

UNESCO
WORLD ANTI PIRACY OBSERVATORY

AUSTRALIA

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I. Legislation

1. Copyright laws

Copyright is protected in Australia through international Agreements, the [Copyright Act No. 63 of 1968](#) as amended; and the Copyright (International Protection) Regulations of 1969 enacted by Statutory Rules 1969 No. 60 as amended.

The Copyright Act was enacted on June 27, 1968, published in the Official Gazette No. 2543 of 1969, and entered into force on May 1, 1969.

Full English text of all Australian Commonwealth legislation can be accessed on-line at the [Commonwealth of Australia Law](#).

2. Other laws

- [Crimes Act](#) of 1914
- [Circuit Layouts Act](#) of 1989
- [Trade Practices Act](#) of 1974

3. Latest developments and perspectives

No amendments currently planned.

4. Summary of legislation

- *Exclusive rights of the authors and of the owners of neighbouring rights*

Australian copyright laws provide copyright owners with both exclusive economic and moral rights.

The exclusive economic rights granted by the Copyright Act for literary, dramatic or musical works are the rights:

- to reproduce the work in a material form (s31(1)(a)(i))
- to publish the work (s31(1)(a)(ii))
- to perform the work in public (s31(1)(a)(iii))
- to communicate the work to the public (s31(1)(a)(iv))
- to make an adaptation of the work (s31(1)(a)(vi)), and do any of the above mentioned acts in relation to the work that is an adaptation of another work; enter into a commercial rental arrangement in respect of the work (other than a computer program) reproduced in a sound recording in specific cases; enter into a commercial rental arrangement in respect of a computer program in specific cases;
- to commercially rent a work if the work is a computer program (s31(1)(d)) or a literary (other than a computer program), musical or dramatic work reproduced in a sound recording (s31(1)(c)).

Copyright owners of artistic works have the following exclusive rights:

- to reproduce the work in a material form (which includes reproducing a two-dimensional work in a three-dimensional form and vice versa) (s31(1)(b)(i))
- to publish the work (s31(1)(b)(ii)), and
- to communicate the work to the public (which includes the electronic transmission of the work such as a broadcast, and making the work available online) (s31(1)(b)(iii))

Equivalent provisions for subject-matter other than works (that is the Neighboring Rights) are in Part IV, Division 2 (s84 to 88) of the Copyright Act:

- Nature of copyright in sound recordings (s85)
- Nature of copyright in cinematograph films (s86)
- Nature of copyright in television broadcasts and sound broadcasts (s87)
- Nature of copyright in published editions of works (s88)

Copyright, in relation to a sound recording, is the exclusive right to make a copy of the sound recording; cause the recording to be heard in public; communicate the recording to the public; and enter into a commercial rental arrangement in respect of the recording with limitations (Section 85 of the Copyright Act).

Copyright, in relation to a cinematograph film, is the exclusive right to make a copy of the film; cause the film, in so far as it consists of visual images, to be seen in public, or, in so far as it consists of sounds, to be heard in public; and communicate the film to the public (Section 86 of the Copyright Act).

Copyright, in relation to a television broadcast or sound broadcast, is the exclusive right to re-broadcast it or communicate it to the public otherwise than by broadcasting it; make a cinematograph film of the broadcast, or a copy of such a film (in the case of a television broadcast in so far as it consists of visual images); and make a sound recording of the broadcast, or a copy of such a sound recording (in the case of a sound broadcast, or of a television broadcast in so far as it consists of sounds) (Section 87 of the Copyright Act).

Copyright, in relation to a published edition of a literary, dramatic, musical or artistic work or of two or more literary, dramatic, musical or artistic works, is the exclusive right to make a facsimile copy of the edition (section 88 of the Copyright Act).

Additionally, performers' rights are protected under Part XIA of the Copyright Act.

Copyright owners may also assign and licence their rights, placing conditions on fees or royalties payable as well as time, place or purpose restrictions.

