

HOUSE OF REPRESENTATIVES

(As read a first time)

COPYRIGHT AMENDMENT BILL 1992

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MINOR AMENDMENTS OF THE PRINCIPAL ACT

1990-91-92

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 16 December 1992

(Parliamentary Secretary to the Attorney-General)

A BILL

FOR

An Act to amend the *Copyright Act 1968*

The Parliament of Australia enacts:

Short title etc.

1.(1) This Act may be cited as the *Copyright Amendment Act 1992*.

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

5 Commencement

2.(1) Subject to subsections (2) and (3), this Act commences on the twenty-eighth day after the day on which it receives the Royal Assent.

10 (2) Paragraphs 5(b) and 8(c) are taken to have commenced on 23 December 1991, immediately after the commencement of the *Copyright Amendment Act 1991*.

(3) Paragraphs 3(b) and (d), 7(b), 8(b) and 14(j), and subsections 6(2) and 9(2) commence on 1 July 1993.

Interpretation

3. Section 10 of the Principal Act is amended:

- (a) by omitting from the definition of “infringing copy” in subsection (1) all the words after “importer” and substituting:
 “but does not include: 5
- (f) a non-infringing book whose importation does not constitute an infringement of that copyright under section 44A or 112A; or
- (g) a non-infringing record whose importation does not constitute an infringement of that copyright under section 44B or 112B;”;
- (b) by adding at the end of the definition of “infringing copy” in subsection (1), the following word and paragraph:
 “or (h) a non-infringing accessory whose importation does not constitute an infringement of that copyright under section 44C or 112C;”;
- (c) by inserting in subsection (1) the following definitions:
 “**‘device’** includes a plate;
‘Geneva Phonograms Convention’ means the Convention for the Protection of Producers of Phonograms against Unauthorised Duplication of their Phonograms done at Geneva on 29 October 1971; 20
‘non-infringing record’ means a record made in a country that is a party to the Geneva Phonograms Convention or is a Schedule 2 country and whose making did not constitute an infringement of any copyright: 25
- (a) in a musical work; or
- (b) in a literary work consisting of words sung or spoken with a musical work; or
- (c) in a sound recording; 30
- under the law of the country in which it was made;
- ‘Schedule 2 country’** means:
 (a) a country specified in Schedule 2; or
 (b) a country designated by the regulations as a Schedule 2 country;”;
- (d) by inserting in subsection (1) the following definitions:
 “**‘accessory’**, in relation to an article, means one or more of the following:
 (a) a label affixed to, or displayed on, the article;
 (b) the packaging or container in which the article is packaged or contained; 40
 (c) a label affixed to, or displayed on, the packaging or container in which the article is packaged or contained;

(d) a written instruction, warranty or other information incidental to the article and provided with the article on its sale;

(e) an instructional audio or video cassette incidental to the article and provided with it on its sale;

but does not include:

(f) a copy of a work:

(i) that is incorporated into the article's surface and is a permanent part of the article; or

(ii) that cannot be separated from the article without rendering the article unsuitable for its ordinary use; or

(g) a manual sold with computer software for use in connection with that software;

'non-infringing accessory' means an accessory made in a country specified in regulations made for the purposes of subsection 184(1), being an accessory whose making did not constitute an infringement of any copyright under the law of that country;".

Infringement by importation for sale or hire

4. Section 37 of the Principal Act is amended:

(a) by omitting "section 44A," and substituting "Division 3,";

(b) by adding at the end the following subsection:

"(2) In relation to an article that was made without the licence of the owner of the copyright in the work under the law of the country in which the article was made, subsection (1) has effect as if the words 'the importer knew, or ought reasonably to have known, that' were omitted."

Infringement by sale and other dealings

5. Section 38 of the Principal Act is amended:

(a) by omitting from subsection (1) "section 44A," and substituting "Division 3,";

(b) by omitting from subsection (1) "importer" (first occurring) and substituting "person".

