Appendix 1

Timeline of key events in the development of Anglo-Australian copyright law

1557  Formation of Stationers’ Company to print books and license printing of books.

1643–94  Licensing legislation empowers Stationers’ Company to control the licensing of books. The guild system of selling books creates the prototype of publishing companies.

17107  The Statute of Anne vests copyright in the author of a book for a maximum period of 28 years from publication.

1750–1774  After a series of conflicting cases, Millar v Kinkaid (1750), Tonson v Walker (1752), Tonson v Collins (1761), Millar v Donaldson (1765), Millar v Taylor (1769), Donaldson v Becket (1774), the House of Lords determines that the Statute of Anne extinguished common law copyright, which publishers argue lasts in perpetuity.

1776  The American Revolution splits the development of copyright in Britain and the United States. The two countries develop their copyright laws independently.

1790  United States Copyright Act creates a copyright term of 14 years.

1831  US copyright term amended to 28 years.

7 A number of writers date the Statute of Anne at 1709. See discussion at the website of Karl-Erik Tallmo, www.copyrighthistory.com/anne.html.
1833 Britain passes *An Act to Amend the Laws Relating to Dramatic Literary Property*. The author is entitled to control ‘representations’ of ‘dramatic pieces’. The musical performing right is explicitly recognised in the *Copyright Act 1842*.

1841 Thomas Noon Talfourd (having introduced a bill in 1837) introduces copyright bill in the House of Commons proposing a posthumous copyright term of 60 years. Thomas Babington Macaulay makes a famous speech attacking the bill: “For consider this; the evil effects of the [copyright] monopoly are proportioned to the length of its duration. A monopoly of 60 years produces twice as much evil as a monopoly of 30 years, and thrice as much evil as a monopoly of 20 years.”

1842 Parliament passes a new Copyright Act vesting copyright in the author of ‘books’ (volumes, pamphlets, sheets, maps etc) the exclusive right to multiply copies. The Act confers on the copyright holder control over the distribution of books in British possessions. It adopts a new copyright term: 42 years from publication or seven years after death, whichever is the longer.

Macaulay is said to have suggested the term of 42 years (Minutes of evidence, Gorrell Committee inquiry) because the Parliament passed the copyright bill in the year 1842.

1844 *International Copyright Act*. Beginnings of principle of copyright reciprocity: by Order in Council foreign copyright works may be protected as if first published in Britain (the *International Copyright Act 1886* provides that orders are only to be made if reciprocal privileges are granted). No importation into dominions of books protected by the Act printed in a country other than that in which they were first published.
1875 Royal Commission on Copyright examines imperial copyright law. Commission appointed after constitutional crisis over Canadian copyright bill that contravened the import restrictions of the imperial Copyright Act 1842. Reports 1878.

1886 The Berne Convention. The beginning of international copyright law controlled by the Berne Union.


1891 US copyright treaty with Britain recognises reciprocal copyright in books.

1905 Senator Sir Josiah Symon speech on the 1905 Australian Copyright Bill. Supports authors' rights and attacks the long posthumous term: “copyright is a monopoly, and like all monopolies, it is evil in essence.” Other senators attack publishers, support authors’ rights and argue for the interests of the public.


1908 At the Berne Union's Berlin Conference, the phonographic industry secures a proviso that allows legislatures to place limitations on the author's control over mechanical reproduction – the beginning of analogous copyrights.

1909 The Gorrell Committee inquires into the law of copyright and implementation of the Berne Convention as amended at the Berlin Conference. John Drummond Robertson of the Gramophone
Company leads the phonographic industry’s advocacy of the compulsory recording licence, copyright in recordings and the mechanical performing right. For the first time, the argument that industrial investment and effort demands the protection of analogous copyrights is heard by government.

The Gorrell Committee reports and supports, almost wholesale, the authors’ rights program set out in the Berne Convention. It rejects most of Drummond Robertson’s arguments and supports only legislation to create a defensive copyright protecting manufacturers against piracy of recordings.

Congress passes the US Copyright Act. Protects copyright works for a renewable term of 28 years from first publication. Requires registration. Creates a compulsory licence for recordings.

1910 The Imperial Copyright Conference. Considers a draft imperial copyright bill intended to create a uniform copyright law for the Empire. Delegates accept the principle of unity and agree the bill, which implements the Berne Convention. Conceptually, imperial copyright is a forerunner of TRIPS.