The moral rights granted to a creator are established under Part IX (sections 189, 190, 192, 193 to 195AJ of the Copyright Act) of the Copyright Act and apply to all creators of literary, dramatic, musical or artistic works and cinematograph films as well as performers of such works. Moral rights cannot be assigned or licensed (section 195AN (3)) and are granted by the following provisions:

- Right of attribution of authorship (Part IX, Division 2) (The equivalent provisions for performers is Division 2A).
- Right not to have authorship of a work falsely attributed (Part IX, Division 3) (The equivalent provision for performers is Division 3A).
- Right of integrity of authorship of a work (Part IX, Division 4) (The equivalent provision for performers is Division 4A).

- *Allowed use of a work without the permission of the owner of the copyright*

Australia's legislative framework provides for exceptions and limitations to infringement of copyright. The exceptions include the following:

Fair Dealing

This exception covers research or study, criticism or review, reporting of news, parody and satire, and reproduction for purpose of judicial proceedings or professional advice by a lawyer or a patent or trademarks attorney. Whether a dealing is 'fair' may depend on several factors including, the nature of the work or other subject matter, the purpose and character of the use, the amount and substantiality of the portion copied, the possibility of obtaining the work within a reasonable time at an ordinary commercial price and the effect on the commercial value of the work or other subject-matter.

Private Use

This exception includes:

- Format-shifting certain legitimately owned material (mainly sound recordings) for private and domestic use.
- Time-shifting of television and radio broadcasts for private and domestic use.

Libraries and Archives

The Copyright Act contains exceptions for libraries and archives for copying in certain circumstances which involve copying for students, researchers, Members of Parliament, other libraries or for administrative purposes. Copying of unpublished works and certain audio-visual materials for certain other purposes, such as publication, may also be done without infringing copyright.

Educational Institutions

Statutory licenses are available for certain educational institutions and institutions assisting persons who have a print or intellectual disability. The terms of these licenses are set out in Parts VA and VB of the Copyright Act. They allow for the multiple reproduction and communication of works for educational purposes or for assisting people who have a disability. They also allow for these institutions to copy television and radio broadcasts. Under the license scheme, the copyright owner has the right to be paid equitable remuneration through an approved collecting society (see Part VA and VB of the Copyright Act).

Special Purposes

In addition to the above exceptions, there are also exceptions under the Act for certain special purposes, which, under the Act must:

- amount to a 'special case'
- not be made partly to obtain a commercial advantage or profit
- not conflict with a normal exploitation of the material, and
- not unreasonably prejudice the legitimate interests of the copyright owner.

Where the circumstances amount to a special purpose, unauthorised use of copyrighted material is allowed by:

- a library or archives for maintaining or operating the library or archives or providing library services
- an educational institution for giving educational instruction, and

- a person with a disability or someone else for obtaining a copy of the material in a form which assists the person with a disability.

Specific Purposes

A number of other exceptions are provided under the Act for specific works and purposes. For example, copyright may not be infringed by:

- the making of a copy of a computer program resulting from the process of normal use of the program or for back-up purposes
 - the owner of a copy of a computer program decompiling the copy to make an interoperable product to test its security or to correct an error
 - the filming, photographing, drawing or painting of sculptures in public places and buildings
 - the temporary reproduction of a work or adaptation made as part of the technical process of making or receiving a non-infringing communication
 - anything done for the purpose of a judicial proceeding or the report of a judicial proceeding
 - the temporary reproduction of a work, film or sound recording made as part of the normal process of using the item, or
 - the reproduction or copy of a work (or adaptation of a work) that is contained in a broadcast, where the copy is made solely for the purpose of broadcasting the work or adaptation or simulcasting it in digital form.
- *Protection of the foreign works*

Australian copyright protection will extend to the works and other subject matter of nationals, citizens and residents of countries to which Australia is a co-member of an international copyright convention. The relevant provisions governing foreign copyright can be found in the *Copyright (International Protection) Regulations 1969*.

