

DRAFT GUIDELINES

**COPYRIGHT AMENDMENT
REGULATIONS 2006**

**INFRINGEMENT NOTICES AND
FORFEITURE OF INFRINGING
COPIES AND DEVICES SCHEME**

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Purpose and scope of the Guidelines

1. These Guidelines are issued by the Australian Government Attorney-General's Department.
2. The purpose of the Guidelines is to assist law enforcement officers in their use of the infringement notices and forfeiture of infringing copies and devices scheme (infringement notice scheme).
3. The Guidelines set out how the infringement notice scheme is intended to operate. They do not cover agencies' operational procedures.
4. The Guidelines should be read in conjunction with the *Copyright Act 1968* and the *Copyright Regulations 1969* as amended. The definitions set out in the Copyright Act and the Copyright Regulations apply to terms used in these Guidelines.

Overview of the infringement notices and forfeiture of infringing copies and devices scheme

5. The infringement notice scheme is provided for in the *Copyright Amendment Regulations 2006*. It underpins the strict liability offences introduced by the *Copyright Amendment Act 2006*.
6. The scheme enables a person who is alleged to have committed an offence of strict liability against Division 5 of Part V (Remedies and Offences), and Subdivision A or B of Division 3 of Part XIA (Performers Protection) of the Act to pay a penalty as an alternative to prosecution.
7. In the case of offences against Division 5 of Part V, a person must also forfeit infringing copies made, or other devices used in making infringing copies, as part of the alleged commission of the offence, to the Commonwealth in order to avoid prosecution.

Overview of strict liability offences under the Copyright Act

8. Section 6.1 of the *Criminal Code Act 1995 (Cth)*, provides that:
 - (1) If a law that creates an offence provides that the offence is an offence of strict liability:
 - (a) there are no fault elements for any of the physical elements of the offence; and
 - (b) the defence of mistake of fact under section 9.2 is available.
9. Therefore, under a strict liability offence the requirement to prove fault is negated, and gives rise to a defence of honest and reasonable mistake as to fact. Both the Criminal Code and the common law start with the same fundamental presumption that fault must be proved for each physical element of an offence for a person to be found guilty, therefore no fault strict liability offences can only be applied by express provision in the relevant legislation.
10. Within the Copyright Act, strict liability offences have been expressly provided for in relation to offences where there could be a spectrum of seriousness in relation to the particular offence. It is anticipated that the strict liability offences will apply to those

offences which are at the lower end of this spectrum. For example, a first time offender who is an operator of a market stall selling a number of infringing DVDs might be issued an infringement notice under the strict liability offences in sections 132AE (Selling or hiring out infringing copy) or 132AF (Offering infringing copy for sale or hire) as an alternative for prosecution for a more serious summary or indictable offence.

11. The effect of the infringement notice scheme is to set up a system which can be used as an alternative to prosecution. This means that where a recipient is issued with a valid infringement notice for violation of a strict liability offence in the Copyright Act, and discharges that notice by making full and proper payment of the penalty, and where required forfeiture of goods, then the liability for the alleged offence is discharged and no prosecution may be brought.

12. However, in the event that an infringement notice is not issued for an offence; is issued and subsequently withdrawn; or, is issued but the penalty is not paid by the recipient in accordance with regulation 23U, then the recipient's liability with respect to prosecution for that, or related offences is not affected. In addition, such action, or inaction, does not limit or otherwise affect the penalty that may be imposed by the court (see regulation 23M).

Meaning of certain words

'authorised officer'

13. The Copyright Regulations define the term 'authorised officer' to mean:

- (a) a member of the Australian Federal Police within the meaning of the *Australian Federal Police Act 1979*, or
- (b) a member of the police force (however described) of a State or Territory

'nominated person'

14. The Copyright Regulations defines the term 'nominated person' to mean 'the person specified in the [infringement] notice as the nominated person'.

15. The term 'nominated person' appears in the infringement notice as being the person to whom the recipient of a notice may apply:

- for withdrawal of the notice
- for more time to pay the penalty under the notice, or
- for payment of the penalty under the notice by instalments.

16. The nominated person will be a Commonwealth official from an Australian Government Department.

'infringing article'

17. The term 'infringing article' is defined in the Copyright Amendment Regulations 2006 (in relation to an offence of strict liability against a provision of Division 5 of Part V of the Act) to mean 'an article that is alleged to be an infringing copy of a work or other subject-matter and that is alleged to have been involved in the commission of the offence'.

18. Example: Where a person is allegedly selling pirated DVDs at a market stall, the infringing article would be the pirated DVD.

'infringing device'

19. The term 'infringing device' is defined in the Copyright Amendment Regulations 2006 (in relation to an offence of strict liability against a provision of Division 5 of Part V of the Act) to mean 'a device that is alleged to have been made to be used for making an infringing copy of a work or other subject-matter and that is alleged to have been involved in the commission of the offence'.

20. Example: This could include a DVD burner in some circumstances.

Service of an infringement notice

What is the process for serving an infringement notice?