6.(1) After section 44A of the Principal Act the following section is inserted in Division 3 of Part 3:

Importation etc. of records

"44B.(1) The copyright in a literary, dramatic or musical work is not infringed by a person who, without the licence of the owner of the copyright and for a purpose mentioned in paragraph 37(1)(a), (b) or (c), imports into Australia a non-infringing record embodying a sound recording of the work made for the purposes of retail sale if:

- (a) the sound recording embodied in the record was first published or re-released on or after 1 July 1994; and
- (b) the record was made in, and is imported from, a Schedule 2 country; and
- (c) the sound recording is not: 5
 - (i) of a performance by a person who is an Australian citizen or resident; or
 - (ii) of a performance by persons the majority of whom are Australian citizens or residents; or
 - (iii) of a performance by 2 performers one of whom is an Australian citizen or resident; or 10
 - (iv) of a performance by persons one of whom is the featured artist and is an Australian citizen or resident; or
 - (v) of a performance that includes 2 featured artists one of whom is an Australian citizen or resident; or 15
 - (vi) of a performance that includes 3 or more featured artists the majority of whom are Australian citizens or residents.

“(2) The copyright in a literary, dramatic or musical work is not infringed by a person who, without the licence of the owner of the copyright and for a purpose mentioned in paragraph 37(1)(a), (b) or (c), imports into Australia a non-infringing record embodying a sound recording of the work made for the purposes of retail sale if: 20

- (a) the record is imported after 1 July 1994; and
- (b) the sound recording embodied in the record has been published in Australia; and 25
- (c) the record is imported from a country that is a party to the Geneva Phonograms Convention or is a Schedule 2 country; and
- (d) the person had ordered in writing from the owner of the copyright in the sound recording embodied in the record, or from the owner’s licensee or agent, one or more copies of the record (not being second-hand copies or more copies than were needed to satisfy the person’s reasonable requirements); and 30
- (e) when the person ordered the imported record, the original order mentioned in paragraph (b) had not been withdrawn or cancelled by, or with the consent of, the person; and 35
- (f) at least 30 days have elapsed since the person placed the original order and the copyright owner, licensee or agent has not filled the order.

“(3) The copyright in a literary, dramatic or musical work is not infringed by a person who, without the licence of the owner of the copyright, imports into Australia after 1 July 1994 a single copy of a non-infringing record embodying a sound recording of a work made for the purposes of retail sale if the importation is for the purpose of 40

filling a written order, or a verifiable telephone order, by a customer of the person and:

(a) in the case of a written order, the order contains a statement signed by the customer; or

5 (b) in the case of a telephone order, the customer makes a verifiable statement;

to the effect that the customer does not intend to use the record for a purpose mentioned in paragraph 37(1)(a), (b) or (c).

10 “(4) Without limiting the ways in which a telephone order under subsection (3), or a statement under paragraph (3)(b) relating to such an order, may be verified, an order or statement is taken to be verifiable if the person who takes the order, or to whom the statement is made, makes a written note of the details of the order or statement when, or immediately after, the order is placed or the statement is made, as the
15 case may be.

“(5) If:

(a) a record embodying a sound recording of a literary, dramatic or musical work is imported into Australia for a purpose mentioned in paragraph 37(1)(a), (b) or (c); and

20 (b) the importation is not, under this section, an infringement of copyright in the work;

the use of the record for any such purpose is not an infringement of the copyright in the work, and subsection 38(1) does not apply to the record.

25 “(6) For the purposes of paragraph (2)(d), a copyright owner, licensee or agent is not taken to have filled an order by a person for one or more copies of a record until the copyright owner, licensee or agent sends the copy, or all of the copies, as the case requires, to the person.

30 “(7) A sound recording is re-released, for the purposes of this section, when it is made available to the public after having been unavailable to the public from the owner of the copyright and from any exclusive licensee or agent of the owner of the copyright, for a period of at least 12 months.”.

35 (2) After section 44B of the Principal Act the following section is inserted:

Copyright subsisting in accessories etc. to imported articles

40 “44C.(1) The copyright in a work embodied in a non-infringing accessory to an article is not infringed by a person who, without the licence of the owner of the copyright, imports the article into Australia for a purpose mentioned in paragraph 37(1)(a), (b) or (c), if the owner of the copyright has consented to the use of the work with the article.

“(2) The operation of this Act in relation to a work embodied in an article is not affected by the operation of this section in relation to a work embodied in a non-infringing accessory to the article.

