

## **COPYRIGHT AMENDMENT ACT 1989 No. 32, 1989**

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### **COPYRIGHT AMENDMENT ACT 1989 No. 32 of 1989 - LONG TITLE**

An Act to amend the Copyright Act 1968, and for related purposes

### **COPYRIGHT AMENDMENT ACT 1989 No. 32 of 1989 - SECT 1**

**Short title etc.**

(Assented to 24 May 1989)

1.

(1) This Act may be cited as the Copyright Amendment Act 1989.

(2) In this Act, "Principal Act" means the Copyright Act 1968\*1\*.

(Minister's second reading speech made in-

House of Representatives on 3 November 1988

Senate on 28 November 1988)

\*1\* No. 63, 1968, as amended. For previous amendments, see No. 216, 1973; Nos. 37 and 91, 1976; No. 160, 1977; No. 19, 1979; No. 154, 1980; Nos. 42, 61 and 113, 1981; Nos. 26, 80 and 154, 1982; Nos. 7, 80, 91 and 136, 1983; Nos. 43

and 165, 1984; Nos. 65 and 67, 1985; Nos. 78 and 168, 1986; and No. 23, 1987.

## **COPYRIGHT AMENDMENT ACT 1989 No. 32 of 1989 - SECT 2**

### **Commencement**

2. (1) Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.

(2) The remaining provisions of this Act (including the items, and paragraphs of the items, in the Schedule) commence on a day or days to be fixed by Proclamation.

## **COPYRIGHT AMENDMENT ACT 1989 No. 32 of 1989 - SECT 3**

### **Long title**

3. The title of the Principal Act is amended by omitting "Copyright" and substituting "copyright and the protection of certain performances".

## **COPYRIGHT AMENDMENT ACT 1989 No. 32 of 1989 - SECT 4**

### **Interpretation**

4. Section 10 of the Principal Act is amended by inserting after subsection (1) the following subsection:

"(1A) Without limiting the meaning of the expression 'educational purposes' in this Act, a copy of the whole or a part of a work or other subject-matter shall be taken, for the purposes of the provision in which the expression appears, to have been made, used or retained, as the case may be, for the educational purposes of an educational institution if:

(a) it is made or retained for use, or is used, in connection with a particular course of instruction provided by the institution; or

(b) it is made or retained for inclusion, or is included, in the collection of a library of the institution."

## **COPYRIGHT AMENDMENT ACT 1989 No. 32 of 1989 - SECT 5**

### **Performance**

5. Section 27 of the Principal Act is amended by adding at the end the following subsection:

"(5) This section does not apply to a performance within the meaning of Part XIA."

## **COPYRIGHT AMENDMENT ACT 1989 No. 32 of 1989 - SECT 6**

### **Fair dealing for purpose of research or study**

6. After subsection 40 (1) of the Principal Act the following new subsections are inserted:

"(1A) A fair dealing with a literary work (other than lecture notes) does not constitute an infringement of the copyright in the work if it is for the purpose of, or associated with, an approved course of study or research by an enrolled external student of an educational institution.

"(1B) In subsection (1A) the expression 'lecture notes' means any literary work produced for the purpose of the course of study or research by a person lecturing or teaching in or in connection with the course of study or research."

## **COPYRIGHT AMENDMENT ACT 1989 No. 32 of 1989 - SECT 7**

7. After section 51 of the Principal Act the following section is inserted:

### **Copying of works in Australian Archives**

"51AA. (1) The copyright in a work that is kept in the collection of the Australian Archives, where it is open to public inspection, is not infringed by the making by, or on behalf of, the officer in charge of the Archives:

- (a) of a single working copy of the work;

(b) of a single reference copy of the work for supply to the central office of the Archives;

(c) on the written request for a reference copy of the work by an officer of the Archives in a regional office of the Archives, where the officer in charge is satisfied that a reference copy of the work has not been previously supplied to that regional office-of a single reference copy of the work for supply to that regional office;

(d) where the officer in charge is satisfied that a reference copy of the work supplied to a regional office of the Archives is lost, damaged or destroyed and an officer of the Archives in that regional office makes a written request for a replacement copy of the work-of a single replacement copy of the work for supply to that regional office; or

(e) where the officer in charge is satisfied that a reference copy of the work supplied to the central office of the Archives is lost, damaged or destroyed-of a single replacement copy of the work for supply to that central office.

"(2) In this section:

'reference copy', in relation to a work, means a copy of the work made from a working copy for supply to the central office, or to a regional office, of the Australian Archives for use by that office in providing access to the work to members of the public;

'replacement copy', in relation to a work, means a copy of the work made from a working copy for the purpose of replacing a reference copy of the work that is lost, damaged or destroyed;

'working copy', in relation to a work, means a copy of the work made for the purpose of enabling the Australian Archives to retain the copy and use it for making reference copies and replacement copies of the work."

## **COPYRIGHT AMENDMENT ACT 1989 No. 32 of 1989 - SECT 8**

### **Interpretation**



8. Section 54 of the Principal Act is amended by adding at the end the following subsections:

"(4) Subject to subsection (5), this Division applies to a record of a part of a musical work as it applies to a record of the whole work.

"(5) Section 55:

(a) does not apply to a record of a whole work unless the previous record referred to in paragraph 55 (1) (a) was a record of the whole work; and

(b) does not apply to a record of a part of a work unless that previous record was a record of that part of the work."

### **COPYRIGHT AMENDMENT ACT 1989 No. 32 of 1989 - SECT 9 Conditions upon which manufacturer may make records of musical work**

9. Section 55 of the Principal Act is amended:

(a) by omitting subparagraph (1) (d) (ii) and substituting the following subparagraph:

"(ii) the prescribed royalty is paid to the owner of the copyright:

(A) in the manner agreed between the manufacturer and the owner of the copyright or, failing such agreement, determined by the Copyright Tribunal under section 152B; or

(B) if no such agreement or determination is in force-in the manner prescribed by the regulations.";

(b) by omitting subsection (5) and substituting the following subsections:

"(5) If, apart from this subsection, the amount of royalty payable in respect of a record under this section would be less than one cent, that amount of royalty is one cent.

"(6) In this section:

'prescribed royalty', in relation to a record of a musical work, means:

(a) such amount of royalty as is agreed between the manufacturer and the owner of the copyright in the work or, failing such agreement, as is determined by the Copyright Tribunal under section 152A; or

(b) if no such agreement or determination is in force-an amount equal to 6.25% of the retail selling price of the record."

#### **COPYRIGHT AMENDMENT ACT 1989 No. 32 of 1989 - SECT 10**

10. Sections 74 and 75 of the Principal Act are repealed and the following sections are substituted:

Corresponding design

"74. In this Division:

'corresponding design', in relation to an artistic work, means a design that, when applied to an article, results in a reproduction of that work, but does not include a design consisting solely of features of two-dimensional pattern or ornament applicable to a surface of an article.

Copyright protection where corresponding design registered

"75. Subject to section 76, where copyright subsists in an artistic work (whether made before the commencement of this section or otherwise) and a corresponding design is or has been registered under the Designs Act 1906 on or after that commencement, it is not an infringement of that copyright to reproduce the work by applying that, or any other, corresponding design to an article."

#### **COPYRIGHT AMENDMENT ACT 1989 No. 32 of 1989 - SECT 11**

11. Section 77 of the Principal Act is repealed and the following section is substituted:

Application of artistic works as industrial designs without registration of the designs

"77. (1) This section applies where:

(a) copyright subsists in an artistic work (other than a building or a model of a building, or a work of artistic craftsmanship) whether made before

the commencement of this section or otherwise;

(b) a corresponding design is applied industrially, whether in Australia or elsewhere, by or with the licence of the owner of the copyright in the work in the place where the industrial application happens;

(c) at any time on or after the commencement of this section, articles to which the corresponding design has been so applied (in this section called 'articles made to the corresponding design') are sold, let for hire or offered or exposed for sale or hire, whether in Australia or elsewhere; and

(d) at that time, the corresponding design is not registrable under the Designs Act 1906 or has not been registered under that Act.

"(2) It is not an infringement of the copyright in the artistic work to reproduce the work, on or after the day on which articles made to the corresponding design are first so sold, let for hire or offered or exposed for sale or hire, by applying that, or any other, corresponding design to an article.

"(3) This section does not apply in relation to any articles in respect of which, at the time when they were sold, let for hire or offered or exposed for sale or hire, the corresponding design concerned was excluded from registration by regulations made under the Designs Act 1906, and, for the purposes of any proceedings under this Act, a design shall be conclusively presumed to have been so excluded if:

(a) before the commencement of the proceedings, an application for the registration of the design under that Act in respect of those articles had been refused;

(b) the reason, or one of the reasons, given for the refusal was that the design was excluded from registration under that Act by regulations made under that Act; and

(c) when the proceedings were commenced, no appeal against the refusal had been allowed or was pending.

"(4) The regulations may specify the circumstances in which a design is, for the purposes of this section, to be taken to be applied industrially."

## **COPYRIGHT AMENDMENT ACT 1989 No. 32 of 1989 - SECT 12**

12. After section 103B of the Principal Act the following section is inserted:

Fair dealing for purpose of research or study

"103C. (1) 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 research or study.

"(2) For the purposes of this Act, the matters to which regard shall be had in determining whether a dealing with an audio-visual item constitutes a fair dealing for the purpose of research or study include:

- (a) the purpose and character of the dealing;
- (b) the nature of the audio-visual item;
- (c) the possibility of obtaining the audio-visual item within a reasonable time at an ordinary commercial price;
- (d) the effect of the dealing upon the potential market for, or value of, the audio-visual item; and
- (e) in a case where part only of the audio-visual item is copied-the amount and substantiality of the part copied taken in relation to the whole item."

## **COPYRIGHT AMENDMENT ACT 1989 No. 32 of 1989 - SECT 13**

### **Filming or recording broadcasts for private and domestic use**

13. Section 111 of the Principal Act is amended by omitting paragraphs (3) (a), (b) and (c) and substituting the following paragraphs:

"(a) selling a copy of the film or sound recording, letting it for hire, or by way of trade offering or exposing it for sale or hire;

(b) distributing a copy of the film or sound recording, whether for the purpose of trade or otherwise;

- (c) by way of trade exhibiting a copy of the film or sound recording in public;
- (d) broadcasting the film or recording; or
- (e) causing the film or recording to be seen or heard in public."

## **COPYRIGHT AMENDMENT ACT 1989 No. 32 of 1989 - SECT 14**

14. After Part V of the Principal Act the following Part is inserted:

### **"PART VA-COPYING OF BROADCASTS BY EDUCATIONAL AND OTHER INSTITUTIONS**

#### **"Division 1-Preliminary**

##### **Interpretation**

"135A. In this Part:

'administering body' means a body administering an institution;

'broadcast' means a sound broadcast or a television broadcast;

'collecting society' means the body that is, for the time being, declared to be the collecting society under section 135P;

'institution' means:

- (a) an educational institution; or
- (b) an institution assisting intellectually handicapped persons;

'notice holder' means the person who is, for the time being, appointed to be the notice holder under section 135T;

'preview copy' means a copy of a broadcast referred to in section 135F;

'records notice' means a remuneration notice specifying that the amount of equitable remuneration payable to the collecting society by the administering body giving the notice is to be assessed on the basis of a records system;

'relevant copyright owner' means the owner of the copyright in a work, a sound recording or a cinematograph film;

'remuneration notice' means a notice referred to in subsection 135G (1);

'rules', in relation to the collecting society, means the provisions of the memorandum and articles of association of the society;

'sampling notice' means a remuneration notice specifying that the amount of equitable remuneration payable to the collecting society by the administering body giving the notice is to be assessed on the basis of a sampling system;

'student', in relation to an institution, has the meaning given by section 135C.

#### Copies of broadcasts

"135B. In this Part:

(a) a reference to a copy of a broadcast is a reference to a record embodying a sound recording of the broadcast or a copy of a cinematograph film of the broadcast; and

(b) a reference to the making of a copy of a broadcast is a reference to the making of a copy of the whole or a part of the broadcast.

#### Student of an institution

"135C. In this Part, a reference to a student of an institution is:

(a) in the case of an educational institution-a reference to a student of the institution; and

(b) in the case of an institution assisting intellectually handicapped persons-a reference to an intellectually handicapped person to whom the institution provides assistance.

#### Operation of collecting society rules

"135D. This Part applies to the collecting society despite anything in the rules of the society but nothing in this Part affects those rules so far as they can operate together with this Part.

#### "Division 2-Copying of broadcasts

##### Copying of broadcasts by educational institutions etc.

"135E. (1) The copyright in a broadcast, or in any work, sound recording or cinematograph film included in a broadcast, is not infringed by the making, by or on behalf of an administering body, of a copy of the broadcast if:

(a) a remuneration notice, given by or on behalf of the administering body

to the collecting society, is in force;

(b) where the copy is made by, or on behalf of, a body administering an educational institution—the copy is made solely for the educational purposes of the institution or of another educational institution;

(c) where the copy is made by, or on behalf of, a body administering an institution assisting intellectually handicapped persons—the copy is made solely for the purposes of use in the provision of assistance to intellectually handicapped persons by the institution or by another similar institution; and

(d) the administering body complies with subsection 135K (1) or (3), as the case requires, in relation to the copy.

"(2) Where a copy of a broadcast referred to in subsection (1):

(a) is used for a purpose other than a purpose referred to in paragraph (1) (b) or (c);

(b) is made, sold or otherwise supplied for a financial profit; or

(c) is given to an administering body when there is not in force a remuneration notice given by that body to the collecting society; with the consent of the administering body by whom, or on whose behalf, it is made, subsection (1) does not apply, and shall be taken never to have applied, to the making of the copy.

Preview copies

"135F. (1) The copyright in a broadcast, or in any work, sound recording or cinematograph film included in a broadcast, is not infringed by the making of a preview copy of the broadcast.

"(2) A copy of a broadcast is a preview copy if:

(a) the copy is made by, or on behalf of, an administering body;

(b) a remuneration notice, given by, or on behalf of, the administering body to the collecting society, is in force; and

(c) the copy is made and used solely for the purpose of enabling that body to decide whether or not the copy should be retained for the educational purposes of the institution administered by it, or for use in the provision of

assistance to intellectually handicapped persons by the institution administered by it, as the case may be.

"(3) Subject to this section, a preview copy shall be destroyed within 14 days after the day on which it was made (in this section called 'the preview period').

"(4) A preview copy may be retained after the end of the preview period if:

(a) where the relevant institution is an educational institution-the copy is retained solely for the educational purposes of the institution; or

(b) where the relevant institution is an institution assisting intellectually handicapped persons-the copy is retained solely for the purpose of use in the provision of assistance to such persons by the institution.

"(5) Where a preview copy is retained under subsection (4), subsection 135E (1) applies in relation to the copy after the end of the preview period as if the copy had been made solely for a purpose referred to in paragraph 135E (1) (b) or (c).

