

FACT SHEET

US FREE TRADE AGREEMENT IMPLEMENTATION ACT 2004

RIGHT TO REPRODUCE/COPY

EXCEPTION FOR THE NORMAL USE OF COPYRIGHT MATERIAL

Amendments to the *Copyright Act 1968* (the Act) in the *US Free Trade Agreement Implementation Act 2004* (USFTAI Act) and the *Copyright Legislation Amendment Act 2004* (CLA Act) commenced on 1 January 2005. The USFTAI Act amended the right of reproduction to include all reproductions of works in any manner or form, permanent or temporary. The USFTAI Act also inserted a new exception to the amended reproduction right to accommodate the normal use of copyright material. Corresponding amendments were also made in relation to subject-matter other than works. Some amendments were made to the Act by the CLA Act to clarify the scope of the new exception.

The right to reproduce works and copy other subject-matter

The USFTAI Act amended the Act to ensure that all reproductions of works and copies of other subject-matter are covered by copyright in Australia.

The amendment to the reproduction right provides that authors, performers and producers of phonograms have the exclusive right 'to authorise or prohibit all reproductions, in any manner or form, permanent or temporary (including temporary storage in material form) of their works (including cinematograph films), performances fixed in a phonogram, and phonograms.

Definition of material form

The Act provides copyright owners with the exclusive right to reproduce their work or adaptation of a work in *material form*.

Prior to the amendment made by the USFTAI Act only reproductions that were capable of further reproduction were deemed to be in *material form*.

Following the amendments in the USFTAI Act, to be in *material form* the form of the work or adaptation no longer needs to be capable of reproduction. As a result copyright applies to all reproductions, in any manner or form, permanent or temporary.

Meaning of copy

The meaning of *copy* in the Act has been amended in relation to subject-matter other than works (in particular, sound recordings and cinematograph films). These amendments effectively ensure that all copies, permanent or temporary, of such subject-matter are covered by copyright.

Exception for the normal use of copyright material

As permitted by Australia's international obligations, including the AUSFTA, exceptions to exclusive rights can be created providing the exception does not conflict with a normal exploitation of the copyright material and does not unreasonably prejudice the legitimate interests of the right holder. The USFTAI Act inserted a new exception into the Act (the exception was also amended by the CLA Act to clarify its scope). The exception ensures that certain reproductions and copies made incidentally as part of the normal use of works legitimately produced and acquired will not constitute an infringement of copyright.

For a particular reproduction to be covered by the new exception it must:

- be temporary, and
- be incidentally made as a necessary part of the technical process of using a copy of the work.

The exception does not apply if:

- the reproduction was made from an infringing copy of the work or if the copy was made in another country would be an infringing copy had it been made in Australia, or
- the use of the work constitutes an infringement of the copyright in the work.

The exception does not apply to any subsequent use of a temporary reproduction of a work other than as a part of the technical process in which the reproduction was made.

A corresponding exception exists in relation to making copies of subject-matter other than works.

More information

For copies of the USFTAI Act and the CLA Act (and Explanatory Memoranda) visit: www.comlaw.gov.au

If you would like more information on copyright generally visit <http://www.ag.gov.au/copyright>, or subscribe to the Attorney-General's Department's Copyright E-news at <http://www.ag.gov.au/www/enews/copyrightHome.nsf>