered or exposed for sale or hire; or

(d) distributed for the purpose of trade or otherwise; or

(e) used for causing the sound recording to be heard in public; or

(f) used for broadcasting the sound recording.

Note: If the earlier or later copy is dealt with as described in subsection (3), then copyright may be infringed not only by the making of the later copy but also by a dealing with the later copy.
(4) To avoid doubt, paragraph (3)(d) does not apply to a loan of the earlier copy or the later copy by the lender to a member of the lender’s family or household for the member’s private and domestic use.

[format-shifting]

(13) Schedule 6, page 104 (before line 5), before item 10, insert:

9A After section 41

Insert:

41A Fair dealing for purpose of parody or satire

A fair dealing with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, does not constitute an infringement of the copyright in the work if it is for the purpose of parody or satire.

9B After section 103A

Insert:

103AA Fair dealing for purpose of parody or satire

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 parody or satire.

[parody and satire]

(14) Schedule 6, item 10, page 104 (line 13), omit “, (4) or (5)”, substitute “or (4)”.

[parody and satire]

(15) Schedule 6, item 10, page 104 (lines 17 and 18), omit “or a person licensed by the owner of the copyright”.

[fair use]

(16) Schedule 6, item 10, page 104 (line 28), at the end of paragraph 200AB(2)(c), add “or profit”.

[fair use]

(17) Schedule 6, item 10, page 105 (line 3), at the end of paragraph 200AB(3)(c), add “or profit”.

[fair use]

(18) Schedule 6, item 10, page 105 (line 16), at the end of paragraph 200AB(4)(c), add “or profit”.

[fair use]

(19) Schedule 6, item 10, page 105 (lines 17 and 18), omit subsection 200AB(5).

[parody and satire]

(20) Schedule 6, item 10, page 105 (after line 37), after subsection 200AB(6), insert:

Cost recovery not commercial advantage or profit

(6A) The use does not fail to meet the condition in paragraph (2)(c), (3)(c) or (4)(c) merely because of the charging of a fee that:

(a) is connected with the use; and

(b) does not exceed the costs of the use to the charger of the fee.
Schedule 6, item 11, page 107 (lines 14 to 36), omit subsection 40(5), substitute:

(5) Despite subsection (2), a reproduction, for the purpose of research or study, of not more than a reasonable portion of a work or adaptation that is described in an item of the table and is not contained in an article in a periodical publication is taken to be a fair dealing with the work or adaptation for the purpose of research or study. For this purpose, reasonable portion means the amount described in the item.

<table>
<thead>
<tr>
<th>Works, adaptations and reasonable portions</th>
<th>Amount that is reasonable portion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item 1 A literary, dramatic or musical work</td>
<td>(a) 10% of the number of pages in</td>
</tr>
<tr>
<td>(except a computer program), or an adaptation</td>
<td>the edition; or</td>
</tr>
<tr>
<td>of such a work, that is contained in a published</td>
<td>(b) if the work or adaptation is</td>
</tr>
<tr>
<td>edition of at least 10 pages</td>
<td>divided into chapters—a single</td>
</tr>
<tr>
<td></td>
<td>chapter</td>
</tr>
<tr>
<td>Item 2 A published literary work in electronic</td>
<td>(a) 10% of the number of words in</td>
</tr>
<tr>
<td>form (except a computer program or an electronic</td>
<td>the work or adaptation; or</td>
</tr>
<tr>
<td>compilation, such as a database), a published dramatic</td>
<td>(b) if the work or adaptation is</td>
</tr>
<tr>
<td>work in electronic form or an adaptation published</td>
<td>divided into chapters—a single</td>
</tr>
<tr>
<td>in electronic form of such a literary or dramatic</td>
<td>chapter</td>
</tr>
<tr>
<td>work</td>
<td></td>
</tr>
</tbody>
</table>

(6) Subsection (5) applies to a reproduction of a work or adaptation described in both items of the table in that subsection even if the amount of the work or adaptation reproduced is not more than a reasonable portion (as defined in that subsection) on the basis of only one of those items.

(7) If:

(a) a person makes a reproduction of a part of a published literary or dramatic work or published adaptation of a literary or dramatic work; and

(b) the reproduction is of not more than a reasonable portion (as defined in subsection (5)) of the work or adaptation;

subsection (5) does not apply in relation to any subsequent reproduction made by the person of any other part of the same work or adaptation.

(8) Subsections 10(2), (2A), (2B) and (2C) do not affect subsection (5), (6) or (7) of this section.

Schedule 6, item 26, page 111 (lines 24 and 25), omit the heading to section 51B, substitute:

51B Making preservation copies of significant works in key cultural institutions’ collections

Schedule 6, item 26, page 111 (lines 28 to 30), omit paragraph 51B(1)(a), substitute:

(a) the body administering the library or archives:

(i) has, under a law of the Commonwealth or a State or Territory, the function of developing and maintaining the collection; or
(ii) is prescribed by the regulations for the purposes of this subparagraph; and

(24) Schedule 6, item 26, page 112 (lines 4 and 5), omit “a single reproduction of the work from the manuscript”, substitute “up to 3 reproductions of the work from the manuscript for the purpose of preserving it against loss or deterioration”.

(25) Schedule 6, item 26, page 112 (lines 9 and 10), omit “a comprehensive photographic reproduction of the work from the original artistic work”, substitute “up to 3 comprehensive photographic reproductions of the work from the original artistic work for the purpose of preserving it against loss or deterioration”.

(26) Schedule 6, item 26, page 112 (lines 17 and 18), omit “a single reproduction of the work from the copy held in the collection”, substitute “up to 3 reproductions of the work from the copy held in the collection, for the purpose of preserving the work against loss or deterioration”.

(27) Schedule 6, item 27, page 113 (lines 6 and 7), omit the heading to section 110BA, substitute:

110BA Making preservation copies of significant recordings and films in key cultural institutions’ collections

(28) Schedule 6, item 27, page 113 (lines 10 to 12), omit paragraph 110BA(1)(a), substitute:

(a) the body administering the library or archives:
   (i) has, under a law of the Commonwealth or a State or Territory, the function of developing and maintaining the collection; or
   (ii) is prescribed by the regulations for the purposes of this subparagraph; and

(29) Schedule 6, item 27, page 113 (line 20), omit “a single copy of the recording from the record”, substitute “up to 3 copies of the recording from the record for the purpose of preserving the recording against loss or deterioration”.

(30) Schedule 6, item 27, page 113 (lines 24 and 25), omit “a single copy of the recording from the published record”, substitute “up to 3 copies of the recording from the published record for the purpose of preserving the recording against loss or deterioration”.

(31) Schedule 6, item 27, page 113 (lines 31 and 32), omit “a single copy of the film from the first copy or unpublished copy”, substitute “up to 3 copies of the film from the first copy or unpublished copy for the purpose of preserving the film against loss or deterioration”.

(32) Schedule 6, item 27, page 114 (lines 4 and 5), omit “a single copy of the film from the published copy held in the collection”, substitute “up to 3 copies of the film from the published copy held in the collection, for the purpose of preserving the film against loss or deterioration,”.
[preservation copying]

(33) Schedule 6, item 29, page 114 (lines 28 and 29), omit the heading to section 112AA, substitute:

112AA Making preservation copies of significant published editions in key cultural institutions’ collections

[preservation copying]

(34) Schedule 6, item 29, page 115 (lines 1 to 3), omit paragraph 112AA(1)(a), substitute:

(a) the body administering the library or archives:
   (i) has, under a law of the Commonwealth or a State or Territory, the function of developing and maintaining the collection; or
   (ii) is prescribed by the regulations for the purposes of this subparagraph; and

[preservation copying]

(35) Schedule 6, item 29, page 115 (lines 9 and 10), omit “a single facsimile copy of the edition from the copy held in the collection”, substitute “up to 3 facsimile copies of the edition from the copy held in the collection, for the purpose of preserving the edition against loss or deterioration,”.

[preservation copying]

(36) Schedule 8, item 1, page 117 (lines 7 to 33), omit the item, substitute:

1 At the end of section 28

Add:

(5) A communication of a literary, dramatic or musical work, a sound recording or a cinematograph film is taken for the purposes of this Act not to be a communication to the public if the communication is made merely to facilitate:
   (a) a performance of the work that, because of this section, is not a performance in public; or
   (b) an act of causing sounds forming part of the recording to be heard that, because of this section, is not an act of causing the sound recording to be heard in public; or
   (c) an act of causing visual images or sounds forming part of the cinematograph film to be seen or heard that, because of this section, is not an act of causing the film to be seen or heard in public.

Note: The heading to section 28 is altered by inserting “and communication” after “Performance”.

[communication for educational instruction]

(37) Schedule 8, item 10, page 122 (lines 6 to 27), omit section 200AAA, substitute:

200AAA Proxy web caching by educational institutions

(1) This section applies if:
   (a) a computer system is operated by or on behalf of a body administering an educational institution; and
   (b) the system is operated primarily to enable staff and students of the institution to use the system to gain online access for educational purposes to works and other subject-matter (whether they are made available online using the Internet or merely the system); and
(c) the system automatically makes:
   (i) temporary electronic reproductions of works made available online through the
       system to users of the system in response to action by the users; and
   (ii) temporary electronic copies of other subject-matter made available online
       through the system to users of the system in response to action by the users; and

(d) those reproductions and copies are made by the system merely to facilitate efficient
later access to the works and other subject-matter by users of the system.

(2) Copyright in a work or other subject-matter reproduced or copied by the system as
    described in paragraphs (1)(c) and (d) is not infringed by:
    (a) that reproduction or copying; or
    (b) the later communication of the work or other subject-matter, using that reproduction
        or copy, to a user of the system.

(3) This section does not limit section 28, 43A, 43B, 111A or 111B.

(4) Disregard this section in determining whether copyright in a work or other subject-matter
    is infringed by an act that:
    (a) involves a system like one described in subsection (1) except that the system is not
        operated as described in paragraphs (1)(a) and (b); and
    (b) corresponds to an act described in paragraph (2)(a) or (b).

(5) In this section:
    system includes network.

[caching by educational institutions]

(38) Schedule 9, item 1, page 123 (line 15), omit the definition of broadcaster in section 135AL,
    substitute:

    broadcaster means a person licensed under the Broadcasting Services Act 1992 to
    provide a broadcasting service (as defined in that Act) by which an encoded broadcast is
    delivered.

[encoded broadcasts]

(39) Schedule 11, item 2, page 157 (lines 14 to 19), omit the definition of licensor in subsection
    136(1), substitute:

    licensor means a body corporate for which both the following conditions are met:
    (a) the body is incorporated under a law in force in a State or Territory relating to
        companies;
    (b) the body’s constitution:
        (i) entitles any owner of copyright, or any owner of copyright of a specified kind,
            to become a member of the body; and
        (ii) requires the body to protect the interests of its members connected with
            copyright; and
        (iii) provides that the main business of the body is granting licences; and
        (iv) requires the body to distribute to its members the proceeds (after deduction of
            the body’s administrative expenses) from payments to the body for licences; and
        (v) prevents the body from paying dividends.

[voluntary licences]
(40) Schedule 11, item 27, page 163 (lines 19 to 23), omit section 157A, substitute:

**157A Tribunal must have regard to ACCC guidelines on request**

(1) In making a decision on a reference or application under this Subdivision, the Tribunal must, if requested by a party to the reference or application, have regard to relevant guidelines (if any) made by the Australian Competition and Consumer Commission.

(2) To avoid doubt, subsection (1) does not prevent the Tribunal from having regard to other relevant matters in making a decision on a reference or application under this Subdivision.

**[ACCC guidelines]**

(41) Schedule 11, item 28, page 164 (line 15), at the end of subsection 135SA(2), add “, but does not affect a distribution started before the order was made”.

**[review of collecting society's distribution arrangement]**

(42) Schedule 11, item 29, page 164 (line 27), at the end of subsection 135ZZEA(2), add “, but does not affect a distribution started before the order was made”.

**[review of collecting society's distribution arrangement]**

(43) Schedule 11, item 30, page 165 (line 10), at the end of subsection 135ZZWA(2), add “, but does not affect a distribution started before the order was made”.

**[review of collecting society's distribution arrangement]**

(44) Schedule 11, item 35, page 169 (line 4), at the end of subsection 183F(2), add “, but does not affect a distribution started before the order was made”.