- *Period of copyright protection*

The duration of copyright protection in Australia is dependent on:

- the nature of the work,
- the time it was created and
- whether or not it has been published.

Generally copyright protection ceases 70 years after the death of the creator of a work; or 70 years after the publication of a sound recording. The relevant provisions are:

- Duration of copyright in original works (s33)
- Duration of copyright in cinematograph films (s94)
- Duration of copyright in sound recordings (s93)
- Publication of artistic works (s216)

There are, however, exceptions to this general rule.

Unpublished works: Copyright will subsist indefinitely in a literary, dramatic or musical work which has not been published, performed in public, broadcast or sold as a recording during the life of the author. If the work is made public posthumously, copyright will subsist for 70 years after the day it was made public.

Artistic Works: Artistic works, other than engravings, are protected for 70 years after the death of the artist even if the work is unpublished. An engraving is treated as a literary work.

Photographs: Copyright has expired for photographs taken before 1955, regardless of whether the author is still alive. Photographs after this date will be protected for the life of the author, plus another 70 years.

Other subject matter: For sound recordings after 1954 and films made after 1 May 1969, it is generally 70 years from the end of the year of first publication. The duration of copyright protection of radio and television broadcasts is 50 years from the making of the broadcast.

Published editions: Copyright in published editions of works lasts for 25 years from the year of first publication of the edition.

Other specific provisions: Other specific provisions include:

- joint authorship (ss80 – 81),
 - anonymous and pseudonymous works (s34),
 - Government-owned copyright (ss180 – 181), and
 - foreign works and works made by international organisations (Part VIII).
-
- *Registration*

There is no registration system, or other formality, for copyright under Australian copyright law.

5. International treaties

Australia is a member of the following International Convention and Treaties on Copyright and Related Rights:

- [Berne Convention on the Protection of Literary and Artistic Works](#), in force since April 14, 1928.
- [Universal Copyright Convention](#), ratification on February 1, 1969 to UCC of 1952 and accession on November 29, 1977 to UCC of 1971.
- [Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations](#), in force since September 30, 1992.
- [WTO Agreement on Trade Related Aspects of Intellectual Property Rights](#) (TRIPS), since January 1, 1995.
- [WIPO Copyright Treaty](#) (WCT), in force since July 26, 2007.
- [WIPO Performances and Phonograms Treaty](#) (WPPT), in force since July 26, 2007.
- [Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms](#), in force since June 22, 1974.
- [Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite](#), in force since October 26, 1990.

Australia is also a party to a number of bilateral free trade agreements which include commitments on copyright:

- Australia-US Free Trade Agreement
- Australia-Singapore Free Trade Agreement
- Australia-Thailand Free Trade Agreement
- Australia-Chile Free Trade Agreement

II. Measures and remedies

1. Copyright infringement

Exercise of exclusive rights

The copyright in any work or other subject-matter is infringed when any act which the copyright owner has the exclusive right to do is done by a person in Australia who is not the copyright owner (or his or her licensee) (see Part III, Division 2 of the Copyright Act) . For example, when a work is published, reproduced or performed in public without the copyright owner's permission. This general rule is subject to a number of specific exceptions in the Copyright Act.

Authorising an infringement

The copyright in any work or other subject-matter is also infringed when any act which the copyright owner has the exclusive right to do is authorised to be done by a person in Australia who is not the copyright owner (or his or her licensee). For example, in the online environment, providing links to infringing material may, in some circumstances, constitute authorisation of an infringement.

Substantial copying

It is not necessary for a whole work to be reproduced or for more than one reproduction to be made for an infringement of copyright to occur. An infringement of copyright occurs so long as a substantial portion of a work or subject-matter has been reproduced or other copyright use is made of it (e.g. it is communicated to the public). The test for what is a substantial portion is often a qualitative rather than a quantitative test.

Importation and commercial dealings

Under the Copyright Act, other indirect acts may also be an infringement of copyright. It is an infringement of copyright to import copyright infringing articles into Australia for trade purposes (s37). Certain commercial dealings with infringing articles may also constitute an infringement of copyright (s38).

