Appendix 3

Recommendations of Copyright Law Review Committee appointed to consider what alterations are desirable to the Copyright Law of the Commonwealth 1959

Our principal recommendations are as follows. (References in this summary to ‘the 1956 Act’ are references to the Copyright Act, 1956 of the United Kingdom.)

Conventions

(1) Australia should adhere to the Brussels Revision of the Berne Convention (para 51) and the Universal Copyright Convention (para 52).

Literary, dramatic and musical works

(2) Provisions similar to section 2 of the 1956 Act should be enacted (paras 53–65). However, it should not be a ‘restricted act’ to perform publicly a work by means of the operation of a broadcast receiving set or gramophone record at any premises where persons reside or sleep as part of the amenities provided exclusively for residents or their guests (para 70).

Artistic works

(3) Provisions to the effect of section 3 of the 1956 Act should be enacted (paras 71–78).

Ownership of copyright

(4) Provisions similar to section 4 (1), (2), (4), (5) and (6) of the 1956 Act should be enacted (paras 78–91).

(5) A person who commissions a work for valuable consideration should, in the absence of agreement to the contrary, be the owner of copyright in the work insofar as it relates to the purpose for
which he commissioned it, provided that his purpose was communicated to the author before the work was made. In all other respects copyright should remain in the author (para 85).

**Infringement by importation, sale, etc**

(6) In adapting section 5 of the 1956 Act it should be provided that in subsections (2) and (3) the onus should be on the importer, seller or dealer to prove that he was not aware and had no reasonable grounds for suspecting that the making or importation of the work was an infringement of copyright (para 94).

(7) The words ‘by the importer’ should be added after ‘made’ in a provision corresponding to section 5 (2) (para 95).

(8) It should not be an infringement by ‘importation’ to bring an infringing copy from a Territory to the Commonwealth or vice versa (para 96).

(9) Provisions to the effect of section 5 (5) and (6) of the 1956 Act (dealing with the liability of owners of places of public entertainment) should be enacted subject to deleting the words ‘to such persons as may desire to hire them’ in sub-section 6 (paras. 103–105).

**Fair dealing with literary, dramatic and musical works**

(10) Provisions to the effect of section 6 (1) and (2) of the 1956 Act should be enacted (para 106).

(11) In adapting section 6 (3) of the 1956 Act (dealing with the reporting of current events) it should be made clear that in cases coming within paragraph (b), ‘fair dealing’ does not extend to the playing of musical works that do not form part of the current event being reported (para 108).

(12) In adapting section 6 (5) of the 1956 Act (dealing with recitations) the proviso and the requirement that the recitation should be by one person should be deleted (para 106).

(13) In adapting section 6 (6) of the 1956 Act (dealing with collections for use in schools) the provision should extend to works collected for use in educational institutions (paras 111, 113).
(14) It should not be an infringement of copyright to make an ephemeral reproduction of any literary, dramatic or musical work for the purpose of broadcasting that work where the person who makes the reproduction is authorized by assignment, licence or by virtue of the Act to broadcast the work. A reproduction should be deemed to be ephemeral if it is destroyed after six months (para 128).

(15) The ephemeral reproduction provisions should not extend to the recording of records (para 125).

(16) There should not be any statutory right to retain reproductions made under the ephemeral reproduction provisions for archival purposes (para 126).

Works in libraries

(17) In adapting section 7 of the 1956 Act (dealing with the supplying of copies of works by librarians) –

(a) the provisions should be extended to include libraries of commercial concerns which are conducted for profit provided the library itself is non-profit-making (paras 137, 143);

(b) paragraph (d) of sub-section (2) should be altered to permit the copying of more than one article from one publication if the articles copied relate to the same subject-matter (para 151);

(c) the proviso to sub-section (3) should be omitted but it should be provided that after copying a part of a non-periodical work the library should give notice to the copyright owner within a reasonable time of the amount that had been copied and the person to whom the copy had been supplied (para 151);

(d) sub-section (6) (dealing with the copying of old unpublished manuscripts) should extend to the copying of articles and engravings. The words ‘seventy-five years’ should be substituted for ‘one hundred years’ (para 151);

(e) authority should be given to university librarians to supply, for the purposes of
research or private study, copies of unpublished theses deposited with them (para 151).

