

1968

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

COPYRIGHT BILL 1968

*(Amendments and New Clause to be proposed by the Attorney-General,  
the Honourable N. H. Bowen)*

- (1) Clause 58, page 29, line 35, omit "two years", insert "one year".
- (2) Clause 153, page 67, lines 19 to 44, and page 68, lines 1 to 18, omit the clause.
- (3) Page 94, after clause 208, insert the following clause:—

"208A. A reference in this Act to the author of a photograph shall, in relation to a photograph taken before the commencement of this Act, be read as a reference to the person who, at the time when the photograph was taken, was the owner of the material on which the photograph was taken."

Authorship  
of  
photographs.

- (4) The following amendments to be moved together, by leave of the Committee, consequentially upon the omission of clause 153:—
- Clause 136, page 59, line 16, omit " , or sub-section (2.) of section 153,".
- Clause 136, page 59, line 19, omit " , or sub-section (2.) of section 153,".
- Clause 146, page 61, lines 6 and 7, omit " , or sub-section (2.) of section 153,".
- Clause 152, page 64, line 28, omit " Subject to section 153 of this Act, the ", insert " The ".
- Clause 152, page 65, line 14, omit " subject to section 153 of this Act,".
- Clause 162, page 76, line 21, omit " , or sub-section (2.) of section 153,".
- Clause 167, page 77, line 10, omit " , or sub-section (2.) of section 153,".
- Clause 175, page 79, line 14, omit " , or sub-section (2.) of section 153,".

1968

The Parliament of the Commonwealth of Australia

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HOUSE OF REPRESENTATIVES

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COPYRIGHT BILL 1968

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(Amendments to be proposed by Mr Connor)

Clause 58, page 29, line 35, omit "two years",  
insert "six months".

Clause 58, page 30, line 13, omit "five", insert  
"two".

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1968

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

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MEMORANDUM SHOWING ALTERATIONS MADE TO  
THE COPYRIGHT BILL 1967 AS PRESENTED TO  
THE HOUSE OF REPRESENTATIVES  
ON 18 MAY 1967

*(Circulated by the Attorney-General, the Honourable N. H. Bowen)*

- (1) Clause 3, page 1, line 14, omit "Original".
- (2) Clause 3, page 1, line 15, omit "Original".
- (3) Clause 3, page 2, line 2, omit "Original".
- (4) Clause 3, page 2, line 12, omit "Original".
- (5) Clause 3, page 2, line 15, omit "Original".
- (6) Clause 3, page 2, line 16, omit "Original".
- (7) Clause 3, page 2, line 19, omit "Original".
- (8) Clause 3, page 2, line 21, omit "Original".
- (9) Clause 3, page 2, line 23, omit "Original".
- (10) Clause 3, page 3, line 9, omit "Original".
- (11) Clause 10, page 5, lines 6 to 13, omit the definition of "cinematograph film", insert the following definition:—
 

" 'cinematograph film' means the aggregate of the visual images embodied in an article or thing so as to be capable by the use of that article or thing—

  - (a) of being shown as a moving picture; or
  - (b) of being embodied in another article or thing by the use of which it can be so shown;

and includes the aggregate of the sounds embodied in a sound-track associated with such visual images;"

- (12) Clause 10, page 5, lines 16 to 18, omit the definition of “ copy ”, insert the following definition:—  
 “ ‘ copy ’, in relation to a cinematograph film, means any article or thing in which the visual images or sounds comprising the film are embodied;”
- (13) Clause 10, page 5, lines 31 and 32, omit “ including the grantor of the licence,”.
- (14) Clause 10, page 6, line 10, after “ recording ”, insert “ not being a sound-track associated with visual images forming part of a cinematograph film ”.
- (15) Clause 10, page 6, line 24, omit “ the regulations ”, insert “ regulations made for the purposes of section 182 of this Act ”.
- (16) Clause 10, page 6, line 39, omit “ material ”, insert “ an article or thing ”.
- (17) Clause 10, page 7, lines 14 to 25, omit the definitions of “ sound recording ” and “ sound-track ”, insert the following definitions:—  
 “ ‘ sound recording ’ means the aggregate of the sounds embodied in a record;  
 ‘ sound-track ’, in relation to visual images forming part of a cinematograph film, means—  
 (a) the part of any article or thing, being an article or thing in which those visual images are embodied, in which sounds are embodied; or  
 (b) a disc, tape or other device in which sounds are embodied and which is made available by the maker of the film for use in conjunction with the article or thing in which those visual images are embodied;”
- (18) Clause 10, page 7, line 35, omit the definition of “ Territory of the Commonwealth ”.
- (19) Clause 10, page 8, lines 3 to 7, omit the definition of “ the minimum royalty ”, insert the following definition:—  
 “ ‘ the minimum royalty ’, in relation to a record, means the amounts applicable in respect of the record under sub-section (4.) of section 55, and sub-paragraph (i) of paragraph (b) of section 56, of this Act or, if those provisions are affected by regulations made for the purposes of section 57 of this Act, under those provisions as so affected;”
- (20) Clause 10, page 8, lines 12 to 15, omit the definition of “ the royalty ”, insert the following definition:—  
 “ ‘ the royalty ’, in relation to a record, means the amount applicable in respect of the record under sub-section (1.) of section 55 of this Act or, if that sub-section is affected by regulations made for the purposes of section 57 of this Act, under that sub-section as so affected;”

(21) Clause 10, page 8, lines 17 and 18, omit “ over a path that is not ”, insert “ otherwise than over a path that is ”.

(22) Page 8, after clause 10, insert the following clause:—

“ 10A. For the purposes of this Act, a person who, at a material time, was ordinarily resident in a country (including Australia) but was temporarily absent from that country shall be treated as if he had been resident in that country at that time.”

Residence in a country not affected by temporary absence.

(23) Clause 16, page 9, line 22, after “ State ”, insert “ but otherwise than under a contract of service or contract of apprenticeship ”.

(24) Clause 20, page 9, after sub-clause (1.), insert the following sub-clause:—

“ (1A.) The last preceding sub-section applies in relation to an adaptation of a work in like manner as it applies in relation to a work.”

(25) Clause 20, page 10, at the end of the clause, add the following sub-clause:—

“ (3.) The last preceding sub-section has effect subject to Division 7 of Part III.”

(26) Clause 21, page 10, after sub-clause (1.), insert the following sub-clause:—

“ (1A.) For the purposes of this Act, a literary, dramatic or musical work that exists in the form of sounds embodied in an article or thing shall be deemed to have been reduced to a material form and to have been so reduced at the time when those sounds were embodied in that article or thing.”

(27) Clause 22, page 10, lines 29 to 35, omit the clause, insert the following clause:—

“ 22.—(1.) For the purposes of this Act, sounds embodied in a soundtrack associated with visual images forming part of a cinematograph film shall be deemed not to be a sound recording.”

Sound recordings and records.

“ (2.) A reference in this Act to a record of a work or other subject-matter shall, unless the contrary intention appears, be read as a reference to a record by means of which the work or other subject-matter can be performed.”

(28) Clause 24, page 10, before sub-clause (1.), insert the following sub-clause:—

“ (1AA.) A reference in this Act to broadcasting shall, unless the contrary intention appears, be read as a reference to broadcasting whether by way of sound broadcasting or of television.”

(29) Clause 24, page 11, after sub-clause (1.), insert the following sub-clause:—

“ (1A.) Where a record embodying a sound recording or a copy of a cinematograph film is used for the purpose of making a broadcast (in this sub-section referred to as ‘ the primary broadcast ’), a person who

makes a broadcast (in this sub-section referred to as 'the secondary broadcast') by receiving and simultaneously making a further transmission of—

- (a) the transmission by which the primary broadcast was made; or
- (b) a transmission made otherwise than by way of broadcasting but simultaneously with the transmission referred to in the last preceding paragraph,

shall, for the purposes of this Act, be deemed not to have used the record or copy for the purpose of making the secondary broadcast.”.

(30) Clause 24, page 11, line 17, omit “material”, insert “article or thing”.

(31) Clause 26, page 12, lines 16 to 17, omit “(whether by way of sound broadcasting or of television)”.

(32) Clause 27, page 13, after sub-clause (1.), insert the following sub-clause:—

“(1A.) For the purposes of the last preceding sub-section, educational instruction given by a teacher at a place of education that is not conducted for profit shall not be taken to be given for profit by reason only that the teacher receives remuneration for giving the instruction.”.

