

## FACT SHEET

### US FREE TRADE AGREEMENT IMPLEMENTATION ACT 2004

#### ELECTRONIC RIGHTS MANAGEMENT INFORMATION

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Amendments to the *Copyright Act 1968* (the Act) in the *US Free Trade Agreement Implementation Act 2004* (USFTAI Act) commenced on 1 January 2005. The USFTAI Act included amendments to the Act to implement obligations under the Australia-United States Free Trade Agreement (AUSFTA) that relate to electronic rights management information (ERMI).

#### *What is ERMI?*

ERMI refers to specified information that relates to a copy of a work or other subject-matter, or any numbers or codes which represent such information electronically. This would include, for example, technology such as digital watermarks. ERMI typically includes details about the copyright owner, and terms and conditions of use of the copyright material.

#### *Protection of ERMI prior to 1 January 2005*

Prior to the commencement of the USFTAI Act, the Act already included provisions protecting ERMI and provided for civil remedies and criminal offences where ERMI was altered or removed. These provisions applied to ERMI that was attached to a copy of a work or other subject-matter.

#### *Protection of ERMI from 1 January 2005*

The USFTAI Act effectively broadened the protection afforded to ERMI in the Act. Protection of ERMI includes both civil remedies and criminal offences, and is extended to include ERMI that is separate from, but appears in connection with, or has at some point in time appeared in connection with, a copy of the work or other subject-matter.

The table below summarises how the ERMI provisions of the Act operate.

<b>ERMI PROVISIONS</b>
<p><b>Definition of ERMI</b></p> <p>The definition requires that the ERMI is information that:</p> <ul style="list-style-type: none"><li>• is electronic; and</li></ul> <p>either:</p> <ul style="list-style-type: none"><li>• is or was attached to, or is or was embodied in, a copy of the work or subject-matter; or</li><li>• appears or appeared in connection with a communication, or the making available, of the work or subject-matter; and</li></ul> <p>either:</p> <ul style="list-style-type: none"><li>• identifies the work or subject-matter, and its author or copyright owner (including such information represented as numbers or codes); or</li></ul>

- identifies or indicates some or all of the terms and conditions on which the work or subject-matter may be used, or indicates that the use of the work or subject-matter is subject to terms or conditions (including such information represented as numbers or codes).

#### **Removal or alteration of ERMI**

The Act provides the copyright owner or exclusive licensee with an action against a person where a person removes or alters ERMI without the permission of the owner or exclusive licensee. The person who removed or altered the ERMI must have known or ought reasonably to have known that the removal or alteration would induce, enable, facilitate or conceal an infringement of copyright.

#### **Distribution to the public etc. of works whose ERMI has been removed or altered**

The Act provides a copyright owner or exclusive licensee with an action against a person where any ERMI that relates to a work has been removed or altered and the person:

- distributes a copy of the work or other subject-matter to the public
- imports into Australia a copy of the work or other subject-matter for distribution to the public, or
- communicates a copy of the work or other subject-matter to the public.

The person must have known that the ERMI was removed or altered without the permission of the owner or exclusive licensee and know or ought reasonably to have known that the distribution, importation or communication that was done by the person would induce, enable, facilitate or conceal an infringement of copyright.

#### **Distribution and importation of ERMI that has been removed or altered**

The Act provides a copyright owner or exclusive licensee with an action against a person who distributes ERMI or imports into Australia ERMI for distribution without the permission of the owner or exclusive licensee where:

- the ERMI has been removed from a copy of a work or subject-matter without the permission of the owner or exclusive licensee, or
- the ERMI has been removed from a copy of a work or subject-matter with the permission of the owner or exclusive licensee but the ERMI has been altered without permission.

The person must have known that the ERMI has been removed or altered without the permission of the owner or exclusive licensee and the person must have known or ought reasonably have known that the distribution or importation of the ERMI that was done by the person would induce, enable, facilitate or conceal an infringement of the copyright.

#### **Exception relating to national security and law enforcement**

None of the causes of action in relation to ERMI apply when something is lawfully done for the purposes of law enforcement or national security by or on behalf of the Commonwealth or a State or Territory; or an authority of the Commonwealth, a State or Territory.

#### **Remedies**

The Act provides criminal offences and civil remedies in relation to the above mentioned causes of action.

*More information*

For copies of the USFTAI Act and the CLA Act (and Explanatory Memoranda) visit:  
[www.comlaw.gov.au](http://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/enewscopyrightHome.nsf>