



## INFORMATION SHEET

G096v06

# Copyright Amendment Act 2006

April 2007

In this information sheet, we outline the amendments to the *Copyright Act 1968* (Cth) which are contained in the *Copyright Amendment Act 2006* (Cth). These include amendments relating to:

- time-shifting, format-shifting and space-shifting;
- certain non-commercial activities of libraries, educational institutions and cultural institutions;
- use of copyright material by people with a disability;
- parody and satire;
- the Copyright Tribunal;
- technological protection measures;
- criminal penalties
- presumptions; and
- unauthorised reception of encoded broadcasts.

The Amendment Act received Royal Assent (was signed by the Governor-General) on 11 December 2006, but not all provisions came into force at the same time. The provisions which immediately came into force were:

- Schedules 6 to 8 (private copying; new “special case” exception; other exceptions for libraries and educational institutions; parody and satire); and
- Schedules 10 and 11 (Copyright Tribunal).

The provisions which came into force at later dates were:

- Schedules 1 to 5 (new criminal provisions and enforcement measures) and Schedule 12 (technological protection measures) – 1 January 2007; and
- Schedule 9 (encoded broadcasts) – 8 January 2007.

There are links to further information about the Copyright Amendment Act 2006 at <http://www.copyright.org.au/u27261>. There will be more detailed information in our forthcoming publication *2006 copyright amendments*, which will be published in early 2007.

**The purpose of this information sheet is to give general introductory information about copyright. If you need to know how the law applies in a particular situation, please get advice from a lawyer.**

## Private copying provisions

### Time-shifting: recording from TV and radio for later private use

People are now allowed to record a television or radio program to watch or listen to at a later time.

The new exception only applies if the recording is made **solely** for private and domestic use, and then only for watching or listening to the program at a more convenient time. The new exception does **not**, however, apply to:

- podcasts (though these are usually expressly licensed for private use); or

- webcasts (except, it appears, programs streamed simultaneously with a broadcast by a “traditional” broadcaster such as the ABC, SBS or one of the commercial free-to-air broadcasters).

If something is legitimately copied from radio or TV under the provision, it will nonetheless become an infringing copy if it is later:

- sold, rented or distributed (unless it is only loaned to a member of the person’s family or household); or
- played or shown in public or broadcast.

There is no express obligation to destroy the recording once it has been watched. However, the government made the following statement about the intention behind the new provision:

Whilst the exception does not require immediate deletion of the television or radio program after watching or listening to it, the exception does not permit a person to record a broadcast and keep it indefinitely in a collection of films or sound recordings for repeated use.

### **“Space-shifting” of recorded music**

A person who owns a copy of a sound recording, such as a CD, is now allowed to make a copy of that recording, for private and domestic use, to play on a device that he or she owns. The device could be a CD player, a computer, a car CD player, or a portable device such as an iPod.

The new provision does **not** apply if the copy the person owns is an infringing copy (such as a pirate CD or an unauthorised digital download). Also, the provision is deemed not to apply if:

- the copy the person owns **or** the copy the person makes is later sold, rented or distributed (unless it is only loaned to a member of the person’s family or household); or
- the copy the person owns **or** the copy the person makes is played or shown in public or broadcast.

The provision can apply to recorded music that has been acquired as a result of a digital download, but does not apply to podcasts. In practice, however, before a digital file is downloaded, a person will often be asked to agree to certain conditions. The new provision in the Copyright Act does not override any undertakings made as a precondition for downloading a file.

### **Format-shifting: copying from one “format” to another for private use**

People who own certain types of material are now allowed to make a copy of that material, for private and domestic use, into certain other “formats”. In summary, an individual may:

- copy a book, magazine or periodical he or she owns into a different “form” (for example, by scanning a book so you can view it on a computer screen);
- copy a photograph he or she owns in hardcopy form into electronic form (for example, by scanning a photographic print);
- copy a photograph he or she owns in electronic form into hardcopy form (for example, by printing a jpeg file);
- copy a video he or she owns into a digital format (for example, onto a DVD).

The new provision does **not** apply if the person:

- has already made a copy in that format;
- sells, rents or distributes the copy (unless it is only loaned to a member of the person’s family or household);
- makes a copy for someone else;
- makes a copy from a copy owned by someone else; or
- disposes of the original to another person.

### **“Special case” exception for libraries, archives, collecting institutions & educational institutions**

A new exception allows the use of copyright material for specified purposes provided the use meets certain additional criteria. There are a number of uncertainties about how the new provision applies and it is likely that organisations and institutions seeking to rely on it will need to get advice about whether it applies in particular situations.