21. The process for serving an infringement notice is as follows:

- An authorised officer has reasonable grounds to believe that all the elements of the infringement notice offence are present
- An authorised officer is of the view that an infringement notice should be issued – exercise of discretion – see below
- If the alleged offence is against Division 5 of Part V (Remedies and Offences), the alleged offender must forfeit infringing copies made, or other devices used in making infringing copies, as part of the alleged commission of the offence, to the Commonwealth (note that this does not apply to electronic rights management information offences), and
- An authorised officer completes the infringement notice form and serves notice on the alleged offender.

What are the relevant offences?

22. Infringement notices can be issued for the range of strict liability offences listed below. The elements of these strict liability offences are set out in detail at **Attachment A**.

DIVISION 5 OF PART V Remedies and Offences Subsection	Offence
132AD(5)	Making infringing copy commercially
132AE(5)	Selling or hiring out infringing copy
132AF(7)&(8)	Offering infringing copy for sale or hire
132AG(7)&(8)	Exhibiting infringing copy in public commercially
132AH(5)	Importing infringing copy commercially
132AI(7)	Distributing infringing copy
132AJ(5)	Possessing infringing copy for commerce
132AL(8)	Making (or possessing) device for making infringing copy
132AO(5)	Causing recording or film to be heard or seen in public

SUBDIVISION A of DIVISION 3 of PART XIA Performers' Protection – General Offences Subsection	Offence
248PB(5)	Unauthorised indirect recording during protection period
248PF(5)	Copying unauthorised recording
248PG(5)	Unauthorised copying of exempt recording
248PH(5)	Unauthorised copying of authorised sound recording
248PI(5)	Selling etc. unauthorised recording
248PJ(7)	Distributing unauthorised recording
248PK(5)	Commercial possession or import of unauthorised recording
248PL(5)	Exhibiting unauthorised recording in public by way of trade
248PM(5)	Importing unauthorised recording for exhibition by way of trade

SUBDIVISION B of DIVISION 3 of PART XIA Performers' Protection – relating to performances given before 1 July 1995 Subsection	Offence
248QC(5)	Copying unauthorised sound recording
248QD(5)	Selling etc. unauthorised sound recording
248QE(7)	Distributing unauthorised sound recording
248QF(5)	Commercial possession or import of unauthorised sound recording
248QG(5)	Exhibiting unauthorised sound recording in public by way of trade
248QH(5)	Importing unauthorised sound recording for exhibition by way of trade

Discretion of authorised officer

23. Even if the authorised officer has reasonable grounds to believe that the elements of an offence are all present, the existence of certain indicators may make it appropriate for the authorised officer to exercise his or her discretion not to serve an infringement notice.

24. The following are relevant considerations for deciding how to exercise that discretion. While the guidelines must be considered, they are for guidance only – they do not direct whether an infringement notice should, or should not, be served in any particular circumstance. That is a matter for the authorised officer to determine in each case.

25. Factors that the authorised officer should consider are:

- authorised officer's judgment as to appropriateness of a notice
- significance of the breach
- estimated value of goods, and
- any other relevant factors.

Authorised officer's judgment as to appropriateness of a notice being issued

26. The following factors may be relevant in considering the appropriateness of a notice being issued:

- the nature of the breach
- whether the breach has been in an organised manner
- the volume of infringing items involved in the breach
- the likelihood of a notice being successful as a deterrent
- practical considerations
- previous warnings, and
- whether the recipient is a first time offender.

Indicators for not serving an infringement notice

- the breach is too significant (see below)
- the organised nature of the breach suggests that an infringement notice would be insufficient to address the breach
- the volume of infringing items involved in the breach is too great to be addressed by an infringement notice
- the infringement notice would not make sufficient impact in light of the breach
- in the circumstances, a warning would be more appropriate, and
- the intended recipient has previously received infringement notices for similar breaches.

Indicators for serving an infringement notice

- the volume of infringing items involved in the breach is appropriate to be addressed by an infringement notice
- the infringement notice would make sufficient impact in light of the offence
- an infringement notice would have a deterrent effect, and
- the intended recipient has received prior warnings in relation to similar offences.

Significance of the breach

27. The following factors are relevant in considering the significance of a breach of a regulatory requirement:

- the seriousness of the consequences flowing from the particular breach
- the nature of the goods to which the breach relates
- the volume of goods to which the breach relates, and
- the organised nature of the breach.

Indicators for not serving an infringement notice

- the breach was relatively minor
- in the circumstances, even though there may be reasonable grounds to believe that the offence has been committed, the relatively minor nature of the breach may indicate that another response, for example, a warning, may be more appropriate than serving an infringement notice, and
- the breach, or the circumstances surrounding the breach, is part of more serious conduct. In this circumstance it may be more appropriate to pursue a prosecution in the first instance, instead of serving an infringement notice.

Indicators for serving an infringement notice

- the breach is significant, and
- in the circumstances the behaviour of the person or the consequences of the breach may be serious enough to serve an infringement notice, but not so serious as to pursue prosecution in the first instance.

When can a notice *not* be served?

28. There is no power to serve an infringement notice if, on the information available to the authorised officer, he or she does not believe on reasonable grounds that an offence has been committed.

29. In the case of offences against Division 5 of Part V (Remedies and Offences) a notice cannot be served if a person does not also forfeit infringing copies made, or other devices used in making infringing copies, as part of the alleged commission of the offence, to the Commonwealth. (This does not apply for electronic rights management information offences.)