"(6) Where a preview copy is neither destroyed within the preview period nor retained under subsection (4), subsection (1) does not apply, and shall be taken never to have applied, to the making of the copy.

#### Remuneration notices

"135G. (1) An administering body may, by notice in writing given to the collecting society by it or on its behalf, undertake to pay equitable remuneration to the society for copies of broadcasts made by it, or on its behalf, being copies made while the notice is in force.

"(2) A remuneration notice shall specify whether the amount of equitable remuneration is to be assessed on the basis of a records system or a sampling system.

"(3) A remuneration notice comes into force on the day on which it is given to the collecting society, or on such later day as is specified in the notice, and remains in force until it is revoked.

#### Records notices

"135H. (1) Where a records notice is given by, or on behalf of, an



administering body, the amount of equitable remuneration payable to the collecting society by the administering body for each copy of a broadcast made by, or on behalf of, the administering body while the notice is in force is such amount as is determined by agreement between the administering body and the collecting society or, failing such agreement, by the Copyright Tribunal on application made by either of them.

"(2) For the purposes of subsection (1), different amounts may be determined (whether by agreement or by the Copyright Tribunal) in relation to:

- (a) different classes of works, sound recordings or cinematograph films included in broadcasts;
- (b) different institutions administered by the administering body; or
- (c) different classes of students of an institution administered by the administering body.

#### Sampling notices

"135J. (1) Where a sampling notice is given by, or on behalf of, an administering body, the amount of equitable remuneration payable to the collecting society by the administering body for copies of broadcasts made by it, or on its behalf, while the notice is in force is such annual amount per student of the institution concerned as is determined by agreement between the administering body and the collecting society or, failing such agreement, by the Copyright Tribunal on application made by either of them.

"(2) The annual amount referred to in subsection (1) shall be determined (whether by agreement or by the Copyright Tribunal) having regard to the extent to which copies of broadcasts are made by, or on behalf of, the administering body in a particular period and to such other matters (if any) as are relevant in the circumstances.

"(3) The extent of copying of broadcasts and any other matters that are necessary or convenient to be assessed by use of a sampling system, shall be assessed by use of a sampling system determined by agreement between the administering body and the collecting society or, failing such agreement, by the Copyright Tribunal on application made by either of them.

"(4) For the purposes of subsection (1), different annual amounts may be determined (whether by agreement or by the Copyright Tribunal) in relation to different institutions administered by the administering body and different classes of students of an institution administered by it.

"(5) Where:

(a) a sampling notice is given by, or on behalf of, an administering body to the collecting society; and

(b) during any period, the administering body does not comply with one or more of the requirements of the sampling system determined under this section in relation to the notice; subsections 135E (1) and 135F (1) do not apply to any copy of a broadcast made by, or on behalf of, the administering body during that period.

Marking and record keeping requirements

"135K. (1) Where a records notice is given by, or on behalf of, an administering body, the body shall:

(a) mark, or cause to be marked, in accordance with the regulations, each copy of a broadcast made by it, or on its behalf, while the notice is in force, or any container in which such a copy is kept;

(b) make, or cause to be made, a record of each copying of a broadcast carried out by it, or on its behalf, while the notice is in force, being a record containing such particulars as are prescribed;

(c) retain that record for the prescribed retention period after the making of the copy to which it relates; and

(d) send copies of all such records to the collecting society in accordance with the regulations.

"(2) For the purposes of subsection (1), a record of the copying of a broadcast:

(a) may be kept in writing or in any other manner prescribed in the regulations; and

(b) if it is kept in writing, shall be in accordance with the prescribed form.

"(3) Where a sampling notice is given by, or on behalf of, an administering

body, the body shall mark, or cause to be marked, in accordance with the regulations, each copy of a broadcast made by it, or on its behalf, while the notice is in force, or any container in which such a copy is kept.

Inspection of records etc.

"135L. (1) Where a remuneration notice is or has been in force, the collecting society may, in writing, notify the administering body which gave the notice that the society wishes, on a day specified in the notice, being an ordinary working day of the institution specified in the notice not earlier than 7 days after the day on which the notice is given, to do such of the following things as are specified in the notice:

(a) assess the amount of copying of broadcasts carried out at the premises of the institution;

(b) inspect all the relevant records held at those premises that relate to the making of copies of broadcasts in reliance on section 135E;

(c) inspect such other records held at those premises as are relevant to the assessment of the amount of equitable remuneration payable by the administering body to the society.

"(2) Where the collecting society gives a notice, a person authorised in writing by the society may, during the ordinary working hours of the relevant institution on the day specified in the notice (but not before 10 a.m. or after 3 p.m.), carry out the assessment, or inspect the records, to which the notice relates and, for that purpose, may enter the premises of the institution.

"(3) An administering body shall take all reasonable precautions, and exercise reasonable diligence, to ensure that a person referred to in subsection (2) who attends at the premises of an institution administered by the body for the purpose of exercising the powers conferred by that subsection is provided with all reasonable and necessary facilities and assistance for the effective exercise of those powers.

"(4) An administering body that contravenes subsection (3) is guilty of an offence punishable, on conviction, by a fine not exceeding \$500.

#### Revocation of remuneration notice

"135M. A remuneration notice may be revoked at any time by the relevant administering body by notice in writing given to the collecting society, and the revocation takes effect at the end of 3 months after the date of the notice or on such later day as is specified in the notice.

#### Request for payment of equitable remuneration

"135N. (1) Subject to this section, where a remuneration notice is or has been in force, the collecting society may, by notice in writing given to the administering body which gave the notice, request the body to pay to the society, within a reasonable time after the date of the notice, the amount of equitable remuneration specified in the notice, being an amount payable under section 135H or 135J, as the case may be, for copies of broadcasts made by, or on behalf of, the body while the remuneration notice is or was in force.

"(2) Where the remuneration notice is a sampling notice, the collecting society shall not make a request under this section more than once in each period of 12 months during which the notice is in force.

"(3) If an amount specified in a request under subsection (1) is not paid in accordance with the request, it may be recovered from the relevant administering body by the collecting society in the Federal Court of Australia or any other court of competent jurisdiction as a debt due to the society.

"(4) Jurisdiction is conferred on the Federal Court of Australia with respect to actions under subsection (3).

#### "Division 3-The collecting society

##### The collecting society

"135P. (1) Subject to this section, the Attorney-General may, by notice in the Gazette, declare a body named in the notice to be the collecting society.

"(2) The Attorney-General shall not name more than one body in a declaration and shall not make a declaration while an earlier declaration is in force.

"(3) The Attorney-General shall not declare a body to be the collecting society unless:

- (a) it is a company limited by guarantee and incorporated under a law in

force in a State or Territory relating to companies;

(b) all relevant copyright owners, or their agents, are entitled to become its members;

(c) its rules prohibit the payment of dividends to its members; and

(d) its rules contain such other provisions as are prescribed, being provisions necessary to ensure that the interests of the collecting society's members who are relevant copyright owners or their agents are protected adequately, including, in particular, provisions about:

(i) the collection of amounts of equitable remuneration payable by administrative bodies under section 135H or 135J;

(ii) the payment of the administrative costs of the society out of amounts collected by it;

(iii) the distribution of amounts collected by it;

(iv) the holding on trust by the society of amounts for relevant copyright owners who are not its members; and

(v) access to records of the society by its members.

#### Revocation of declaration

"135Q. The Attorney-General may, by notice in the Gazette, revoke the declaration of a body as the collecting society if satisfied that the body:

(a) is not functioning adequately as the collecting society;

(b) is not acting in accordance with its rules or in the best interests of those of its members who are relevant copyright owners or their agents;

(c) has altered its rules so that they no longer comply with paragraphs 135P (3) (c) and (d); or

(d) has refused or failed, without reasonable excuse, to comply with section 135R or 135S.

#### Annual report and accounts

"135R. (1) The collecting society shall, as soon as practicable after the end of each financial year, prepare a report of its operations during that financial year and send a copy of the report to the Attorney-General.

"(2) The Attorney-General shall cause a copy of the report sent to the

Attorney-General under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after the receipt of the report by the Attorney-General.

"(3) The society shall keep accounting records correctly recording and explaining the transactions of the society (including any transactions as trustee) and the financial position of the society.

"(4) The accounting records shall be kept in such a manner as will enable true and fair accounts of the society to be prepared from time to time and those accounts to be conveniently and properly audited.

"(5) The society shall, as soon as practicable after the end of each financial year, cause its accounts to be audited by an auditor who is not a member of the society, and shall send to the Attorney-General a copy of its accounts as so audited.

"(6) The society shall give its members reasonable access to copies of all reports and audited accounts prepared under this section.

"(7) This section does not affect any obligations of the society relating to the preparation and lodging of annual returns or accounts under the law under which it is incorporated.

#### Amendment of rules

"135S. The collecting society shall, within 21 days after it alters its rules, send a copy of the rules as so altered to the Attorney-General, together with a statement setting out the effect of the alteration and the reasons why it was made.

#### "Division 4-Interim copying

##### Appointment of notice holder

"135T. The Attorney-General may, by notice in the Gazette, appoint a person to be the notice holder for the purposes of this Division.

##### Copying before declaration of collecting society

"135U. (1) The copyright in a broadcast, or in any work, sound recording or cinematograph film included in a broadcast, is not infringed by the making, by or on behalf of an administering body, of a copy of the broadcast if:

(a) at the time the copy is made, the first collecting society has not been declared;

(b) a notice given by the administering body to the notice holder under subsection 135W (1) is in force;

(c) where the copy is made by, or on behalf of, a body administering an educational institution-the copy is made solely for the educational purposes of the institution or of another educational institution;

(d) where the copy is made by, or on behalf of a body administering an institution assisting intellectually handicapped persons-the copy is made solely for the purposes of use in the provision of assistance to intellectually handicapped persons by the institution or by another similar institution; and

(e) the administering body complies with paragraphs 135K (1) (a), (b) and (c) or subsection 135K (3), in so far as those provisions apply.

"(2) Where a copy of a broadcast referred to in subsection (1):

(a) is used for a purpose other than a purpose referred to in paragraph (1) (c) or (d);

(b) is made, sold or otherwise supplied for a financial profit; or

(c) is given to an administering body when there is not in force a notice given by that body to the notice holder under subsection 135W (1);

with the consent of the administering body by whom, or on whose behalf, it is made, subsection (1) does not apply, and shall be taken never to have applied, to the making of the copy.

Preview copies

"135V. Section 135F applies to the making of preview copies of broadcasts before the first collecting society is declared as if:

(a) the reference in paragraph 135F (2) (b) to a remuneration notice given by an administering body to the collecting society were a reference to a notice under subsection 135W (1) given by the administering body to the notice holder; and

(b) the references in subsection 135F (5) to subsection 135E (1), and

paragraphs 135E (1) (b) and (c), were references to subsection 135U (1), and paragraphs 135U (1) (c) and (d), respectively.

#### Notices by administering bodies

"135W. (1) An administering body may at any time before the declaration of the first collecting society, by notice in writing given to the notice holder, undertake to pay equitable remuneration to the collecting society, when it is declared, for copies of broadcasts made by, or on behalf of, the administering body while the notice is in force.

"(2) A notice shall specify whether the amount of equitable remuneration is to be assessed on the basis of a records system or a sampling system.

"(3) A notice comes into force on the day on which it is given to the notice holder, or on such later day as is specified in the notice, and remains in force until it is revoked.

"(4) A notice may be revoked at any time by the relevant administering body by notice in writing given to the notice holder, and the revocation takes effect on the date of the notice of revocation or on such later date as is specified in it.

#### Marking and record keeping requirements

"135X. (1) Where an administering body gives a notice under subsection 135W (1) that specifies that the amount of equitable remuneration is to be assessed on the basis of a records system, paragraphs 135K (1) (a), (b) and (d) and subsection 135K (2) apply as if:

(a) the reference to the collecting society were a reference to the notice holder; and

(b) references to a records notice were references to the notice under subsection 135W (1).

"(2) Where an administering body gives a notice under subsection 135W (1) that specifies that the amount of equitable remuneration is to be assessed on the basis of a sampling system, subsection 135K (3) applies as if:

(a) the reference to the collecting society were a reference to the notice holder; and



(b) references to a sampling notice were references to the notice under subsection 135W (1).

#### Effect of declaration of collecting society

"135Y. (1) Where the first collecting society is declared, a notice given by an administering body to the notice holder under subsection 135W (1) and in force immediately before that declaration shall, on and after that declaration, be taken, for the purposes of this Part, to be a records notice or a sampling notice, as the case may be, given by that body to the collecting society, being a records notice or sampling notice that came into force on the day on which the notice came into force.

"(2) Where a notice is to be taken under this section to be a records notice, the relevant administering body shall cause copies of all records made under paragraph 135K (1) (b) on or after the day on which the notice is taken to have come into force to be sent to the collecting society within 21 days after the declaration of the collecting society.

#### "Division 5-Miscellaneous

#### Relevant copyright owner may authorise copying

"135Z. Nothing in this Part affects the right of the owner of the copyright in a broadcast, or in a work, sound recording or cinematograph film included in a broadcast, to grant a licence authorising an administering body to make, or cause to be made, a copy of the broadcast, work, sound recording or film without infringing that copyright.

#### Copyright not to vest in copier

"135ZA. Despite any other provision of this Act, the making of a copy of a broadcast by, or on behalf of, an administering body that is not an infringement of copyright under this Part, does not vest copyright in any work or other subject-matter in any person."

### **COPYRIGHT AMENDMENT ACT 1989 No. 32 of 1989 - SECT 15**

15. The following Part is inserted in the Principal Act after Part V of that

Act or, if Part VA of that Act (as amended by this Act) has commenced, after Part VA:

## **"PART VB-COPYING OF WORKS ETC. BY EDUCATIONAL AND OTHER INSTITUTIONS**

### "Division 1-Preliminary

#### Interpretation

"135ZB. In this Part:

'administering body' means a body administering an institution;

'collecting society' means a body that is, for the time being, declared to be a collecting society under section 135ZZB;

'eligible item' has the meaning given by section 135ZC;

'institution' means:

- (a) an educational institution;
- (b) an institution assisting handicapped readers; or
- (c) an institution assisting intellectually handicapped persons;

'licensed copy' means:

(a) a copy of the whole or a part of a work, being a copy made by, or on behalf of, a body administering an educational institution in reliance on section 135ZJ, 135ZK or 135ZL;

(b) a record embodying a sound recording of the whole or a part of a literary or dramatic work, or a Braille version, a large-print version or a photographic version of the whole or a part of such a work, being a record or version made by, or on behalf of, a body administering an institution assisting handicapped readers in reliance on section 135ZP; or

(c) a copy of the whole or a part of an eligible item, being a copy made

by, or on behalf of, a body administering an institution assisting intellectually handicapped persons in reliance on section 135ZS;

'records notice' means a remuneration notice specifying that the amount of equitable remuneration payable to the collecting society by the administering

body giving the notice is to be assessed on the basis of a records system;

'relevant collecting society', in relation to a remuneration notice, means the collecting society for the owners of the copyright in works, or other subject-matter, of the same kind as that to which the remuneration notice relates;

'relevant copyright owner' means the owner of the copyright in a work or an eligible item other than a work;

'remuneration notice' means a notice referred to in subsection 135ZU (1);

'rules', in relation to a collecting society, means the provisions of the memorandum and articles of association of the society;

'sampling notice' means a remuneration notice specifying that the amount of equitable remuneration payable to the collecting society by the administering body giving the notice is to be assessed on the basis of a sampling system;

'student', in relation to an institution, has the meaning given by section 135ZD.