The purposes for which the provision may be relied upon are:

- maintaining or operating a library or archives;
- giving educational instruction; and
- obtaining a copy of material in a form which assists a person with a disability.

The use must not be made for the purpose of obtaining a commercial advantage or profit and, in addition, the use must:

- amount to a special case;
- not conflict with a normal exploitation of a work; and
- not unreasonably prejudice the legitimate interests of the owner of the copyright.

These conditions are almost identical to the conditions of the “three-step test” in international treaties, which govern the exceptions to copyright infringement that countries may have in their copyright legislation.

The new exception is not available if another exception or statutory licence applies to the use (or could apply, if the conditions were met). If, for example, a use can be for “educational purposes” under Part VA or Part VB of the Copyright Act, the new provision will not apply.

## **Other amendments relevant to libraries, archives & collecting institutions**

### **Additional provisions for “key cultural institutions”**

There are new provisions allowing certain activities relating to collections of “key cultural institutions”. These apply if:

- the body administering the collection either has, under a Commonwealth or State law, the function of developing or maintaining the collection, or is prescribed by the Copyright Regulations; and
- the material is of historical or cultural significance to Australia.

There are not yet any Regulations listing key cultural institutions.

A key cultural institution is allowed to make three preservation copies of the following:

- a manuscript;
- an original artwork, provided a photographic reproduction is not commercially available;
- a published work, provided a copy of it is not commercially available;
- a particular edition of a work, provided the authorised officer of the library or archives is satisfied that it is appropriate that a preservation copy be made of that edition;
- an original sound recording, an unpublished sound recording, an original film and an unpublished film; and
- a published sound recording or film, provided a copy of it is not commercially available.

(An item is commercially available if it is available within a reasonable time at an ordinary commercial price, including in electronic form.)

### **New definitions for “library” & “archives”**

Under the previous law, the provisions which allow libraries and archives to copy and communicate material from their collections to clients for their research or study, and to other libraries for inclusion in their collections, applied to libraries and archives that are not conducted for profit. The collection need not have been accessible to the public.

Now, these specific provisions are only available to libraries and archives “all or part of whose collection is accessible to members of the public directly or through interlibrary loans”, and (as previously) to parliamentary libraries. A library conducted for profit is no longer excluded, provided its collection is accessible to the public. An archive, on the other hand, is still excluded if it is operated for profit.

## **New definition of “administrative purposes”**

Libraries and archives are entitled to make a reproduction of a work in their collection for “administrative purposes”. There is now a new definition of “administrative purposes”: “purposes directly related to the care or control of the collection”.

## **Access by volunteers to “administrative” copies**

Under the existing provisions, an administrative copy of a work in a collection may be made available online so that “officers of the library or archives” can view the work on a computer terminal on the library’s premises. As a result of the amendments, “officer of a library or archives” now includes “volunteers assisting with the care or control of the collection”.

## **Replacement of damaged, deteriorated, lost or stolen editions of works**

Libraries and archives are now allowed to make a replacement copy of a particular edition of a work which has been damaged, lost or stolen, or which has deteriorated, even though another edition of the work is available for purchase. An authorised officer must make a declaration stating why a replacement copy should be made from or of the particular damaged, deteriorated, lost or stolen edition.

## **Other amendments relating to educational institutions**

There are new provisions relating to certain activities by educational institutions. These include provisions that:

- allow copying and communication of free-to-air broadcasts made available online by the broadcaster, such as podcasts (note, however, that the new provision does not override any contractual undertakings a person may give as a condition of getting access to the online content);
- allow copying and communication of up to 15 pages from an anthology published in electronic form;
- limit to continuous parts or pages the amount that may be copied, without payment, from a work of 200 pages or more published in electronic form;
- allow a communication of material to a class so that it can be seen and/or heard by the class (this would allow, for example, a film to be shown in class by means of a reticulated system); and
- allow proxy caching of websites, subject to certain conditions.

## **New “fair dealing” provision for parody and satire**

There is now an exception allowing “fair dealing” for parody or satire.

There is no definition of “parody” or “satire” in the Copyright Amendment Act, so these terms are likely to be interpreted with reference to their dictionary meanings. The **Macquarie Dictionary** includes the following definitions:

“Parody”:

1. a humorous or satirical imitation of a serious piece of literature or writing.
2. the kind of literary composition represented by such imitations.
3. a burlesque imitation of a musical composition.
4. a poor imitation; a travesty.

“Burlesque” (used as an adjective):

involving ludicrous or debasing treatment of a serious subject.

“Satire”:

1. the use of irony, sarcasm, ridicule, etc in exposing, denouncing, or deriding vice, folly etc.
2. a literary composition, in verse or prose, in which vices, abuses, follies etc are held up to scorn, derision, or ridicule.
3. the species of literature constituted by such composition.