“(3) If:

- (a) an article is imported into Australia for a purpose mentioned in paragraph 37(1)(a), (b) or (c); and 5
- (b) the importation is not, under this section, an infringement of the copyright in a work embodied in a non-infringing accessory to the article;

the use of the accessory with the article for any such purpose is not an infringement of the copyright in the work, and subsection 38(1) does not apply to the accessory.” 10

Infringement by importation for sale or hire

7. Section 102 of the Principal Act is amended:

- (a) by omitting “section 112A,” and substituting “sections 112A and 112B,”; 15
- (b) by omitting “and 112B” and substituting “, 112B and 112C”;
- (c) by adding at the end the following subsection:

“(2) In relation to an article that was made without the licence of the owner of the copyright in the work under the law of the country in which the article was made, subsection (1) has effect as if the words ‘the importer knew, or ought reasonably to have known, that’ were omitted.” 20

Infringement by sale and other dealings

8. Section 103 of the Principal Act is amended:

- (a) by omitting from subsection (1) “section 112A,” and substituting “sections 112A and 112B,”; 25
- (b) by omitting “and 112B” and substituting “, 112B and 112C”;
- (c) by omitting from subsection (1) “importer” (first occurring) and substituting “person”. 30

9.(1) After section 112A of the Principal Act the following section is inserted in Division 6 of Part 4:

Importation etc. of records

“112B.(1) The copyright in a sound recording is not infringed by a person who, without the licence of the owner of the copyright and for a purpose mentioned in paragraph 102(1)(a), (b) or (c), imports into Australia a non-infringing record embodying the sound recording made for the purpose of retail sale if: 35

- (a) the sound recording embodied in the record was first published, or was re-released, on or after 1 July 1994; and 40
- (b) the record was made in, and is imported from, a Schedule 2 country; and

(c) the sound recording is not:

- (i) of a performance by a person who is an Australian citizen or resident; or
- 5 (ii) of a performance by persons the majority of whom are Australian citizens or residents; or
- (iii) of a performance by 2 performers one of whom is an Australian citizen or resident; or
- (iv) of a performance by persons one of whom is the featured artist and is an Australian citizen or resident; or
- 10 (v) of a performance that includes 2 featured artists one of whom is an Australian citizen or resident; or
- (vi) of a performance that includes 3 or more featured artists the majority of whom are Australian citizens or residents.

15 “(2) The copyright in a sound recording is not infringed by a person who, without the licence of the owner of the copyright and for a purpose mentioned in paragraph 102(1)(a), (b) or (c), imports into Australia a non-infringing record embodying the sound recording made for the purpose of retail sale if:

- 20 (a) the record is imported after 1 July 1994; and
- (b) the sound recording embodied in the record has been published in Australia; and
- (c) the record is imported from a country that is a party to the Geneva Phonograms Convention or that is a Schedule 2 country; and
- 25 (d) the person had ordered in writing from the owner of the copyright, or from the owner’s licensee or agent, one or more copies of the record (not being second-hand copies or more copies than were needed to satisfy the person’s reasonable requirements); and
- 30 (e) when the person ordered the imported record, the original order mentioned in paragraph (b) had not been withdrawn or cancelled by, or with the consent of, the person; and
- 35 (f) at least 30 days have elapsed since the person placed the original order and the copyright owner, licensee or agent has not filled the order.

40 “(3) The copyright in a sound recording is not infringed by a person who, without the licence of the owner of the copyright, imports into Australia after 1 July 1994 a single copy of a non-infringing record embodying a sound recording of a work made for the purposes of retail sale if the importation is for the purpose of filling a written order, or a verifiable telephone order, by a customer of the person and:

- (a) in the case of a written order, the order contains a statement signed by the customer; or

(b) in the case of a telephone order, the customer makes a verifiable statement;

to the effect that the customer does not intend to use the record for a purpose mentioned in paragraph 102(1)(a), (b) or (c).

“(4) Without limiting the ways in which a telephone order under subsection (3), or a statement under paragraph (3)(b) relating to such an order, may be verified, an order or statement is taken to be verifiable if the person who takes the order, or to whom the statement is made, makes a written note of the details of the order or statement when, or immediately after, the order is placed or the statement is made, as the case may be. 5 10

“(5) If:

(a) a record is imported into Australia for a purpose mentioned in paragraph 102(1)(a), (b) or (c); and

(b) the importation is not, under this section, an infringement of the copyright in the sound recording embodied in the record; 15

the use of the record for any such purpose is not an infringement of the copyright in the sound recording, and subsection 103(1) does not apply to the record.