#### Eligible items and photographic versions

"135ZC. In this Part:

(a) a reference to an eligible item is a reference to:

- (i) a published literary, dramatic, musical or artistic work;
- (ii) a published sound recording or cinematograph film; or
- (iii) a work referred to in subparagraph (i) that is included in a

sound broadcast;

(b) a reference to a copy of an eligible item, being a literary, dramatic or musical work, is a reference to any of the following:

- (i) a reproduction of the work in a material form;
- (ii) an adaptation of the work;
- (iii) a reproduction in a material form of an adaptation of the work;

(c) a reference to a copy of an eligible item, being an artistic work, is a reference to a reproduction in a material form of the work;

(d) a reference to a copy of an eligible item, being a sound recording or a cinematograph film, is a reference to a copy of the sound recording or

cinematograph film; and

(e) a reference to a photographic version of a work or a part of a work is a reference to a copy of the work or part of the work produced as a film-strip, or series of separate transparencies, designed to meet the needs of handicapped readers.

Student of an institution

"135ZD. In this Part, a reference to a student of an institution is:

(a) in the case of an educational institution-a reference to a student of the institution;

(b) in the case of an institution assisting handicapped readers-a reference to a handicapped reader to whom the institution provides assistance;

(c) in the case of an institution assisting intellectually handicapped persons-a reference to an intellectually handicapped person to whom the institution provides assistance.

Part does not apply to computer programs

"135ZE. Nothing in this Part applies in relation to a literary work, being a computer program or a compilation of computer programs.

Operation of collecting society rules

"135ZF. This Part applies to a collecting society despite anything in the rules of the society but nothing in this Part affects those rules so far as they can operate together with this Part.

"Division 2-Copying of works by educational institutions

Multiple copying of insubstantial portions of works

"135ZG. (1) Subject to this section, copyright in a literary or dramatic work is not infringed by the making of one or more copies of a page or pages of the work in an edition of the work if the copying is carried out on the premises of an educational institution for the purposes of a course of education provided by it.

"(2) Subsection (1) does not apply to the making of a copy of the whole of a work.

"(3) Subsection (1) does not apply to the making of a copy of more than 2 of the pages of a work in an edition of the work unless:

- (a) there are more than 200 pages in the edition; and
- (b) the total number of pages so copied does not exceed 1% of the total number of pages in the edition.

"(4) Where:

- (a) a person makes, or causes to be made, a copy of a part of a work contained on a page or pages in an edition; and
- (b) subsection (1) applies to the making of that copy; that subsection does not apply to the making, by or on behalf of that person, of a copy of any other part of that work within 14 days after the day on which the previous copy was made.

"(5) In this section, a reference to an edition of a work includes a reference to an edition of works that include that work.

#### Copying of published editions by educational institutions

"135ZH. The copyright in a published edition of a work (being a work in which copyright does not subsist) is not infringed by the making of one or more reproductions of the whole or a part of the edition if the reproduction, or each of the reproductions, is made in the course of the making of a copy of the whole or a part of the work by, or on behalf of, a body administering an educational institution for the educational purposes of that institution or of another educational institution.

#### Multiple copying of periodical articles by educational institutions

"135ZJ. (1) Subject to this section, the copyright in an article contained in a periodical publication is not infringed by the making of one or more copies of the whole or a part of that article by, or on behalf of, a body administering an educational institution if:

- (a) a remuneration notice, given by or on behalf of the body to the relevant collecting society, is in force;
- (b) the copy is made solely for the educational purposes of the institution or of another educational institution; and

(c) the body complies with subsection 135ZX (1) or (3), as the case requires, in relation to the copy.

"(2) This section does not apply in relation to copies of, or of parts of, 2 or more articles contained in the same periodical publication unless the articles relate to the same subject-matter.

#### Multiple copying of works published in anthologies

"135ZK. The copyright in a literary or dramatic work, being a work contained in a published anthology of works and comprising not more than 15 pages in that anthology, is not infringed by the making of one or more copies of the whole or a part of that work by, or on behalf of, a body administering an educational institution if:

(a) a remuneration notice, given by or on behalf of the body to the relevant collecting society, is in force;

(b) the copy is made solely for the educational purposes of the institution or of another educational institution; and

(c) the body complies with subsection 135ZX (1) or (3), as the case requires, in relation to the copy.

#### Multiple copying of works by educational institutions

"135ZL. (1) Subject to this section, the copyright in a literary, dramatic, musical or artistic work (other than an article contained in a periodical publication) is not infringed by the making of one or more copies of the whole or a part of the work by, or on behalf of, a body administering an educational institution if:

(a) a remuneration notice, given by or on behalf of the body to the relevant collecting society, is in force;

(b) the copy is made solely for the educational purposes of the institution or of another educational institution; and

(c) the body complies with subsection 135ZX (1) or (3), as the case requires, in relation to the copy.

"(2) This section does not apply in relation to copies of the whole, or of more than a reasonable portion, of a work that has been separately published

unless the person who makes the copies, or causes the copies to be made, for, or on behalf of, the body is satisfied, after reasonable investigation, that copies (other than second-hand copies) of the work cannot be obtained within a reasonable time at an ordinary commercial price.

#### Application of Division to certain illustrations

"135ZM. Where an article or other literary, dramatic or musical work is accompanied by an artistic work or artistic works provided for the purpose of explaining or illustrating the article or other work, the preceding sections of this Division apply as if:

(a) where any of those sections provides that the copyright in the article or other work is not infringed-the reference to that copyright included a reference to any copyright in that artistic work or those artistic works;

(b) a reference to a copy of an article or other work included a reference to a copy of the article or other work together with a copy of that artistic work or those artistic works;

(c) a reference to a copy of a part of an article or other work included a reference to a copy of that part of the article or other work together with a copy of the artistic work or artistic works provided for the purpose of explaining or illustrating that part;

(d) a reference to a copy of a page of a literary or dramatic work in an edition of the work included a reference to a copy of a page in such an edition that contained that work and an artistic work or artistic works provided for the purpose of explaining or illustrating that part of that work;  
and

(e) a reference to a copy of pages of a literary or dramatic work in an edition of the work included a reference to a copy of pages in such an edition that contained a part of that work and an artistic work or artistic works provided for the purpose of explaining or illustrating that part of that work.

"Division 3-Copying of works by institutions assisting handicapped  
readers

Copying of published editions by institutions assisting handicapped readers

"135ZN. The copyright in a published edition of a work (being a work in which copyright does not subsist) is not infringed by the making of one or more reproductions of the whole or a part of the edition if the reproduction, or each of the reproductions, is made in the course of the making of a copy of the whole or a part of the work by, or on behalf of, a body administering an institution assisting handicapped readers for use in the provision, whether by the institution or otherwise, of assistance to handicapped readers.

Multiple copying of works by institutions assisting handicapped readers

"135ZP. (1) The copyright in a literary or dramatic work is not infringed by the making by, or on behalf of, a body administering an institution assisting handicapped readers of one or more records embodying a sound recording of the work or of a part of the work if:

- (a) a remuneration notice, given by or on behalf of the body to the relevant collecting society, is in force;
- (b) each record is made solely for use by a handicapped reader for the purpose of research or study that he or she is undertaking or proposes to undertake, or for the purpose of otherwise instructing himself or herself on any matter; and
- (c) the body complies with subsection 135ZX (1) or (3), as the case requires, in relation to each copy.

"(2) The copyright in a published literary or dramatic work is not infringed by the making by, or on behalf of, a body administering an institution assisting handicapped readers, of one or more Braille versions, large-print versions or photographic versions of the work or of a part of the work if:

- (a) a remuneration notice, given by or on behalf of the body to the relevant collecting society, is in force;
- (b) each version is made solely for use by a handicapped reader for the purpose of research or study that he or she is undertaking or proposes to undertake, or for the purpose of otherwise instructing himself or herself on any matter; and
- (c) the body complies with subsection 135ZX (1) or (3), as the case



requires, in relation to each version.

"(3) Where a sound recording of a work has been published, subsection (1) does not apply to the making of any record embodying a sound recording of the work (including a record that is a copy of that first-mentioned sound recording) for, or on behalf of, a body administering an institution assisting handicapped readers unless the person who makes that record, or causes that record to be made, is satisfied, after reasonable investigation, that no new record that embodies only a sound recording of the work can be obtained within a reasonable time at an ordinary commercial price.

"(4) Where a Braille version of a work has been separately published, subsection (2) does not apply to the making of a Braille version of the work, or of a part of the work, unless the person who makes that version, or causes that version to be made, for, or on behalf of, a body administering an institution assisting handicapped readers is satisfied, after reasonable investigation, that no new copy of a Braille version of the work, being a version that has been separately published, can be obtained within a reasonable time at an ordinary commercial price.

"(5) Where a large-print version of a work has been separately published, subsection (2) does not apply to the making of a large-print version of the work, or of a part of the work, unless the person who makes the version, or causes the version to be made, for, or on behalf of, a body administering an institution assisting handicapped readers is satisfied, after reasonable investigation, that no new copy of a large-print version of the work, being a version that has been separately published, can be obtained within a reasonable time at an ordinary commercial price.

"(6) Where a photographic version of a work has been separately published, subsection (2) does not apply to the making of a photographic version of the work, or of a part of the work, unless the person who makes the version, or causes the version to be made, for, or on behalf of, a body administering an institution assisting handicapped readers is satisfied, after reasonable investigation, that no new copy of a photographic version of the work, being a

version that has been separately published, can be obtained within a reasonable time at an ordinary commercial price.

"(7) For the purposes of this section, a record or a version shall be taken to be a new record or version if it is not second-hand.

Making of relevant reproductions by institutions assisting handicapped readers

"135ZQ. (1) Subject to this section, the copyright in a published literary or dramatic work is not infringed by the making by, or on behalf of, a body administering an institution assisting handicapped readers, of a relevant reproduction of the work, or of a part of the work, if the relevant reproduction is made solely for use in the making by, or on behalf of, that body, of a handicapped reader's copy of the work, or of a part of the work, as the case may be.

"(2) Where:

(a) a relevant reproduction of a work, or of a part of a work, is made by, or on behalf of, a body administering an institution assisting handicapped readers; and

(b) the relevant reproduction:

(i) is used otherwise than in the making by, or on behalf of, that body, of a handicapped reader's copy of the work, or of a part of the work, as the case may be; or

(ii) is not destroyed within 3 months after the day on which it was made;

subsection (1) does not apply, and shall be taken never to have applied, to the making of the relevant reproduction.

"(3) Subsection (1) does not apply to the making of a relevant reproduction, being a record embodying a sound recording, of a work, or of a part of a work, unless, at the time the record was made, there was embodied on the record, immediately before the beginning of that sound recording, a sound recording of the prescribed message.

"(4) Subsection (1) does not apply to the making of a relevant reproduction of a work, or of a part of a work, unless the body by whom, or on whose behalf, the relevant reproduction is made marks it, or causes it to be marked, in accordance with the regulations.

"(5) In this section:

'relevant reproduction', in relation to a work, or a part of a work, means:

(a) a copy of the work, or of a part of the work; or

(b) a record embodying a sound recording of the work, or of a part of the work; or

(c) a Braille version, a large-print version, or a photographic version, of the work, or of a part of the work.

"Division 4-Copying of works etc. by institutions assisting intellectually  
handicapped persons

Copying of published editions by institutions assisting intellectually  
handicapped persons

"135ZR. The copyright in a published edition of a work (being a work in which copyright does not subsist) is not infringed by the making of one or more reproductions of the whole or a part of the edition in the course of making one or more copies of the whole or a part of the work by, or on behalf of, a body administering an institution assisting intellectually handicapped persons for use in the provision, whether by the institution or otherwise, of assistance to intellectually handicapped persons.

Copying of eligible items by institutions assisting intellectually  
handicapped  
persons

"135ZS. (1) The copyright in an eligible item, or in any work or other subject-matter included in an eligible item, is not infringed by the making by, or on behalf of, a body administering an institution assisting intellectually handicapped persons of a copy of the whole or a part of the

eligible item if:

(a) a remuneration notice, given by or on behalf of the body to the relevant collecting society, is in force;

(b) the copy is made solely for the purpose of use in the provision, whether by the institution or otherwise, of assistance to intellectually handicapped persons; and

(c) the body complies with subsection 135ZX (1) or (3), as the case requires, in relation to the copy.

"(2) Subsection (1) does not apply to the making of a copy of the whole or a part of:

(a) an eligible item, being a work that has been separately published in a form that would be suitable for use in the provision of the assistance referred to in that subsection; or

(b) an eligible item that is not a work;

unless the person who makes the copy, or causes the copy to be made, is satisfied after reasonable investigation that:

(c) in the case of an eligible item referred to in paragraph (a)-no new copy of the eligible item in a form suitable for use in the provision of that assistance can be obtained within a reasonable time at an ordinary commercial price; or

(d) in the case of an eligible item referred to in paragraph (b)-no new copy of the eligible item alone can be obtained within a reasonable time at an ordinary commercial price.

"(3) For the purposes of this section, a copy shall be taken to be new if it is not second-hand.

Making of copies for use in making intellectually handicapped person's copies

"135ZT. (1) Subject to this section, the copyright in an eligible item or in a television broadcast is not infringed by the making by, or on behalf of, a body administering an institution assisting intellectually handicapped persons of a copy of the whole or a part of the eligible item or broadcast, if the copy is made solely for use in the making by, or on behalf of, that body of an

intellectually handicapped person's copy of the whole or the part of the eligible item or broadcast, as the case may be.

"(2) Where:

(a) a copy of the whole or a part of an eligible item or a television broadcast is made by, or on behalf of, a body administering an institution assisting intellectually handicapped persons; and

(b) the copy:

(i) is used otherwise than in the making by, or on behalf of, that body of an intellectually handicapped person's copy of the whole or the part of the eligible item or broadcast, as the case may be; or

(ii) is not destroyed within 3 months after the day on which it was made;

subsection (1) does not apply, and shall be taken never to have applied, to the making of the copy.

"(3) Subsection (1) does not apply to the making of a record embodying a sound recording of the whole or part of an eligible item unless, at the time the record was made, there was embodied on the record, immediately before the beginning of that sound recording, a sound recording of the prescribed message.