Place of public entertainment

It is an infringement of copyright to permit a place of public entertainment to be used for an infringing public performance of a literary, dramatic or musical work (s39).

Internet Service Provider (ISP) Scheme

The purpose of the ISP scheme is to provide legal incentives for ISPs to cooperate with copyright owners in deterring the infringement of copyright in the online environment, by providing limitations on the scope of remedies available against ISPs for copyright infringements that they do not control, initiate, or direct, which take place through their systems or networks.

There are four separate types of activities undertaken by ISPs that are covered by the scheme:

- Category A – where the ISP acts as a conduit for internet activities through the provision of facilities for transmitting, routing or providing connections for copyright material.
- Category B – where the ISP caches copyright material through an automatic process.
- Category C – where the ISP stores copyright material on their systems or networks.
- Category D – where the ISP refers users to an online location using online information location tools or technology.

The ISP scheme is voluntary. The scheme does not affect the liability of an ISP for infringement, but rather the consequences of that liability. Where an ISP complies with the conditions relevant to activities under the scheme, a court cannot award damages against the ISP in relation to those activities.

2. Remedies to protect copyright holders

Civil Remedies

Civil actions for copyright infringement are provided for under Part V, Division 2 of the Copyright Act. Remedies available to the court for civil actions are:

- an injunction (s115(2))
- damages for infringement (s115(2))
- additional damages (s115(4))
- damages for conversion or detention in respect of infringing copies and plates used for making them (s116(1))
- an account of profits (s115(2)), and
- delivery up of infringing copies or plates (s116(1)).

The Copyright Act makes particular provisions with respect to the determination of damages in matters of commercial scale electronic infringement (ss115(5),(6) and (7)). Where specified conditions are satisfied, the court may have regard to the likelihood of the likely infringements (as well as the proven infringement) in deciding what relief to grant in the action. This is particularly important in cases involving commercial-scale Internet infringements such as those that occur through peer-to-peer file sharing, hypertext linking or downloads from remote websites.

Criminal Penalties

Australia has also established a system of criminal offences for more serious copyright infringement, which generally includes infringement for commercial advantage or financial gain.

The development of criminal offences within the Copyright Act has been an ongoing process as offences are developed to address the situations that arise within the context of the emerging digital environment. This has resulted in provision for offences relating to:

- the circumvention of effective technological measures
- abuse of rights management information
- devices to decode broadcast signals
- copyright piracy of books, computer software, sound recordings and films
- significant infringements on a commercial scale, and
- other actions that prejudice the economic rights of the copyright owner.

The Copyright Act establishes a tiered system of copyright offences, including indictable, summary and strict liability offences. This means that the police and prosecutors have a range of options in pursuing offenders depending on the seriousness of the activity.

Indictable Offences

Indictable offences are more serious offences involving an activity where a person has acted intentionally or recklessly. The maximum penalty for indictable copyright offences is 5 years imprisonment and/or 550 penalty units (currently AUD\$60 500). The exception to this is the offence relating to importing an infringing copy for a commercial purpose (s132AH) which is the only offence in the Copyright Act to carry the maximum penalty of 650 penalty units (currently

AUD\$75 100). The maximum pecuniary penalty for most of these offences increases to 850 penalty units (currently AUD\$93 500) where the infringing copy was made by converting a work or other subject-matter from a hard copy or analog form into a digital or other electronic machine-readable form (s 132AK).

The creation of indictable offences also enables law enforcement to track and confiscate proceeds of copyright crimes through application of the *Proceeds of Crime Act 2002*.

Summary Offences

Summary offences are less serious and involve an activity where a person has acted intentionally or negligently. This offence carries a smaller maximum penalty of imprisonment for 2 years and/or 120 penalty units (currently AUD\$13 200).