Multiple offences

30. There may be circumstances where an authorised officer has reasonable grounds to believe that more than one strict liability offence has been committed. In such a situation, the authorised officer has discretion as to how many infringement notices to serve.

31. For example, a market stall owner has 20 pirated Dandy Warhol CDs for sale and an assortment of 20 other individual pirated CDs for sale. Technically, for each song, there would be a separate breach. In this situation, the authorised officer must use his or her discretion not only in whether to issue a notice, but how many notices to issue. The same factors and indicators for determining whether to issue a notice may also be considered in determining the number of notices to issue.

32. Another situation that may arise is where the market stall owner is issued with a notice and the authorised officer returns later that same day only to find the market stall owner still selling pirated goods. This may be a situation where an infringement notice is inappropriate and other options need to be considered.

Forfeiture

In what circumstances may forfeiture occur?

33. Forfeiture may occur when an authorised officer has reasonable grounds to believe that a person has committed an offence of strict liability against a provision of Division 5 of Part V of the Act (except ss 132AQ(5), 132AR(5) and 132AS(5)) and the person possesses, at the time and place that the authorised officer forms that belief, an infringing article or an infringing device in relation to the alleged offence.

34. A person must voluntarily agree to forfeit, and actually forfeit, the infringing article/s and/or device/s before an infringement notice may be issued. Failure to agree to forfeit such items, or to pay the relevant infringement notice penalty, may result in prosecution for the offence.

What is the procedure for forfeiture?

35. Where the above conditions are satisfied, the authorised officer may inform the person that if they agree to forfeit, and do forfeit the infringing article/s and/or device/s then at that time and place, and subsequently pay the penalty in accordance with the infringement notice (provided this notice is not subsequently withdrawn), then the person may avoid prosecution (see Copyright Regulation 23O(2)).

36. The authorised officer may take possession of the items, if they are forfeited voluntarily by the person. At the time of taking possession, the authorised officer must give the person a receipt for the items under regulation 23O(3).

37. Where goods are seized under the Copyright Act, the procedure will be according to the operational procedure of that Commonwealth or State Police Service and may vary accordingly.

What can be forfeited?

38. The table below lists the items that must be forfeited if a person is alleged to have committed a strict liability offence against a provision of Division 5 of Part V of the Act and the person has opted to forfeit the infringing items.

DIVISION 5 OF PART V Remedies and Offences Subsection	Offence	Items to be forfeited
132AD(5)	Making infringing copy commercially	Infringing copy of a work or other subject-matter
132AE(5)	Selling or hiring out infringing copy	Infringing copy of a work or other subject-matter
132AF(7)&(8)	Offering infringing copy for sale or hire	Infringing copy of a work or other subject-matter
132AG(7)&(8)	Exhibiting infringing copy in public commercially	Infringing copy of a work or other subject-matter
132AH(5)	Importing infringing copy commercially	Infringing copy of a work or other subject-matter
132AI(7)	Distributing infringing copy	Infringing copy of a work or other subject-matter
132AJ(5)	Possessing infringing copy for commerce	Infringing copy of a work or other subject-matter
132AL(8)	Making (or possessing) device for making infringing copy	Device
132AO(5)	Causing recording or film to be heard or seen in public	Nil.

When are items forfeited?

39. In respect of offences against provisions of Division 5 of Part V (except ss 132AQ(5), 132AR(5) and 132AS(5)) the alleged offender must forfeit by agreement all infringing articles and devices in relation to the alleged offences in their possession before the authorised officer may issue an infringement notice (see regulation 23P).

What happens if the alleged offender refuses to forfeit certain items?

40. If the person does not agree to forfeit the requisite items, that person may face prosecution for the relevant strict liability offence. This applies to an offence of strict liability against a provision of Division 5 of Part V of the Act (except electronic rights management information offences).

What happens to forfeited items?

41. Where items are forfeited by a person under regulation 23O, then the authorised officer takes possession of the items. These items should be retained by the relevant Commonwealth or State police service and held until the completion of the court proceedings (if any), or until the person makes payment in accordance with the infringement notice.

Destruction – procedure

42. Following the payment of the penalty in accordance with the infringement notice the items must be destroyed in accordance with regulation 23O(4). Advice of payment of the penalty will be given by the Commonwealth nominated person to the relevant Commonwealth or State police force in possession of the item.

43. In the event that:

- the penalty is not paid and criminal proceedings are commenced against the person
- the infringement notice is subsequently withdrawn and criminal proceedings are commenced against the person, or
- the infringement notice is subsequently withdrawn and no criminal proceedings are commenced against the person

the items forfeited under the regulations may be dealt with pursuant to s 9 of the *Crimes Act 1914*. These provisions allow the items to be taken before a court of summary jurisdiction and, if the court is satisfied that the items are forfeited, then an order is made for the articles to be condemned. Where criminal proceedings are pending, the order shall not be made until the prosecution is determined.

44. Where a person has been charged, the items forfeited under the regulations may also be dealt with pursuant to s 133 of the Copyright Act regardless of whether or not the person has been convicted. Where criminal proceedings are pending, goods should not be destroyed until the prosecution is determined.