"(4) Subsection (1) does not apply to the making of a copy of the whole or part of an eligible item or a television broadcast unless the body by whom, or on whose behalf, the copy is made, marks it, or causes it to be marked, in accordance with the regulations.

#### "Division 5-Equitable remuneration

##### Remuneration notices

"135ZU. (1) An administering body may, by notice in writing given to the relevant collecting society, undertake to pay equitable remuneration to the society for licensed copies made by it, or on its behalf, being copies made while the notice is in force.

"(2) A remuneration notice shall specify whether the amount of equitable remuneration is to be assessed on the basis of a records system or a sampling

system.

"(3) A remuneration notice comes into force on the day on which it is given to the collecting society, or on such later day as is specified in the notice, and remains in force until it is revoked.

#### Records notices

"135ZV. (1) Where a records notice is given by, or on behalf of, an administering body, the amount of equitable remuneration payable to the relevant collecting society by the administering body for each licensed copy made by it, or on its behalf, while the notice is in force is such amount as is determined by agreement between the administering body and that collecting society or, failing such agreement, by the Copyright Tribunal on application made by either of them.

"(2) For the purposes of subsection (1), different amounts may be determined (whether by agreement or by the Copyright Tribunal) in relation to different institutions administered by the administering body and different classes of students of an institution administered by it.

#### Sampling notices

"135ZW. (1) Where a sampling notice is given by, or on behalf of, an administering body, the amount of equitable remuneration payable to the relevant collecting society by the administering body for licensed copies made by it, or on its behalf, while the notice is in force is such annual amount per student of the institution concerned as is determined by agreement between the administering body and that collecting society or, failing such agreement, by the Copyright Tribunal on application made by either of them.

"(2) The annual amount referred to in subsection (1) shall be determined (whether by agreement or by the Copyright Tribunal) having regard to the number of licensed copies made by, or on behalf of, the administering body in a particular period and to such other matters (if any) as are relevant in the circumstances.

"(3) The number of copies referred to in subsection (2), and any other

matters that are necessary or convenient to be assessed by use of a sampling system, shall be assessed by use of a sampling system determined by agreement between the administering body and the relevant collecting society or, failing such agreement, by the Copyright Tribunal on application made by either of them.

"(4) For the purposes of subsection (1), different annual amounts may be determined (whether by agreement or by the Copyright Tribunal) in relation to different institutions administered by the administering body and different classes of students of an institution administered by it.

"(5) Where:

(a) a sampling notice is given by, or on behalf of, an administering body to a collecting society; and

(b) during any period, the administering body does not comply with one or more of the requirements of the sampling system determined under this section in relation to that notice;

sections 135ZJ, 135ZK, 135ZL, 135ZP and 135ZS do not apply to any copy of a work or other subject-matter by, or on behalf of, the administering body during that period.

Marking and record keeping requirements

"135ZX. (1) Where a records notice is given by, or on behalf of, an administering body to a collecting society, the administering body shall:

(a) mark, or cause to be marked, in accordance with the regulations, each licensed copy made by it, or on its behalf, while the notice is in force, or any container in which such a copy is kept;

(b) make, or cause to be made, a record of the making of each licensed copy that is carried out by it, or on its behalf, while the notice is in force, being a record containing such particulars as are prescribed;

(c) retain that record for the prescribed retention period after the making of the copy to which it relates; and

(d) send copies of all such records to the collecting society in accordance with the regulations.

"(2) For the purposes of subsection (1), a record of the making of a licensed copy:

(a) may be kept in writing or in any other manner prescribed; and

(b) if it is kept in writing, shall be in accordance with the prescribed form.

"(3) Where a sampling notice is given by, or on behalf of, an administering body to a collecting society, the administering body shall mark, or cause to be marked, in accordance with the regulations, each licensed copy made by it, or on its behalf, while the notice is in force, or any container in which such a copy is kept.

"(4) Regulations made for the purposes of paragraph (1) (a) or (b) or subsection (3) may prescribe different marks or particulars, and impose different requirements, in relation to different kinds of licensed copies or different kinds of works or eligible items.

Inspection of records etc.

"135ZY. (1) Where a remuneration notice is or has been in force, the relevant collecting society to which the notice was given may, in writing, notify the administering body which gave the notice that the society wishes, on a day specified in the notice, being an ordinary working day of the institution specified in the notice not earlier than 7 days after the day on which the notice is given to do such of the following things as are specified in the notice:

(a) assess the amount of licensed copying carried out at the premises of the institution;

(b) inspect all the relevant records held at those premises that relate to the making of licensed copies;

(c) inspect such other records held at those premises as are relevant to the assessment of the amount of equitable remuneration payable by the administering body to the society.

"(2) Where a collecting society gives a notice, a person authorised in writing by the society may, during the ordinary working hours of the relevant



institution on the day specified in the notice (but not before 10 a.m. or after 3 p.m.), carry out the assessment, or inspect the records, to which the notice relates and, for that purpose, may enter the premises of the institution.

"(3) An administering body shall take all reasonable precautions, and exercise reasonable diligence, to ensure that a person referred to in subsection (2) who attends at the premises of an institution administered by the body for the purpose of exercising the powers conferred by that subsection is provided with all reasonable and necessary facilities and assistance for the effective exercise of those powers.

"(4) An administering body that contravenes subsection (3) is guilty of an offence punishable, on conviction, by a fine not exceeding \$500.

#### Revocation of remuneration notice

"135ZZ. A remuneration notice may be revoked at any time by the relevant administering body by notice in writing given to the relevant collecting society and the revocation takes effect at the end of 3 months after the date of the notice or on such later day as is specified in the notice.

#### Request for payment of equitable remuneration

"135ZZA. (1) Subject to this section, where a remuneration notice is or has been in force, the relevant collecting society may, by notice in writing given to the administering body which gave the notice, request the body to pay to the society, within a reasonable time after the date of the notice, the amount of equitable remuneration specified in the notice, being an amount payable under section 135ZV or 135ZW, as the case may be, for licensed copies made by, or on behalf of, the body while the remuneration notice is or was in force.

"(2) Where the remuneration notice is a sampling notice, a collecting society shall not make a request under this section more than once in each period of 12 months during which the notice is in force.

"(3) If an amount specified in a request is not paid in accordance with the request, it may be recovered from the relevant administering body by the relevant collecting society in the Federal Court of Australia or in any other

court of competent jurisdiction as a debt due to the society.

"(4) Jurisdiction is conferred on the Federal Court of Australia with respect to actions under subsection (3).

"Division 6-Collecting societies

Collecting societies

"135ZZB. (1) Subject to this section, the Attorney-General may, by notice in the Gazette, declare the body named in the notice to be the collecting society for all relevant copyright owners or for such classes of relevant copyright owners as are specified in the notice.

"(2) Where the Attorney-General declares a body to be the collecting society for a specified class of copyright owners and subsequently declares another body to be the collecting society for that class of copyright owners:

(a) the first-mentioned collecting society ceases to be the collecting society for that class of copyright owners on the day on which the subsequent declaration is made; and

(b) any remuneration notice given to that collecting society ceases to be in force to the extent to which it relates to licensed copies of works or other subject-matter the copyright owners of which are included in that class of copyright owners.

"(3) The Attorney-General shall not declare the body to be a collecting society unless:

(a) it is a company limited by guarantee and incorporated under a law in force in a State or Territory relating to companies;

(b) all persons who are included in a class of relevant copyright owners to be specified in the declaration, or their agents, are entitled to become its members;

(c) its rules prohibit the payment of dividends to its members; and

(d) its rules contain such other provisions as are prescribed, being provisions necessary to ensure that the interests of members of a collecting society who are relevant copyright owners or their agents are protected adequately, including, in particular, provisions about:

(i) the collection of amounts of equitable remuneration payable by administering bodies under section 135ZV or 135ZW;

(ii) the payment of the administrative costs of a collecting society out of amounts collected by it;

(iii) the distribution of amounts collected by a collecting society;

(iv) the holding on trust by a collecting society of amounts for relevant

copyright owners who are not its members; and

(v) access to records of a collecting society by its members.

"(4) Where the Attorney-General has declared a body to be the collecting society for a specified class of copyright owners, the Attorney-General may refuse to declare another body to be the collecting society for that class of copyright owners unless satisfied that to do so would be in the interests of those copyright owners, having regard to the number of members of the first-mentioned society, the scope of its activities and such other considerations as are relevant.

#### Revocation of declaration

"135ZZC. The Attorney-General may, by notice in the Gazette, revoke the declaration of a body as a collecting society if satisfied that the body:

(a) is not functioning adequately as a collecting society;

(b) is not acting in accordance with its rules or in the best interests of those of its members who are relevant copyright owners, or their agents;

(c) has altered its rules so that they no longer comply with paragraphs 135ZZB (3) (c) and (d); or

(d) has refused or failed, without reasonable excuse, to comply with section 135ZZD or 135ZZE.

#### Annual report and accounts

"135ZZD. (1) A collecting society shall, as soon as practicable after the end of each financial year, prepare a report of its operations during that financial year and send a copy of the report to the Attorney-General.

"(2) The Attorney-General shall cause a copy of the report sent to the

Attorney-General under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after the receipt of the report by the Attorney-General.

"(3) A collecting society shall keep accounting records correctly recording and explaining the transactions of the society (including any transactions as trustee) and the financial position of the society.

"(4) The accounting records shall be kept in such a manner as will enable true and fair accounts of the society to be prepared from time to time and those accounts to be conveniently and properly audited.

"(5) A collecting society shall, as soon as practicable after the end of each financial year, cause its accounts to be audited by an auditor who is not a member of the society, and shall send to the Attorney-General a copy of its accounts as so audited.

"(6) A collecting society shall give its members reasonable access to copies of all reports and audited accounts prepared by it under this section.

"(7) This section does not affect any obligations of a collecting society relating to the preparation and lodging of annual returns or accounts under the law under which it is incorporated.

#### Amendment of rules

"135ZZE. A collecting society shall, within 21 days after it alters its rules, send a copy of the rules as so altered to the Attorney-General, together with a statement setting out the effect of the alteration and the reasons why it was made.

#### "Division 7-Miscellaneous

##### Rights of copyright owners

"135ZZF. (1) Nothing in this Part affects the right of the owner of the copyright in a work to grant a licence authorising the body administering an educational institution to make, or cause to be made, copies of the whole or a part of the work without infringement of that copyright.

"(2) Nothing in this Part affects the right of the owner of the copyright in a work to grant a licence authorising the body administering an institution

assisting handicapped readers to make, or cause to be made, sound recordings of, or Braille, large-print or photographic versions of, the whole or a part of the work without infringement of that copyright.

"(3) Nothing in this Part affects the right of the owner of the copyright in an eligible item to grant a licence authorising the body administering an institution assisting intellectually handicapped persons to make, or cause to be made, a copy of the whole or a part of the eligible item without infringement of that copyright.

Copyright not to vest in copier

"135ZZG. Despite any other provision of this Act, copyright does not vest in the maker of a handicapped reader's copy of the whole or part of a work, or of an intellectually handicapped person's copy of the whole or part of an eligible item, merely because of the making of the copy.

Unauthorised use of copies

"135ZZH. (1) Where a copy, record or version of a work, a sound recording or a cinematograph film, being a copy, record or version referred to in a prescribed provision of this Part:

- (a) is sold or otherwise supplied for a financial profit;
  - (b) is used for a purpose other than the purpose specified in the prescribed provision; or
  - (c) is given to an administering body when there is not in force a remuneration notice given by that body to the relevant collecting society;
- with the consent of the administering body by whom, or on whose behalf, it is made, the prescribed provision does not apply, and shall be taken never to have applied, to the making of the copy.

"(2) For the purposes of this section, subsection 135ZG (1), subsection 135ZJ (1), section 135ZK and subsections 135ZL (1), 135ZP (1) and (2) and 135ZS (1) are prescribed provisions."

**COPYRIGHT AMENDMENT ACT 1989 No. 32 of 1989 - SECT 16**

16. Before Part VI of the Principal Act the following Part is inserted:

**"PART VC-USE OF BLANK TAPES FOR PRIVATE AND DOMESTIC  
COPYING**

"Division 1-Preliminary

Interpretation

"135ZZJ. In this Part:

'blank tape' means a tape, other than an exempt tape, that is of a kind ordinarily purchased or hired for use for making copies of sound recordings, whether or not any sounds are embodied in the tape;

'collecting society' means the body that is, for the time being, declared to be the collecting society under section 135ZZU;

'distribute' means distribute by way of trade;

'eligible foreign country' means a foreign country declared by the regulations to be an eligible foreign country for the purposes of this Part;

'eligible sound recording' means a sound recording the maker of which was, at the time the recording was made:

(a) an Australian citizen, an Australian protected person, or a person resident in Australia;

(b) a body corporate incorporated under a law in force in a State or Territory relating to companies; or

(c) a citizen, national or resident of a foreign country, or a body corporate incorporated under a law of a foreign country, being a foreign country that was at that time, or afterwards became, an eligible foreign country;

'eligible work' means a literary, dramatic or musical work the author of which was, at the time the work was made:

(a) an Australian citizen, an Australian protected person or a person resident in Australia; or

(b) a citizen, national or resident of a foreign country, being a foreign

country that was at that time, or afterwards became, an eligible foreign country;

'exempt body' means a body or organisation in respect of which a declaration is in force under section 135ZZT;

'exempt tape' means:

- (a) a tape that has a normal playing time of 30 minutes or less;
- (b) a second-hand tape;
- (c) a microcassette of a kind ordinarily used for making sound

recordings

of dictated material;

- (d) a tape of a kind known as open reel tape or reel-to-reel tape;
- (e) a video tape; or
- (f) a tape of a kind ordinarily used for storing computer data or

programs;

'exemption number' means the number issued to an exempt body or a prescribed organisation under section 135ZZT;

'proclaimed day' means the day fixed by Proclamation for the purposes of this Part, being a day not earlier than the day on which the Copyright Tribunal first makes an order determining the amount referred to in subsection 135ZZN (2);

'quarter' means a quarter of a calendar year, being a quarter beginning on 1 January, 1 April, 1 July or 1 October;

'relevant copyright owner' means the owner of the copyright in an eligible sound recording or an eligible work;

'royalty' means the royalty payable for a blank tape under this Part;

'rules', in relation to the collecting society, means the provisions of the memorandum and articles of association of the society;

'sell' means sell by wholesale or retail;

'vendor' means a person who, in the usual course of his or her business, sells, hires or otherwise distributes blank tapes.

Private and domestic use

"135ZZK. For the purposes of this Part, a copy of a sound recording shall be taken not to have been made for the private and domestic use of the person who made it if it is made for the purpose of:

- (a) selling the copy, letting it for hire, or by way of trade offering or exposing it for sale or hire;
- (b) distributing the copy, whether for the purpose of trade or otherwise;
- (c) by way of trade exhibiting the copy in public;
- (d) broadcasting the recording; or
- (e) causing the recording to be heard in public.