Strict Liability Offences

This is the lowest tier of the offence system where no criminal intent, or fault element, needs to be established. The maximum penalty for a strict liability offence in the Copyright Act is 60 penalty units (currently AUD\$6 600).

The strict liability offences are underpinned by an infringement notice scheme provided for in the *Copyright Regulations 1969*. Where an enforcement officer has reason to believe a strict liability offence against the Copyright Act has been committed, they may issue an infringement notice. A person issued with a notice has the option of paying a fine, and in some cases forfeiting the copyright material and/or devices as an alternative to prosecution in court.

3. Provisional measures

Section 115(2) of the Copyright Act provides that where an owner of copyright has brought an action under the Act for copyright infringement, then the relief the court may grant includes an injunction, subject to such terms and conditions, if any, as the court thinks fit.

Under common law, Australian courts can also issue *ex parte* orders for the inspection and seizure of evidence (called Anton Pillar Orders), and to safeguard against the removal or destruction of evidence relating to infringement (s23 *Federal Court Act 1976*).

In criminal matters, s3E of the *Crimes Act 1914* provides that a court with appropriate jurisdiction may issue a warrant for search and seizure of persons or property by a law enforcement officer in relation to a Commonwealth offence. This includes copyright offences. Such warrants are used by law enforcement officers as part of the investigation process into an alleged offence or offences.

4. Penalties for copyright infringement

- *In civil cases*

As discussed above, on the basis of a civil action under Part V, Division 2 of the Copyright Act, the remedies available to the court are:

- an injunction (s115(2))
- damages for infringement (s115(2))
- additional damages (s115(4))
- damages for conversion or detention in respect of infringing copies and plates used for making them (s116(1))

- an account of profits (s115(2))
- delivery up of infringing copies or plates (s116(1))
 - *For criminal offence in copyright cases*

As discussed above, the Copyright Act establishes a tiered system of copyright offences, including indictable, summary and strict liability offences.

Indictable Offences

The maximum penalty for indictable copyright offences is 5 years imprisonment and/or 550 penalty units (currently AUD\$60 500). The exception to this is the offence of importing an infringing copy for a commercial purpose (s132AH) which is the only offence in the Copyright Act to carry a maximum penalty of 650 penalty units (currently AUD\$75 100).

Summary Offences

Summary offences carry a maximum penalty of 2 years imprisonment and/or 120 penalty units (currently AUD\$13 200).

Strict Liability Offences

The maximum penalty for a strict liability offence in the Copyright Act is 60 penalty units (currently AUD\$6 600).

Higher penalties apply for corporations and aggravated offences (see reference to s 132AK above).

- *Seizure, confiscation, forfeiture and destruction of all infringing copies*

In a civil action for infringement of copyright, s116(2) of the Copyright Act establishes the alternative common law right of an action for detention in respect of infringing copies or devices. This means that the rights holder may seek delivery up of infringing copies or devices, or damages for their value where these remain in the defendant's possession. In addition, the courts have the power to order the delivery up of infringing copies for destruction as an equitable remedy.

Where a person is charged with a criminal offence under the Copyright Act, s133 authorises to the court to order an article to be destroyed, delivered up to the owner of the copyright concerned, or dealt with as the court thinks fit, if it is either:

- a circumvention device used or intended to be used for certain offences
 - an infringing copy, or
 - a device or equipment used, or intended to be used, for making infringing copies.
- *Publication of the judgment in newspapers or professional magazines*

Australian court decisions in both civil and criminal matters are generally publicly available.

- *Damages*

Pursuant to s115(2) of the Copyright Act, a rights holder, if successful in a civil action, may be awarded damages or an account of profit, but not both. The rights holder may also be entitled to additional damages to be awarded by the court as it considers appropriate in the circumstances, and in accordance with the provisions of s115(4) of the Copyright Act.

The Act provides some guidance to the court in the exercise of its discretion to award such additional damages. Factors the court may take into account include the flagrancy of the infringement, the need to deter similar infringement, conduct of the defendant, the existence of conversion, any benefits gained by the defendant, and all other relevant matters.