Contents of infringement notice

What must be included?

45. Regulation 23Q provides that an infringement notice must be in accordance with the form set out in Schedule 11C. **This form is at Attachment B.**

46. Note that s 25C of the *Acts Interpretation Act 1901* provides that, in general, 'substantial compliance' with a form is sufficient and exact compliance is not necessary.

What else can be included?

47. It may be useful to attach to an infringement notice a table, similar to the one below, that sets out the relevant sections of the Copyright Act that are alleged to have been breached. This would enable a law enforcement officer to clearly and quickly identify the alleged offences. For example:

Mark [X] for applicable offence and insert appropriate number of offences if multiple offences are alleged	DIVISION 5 OF PART V Remedies and Offences Subsection	Offence
	132AD(5)	Making infringing copy commercially
	132AE(5)	Selling or hiring out infringing copy
	132AF(7)&(8)	Offering infringing copy for sale or hire
	132AG(7)&(8)	Exhibiting infringing copy in public commercially
	132AH(5)	Importing infringing copy commercially
	132AI(7)	Distributing infringing copy
	132AJ(5)	Possessing infringing copy for commerce
	132AL(8)	Making (or possessing) device for making infringing copy
	132AO(5)	Causing recording or film to be heard or seen in public
	SUBDIVISION A of DIVISION 3 of PART XIA	Offence
	248PB(5)	Unauthorised indirect recording during protection period
	248PF(5)	Copying unauthorised recording
	248PG(5)	Unauthorised copying of exempt recording
	248PH(5)	Unauthorised copying of authorised sound recording
	248PI(5)	Selling etc. unauthorised recording
	248PJ(7)	Distributing unauthorised recording
	248PK(5)	Commercial possession or import of unauthorised recording
	248PL(5)	Exhibiting unauthorised recording in public by way of trade
	248PM(5)	Importing unauthorised recording for exhibition by way of trade
	SUBDIVISION B of DIVISION 3 of PART XIA	Offence
	248QC(5)	Copying unauthorised sound recording
	248QD(5)	Selling etc. unauthorised sound recording
	248QE(7)	Distributing unauthorised sound recording
	248QF(5)	Commercial possession or import of unauthorised sound recording
	248QG(5)	Exhibiting unauthorised sound recording in public by way of trade
	248QH(5)	Importing unauthorised sound recording for exhibition by way of trade

48. It may also be of use to include in an infringement notice:

- dollar amounts for penalty units (provided in sub-s 4AA(1) of the *Crimes Act 1914*)
- the address or location where payment of the penalty may be made (in addition to method)
- reasons for issuing the notice.

Time for serving notice

49. The intention of the scheme is to create an on-the-spot fine system; notices are intended be served at the time and place where the authorised officer forms the belief that a person has committed an offence of strict liability.

50. However, Regulation 23P allows an infringement notice to be served within 12 months after the day on which the offence is alleged to have been committed.

Payment

How to pay fine

51. Payment is to be made in accordance with the terms of the infringement notice to the nominated person through the Commonwealth Attorney-General's Department.

Time for payment of a penalty

52. A person is not obliged to pay the penalty specified in an infringement notice, but may do so to avoid prosecution.

53. The time for payment is 28 days (not including Sundays or public holidays) from the day the notice is served on the person (regulation 23U).

Extending time for payment

54. Regulation 23S provides that a person may apply for up to 28 days extension of time for payment of a penalty. The Regulations set out what the application must include and the required actions of the nominated person.

55. The following factors may be relevant to the nominated person's consideration of whether to extend the time for payment of a penalty specified in an infringement notice:

- the amount of the penalty
- the financial circumstances of the person on whom the infringement notice was served
- whether the authorised officer intends to withdraw the notice
- whether written representations seeking withdrawal of the notice have been made, and
- whether prosecution action has commenced.

56. The nominated person may choose to consider other relevant factors.

Indicators for extending time for payment

- the amount of the penalty is large relative to the capacity of the person to pay within the original 28 days for payment
- not extending the time for payment would cause unreasonable financial hardship
- the time for payment has expired (whether or not the person has already paid the penalty) and the authorised officer now wishes to withdraw the infringement notice
- written representations for withdrawal of the notice have been received for consideration, and
- prosecution action has not commenced.

Indicators for not extending time for payment

- the amount of the penalty is small relative to the capacity of the person to pay within the original 28 days for payment
- payment within 28 days would not cause unreasonable financial hardship
- the authorised officer does not wish to withdraw the infringement notice, and
- prosecution action has commenced.

Payment by instalment

57. Regulation 23T provides that a person may apply for permission to pay a penalty by instalments. The Regulations set out the requirements for the applications and the required actions of the nominated person.

58. The following factors may be relevant to the nominated person's consideration of whether to extend the time for payment of a penalty specified in an infringement notice:

- the amount of the penalty
- the financial circumstances of the person on whom the infringement notice was served
- whether the authorised officer intends to withdraw the notice
- whether written representations seeking withdrawal of the notice have been made, and
- whether prosecution action has commenced.