Operation of collecting society rules

"135ZZL. This Part applies to the collecting society despite anything in the rules of the society but nothing in this Part affects those rules so far as they can operate together with this Part.

#### "Division 2-Copying with blank tapes

Copying with blank tapes

"135ZZM. (1) Copyright subsisting in a published sound recording, or in any work included in a published sound recording, is not infringed by making on private premises a copy of the sound recording if the copy is made on or after the proclaimed day on a blank tape for the private and domestic use of the person who makes it.

"(2) Subsection (1) applies whether the blank tape was first sold, hired or otherwise distributed in Australia before or after the commencement of this section.

"(3) Where a copy of a sound recording made in reliance on subsection (1) is used otherwise than for the private and domestic use of the person who made it, subsection (1) does not apply, and shall be taken never to have applied, to the making of the copy.

#### "Division 3-Blank tape royalty

Blank tape royalty

"135ZZN. (1) Subject to this Part, a royalty is payable for each blank tape first sold, let for hire or otherwise distributed in Australia on or after the



proclaimed day.

"(2) The amount of the royalty payable for a blank tape is an amount worked out using the formula:

$$A \times NM$$

where:

A

is the amount per minute determined by the Copyright Tribunal under section 153E; and

NM

is the number of minutes of normal playing time of the tape.

Royalty payable by vendor

"135ZZP. (1) The royalty for a blank tape is payable by the vendor who first sells, lets for hire or otherwise distributes the tape in Australia.

"(2) A vendor shall, within 21 days after the end of the quarter in which this Part commences and within 21 days after the end of each succeeding quarter, pay to the collecting society an amount equal to the sum of the amounts of royalty payable by the vendor for blank tapes first sold, let for hire or distributed by the vendor during that quarter.

Recovery of amounts of royalty

"135ZZQ. (1) An amount payable to the collecting society by a vendor under section 135ZZP is recoverable from the vendor by the society in the Federal Court of Australia or any other court of competent jurisdiction as a debt due to the society.

"(2) Jurisdiction is conferred on the Federal Court of Australia with respect to actions under subsection (1).

Royalty not payable in certain cases

"135ZZR. A vendor who sells blank tapes to a prescribed organisation or to an exempt body is not liable to pay the royalty in respect of any blank tape so sold by the vendor to that organisation or body if the vendor gives the collecting society:

(a) particulars of the normal playing time of the tape, together with such

other particulars (if any) of the tape and the sale as are prescribed; and

(b) the exemption number of the organisation or body.

Payment of amounts by collecting society to prescribed organisations etc.

"135ZZS. (1) Where a prescribed organisation or an exempt body:

(a) purchases a blank tape from a vendor; and

(b) gives the collecting society particulars of the normal playing time of the tape, together with such other particulars (if any) of the tape and the purchase as are prescribed and a receipt for the purchase;

the collecting society shall pay to the organisation or body an amount equal to the amount of the royalty payable for the tape, whether or not that amount of royalty has been paid.

"(2) Subsection (1) does not apply where the prescribed organisation or exempt body purchases the blank tape from a vendor who is not liable under section 135ZZR to pay the royalty in respect of that blank tape.

"(3) Where a person or body (other than a prescribed organisation or an exempt body):

(a) purchases a blank tape from a vendor; and

(b) gives the collecting society a receipt for the purchase of the tape together with a statutory declaration made by the person, or by an officer or member of the body, as the case may be:

(i) containing particulars of the normal playing time of the tape, together with such other particulars (if any) of the tape and the purchase as are prescribed; and

(ii) declaring that the person or body will not use the tape, or cause or

permit it to be used, or make it available to any person for use, for the purpose of making a copy of a sound recording in which copyright subsists unless the person or body is the owner or licensee of the right to make a copy of the sound recording; the collecting society shall pay to the person or body an amount equal to the amount of the royalty payable for the tape, whether or not that amount of royalty has been paid.

## Exempt bodies and exemption numbers

"135ZZT. (1) A body or organisation, other than a prescribed organisation, may apply in writing to the collecting society to be declared an exempt body.

"(2) Where the collecting society is satisfied that a body or organisation which has applied to the society does not use blank tapes, or make blank tapes available to any of its members, for the purpose of making copies of sound recordings in which copyright subsists unless the body, organisation or member, as the case may be, is the owner or licensee of the right to make such copies, the collecting society shall, by notice in writing to the body or organisation, declare the body or organisation to be an exempt body and issue an exemption number to it.

"(3) Where the collecting society is satisfied that an exempt body uses blank tapes, or makes blank tapes available to its members for use, for the purpose referred to in subsection (2), the collecting society may, by notice in writing given to the body, revoke the declaration of the body as an exempt body and withdraw the exemption number issued to it.

"(4) The collecting society shall, on the request of a prescribed organisation, issue an exemption number to the organisation.

### "Division 4-The collecting society

#### The collecting society

"135ZZU. (1) Subject to this section, the Attorney-General may, by notice in the Gazette, declare the body named in the notice to be the collecting society.

"(2) The Attorney-General shall not name more than one body in a declaration and shall not make a declaration while an earlier declaration is in force.

"(3) The Attorney-General shall not declare a body to be the collecting society unless:

(a) it is a company limited by guarantee and incorporated under a law in force in a State or Territory relating to companies;

(b) all relevant copyright owners, or their agents, are entitled to become its members;

(c) its rules prohibit the payment of dividends to its members; and

(d) its rules contain such other provisions as are prescribed, being provisions necessary to ensure that the interests of the collecting society's members who are relevant copyright owners or their agents are protected adequately, including, in particular, provisions about:

(i) the collection of amounts of royalty from vendors;

(ii) the payment of the administrative costs of the society out of amounts collected by it;

(iii) the distribution of amounts collected by it;

(iv) the holding on trust of amounts for relevant copyright owners who are not its members; and

(v) access to records of the society by its members.

#### Revocation of declaration

"135ZZV. The Attorney-General may, by notice in the Gazette, revoke the declaration of a body as the collecting society if satisfied that the body:

(a) is not functioning adequately as the collecting society;

(b) is not acting in accordance with its rules or in the best interests of those of its members who are relevant copyright owners, or their agents;

(c) has altered its rules so that they no longer comply with paragraphs 135ZZU (3) (c) and (d); or

(d) has refused or failed, without reasonable excuse, to comply with section 135ZZW or 135ZZX.

#### Annual report and accounts

"135ZZW. (1) The collecting society shall, as soon as practicable after the end of each financial year, prepare a report of its operations during that financial year and send a copy of the report to the Attorney-General.

"(2) The Attorney-General shall cause a copy of the report sent to the Attorney-General under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after the receipt of the report by the Attorney-General.

"(3) The society shall keep accounting records correctly recording and explaining the transactions of the society (including any transactions as trustee) and the financial position of the society.

"(4) The accounting records shall be kept in such a manner as will enable true and fair accounts of the society to be prepared from time to time and those accounts to be conveniently and properly audited.

"(5) The society shall, as soon as practicable after the end of each financial year, cause its accounts to be audited by an auditor who is not a member of the society, and shall send to the Attorney-General a copy of its accounts as so audited.

"(6) The society shall give its members reasonable access to copies of all reports and audited accounts prepared under this section.

"(7) This section does not affect any obligations of the society relating to the preparation and lodging of annual returns or accounts under the law under which it is incorporated.

#### Amendment of rules

"135ZZX. The collecting society shall, within 21 days after it alters its rules, send a copy of the rules as so altered to the Attorney-General, together with a statement setting out the effect of the alteration and the reasons why it was made.

#### Inspection of records etc.

"135ZZY. (1) The collecting society may, in writing, notify a vendor who is liable to pay royalty that the society wishes, on a day specified in the notice, being an ordinary working day not earlier than 7 days after the day on which the notice is given, to inspect all records held by the vendor at the premises specified in the notice, being records that relate to the sale, letting for hire or distribution of blank tapes by the vendor and such other records held at those premises as are relevant to the assessment of the amount of royalty payable by the vendor to the society.

"(2) Where the collecting society gives a notice, a person authorised in writing by the society may, during ordinary working hours on the day specified

in the notice, inspect the records to which the notice relates and, for that purpose, may enter the premises specified in the notice.

"(3) A person who hinders or obstructs a person in the exercise of the powers conferred by subsection (2) is guilty of an offence punishable, on conviction, by a fine not exceeding \$500.

"(4) A person who, whether directly or indirectly, makes a record of, or discloses or communicates to a person any prescribed information, except for the purpose of ensuring compliance with a provision of this Part, is guilty of an offence punishable, on conviction, by a fine not exceeding \$500.

"(5) In this section:

'prescribed information' means information obtained as a result of an inspection carried out under this section.

#### "Division 5-Miscellaneous

Copyright owners may authorise copying

"135ZZZ. Nothing in this Part affects the right of the owner of the copyright in a work or other subject-matter to grant a licence authorising a person to make or cause to be made, a sound recording, or a copy of a sound recording, of the work or other subject-matter without infringing that copyright.

Copyright not to vest in copier

"135ZZZA. Despite any other provision of this Act, the making of a copy of a sound recording that is not an infringement of copyright under this Part, does not vest copyright in any work or other subject-matter in any person.

Eligible foreign countries

"135ZZZB. A foreign country shall not be declared by the regulations to be an eligible foreign country for the purposes of this Part unless the Governor-General is satisfied that adequate payments are, or will be, made to owners of copyright under this Act in sound recordings and in literary, dramatic or musical works as part of a blank tape royalty scheme operating in that country."

## **COPYRIGHT AMENDMENT ACT 1989 No. 32 of 1989 - SECT 17**

17. After section 152 of the Principal Act the following sections are inserted:

Applications to Tribunal for determination of amount of royalty payable for recording musical works

"152A. (1) In this section:

'manufacturer' has the same meaning as in section 55.

"(2) Subject to this section, an application may be made to the Tribunal for an order determining, or making provision for determining, the amount of royalty payable by the manufacturer of a record of a musical work to the owner of the copyright in the work during a period specified in the application.

"(3) An application may be made by the manufacturer or the owner of the copyright in the musical work recorded by the manufacturer.

"(4) The parties to an application are:

(a) the manufacturer and the owner of the copyright in the musical work;  
and

(b) any organisations or persons who are made parties to the application.

"(5) Where an application is made under subsection (2), the Tribunal shall consider the application and, after giving the parties an opportunity of presenting their cases, make an order determining, or making provision for determining, an equitable amount of royalty payable by the manufacturer of the record of the musical work to the owner of the copyright in the work during the period specified in the order.

"(6) Where an organisation (whether claiming to represent manufacturers or the owners of copyrights in musical works or not) or a person (whether a manufacturer or the owner of the copyright in a musical work or not) applies to the Tribunal to be made a party to an application under this section, the Tribunal may, if it thinks fit, make that organisation or person a party to the application if the Tribunal is satisfied that the organisation or person has a substantial interest in the application.

"(7) The period that may be specified in an order under subsection (5) in relation to a manufacturer may be a period beginning before the date of making of the order or before the date of making of the application but shall not be a period beginning before:

- (a) the end of the period specified in the last preceding order (if any) made under that subsection in relation to that manufacturer; or
- (b) the commencement of this section.

"(8) Where an order is in force under this section, the manufacturer in relation to whom the order applies is liable to pay to the person specified in the order the amount of royalty so specified at the times so specified and that person may recover the amount, if it is not paid in accordance with the order, in a court of competent jurisdiction from the manufacturer as a debt due to the person.

Applications to Tribunal for determination of manner of paying royalty

"152B. (1) In this section:

'manufacturer' has the same meaning as in section 55.

"(2) An application may be made to the Tribunal for an order determining the manner in which amounts of royalty payable by the manufacturer of a record of a musical work to the owner of the copyright in the work are to be paid.

"(3) An application may be made by the manufacturer or the owner of the copyright in the musical work recorded by the manufacturer.

"(4) The parties to an application are:

- (a) the manufacturer and the owner of the copyright in the musical work; and
- (b) any organisations or persons who are made parties to the application.

"(5) Where an organisation (whether claiming to represent manufacturers or the owners of copyrights in musical works or not) or a person (whether a manufacturer or the owner of the copyright in a musical work or not) applies to the Tribunal to be made a party to an application under this section, the Tribunal may, if it thinks fit, make that organisation or person a party to the application if the Tribunal is satisfied that the organisation or person



has a substantial interest in the application.

"(6) Where an application is made under subsection (2), the Tribunal shall consider the application and, after giving the parties an opportunity of presenting their cases, make an order determining the manner in which amounts of royalty payable by the manufacturer of the record of the musical work to the owner of the copyright in the work are to be paid."

## **COPYRIGHT AMENDMENT ACT 1989 No. 32 of 1989 - SECT 18**

18. After section 153 of the Principal Act the following sections are inserted:

Applications to Tribunal under section 135H or subsection 135J (1)

"153A. (1) The parties to an application to the Tribunal under section 135H or subsection 135J (1) for the determination of the amount of equitable remuneration payable to the collecting society by an administering body for the making, by or on behalf of that body, of a copy of a television broadcast are the society and the body.

"(2) Where an application is made to the Tribunal under section 135H or subsection 135J (1), the Tribunal shall consider the application and, after giving the parties to the application the opportunity of presenting their cases, shall make an order determining the amount per copy or per student of the relevant institution, as the case may be, that it considers to be equitable remuneration for the making of copies of television broadcasts.

"(3) In making an order, the Tribunal:

(a) shall have regard to the extent to which copies of television broadcasts are made by, or on behalf of, the administering body solely for the purpose of enabling the material included in the broadcasts to be seen and heard at times more convenient than the times when the broadcasts were made; and

(b) may have regard to such other matters (if any) as are prescribed.

"(4) An order may be expressed to have effect in relation to copies of television broadcasts made in reliance on section 135E before the day on which the order is made.

"(5) In this section, 'administering body', 'collecting society', 'institution' and 'student' have the same meanings as in Part VA.

Applications to Tribunal under subsection 135J (3)

"153B. (1) The parties to an application to the Tribunal under subsection 135J (3) for the determination of a sampling system are the collecting society and the administering body concerned.

"(2) Where an application is made to the Tribunal under subsection 135J (3), the Tribunal shall consider the application and, after giving the parties to the application an opportunity of presenting their cases, shall make an order determining the sampling system.

"(3) In this section, 'administering body' and 'collecting society' have the same meanings as in Part VA."

## **COPYRIGHT AMENDMENT ACT 1989 No. 32 of 1989 - SECT 19**

19. The following sections are inserted in the Principal Act after section 153 or, if section 153B of that Act (as amended by this Act) has commenced, after section 153B:

Applications to Tribunal under section 135ZV or subsection 135ZW (1)

"153C. (1) The parties to an application to the Tribunal under section 135ZV or subsection 135ZW (1) for the determination of the amount of equitable remuneration payable to a collecting society by an administering body for the making, by or on behalf of that body, of licensed copies are the society and the body.