“(6) For the purposes of paragraph (2)(d), a copyright owner, licensee or agent is not taken to have filled an order by a person for one or more copies of a record until the copyright owner, licensee or agent sends the copy, or all of the copies, as the case requires, to the person. 20

“(7) A sound recording is re-released, for the purposes of this section, when it is made available to the public after having been unavailable to the public from the owner of the copyright and from any exclusive licensee or agent of the owner of the copyright, for a period of at least 12 months.”. 25

(2) After section 112B of the Principal Act the following section is inserted: 30

Copyright subsisting in accessories etc. to imported articles

“112C.(1) The copyright in:

(a) a published edition of a work embodied in a non-infringing accessory to an article; or

(b) a cinematograph film that is a non-infringing accessory to an article; 35

is not infringed by a person who, without the licence of the owner of the copyright, imports the article into Australia for a purpose mentioned in paragraph 102(1)(a), (b) or (c), if the owner of the copyright has consented to the use of the published edition or cinematograph film with the article. 40

“(2) The operation of this Act in relation to:

(a) a published edition of a work embodied in an article; or
(b) a cinematograph film;
is not affected by the operation of this section in relation to:

- 5 (c) a published edition of a work, or other subject matter, embodied in a non-infringing accessory to the article; or
- (d) a cinematograph film that is a non-infringing accessory to the article.

“(3) If:

- 10 (a) an article is imported into Australia for a purpose mentioned in paragraph 102(1)(a), (b) or (c); and
- (b) the importation is not, under this section, an infringement of the copyright in:
 - 15 (i) a published edition of a work embodied in a non-infringing accessory to the article; or
 - (ii) a cinematograph film that is a non-infringing accessory to the article;

the use of the article for any such purpose is not an infringement of the copyright in the published edition of the work, or in the cinematograph film, and subsection 103(1) does not apply to the accessory.”.

Rights of owner of copyright in respect of infringing copies

10.(1) Section 116 of the Principal Act is amended:

- 25 (a) by omitting subsection (1) and substituting the following subsections:

“(1) The owner of the copyright in a work or other subject-matter may bring an action for conversion or detention in respect of:

- 30 (a) an infringing copy; or
- (b) a device used or intended to be used for making infringing copies.

“(1A) In an action for conversion or detention, a court may grant to the owner of the copyright all or any of the remedies that are available in such an action as if:

- 35 (a) the owner of the copyright had been the owner of the infringing copy since the time the copy was made; or
- (b) the owner of the copyright had been the owner of the device since the time when it was used or intended to be used for making infringing copies.
- 40

“(1B) Any relief granted by a court in an action for conversion or detention is in addition to any relief that the court may grant under section 115.

- 45 “(1C) A court is not to grant any relief to the owner of the

copyright in an action for conversion or detention if the relief that the court has granted or proposes to grant under section 115 is, in the opinion of the court, a sufficient remedy.

“(1D) In deciding whether to grant relief in an action for conversion or detention, the court may have regard to the following: 5

- (a) the expenses incurred by the defendant, being a person who marketed or otherwise dealt with the infringing copy, in manufacturing or acquiring the infringing copy; 10
- (b) whether the expenses were incurred before or after the infringing copy was sold or otherwise disposed of by the defendant;
- (c) any other matter that the court considers relevant. 15

“(1E) If the infringing copy is an article of which only part consists of material that infringes copyright, the court, in deciding whether to grant relief, may also have regard to the following: 15

- (a) the importance to the article of the material that infringes copyright; 20
- (b) the proportion the material that infringes copyright bears to the article;
- (c) the extent to which the material that infringes copyright may be separated from the article.”; 25
- (b) by omitting from paragraph (2)(c) “plate” and substituting “device”. 25

(2) The amendments made by subsection (1) do not apply to an action for conversion or detention brought before the commencement of this section. 30

11. After section 126 of the Principal Act the following section is inserted:

Presumptions as to subsistence of copyright etc. in sound recordings

“126A.(1) In an action brought under this Part in relation to a sound recording, copyright is presumed to subsist in the sound recording if: 35

- (a) the plaintiff files an affidavit:
 - (i) stating that the record embodying the sound recording or its container bore a label or mark specifying the date and place of first publication of the sound recording; and 40
 - (ii) specifying that date and place; and
- (b) the date and place of first publication specified in the affidavit are such as, if proved, would support the subsistence of copyright in the sound recording on the day on which the action is instituted. 45

“(2) If the subsistence of copyright is presumed under subsection (1), the plaintiff is presumed to be entitled to bring the action under this Part in relation to the sound recording if the affidavit filed by the plaintiff asserts:

- 5 (a) that the plaintiff is the maker of the sound recording and is specified on the label or container of the record embodying the sound recording as the maker of the sound recording; and
- (b) that the plaintiff has not assigned the copyright in the sound recording.