1911 Imperial Copyright Act passed. The new Act implements the revised Berne Convention, establishing copyright in works for a posthumous period of 50 years. The exclusive rights of the owner include a mechanical reproduction right, the range of offences is substantially increased and fair dealing provisions introduced. The phonographic industry, with Drummond Robertson again at the forefront, persuades the legislature to create a limited copyright in sound recordings and to introduce a compulsory recording licence.
<table>
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<th>Year</th>
<th>Event</th>
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<tr>
<td>1912</td>
<td>Australian <em>Copyright Act</em> passed. The Act repeals the 1905 legislation and adopts the imperial legislation in Australian law. Despite the strong protests of three politicians, the Act reintroduces distribution controls created in the 1842 imperial <em>Copyright Act</em>. These controls, originally designed to enable British publishers to control the supply of books, allow copyright owners to control the importation of copyright works into Australia.</td>
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<td>1912–1913</td>
<td>Samuel Coleridge-Taylor controversy. The United Kingdom’s Society of Authors proposes compulsory royalties to prevent exploitation of authors by publishers. The idea of compulsory payments suggests collection of payments for the performing right.</td>
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<td>1914</td>
<td>Formation in the United Kingdom of the Performing Right Society. The PRS administers the collective performing rights of the owners of musical copyright. As assignee of the right, it collects performance fees from entertainment venues and other places where music is performed publicly and distributes the fees to the owners of copyright works performed. Copyright legislation becomes, for the first time, the instrument of mass revenue collection.</td>
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<td>1920</td>
<td>Nellie Melba concert broadcast by wireless in Britain. The radio broadcasting revolution begins.</td>
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<td>1922</td>
<td>Formation of British Broadcasting Company and beginning of public radio broadcasting in Britain.</td>
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<td>1924</td>
<td>Mixed broadcasting begins in Australia. Public broadcasters – A Class stations – and private commercial broadcasters – B Class stations – share the airwaves.</td>
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1926 Formation of the Australasian Performing Right Society (at the instigation of the PRS). APRA immediately begins demanding performance fees from the users of commercial music, including radio broadcasters.

1927 Royal Commission on Wireless criticises APRA, supports mixed broadcasting.

1928 Berne Union holds Rome Conference to consider proposals to revise Berne Convention. The revised Convention confers on authors the right to control the broadcasting of works. The efforts of the Australian and NZ delegates results in a proviso that permits legislatures to place qualifications on the author's exclusive control over the performing right.

1931 The radio ban. Australian record companies – “the associated manufacturers” – impose a ban on the sale of records to radio stations and the playing of their records by the stations. They argue that patents and copyright legislation permits them to impose a ban and argue for a mechanical performing right (i.e. record companies have performing right in records). In Britain, a similar ban is imposed by record companies on the BBC.

1932–33 Royal Commission on Performing Rights. Proposes the creation of a copyright tribunal to arbitrate performing right licensing disputes. Rejects the mechanical performance right claimed by the record companies. Proposes that APRA be compelled to publicly disclose details of income and distributions. The Government declines to implement the recommendations.

1934 *Gramophone Company Ltd v Stephen Cawardine & Co* (Ch D). Justice Maugham finds that section 19 of the *Copyright Act 1911* creates a mechanical performing right. His reasoning reprises the
arguments of Drummond Robertson in 1909 and 1911 – the recording industry’s investment and skill demands protection.

1934–38 APRA pursues licensees, and in particular, radio broadcasters, for increased performance fees. Increases were agreed with the ABC, APRA’s main source of revenue, in 1934 and 1938 (after arbitration).

1936 Austria passes a law recognising ‘related rights’ of performers, the producers of sound and film recordings, and broadcasters. Related rights are more commonly known as ‘neighbouring rights’.

1937 Wimbledon broadcast on television for first time in Britain, bringing sport to a national audience.

1938 FA Cup Final broadcast on television for first time in Britain.

1939 APRA is attacked in Australian Parliament by past and present Postmasters General (responsible for broadcasting policy) and numerous other politicians.

1948 Berne Union’s Brussels Conference to revise the Berne Convention. Enacting the 50 year posthumous term becomes a mandatory obligation and the author’s right to control the broadcasting of works is extended to television broadcasting. The Union does not endorse neighbouring rights but resolves that members should study how copyright can be uniformly extended to sound recordings, broadcasts and performers.

1950 Establishment in Britain of Association for the Protection of Copyright in Sport. For several years, sporting associations have argued for copyright in sporting spectacles. The drive for
sporting copyright is opposed by the BBC, which wishes to secure copyright in broadcasts.

US Haloid Company (later Xerox Corporation) produces first photocopier.

1951 In response to the argument over broadcasting rights, and the consistent agitation of the APCS, the Government calls an inquiry into copyright chaired first by Lord Reading and then Lord Gregory.

1952 Gregory Report published. Recommends new legislation to replace the 1911 Copyright Act. Proposes broadcaster copyright in broadcasts and recordings of broadcasts. The BBC is to own copyright in television broadcasts – no copyright in spectacles but sporting associations deserve consideration. Recommends also that record manufacturers have full copyright in records including the mechanical performing right. Proposes that the Government implement the revised Berne Convention.

Universal Copyright Convention. Convention is inaugurated by UNESCO as a multilateral alternative to Berne Convention. It imposes less demanding obligations on members: they are to provide “adequate and effective” protection. Introduces the © symbol. The US, not a member of the Berne Convention, joins the UCC.

1956 New British Copyright Act implements Gregory Committee recommendations and creates new category of 'subject matter other than works', which recognises copyright in broadcasts, recordings and mechanical performances. The categories of 'works' and 'subject matter other than works' establish equivalence between authorial copyright and the analogous copyrights of record and film producers, and broadcasters.
1958  Australian Government establishes Spicer Committee to inquire into the copyright law. The Committee's brief is to advise on adoption of changes to British copyright law.