(33) Clause 27, page 13, line 8, omit “the last preceding sub-section”, insert “sub-section (1.) of this section”.

(34) Clause 27, page 13, line 12, omit “two”, insert “three”.

(35) Clause 28, page 13, line 21, omit “made available”, insert “supplied (whether by sale or otherwise)”.

(36) Clause 28, page 13, line 28, omit “made available”, insert “supplied (whether by sale or otherwise)”.

(37) Clause 28, page 13, line 31, omit “made available”, insert “supplied”.

(38) Clause 28, page 13, lines 32 to 37, omit sub-clause (3.), insert the following sub-clause:—

“(3.) For the purposes of this Act, the performance of a literary, dramatic or musical work, the supplying (whether by sale or otherwise) to the public of records of a literary, dramatic or musical work, the exhibition of an artistic work, the construction of a building or of a model of a building, or the supplying (whether by sale or otherwise) to the public of photographs or engravings of a building, of a model of a building or of a sculpture, does not constitute publication of the work”.

(39) Page 15, line 4, omit “Original”.

(40) Clause 30, page 15, lines 12 to 13, omit “, whether by way of sound broadcasting or of television”.

(41) Clause 31, page 16, after sub-clause (2.), insert the following sub-clause:—

“(2A.) Notwithstanding the last preceding sub-section but subject to the remaining provisions of this Act, copyright subsists in—

- (a) an original artistic work that is a building situated in Australia; or
- (b) an original artistic work that is attached to, or forms part of, such a building.”.

(42) Clause 31, page 16, line 8, omit “(not being a body corporate)”.

(43) Clause 32, page 16, lines 21 to 22, omit “, whether by way of sound broadcasting or of television”.

(44) Clause 32, page 16, lines 27 to 28, omit “by way of sound broadcasting or of television”.

(45) Clause 34, page 17, lines 24 to 25, omit “, whether by way of sound broadcasting or of television”.

(46) Page 18, line 1, omit “*Original*”.

(47) Clause 36, page 18, lines 9 to 14, omit the clause, insert the following clause:—

“36. The copyright in a literary, dramatic, musical or artistic work is infringed by a person who, without the licence of the owner of the copyright, imports an article into Australia for the purpose of—

Infringement by importation for sale or hire.

- (a) selling, letting for hire, or by way of trade offering or exposing for sale or hire, the article;
- (b) distributing the article—
  - (i) for the purpose of trade; or
  - (ii) for any other purpose to an extent that will affect prejudicially the owner of the copyright; or
- (c) by way of trade exhibiting the article in public,

where, to his knowledge, the making of the article would, if the article had been made in Australia by the importer, have constituted an infringement of the copyright.”.

(48) Page 19, line 6, omit “*Original*”.

(49) Clause 41, page 19, line 23, omit “sound broadcasting or television”, insert “broadcasting”.

(50) Clause 41, page 19, line 26, omit “sound broadcasting or television”, insert “broadcasting”.

(51) Page 19, after clause 42, insert the following clause in Division 3 of Part III.:—

“42A.—(1.) The copyright in a published literary, dramatic, musical or artistic work is not infringed by the inclusion of a short extract from the work, or, in the case of a published literary, dramatic or musical work,

Inclusion of works in collections for use by places of education.

from an adaptation of the work, in a collection of literary, dramatic, musical or artistic works contained in a book, sound recording or cinematograph film and intended for use by places of education if—

- (a) the collection is described in an appropriate place in the book, on the label of each record embodying the recording or of its container, or in the film, as being intended for use by places of education;
- (b) the work or adaptation was not published for the purpose of being used by places of education;
- (c) the collection consists principally of matter in which copyright does not subsist; and
- (d) a sufficient acknowledgement of the work or adaptation is made.

“(2.) The last preceding sub-section does not apply in relation to the copyright in a work if, in addition to the extract concerned, two or more other extracts from, or from adaptations of, works (being works in which copyright subsists at the time when the collection is published) by the author of the first-mentioned work are contained in that collection, or are contained in that collection taken together with every similar collection, if any, of works intended for use by places of education and published by the same publisher within the period of five years immediately preceding the publication of the first-mentioned collection.”.

(52) Clause 44, page 20, lines 1 to 22, omit the clause.

(53) Clause 46, page 20, line 31, after “not”, insert “(whether by reason of an assignment or licence or of the operation of a provision of this Act)”.

(54) Clause 46, page 20, line 41, after “not”, insert “(whether by reason of an assignment or licence or of the operation of a provision of this Act)”.

(55) Clause 46, page 21, lines 24 and 25, omit “destroyed, or are delivered to the National Library with the consent of the National Librarian”, insert “destroyed or are delivered, with the consent of the National Librarian, to the National Library”.

(56) Clause 46, page 21, lines 26 and 27, omit sub-clause (6.).

(57) Clause 51, page 24, line 24, omit “(whether by way of sound broadcasting or of television)”.

(58) Clause 53, page 25, lines 3 to 9, omit paragraphs (a) and (b) of sub-clause (1.), insert the following paragraphs:—

- “(a) a reference to a musical work shall be read as a reference to the work in its original form or to an adaptation of the work;
- “(b) a reference to the owner of the copyright in a literary, dramatic or musical work shall, unless the contrary intention appears, be read as a reference to the person who is entitled to authorize the making in, and the importation into, Australia of records of the work; and



“(c) a reference to sale of a record by retail or to retail sale of a record shall be read as not including a reference to—

- (i) sale for a consideration not consisting wholly of money; or
- (ii) sale by a person not ordinarily carrying on the business of making or selling records.”.

(59) Clause 54, page 25, lines 19 to 22, omit paragraph (a) of sub-clause (1.), insert the following paragraph:—

“(a) a record of the work—

- (i) has previously been made in, or imported into, Australia for the purpose of retail sale and was so made or imported by, or with the licence of, the owner of the copyright in the work;
- (ii) has previously been made in Australia for use in making other records for the purpose of retail sale and was so made by, or with the licence of, the owner of the copyright in the work;
- (iii) has previously been made in, or imported into, a country other than Australia for the purpose of retail sale, being a country that, at the time of the previous making or importation, was specified in the regulations to be a country in relation to which this Division applies, and was so made or imported by, or with the licence of, the person who was, under the law of that country, the owner of the copyright in the work; or
- (iv) has previously been made in a country other than Australia for use in making other records for the purpose of retail sale, being a country that, at the time of the previous making, was specified in the regulations to be a country in relation to which this Division applies, and was so made by, or with the licence of, the person who was, under the law of that country, the owner of the copyright in the work;”.

(60) Clause 54, page 25, lines 23 to 25, omit paragraph (b), insert the following paragraph:—

“(b) before the making of the record, the prescribed notice of the intended making of the record was given to the owner of the copyright;”.

(61) Clause 54, page 25, line 29, at the end of paragraph (c) of sub-clause (1.), add “ and ”.

(62) Clause 54, page 25, lines 30 to 35, omit paragraphs (d) and (e) of sub-clause (1.), insert the following paragraph:—

“(d) where the record is so sold or supplied by the manufacturer—

- (i) the sale or supply is made with the licence of the owner of the copyright; and

(ii) there is paid to the owner of the copyright, as prescribed by the regulations, a royalty ascertained in accordance with the succeeding sections of this Division.”.

(63) Clause 54, page 25, lines 36 to 44, and page 26, lines 1 to 28, omit sub-clauses (2.), (3.) and (4.), insert the following sub-clauses:—

“(2.) The last preceding sub-section does not apply in relation to a record of an adaptation of a musical work if the adaptation debases the work.

“(3.) Sub-paragraph (i) of paragraph (d) of sub-section (1.) of this section does not apply in relation to a record of a work (other than a work that was made for the purpose of being performed, or has been performed, in association with a dramatic work or has been included in a cinematograph film) if the sale or supply is made after the expiration of the prescribed period after the earliest of the following dates:—

(a) the date of the first making in, or the date of the first importation into, Australia of a previous record of the work in circumstances referred to in sub-paragraph (i) or sub-paragraph (ii) of paragraph (a) of sub-section (1.) of this section;

(b) the date of the first supplying (whether by sale or otherwise) to the public in a country referred to in sub-paragraph (iii) or sub-paragraph (iv) of paragraph (a) of sub-section (1.) of this section of a previous record of the work made in, or imported into, that country in circumstances referred to in that sub-paragraph.

