

# NEW AUSTRALIAN COPYRIGHT LAWS

## EVIDENTIAL PRESUMPTIONS

Evidential presumptions have been changed to make it easier for copyright owners to prove subsistence and ownership of copyright.

### **Subsistence and ownership of copyright for civil and criminal proceedings**

Copyright owners put notices on their copyright material to indicate ownership. Now those statements will be assumed to be correct.

Under s 132A the presumptions relating to subsistence and ownership of copyright in a prosecution for offences against Division 5 (except s 132AM) also adopt the wording 'presumed . . . unless the contrary is established'.

### **Industry-specific presumptions**

New presumptions recognise industry-specific labelling practices and amend other existing industry-specific presumptions. If copyright owners do not meet the requirements of the relevant industry-specific presumptions, they can rely on the general evidential presumptions in ss 126A, 126B and 132A.

### **Sound recordings**

Where records bear a label or mark containing statements about the maker of the sound recording or the year or country in which the recording was first published, these will be presumed correct unless the contrary is established.

Where a label or mark consists of the letter 'P' in a circle accompanied by a specified year and the name of a person, it will be presumed, unless the contrary is established, that:

- the recording was first published in that year and the person was the owner, and
- the person was the owner of the copyright in the recording when and where the records or containers were labelled or marked.

### **Films**

In civil proceedings, where the name of a person appears on copies of a film made available to the public, that person is presumed, unless the contrary is established, to be the maker of the film. This presumption has been extended to criminal proceedings under new s 132C.

If articles or things, or their containers, embodying a film, have been supplied commercially and, at the time of their supply, they bear a letter 'C' in a circle accompanied by a specified year and the name of a person, the following will be presumed, unless the contrary is established:

- that the film was made in that year, and
- that the person was the owner of copyright in the film when and where the articles, things or containers were labelled or marked.

These presumptions apply to both civil and criminal proceedings.

## Computer programs

If certain conditions are met relating to the public supply of an article or thing embodying all or part of a computer program, s 129A provides for the following presumptions, unless the contrary is established:

- that the computer program is an original literary work
- that the computer program was first published in the year stated on the article or thing, or their containers, embodying all or part of the program, and
- that the person was the owner of copyright in the program when and where the articles, things or containers were labelled or marked.

Presumptions have also been introduced for prosecutions for offences relating to copyright in a literary work that is a computer program (s 132AAA).

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



**Australian Government**  
**Attorney-General's Department**