10 “(3) If the plaintiff is not the maker of the sound recording, the plaintiff is presumed to be entitled to bring the action under this Part in relation to the sound recording if the affidavit filed by the plaintiff:

- (a) asserts that the plaintiff is entitled to bring the action as assignee or exclusive licensee of the copyright in the sound recording:
- 15 (i) from the maker; or
- (ii) from a person other than the maker; or
- (b) asserts that the plaintiff is entitled to bring the action as owner of the copyright under subsection 97(3).

20 “(4) An affidavit filed by the plaintiff under paragraph (3)(a) must list all the persons through whom the plaintiff claims to have the assignment or exclusive licence of the copyright in the sound recording.

 “(5) The presumptions under subsections (1), (2) and (3) operate unless the contrary is established.”.

Penalties

25 12. Section 133 of the Principal Act is amended by inserting in subsection (1) “or a sound recording” after “film” (wherever occurring).

 13. After section 134A of the Principal Act the following heading and section are inserted:

“Division 7—Seizure of imported copies of works and sound recordings

30 Interpretation

 “134B. In this Division:

- (a) except in paragraph 135(2)(a), a reference to the owner of the copyright in a work or sound recording includes a reference to a person who is an exclusive licensee of the owner of the copyright; and
- 35 (b) a reference to the “Comptroller-General” is a reference to the Comptroller-General of Customs.”.

Restriction of importation of printed copies of works and sound recordings

14. Section 135 of the Principal Act is amended:

- (a) by omitting subsections (2), (3) and (4) and substituting the following subsections: 5

“(2) The owner of the copyright, or an exclusive licensee of the owner of the copyright, in a published literary, dramatic or musical work, or in a published sound recording, may give notice in writing to the Comptroller-General stating:

- (a) that he or she is the owner of the copyright, or an exclusive licensee of the owner of the copyright, as the case may be, in the work or sound recording; and 10
 (b) that he or she objects to the importation into Australia of a shipment of copies of the work or sound recording to which this section applies. 15

“(3) A notice under subsection (2) is of no effect unless it identifies the shipment of articles whose importation is objected to by the owner of the copyright.

“(4) This section applies:

- (a) in the case of a published literary, dramatic or musical work—to any printed copy of the work; or 20
 (b) in the case of a published sound recording—to any copy of the sound recording;

made outside Australia and the external Territories the making of which would, if it had been made in Australia by a person who imported it into Australia, have constituted an infringement of the copyright in the work or sound recording.”; 25

- (b) by inserting in subsection (5) “or sound recording” after “work” (wherever occurring);

(c) by omitting from subsection (5) “as forfeited to the Commonwealth” and substituting “by the Comptroller-General”; 30

(d) by inserting in subsection (6) “or sound recording” after “work”;

(e) by omitting from subsection (6) “as forfeited”;

(f) by omitting subsection (7);

(g) by omitting paragraphs (8)(d) and (e); 35

(h) by inserting in subsection (9) “or published sound recordings” after “works”;

(i) by adding at the end the following subsection:

“(10) This section does not apply to the importation into Australia of: 40

- (a) copies of books whose importation, by virtue of sections 44A and 112A, does not constitute an infringement of copyright; and

(b) copies of records whose importation, by virtue of sections 44B and 112B, does not constitute infringement of copyright.”;

5 (j) by adding at the end of subsection (10) the following word and paragraph:

“; and (c) accessories whose importation, by virtue of sections 44C and 112C, does not constitute an infringement of copyright.”.

10 15. The Principal Act is amended by inserting the following sections after section 135 in Part 5:

Security for expenses of seizure

15 “135AA. The Comptroller-General may refuse to take any action under subsection 135(5) unless the owner of the copyright has deposited with the Comptroller-General a sum of money that, in the opinion of the Comptroller-General, is sufficient to reimburse the Commonwealth for the reasonable expenses it is likely to incur as a result of any such action.

Secure storage of seized copies

20 “135AB. Copies seized under subsection 135(5) must be taken to such place of security as the Comptroller-General directs.

Notice of seizure

25 “135AC.(1) As soon as is practicable after copies are seized under subsection 135(5), the Comptroller-General must give to the importer and the owner of the copyright, either personally or by post, a written notice identifying the copies and stating that the identified copies have been seized.

