

APPENDIX B (Paragraph 4 of Report)

Relevant provisions of the  
Copyright Act 1968

RELEVANT PROVISIONS OF  
THE COPYRIGHT ACT 1968

Infringement by importation for sale or hire

37. The copyright in a literary, dramatic, musical or artistic work is infringed by a person who, without the licence of the owner of the copyright, imports 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—
  - (i) for the purpose of trade; or
  - (ii) for any other purpose to an extent that will affect prejudicially the owner of the copyright; or

(c) by way of trade exhibiting the article in public, where, to his knowledge, the making of the article would, if the article had been made in Australia by the importer, have constituted an infringement of the copyright.

Infringement by sale and other dealings

38. (1) The copyright in a literary, dramatic, musical or artistic work is infringed by a person who, 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 article: or

(b) by way of trade exhibits an article in public, where, to his knowledge, the making of the article constituted an infringement of the copyright or, in the case of an imported article, would, if the article had been made in Australia by the importer, have constituted such an infringement.

(2) For the purposes of the last preceding subsection, the distribution of any articles—

- (a) for the purpose of trade; or
- (b) for any other purpose to an extent that affects prejudicially the owner of the copyright concerned,

shall be taken to be the sale of those articles.

Infringement by importation for sale or hire

**102.** A copyright subsisting by virtue of this Part is infringed by a person who, without the licence of the owner of the copyright, imports 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—
  - (i) for the purpose of trade; or
  - (ii) for any other purpose to an extent that will affect prejudicially the owner of the copyright; or

(c) by way of trade exhibiting the article in public, where, to his knowledge, the making of the article would, if the article had been made in Australia by the importer, have constituted an infringement

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### Infringement by sale and other dealings

103. (1) A copyright subsisting by virtue of this Part is infringed by a person who, 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 article; or
- (b) by way of trade exhibits an article in public, where, to his knowledge, the making of the article constituted an infringement of the copyright or, in the case of an imported article, would, if the article had been made in Australia by the importer, have constituted an infringement of the copyright.

(2) For the purposes of the last preceding sub-section, the distribution of any articles—

- (a) for the purpose of trade; or
  - (b) for any other purpose to an extent that affects prejudicially the owner of the copyright concerned,
- shall be taken to be the sale of those articles.

### Offences

**132. (1)** A person shall not, at a time when copyright subsists in a work—

- (a) make an article for sale or hire;
- (b) sell or let for hire, or by way of trade offer or expose for sale or hire, an article;
- (c) by way of trade exhibit an article in **public**; or
- (d) import an article into Australia 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 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
  - (iii) 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.

**(2)** A person shall not, at a time when copyright subsists in a work, **distribute—**

- (a) for the purpose of trade; or
- (b) for any other purpose to an extent that affects prejudicially the owner of the copyright,

an article that the person knows, or ought reasonably to know, to be an infringing copy of the **work**.

**(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

(3) A person shall not, at a **time** when copyright subsists in a work, make or have in his or her possession a plate that the person knows, or ought reasonably to know, is to be used for making infringing copies of the work.

(4) The preceding provisions of this section apply in relation to copyright subsisting in any subject-matter by virtue of Part **IV** in like manner as **they** apply in relation to copyright subsisting in a work by virtue of Part **III**.

(5) A person shall not cause a literary, dramatic or musical work to **be** performed in public at a place of public entertainment, if the person **knows**, or ought reasonably to know, that copyright subsists in the work and that the performance constitutes an infringement of the copyright.

**(5AA)** A person shall not **cause—**

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

(b) a cinematography 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.

**(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.

(6) This section applies only in respect of acts done in Australia.

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

(8) Jurisdiction is conferred on the Federal Court of Australia to hear and determine prosecutions **for offences** against this 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**.

#### Restriction of importation of printed copies of works

**135. (1)** In this **section—**

(a) a reference to Australia does not include a reference to the external Territories; and

(b) a reference to importation into Australia does not include a reference to importation from such a Territory.

(2) The owner of the copyright in a published literary, dramatic or musical work may give notice in writing to the Comptroller-General of **Customs** (in this section referred to as “the **Comptroller-General**”) **stating—**

(a) that he is the owner of the “copyright in the **work**; and

(b) **that he** objects to **the** importation into Australia, during a period **specified** in the notice, of copies of the work to **which this** section applies.

(3) A notice under the last preceding sub-section is of no effect unless the period specified in the notice does not exceed 5 years and does not extend beyond the end of the period for which the copyright in the work to which the notice relates is to subsist.

**(4) This** section applies, in relation to a work, to any printed copy of the work made outside Australia and the external Territories the making of which would, if it had been made in Australia by the person who imported it into Australia, have constituted an infringement of the copyright in the work.

(5) Where a notice has been given under this section in respect of a work and has not been withdrawn, the importation of copies of ~~the~~ work to which this section applies into Australia for the purpose ~~of—~~

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

(b) distributing the **copies—**

(i) for the purpose of trade; or

(ii) 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 copies in public,  
is prohibited and any such copies, if imported into Australia for any such purpose, may be seized as forfeited. to the Commonwealth.

(6) Subject to the regulations, the Comptroller-General, or on appeal from him the Minister for Industry, Technology and Commerce, may permit copies of a work that are liable to be or have been seized as forfeited under this section to be delivered to the owner or importer upon security being given to the satisfaction of the Comptroller-General that the copies will be forthwith exported from Australia.

(7) The provisions of the *Customs Act* 1901-2968 apply to the seizure and forfeiture under this section of copies of a work to which this section applies as if the copies were prohibited imports for the purposes of that Act.

(8) The regulations may make provision for or in relation **to—**

(a) the forms of notices under this **section**;

(b) the times at which, and the manner in which, notices are to be given;

(c) the giving of information and evidence to the Comptroller-~~&ncm~~~

(d) the payment of fees and the giving of security to the **Comptroller-General** in respect of any liability or expense that may be incurred by him as a result of the seizure of any copy of a work to which a notice under this section **relates**; and

(e) indemnifying the Comptroller-General against any such liability or expense.

(9) The regulations may contain provisions similar to the provisions of this section in relation to the importation into external Territories (other than importation from Australia or from another such Territory) of printed copies of published literary, dramatic or musical works.

(10) Where no appeal has been made to the Minister for Industry, Technology and Commerce against a decision of the Comptroller-General made on or after 1 July 1976 not to grant permission under sub-section (6), an application may be made to **the** Administrative Appeals Tribunal for a review of the decision.

(11) Where an application has been made to the Administrative Appeals Tribunal for a review of a decision referred to in sub-section (10), a person is not entitled to **appeal** to the Minister for Industry, Technology and Commerce under sub-section (6) against that decision.

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