“(4.) Regulations prescribing a period for the purposes of the last preceding sub-section may prescribe different periods in relation to different classes of records.

“(5.) Without limiting the generality of paragraph (d) of sub-section (1.) of this section, regulations made for the purposes of that paragraph may provide—

(a) that payment of the royalties in respect of records, or of an amount, ascertained in accordance with the regulations, in respect of the royalties in respect of records, is, or is in such classes of cases as are specified in the regulations, to be made before the records are sold or supplied by the manufacturer; and

(b) that the doing of such acts as are specified in the regulations, being such acts as the Governor-General considers convenient for ensuring the receipt by the owner of the copyright of the royalties in respect of records or, if the owner of the copyright cannot be found by reasonable inquiry, as the Governor-General considers reasonable in the circumstances, is to be deemed to constitute payment of the royalties.”.

(64) Clause 55, page 26, lines 29 to 39, omit sub-clauses (1.) to (3.), insert the following sub-clauses:—

“(1.) Subject to this Division, the royalty payable in respect of a record is five per centum of the retail selling price of the record.

“(2.) For the purposes of the last preceding sub-section—

- (a) if the selling price to the public of the record is marked by the maker of the record on the label of the record—the retail selling price of the record shall be taken to be that price;
- (b) if the selling price to the public of the record is not so marked but is specified in the appropriate price list issued by the maker of the record—the retail selling price of the record shall be taken to be the price so specified; or
- (c) if the selling price to the public of the record is not so marked or specified but other records embodying the same sound recording as, and bearing an identical label to, the record have been sold to the public—the retail selling price of the record shall be taken to be the highest price at which those other records are ordinarily sold to the public in the capital city of a State.

“(3.) A reference in the last preceding sub-section to the label of a record shall be read as including a reference to the label on the container of the record.

“(3A.) If the royalty payable in respect of a record under this section includes a fraction of a cent that is less than or more than one-half of a cent—

- (a) where that fraction is less than one-half of a cent—that fraction shall be treated as one-half of a cent; and
- (b) where that fraction is more than one-half of a cent—that fraction shall be treated as a whole cent.”.

(65) Clause 56, page 26, line 44, omit “ material ”, insert “ matter ”.

(66) Clause 56, page 26, lines 45 and 46 and page 27, lines 1 to 17, omit paragraphs (a) and (b), insert the following paragraphs:—

- “(a) if the record includes a work in which copyright does not subsist or works in which copyrights do not subsist—the royalty payable in respect of the record is, subject to the next succeeding paragraph, the amount that bears to the amount that, but for this section, would be the amount of the royalty the same proportion as the number of works in the record in which copyrights subsist bears to the total number of works in the record; and
- “(b) if the record includes two or more works in which copyrights subsist—
  - (i) subject to this Division, the royalty payable in respect of the record shall not be less than One cent in respect of each work in the record in which copyright subsists; and
  - (ii) if the owners of the copyrights in the works in the record in which copyrights subsist are different persons—there shall be paid to the owner of the copyright in each work, in respect of that work, an amount ascertained by dividing

the amount of the royalty payable in respect of the record by the number of works in the record in which copyrights subsist.”.

(67) Clause 57, page 27, lines 21 to 22, omit “ may have ceased to be ”, insert “ is not ”.

(68) Clause 57, page 27, lines 25 to 31, omit sub-clause (2.), insert the following sub-clause:—

“(2.) At any time after the Tribunal has made a report in relation to the royalty, or the minimum royalty, payable in respect of records generally or in respect of records included in a particular class of records, the regulations may provide that the relevant provision of this Act, in its application in respect of records generally or in respect of records included in that class of records, as the case may be, shall have effect as if it were subject to such variations as are provided by the regulations, being such variations as the Governor-General thinks equitable.”.

(69) Clause 57, page 27, line 38, omit “ was also applicable ”, insert “ also related ”.

(70) Clause 57, page 27, after sub-clause (4.), add the following sub-clause:—

“(5.) In this section, ‘ the relevant provision of this Act ’ means—

(a) in relation to the royalty payable in respect of any records—sub-section (1.) of section 55 of this Act or, if that sub-section is affected by regulations made for the purposes of this section, that sub-section as so affected; and

(b) in relation to the minimum royalty payable in respect of any records—sub-section (4.) of section 55, and sub-paragraph (i) of paragraph (b) of section 56, of this Act or, if those provisions are affected by regulations made for the purposes of this section, those provisions as so affected.”.

(71) Clauses 58 and 59, page 28, lines 1 to 45, and clauses 60, 61 and 62, page 29, lines 1 to 38, omit the clauses, insert the following clauses:—

“ 59.—(1.) Where—

(a) a person makes in Australia a record comprising the performance of a musical work in which words are sung, or are spoken incidentally to or in association with the music, whether or not there is any other matter comprised in the record;

(b) copyright does not subsist in that work or, if copyright so subsists, the requirements specified in sub-section (1.) of section 54 of this Act are complied with in relation to that copyright;

(c) the words consist or form part of a literary or dramatic work in which copyright subsists;

(d) a record of the musical work in which those words, or words substantially the same as those words, were sung, or were spoken incidentally to or in association with the music—

Conditions upon which manufacturer may include part of a literary or dramatic work in a record of a musical work.

- (i) has previously been made in, or imported into, Australia for the purpose of retail sale and was so made or imported by, or with the licence of, the owner of the copyright in the literary or dramatic work;
- (ii) has previously been made in Australia for use in making other records for the purpose of retail sale and was so made by, or with the licence of, the owner of the copyright in the literary or dramatic work;
- (iii) has previously been made in, or imported into, a country other than Australia for the purpose of retail sale, being a country that, at the time of the previous making or importation, was specified in the regulations to be a country in relation to which this Division applies, and was so made or imported by, or with the licence of, the person who was, under the law of that country, the owner of the copyright in the literary or dramatic work; or
- (iv) has previously been made in a country other than Australia for use in making other records for the purpose of retail sale, being a country that, at the time of the previous making, was specified in the regulations to be a country in relation to which this Division applies, and was so made by, or with the licence of, the person who was, under the law of that country, the owner of the copyright in the literary or dramatic work; and

(e) the like notice was given to the owner of the copyright in the literary or dramatic work as is required by paragraph (b) of sub-section (1.) of section 54 of this Act to be given to the owner of the copyright (if any) in the musical work and there is paid to the owner of the copyright in the literary or dramatic work such amount (if any) as is ascertained in accordance with this section,

the making of the record does not constitute an infringement of the copyright in the literary or dramatic work.

“(2.) Where copyright does not subsist in the musical work, the amount to be paid in respect of the literary or dramatic work is an amount equal to the royalty that, but for this section, would have been payable in respect of the musical work if copyright had subsisted in the musical work.

“(3.) Where copyright subsists in the musical work as well as in the literary or dramatic work—

- (a) if the copyrights in those works are owned by the same person—  
an amount is not payable in respect of the literary or dramatic work; or
- (b) if the copyrights in those works are owned by different persons—  
the royalty that, but for this section, would have been payable in respect of the musical work shall be apportioned between them in

such manner as they agree, or, in default of agreement, as is determined by the Copyright Tribunal on the application of either of them.

“(4.) Where the owner of the copyright in a musical work and the owner of the copyright in a literary or dramatic work do not agree on the manner in which an amount is to be apportioned between them but the person who made the record gives an undertaking in writing to each owner to pay to him the portion of that amount that the Tribunal determines to be payable to him, then—

- (a) paragraph (d) of sub-section (1.) of section 54 of this Act and paragraph (e) of sub-section (1.) of this section have effect as if the payments referred to in those paragraphs had been made; and
- (b) the person who made the record is liable, when the amount to which an undertaking relates is determined, to pay that amount to the owner of the copyright to whom the undertaking was given and the owner may recover that amount in a court of competent jurisdiction from that person as a debt due to the owner.

“(5.) Regulations made for the purposes of paragraph (d) of sub-section (1.) of section 54 of this Act in relation to payments to the owner of the copyright in a musical work have the like effect, with any necessary modifications, for the purposes of paragraph (e) of sub-section (1.) of this section in relation to payments to the owner of the copyright in a literary or dramatic work.

Records made partly for retail sale and partly for gratuitous disposal.