59. The nominated person may choose to consider other relevant factors.

Indicators for allowing payment by instalment

- the amount of the penalty is large relative to the capacity of the person to pay in one single payment
- not allowing for payment by instalment would cause unreasonable financial hardship
- the time for payment has expired (whether or not the person has already paid the penalty) and the authorised officer now wishes to withdraw the infringement notice

- written representations for withdrawal of the notice have been received for consideration, and
- prosecution action has not commenced.

Indicators for not allowing payment by instalment

- the amount of the penalty is small relative to the capacity of the person to pay in one single payment
- payment within 28 days would not cause unreasonable financial hardship
- the authorised officer does not wish to withdraw the infringement notice, and
- prosecution action has commenced.

Failure to pay

60. A person who has been served with an infringement notice, and who does not pay the penalty stated in the notice for the offence in accordance with regulation 23U, may be liable for prosecution for the commission of the alleged offence.

61. In such a case, the Commonwealth nominated person will advise the authorised officer of the failure to pay within the designated period. The Commonwealth Director of Public Prosecutions will assess any brief of evidence forwarded by the authorised officer or the Australian Federal Police in relation to the commission of an offence in accordance with the Prosecution Policy of the Commonwealth and where appropriate prosecute accordingly.

Withdrawal of an infringement notice

62. A person who has been served with an infringement notice may write to the nominated person seeking withdrawal of the notice (see regulation 23W).

63. The authorised officer may also initiate the withdrawal of an infringement notice (see regulation 23X).

Different Authorised officer to consider the withdrawal

64. A different authorised officer from the one who made the decision to serve the infringement notice should decide the merits of withdrawing the infringement notice.

65. Note: With regards to withdrawal of an infringement notice by an authorised officer, the Regulations do not provide for AAT (Administrative Appeals Tribunal) review of a decision not to withdraw a notice, yet a person ultimately has the right to refuse to pay the penalty in an infringement notice and to defend that matter in court if prosecuted.

Considerations for withdrawing an infringement notice

66. Regulation 23W provides that the matters to which the nominated person or authorised officer may have regard to in deciding whether to withdraw an infringement notice include, but are not limited to, the following:

- whether the recipient has been previously convicted of an offence against the Act
- the circumstances in which the offence specified in the notice is alleged to have been committed
- whether an infringement notice has previously been given to the recipient in relation to an offence of the same kind as the offence specified in the notice, and in relation to which the recipient paid the penalty under the notice, or
- any other relevant matter.

67. In addition to these matters, in deciding whether to withdraw an infringement notice, all the considerations set out under these guidelines will be relevant.

Indicators for withdrawing an infringement notice

- on the basis of information that was unavailable to the original authorised officer at the time the decision to serve the infringement notice was made, or on reconsideration of information that was available, the nominated person or authorised officer:
 - (a) does not believe on reasonable grounds that the offence was committed, or
 - (b) otherwise considers that an infringement notice should not have been served (including because prosecution for the offence is more appropriate.)

Indicators for not withdrawing an infringement notice

- no new information has become available since the time of the decision to serve the infringement notice, or
- on the basis of information that was unavailable to the original authorised officer at the time the decision to serve the infringement notice was made, or on reconsideration of information that was available, the nominated person or authorised officer:
 - (a) believes on reasonable grounds that the offence was committed, and
 - (b) does not otherwise consider that an infringement notice should not have been served.

The withdrawal decision

68. If an infringement notice is to be withdrawn by the nominated person, the nominated person must notify the person on whom the notice was served, in writing. The nominated person must do this within 14 days (excluding Sundays and public holidays) of receiving any written application for withdrawal.

69. The nominated person must provide reasons for any refusal to withdraw an infringement notice at the time of notifying the alleged offender of the decision. Application may be made to the Administrative Appeals Tribunal for review of a decision of the nominated person to refuse to withdraw an infringement notice.

70. If an infringement notice is withdrawn by a nominated person or an authorised officer after the penalty in the notice has been paid, the nominated person, or the authorised officer must arrange for the penalty amount to be repaid by the Commonwealth.

Comments on the draft Guidelines

For comments on the contents of these draft Guidelines please e-mail:
copyrightlawbranch@ag.gov.au

Guide to the elements of the strict liability offences

DIVISION 5 OF PART V

132AD Making infringing copy commercially

When is an offence committed?

A person commits an offence if:

- (a) the person makes an article in preparation for, or in the course of:
 - (i) selling it; or
 - (ii) letting it for hire; or
 - (iii) obtaining a commercial advantage or profit; and
- (b) the article is an infringing copy of a work or other subject-matter; and
- (c) copyright subsists in the work or other subject-matter when the article is made.

Who commits the offence?

The person who makes an article in preparation for, or in the course of, selling it, letting it for hire or obtaining a commercial advantage or profit.

132AE Selling or hiring out infringing copy

When is an offence committed?

A person commits an offence if:

- (a) the person sells an article or lets an article for hire; and
- (b) the article is an infringing copy of a work or other subject-matter; and
- (c) copyright subsists in the work or other subject-matter at the time of the sale or letting.

Who commits the offence?

The person who sells an article or lets an article for hire.

132AF Offering infringing copy for sale or hire

When is an offence committed?

