

NEW AUSTRALIAN COPYRIGHT LAWS

CRIMINAL OFFENCE PROVISIONS

A wider range of copyright enforcement measures have been created, including a tiered offences system, infringement notices, and proceeds of crime remedies.

Tiered offences system

There are now three tiered offences for most offences in the *Copyright Act 1968*. The amendments create indictable, summary and strict liability offences relating to copyright piracy. The tiered offences contain similar physical elements, but have different fault elements to reflect the offences' different levels of seriousness.

For example, the most serious offences are indictable. They have default fault elements of intention and recklessness. They have maximum penalties of 5 years imprisonment and/or between 550 (\$60,500) to 850 (\$93,500) penalty units for natural persons.

The summary offences have a lower threshold, with most containing fault elements of intention (by default) and negligence. They have maximum penalties of 2 years imprisonment and/or 120 (\$13,200) penalty units.

New strict liability offences

Strict liability offences do not require a fault element. They will allow lower levels of commercial piracy to be effectively policed. However, there are a range of defences available to strict liability, both under the Criminal Code and the Copyright Act. The maximum penalty for a strict liability offence is 60 (\$6,600) penalty units for a natural person.

Only select offences are strict liability to ensure that certain legitimate activities of consumers and businesses are not criminalised. The tiered offences that do not have strict liability for this reason are:

- s 132AI – distributing an infringing copy that prejudicially affects the copyright owner (note that it is a strict liability offence to distribute an infringing copy in preparation for, or in the course of, trading, or obtaining a commercial advantage or profit)
- s 132AL – possessing a device for making an infringing copy (note that it is a strict liability offence for a person to make a device to produce an infringing copy)
- s 132AN – causing a work to be performed publicly
- s 132AO – causing a sound recording to be heard in public (note that it is a strict liability offence for a person to cause images or sound from a cinematograph film to be seen or heard in public)
- s 248PA – making an unauthorised direct recording of a performance during the protection period
- s 248PC – unauthorised communication of a performance to the public during the 20-year protection period

- s 248PD – causing an unauthorised recording of a performance to be seen or heard in public during the 20-year protection period
- s 248PE – possessing a plate, or the recording equipment, to make or copy an unauthorised recording of a performance
- s 248PJ – distributing an unauthorised recording that will prejudicially affect the financial interests of the performer
- s 248PK – commercial possession of an unauthorised recording with intention to distribute that will prejudicially affect the financial interests of the performer (note that it is a strict liability offence for a person to possess or import an unauthorised recording in preparation for, or in the course of doing, certain commercial or trading activities)
- s 248QB – possessing a plate, or the recording equipment, for making a copy of an unauthorised sound recording of a performance, and
- s 248QE – distributing an unauthorised sound recording of a performance that will prejudicially affect the financial interests of the performer (note that it is a strict liability offence for a person to distribute an unauthorised sound recording of a performance in preparation for, or in the course of, trade).

New strict liability offences are underpinned by an infringement notice scheme outlined in the *Copyright Regulations 1969*.

Infringement notices

The Regulations allow for infringement notices to be issued to persons alleged to have committed certain strict liability offences. This allows police to deal with suspected minor offenders without the need to summons a person to appear in court. Infringement notices should also be effective in shutting down low level offenders selling infringing goods at street markets.

For offences in Division V of Part V, a person issued with an infringement notice may, as an alternative to prosecution, pay a penalty to the Commonwealth and forfeit any infringing copies and devices used to make infringing copies (s 133B). However, the process is different for offences in Part XIA relating to performances and sound recordings. In those cases, a person issued with an infringement notice may, as an alternative to prosecution, pay only a penalty to the Commonwealth (s 248SA).

Proceeds of crime

The new changes allow the police to track and recover proceeds made from copyright crimes. This will help the police tackle organised crime involvement in copyright piracy. It will also assist in minimising lost revenue to the Government through the detection of other serious crime such as tax evasion and money laundering.

This fact sheet provides general information only and is not a substitute for professional legal advice.



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