"(2) Where an application is made to the Tribunal under section 135ZV or subsection 135ZW (1), the Tribunal shall consider the application and, after giving the parties to the application the opportunity of presenting their cases, shall make an order determining the amount per licensed copy, or per

student of the relevant institution, as the case may be, that it considers to be equitable remuneration for the making of a licensed copy.

"(3) In making an order, the Tribunal may have regard to such matters (if any) as are prescribed.

"(4) An order may be expressed to have effect in relation to licensed copies made before the day on which the order is made.

"(5) In this section, 'administering body', 'collecting society', 'institution', 'licensed copy' and 'student' have the same meanings as in Part VB.

Applications to Tribunal under subsection 135ZW (3)

"153D. (1) The parties to an application to the Tribunal under subsection 135ZW (3) for the determination of a sampling system to be used for the purpose of assessing the number of licensed copies made by, or on behalf of, an administering body, or any other relevant matters, are the relevant collecting society and the body.

"(2) Where an application is made to the Tribunal under subsection 135ZW (3), the Tribunal shall consider the application and, after giving the parties to the application an opportunity of presenting their cases, shall make an order determining the sampling process.

"(3) In this section, 'administering body', 'collecting society' and 'licensed copy' have the same meanings as in Part VB."

## **COPYRIGHT AMENDMENT ACT 1989 No. 32 of 1989 - SECT 20**

20. Before section 154 of the Principal Act the following section is inserted:

Determination of amount of blank tape royalty by Tribunal

"153E. (1) Expressions used in this section that are also used in Part VC have the same meanings as they have in that Part.

"(2) An application may be made to the Tribunal for an order determining, or making provision for determining, the amount per minute of normal playing time

of a blank tape that is payable under Part VC by way of royalty for the blank tape.

"(3) An application may be made by any person who has an interest in the matter that is the subject of the application, including the collecting society, a vendor or a relevant copyright owner.

"(4) The parties to an application are:

(a) the applicant; and

(b) such persons or organisations as are made parties to the application under subsection (5).

"(5) Where a person or an organisation applies to the Tribunal to be made party to an application and the Tribunal is satisfied that the person or organisation has an interest in the matter that is the subject of the application, the Tribunal may, if it thinks fit, make that person or organisation a party to the application.

"(6) Subject to subsection (9), the Tribunal shall consider an application under subsection (2) and, after giving the parties to the application an opportunity of presenting their cases, shall make an order determining, or making provision for determining, the amount per minute of normal playing time of a blank tape that is payable under Part VC by way of royalty for the blank tape.

"(7) In making an order, the Tribunal shall take into account all relevant matters including the extent to which blank tapes are used for the purposes of making copies of eligible sound recordings and eligible works for private and domestic use.

"(8) An order shall remain in force until:

(a) it is revoked; or

(b) where the order specifies a period during which it is to remain in force-the end of that period;  
whichever happens first.

"(9) The Tribunal may refuse to consider an application under subsection (1) made less than 2 years after the making of the last order under this section

unless the Tribunal is satisfied that there has been a substantial change in any of the matters relevant to the determination of the amount of the royalty."

#### **COPYRIGHT AMENDMENT ACT 1989 No. 32 of 1989 - SECT 21**

21. After section 195 of the Principal Act the following section is inserted in Part IX:

Jurisdiction of Federal Court of Australia

"195AA. Jurisdiction is conferred on the Federal Court of Australia with respect to actions under section 194."

#### **COPYRIGHT AMENDMENT ACT 1989 No. 32 of 1989 - SECT 22**

22. After section 195A of the Principal Act the following section is inserted:

Review of certain decisions

"195B. (1) For the purposes of this section, the following decisions are reviewable decisions:

(a) a decision of the Attorney-General refusing to make a declaration in respect of a body or institution under subsection 10A (1), 135P (1), 135ZZB (1) or 135ZZU (1);

(b) a decision of the Attorney-General revoking a declaration made in respect of a body or institution under subsection 10A (1), 135P (1), 135ZZB (1) or 135ZZU (1);

(c) a decision of the Comptroller-General of Customs not to grant permission under subsection 135 (6).

"(2) Where the Attorney-General makes a reviewable decision referred to in paragraph (1) (a) or (b), the Attorney-General shall cause to be sent to the body or institution concerned a written notice containing:

(a) the terms of the decision;

(b) a statement to the effect that, subject to the Administrative Appeals Tribunal Act 1975, application may be made to the Administrative Appeals Tribunal for review of the decision; and

(c) except where subsection 28 (4) of that Act applies-a statement to the effect that the body or institution may request a statement under section 28 of that Act.

"(3) Where the Comptroller-General of Customs makes a reviewable decision referred to in paragraph (1) (c), the Comptroller-General shall cause to be sent to the owner or importer whose interests are affected by the decision a notice containing:

(a) the terms of the decision;

(b) a statement to the effect that where no appeal under subsection 135 (6) has been made to the Minister for Industry, Technology and Commerce against the decision, the owner or importer may, subject to the Administrative Appeals Tribunal Act 1975, apply to the Administrative Appeals Tribunal for review of the decision; and

(c) except where subsection 28 (4) of that Act applies-a statement to the effect that the owner or importer may request a statement under section 28 of that Act.

"(4) Failure to include in a notice under subsection (2) or (3) a statement of the kind referred to in paragraph (2) (b) or (c) or (3) (b) or (c), as the case requires, does not affect the validity of the decision to which the notice relates.

"(5) Subject to subsection (6), application may be made to the Administrative Appeals Tribunal for review of a reviewable decision.

"(6) Application may not be made to the Administrative Appeals Tribunal for review of a reviewable decision referred to in paragraph (1) (c) if a person has appealed to the Minister for Industry, Technology and Commerce against the decision under subsection 135 (6).

"(7) Where an application is made to the Administrative Appeals Tribunal for

review of a reviewable decision referred to in paragraph (1) (c), a person is not entitled to appeal to the Minister for Industry, Technology and Commerce against that decision under subsection 135 (6).

"(8) In this section:

'decision' has the same meaning as in the Administrative Appeals Tribunal Act 1975."

## **COPYRIGHT AMENDMENT ACT 1989 No. 32 of 1989 - SECT 23**

### **Use of works and broadcasts for educational purposes**

23. Section 200 of the Principal Act is amended:

(a) by omitting from subsection (2) "or of a television broadcast" and ", or an infringement of copyright in the broadcast,";

(b) by inserting after subsection (2) the following subsection:

"(2A) The making of a record of a sound broadcast is not an infringement of copyright in the broadcast if the record is made by, or on behalf of, the body administering an educational institution and is not used except for the educational purposes of that institution or another educational institution.";

(c) by omitting from subsection (3) "the last two preceding subsections" and substituting "subsections (1), (2) and (2A)";

(d) by omitting from subsection (4) "(1) and (2)" and substituting "(1), (2) and (2A)".

## **COPYRIGHT AMENDMENT ACT 1989 No. 32 of 1989 - SECT 24**

24. After section 200 of the Principal Act the following section is inserted:

Use of broadcasts by institutions assisting intellectually handicapped persons

"200AA. The making of a record of a sound broadcast is not an infringement

of copyright in the broadcast if the record is made by, or on behalf of, the body administering an institution assisting intellectually handicapped persons and is used only for the purpose of the provision of that assistance by that institution."

## **COPYRIGHT AMENDMENT ACT 1989 No. 32 of 1989 - SECT 25**

### **Application and repeal of section 200A**

25. (1) If Part VA of the Principal Act as amended by this Act commences before Part VB of that Act as so amended, section 200A of that Act:

(a) ceases, on the commencement of Part VA, to apply to an eligible item that is a sound broadcast, a television broadcast, or a work, sound recording, or cinematograph film included in a sound or television broadcast; and

(b) is repealed on the commencement of Part VB.

(2) If Part VB of the Principal Act as amended by this Act commences before Part VA of that Act as so amended, section 200A of that Act:

(a) ceases, on the commencement of Part VB, to apply to an eligible item other than a sound broadcast, a television broadcast, or a work, sound recording, or cinematograph film included in a sound or television broadcast; and

(b) is repealed on the commencement of Part VA.

(3) If Parts VA and VB of the Principal Act as amended by this Act commence on the same day, section 200A of that Act is repealed on that day.

## **COPYRIGHT AMENDMENT ACT 1989 No. 32 of 1989 - SECT 26**

Retention of declarations in relation to copies made by libraries, archives or institutions

26. Section 203A of the Principal Act is amended:

(a) by omitting paragraphs (2) (a) and (b) or, if paragraph (2) (c) has been omitted, by omitting subsection (2);



- (b) by omitting paragraph (2) (c) or, if paragraphs (2) (a) and (b) have been omitted, by omitting subsection (2);
- (c) by omitting subsection (3);
- (d) by omitting from subsection (4) "or against subsection (2) with respect to the retention of the same record";
- (e) by omitting from subsection (5) ", or to a prosecution of the body administering, or of the custodian in charge of the copying records of, an institution for an offence against subsection (2) in relation to the retention of a record,";
- (f) by omitting paragraphs (5) (a) and (b) and substituting the following paragraphs:

"(a) in the case of a prosecution of the officer in charge of a library or archives-the declaration relates to the making of a copy of the whole or a part of a work, a sound recording or a cinematograph film before the day on which the defendant became the officer in charge of the library or archives and was not in the possession of the body administering the library or archives at that day; or

(b) in any case-the defendant took all reasonable precautions, and exercised due diligence, to ensure the retention of the declaration in the records of the library or archives, as the case requires."

## **COPYRIGHT AMENDMENT ACT 1989 No. 32 of 1989 - SECT 27**

### **Inspection of records and declarations retained by libraries, archives or institutions**

27. (1) If Part VA of the Principal Act as amended by this Act commences before Part VB of that Act as so amended, section 203E of that Act is amended:

- (a) by inserting in subsection (2) "to which section 200A applies" after "an eligible item";
- (b) by omitting from subsection (2) "(not being, in any case, an

institution that deposits its copying records with a central records authority");

(c) by omitting from subparagraph (2) (a) (ii) "or parts of eligible items" and substituting "to which section 200A applies, or parts of such eligible items";

(d) by inserting in paragraph (2) (b) "to which section 200A applies" after "eligible items";

(e) by omitting subsection (3);

(f) by omitting subsection (5) and substituting the following subsection:

"(5) Where a person gives notice under subsection (2) to the custodian in charge of the copying records of an institution that the person wishes to inspect certain records on a particular day, that person may, during the ordinary working hours of the institution on that day (but not before 10 a.m. or after 3 p.m.) inspect the records to which the notice relates and, for that purpose, may enter the premises of the institution at which the copying records of the institution are kept.";

(g) by omitting from subsection (7) "or a central records authority";

(h) by omitting from paragraph (7) (a) "or central records authority, as the case may be";

(j) by omitting from paragraph (7) (b) "or the officer in charge of the central records authority, as the case may be";

(k) by omitting from subsection (8) ", or of the officer in charge of a central records authority,";

(m) by omitting from subsection (8) ", institution or central records authority" and substituting "or institution";

(n) by omitting from subsection (9) "or a central records authority";

(p) by omitting from subsection (9) ", institution or central records authority" and substituting "or institution".

(2) If Part VB of the Principal Act as amended by this Act commences before Part VA of that Act as so amended, section 203E of that Act is amended:

(a) by omitting subsection (2) and substituting the following subsection:

"(2) The owner of the copyright in an eligible item to which section 200A applies, or the agent of such an owner, may notify the custodian in charge of the copying records of an institution assisting intellectually handicapped persons, in writing, that the owner or agent, as the case may be, wishes to inspect:

(a) all the relevant records of the institution that relate to the making, in reliance on section 200A, of intellectually handicapped persons' copies of eligible items to which that section applies, or parts of such eligible items; or

(b) such of those records that relate to any eligible items to which that section applies by a specified author or maker;

on a day specified in the notice, being an ordinary working day of the institution not earlier than 7 days after the date of the giving of the notice.";

(b) by omitting subsection (3);

(c) by omitting subsection (5) and substituting the following subsection:

"(5) Where a person gives notice under subsection (2) to the custodian in charge of the copying records of an institution that the person wishes to inspect certain records on a particular day, that person may, during the ordinary working hours of the institution on that day (but not before 10 a.m. or after 3 p.m.) inspect the records to which the notice relates and, for that purpose, may enter the premises of the institution at which the copying records of the institution are kept.";

(d) by omitting from subsection (7) "or a central records authority";

(e) by omitting from paragraph (7) (a) "or central records authority, as the case may be";

(f) by omitting from paragraph (7) (b) "or the officer in charge of the central records authority, as the case may be";

(g) by omitting from subsection (8) ", or of the officer in charge of a central records authority,";

(h) by omitting from subsection (8) ", institution or central records authority" and substituting "or institution";

(j) by omitting from subsection (9) "or a central records authority";

(k) by omitting from subsection (9) ", institution or central records authority" and substituting "or institution".

(3) If:

(a) Parts VA and VB of the Principal Act as amended by this Act commence on the same day;

(b) after the commencement of Part VA of the Principal Act as amended by this Act, Part VB of that Act, as so amended, commences; or

(c) after the commencement of Part VB of the Principal Act as amended by this Act, Part VA of that Act, as so amended, commences; section 203E of the Principal Act is amended:

(d) by omitting subsections (2), (5) and (7);

(e) where paragraph (a) applies-by omitting subsection (3);

(f) by omitting subsections (8) and (9) and substituting the following subsections:

"(8) The officer in charge of a library or archives shall not be convicted

of an offence against subsection (6) if the officer adduces evidence that he or she believed, on reasonable grounds, that the person who attended the premises of the library or archives, as the case may be, as mentioned in that subsection, was provided with all reasonable facilities and assistance for the effective exercise of the powers conferred by subsection (4) and that evidence is not rebutted by the prosecution.

"(9) The body administering a library or archives shall not be convicted of an offence against subsection (6) if the body adduces evidence that it took all reasonable precautions, and exercised due diligence, to ensure that the

person who attended the premises of the library or archives, as the case may be, as mentioned in that subsection, was provided with all reasonable facilities and assistance for the effective exercise of the powers conferred by subsection (4) and that evidence is not rebutted by the prosecution.".