“(2) A notice given to the owner of the copyright under subsection (1) must state that the copies will be released to the importer unless:

30 (a) an action for infringement of copyright in respect of the copies is instituted by the owner of the copyright within the period of one month after the giving of the notice; and

(b) the owner of the copyright gives written notice to the Comptroller-General within that period stating that the action for infringement of copyright has been instituted.

35 **Inspection, release, etc. of seized copies**

“135AD.(1) The Comptroller-General may permit the owner of the copyright to inspect the copies.

40 “(2) If the owner of the copyright gives the Comptroller-General the requisite undertakings, the owner of the copyright may remove one sample of the seized copies from the custody of the Comptroller-General for inspection by the owner of the copyright.

“(3) The requisite undertakings are undertakings in writing that the owner of the copyright will:

- (a) return the sample copy at a specified time that is satisfactory to the Comptroller-General; and
- (b) take reasonable care to prevent damage to the sample copy. 5

“(4) If the Comptroller-General permits inspection of the seized copies, or the removal of a sample copy, according to this section, the Comptroller-General is not liable to the importer for any loss or damage suffered by the importer arising out of:

- (a) damage to any of the seized copies incurred during inspection under subsection (1); or 10
- (b) anything done by the owner of the copyright or any other person to, or in relation to, a sample copy removed from the custody of the Comptroller-General or any use made by the owner of the copyright of such a sample copy. 15

Forfeiture of seized copies

“135AE.(1) Subject to subsection (2), the importer may, by written notice to the Comptroller-General, consent to the copies being forfeited to the Commonwealth.

“(2) The notice must be given before any action for infringement of copyright in relation to the copies is instituted. 20

“(3) If the importer gives such a notice, the copies are forfeited to the Commonwealth and may be disposed of in such manner as is prescribed or, if no manner of disposal is prescribed, as the Comptroller-General directs. 25

Compulsory release of seized copies to the importer

“135AF.(1) The Comptroller-General must release copies seized under subsection 135(5) (not being copies forfeited to the Commonwealth under section 135AE) to the importer on the expiration of the period of one month after the giving of a notice under subsection 135AC(1) to the owner of the copyright unless the owner of the copyright has, before the expiration of that period: 30

- (a) instituted an action for infringement of the relevant copyright in respect of the copies; and
- (b) given written notice to the Comptroller-General stating that the action has been instituted. 35

“(2) If:

- (a) an action for infringement of copyright has been instituted in respect of copies seized under subsection 135(5); and
- (b) at the end of a period of 3 weeks commencing on the day on which the action was instituted there is not in force an order 40

of the court in which the action was instituted restraining the release of the copies;

the Comptroller-General must release the copies to the importer.

5 “(3) If the owner of the copyright gives written notice to the Comptroller-General stating that he or she consents to the release of the copies seized under subsection 135(5) the Comptroller-General must release the copies to the importer.

Addition of co-defendant

“135AG. If:

- 10 (a) an action for infringement of copyright has been instituted in relation to copies seized under subsection 135(5); and
(b) a person applies to the court in which the action was instituted to be joined as a defendant to the action;

15 the court may permit that person to be joined as a defendant to the action.

Award of damages

“135AH. If:

- 20 (a) in an action for infringement of copyright instituted in relation to copies seized under subsection 135(5), a court determines that the importation of copies does not constitute an infringement of the relevant copyright; and
(b) the defendant satisfies the court that he or she has suffered loss or damage by reason of the copies being detained;

25 the court may order the plaintiff to pay to the defendant such amount as the court determines as compensation for that loss or damage, other than any part of that loss or damage that is attributable to any period before the day on which the copies were seized.

Retention of control of seized copies

30 “135AJ. If the Comptroller-General has seized copies under subsection 135(5), the Comptroller-General must not, except in accordance with an order under paragraph 135AK(1)(a), release or dispose of the copies, or take any other action in relation to the copies, if the Comptroller-General is required or permitted, under any other law of the Commonwealth, to retain control of the copies.

35 **Release or forfeiture of seized copies by court**

“135AK.(1) Without limiting the relief that a court may grant apart from this section, in an action for infringement of copyright in respect of the copies seized under subsection 135(5), the court:

- 40 (a) may, at any time, make an order, subject to such terms (if any) as the court thinks fit, requiring the copies to be released to the defendant; or

(b) may order that the copies be forfeited to the Commonwealth.

“(2) A court may only make an order under paragraph (1)(b) if it is satisfied that the Comptroller-General is not required or permitted, under any other law of the Commonwealth, to retain control of the copies.

