

## Shifting the law on copyright infringement

The Federal Government has recently announced that it will be introducing some important reforms to the Copyright Act to legalise the (temporary) recording of a TV or radio program (known as “time-shifting”) and the transfer of music from a CD to a portable MP3 player or a video tape to DVD (known as “format-shifting”).

19 June 2006

### BACKGROUND TO REFORMS

Broadly speaking, there are fair dealing defences to otherwise infringing acts under the *Copyright Act* for the specific purposes of:

- research or study;
- criticism or review;
- reporting news; and
- judicial proceedings or legal advice.

### PRIVATE USE EXCEPTIONS

An exception for time-shifting will be introduced. This exception will permit the recording of a TV or radio program to be viewed or listened to at a later time but only for a single use.

An exception for format-shifting will be introduced. This exception will permit a person who has purchased a legitimate copy of copyright material to make a copy in a different format. It will not, however, allow a person to make a back-up copy of a CD in the same format as the original.

### FLEXIBLE DEALING EXCEPTIONS

Existing exceptions and statutory licences will be strengthened to enable:

- non-commercial uses by libraries, museums, archives;
- non-commercial uses by educational institutions for the purpose of teaching;
- non-commercial uses for the benefit of people with disabilities; and
- parody and satire.

### OTHER AMENDMENTS

Reforms are also proposed in relation to:

- the use of Internet material;
- removal of the legislative cap on copyright licence fees paid by radio broadcasters for playing sound recordings;
- harsher and more swift enforcement measures against copyright piracy including:
  - police power to issue on-the-spot fines and access and recover profits made by copyright pirates;
  - the introduction in civil cases of an evidential presumption of copyright ownership in films that recognises worldwide labelling practices;
  - increasing the Court’s power to award larger damages or other remedies in circumstances where there have been multiple acts of infringement;
  - clarification in relation to infringement by making electronic reproductions or copies of copyright material; and
  - making it an offence for a pay TV subscriber to distribute a subscription broadcast to other premises or for a subscriber to use the broadcast for commercial purposes if the subscription fee has not been paid.



## CUSTOMS SEIZURES

To complement the seizure provisions under the *Copyright Act*, the *Commerce (Trade Descriptions) Act* will be amended to allow Customs to seize an imported article containing a false description without a warrant.

## COMMENT

A draft exposure Bill is expected to be released soon. The scope of the new range of exceptions and practical implementation of the increased enforcement measures remains to be seen in the detail.

A link to the A-G's Media Release is at:

[http://www.ag.gov.au/agd/WWW/MinisterRuddockHome.nsf/Page/Media\\_Releases\\_2006\\_Second\\_Quarter\\_14\\_May\\_2006\\_-\\_Major\\_Copyright\\_Reforms\\_Strike\\_Balace\\_-\\_o882006](http://www.ag.gov.au/agd/WWW/MinisterRuddockHome.nsf/Page/Media_Releases_2006_Second_Quarter_14_May_2006_-_Major_Copyright_Reforms_Strike_Balace_-_o882006)

## AUTHOR

Joy Atacador, Associate

## FURTHER INFORMATION

For further information or advice on the topics covered in this article or other intellectual property law matters please contact:

Joy Atacador, Associate  
+ 61 3 9254 2888 or [jatacador@davies.com.au](mailto:jatacador@davies.com.au)



If you would like to be removed from our mailing list, please send an email to [mail@davies.com.au](mailto:mail@davies.com.au) or telephone Melissa McLennan on + 61 3 9254 2777.

The contents of this information sheet are not intended to be, nor are they, a complete statement of the law on the particular subject matter and are for information purposes only. This update is not a substitute for legal advice.

### Melbourne

1 Nicholson Street,  
Melbourne VIC 3000  
Telephone +61 3 9254 2777  
Facsimile +61 3 9254 2770

### Sydney

255 Elizabeth Street,  
Sydney NSW 2000  
Telephone +61 2 9293 1000  
Facsimile +61 2 9262 1080

### Brisbane

Level 3, 303 Coronation Drive,  
Milton QLD 4064  
Telephone +61 7 3368 2255  
Facsimile +61 7 3368 2262

### Canberra

Level 11, 60 Marcus Clarke St,  
Canberra ACT 2601  
Telephone +61 2 6248 8063  
Facsimile +61 2 6248 6591

### Newcastle

130 University Drive  
Callaghan NSW 2308  
Telephone +61 2 4960 8366  
Facsimile +61 2 9262 1080