## **COPYRIGHT AMENDMENT ACT 1989 No. 32 of 1989 - SECT 28**

28. After Part XI of the Principal Act the following Part is inserted:

### **"PART XIA-PERFORMERS' PROTECTION**

#### **"Division 1-Preliminary**

##### Interpretation

"248A. (1) In this Part:

'action' means a proceeding of a civil nature between parties and includes a counterclaim;

'authorised', in relation to a recording of a performance, means made with the authority of the performer;

'cinematograph film' includes an article in which visual images are embodied and which is capable of being used to show those images as a moving picture, and a sound-track associated with those images;

'direct', in relation to a sound recording or cinematograph film of a performance, means made directly from the live performance;

'exempt recording' means:

(a) an indirect sound recording or an indirect cinematograph film of a performance, being a sound recording or film made solely for the purpose of the private and domestic use of the person who made it;

(b) an indirect sound recording or an indirect cinematograph film of a performance, being a sound recording or film made solely for the purpose of use in scientific research;

(c) an indirect sound recording or an indirect cinematograph film of a performance, being a sound recording or film made by, or on behalf of, the body administering an educational institution solely for the educational

purposes of that institution or of another educational institution;

(d) an indirect sound recording or an indirect cinematograph film of a performance, being a sound recording or film made by, or on behalf of, the body administering an institution assisting handicapped readers solely for the purpose of the provision, whether by the institution or otherwise, of assistance to handicapped readers;

(e) an indirect sound recording or an indirect cinematograph film of a performance, being a sound recording or film made by, or on behalf of, the body administering an institution assisting intellectually handicapped persons solely for the purpose of the provision, whether by the institution or otherwise, of assistance to intellectually handicapped persons;

(f) a direct or indirect sound recording or cinematograph film of a performance made:

(i) for the purpose of, or associated with, the reporting of news or current affairs; or

(ii) for the purpose of criticism or review;

(g) a direct or indirect sound recording or cinematograph film of a performance made solely for the purpose of a judicial proceeding or the giving of professional advice by a legal practitioner;

(h) a direct sound recording or cinematograph film of a performance made

by a broadcaster who has the authority of the performer to broadcast the performance, being a recording or film made solely for the purpose of making that broadcast;

(j) a direct or indirect sound recording or cinematograph film of a performance made by a person who reasonably believes, due to a fraudulent or innocent misrepresentation made to the person, that the performer has authorised the making of the recording or film by the person;

(k) a copy of a sound recording or cinematograph film referred to in paragraph (a), (b), (c), (d), (e), (f) or (g), being a copy made solely for a purpose referred to in any of those paragraphs;

(m) a copy of a sound recording or cinematograph film referred to in paragraph (h), being a copy made solely for the purpose referred to in that paragraph;

(n) a copy of a sound recording or cinematograph film referred to in paragraph (j), being a copy made:

(i) by a person who believes, due to a fraudulent or innocent representation made to the person, that the performer has authorised the making of the copy; or

(ii) solely for a purpose referred to in paragraph (a), (b), (c), (d), (e), (f) or (g); or

(p) a copy of an authorised recording of a performance, other than a copy of an authorised sound recording where the copy was made for use in a sound-track but the making of the sound recording was not authorised for the purpose of use in a sound-track;

'indirect', in relation to a sound recording or cinematograph film of a performance, means made from a broadcast, or a re-broadcast, of the performance or from a transmission of the performance to subscribers to a diffusion service; 'performance' means:

(a) a performance (including an improvisation) of a dramatic work, or part of such a work, including such a performance given with the use of puppets;

(b) a performance (including an improvisation) of a musical work or part of such a work;

(c) the reading, recitation or delivery of a literary work, or part of such a work, or the recitation or delivery of an improvised literary work;

(d) a performance of a dance; or

(e) a performance of a circus act or a variety act or any similar presentation or show;

being a live performance given in Australia by one or more qualified persons, whether in the presence of an audience or otherwise;

'protection period', in relation to a performance, means the period beginning on the day when the performance is given and ending at the end of the period of 20 calendar years after the calendar year in which the performance is given;

'qualified person' means an Australian citizen, an Australian protected person or a person resident in Australia;

'recording' means a sound recording or cinematograph film, other than an exempt recording;

'sound recording' includes an article in which sounds are embodied;

'unauthorised', in relation to a recording of a performance, means made without the authority of the performer;

'unauthorised use' has the meaning given by section 248G.

"(2) The following shall be taken not to be performances for the purposes of this Part:

(a) a performance referred to in subsection 28 (1);

(b) a reading, recital or delivery of any item of news and information;

(c) a performance of a sporting activity; or

(d) a participation in a performance as a member of an audience.

"(3) In this Part:

(a) a reference to the doing of an act in relation to a performance includes a reference to the doing of that act in relation to a substantial part of the performance;

(b) a reference to the doing of an act in relation to a performance, or a recording of a performance, with the authority of the performer is, in the case of 2 or more performers, a reference to the doing of the act where each of the performers has authorised the doing of the act;



(c) a reference to the doing of an act in relation to a performance, or a recording of a performance, without the authority of the performer is, in the case of 2 or more performers, a reference to the doing of the act where at least one of the performers has not authorised the doing of the act; and

(d) a reference to a sound-track is a reference to a sound-track associated with visual images forming part of a cinematograph film.

#### Educational purposes

"248B. Without limiting the meaning of the expression 'educational purposes' in paragraph (c) of the definition of 'exempt recording' in subsection 248A (1), a sound recording or cinematograph film of a performance shall be taken to have been made for the educational purposes of an educational institution if it is made:

(a) for use in connection with a particular course of instruction provided by the institution; or

(b) for inclusion in the collection of a library of the institution.

#### Exempt recordings cease to be exempt recordings in certain circumstances

"248C. (1) If any copies of a sound recording or a cinematograph film of a performance, being a sound recording or film that is an exempt recording under paragraph (h) of the definition of 'exempt recording' in subsection 248A (1), are not destroyed before the end of the period of 12 months beginning on the day on which any of those copies is first used for broadcasting the performance, the sound recording or film shall, at the end of that period, cease to be an exempt recording.

"(2) A sound recording or cinematograph film, or a copy of such a recording or film, that is an exempt recording because it was made for a purpose referred to in paragraph (a), (b), (c), (d), (e) or (f) of the definition of 'exempt recording' in subsection 248A (1) ceases to be an exempt recording if it is used for any other purpose without the authority of the performer.

#### Private and domestic use

"248D. For the purposes of this Part, a sound recording or cinematograph film shall be taken not to have been made for the private and domestic use of

the person who made it if it is made for the purpose of:

- (a) selling it, letting it for hire, or by way of trade offering or exposing it for sale or hire;
- (b) distributing it, whether for the purpose of trade or otherwise;
- (c) by way of trade exhibiting it in public;
- (d) broadcasting the film or recording; or
- (e) causing the film or recording to be seen or heard in public.

References to transmission to subscribers to a diffusion service

"248E. (1) A reference in this Part to the transmission of a performance to subscribers to a diffusion service is a reference to the transmission of the performance in the course of a service of distributing broadcast or other matter (whether provided by the person operating the service or by other persons) over wires, or over other paths provided by a material substance, to the premises of subscribers to the service.

"(2) For the purposes of this Part, where a performance is so transmitted:

- (a) the person operating the service shall be taken to be the person causing the performance to be so transmitted; and
- (b) no person other than the person operating the service shall be taken to be causing the performance to be so transmitted, whether or not he or she provides any facilities for the transmission.

"(3) In applying this section, a service of distributing broadcast or other matter shall be disregarded where the service is only incidental to a business of keeping or letting premises at which persons reside or sleep, and is operated as part of the amenities provided exclusively for residents or inmates of the premises or for those residents or inmates and their guests.

"(4) A reference in this section to the person operating a service of distributing broadcast or other matter is a reference to the person who, in the agreements with subscribers to the service, undertakes to provide them with the service, whether he or she is the person who transmits the broadcast or other matter or not.

"(5) Where a service of distributing matter over wires or over other paths

provided by a material substance is only incidental to, or part of, a service of transmitting telegraphic or telephonic communications, a subscriber to the last-mentioned service shall be taken, for the purposes of this section, to be a subscriber to the first-mentioned service.

#### Application

"248F. (1) This Part applies to an act done on or after the commencement of this Part in relation to a performance given on or after that commencement.

"(2) Nothing in this Part affects any copyright subsisting in a work that is performed or in any sound recording, cinematograph film or broadcast of a performance, or any other right or obligation arising otherwise than under this Part.

"(3) In the application of this Part to a counterclaim, the reference in section 248J to the defendant shall be read as a reference to the plaintiff.

#### "Division 2-Actions by performers

##### What constitutes unauthorised use

"248G. (1) A person makes an unauthorised use of a performance if the person, at any time during the protection period of the performance and without the authority of the performer:

- (a) makes a direct or indirect recording of the performance;
- (b) broadcasts or re-broadcasts the performance, either directly from the live performance or from an unauthorised recording of it; or
- (c) causes the live performance, or an unauthorised recording of it, to be transmitted to subscribers to a diffusion service.

"(2) A person makes an unauthorised use of a performance if the person, at any time during the protection period of the performance and without the authority of the performer:

- (a) makes a copy of a recording of the performance that the person knows, or ought reasonably to know, is an unauthorised recording;
- (b) makes a copy of an exempt recording of the performance, being a copy that the person knows, or ought reasonably to know, is not itself an exempt recording;

(c) makes, for use in a sound-track, a copy of an authorised sound recording of the performance and the person knows, or ought reasonably to know, that the making of the sound recording was not authorised for the purpose of use in that or any other sound-track;

(d) has in his or her possession a recording of the performance that the person knows, or ought reasonably to know, is an unauthorised recording;

(e) sells, lets on hire, or by way of trade exhibits in public or offers or exposes for sale or hire, a recording of the performance that the person knows, or ought reasonably to know, is an unauthorised recording;

(f) distributes a recording of the performance for the purpose of trade, or for any other purpose to an extent that will affect prejudicially the financial interests of the performer or performers in the performance, being a recording that the person knows, or ought reasonably to know, is an unauthorised recording;

(g) imports a recording of the performance into Australia for the purpose of:

(i) selling it, letting it for hire, or by way of trade exhibiting it in public or offering or exposing it for sale or hire; or

(ii) distributing it for the purpose of trade, or for any other purpose to an extent that will affect prejudicially the financial interests of the performer or performers in the performance;

being a recording that the person knows, or ought reasonably to know, is an unauthorised recording; or

(h) causes a recording of the performance to be heard or seen in public, being a recording that the person knows, or ought reasonably to know, is an unauthorised recording.

"(3) A person who broadcasts or re-broadcasts an authorised recording of a performance, or causes an authorised recording of a performance to be transmitted to subscribers to a diffusion service, without the authority of

the performer does not, by so doing, make an unauthorised use of the performance.

"(4) This section applies only to acts done in Australia.

#### Copying sound recordings for broadcasting

"248H. (1) Despite paragraph 248G (2) (c), where the making of a copy of a sound recording of a performance for use in a sound-track would, but for this subsection, be an unauthorised use of the performance under that paragraph, the making by a person of such a copy solely for the purpose of use in a broadcast by that person is not an unauthorised use of the performance.

"(2) Subsection (1) does not apply to a copy if it is used for a purpose other than:

- (a) a broadcast by the person who made the copy; or
- (b) the making of further copies by that person for the purpose of broadcasting by that person.

"(3) Subsection (1) does not apply to a copy unless all the copies made in accordance with that subsection are:

- (a) destroyed; or
- (b) delivered, with the consent of the Director-General of the Australian Archives, to the Australian Archives;

before the end of the period of 12 months beginning on the day on which any of those copies is first used for the purpose of a broadcast in accordance with that subsection, or before the end of such further period (if any) as is agreed between the maker of the copy and the performer, or all of the performers.

"(4) The Director-General of the Australian Archives shall not consent to the delivery of a copy of a sound recording to the Australian Archives unless the Director-General has certified that the sound recording is of an exceptional documentary character.

#### Actions for unauthorised use

"248J. (1) A performer may bring an action for an unauthorised use of his or her performance.

"(2) The relief that a court may grant in an action for an unauthorised use of a performance includes an injunction (subject to such terms, if any, as the court thinks fit) and damages.

"(3) Where, in an action for an unauthorised use of a performance:

(a) the unauthorised use is established; and

(b) the court is satisfied that it is proper to do so, having regard to:

(i) the flagrancy of the use;

(ii) any benefit shown to have accrued to the defendant by reason of the use; and

(iii) all other relevant matters;

the court may, in assessing damages, award such additional damages as it considers appropriate in the circumstances.

#### Exercise of jurisdiction

"248K. The jurisdiction of the Supreme Court of a State or Territory in an action under section 248J shall be exercised by a single Judge of the Court.

#### Appeals

"248L. (1) Subject to subsection (2), a decision of a court of a State or Territory (however constituted) in an action under section 248J is final and conclusive.

"(2) An appeal lies from a decision of a court of a State or Territory in an action under section 248J:

(a) to the Federal Court of Australia; or

(b) by special leave of the High Court, to the High Court.

#### Jurisdiction of Federal Court

"248M. Jurisdiction is conferred on the Federal Court of Australia with respect to actions under section 248J.

#### Right to bring an action not assignable

"248N. The right of a performer to bring an action under section 248J is not assignable.

#### "Division 3-Offences

Offences involving unauthorised recording, broadcasting etc. of performances

"248P. (1) A person shall not, at any time during the protection period of a performance, make a direct recording of the performance without the authority of the performer.

"(2) A person shall not, at any time during the protection period of a performance, make an indirect recording of the performance without the authority of the performer.

"(3) A person shall not, at any time during the protection period of a performance, broadcast or re-broadcast the performance, either directly from the live performance or from an unauthorised recording of it, without the authority of the performer.

"(4) A person shall not, at any time during the protection period of a performance, cause the live performance, or an unauthorised recording of it, to be transmitted to subscribers to a diffusion service without the authority of the performer.

"(5) A person shall not, at any time during the protection period of a performance, cause a recording of the performance to be heard or seen in public if the person knows, or ought reasonably to know, that the recording is an unauthorised recording.

"(6) A person shall not, at any time during the protection period of a performance, have in his or her possession any plate or recording equipment that the person knows, or ought reasonably to know, is to be used for making an unauthorised recording of the performance or a copy of such a recording.

"(7) This section applies only to acts done in Australia.

"(8) A person who broadcasts or re-broadcasts an authorised recording of a performance, or causes an authorised recording of a performance to be transmitted to subscribers to a diffusion service, without the authority of the performer does not, by doing so, contravene subsection (3) or (4).

Other offences in relation to performances

"248Q. (1) A person shall not, at any time during the protection period of a performance, make a copy of a recording of the performance if the person

knows, or ought reasonably to know, that the recording is an unauthorised recording.

"(2) A person shall not, at any time during the protection period of a performance, make a copy of an exempt recording of the performance without the authority of the performer if the person knows, or ought reasonably to know, that the copy is not itself an exempt recording.

"(3) A person shall not, at any time during the protection period of a performance, make a copy of an authorised sound recording of the performance without the authority of the performer if:

(a) the copy is made for use in a sound-track and the person knows, or ought reasonably to know, that the making of the sound recording was not authorised for the purpose of use in that or any other sound-track; and

(b) the making of the copy is an unauthorised use of the performance under subsection 248G (2).

"(4) A person shall not, at any time during the protection period of a performance, have in his or her possession a recording of the performance if the person knows, or ought reasonably to know, that the recording is an unauthorised recording.