The *Federal Court of Australia Act 1976* provides for the award of appropriate court costs at the discretion of the court (s 43(1)).

5. Requirements for foreign persons

As discussed in response to question 4 above, the provisions of the Copyright Act extend to works of nationals, citizens and residents of other convention countries and to works made or first published in those countries.

In order to establish subsistence and ownership in court proceedings, valid foreign certificates and documentation (for example, US Copyright registration certificates) can be used as evidence. Sections 126A(3) and 126B(3) of the Copyright Act provide that the information as to ownership and subsistence of copyright on foreign certificates or other documentation will be presumed to be as stated unless the contrary is established.

III. Enforcement

1. Enforcement authorities

a) Authorities responsible for enforcing the copyright law

- **Attorney-General's Department**
 - Primary policy responsibility for copyright legislation.
- **Australian Federal Police**
 - Principal IP law enforcement agency.
- **Commonwealth Director of Public Prosecutions**
 - Prosecution of IP offences.
- **Australian Customs Service**
 - IP border enforcement.
- **Department of Foreign Affairs and Trade**
 - Represents Australian interests on international and trade related issues concerning IP, including bilateral and multilateral FTA negotiations to which Australia is a party.

b) Enforcement bodies entitled to act *ex-officio* in copyright infringement cases

The Australian Federal Police has authority to initiate investigations in respect of any Commonwealth criminal offence, which includes offences under the Copyright Act.

c) Courts dealing with copyright cases

Civil Actions

Civil actions for infringement of copyright may be commenced in any State or Territory Court of competent jurisdiction (s131A), the Federal Court (s131C), or the Federal Magistrates Court (s131D).

Criminal Prosecutions

Criminal prosecution proceedings under the Copyright Act may be commenced in any State or Territory court of competent jurisdiction. Some may be commenced in the Federal Court.

The High Court of Australia may hear appeals on copyright matters that, on its determination, raise particularly important issues of law.

2. Enforcement at the boarder

Section 200A of the Customs Ordinance provides for implementation of the TRIPS "Border Provisions".

- *Competent authority responsible for administering applications for copyright infringements at borders:*

The Australian Customs Service has the authority to detain and deal with goods that infringe copyright, under the Notice of Objection Scheme, established by the Copyright Act (ss134B to 135AK).

To protect their copyright material the copyright owner, or in some circumstances the licensee or authorised user, must lodge a Notice of Objection with Customs. Under the Act, where such a Notice is in place, Customs may seize imported goods that are suspected of infringing the notified right.

To register or re-lodge a Notice of Objection the following documentation must to be provided to Customs:

- a Notice of Objection form that advises the name of the copyright owner, or authorised user/exclusive licensee, and the copyright material to be covered
- the particulars of each copyright material for which coverage is required.
- a formal undertaking agreeing to repay any costs incurred by the Commonwealth as a result of a seizure, and
- if an authorised user or exclusive licensee is lodging the Notice, evidence that:
 - they have permission from the copyright owner to lodge the Notice
 - the owner has refused to lodge the Notice, or
 - the owner has not responded to the request after 2 months.

Once Customs accepts a Notice, it will remain in force for a period of four years (s135(5)). After four years a Notice may be re-lodged to ensure on-going protection. If the Notice is no longer required, the owner may withdraw it at any time.

- *Security/equivalent assurance imposed in order to protect the defendant and prevent abuse:*

As noted above, the copyright owner must make a formal undertaking at the time of lodging a Notice of Objection, agreeing to repay any costs incurred by the competent authority as a result of the seizure (s135AA).

- *Notification to the importer and the copyright holder of the suspension of the release of the goods by the customs:*

As soon as practicable after goods are seized under the Notice of Objection Scheme, Customs must formally notify both the importer and the right holder of the seizure (s135AC).