A person commits an offence if:

- (a) the person by way of trade offers or exposes an article for sale or hire; and
- (b) the article is an infringing copy of a work or other subject-matter; and
- (c) copyright subsists in the work or other subject-matter at the time of the offer or exposure.

Who commits the offence?

The person who by way of trade offers or exposes an article for sale or hire.

When is an offence committed?

A person commits an offence if:

- (a) the person offers or exposes an article for sale or hire, in preparation for, or in the course of, obtaining a commercial advantage or profit; and
- (b) the article is an infringing copy of a work or other subject-matter; and
- (c) copyright subsists in the work or other subject-matter at the time of the offer or exposure.

Who commits the offence?

The person who offers or exposes an article for sale or hire, in preparation for, or in the course of, obtaining a commercial advantage or profit

132AG Exhibiting infringing copy in public commercially

When is an offence committed?

A person commits an offence if:

- (a) the person by way of trade exhibits an article in public; and
- (b) the article is an infringing copy of a work or other subject-matter; and
- (c) copyright subsists in the work or other subject-matter at the time of the exhibition.

Who commits the offence?

The person who by way of trade exhibits an article in public

When is an offence committed?

A person commits an offence if:

- (a) the person exhibits an article in public in preparation for, or in the course of, obtaining a commercial advantage or profit; and
- (b) the article is an infringing copy of a work or other subject-matter; and
- (c) copyright subsists in the work or other subject-matter at the time of the exhibition.

Who commits the offence?

The person who exhibits an article in public in preparation for, or in the course of, obtaining a commercial advantage or profit.

132AH Importing infringing copy commercially

When is an offence committed?

A person commits an offence if:

- (a) the person imports an article into Australia in preparation for, or in the course of, doing any of the following with the article:
 - (i) selling it;
 - (ii) letting it for hire;
 - (iii) by way of trade offering or exposing it for sale or hire;
 - (iv) offering or exposing it for sale or hire to obtain a commercial advantage or profit;
 - (v) distributing it for trade;
 - (vi) distributing it to obtain a commercial advantage or profit;
 - (vii) distributing it to an extent that will affect prejudicially the owner of the copyright in the work or other subject-matter of which the article is an infringing copy;
 - (viii) by way of trade exhibiting it in public;
 - (ix) exhibiting it in public to obtain a commercial advantage or profit; and
- (b) the article is an infringing copy of a work or other subject-matter; and
- (c) copyright subsists in the work or other subject-matter at the time of the import.

Who commits the offence?

The person who imports an article into Australia in preparation for, or in the course of doing any of the listed above (i) – (ix).

132AI Distributing infringing copy

When is an offence committed?

A person commits an offence if:

- (a) the person distributes an article in preparation for, or in the course of:
 - (i) trading; or
 - (ii) obtaining a commercial advantage or profit; and
- (b) the article is an infringing copy of a work or other subject-matter; and
- (c) copyright subsists in the work or other subject-matter at the time of the distribution.

Who commits the offence?

The person who distributes an article in preparation for, or in the course of trading or obtaining a commercial advantage or profit.

132AJ Possessing infringing copy for commerce

When is an offence committed?

A person commits an offence if:

- (a) the person possesses an article in preparation for, or in the course of, doing any of the following with the article:
 - (i) selling it;
 - (ii) letting it for hire;
 - (iii) by way of trade offering or exposing it for sale or hire;
 - (iv) offering or exposing it for sale or hire to obtain a commercial advantage or profit;
 - (v) distributing it for trade;
 - (vi) distributing it to obtain a commercial advantage or profit;
 - (vii) distributing it to an extent that will affect prejudicially the owner of the copyright in the work or other subject-matter of which the article is an infringing copy;
 - (viii) by way of trade exhibiting it in public;
 - (ix) exhibiting it in public to obtain a commercial advantage or profit; and
- (b) the article is an infringing copy of a work or other subject-matter; and
- (c) copyright subsists in the work or other subject-matter at the time of the possession.

Who commits the offence?

The person who possesses an article in preparation for, or in the course of, doing any of the listed above (i) – (ix).

132AL Making or possessing device for making infringing copy

When is an offence committed?

A person commits an offence if:

- (a) the person makes a device; and
- (b) the device is to be used for copying a work or other subject-matter; and
- (c) the copy will be an infringing copy; and
- (d) copyright subsists in the work or other subject-matter at the time of the making of the device.

No need to prove which work etc. is to be copied

In a prosecution for an offence against this section, it is not necessary to prove which particular work or other subject-matter is intended to be, or will be, copied using the device.

Who commits the offence?

The person who makes a device.

132AO Causing recording or film to be heard or seen in public

When is an offence committed?

A person commits an offence if:

- (a) the person causes:
 - (i) images from a cinematograph film to be seen; or
 - (ii) sound from a cinematograph film to be heard; and
- (b) the hearing or seeing occurs in public at a place of public entertainment; and
- (c) causing the hearing or seeing infringes copyright in the recording or film.

Who commits the offence?

The person who causes images from a film to be seen or sounds from a film to be heard.

SUBDIVISION A of DIVISION 3 OF PART XIA

248PB Unauthorised indirect recording during protection period

When is an offence committed?