“60. Where a person makes, in Australia, a number of records embodying the same sound recording, being a recording of a musical work or of a musical work and of words consisting or forming part of a literary or dramatic work, with the intention of—

- (a) selling by retail, or supplying for sale by retail by another person, a substantial proportion of the records (in this section referred to as ‘the records made for retail sale’); and
- (b) disposing gratuitously of the remainder of the records or supplying the remainder of the records for gratuitous disposal by another person,

this Division applies in relation to the records other than the records made for retail sale as if—

- (c) those records had been made with the intention of selling them by retail or of supplying them for sale by retail by another person;
- (d) the gratuitous disposal of those records by the maker of the records, or the supplying of those records by the maker of the records for gratuitous disposal by another person, were a sale of the records by retail; and
- (e) the retail selling price of those records were the same as the retail selling price of the records made for retail sale.

“ 61. Where—

(a) a person makes inquiries, as prescribed, for the purpose of ascertaining whether a record of a musical work, or a record of a musical work in which words consisting or forming part of a literary or dramatic work were sung or spoken, has previously been made in, or imported into, Australia by, or with the licence of, the owner of the copyright in the musical work or in the literary or dramatic work, as the case may be, for the purpose of retail sale or for use in making other records for the purpose of retail sale; and

Making inquiries in relation to previous records.

(b) an answer to those inquiries is not received within the prescribed period,

a record of that musical work, or a record of that work in which those words were sung or spoken, as the case may be, shall, for the purposes of the application of this Division—

(c) in relation to the person who made the inquiries; or

(d) in relation to a person who makes records of the musical work, or records of that work in which those words or substantially the same words are sung or spoken, for the purpose of supplying those records to the person who made the inquiries in pursuance of an agreement entered into between those persons for the making of the records,

be taken to have been previously made in, or imported into, Australia with the licence of the owner of that copyright for the purpose of retail sale or for use in making other records for the purpose of retail sale, as the case may be.

“ 62.—(1.) Subject to the next succeeding sub-section, the preceding sections of this Division apply in relation to a record of a part of a musical work in like manner as they apply in relation to a record of the whole of the work.

Application of Division in relation to record of part of a work.

“ (2.) Sub-section (1.) of section 54 of this Act—

(a) does not apply in relation to a record of the whole of a work unless the previous record referred to in paragraph (a) of that sub-section was a record of the whole of the work; and

(b) does not apply in relation to a record of a part of a work unless that previous record was a record of, or comprising, that part of the work.”.

(72) Clause 63, page 29, line 39, omit “ the next succeeding sub-section ”, insert “ this section ”.

(73) Clause 63, page 29, line 42, omit “ of sub-section (1.) and sub-section (2.) ”, insert “ and sub-paragraph (i) of paragraph (d) of sub-section (1.), and sub-sections (3.) and (4.) ”.

(74) Clause 63, page 30, at the end of the clause, add the following sub-clause:—

“ (3.) This section ceases to have effect at the expiration of two years after the commencement of this Act.”.

(75) Clause 68, page 30, lines 32 to 33, omit “, or the inclusion in a television broadcast,”.

(76) Clause 69, page 30, line 38, omit “ 66, 67 and 68 ”, insert “ 66 and 67 ”.

(77) Clause 70, page 31, line 2, after “ not ”, insert “ (whether by reason of an assignment or licence or of the operation of a provision of this Act) ”.

(78) Clause 70, page 31, line 10, after “ not ”, insert “ (whether by reason of an assignment or licence or of the operation of a provision of this Act) ”.

(79) Clause 70, page 31, lines 35 and 36, omit “ destroyed, or are delivered to the National Library with the consent of the National Librarian ”, insert “ destroyed or are delivered, with the consent of the National Librarian, to the National Library ”.

(80) Clause 71, page 31, lines 37 to 40, omit the clause, insert the following clause:—

“ 71. For the purposes of this Act—

(a) the making of an object of any kind that is in three dimensions does not infringe the copyright in an artistic work that is in two dimensions; and

(b) the making of an object of any kind that is in two dimensions does not infringe the copyright in an artistic work that is in three dimensions,

if the object would not appear to persons who are not experts in relation to objects of that kind to be a reproduction of the artistic work.”.

(81) Clause 74, page 32, line 36, after “ act ”, insert “ in Australia ”.

(82) Clause 83, page 36, line 1, omit “ 44 ”, insert “ 42A ”.

(83) Page 36, line 12, omit “ ORIGINAL ”.

(84) Page 36, line 21, omit “ *Original* ”.

(85) Clause 85, page 36, lines 27 to 28, omit “ whether by way of sound broadcasting or of television ”.

(86) Clause 86, page 36, lines 36 to 37, omit “, whether by way of sound broadcasting or of television ”.

(87) Page 37, line 17, omit “ *Original* ”.



(88) Clause 89, page 37, lines 22 to 27, omit sub-clause (2.), insert the following sub-clause:—

“(2.) Without prejudice to the last preceding sub-section, copyright subsists, subject to this Act, in a sound recording if the recording was made in Australia.”.

(89) Clause 90, page 37, lines 34 to 40, omit sub-clause (2.), insert the following sub-clause:—

“(2.) Without prejudice to the last preceding sub-section, copyright subsists, subject to this Act, in a cinematograph film if the film was made in Australia.”.

(90) Page 38, line 26, omit “*Original*”.

(91) Clause 95, page 39, lines 4 and 5, omit “material of any kind”, insert “any article or thing”.

(92) Page 39, line 17, omit “*Original*”.

(93) Clause 97, page 39, lines 29 to 33, omit “, but, if at the time the agreement was made that person made known, expressly or by implication, to the maker of the recording the purpose for which the recording was required, the maker is entitled to restrain the doing, otherwise than for that purpose, of any act comprised in the copyright in the recording”.

(94) Clause 98, page 40, lines 4 to 8, omit “, but, if at the time the agreement was made that person made known, expressly or by implication, to the maker of the film the purpose for which the film was required, the maker is entitled to restrain the doing, otherwise than for that purpose, of any act comprised in the copyright in the film”.

(95) Page 40, line 24, omit “*Original*”.

(96) Clause 101, page 40, line 36, omit “material”, insert “article or thing”.

(97) Clause 102, page 40, lines 39 to 44, omit the clause, insert the following clause:—

“102. A copyright subsisting by virtue of this Part is infringed by a person who, without the licence of the owner of the copyright, imports an article into Australia for the purpose of—

Infringement by importation for sale or hire.

(a) selling, letting for hire, or by way of trade offering or exposing for sale or hire, the article;

(b) distributing the article—

(i) for the purpose of trade; or

(ii) for any other purpose to an extent that will affect prejudicially the owner of the copyright; or

(c) by way of trade exhibiting the article in public,

where, to his knowledge, the making of the article would, if the article had been made in Australia by the importer, have constituted an infringement of the copyright.”.

(98) Clause 105, page 41, lines 20 to 35, omit the clause, insert the following clause:—

“ 105. Copyright subsisting in a sound recording by virtue only of sub-section (3.) of section 89 of this Act is not infringed by the causing of the recording to be heard in public or by the broadcasting of the recording.”

Copyright  
in certain  
recordings  
not infringed  
by causing  
recordings to  
be heard in  
public or  
broadcast.

(99) Clause 107, page 42, line 16, after “ not ”, insert “ (whether by reason of an assignment or licence or of the operation of a provision of this Act) ”.

(100) Clause 107, page 42, lines 19 and 20, omit “ such a record solely for the purpose of the broadcasting of the recording ”, insert “ a record embodying the recording in association with other matter solely for the purpose of the broadcasting of the recording in association with the other matter ”.

(101) Clause 107, page 42, line 23, after “ not ”, insert “ (whether by reason of an assignment or licence or of the operation of a provision of this Act) ”.

(102) Clause 107, page 43, lines 5 to 6, omit “ destroyed, or are delivered to the National Library with the consent of the National Librarian ”, insert “ destroyed or are delivered, with the consent of the National Librarian, to the National Library ”.

(103) Clause 107, page 43, lines 7 and 8, omit sub-clause (6.).

(104) Clause 108, page 43, lines 9 to 19, omit sub-clause (1.), insert the following sub-clause:—

“ (1.) The copyright in a sound recording that has been published is not infringed by a person who causes the recording to be heard in public if—

(a) the person has paid to the owner of the copyright in the recording such amount as they agree or, in default of agreement, has given an undertaking in writing to the owner to pay to him such amount as is determined by the Copyright Tribunal, on the application of either of them, to be equitable remuneration to the owner for the causing of the recording to be heard in public; and

(b) in the case of a recording that was first published outside Australia—the recording has been published in Australia or the prescribed period after the date of the first publication of the recording has expired.”