"(5) A person shall not, at any time during the protection period of a performance:

(a) sell, let for hire, or by way of trade offer or expose for sale or hire a recording of the performance;

(b) distribute a recording of the performance for the purpose of trade, or for any other purpose to an extent that will affect prejudicially the financial interests of the performer or performers in the performance; or

(c) import a recording of the performance into Australia for the purpose of:

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

(ii) distributing it for the purpose of trade, or for any other purpose to an extent that will affect prejudicially the financial interests of the



performer or performers in the performance;

if the person knows, or ought reasonably to know, that the recording is an unauthorised recording.

"(6) A person shall not, at any time during the protection period of a performance:

(a) by way of trade exhibit in public a recording of the performance; or

(b) import a recording of the performance into Australia for the purpose of exhibiting the recording in public by way of trade;

if the person knows, or ought reasonably to know, that the recording is an unauthorised recording.

"(7) This section applies only to acts done in Australia.

#### Penalties

"248R. (1) A person who contravenes subsection 248P (1) or (2) is guilty of an offence punishable on conviction by:

(a) if it is the person's first conviction for a contravention of that subsection and the recording to which the contravention relates is a sound recording:

(i) if the person is a natural person-a fine not exceeding \$500; or

(ii) if the person is a body corporate-a fine not exceeding \$2,500;

(b) if it is the person's first conviction for a contravention of that subsection and the recording to which the contravention relates is a cinematograph film:

(i) if the person is a natural person-a fine not exceeding \$1,500 or imprisonment for a term not exceeding 2 years, or both; or

(ii) if the person is a body corporate-a fine not exceeding \$7,500;

(c) if it is not the person's first conviction for a contravention of that subsection and the recording to which the contravention relates is a sound recording:

(i) if the person is a natural person-a fine not exceeding \$500 or imprisonment for a term not exceeding 6 months, or both; or

(ii) if the person is a body corporate-a fine not exceeding \$5,000; or  
(d) if it is not the person's first conviction for a contravention of that subsection and the recording to which the contravention relates is a cinematograph film:

(i) if the person is a natural person-a fine not exceeding \$1,500 or imprisonment for a term not exceeding 5 years, or both; or

(ii) if the person is a body corporate-a fine not exceeding \$15,000.

"(2) A person who contravenes subsection 248P (3), (4), (5) or (6) is guilty of an offence punishable on conviction by:

(a) if it is the person's first conviction for a contravention of that subsection:

(i) if the person is a natural person-a fine not exceeding \$1,500; or

(ii) if the person is a body corporate-a fine not exceeding \$7,500; or

(b) in any other case:

(i) if the person is a natural person-a fine not exceeding \$1,500 or imprisonment for a term not exceeding 6 months, or both; or

(ii) if the person is a body corporate-a fine not exceeding \$15,000.

"(3) A person who contravenes subsection 248Q (1), (2), (3), (4), (5) or (6) is guilty of an offence punishable on conviction by:

(a) if it is the person's first conviction for a contravention of that subsection and the recording to which the contravention relates is a sound recording:

(i) if the person is a natural person-a fine not exceeding \$500 for each

sound recording or copy to which the offence relates; or

(ii) if the person is a body corporate-a fine not exceeding \$2,500 for each sound recording or copy to which the offence relates;

(b) if it is the person's first conviction for a contravention of that subsection and the recording to which the contravention relates is a cinematograph film:

(i) if the person is a natural person-a fine not exceeding \$1,500 for

each cinematograph film or copy to which the offence relates or imprisonment for a term not exceeding 2 years, or both; or

(ii) if the person is a body corporate-a fine not exceeding \$7,500 for each cinematograph film or copy to which the offence relates;

(c) if it is not the person's first conviction for a contravention of that subsection and the recording to which the contravention relates is a sound recording:

(i) if the person is a natural person-a fine not exceeding \$500 for each

sound recording or copy to which the offence relates or imprisonment for a term not exceeding 6 months, or both; or

(ii) if the person is a body corporate-a fine not exceeding \$5,000 for each sound recording or copy to which the offence relates; or

(d) if it is not the person's first conviction for a contravention of that subsection and the recording to which the contravention relates is a cinematograph film:

(i) if the person is a natural person-a fine not exceeding \$1,500 for each cinematograph film or copy to which the offence relates or imprisonment for a term not exceeding 5 years, or both; or

(ii) if the person is a body corporate-a fine not exceeding \$15,000 for each cinematograph film or copy to which the offence relates.

"(4) Where a fine is imposed on a person under subsection (3) in relation to an offence committed by the person and there is more than one recording or copy to which the offence relates:

(a) if the person is prosecuted before the Federal Court of Australia-the fine imposed in respect of the offence shall not exceed \$50,000 if the person is a natural person or \$250,000 if the person is a body corporate; and

(b) if the person is prosecuted before any other court-the fine imposed in

respect of the offence shall not exceed \$10,000 if the person is a natural person or \$50,000 if the person is a body corporate.

#### Prosecutions for offences

"248S. (1) Prosecutions for offences against this Part may be brought in the Federal Court of Australia or in any other court of competent jurisdiction.

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

#### Destruction or delivery up of unauthorised recordings

"248T. The court before which a person is charged with an offence against this Part may, whether the person is convicted of the offence or not, order that any article in the possession of the person that appears to the court to be:

- (a) an unauthorised recording of a performance, or a copy of such a recording; or
- (b) a plate or recording equipment used, or intended to be used, for making an unauthorised recording of a performance, or copies of such a recording; be destroyed or delivered up to the performer or performers concerned or otherwise dealt with in such manner as the court thinks fit.

#### "Division 4-Extension of protection to foreign countries

##### Application to foreign countries

"248U. (1) Subject to this section, the regulations may apply any of the provisions of this Part specified in the regulations, in relation to a foreign country so specified, in any one or more of the following ways:

- (a) so that the provisions apply in relation to performances given in that country in like manner as those provisions apply in relation to performances given in Australia;
- (b) so that the provisions apply in relation to persons who are citizens or nationals of that country in like manner as those provisions apply in relation to persons who are Australian citizens;
- (c) so that the provisions apply in relation to persons who are resident in that country in like manner as those provisions apply in relation to persons

who are resident in Australia.

"(2) Regulations applying a provision of this Part in relation to a foreign country:

(a) may apply the provision without exception or modification or subject to such exceptions or modifications as are specified in the regulations; and

(b) may apply the provision either generally or in relation to such classes of performances, or other classes of cases, as are specified in the regulations.

"(3) Regulations shall not be made applying any of the provisions of this Part in relation to a foreign country that is not a party to a Convention relating to the protection of performers to which Australia is also a party unless the Governor-General is satisfied that, in respect of the performances to which those provisions relate, provision has been or will be made under the law of that country under which adequate protection is or will be given to performers whose performances are protected under this Act.

Denial of protection to citizens of countries not giving adequate protection to Australian performances

"248V. (1) If it appears to the Governor-General that the law of a foreign country does not give adequate protection to Australian performances (whether the lack of protection relates to the nature of the performance or the nationality, citizenship or country of residence of its performer, or all of those matters), the Governor-General may, having regard to the nature and extent of the lack of protection involved, make regulations in relation to that country in accordance with this section.

"(2) Regulations made for the purposes of this section may provide, either generally or in such cases as are specified in the regulations, that this Part does not apply to performances given after a day specified in the regulations (which may be a day before the commencement of the regulations or of this Part) if, at the time the performances were or are given, the performers were or are citizens or nationals of a foreign country specified in the regulations, other than persons resident in Australia."

## **COPYRIGHT AMENDMENT ACT 1989 No. 32 of 1989 - SECT 29**

### **Savings**

29. In spite of anything in this Act:

(a) the Principal Act, as in force immediately before the commencement of section 14 of this Act, continues to apply in relation to a copy of a television broadcast made in reliance on section 200A of the Principal Act; and

(b) the Principal Act, as in force immediately before the commencement of section 15 of this Act, continues to apply in relation to a copy of a work or other subject-matter made in reliance on section 53A, 53B, 53C, 53D or 200A of the Principal Act; until the end of the period of 4 years beginning on the day on which the copy was made.

## **COPYRIGHT AMENDMENT ACT 1989 No. 32 of 1989 - SCHEDULE**

### **SCHEDULE**

#### **FURTHER AMENDMENTS OF THE COPYRIGHT ACT 1968**

1. Subsection 10 (1) (definition of "dramatic work"):

"Omit from paragraph (a) of the definition "if described in writing in the form in which the show is to be presented".

2. Subsection 10 (1) (definition of "officer in charge"):

(a) Add at the end of paragraph (a) of the definition "and".

(b) Omit paragraph (b) of the definition.

3. Subsection 10 (1) (definition of "central records authority"):

Omit the definition.

4. Subsection 10 (1) (definition of "the Crown"):

(a) Omit "and the Crown in right of the Northern Territory", substitute ", the Crown in right of the Northern Territory and the Crown in right of Norfolk Island".

(b) Add at the end of the definition "or Norfolk Island".

5. Subsection 10 (1) (definitions of "the royalty" and "the minimum royalty"):

Omit the definitions.

6. Paragraph 10 (3) (a):

Omit "or a central records authority".

7. Subparagraph 10 (3) (a) (i):

Omit "or authority" and "or authority, as the case may be".

8. Subparagraph 10 (3) (a) (ii):

Omit "or authority, as the case may be".

9. Paragraph 10 (3) (d):

Omit the paragraph.

10. Paragraph 10 (3) (e):

Add at the end of the paragraph "and the Crown in right of Norfolk Island".

11. Paragraph 10 (3) (ha):

Omit "Part X", substitute "Part VB".

12. Paragraph 10 (3) (n):

(a) After "Northern Territory" (first occurring) insert "and Norfolk Island".

(b) After "Northern Territory" (second occurring) insert "or Norfolk Island".

13. Paragraph 10A (1) (a):

Omit the paragraph.

14. Subsection 22 (1):

Omit "or musical", substitute ", musical or artistic".

15. Divisions 5A and 5B of Part III:

Repeal the Divisions.

16. Sections 56 and 58:

Repeal the sections.

17. Sections 62, 63 and 71:

Repeal the sections.

18. Subparagraphs 112 (a) (ii) and (b) (ii):

(a) Omit "53A, 53B, 53D", substitute "135ZG, 135ZJ, 135ZK, 135ZL, 135ZM, 135ZN, 135ZP, 135ZQ, 135ZR, 135ZS, 135ZT or".

(b) Omit "or 200A".

19. Subsections 135 (10) and (11):

Omit the subsections.

20. Section 148:

Repeal the section.

21. Subsection 149A (1):

(a) Omit ", 53B (11), 53D (10)".

(b) Omit "or 200A (5)".

(c) Omit "for the making of a sound broadcast, copy, handicapped reader's copy or intellectually handicapped person's copy".

22. Subsection 149A (3):

Omit "for the making of the sound broadcast, copy, handicapped person's copy,

or intellectually handicapped person's copy, as the case requires".

23. Section 159A:

Repeal the section.

24. Section 159B:

Repeal the section.

25. Subsection 183 (11):

Omit "for the teaching", substitute "or other subject-matter for the educational".

26. Subsection 184 (1):

After "this Act" insert "(other than those of Part XIA)".

27. Subsection 195A (2):



(a) Omit "53B, 53D,".

(b) Omit "110B or 200A", substitute "or 110B".

28. Section 203B:

Repeal the section.

29. Section 203C:

Repeal the section.

30. Subsections 203D (2), (3) and (4):

Omit the subsections.

31. Subsection 203D (5):

(a) Omit ", (2) or (4) in relation to the arrangement of declarations or copying records".

(b) Omit "or copying records, as the case may be,".

32. Subsection 203F (1):

(a) Omit "53B, 53D,".

(b) Omit ", 110B or 200A", substitute "or 110B".

(c) Omit "or record" (wherever occurring).

33. Subsection 203F (2):

(a) Omit ", 53B".

(b) Omit ", in relation to the making of a handicapped reader's copy of the whole or a part of a work in reliance on section 53D".

(c) Omit "or in relation to the making of a copy of the whole or a part of an eligible item in reliance on section 200A".

(d) Omit "or record" (wherever occurring).

34. Subsections 203F (3) and (4):

Omit the subsections.

35. Section 203G:

Repeal the section.

36. Subsection 203H (1):

(a) Omit ", 51A, 53B or 53D", substitute "or 51A".

(b) Omit all the words from and including "notation", substitute "notation

stating that the copy was made on behalf of that institution and specifying the date on which the copy was made."

37. Subsection 203H (2):

(a) Omit ", a cinematograph film or an eligible item", substitute "or a cinematograph film".

(b) Omit ", cinematograph film or eligible item, or a part of the eligible item", substitute "or cinematograph film".

(c) Omit "or 200A".

(d) Omit all the words from and including "notation", substitute "notation stating that the copy was made on behalf of that institution and specifying the date on which the copy was made."

38. Subsections 203H (3) and (3A):

Omit the subsections.

39. Paragraph 203H (4) (a):

Add at the end of the paragraph "or".

40. Paragraph 203H (4) (aa):

Omit the paragraph, substitute the following paragraph:

"(aa) makes on, or attaches to, a copy of a sound recording or a cinematograph film a notation of the kind referred to in subsection (2);".

41. Paragraph 203H (4) (b):

Omit the paragraph.

42. Subsection 203H (4):

Omit "or message".

43. Subsection 203H (5):

Omit ", (2), (3) and (3A)", substitute "and (2)".

44. Paragraphs 203H (5) (a), (5) (b) and (5) (c):

Omit ", a cinematograph film or an eligible item, or of a part of a work or an eligible item", substitute "or a cinematograph film, or of a part of a work".

45. Paragraph 203H (5) (e):

Omit ", a cinematograph film or an eligible item, or of a part of an eligible

item,", substitute "or a cinematograph film".

46. Paragraph 203H (6) (a):

Add at the end of the paragraph "or".

47. Paragraph 203H (6) (b):

Omit the paragraph.

48. Subsection 203H (6):

(a) After "notation" (wherever occurring) insert "or mark".

(b) After "subsection (1)" insert ", 135K (1), 135ZY (1), 135ZQ (4) or 135ZT (4)".

49. Subsection 203H (7):

(a) After "notation" (wherever occurring) insert "or mark".

(b) After "subsection (1)" insert ", 135K (1), 135ZX (1), 135ZQ (4) or 135ZT (4)".

50. Subsections 203H (8) and (9):

Omit the subsections.

51. Paragraph 203H (9A) (a):

Add at the end of the paragraph "or".

52. Paragraph 203H (9A) (b):

Omit the paragraph.

53. Subsections 203H (9A) and (9B):

(a) Omit ", a cinematograph film or an eligible item, or of a part of an eligible item,", substitute "or a cinematograph film".

(b) After "notation" (wherever occurring) insert "or mark".

(c) After "subsection (2)" insert ", 135K (1), 135ZX (1), 135ZQ (4) or 135ZT (4)".