A person commits an offence if:

- (a) the person makes an indirect recording of a performance; and
- (b) the recording is made during the protection period of the performance; and
- (c) the recording is made without the authority of the performer.

Who commits the offence?

The person who makes the indirect recording of the performance.

248PF Copying unauthorised recording

When is an offence committed?

A person commits an offence if:

- (a) the person makes a copy of a recording of a performance; and
- (b) the copy is made during the protection period of the performance; and
- (c) the recording is an unauthorised recording.

Who commits the offence?

The person who makes a copy of a recording of a performance

248PG Unauthorised copying of exempt recording

When is an offence committed?

A person commits an offence if:

- (a) the person makes a copy of a recording of a performance; and
- (b) the copy is made during the protection period of the performance; and
- (c) the copy is made without the authority of the performer; and
- (d) the recording is an exempt recording; and
- (e) the copy is not an exempt recording.

Who commits the offence?

The person who makes a copy of a recording of a performance.

248PH Unauthorised copying of authorised sound recording

When is an offence committed?

A person commits an offence if:

- (a) the person makes a copy of a sound recording of a performance in preparation for use in a sound-track; and
- (b) the copy is made during the 20-year protection period of the performance; and
- (c) the copy is made without the authority of the performer; and
- (d) the sound recording is an authorised sound recording; and
- (e) the making of the sound recording was not authorised for the purpose of use in that or any other sound-track.

Who commits the offence?

The person who makes a copy of a sound recording of a performance.

248PI Selling etc. unauthorised recording

When is an offence committed?

A person commits an offence if:

- (a) the person does any of the following acts:
 - (i) sells a recording of a performance;
 - (ii) lets for hire a recording of a performance;
 - (iii) by way of trade offers or exposes for sale or hire a recording of a performance; and
- (b) the act is done during the protection period of the performance; and
- (c) the recording is an unauthorised recording.

Who commits the offence?

The person who sells, lets for hire, by way of trade offers or exposes for sale or hire a recording of a performance.

248PJ Distributing unauthorised recording

When is an offence committed?

A person commits an offence if:

- (a) the person distributes a recording of a performance in preparation for, or in the course of, trade; and
- (b) the distribution occurs during the protection period of the performance; and
- (c) the recording is an unauthorised recording.

Who commits the offence?

The person who distributes a recording of a performance in preparation for, or in the course of trade.

248PK Commercial possession or import of unauthorised recording

When is an offence committed?

A person commits an offence if:

- (a) the person possesses, or imports into Australia, a recording of a performance in preparation for, or in the course of, doing any of the following:
 - (i) selling the recording;
 - (ii) letting the recording for hire;
 - (iii) by way of trade offering or exposing the recording for sale or hire;
 - (iv) distributing the recording for trade; and
- (b) the possession or import occurs during the protection period of the performance; and
- (c) the recording is an unauthorised recording.

Who commits the offence?

The person who possesses or imports into Australia, a recording of a performance in preparation for, or in the course of doing any of the listed above (i) – (iv).

248PL Exhibiting unauthorised recording in public by way of trade

When is an offence committed?

A person commits an offence if:

- (a) the person by way of trade exhibits in public a recording of a performance; and
- (b) the exhibition occurs during the protection period of the performance; and

(c) the recording is an unauthorised recording.

Who commits the offence?

The person who by way of trade exhibits in public a recording of a performance.

248PM Importing unauthorised recording for exhibition by way of trade

When is an offence committed?

A person commits an offence if:

- (a) the person imports into Australia a recording of a performance, in preparation for exhibiting the recording in public by way of trade; and
- (b) the import occurs during the protection period of the performance; and
- (c) the recording is an unauthorised recording.

Who commits the offence?

The person who imports into Australia a recording of a performance in preparation for exhibiting the recording in public by way of trade.

SUBDIVISION B of DIVISION 3 of PART XIA

248QC Copying unauthorised sound recording

When is an offence committed?

A person commits an offence if:

- (a) the person makes a copy of a sound recording of a performance; and
- (b) the copy is made during the 50-year protection period of the performance; and
- (c) the recording is an unauthorised recording.

Who commits the offence?

The person who makes a sound recording of a performance.

248QD Selling etc. unauthorised sound recording

When is an offence committed?

A person commits an offence if:

- (a) the person does any of the following acts:
 - (i) sells a sound recording of a performance;
 - (ii) lets for hire a sound recording of a performance;
 - (iii) by way of trade offers or exposes for sale or hire a sound recording of a performance; and
- (b) the act is done during the 50-year protection period of the performance; and

- (c) the recording is an unauthorised recording.

Who commits the offence?

The person who sells, lets for hire, by way of trade offers or exposes for sale or hire a sound recording of a performance.

248QE Distributing unauthorised sound recording

When is an offence committed?

A person commits an offence if:

- (a) the person distributes a sound recording of a performance in preparation for, or in the course of, trade; and
- (b) the distribution occurs during the 50-year protection period of the performance; and
- (c) the recording is an unauthorised recording.

Who commits the offence?

The person who distributes a sound recording of a performance in preparation for, or in the course of, trade.

248QF Commercial possession or import of unauthorised sound recording

When is an offence committed?

