

132AC Commercial-scale infringement prejudicing copyright owner

Indictable offence

- (1) A person commits an offence if:
 - (a) the person engages in conduct; and
 - (b) the conduct results in one or more infringements of the copyright in a work or other subject-matter; and
 - (c) the infringement or infringements have a substantial prejudicial impact on the owner of the copyright; and
 - (d) the infringement or infringements occur on a commercial scale.
- (2) An offence against subsection (1) is punishable on conviction by a fine of not more than 550 penalty units or imprisonment for not more than 5 years, or both.

Note: A corporation may be fined up to 5 times the amount of the maximum fine (see subsection 4B(3) of the *Crimes Act 1914*).

Summary offence

- (3) A person commits an offence if:
 - (a) the person engages in conduct; and
 - (b) the conduct results in one or more infringements of the copyright in a work or other subject-matter; and
 - (c) the infringement or infringements have a substantial prejudicial impact on the owner of the copyright and the person is negligent as to that fact; and
 - (d) the infringement or infringements occur on a commercial scale and the person is negligent as to that fact.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

- (4) An offence against subsection (3) is a summary offence, despite section 4G of the *Crimes Act 1914*.

Determining whether infringements occur on commercial scale

- (5) In determining whether one or more infringements occur on a commercial scale for the purposes of paragraph (1)(d) or (3)(d), the following matters are to be taken into account:
 - (a) the volume and value of any articles that are infringing copies that constitute the infringement or infringements;
 - (b) any other relevant matter.

Defence relating to law enforcement and national security

- (6) This section does not apply in respect of anything lawfully done for the purposes of law enforcement or national security by or on behalf of:
 - (a) the Commonwealth or a State or Territory; or
 - (b) an authority of the Commonwealth or of a State or Territory.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

Defence for certain public institutions etc.

- (7) This section does not apply in respect of anything lawfully done by the following in performing their

functions:

- (a) a library (other than a library that is conducted for the profit, direct or indirect, of an individual or individuals);
- (b) a body mentioned in:
 - (i) paragraph (a) of the definition of *archives* in subsection 10(1); or
 - (ii) subsection 10(4);
- (c) an educational institution;
- (d) a public non-commercial broadcaster, including:
 - (i) a body that provides a national broadcasting service within the meaning of the *Broadcasting Services Act 1992*; and
 - (ii) a body that holds a community broadcasting licence within the meaning of that Act.

Note 1: A library that is owned by a person conducting a business for profit might not itself be conducted for profit (see section 18).

Note 2: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

- (8) This section does not apply in respect of anything lawfully done by a person in connection with a work or other subject-matter if:
 - (a) the person has custody of the work or other subject-matter under an arrangement referred to in section 64 of the *Archives Act 1983*; and
 - (b) under subsection (7), it would be lawful for the National Archives of Australia to do that thing.

Note: A defendant bears an evidential burden in relation to the matter in subsection (8) (see subsection 13.3(3) of the *Criminal Code*).