**[review of collecting society's distribution arrangement]**

(45) Schedule 11, Part 4, page 171 (line 2) to page 174 (line 28), omit the Part, substitute:

**Part 4—Records notices**

*Copyright Act 1968*

**39 After subsection 135K(2)**

Insert:

(2A) A matter that:

(a) relates to an activity required by paragraph (1)(b), (c) or (d); and

(b) needs, or is convenient, to be determined; and

(c) is not determined by subsection (1) or (2) or regulations made for the purposes of paragraph (1)(b), (c) or (d) or (2)(a) or (b);

is to be determined by agreement between the administering body and the collecting society or, failing such agreement, the Copyright Tribunal on the application of either of them.

(2B) Sections 135E and 135F do not apply to a copy of a broadcast, or a communication of a copy of a broadcast, made by or on behalf of the administering body during a period in which:

(a) an agreement, or an order of the Copyright Tribunal, determining a matter described in subsection (2A) is in force; and
(b) the body does not comply with the agreement or order.

Note 1: The following heading to subsection 135K(1) is inserted “If records notice is given”.

Note 2: The following heading to subsection 135K(3) is inserted “If sampling notice is given”.

40 Application

(1) The amendment of section 135K of the Copyright Act 1968 made by this Part applies in relation to a records notice given on or after the commencement of the amendment.

(2) The amendment also applies in relation to a records notice given by or on behalf of an administering body before that commencement, if the body and the collecting society make an agreement determining a matter described in subsection 135K(2A) of the Copyright Act 1968. In that case, the amendment applies at and after the time the agreement comes into force.

Note: While the amendment does not apply, section 135K of the Copyright Act 1968, as in force before the commencement of the amendment, applies.

(3) In this item:

- **administering body** has the meaning given by section 135A of the Copyright Act 1968.
- **collecting society** has the meaning given by section 135A of the Copyright Act 1968.
- **records notice** has the meaning given by section 135A of the Copyright Act 1968.

41 After subsection 135ZX(2)

Insert:

(2A) A matter that:

(a) relates to an activity required by paragraph (1)(b), (c) or (d); and
(b) needs, or is convenient, to be determined; and
(c) is not determined by subsection (1) or (2) or regulations made for the purposes of paragraph (1)(b), (c) or (d) or (2)(a) or (b);

is to be determined by agreement between the administering body and the collecting society or, failing such agreement, the Copyright Tribunal on the application of either of them.

(2B) Sections 135ZJ, 135ZK, 135ZL, 135ZMC, 135ZMD, 135ZMDA, 135ZP and 135ZS do not apply to a reproduction or copy of a work or other subject-matter made in hardcopy form or analog form by or on behalf of the administering body during a period in which:

(a) an agreement, or an order of the Copyright Tribunal, determining a matter described in subsection (2A) is in force; and
(b) the body does not comply with the agreement or order.

Note 1: The following heading to subsection 135ZX(1) is inserted “If records notice is given”.

Note 2: The following heading to subsection 135ZX(3) is inserted “If sampling notice is given”.

Note 3: The following heading to subsection 135ZX(4) is inserted “Regulations relevant to records notices and sampling notices”.

42 Application

(1) The amendment of section 135ZX of the Copyright Act 1968 made by this Part applies in relation to a records notice given on or after the commencement of the amendment.

(2) The amendment also applies in relation to a records notice given by or on behalf of an administering body before that commencement, if the body and the relevant collecting society make an agreement determining a matter described in subsection 135ZX(2A) of the Copyright Act 1968.
Act 1968. In that case, the amendment applies at and after the time the agreement comes into force.

Note: While the amendment does not apply, section 135ZX of the Copyright Act 1968, as in force before the commencement of the amendment, applies.

(3) In this item:
administering body has the meaning given by section 135ZB of the Copyright Act 1968.
records notice has the meaning given by section 135ZB of the Copyright Act 1968.
relevant collecting society has the meaning given by section 135ZB of the Copyright Act 1968.

43 After section 153BA

Insert:

153BAA Application to the Tribunal under subsection 135K(2A)

(1) The parties to an application to the Tribunal under subsection 135K(2A) for the determination of a matter are the collecting society and the administering body concerned.