A person commits an offence if:

- (a) the person possesses, or imports into Australia, a sound recording of a performance in preparation for, or in the course of, doing any of the following:
 - (i) selling the recording;
 - (ii) letting the recording for hire;
 - (iii) by way of trade offering or exposing the recording for sale or hire;
 - (iv) distributing the recording for trade; and
- (b) the possession or import occurs during the 50-year protection period of the performance; and
- (c) the recording is an unauthorised recording.

Who commits the offence?

The person who possesses, or imports into Australia, a sound recording of a performance in preparation for, or in the course of, doing any of the above listed (i) – (iv).

248QG Exhibiting unauthorised sound recording in public by way of trade

When is an offence committed?

A person commits an offence if:

- (a) the person by way of trade exhibits in public a sound recording of a performance; and
- (b) the exhibition occurs during the 50-year protection period of the performance; and
- (c) the recording is an unauthorised recording.

Who commits the offence?

The person who by way of trade exhibits in public a sound recording of a performance.

248QH Importing unauthorised sound recording for exhibition by way of trade

When is an offence committed?

A person commits an offence if:

- (a) the person imports into Australia a sound recording of a performance in preparation for exhibiting the recording in public by way of trade; and
- (b) the import occurs during the 50-year protection period of the performance; and
- (c) the recording is an unauthorised recording.

Who commits the offence?

The person who imports into Australia a sound recording of a performance in preparation for exhibiting the recording in public by way of trade.

Pro Forma of infringement notice**Schedule 11C Form of infringement notice**

(regulation 23Q)

COMMONWEALTH OF AUSTRALIA

Copyright Regulations 1969

INFRINGEMENT NOTICE

Date of issue:

Unique identification code:

TO [*name and address of recipient*]:

1. I, [*name of authorised officer giving the infringement notice*], give this infringement notice under regulation 23P of the *Copyright Regulations 1969*.
2. I have reasonable grounds to believe that you have committed the following offence:

[Details of alleged offence, including the provision of the Act that creates the offence, the nature of the offence, the time and date of the alleged offence, and the place of the alleged offence.]

Penalty under this notice

3. The penalty for the alleged offence under this notice is 12 penalty units for an individual or 60 penalty units for a body corporate. This penalty can be paid by [*methods of payment*].
- *4. If you pay the penalty stated in this notice within the time for payment mentioned below then (unless this notice is subsequently withdrawn and any penalty paid refunded):
- *4. If you have agreed to forfeit, and have forfeited, to the Commonwealth all infringing articles and devices in your possession in relation to the alleged offence at the time and place that this notice is issued, and you pay the penalty stated in this notice within the time for payment mentioned below, then (unless this notice is subsequently withdrawn and any penalty paid refunded):
 - (a) any liability you have for the commission of the alleged offence will be discharged; and

- (b) you will not be prosecuted for the alleged offence; and
- (c) you will not be taken to have admitted guilt in respect of the alleged offence; and
- (d) you will not be taken to have been convicted of the alleged offence.

** Omit if not applicable*

Consequences of failure to pay penalty under this notice

- 5. If you do not pay the penalty specified in this notice within the time for payment mentioned below, you may be prosecuted for the alleged offence.
- 6. The maximum penalty that a court may impose for this offence is 60 penalty units for an individual and 300 penalty units for a body corporate.

Time for payment

- 7. The time for payment is:
 - (a) within 28 days after the date of this notice; or
 - (b) if you apply for a further period of time in which to pay the penalty, and the application is granted — within the further period allowed; or
 - (c) if you apply for a further period of time in which to pay the penalty, and the application is refused — within 7 days after the date you receive the notice of refusal; or
 - (d) if you apply for permission to pay the penalty by instalments, and that permission is granted — in accordance with the permission; or
 - (e) if you apply for permission to pay the penalty by instalments, and that permission is refused — within 7 days after the date you receive the notice of refusal; or
 - (f) if you apply for the notice to be withdrawn, and the application is refused — within 28 days after the date you receive the notice of refusal.

Further penalty for continuing offence

- 8. If the commission of the alleged offence continues beyond [*date of alleged offence*], a further penalty may be imposed even if the penalty imposed by this notice is paid.

Contacting the [relevant police force]

9. The [name of the police force] may be contacted by: [methods of contact].

Applying to have this notice withdrawn

10. Within 28 days after you receive this notice, you may apply to [name and/or position title] (the *nominated person*) to have this notice withdrawn.

Applying for more time to pay the penalty under this notice

11. Within 28 days after you receive this notice, you may apply to the nominated person for a further period of up to 28 days in which to pay the penalty under this notice.

Applying to pay the penalty under this notice by instalments

12. Within 28 days after you receive this notice, you may apply to the nominated person for permission to pay the penalty under this notice by instalments.

Requirements for applications

13. An application to have this notice withdrawn, or for more time to pay the penalty under this notice, or for permission to pay the penalty under this notice by instalments:
- (a) must be in writing; and
 - (b) must include the unique identification code set out at the top of this notice; and
 - (c) must include your reasons for making the application; and
 - (d) for an application for permission to pay the penalty under this notice by instalments — include the proposed amount and frequency of instalments; and
 - (e) may be made by [methods of making application].

Signature of authorised officer issuing the notice: