

APPENDIX A (Paragraph 3 of Report)

Suggested Form of Amendments to the
Copyright Act 1968

SUGGESTED FORM OF AMENDMENTS TO THE COPYRIGHT ACT 1968

The suggested amendments of the copyright Act 1968 are:-

1. Substitute the words, "if the person knew or ought reasonably to have known that" for the words, "where, to his knowledge," in subsets. 37(1), 38(1), 102(1) and 103(1).
2. After s. 37, insert a new section, s. 37A, as follows:-

"37A(1) The provisions of s. 37 are not infringed where:-

- (a) A person imports an article into Australia and, at the time of the importation, is satisfied after reasonable investigation that copies of the article (not being second-hand copies) or articles substantially similar thereto, cannot be obtained in Australia from the copyright owner or his licensee or agent within a
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reasonable time; or

(b) A person imports an article into Australia and the article is imported pursuant to a written order signed by another person in which it is stated by that person that the article is required otherwise than for the purpose of-

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

(ii) distributing the article-

(A) for the purpose of trade;

or

(B) for any other purpose to an extent that will affect prejudicially the owner of the copyright; or

(iii) by way of trade exhibiting the article in public.

(2) This section shall not apply to an article unless it is made in Australia or in a country specified in Part I or Part II of Schedule 1 to the Copyright (International protection) Regulations

made pursuant to s. 184 of this Act as in force from time to time with the consent of, or under licence from, the owner, in the country of manufacture, of the copyright in the work of which the article is said to be a reproduction.

(3) A person' relying upon this section shall carry the onus of proving the matters specified in sub-sees. (1) and (2).

(4) A person who makes a statement pursuant to para. (1)(b) which is false to his knowledge is liable to pay to any person who suffers loss as a consequence of the making of such a statement the amount of such loss.

(5) The amount of such loss is a debt due to the person who has suffered it and is recoverable by him from the person making the statement in a court of competent jurisdiction."

3. After s. 38, add two new sections as follows:-

"38A(1) The provisions of s. 38 are not infringed where a person, in Australia, and without the licence of the owner of the copyright -

(a) sells, lets for hire, or by way of trade

offers or exposes for sale or hire, an imported article; or

- (b) by way of trade exhibits an imported article in public,

and either,

- (c) the person importing it was satisfied after reasonable investigation that, at the time of the importation of the article, copies of the article (not being second-hand copies) or articles substantially similar thereto, could not be obtained in Australia from the copyright owner or his licensee or agent within a reasonable time;

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- (d) the article was imported pursuant to a written order signed by another person in which that person stated that the article was required otherwise than for the purposes of-

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

(ii) distributing the article-

(A) for the purpose of trade; or

(B) for any other purpose to an extent that would affect prejudicially the owner of the copyright; or

(iii) by way of trade exhibiting the article in public.

(2) This section shall not apply to an article unless it is made in Australia or in a country specified in Part I or Part II of Schedule 1 to the Copyright (International Protection) Regulations made pursuant to s. 184 of this Act as in force from time to time with the consent of, or under licence from, the owner, in the country of manufacture, of the copyright in the work of which the article is said to be a reproduction.

(3) A person relying upon this section shall carry the onus of proving the matters specified in sub-sees. (1) and (2).

(4) A person who makes a statement pursuant to para. (1)(d) which is false to his knowledge is liable to pay to any person who suffers loss as a

consequence of the making of such a statement the amount of such loss.

(5) The amount of such loss is a debt due to the person who has suffered it and is recoverable by him from the person making the statement in a court of competent jurisdiction.

38B(1) Section 37 and, so far as it applies to imported articles, s. 38 of this Act, do not apply to an article by reason only that copyright subsists in a label or mark (whether a trade mark within the meaning of the Trade Marks Act 1955 or not) which is affixed or attached to the article or to the packaging or container in which the article is packed or contained.

(2) Sub-section (1) does not apply if the owner of the copyright in the label or mark has not consented to or authorized the use of his work for the purposes of the label or mark."

4. After s. 38B, add a new section, s. 38c, as follows:-

"(1) Regulations may be made prescribing periods of time which are reasonable times for the purposes of para. 37A(1)(a) and para. 38A(1)(c) of the Act.

(2) Any such prescription may be made in relation to all reproductions of particular works, or reproductions of particular classes of works or particular articles which are reproductions of a work or works."

5. After s. 102, add a new section, S. 102A, as follows:-

"102A(1) The provisions of s. 102 are not infringed where:-

(a) A person imports an article into Australia and, at the time of the importation, is satisfied after reasonable investigation that copies of the article (not being second-hand copies) or articles substantially similar thereto, cannot be obtained in Australia from the copyright owner or his licensee or agent within a reasonable time; or

(b) A person imports an article into Australia and the article is imported pursuant to a written order signed by another person in which it is stated by that person that the article is required otherwise than for the purpose of-

- (i) selling, letting for hire, or by way of trade offering or exposing for sale or hire, the article;
- (ii) distributing the article -
 - (A) for the purpose of trade; or
 - (B) for any other purpose to an extent that will affect prejudicially the owner of the copyright; or
- (iii) by way of trade exhibiting the article in public.

(2) This section shall not apply to an article unless it is made in Australia or in a country specified in Part I or Part II of Schedule 1 to the Copyright (International Protection) Regulations made pursuant to s. 184 of this Act as in force from time to time with the consent of, or under licence from, the owner, in the country of manufacture, of the copyright in the work of which the article is said to be a reproduction.

(3) A person relying upon this section shall carry the onus of proving the matters specified in sub-sees. (1) and (2).

(4) A person who makes a statement pursuant to para. (1)(b) which is false to his knowledge is liable to pay to any person who suffers loss as a consequence of the making of such a statement the amount of such loss.

(5) The amount of such loss is a debt due to the person who has suffered it and is recoverable by him from the person making the statement in a court of competent jurisdiction."

6. After s. 103B, add a new section, s. 103C, as follows:-

"103C(1) The provisions of s. 103 are not infringed where a person, in Australia, and without the licence 'of the owner of the copyright -

(a) sells, lets for hire, or by way of trade **offers or exposes for sale or hire, an imported article; or**

(b) by way of trade exhibits an imported article in public,

and either,

(c) the person importing it was satisfied after reasonable investigation that, at the time

of the importation of the article, copies of the article (not being second-hand copies) or articles substantially similar thereto, could not be obtained in Australia from the copyright owner or his licensee or agent within a reasonable time;

or,

(d) the article was imported pursuant to a written order signed by another person in which that person stated that the article was required otherwise than for the purposes of-

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

(ii) distributing the article-

(A) for the purpose of trade; or

(B) for any other purpose to an extent that would affect prejudicially the owner of the copyright; or

(iii) by way of trade exhibiting the

article in public.

(2) This section shall not apply to an article unless it is made in Australia or in a country specified in Part I or Part II of Schedule 1 to the Copyright (International Protection) Regulations made pursuant to s. 184 of this Act as in force from time to time with the consent of, or under licence from, the owner, in the country of manufacture, of the copyright in the work of which the article is said to be a reproduction.

(3) A person relying upon this section shall carry the onus of proving the matters specified in sub-sees. (1) and (2).

(4 A) person who makes a statement pursuant to para. (1)(d) which is false to his knowledge is liable to pay to any person who suffers loss as a consequence of the making of such a statement the amount of such loss.

(5) The amount of such loss is a debt due to the person who has suffered it and is recoverable by him from the person making the statement in a court of competent jurisdiction."

7. After s. 103C, add a new section, s. 103D, as follows:-

"103D(1) Regulations may be made prescribing periods of time which are reasonable times for the purposes of para. 102A(1)(a) and para. 103C(1)(C) of the Act.

(2) Any such prescription may be made in relation to all copies of particular subject matter, or copies of particular classes of subject matter or particular articles which are copies of one or more items of subject matter."

8. The following amendments should be made to s. 132:-

(1) Omit para..

(2) Add after sub-sec. (1) a new sub-section as follows:-

"(1A) A person shall not, at a time when copyright subsists in a work, import an article into Australia 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:-

- (d) the person knows or ought reasonably to know the article to be an infringing copy of the work; and
- (e) the article was not made in Australia or in a country specified in Part I or Part II of Schedule 1 to the Copyright (International protection) Regulations made pursuant to s. 184 of this Act as in force from time to time . with the consent of, or under licence from, the owner, in the country of manufacture, of the copyright in the work of which the article is said to be a reproduction."

(3) Insert into s. 132 a new sub-section, sub-see. (1B), as follows:-

"(1B) In a prosecution for an offence under sub-see. (1A) proof that the person importing the article knew or ought reasonably to have known that the article was an infringing copy of the work shall be prima facie evidence of the matters

specified in para. (1A)(e)."

(4) Insert into s. 132 a new sub-section, sub-see.

(5A) as follows:-

"(5A) A person shall not make, or cause to be made, a statement in an order referred to in sub-sees. 37A(1), 38A(1), 102A(I) or 103C(1) which he knows to be false or misleading."

Note:

1. The numbers 103C and 103D have been used rather than 103A and 103B because the Act already contains sections numbered 103A and 103B.

2. The provisions of s. 37A and 102A will cover the importation of multiple copies because of the operation of the Acts Interpretation Act 1901.

3. If the provisions of paras. 38A(1)(d) or 103C(1)(d) have been complied with, an importer or other person may sell an imported article to a person other than the person placing the order because the article will have been lawfully imported notwithstanding the fact that the person who placed the order for the article does not accept it.

4. There is no counterpart of s. 38B following s. 103C because it is unlikely that any writing or drawing on a

label will be subject matter as distinct from a work.