Compulsory licence to manufacture records

(18) The system of compulsory licensing in respect of gramophone records should be retained and provisions along the lines of section 8 of the 1956 Act should be enacted subject to the following alterations (para 171):

- the words ‘or consent’ should be added after ‘licence’ in sub-section (1) (a) (para 187);
- the words ‘by retail’ should be omitted from paragraphs (c) and (d) of sub-section (1) (para 191);
- the rate of royalty should be 6 1/4 per cent of the ordinary retail selling price and no deduction should be made from that price in respect of sales tax or cost of record containers (paras 197–200);
- a copyright tribunal should have the task of revising the rate (para 197);
- the minimum royalty provided for in sub-section (4) should be one penny (para 204);
- Where several work are included on one record and they are all in copyright, the royalty should be apportioned among the copyright owners by dividing the royalty by the number of works on the record (para 203);
- where a record includes non-copyright material, the total royalty should be reduced proportionately (para 206);
- the use of adhesive stamps should be abolished and the manufacturer should be required to keep on deposit with the copyright owner an amount equal to its royalty on his dealings for the previous month and, in the case of a new manufacturer, an amount equal to the royalty on his estimated dealings for the first month (para 210);
- where the Regulations require the giving of notice and information to the copyright owner, it should be an offence to give false information (para 211);
(j) in sub-section (6) (which defines ‘adaptation’) ‘instruments’ should be substituted for ‘performers’ (para 213);

(k) the compulsory licence system should extend to the importation of a matrix or a record for the purpose of making records from it for sale (para 185).

**Fair dealing with artistic works**

(19) Provisions to the effect of section 9 of the 1956 Act should be enacted (paras 217–221).

(20) Fair dealing with an artistic work for the purposes of reporting a current event should not constitute an infringement (para 222).

(21) Provision should be made for ephemeral reproductions of artistic works on the same basis as that in relation to literary, dramatic and musical works (para 222).

**Anonymous and pseudonymous works and works of joint authorship**

(22) Provisions to the effect of the Second and Third Schedules to the 1956 Act should be enacted, but they should be placed in the body of the Act (para 223).

**Gramophone records**

(23) The performing right in gramophone records should be retained (para 245).

(24) The performing right should be conferred in respect of all records that are in copyright in Australia without regard to whether provisions for such a right exist in the country of first publication (para 253).

(25) Provisions to the effect of section 12 of the 1956 Act should be enacted subject to altering sub-section (7) by deleting the words ‘or mainly’ in paragraph (a) and adding ‘or their guests’ after ‘therein’ (para 264).
**Cinematograph films**

(26) Provisions to the effect of section 13 of the 1956 Act should be enacted subject to altering sub-section (4) to provide that where a film is commissioned for valuable consideration the person who commissioned the film should, in the absence of agreement to the contrary, be the owner of copyright to the extent of his purpose in commissioning the film provided his purpose is communicated to the maker before the film is made (paras 268–275).

**Sound and television broadcasts**

(27) Copyright should subsist in every television or sound broadcast made by the Australian Broadcasting Commission or a person licensed under the *Broadcasting and Television Act* 1942–1956 (para 290).

(28) Provisions along the lines of section 14 of the 1956 Act should be enacted, subject to the following alterations:

(a) ‘for the private use of the person doing the act’ should be substituted for ‘for private purposes’ in sub-section (4) (a) and (b) (para 294);

(b) the words ‘exceed the prices usually charged at that place and’ should be deleted from sub-section (8) (b) (para 298);

(c) paragraph (i) of the proviso to sub-section (8) should provide that no account shall be taken of performances at premises where persons reside or sleep, as part of the amenities provided exclusively for residents or inmates and their guests (para 299).

**Copyright in typographical arrangements**


**Infringement of copyright in records, etc, by importation, sale or similar dealings**

(30) Provisions to the effect of section 16 of the 1956 Act should be enacted (para 304).
Remedies for infringement

(31) Provisions to the effect of sections 17, and 18 and 19 of the 1956 Act should be enacted subject to the following alterations:

(a) sub-section (2) of section 17 should exempt from liability for damages for infringement persons who at the time of an infringement were not aware and had no reasonable grounds for suspecting that the act was an infringement of copyright (para 308);

(b) the provision in sub-section (4) of section 17, that no injunction shall be made after the construction of a building has been begun, should be deleted (para 311),

(c) paragraph (d) of section 18(3) should define ‘infringing copy’ to include a film or record made directly from a broadcast (para 320).

(32) Provisions to the effect of section 20 of the 1956 Act should be enacted subject to altering sub-section (7) to provide that the benefits of the presumptions are conferred only when the information was on the label at the time the records were first issued (para 328).

(33) Provisions to the effect of section 21(1) to (5) of the 1956 Act should be enacted (para 330).

(34) In adapting sub-sections (7) and (8) of section 21 of the 1956 Act, the maximum penalties for offences under sub-sections (1) and (2) should be five pounds for each article to which the offence relates or, in cases other than a first offence, two months imprisonment. A fine should not exceed two hundred pounds in respect of articles comprised in the same transaction. A person found guilty of an offence under sub-sections (3) to (5) should be liable to a fine not exceeding two hundred pounds or (in a case other than first conviction under the section) to imprisonment for two months (para 331).

**Tribunal**

(36) There should be a tribunal to deal with disputes between bodies authorized to grant licences for the public performance of works and persons desiring licences (para 355).

