



# **Copyright Amendment (Computer Programs) Act 1999**

**No. 105, 1999**

**An Act to amend the *Copyright Act 1968*, and for related purposes**



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# Copyright Amendment (Computer Programs) Act 1999

No. 105, 1999

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## An Act to amend the *Copyright Act 1968*, and for related purposes

[Assented to 24 August 1999]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Copyright Amendment (Computer Programs) Act 1999*.

### 2 Commencement

- (1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.

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- (2) If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

### **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendment of the Copyright Act 1968**

### **1 Section 43A**

Repeal the section.

### **2 After Division 4 of Part III**

Insert:

### **Division 4A—Acts not constituting infringements of copyright in computer programs**

#### **47B Reproduction for normal use or study of computer programs**

- (1) Subject to subsection (2), the copyright in a literary work that is a computer program is not infringed by the making of a reproduction of the work if:
  - (a) the reproduction is made in the course of running a copy of the program for the purposes for which the program was designed; and
  - (b) the running of the copy is done by, or on behalf of, the owner or licensee of the copy.
- (2) Subsection (1) does not apply to the making of a reproduction of a computer program:
  - (a) from an infringing copy of the computer program; or
  - (b) contrary to an express direction or licence given by, or on behalf of, the owner of the copyright in the computer program to the owner of the copy from which the reproduction is made when the owner of that copy acquired it.
- (3) Subject to subsection (4), the copyright in a literary work that is a computer program is not infringed by the making of a reproduction of the work if:
  - (a) the reproduction is made in the course of running a copy of the program for the purpose of studying the ideas behind the program and the way in which it functions; and

- (b) the running of the copy is done by, or on behalf of, the owner or licensee of the copy.
- (4) Subsection (3) does not apply to the making of a reproduction of a computer program from an infringing copy of the computer program.

#### **47C Back-up copy of computer programs**

- (1) Subject to subsection (4), the copyright in a literary work that is a computer program is not infringed by the making of a reproduction of the work if:
  - (a) the reproduction is made by, or on behalf of, the owner or licensee of the copy (the *original copy*) from which the reproduction is made; and
  - (b) the reproduction is made for use only by, or on behalf of, the owner or licensee of the original copy; and
  - (c) the reproduction is made for any of the following purposes:
    - (i) to enable the owner or licensee of the original copy to use the reproduction in lieu of the original copy and to store the original copy;
    - (ii) to enable the owner or licensee of the original copy to store the reproduction for use in lieu of the original copy if the original copy is lost, destroyed or rendered unusable;
    - (iii) to enable the owner or licensee of the original copy to use the reproduction in lieu of the original copy, or of another reproduction made under this subsection, if the original copy, or the other reproduction, is lost, destroyed or rendered unusable.
- (2) Subject to subsection (4), the copyright in a literary work that is a computer program is not infringed by the making of a reproduction of the work if:
  - (a) the reproduction is made by, or on behalf of, the owner or licensee of the copy (the *original copy*) from which the reproduction is made; and
  - (b) the making of the reproduction is part of the normal back-up copying of data for security purposes.
- (3) Subsection (1) applies in relation to a reproduction of a work made for a purpose referred to in subparagraph (1)(c)(iii) whether or not

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other reproductions of the work have previously been made for the same purpose from the same copy.

- (4) Subsections (1) and (2) do not apply to the making of a reproduction of a computer program:
- (a) from an infringing copy of the computer program; or
  - (b) if the owner of the copyright in the computer program has so designed the program that copies of it cannot be made without modifying the program; or
  - (c) if a licence to use the original copy, given by, or on behalf of, the owner of the copyright in the computer program to the owner of the original copy when the owner of that copy acquired it, has expired or been terminated.
- (5) For the purposes of this section, a reference to a copy of a computer program is a reference to any article in which the computer program is reproduced in a material form.