Essentially, a parody is an *imitation* of a work, and therefore will often include parts of the original. In some cases, a parody may not be effective unless parts of the original are included. It seems that the purpose of a true parody is to make some comment on the imitated work. A melody with new lyrics would therefore not necessarily be a parody.

The purpose of satire, on the other hand, is to draw attention to characteristics or actions – such as vice or folly – by using certain forms of expression – such as irony, sarcasm and ridicule. It seems that both elements are required: the object to which attention is drawn (vice or folly etc) and the manner in which it is done (irony, ridicule etc). It is not clear, for example, that a work which uses irony or ridicule about something *other* than something like vice or folly would be satire.

Other countries – including the United States and many European countries – have a special exception for parody. No other country, to our knowledge, has a special exception for satire.

The new provision does not directly affect a creator's right to take legal action if his or her work is treated in a derogatory way. However, in many cases the use of a copyright work for parodic purposes may be defensible as "reasonable" under the moral rights provisions. It is not so clear that use of a copyright work for satirical purposes would be as likely to be "reasonable" in all the circumstances. This is because, unlike parody, the object of satire is generally not the copyright material itself or its creator(s). Rather, the use of any specific piece of copyright material for satirical purposes will generally be merely co-incidental – a vehicle for the satire.

## Technical protection measures

"Technological protection measures" (TPMs) are technological mechanisms used by copyright owners to prevent:

- unauthorised **access** to copyright content (access-control TPMs); and/or
- unauthorised **use** of copyright content (copy-control TPMs).

The Copyright Act currently includes sanctions against manufacturing and supplying devices and services to circumvent copy-control TPMs. From 1 January 2007, there have also been sanctions against:

- circumventing an access-control TPM;
- manufacturing or supplying a device to circumvent an access-control TPM; and
- providing a service to circumvent an access-control TPM.

There are limited circumstances in which a circumvention device or service may be legally manufactured and supplied. These circumstances are much more limited than the pre-2007 provisions.

The new provisions allow a person to circumvent a TPM to get access to copyright content in certain situations. Some of these situations are set out in the Copyright Act. Additional situations are set out in new regulations to the Copyright Act, which also came into operation on 1 January 2007.

The amendments to the TPM provisions within the Copyright Amendment Act 2006 were intended to implement Australia's obligations under the Australia-US Free Trade Agreement (AUSFTA), which requires more extensive protection for TPMs than was previously provided in Australia.

## Enforcement

There are new provisions which relate to piracy and enforcement. These include:

- new offences relating to "substantial infringement on a commercial scale";
- on-the-spot fines for many offences;
- the ability to take into account likely infringements as well as proved infringements when infringement takes place online on a commercial scale;
- new presumptions, based on labelling and other documentation, about copyright subsistence and ownership in court proceedings; and
- increased penalties for criminal infringement including where the infringement involves digitisation of analogue material.

## Copyright Tribunal jurisdiction

The Copyright Tribunal determines the rate of payment and certain other conditions of statutory licences and certain other music licences administered by copyright collecting societies. The Tribunal's jurisdiction has been extended to cover other licences administered by collecting societies, such as the licences for associations, corporations and local government administered by Copyright Agency Limited.

The amendments follow recommendations made by the Copyright Law Review Committee (CLRC) in 2000 following its review of the Copyright Tribunal's jurisdiction. There is a link to the report from <http://www.copyright.org.au/U25867>.

## Unauthorised access to encoded broadcasts

There are new offences relating to unauthorised access to encoded broadcasts, such as pay TV.

## Further information

For further information about copyright, and about our other publications and training program, see our website – <http://www.copyright.org.au>.

If you meet our eligibility guidelines, a Copyright Council lawyer may be able to give you free preliminary legal advice about an issue that is not addressed in an information sheet. This service is primarily for professional creators and arts organisations but is also available to staff of educational institutions, libraries and governments. For information about the service, see <http://www.copyright.org.au/advice> or our information sheet *Australian Copyright Council: who we are, what we do*.

Information from the Arts Law Centre of Australia may also be of interest to you: see <http://www.artslaw.com.au> or telephone (02) 9356 2566.

## Reproducing this information sheet

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## Australian Copyright Council

**The Australian Copyright Council is a non-profit organisation whose objectives are to:**

- assist creators and other copyright owners to exercise their rights effectively;
- raise awareness in the community about the importance of copyright;
- identify and research areas of copyright law which are inadequate or unfair;
- seek changes to law and practice to enhance the effectiveness and fairness of copyright;
- foster co-operation amongst bodies representing creators and owners of copyright.



**Australian Government**



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