(105) Clause 108, page 43, at the end of the clause, add the following sub-clause:—

“ (3.) Regulations prescribing a period for the purposes of paragraph (b) of sub-section (1.) of this section may prescribe different periods in relation to different classes of sound recordings.”

(106) Page 43, after clause 108, insert the following clause:—

“ 108A.—(1.) Subject to this section, the copyright in a published sound recording is not infringed by the making of a broadcast of that recording if—

Copyright in published sound recording not infringed by broadcast in certain circumstances.

- (a) where there is no order of the Tribunal in force under section 149A of this Act applying to the maker of that broadcast in relation to the time when that broadcast was made—the maker of that broadcast has given an undertaking in writing to the person who is the owner of the copyright in that recording to pay to him such amounts (if any) as may be specified in, or determined in accordance with, an order of the Tribunal made under that section in respect of the broadcasting by the maker, during a period within which that broadcast was made, of published sound recordings in which the copyrights are owned by that person and which include that recording; or
- (b) where there is an order of the Tribunal in force under that section applying to the maker of that broadcast in relation to the time when that broadcast was made—
  - (i) the copyright in that recording is owned by a person who is specified in the order as one of the persons among whom the amount specified in, or determined in accordance with, the order is to be divided and the maker of the broadcast makes payments to the person in accordance with the order; or
  - (ii) the copyright in that recording is owned by a person who is not so specified in the order.

“(2.) The last preceding sub-section does not apply in relation to a broadcast of a sound recording if the broadcast was made in accordance with an agreement between the maker of the broadcast and the owner of the copyright in the recording.

“(3.) Sub-section (1.) of this section does not apply in relation to a broadcast of a sound recording that has not been published in Australia if the broadcast was made before the expiration of the prescribed period after the date of the first publication of the recording.

“(4.) Regulations prescribing a period for the purposes of the last preceding sub-section may prescribe different periods in relation to different classes of sound recordings.

“(5.) Sub-section (1.) of this section does not apply in relation to a broadcast of a sound recording that has not been published in Australia if—

- (a) the recording consists of, or includes, a musical work in which copyright subsists;

- (b) the musical work was made for the purpose of being performed, or has been performed, in association with a dramatic work or has been included in a cinematograph film; and
- (c) records of the musical work have not been supplied (whether by sale or otherwise) to the public in Australia.

“(6.) For the purposes of paragraph (c) of the last preceding subsection, a supplying of records of a musical work shall be disregarded if the supplying was done otherwise than by, or with the licence of, the owner of the copyright in the work.”.

(107) Clause 109, page 43, line 28, omit “ material of any kind ”, insert “ an article or thing ”.

(108) Clause 110, page 44, lines 15 to 16, omit “, whether by way of sound broadcasting or of television ”.

(109) Clause 115, page 46, lines 1 to 6, omit sub-clause (1.), insert the following sub-clause:—

“(1.) Subject to this Act, the owner of the copyright in a work or other subject-matter is entitled in respect of any infringing copy, or of any plate used or intended to be used for making infringing copies, to the rights and remedies, by way of an action for conversion or detention, to which he would be entitled if he were the owner of the copy or plate and had been the owner of the copy or plate since the time when it was made.”.

(110) Clause 126, page 49, at the end of the clause, add the following sub-clause:—

“(3.) Where, in an action brought by virtue of this Part in relation to a photograph—

(a) it is established that, at the time when the photograph was taken, a person was the owner of the material on which the photograph was taken or, if the ownership of that material as at that time is not established, that a person was the owner of the apparatus by which the photograph was taken; or

(b) neither the ownership as at the time when the photograph was taken of the material on which it was taken nor the ownership as at that time of the apparatus by which it was taken is established but it is established that, at the time of the death of a person, the photograph was owned by the person or, if the ownership of the photograph as at that time is not established, was in the possession or custody of the person,

the person shall be presumed, unless the contrary is established, to have been the person who took the photograph.”.

(111) Clause 129, page 50, lines 8 to 20, omit the clause, insert the following clauses:—

“ 129. In an action brought by virtue of this Part in relation to copyright in a sound recording, if records embodying the recording or a part of the recording have been supplied (whether by sale or otherwise) to the public and, at the time when records embodying the recording or part of the recording were first so supplied, the records or their containers bore a label or other mark containing a statement—

Evidence in relation to recordings.

- (a) that a person specified on the label or mark was the maker of the recording;
- (b) that the recording was first published in a year specified on the label or mark; or
- (c) that the recording was first published in a country specified on the label or mark,

that label or mark is sufficient evidence of the facts so stated except in so far as the contrary is established.

“ 129A. Where the name of a person appeared on copies of a cinematograph film as made available to the public in such a way as to imply that the person was the maker of the film and, in the case of a person other than a body corporate, that name was his true name or a name by which he was commonly known, that person shall, in an action brought by virtue of this Part, be presumed, unless the contrary is established, to be the maker of the film and to have made the film in circumstances to which sub-section (3.) of section 98 of this Act does not apply.”

Presumption in relation to maker of film.

(112) Clause 130, page 50, lines 22 to 30, omit sub-clause (1.), insert the following sub-clause:—

“(1.) A person shall not, at a time when copyright subsists in a work—

- (a) make an article for sale or hire;
- (b) sell or let for hire, or by way of trade offer or expose for sale or hire, an article;
- (c) by way of trade exhibit an article in public; or
- (d) import an article into Australia for the purpose of—
  - (i) selling, letting for hire, or by way of trade offering or exposing for sale or hire, the article;
  - (ii) distributing the article for the purpose of trade, or for any other purpose to an extent that will affect prejudicially the owner of the copyright in the work; or
  - (iii) by way of trade exhibiting the article in public,

if he knows the article to be an infringing copy of the work.”

(113) Clause 131, page 51, line 8, omit “ against ”, insert “ by reason of a contravention of ”.

(114) Clause 131, page 51, line 20, omit “ against ”, insert “ by reason of a contravention of ”.

(115) Clause 132, page 51, line 32, omit “ in respect of ”, insert “ for ”.

(116) Clause 133, page 52, lines 19 to 24, omit sub-clause (5.), insert the following sub-clause:—

“ (5.) Where a notice has been given under this section in respect of a work and has not been withdrawn, the importation of copies of the work to which this section applies into Australia for the purpose of—

(a) selling, letting for hire, or by way of trade offering or exposing for sale or hire, the copies;

(b) distributing the copies—

(i) for the purpose of trade; or

(ii) for any other purpose to an extent that will affect prejudicially the owner of the copyright in the work; or

(c) by way of trade exhibiting the copies in public,

is prohibited and any such copies, if imported into Australia for any such purpose, may be seized as forfeited to the Commonwealth.”.

(117) Clause 134, page 53, lines 9 to 15, omit the definition of “ licence ”, insert the following definition:—

“ ‘ licence ’ means a licence granted by or on behalf of the owner or prospective owner of the copyright in a literary, dramatic or musical work, or of the copyright in a sound recording, being—

(a) in the case of a literary, dramatic or musical work—a licence to perform the work or an adaptation of the work in public, to broadcast the work or an adaptation of the work, to make a sound recording or cinematograph film of the work or of an adaptation of the work for the purpose of broadcasting the work or adaptation or to cause the work or an adaptation of the work to be transmitted to subscribers to a diffusion service; or

(b) in the case of a sound recording—a licence to cause the recording to be heard in public or to make a record embodying the recording for the purpose of broadcasting the recording;”.

(118) Clause 134, page 53, lines 24 to 30, omit the definitions of “ licensor ” and “ member ”, insert the following definitions:—

“ ‘ licensor ’ means—

(a) in relation to licences in respect of a literary, dramatic or musical work—the owner or prospective owner of the copyright in the work or any body of persons (whether

corporate or unincorporate) acting as agent for the owner or prospective owner in relation to the negotiation or granting of such licences; and

- (b) in relation to licences in respect of a sound recording—the owner or prospective owner of the copyright in the recording or any body of persons (whether corporate or unincorporate) acting as agent for the owner or prospective owner in relation to the negotiation or granting of such licences;

‘ member ’ means a member of the Tribunal;”.

(119) Clause 134, page 53, line 35, after “ 146 ”, insert “, or sub-section (2.) of section 149B,”.

(120) Clause 134, page 53, line 37, after “ 146 ”, insert “, or sub-section (2.) of section 149B,”.