1959  Spicer Report completed. Recommends Australian legislation on UK lines. Proposes establishment of the Copyright Tribunal.

Haloid Company (Xerox Corporation) manufactures the Xerox 914 photocopier.


1963  Brazzaville Conference. African nations demand third world copyright. They inform UNESCO and the Berne Union that a shorter copyright term should apply to material imported by less developed nations and they should be entitled to free use of copyright material for educational and school purposes.

1964  US Copyright Office registers two computer programs.


1967  Berne Union’s Stockholm Conference. Concept of third world copyright is accepted by the Union. Less developed nations can make reservations allowing them for a certain period to reproduce literary and artistic works for educational
purposes, and to make compulsory translations and publications of unavailable foreign works.

1968–69

Third world copyright is rejected. Developed nations, led by Britain and influenced by United States, reject the scope of reservations powers agreed in 1967.

1968

Australian Parliament passes *Copyright Act*. Implements the changes introduced by the British *Copyright Act 1956*. Also retains parallel importation restrictions giving the copyright owners control over the distribution of copyright material.

1969

Phonographic Performance Company of Australia formed to collect mechanical performing right fees.

1971

Paris Revision Conference of Berne Union and UNESCO. Berne Convention and UCC grant less developed nations limited freedoms to translate foreign works under compulsory licence.

WIPO and UNESCO, at instigation of industry, create the Phonograms Convention which requires members to prohibit the unauthorised reproduction and importation of unauthorised reproductions of recordings for distribution to the public.

1973

According to Australian newspaper report, the world produced 30 billion photocopied pages in the previous year.

1974

Australian Government announces inquiry into photocopying practice and the need for legislative changes to protect the interests of copyright owners. Inquiry chaired by Justice Franki.
Australian Copyright Council forms the Copyright Agency Limited (CAL) to collect licence fees for the photocopying of works.

1975

Australian High Court finds, in *University of NSW v Moorhouse*, that the university authorised copyright infringement in its library by failing to adequately warn persons photocopying material of infringement liability, and by failing to adequately supervise photocopying.

US Supreme Court splits evenly on question of fair use in *Williams and Wilkins Co v United States*, a case appealed from the full court of the Court of Claims. The full court ruled that photocopying by two government libraries of articles in medical journals published by the respondent constituted fair use. The effect of the decision is that the courts refer determination of the copyright status of photocopying to Congress.

1976

Franki Report published. 35 recommendations concerning photocopying, library copying and fair dealing. Proposed introduction of a statutory licence for educational copying. Educational institutions to keep records of copying and pay “appropriate royalty”.

US *Copyright Act*. The new legislation replaces the *Copyright Act 1909*. Recognises neighbouring rights, recognises copyright in ‘computer program’ and codifies fair use doctrine.

1979

Australasian Mechanical Copyright Owners Society formed to collect royalties for recordings made of the musical works owned by publishers and composers.

1980

Australia passes legislation implementing recommendations of the Franki Committee. Establishes a statutory licence for educational
copying with educational institutions obliged to maintain records of copying.

1984

Australia amends the Copyright Act 1968 to recognise copyright in computer programs. Computer programs are defined to include both source and object code.


1985

In Copyright Agency Limited v Department of Education of NSW, the Copyright Tribunal determines that NSW educational institutions must pay CAL 2 cents per page copied by educational users.

Britain, Federal Republic of Germany and Japan pass legislation recognising copyright in computer programs.

1988

New British Copyright Act replaces Copyright Act 1956.

Office of US Trade Representative establishes Special 301 WatchList to rate international compliance with US-endorsed intellectual property standards.

1989

US joins Berne Union.

1990

Australian Audiovisual Society (Screenrights) formed to collect fees for the copying of broadcasts by educational sector and government.
1994  World Trade Organization formed. TRIPS Agreement establishes uniform global copyright standards and establishes enforcement and dispute resolution procedures.

1995  Viscopy formed in Australia to collect fees for the publication of visual art.

1998  *Digital Millennium Copyright Act* amends the US Copyright Act to implement the 1996 WIPO treaties. Criminalises the production and dissemination of circumvention devices and the circumvention of controls on access to copyright material.

2000  Australian *Copyright Amendment (Digital Agenda) Act* passed. It amends the Copyright Act 1968 to implement the WIPO treaties. Introduces, among other things, a new right of communication to the public and enforcement measures.


2007  In *Copyright Agency Limited v State of NSW*, the Australian Full Federal Court finds that copyright in maps and plans vests in the surveyors who created them. The Court ruled, however, that the statutory and regulatory framework for registration licensed the State of NSW to copy the maps and plans without remunerating surveyors. The decision could encourage re-examination of the purpose of use when
determining remuneration – one possibility is that government use of copyright material for categorically non-commercial public purposes is declared exempt from fees or protected by restrictions on fees.