- *Time limit for the suspension of the goods by customs authorities:*

The right holder has ten working days from the date of the notice in which to commence legal action. This ten day 'action period' may be extended by a further ten working days if a delegate of the Customs CEO deems such an extension is appropriate (s135AC)

- *The competent authorities and the right to order the destruction or disposal of infringing goods:*

The importer has the option to voluntarily forfeit the goods to the Commonwealth by written consent, prior to the commencement of any legal action taken by the right holder (s135AE). If the goods are voluntarily forfeited, the goods are disposed of by Customs. This is usually by destruction or, where appropriate, through donation to charity (s135AI).

Where the goods are not voluntarily forfeited, the right holder has two options. They can commence infringement action against the importer in the courts, or they can consent to the release of the goods. If Customs does not receive written confirmation of the commencement of court action within the action period, the goods are released to the importer (s135AF).

At the conclusion of any court action if the court finds that the goods do not infringe they will be released to the importer. If the court finds that the goods do infringe, the goods will be forfeited to the Commonwealth and will be disposed of as directed by the Customs CEO (s135AG).

- *Customs authorities and copyright infringement cases*

Generally, Customs officials may only detain goods which are suspecting of infringing copyright where there is a Notice of Objection in place. However, under s5(1) of the *Commerce Trade Descriptions Act 1905*, Customs has the authority to inspect and examine all prescribed goods which are imported, or which are entered for export or brought for export to any wharf or place or are in course of manufacture or preparation for export.

- *Law and provisions for a de minimis import exception*

Under the Copyright Act, goods suspected of being infringing and which are subject to a Notice of Objection, may be detained by Customs where they are being imported for the purpose of:

- selling, letting for hire, or by way of trade offering or exposing for sale or hire the copies
- distributing the copies for the purpose of trade,
- distributing the copies for any other purpose to an extent that will affect prejudicially the owner of the copyright in the copyright material, or
- by way of trade exhibiting the copies in public (s135(7)).

IV. Public Awareness

1. Awareness campaigns and actions

Public Education Initiatives

In Australia, both IP industry groups and Government agencies have been active in pursuing public awareness initiatives to raise awareness about the negative impact of trade mark counterfeiting and copyright piracy.

For example, in August 2008 the Attorney-General's Department, in conjunction with Crime Stoppers Australia, launched a public awareness campaign to inform young people about the effects of copyright piracy on creative industries, particularly in relation to music. This campaign was delivered via an online animation and a schools competition.

Also in 2008, the Australian Federal Police launched a new website to assist Australian consumers to recognise and reject counterfeit goods.

Copyright industry groups are also active in address public awareness. In August 2008, the Intellectual Property Awareness Trust (members include Australian film and television industry creators, distributors and retailers) launched a secondary schools education resource, called 'Nothing Beats the Real Thing!' with the aim of helping students understand and respect film and television copyright. The resource is an educational module that includes quizzes, interactive games and activities designed for students across all curriculum areas.

2. Promotion of legal exploitation

3. Associations and organizations with awareness-raising purpose

4. Best practices

V. Capacity-building

1. Training

International Cooperation

The Australian Federal Police is engaged in international cooperation and capacity building activities in the Asia-Pacific region through the appointment of an Asia-Pacific IP Project Officer, and the hosting of IP Crime Workshops held in Thailand in June 2008, and Hong Kong in November 2008.

The Australian Government continues to seek effective IP enforcement commitments and cooperation in relevant international fora such as the Asia-Pacific Economic Cooperation IP Experts Group, the World Trade Organisation, and the World Intellectual Property Organisation.

Australia also pursues these goals in our free trade agreements as well as participation in the negotiations on a proposed plurilateral Anti-Counterfeiting Trade Agreement, which aims to tackle the growth in piracy and counterfeiting worldwide.

2. Establishment of specialized units and intersectoral groups

3. Best practices

Trade mark counterfeiting and copyright piracy is being addressed in Australia through a whole-of-Government approach incorporating a broad number of initiatives, including those outlined below.