(121) Clause 134, page 53, lines 38 to 40, omit the definition of “ the President ”, insert the following definitions:—

“ ‘ the Deputy President ’ means the Deputy President of the Tribunal;

‘ the President ’ means the President of the Tribunal.”.

(122) Clause 134, page 54, at the end of the clause, add the following sub-clause:—

“ (3.) For the purposes of this Part, a person shall not be taken not to require a licence to cause a sound recording to be heard in public by reason only of the operation of section 108 of this Act.”.

(123) Clause 136, page 54, line 29, omit “ three ”, insert “ five ”.

(124) Clause 140, page 55, line 4, omit “ of the Tribunal ”.

(125) Clause 140, page 55, line 6, omit “ of the Tribunal ”.

(126) Clause 144, page 55, lines 24 to 34, omit sub-clause (3.), insert the following sub-clause:—

“ (3.) Where—

(a) the Tribunal holds an inquiry under section 146, or sub-section (2.) of section 149B, of this Act; or

(b) any party to an application or reference requests that the Tribunal be constituted by more than one member for the purposes of that application or reference,

the Tribunal shall, for the purposes of the inquiry, application or reference, be constituted by not less than two members of whom one shall be the President or the Deputy President, but nothing in this sub-section prevents a single member exercising the powers of the Tribunal in relation to matters of procedure.”.

- (127) Clause 144, page 55, line 37, omit " of the Tribunal ".
- (128) Clause 144, page 55, line 39, omit " of the Tribunal ".
- (129) Clause 144, page 56, line 2, omit " of the Tribunal ".
- (130) Clause 144, page 56, line 4, omit " of the Tribunal ".
- (131) Clause 149, page 57, lines 27 and 28, omit " or for the broadcasting of the recording by way of sound broadcasting or of television ".
- (132) Clause 149, page 57, lines 32 and 33, omit " or who broadcast the recording ".
- (133) Clause 149, page 57, lines 39 and 40, omit " or for the broadcasting of the recording, as the case may be ".

(134) Page 57, after clause 149, insert the following clauses:—

" 149A.—(1.) In this section, unless the contrary intention appears—  
 'Australia' does not include the Territories of the Commonwealth  
 not forming part of the Commonwealth;

' broadcaster ' means—

- (a) the Australian Broadcasting Commission;
- (b) the holder of a licence for a broadcasting station;
- (c) the holder of a licence for a television station; or
- (d) a person prescribed for the purposes of sub-paragraph (iii) of paragraph (a) or sub-paragraph (iii) of paragraph (b) of section 91 of this Act.

" (2.) Subject to this section, an application may be made to the Tribunal for an order determining, or making provision for determining, the amount payable by a broadcaster to the owners of copyrights in published sound recordings in respect of the broadcasting, during a period specified in the application, of those recordings by that broadcaster.

" (3.) An application under the last preceding sub-section may be made by the broadcaster or by the owner of a copyright in a published sound recording.

" (4.) The parties to an application under sub-section (2.) of this section are—

- (a) the person making the application; and
- (b) such organizations or persons as apply to the Tribunal to be made parties to the application and, in accordance with the next succeeding sub-section, are made parties to the application.

" (5.) Where an organization (whether claiming to be representative of broadcasters or of the owners of copyrights in published sound recordings or not) or a person (whether a broadcaster or the owner of a copyright in a published sound recording or not) applies to the Tribunal to be made a party to an application under this section, and the Tribunal



is satisfied that the organization or person has a substantial interest in the matter that is the subject of the application, the Tribunal may, if it thinks fit, make that organization or person a party to the application.

“(6.) The Tribunal shall consider an application under sub-section (2.) of this section and, after giving the parties to the application an opportunity of presenting their cases, shall make an order—

- (a) determining, or making provision for determining, the amount payable by the broadcaster to the owners of copyrights in published sound recordings in respect of the broadcasting, during the period to which the order applies, by the broadcaster of those recordings;
- (b) specifying as the persons among whom that amount is to be divided such of the persons who were, or were represented by, parties to the application as the Tribunal is satisfied are the owners of copyrights in published sound recordings; and
- (c) specifying as the respective shares in that amount of the persons among whom that amount is to be divided and as the times at which those shares are to be paid such shares and times as those persons agree or, in default of agreement, as the Tribunal thinks equitable.

“(7.) In so making an order in relation to a broadcaster, the Tribunal shall take into account all relevant matters, including the extent to which the broadcaster uses, for the purposes of broadcasting, records embodying sound recordings (other than recordings in relation to which section 105 of this Act applies) in which copyrights subsist, being copyrights owned by persons who are, or are represented by, parties to the application.

“(8.) Subject to section 149B of this Act, the Tribunal shall not make an order that would require a broadcaster being the holder of a licence for a broadcasting station to pay, in respect of the broadcasting of published sound recordings during the period in relation to which the order applies, an amount exceeding one per centum of the amount determined by the Tribunal to be the gross earnings of the broadcaster during the period equal to the period in relation to which the order applies that ended on the thirtieth day of June last preceding the date of commencement of the period in relation to which the order applies.

“(9.) Where a broadcaster being the holder of a licence for a broadcasting station has, with the leave of the Australian Broadcasting Control Board under section 106 of the *Broadcasting and Television Act 1942-1967*, adopted an accounting period ending on a day other than the thirtieth day of June, the reference in the last preceding sub-section to the thirtieth day of June shall, in relation to that broadcaster, be read as a reference to that other day.

“(10.) Sub-section (8.) of this section does not apply to an order in relation to a broadcaster unless—

- (a) the broadcaster establishes to the satisfaction of the Tribunal the amount of the gross earnings of the broadcaster during the period in respect of which those earnings are to be determined; and
- (b) the broadcaster carried on the transmission of programmes by way of sound broadcasting throughout the whole of that period.

“(11.) Where an application is made to the Tribunal under sub-section (2.) of this section in relation to the Australian Broadcasting Commission, the Tribunal—

- (a) shall make separate orders in respect of sound broadcasts by the Commission of published sound recordings and in respect of television broadcasts by the Commission of such recordings; and
- (b) subject to section 149B of this Act, shall not make an order that would require the Commission to pay, in respect of sound broadcasts of published sound recordings during the period in relation to which the order applies, an amount exceeding the sum of—
  - (i) in respect of each complete year included in that period—the amount ascertained by multiplying one-half of One cent by the number equal to the number of persons comprised in the estimated population of Australia as last set out in statistics published by the Commonwealth Statistician before the making of the order; and
  - (ii) in respect of each part of a year included in that period—the amount that bears to the amount ascertained in accordance with the last preceding sub-paragraph in relation to a complete year the same proportion as that part of a year bears to a complete year.

“(12.) A person who is not specified in an order in force under sub-section (6.) of this section as one of the persons among whom the amount specified in, or determined in accordance with, the order is to be divided may, before the expiration of the period to which the order applies, apply to the Tribunal for an amendment of the order so as to specify him as one of those persons.

“(13.) The parties to an application under the last preceding sub-section for an amendment of an order are—

- (a) the person making the application;
- (b) the broadcaster in relation to whom the order applies;
- (c) the persons specified in the order as the persons among whom the amount specified in, or determined in accordance with, the order is to be divided; and
- (d) such organizations or persons as apply to the Tribunal to be made parties to the application and, in accordance with sub-section (5.) of this section, are made parties to the application.

“(14.) The Tribunal shall consider an application under sub-section (12.) of this section for an amendment of an order in force under sub-section (6.) of this section (in this sub-section referred to as ‘ the principal order ’) and, after giving the parties to the application an opportunity of presenting their cases, shall, if it is satisfied that the applicant is the owner of the copyright or copyrights in one or more published sound recordings, make an order amending the principal order so as to—

- (a) specify the applicant as one of the persons among whom the amount specified in, or determined in accordance with, the principal order is to be divided; and
- (b) specify as the share of the applicant in that amount and as the times at which that share is to be paid such share and times as the applicant and the other persons among whom that amount is to be divided agree or, in default of agreement, as the Tribunal thinks equitable and make any consequential alterations in respect of the shares of those other persons.

“(15.) An order of the Tribunal made under sub-section (6.) of this section in relation to a broadcaster applies in relation to the period commencing on the date specified in the order and ending on the thirtieth day of June next succeeding the date of making of the order.