5

“(3) The Comptroller-General must comply with an order made under paragraph (1)(a).

Disposal of seized copies forfeited to the Commonwealth

“135AL. If a court orders that copies be forfeited to the Commonwealth, the copies are to be disposed of in such manner as is prescribed or, if no manner of disposal is prescribed, as the Comptroller-General directs.

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Appearance by Comptroller-General in an action for infringement of copyright

“135AM. The Comptroller-General is entitled to appear and be heard in an action for infringement of copyright in respect of copies seized under subsection 135(5).

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Recovery of expenses by Commonwealth

“135AN.(1) If the reasonable expenses incurred by the Commonwealth in relation to the seizure of copies under subsection 135(5) exceed the sum deposited under section 135AA, the amount of the excess is a debt due by the owner of the copyright or, if there is more than one owner of the copyright, jointly or severally by the owners of the copyright, to the Commonwealth.

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“(2) If the sum deposited under section 135AA exceeds the reasonable expenses incurred by the Commonwealth in relation to the seizure of copies under subsection 135(5), the amount of the excess is a debt due by the Commonwealth to the owner of the copyright.

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Immunity of the Commonwealth

“135AP. An action or proceeding does not lie against the Commonwealth in respect of any loss or damage suffered by a person because of:

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- (a) copies being seized or not being seized under this Division; or
- (b) the release or forfeiture of copies seized under this Division.

Delegation

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“135AQ. The Comptroller-General may delegate to a person who is an officer under the *Customs Act 1901* any or all of his or her powers under this Division.”.

Oath or affirmation of office

16. Section 144 of the Principal Act is amended by omitting from subsection (1) “the Schedule” and substituting “Schedule 1”.

Sittings of the Tribunal

5 17. Section 146 of the Principal Act is amended by omitting paragraph (3)(a).

18. The Principal Act is amended by adding the following section after section 184:

Adding countries to Schedule 2

10 “184A.(1) Subject to subsections (2) and (3), the regulations may designate a country as a Schedule 2 country.

“(2) A country may be designated as a Schedule 2 country if it is a party to the Geneva Phonograms Convention.

15 “(3) A country that is not a party to the Geneva Phonograms Convention may be designated as a Schedule 2 country if the Governor-General is satisfied:

(a) that the country is included in Part I, II or III of Schedule 1 to the Copyright (International Protection) Regulations; and

20 (b) that the country’s domestic legislation would fulfil the country’s obligations under the Geneva Phonograms Convention if it were a party to that Convention.”.

Heading to Schedule

19. The heading to the Schedule to the Principal Act is omitted and the following heading substituted:

25 “SCHEDULE 1”.

Addition of Schedule

20. The Principal Act is amended by adding at the end the Schedule set out in Schedule 1 to this Act.

Minor amendments of the Principal Act

30 21. The Principal Act is amended as set out in Schedule 2.

SCHEDULE 1

Section 20

“SCHEDULE 2

Sections 44B and 112B

COUNTRIES FROM WHICH RECORDS MAY BE IMPORTED

USA
New Zealand
Denmark
France
United Kingdom”.

SCHEDULE 2

Section 21

MINOR AMENDMENTS OF THE PRINCIPAL ACT**Paragraph 10(3)(f):**

Omit the paragraph.

Subsection 44A(1):

Insert “(1)” after “37”.

Subsection 44A(2):

Insert “(1)” after “37”.

Subsection 44A(3):

Insert “(1)” after “37”.

Subsection 44A(5):

Insert “(1)” after “37”.

Paragraph 44A(6)(a):

Insert “(1)” after “37”.

Subsection 112A(1):

Insert “(1)” after “102”.

Subsection 112A(2):

Insert “(1)” after “102”.

Subsection 112A(3):

Insert “(1)” after “102”.

SCHEDULE 2—continued

Paragraph 112A(4)(b):

Insert “(1)” after “102”.

Paragraph 112A(6)(a):

Insert “(1)” after “102”.

Subsection 132(3):

Omit “plate”, substitute “device”.

Subsection 133(4):

Omit “plate or recording equipment”, substitute “device”.

Section 134:

Omit “plate” (twice occurring), substitute “device”.

Subparagraph 135P(3)(d)(i):

Omit “administrative”, substitute “administering”.

Subsection 135ZZB(3):

Omit “a collecting society” (wherever occurring), substitute “the collecting society”.

Section 153A:

Insert “or sound” after “television” (wherever occurring).