(37) The tribunal should consist of three persons who are either legal practitioners of some years’ standing or who hold or have held judicial office. One member should have the title of ‘President’ (para 355).

(38) Only one member should, unless the parties otherwise agree, sit on the tribunal to hear any particular matter (para 355).

(39) Provisions similar to sections 24, 25, 26, 27, 29 and 30 of the 1956 Act should be enacted (paras 356–378), but a licensing body should have the power to refer to the tribunal a proposed licensing scheme or an existing licensing scheme (para 365).

(40) The tribunal should be called ‘the Copyright Tribunal’ (para 377).

**Extension or restriction of operation of Act**

(41) The Act should extend to all Territories under the authority of the Commonwealth (para 382).

(42) Provisions similar to section 32 of the 1956 Act should be enacted (para 384).

(43) Provisions similar to sections 33 and 35 of the 1956 Act should be enacted (paras 387, 388).

**Assignments, licences and testamentary dispositions**

(44) In adapting section 36 of the 1956 Act, the provision in subsection (4), enabling a purchaser in good faith and without notice to defeat the claims of a prior licensee, should be deleted (para 392).

(45) Section 5 (2.) of the 1911 Act should be repealed and not re-enacted in a new Copyright Act (para 396).
(46) Provisions to the effect of section 37 (with the exception of subsection (4)) and section 38 of the 1956 Act should be enacted (paras 397, 400).

The Crown

(47) Provisions to the effect of section 39 of the 1956 Act should be enacted and should be applicable to the Crown in the right of the Commonwealth and the States (para 403).

(48) The Commonwealth and the States should be empowered to use copyright material for any purposes of the Crown, subject to payment of just compensation (para 405).

Broadcasts of recordings and films

(49) Provisions similar to section 40 of the 1956 Act should be enacted (para 413).

Use of copyright material for education

(50) Provisions to the effect of sub-sections (1) to (5) of section 41 of the 1956 Act should be enacted (para 416). In adapting that section, it should be made clear that the word ‘school’ extends to all education institutions not conducted for profit (para 419).

(51) The recording by school authorities of school broadcasts of the ABC should not constitute a breach of copyright in the works broadcast if the recording is not used outside the school (para 418).

False attribution of authorship

(52) In adapting section 43 of the 1956 Act, it should be provided that actions under that section cannot be brought after the death of the author (para 425).

Forfeited works

(53) In adapting section 46 (3) of the 1956 Act, it should be provided that the Crown cannot sell forfeited works that are in copyright without the consent of the copyright owner unless the action which gave rise to the forfeiture was committed by the copyright owner (para 427).
Industrial designs

(54) Provisions similar to the effect of sections 10 and 44 of the 1956 Act should be enacted (para 436).

Definitions

(55) In adapting section 48 of the 1956 Act –
   (a) the definition of ‘author’ in relation to ‘photograph’ should be ‘the person who takes the photograph’ (para 428);
   (b) the definition of ‘wireless telegraphy’ should be set out in a Copyright Act fully and not by reference to another Act (para 439);
   (c) in sub-section (3), the latter part of that provision should read ‘and is operated as part of the amenities provided exclusively for residents or inmates therein or their guests’ (para 440).

(56) Provisions to the effect of sub-sections (1) to (4) of section 49 of the 1956 Act should be enacted (para 443).

Copyright Act 1912–1950

(a) Registration and summary offences

(57) Provision for voluntary registration and for summary offences dependent on registration set out in Parts III and IV of the Copyright Act 1912–1950 should be repealed (paras 462, 466).

(b) Deposit of books

(58) It should be made clear that section 40 of the Copyright Act 1912–1950 extends only to books that are published in the Commonwealth and have not been previously published elsewhere (para 468).

(59) The definition of ‘book’ in section 40 should include ‘sheet of music’ (para 469).
(c) *Groundless threats of legal proceedings*

(60) There should be a civil remedy in cases of groundless threats of legal proceedings along the lines of section 121 of the Patents Act (para 471).

**Miscellaneous**

(a) *Performers’ right*

(61) No recommendation is made regarding the grant to performers of a right in the nature of copyright (para 477).

(62) There should not be any right in the nature of copyright in respect of sporting spectacles (para 480).

(b) *The Court*

(63) The Supreme Court of the States and Territories should have exclusive original jurisdiction in copyright actions (para 486).

(c) *‘Droit Moral’*

(64) Provision should not be made to prevent a purchaser of an artistic work from exhibiting that work without the consent of the artist (para 490).

(d) *Filing of List of Works*

(65) Provision should not be made to require a licensing body to file a list of the works in which it owns copyright (paras 492, 493).

(e) *Maps*

(66) Provision should not be made to require map producers to indicate on their maps the source of the material used in their production (para 495).