“(16.) The date that may be so specified in an order of the Tribunal made under sub-section (6.) of this section in relation to a broadcaster may be a date before the date of making of the order or before the date of making of the application but shall not be a date before the date of expiration of the period in relation to which the last preceding order (if any) of the Tribunal made under that sub-section in relation to that broadcaster applied or before the date of commencement of this Act.

“(17.) An order of the Tribunal made under sub-section (14.) of this section amending an order of the Tribunal made under sub-section (6.) of this section applies in relation to the period commencing on the date of making of the amending order and ending on the date of expiration of the period in relation to which the order that is being amended applies.

“(18.) Where an order of the Tribunal is in force under this section, the broadcaster in relation to whom the order applies is liable to pay to each of the persons specified in the order as the persons among whom the amount specified in, or determined in accordance with, the order is to be divided the share so specified in relation to that person and is so liable to pay that share at the times so specified and that person may recover any amount that is not paid in accordance with the order in a court of competent jurisdiction from the broadcaster as a debt due to the person.

“(19.) For the purposes of this section, the gross earnings of a broadcaster in respect of a period are the gross earnings of the broadcaster during that period in respect of the broadcasting by him of advertisements

or other matter, including the gross earnings of the broadcaster during that period in respect of the provision by him of, or otherwise in respect of, matter broadcast by him.

“(20.) Where, in connexion with a transaction, any consideration is paid or given otherwise than in cash, the money value of that consideration shall, for the purposes of the last preceding sub-section, be deemed to have been paid or given.

“(21.) Where the Tribunal is of the opinion that—

- (a) an amount, or part of an amount, earned during any period by a person other than a broadcaster would, if the broadcaster and that person were the same person, form part of the gross earnings of the broadcaster in respect of that period for the purposes of this section; and
- (b) a relationship exists between the broadcaster and the other person (whether by reason of any shareholding or of any agreement or arrangement, or for any other reason) of such a kind that the amount or the part of the amount, as the case may be, should, for the purposes of this section, be treated as part of the gross earnings of the broadcaster in respect of that period,

the Tribunal may so treat the amount or the part of the amount, as the case may be.

“149B.—(1.) If at any time after the expiration of five years after the commencement of this Act it appears to the Attorney-General that, by reason of a change in circumstances, the maximum broadcasting royalty payable by the holders of licences for broadcasting stations or by the Australian Broadcasting Commission should be varied, he may request the Copyright Tribunal to hold an inquiry into the matter and report the result of its inquiry to the Attorney-General.

“(2.) Where such a request is made, the Tribunal shall hold the inquiry and shall give every person or organization that the Tribunal is satisfied has a substantial interest in the matter to which the inquiry relates an opportunity of presenting a case to the Tribunal.

“(3.) As soon as practicable after the completion of the inquiry, the Tribunal shall make a report in writing to the Attorney-General setting out the result of the inquiry.

“(4.) At any time after the Tribunal has made a report in relation to the maximum broadcasting royalty payable by the holders of licences for broadcasting stations or by the Australian Broadcasting Commission, the regulations may provide that the relevant provision of this Act shall have effect as if it were subject to such variations as are provided by the regulations.

“(5.) Before making regulations for the purposes of the last preceding sub-section, the Governor-General shall take into account the report of the Tribunal.

“(6.) Where the Tribunal has made a report in relation to the maximum broadcasting royalty payable by the holders of licences for broadcasting stations or by the Australian Broadcasting Commission, the Attorney-General shall not, before the expiration of five years after the report was made, request the Tribunal to hold a further inquiry under this section in relation to that royalty.

“(7.) In this section—

‘the maximum broadcasting royalty’, in relation to the holders of licences for broadcasting stations or in relation to the Australian Broadcasting Commission, means the amounts applicable in relation to those holders or in relation to the Commission, as the case may be, under the relevant provision of this Act;

‘the relevant provision of this Act’ means—

- (a) in relation to the holders of licences for broadcasting stations—sub-section (8.) of section 149A of this Act or, if that sub-section is affected by regulations made for the purposes of this section, that sub-section as so affected; and
- (b) in relation to the Australian Broadcasting Commission—paragraph (b) of sub-section (11.) of section 149A of this Act or, if that paragraph is affected by regulations made for the purposes of this section, that paragraph as so affected.”.

(135) Clause 151, page 58, lines 38 to 43, omit sub-clause (6.), insert the following sub-clause:—

“(6.) Where a licence scheme has been referred to the Tribunal under this section, the licensor may do either or both of the following things:—

- (a) bring the scheme into operation before the Tribunal makes an order in pursuance of the reference;
- (b) withdraw the reference at any time before the Tribunal makes an order in pursuance of the reference, whether the scheme has been brought into operation or not.”.

(136) Clause 154, page 61, line 40, after “apply”, insert “(including a case where a licence scheme has not been formulated or is not in operation)”.

(137) Clause 154, page 62, after sub-clause (3.), insert the following sub-clause:—

“(3A.) An organization that claims that it is representative of persons requiring licences in cases to which a licence scheme does not apply (including cases where a licence scheme has not been formulated or is not in operation) and—

- (a) that a licensor has refused or failed to grant the licences, or to procure the grant of the licences, and that in the circumstances it is unreasonable that the licences should not be granted; or

- (b) that a licensor proposes that the licences should be granted subject to the payment of charges, or to conditions, that are unreasonable,  
may apply to the Tribunal under this section.”.
- (138) Clause 154, page 62, line 12, omit “ sub-section (2.) or sub-section (3.) ”, insert “ (2.), (3.) or (3A.) ”.
- (139) Clause 154, page 62, line 21, omit “ or ”.
- (140) Clause 154, page 62, line 25, omit “ applicant. ”, insert “ applicant; or ”.
- (141) Clause 154, page 62, at the end of sub-clause (5.), add the following paragraph:—  
“ (c) in the case of an application under sub-section (3A.) of this section—the charges, if any, and the conditions, that the Tribunal considers reasonable in the circumstances in relation to persons, or to persons included in classes of persons, specified in the order, being persons who were represented by the applicant or were parties to the application.”.
- (142) Clause 155, page 62, line 32, omit “ who ”.
- (143) Clause 155, page 63, lines 7 to 12, omit sub-clause (3.), insert the following sub-clause:—  
“ (3.) A person who does anything in relation to which sub-section (1.) of this section applies is liable to pay to the licensor operating the licence scheme concerned the amount of any charges that would be payable if he were the holder of a licence granted in accordance with the scheme in so far as the scheme relates to the doing of that thing and the licensor may recover that amount in a court of competent jurisdiction from the person as a debt due to the licensor.”.
- (144) Clause 156, page 63, line 14, omit “ who ”.
- (145) Clause 156, page 63, after sub-clause (2.), insert the following sub-clause:—  
“ (2A.) A person who does anything in relation to which sub-section (1.) of this section applies is liable to pay to the licensor operating the licence scheme concerned the amount of any charges that would be payable if he were the holder of a licence granted in accordance with the scheme, as confirmed or varied by the order, in so far as the scheme relates to the doing of that thing and the licensor may recover that amount in a court of competent jurisdiction from the person as a debt due to the licensor.”.
- (146) Clause 156, page 63, line 45, omit “ he ”, insert “ the applicant ”.
- (147) Clause 156, page 64, lines 4 to 9, omit sub-clause (4.), insert the following sub-clauses:—  
“ (4.) Where the Tribunal has made an order on an application under sub-section (3A.) of section 154 of this Act specifying charges, if any, and

conditions, in relation to the persons, or to persons included in the classes of persons, specified in the order, in respect of matters specified in the order, then, if—

- (a) any such person has complied with the conditions specified in the order; and
- (b) in a case where the order specifies any charges—the person has paid those charges to the licensor or, if the amount payable could not be ascertained, has given to the licensor an undertaking in writing to pay the charges when ascertained,

that person shall be in the like position, in any proceedings for infringement of copyright relating to any of those matters, as if he had at all material times been the holder of a licence granted by the owner of the copyright concerned on the conditions, and subject to payment of the charges (if any), specified in the order.

“(5.) Where a person in relation to whom an order referred to in sub-section (3.) or sub-section (4.) of this section applies does, in relation to any of the matters specified in that order, anything that, apart from that sub-section, would be an infringement of copyright but would not be such an infringement if he were the holder of a licence in respect of the doing of that thing granted by the owner of the copyright concerned on the conditions and subject to payment of the charges (if any) specified in the order, that person is liable to pay to the owner of the copyright the amount of any charges that would be payable if he were the holder of such a licence and the owner of the copyright may recover that amount in a court of competent jurisdiction from the person as a debt due to the owner of the copyright.”