Paragraph 166(2)(a):

Omit “an intended inquiry by the Tribunal under section 148 or”.

Subsection 195A(5):

Omit the subsection.

Subsection 195B(3):

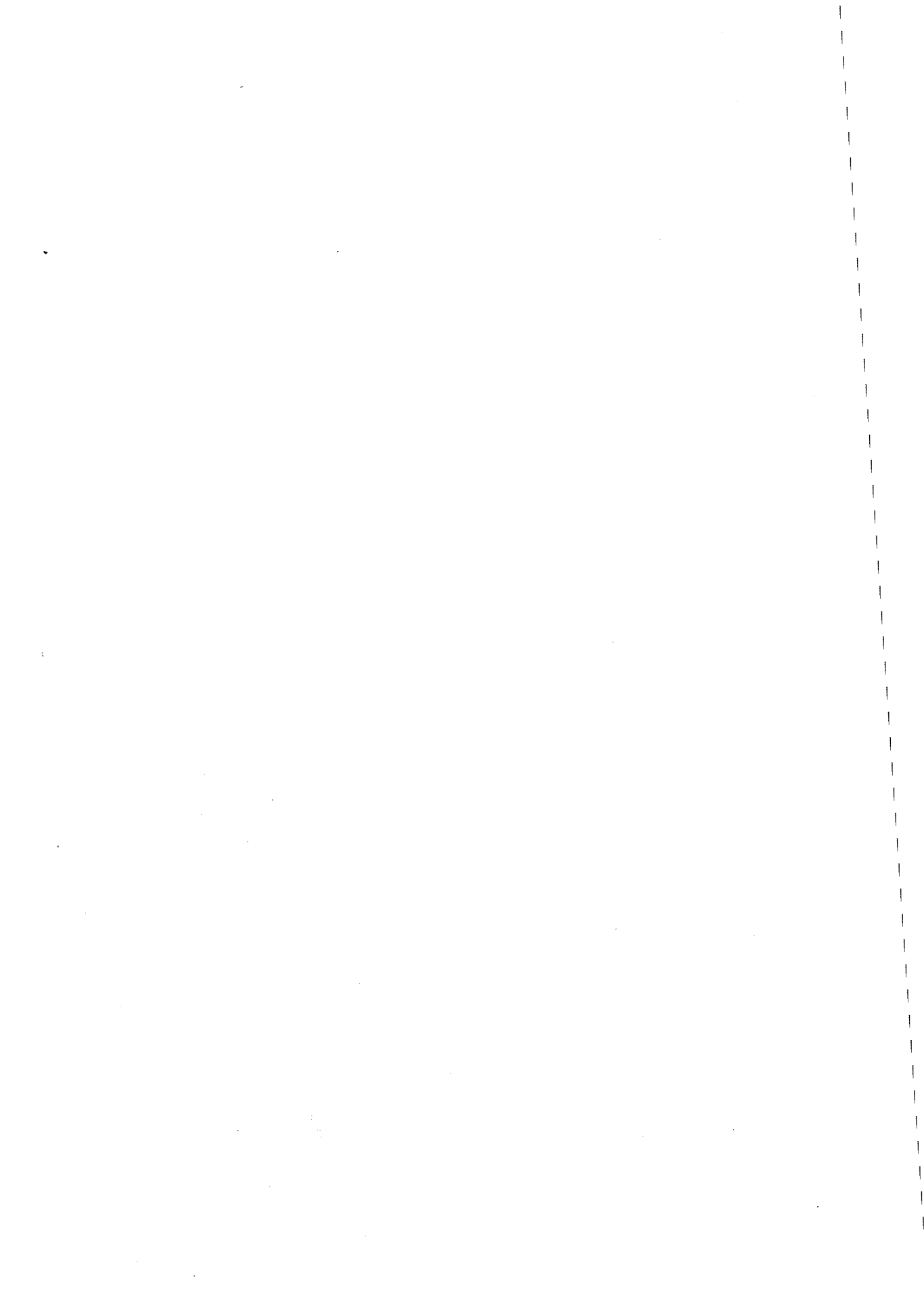
Insert “written” before “notice”.

Subsection 202(5):

Omit “plate”, substitute “device”.

NOTE

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 and 61, 1981; No. 113, 1981 (as amended by No. 154, 1982); 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; No. 23, 1987; No. 146, 1988; Nos. 28 and 32, 1989; Nos. 174 and 180, 1991; and No. 105, 1992.





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