Legislation

Australia's copyright legislation establishes a system of tiered offences (indictable, summary and strict liability) which give police and prosecutors options such as infringement notices and proceeds of crime remedies for dealing with suspected offenders. Australia's trade mark legislation establishes a system of indictable offences only. Trade mark criminal penalties are currently the subject of a review.

Enforcement Action

Commencing in July 2007, the Australian Federal Police and the Commonwealth Director of Public Prosecutions received additional funding for IP enforcement to be provided over two years. This has enabled more resources to be dedicated to IP crime and the establishment of a dedicated IP Crimes unit in the Australian Federal Police. During the funding period there has been an increase in enforcement activity and prosecutions as well as developments in intelligence gathering and in cooperation activities between law enforcement, government agencies and industry.

Cooperation

Cooperation between Australian IP Agencies, including policy agencies, law enforcement and Customs is undertaken through the Interdepartmental Committee on IP Enforcement, chaired by the Attorney-General's Department.

In addition, the IP Enforcement Consultative Group, which is chaired by the Australian Federal Police, meets regularly to enhance practical cooperation between IP industries and law enforcement, prosecution and government policy agencies.

VI. Other

1. TPM/DRM

The Copyright Act provides civil remedies and criminal penalties where a person circumvents an access control TPM. To come within the definition of an access control TPM, the TPM must be:

- used by, or with the permission of, the owner or exclusive licensee of the copyright
- used on material in which copyright subsists
- used in connection with the exercise of the copyright owner's exclusive rights, and
- used in the normal course of its operation to control access to the work.

An access control TPM specifically excludes TPMs which control geographic market segmentation such as region coding, as well as TPMs which restrict the use of after-market goods or services.

There are also specific exceptions to TPM liability in the Act which include:

- where there is permission of the copyright owner
- interoperability between computer programs
- encryption research
- computer security testing
- online privacy
- law enforcement and national security, and
- acquisitions by libraries and other related institutions.

However, not all exceptions apply to all categories of liability.

There is also a mechanism for the creation of additional exceptions to civil and criminal liability for the circumvention of access control TPMs (sub-ss 116AN(9) and 132 APC(9)).

Currently, the following additional exceptions to TPM liability are included in the Copyright Regulations:

- the reproduction of computer programs to make interoperable products
- the reproduction and communication of copyright material by educational and other institutions assisting people with disabilities
- the reproduction and communication of copyright material by libraries, archives and cultural institutions for certain purposes
- the inclusion of sound recordings in broadcasts and the reproduction of sound recordings for broadcasting purposes
- access where a TPM is not operating normally and a replacement TPM is not reasonably available, and
- access where a TPM damages a product, or where circumvention is necessary to repair a product.

If a copyright owner takes civil action, the remedies apply as for copyright infringement (see response to Question II, 2 above). For criminal actions, the maximum penalty for circumvention of an access control TPM is 60 penalty units (\$AUD 6,600).

2. Licensing Schemes

3. Optical Discs

4. Hotlines

5. Relevant contacts and links

Government Agencies

The Attorney-General's Department:

- Website: <http://www.agd.gov.au/copyright>
- E-mail: copyrightlawbranch@ag.gov.au

Australia Federal Police - <http://www.afp.gov.au/national/ip-crime.html>

Customs Service Australia - <http://www.customs.gov.au/site/page.cfm?u=5369>

Copyright Industry Groups

Australian Federation Against Copyright Theft - <http://www.afact.org.au>

Music Industry Piracy Investigations - <http://www.mipi.com.au>

Interactive Entertainment Association Australia - <http://www.ieaa.com.au>

Audio Visual Software Distributors Association - <http://www.avsda.com.au>

Business Software Alliance of Australia - <http://www.bsaa.com.au>

As noted above, in 2008, the Attorney-General's Department and Crime Stoppers Australia launched a public awareness campaign to raise awareness (particularly amongst young people) about the impact of copyright piracy on the music industry. An animation developed for this initiative and accompanying fact sheets are available at: <http://www.Frankhardcase.com.au>