(148) Clause 158, page 65, line 10, after “146”, insert “, or sub-section (2.) of section 149B,”.

(149) Page 65, after clause 158, insert the following clause in Division 3 of Part VI.:—

“158A. Nothing in this Part affects the operation of any agreement or of any award made by an arbitrator, whether the agreement or award was made before, or is made after, the commencement of this Act.”

Agreements  
or awards not  
affected.

(150) Clause 162, page 65, line 34, after “prescribe”, insert “the fees payable in respect of those references and applications and the”.

(151) Clause 162, page 65, line 37, after “146”, insert “, or sub-section (2.) of section 149B,”.

(152) Clause 170, page 68, line 2, after “146”, insert “, or sub-section (2.) of section 149B,”.

(153) Clause 180, page 71, lines 6 to 11, omit paragraph (a) of sub-clause (1.), insert the following paragraphs:—

“(a) so that the provisions apply in relation to literary, dramatic, musical or artistic works or editions first published, or sound

recordings or cinematograph films made or first published, in that country in like manner as those provisions apply in relation to literary, dramatic, musical or artistic works or editions first published, or sound recordings or cinematograph films made or first published, in Australia;

“(aa) so that the provisions apply in relation to artistic works that are buildings situated in that country or are attached to, or form part of, buildings situated in that country in like manner as those provisions apply in relation to artistic works that are buildings situated in Australia or are attached to, or form part of, buildings situated in Australia;”.

(154) Clause 180, page 72, at the end of the clause, add the following sub-clause:—

“(4.) Where—

- (a) the identity of the author of an unpublished work is unknown but there are reasonable grounds for believing that the author of the work was, at the time when, or for a substantial part of the period during which, the work was made, a citizen or national of a country other than Australia;
- (b) under the law of that country, a person is authorized to represent the author, or to protect and enforce the rights of the author, in relation to that work; and
- (c) provision is made by the regulations applying any of the provisions of this Act in relation to works made by citizens or nationals of that country,

that person shall, for the purposes of those provisions as so applying, be treated as if he were the author of the work.”.

(155) Clause 186, page 74, lines 37 to 42, and page 75, lines 1 to 21, omit the clause, insert the following clause:—

“186.—(1.) A person (in this sub-section referred to as ‘the offender’) is, by virtue of this section, under a duty to the author of a work not to—

- (a) insert or affix another person’s name in or on the work, or in or on a reproduction of the work, in such a way as to imply that the other person is the author of the work;
- (b) publish, sell or let for hire, by way of trade offer or expose for sale or hire, or by way of trade exhibit in public, the work with another person’s name so inserted or affixed, if the offender knows that the other person is not the author of the work;
- (c) do any of the acts mentioned in the last preceding paragraph in relation to, or distribute, reproductions of the work, being reproductions in or on which another person’s name has been so inserted or affixed, if the offender knows that the other person is not the author of the work; or
- (d) perform in public, or broadcast, the work as being a work of which another person is the author, if the offender knows that the other person is not the author of the work.

Duty not to attribute falsely the authorship of a work.



“(2.) The last preceding sub-section applies where, contrary to the fact, a work is represented as being an adaptation of the work of another person in like manner as it applies where a work is represented as being the work of another person.

“(3.) After the death of the author of a work, a person is, by virtue of this section, under a duty to the legal personal representative of the author not to do in relation to, or to a reproduction of, the work or an adaptation of the work any act that, but for the death of the author, the person would, by reason of either of the last two preceding sub-sections, have been under a duty to the author not to do.

“(4.) In this section, ‘work’ means a work in which copyright subsists.”.

(156) Clause 187, page 75, lines 22 to 23, omit “Where an artistic work in which copyright subsists has been altered after the author parted with the possession of the work”, insert “Where a work in which copyright subsists has been altered by a person other than the author of the work”.

(157) Clause 190, page 76, at the end of the clause, add the following sub-clause:—

“(3.) Where, in respect of an act done in relation to, or to a reproduction of, a work or an adaptation of a work after the death of the author of the work, damages are recovered under this section by the legal personal representative of the author, those damages devolve as if they formed part of the estate of the author and as if the right of action in respect of the doing of that act had subsisted, and had been vested in the author, immediately before his death.”.

(158) Clause 197, page 79, line 17, omit “first”.

(159) Clause 197, page 79, line 40, after “table,”, insert “being a literary, dramatic, musical or artistic work or an edition of such a work,”.

(160) Clause 200, page 81, line 1, omit “and”, insert “or”.

(161) Clause 202, page 82, line 19, omit “definition”, insert “sub-section”.

(162) Clause 206, page 83, line 10, after “subject”, insert “and to a person domiciled in any part of the Queen’s dominions to which the Copyright Act, 1911 extended”.

(163) Clause 206, page 83, after sub-clause (3.), insert the following sub-clause:—

“(3A.) Sub-section (2A.) of section 31 of this Act does not apply to or in relation to a building that was constructed before the commencement of this Act.”.

(164) Clause 210, page 84, lines 32 to 37, omit sub-clause (1.), insert the following sub-clause:—

“(1.) Where a record of a work has, before the commencement of this Act, been made by, or with the consent or acquiescence of, the owner of the copyright in the work under the Copyright Act, 1911, Division 6 of Part III. has the like effect as if the record had been made in Australia for the purpose of retail sale and had been so made by, or with the licence of, the person who is entitled, by virtue of this Act, to authorize the making in Australia of records of the work.”.

(165) Clause 212, page 85, lines 12 and 13, omit “, in the case of a building constructed before the commencement of this Act, be read as ”, insert “ be read as including ”.

(166) Clause 213, page 85, at the end of the clause, add the following sub-clause:—

“(2.) Copyright does not subsist by virtue of this Act in an artistic work made before the commencement of this Act which, at the time when the work was made, constituted a design capable of being registered under the *Designs Act* 1906, or under that Act as amended and in force at that time, and was used, or intended to be used, as a model or pattern to be multiplied by any industrial process.”.

(167) Page 86, line 35, omit “ *Original* ”.

(168) Clause 215, page 86, lines 36 to 42, omit the clause, insert the following clause:—

Sound  
recordings.

“ 215.—(1.) Sub-section (1.) of section 89 of this Act applies in relation to sound recordings made before the commencement of this Act as if the reference in that sub-section to a qualified person included a reference to a British subject and to a person domiciled in any part of the Queen’s dominions to which the Copyright Act, 1911 extended.

“(2.) Sub-section (2.) of section 89 of this Act does not apply in relation to a sound recording made before the commencement of this Act.

“(3.) Section 93 of this Act does not apply in relation to a sound recording made before the commencement of this Act but copyright subsisting in such a recording by virtue of sub-section (1.) or sub-section (3.) of section 89 of this Act continues to subsist until the expiration of fifty years after the expiration of the calendar year in which the recording was made.”.

(169) Clause 218, page 87, lines 15 to 20, omit the clause, insert the following clause:—

Television  
broadcasts  
and sound  
broadcasts.

“ 218. Copyright does not subsist by virtue of section 91 of this Act in—

(a) a television broadcast or a sound broadcast made before the commencement of this Act; or

(b) a television broadcast or a sound broadcast made after the commencement of this Act that is a repetition of a television broadcast or a sound broadcast made before the commencement of this Act.”.

(170) Clause 219, page 87, lines 24 to 26, omit sub-clause (2.).

(171) Page 88, after clause 224, insert the following clause:—

“ 224A. Section 132 of this Act does not apply in relation to an infringement of copyright under the Copyright Act, 1911 or to an article made, or imported into Australia, before the commencement of this Act.”.

Limitation of actions.

(172) Clause 231, page 89, lines 25 to 27, omit “ and, for the purposes of that sub-section, a previous edition shall be disregarded if it was published before the commencement of this Act ”.

(173) Clause 232, page 89, lines 28 to 32, omit sub-clause (1.), insert the following sub-clause:—

“ (1.) It is a breach of the duty imposed on a person by section 186 of this Act if the person does, on or after the date of commencement of this Act, any of the acts mentioned in paragraphs (b) and (c) of sub-section (1.) of that section notwithstanding that the name concerned was inserted or affixed before that date.”.

(174) Clause 240, page 92, lines 19 to 20, omit “ (whether by way of sound broadcasting or of television) ”.