(2) If an application is made to the Tribunal under subsection 135K(2A) for the determination of a matter, the Tribunal must consider the application and, after giving the parties to the application an opportunity of presenting their cases, must make an order determining the matter.

(3) In determining a matter described in subsection 135K(2A), the Tribunal must have regard to such matters (if any) as are prescribed.

(4) In this section:

administering body has the same meaning as in Part VA.

collecting society has the same meaning as in Part VA.

44 After section 153DA

Insert:

153DB Application to the Tribunal under subsection 135ZX(2A)

(1) The parties to an application to the Tribunal under subsection 135ZX(2A) for the determination of a matter are the relevant collecting society and the administering body concerned.

(2) If an application is made to the Tribunal under subsection 135ZX(2A) for the determination of a matter, the Tribunal must consider the application and, after giving the parties to the application an opportunity of presenting their cases, must make an order determining the matter.

(3) In determining a matter described in subsection 135ZX(2A), the Tribunal must have regard to such matters (if any) as are prescribed.

(4) In this section:

administering body has the same meaning as in Part VB.
relevant collecting society has the same meaning as in Part VB.

[records notices]

(46) Schedule 12, item 9, page 188 (after line 16), after subparagraph 116AN(3)(b)(ii), insert:
   (iia) relates to elements of the original program that will not be readily available to the person when the circumvention occurs; and

[technical correction—interoperability]

(47) Schedule 12, item 9, page 188 (line 20), omit “; and”, substitute “.”.

[technical correction—interoperability]

(48) Schedule 12, item 9, page 188 (lines 21 and 22), omit paragraph 116AN(3)(c).

[technical correction—interoperability]

(49) Schedule 12, item 9, page 192 (after line 23), after subparagraph 116AO(3)(b)(ii), insert:
   (iia) relates to elements of the original program that will not be readily available to the person doing the act when the circumvention occurs; and

[technical correction—interoperability]

(50) Schedule 12, item 9, page 192 (line 27), omit “; and”, substitute “.”.

[technical correction—interoperability]

(51) Schedule 12, item 9, page 192 (lines 28 and 29), omit paragraph 116AO(3)(c).

[technical correction—interoperability]

(52) Schedule 12, item 9, page 195 (after line 16), after subparagraph 116AP(3)(b)(ii), insert:
   (iia) relates to elements of the original program that will not be readily available to the person doing the act when the circumvention occurs; and

[technical correction—interoperability]

(53) Schedule 12, item 9, page 195 (line 20), omit “; and”, substitute “.”.

[technical correction—interoperability]

(54) Schedule 12, item 9, page 195 (lines 21 and 22), omit paragraph 116AP(3)(c).

[technical correction—interoperability]

(55) Schedule 12, item 11, page 199 (after line 17), after subparagraph 132APC(3)(b)(ii), insert:
   (iia) relates to elements of the original program that will not be readily available to the person when the circumvention occurs; and

[technical correction—interoperability]

(56) Schedule 12, item 11, page 199 (line 21), omit “; and”, substitute “.”.

[technical correction—interoperability]

(57) Schedule 12, item 11, page 199 (lines 22 and 23), omit paragraph 132APC(3)(c).

[technical correction—interoperability]

(58) Schedule 12, item 11, page 203 (after line 32), after subparagraph 132APD(3)(b)(ii), insert:
   (iia) relates to elements of the original program that will not be readily available to the person doing the act when the circumvention occurs; and

[technical correction—interoperability]
(59) Schedule 12, item 11, page 203 (line 36), omit “; and”, substitute “.”.  
[technical correction—interoperability]

(60) Schedule 12, item 11, page 204 (lines 1 and 2), omit paragraph 132APD(3)(c).  
[technical correction—interoperability]

(61) Schedule 12, item 11, page 207 (after line 16), after subparagraph 132APE(3)(b)(ii), insert:  
(iia) relates to elements of the original program that will not be readily available to the person doing the act when the circumvention occurs; and  
[technical correction—interoperability]

(62) Schedule 12, item 11, page 207 (line 20), omit “; and”, substitute “.”.  
[technical correction—interoperability]

(63) Schedule 12, item 11, page 207 (lines 21 and 22), omit paragraph 132APE(3)(c).  
[technical correction—interoperability]