#### **47D Reproducing computer programs to make interoperable products**

- (1) Subject to this Division, the copyright in a literary work that is a computer program is not infringed by the making of a reproduction or adaptation of the work if:
- (a) the reproduction or adaptation is made by, or on behalf of, the owner or licensee of the copy of the program (the ***original program***) used for making the reproduction or adaptation; and
  - (b) the reproduction or adaptation is made for the purpose of obtaining information necessary to enable the owner or licensee to make independently another program (the ***new program***), or an article, to connect to and be used together with, or otherwise to interoperate with, the original program or any other program; and
  - (c) the reproduction or adaptation is made only to the extent reasonably necessary to obtain the information referred to in paragraph (b); and
  - (d) to the extent that the new program reproduces or adapts the original program, it does so only to the extent necessary to enable the new program to connect to and be used together

- with, or otherwise to interoperate with, the original program or the other program; and
  - (e) the information referred to in paragraph (b) is not readily available to the owner or licensee from another source when the reproduction or adaptation is made.
- (2) Subsection (1) does not apply to the making of a reproduction or adaptation of a computer program from an infringing copy of the computer program.

#### **47E Reproducing computer programs to correct errors**

- (1) Subject to this Division, the copyright in a literary work that is a computer program is not infringed by the making, on or after 23 February 1999, of a reproduction or adaptation of the work if:
- (a) the reproduction or adaptation is made by, or on behalf of, the owner or licensee of the copy of the program (the *original copy*) used for making the reproduction or adaptation; and
  - (b) the reproduction or adaptation is made for the purpose of correcting an error in the original copy that prevents it from operating (including in conjunction with other programs or with hardware):
    - (i) as intended by its author; or
    - (ii) in accordance with any specifications or other documentation supplied with the original copy; and
  - (c) the reproduction or adaptation is made only to the extent reasonably necessary to correct the error referred to in paragraph (b); and
  - (d) when the reproduction or adaptation is made, another copy of the program that does operate as mentioned in paragraph (b) is not available to the owner or licensee within a reasonable time at an ordinary commercial price.
- (2) Subsection (1) does not apply to the making of a reproduction or adaptation of a computer program from an infringing copy of the computer program.

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**47F Reproducing computer programs for security testing**

- (1) Subject to this Division, the copyright in a literary work that is a computer program is not infringed by the making of a reproduction or adaptation of the work if:
- (a) the reproduction or adaptation is made by, or on behalf of, the owner or licensee of the copy of the program (the *original copy*) used for making the reproduction or adaptation; and
  - (b) the reproduction or adaptation is made for the purpose of:
    - (i) testing in good faith the security of the original copy, or of a computer system or network of which the original copy is a part; or
    - (ii) investigating, or correcting, in good faith a security flaw in, or the vulnerability to unauthorised access of, the original copy, or of a computer system or network of which the original copy is a part; and
  - (c) the reproduction or adaptation is made only to the extent reasonably necessary to achieve a purpose referred to in paragraph (b); and
  - (d) the information resulting from the making of the reproduction or adaptation is not readily available to the owner or licensee from another source when the reproduction or adaptation is made.
- (2) Subsection (1) does not apply to the making of a reproduction or adaptation of a computer program from an infringing copy of the computer program.

**47G Unauthorised use of copies or information**

- (1) If:
- (a) a reproduction or adaptation of a literary work that is a computer program is made under a prescribed provision; and
  - (b) the reproduction or adaptation, or any information derived from it, is, without the consent of the owner of the copyright in the computer program, used, or sold or otherwise supplied to a person, for a purpose other than a purpose specified in the prescribed provision;
- the prescribed provision does not apply, and is taken never to have applied, to the making of the reproduction or adaptation.

- (2) For the purposes of this section, sections 47B, 47C, 47D, 47E and 47F are prescribed provisions.

**47H Agreements excluding operation of certain provisions**

An agreement, or a provision of an agreement, that excludes or limits, or has the effect of excluding or limiting, the operation of subsection 47B(3), or section 47C, 47D, 47E or 47F, has no effect.

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*[Minister's second reading speech made in—  
Senate on 21 April 1999  
House of Representatives on 11 August 1999]*

(79/99)

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