

AUSTRALIAN CUSTOMS NOTICE NO. 2003/28

Copyright Amendment (Parallel Importation) Act 2002

This Australian Customs Notice provides advice on the amendments to the *Copyright Act 1968* (the Copyright Act) as they relate to the Notice of Objection regime administered by the Australian Customs Service.

The *Copyright Amendment (Parallel Importation) Act 2002* (the Parallel Importation Act) made a number of amendments to the Copyright Act that are concerned with parallel importation of computer programs, and electronic literary and music items. These amendments to the Copyright Act took effect on 15 April 2003.

“Parallel importation” is the importation of genuine products (non-pirated) outside of the copyright owner’s endorsed importation and distribution channels.

# The Amendments

Customs administers a Notice of Objection regime under Division 7, Part V of the Copyright Act. Amendments to the Copyright Act introduced in the Parallel Importation Act which affect the operation of this regime include:

defining electronic literary or music item (s.10(1))

defining a non-infringing copy of a computer program (s.10AB) defining a non-infringing copy of an electronic literary or music item (s.10AC)

defining when a computer program or electronic literary or music item is considered to be an accessory (s.10AD)

defining a feature film (s.10AD)

providing circumstances when the copyright in a computer program or electronic literary or music item is not infringed (s.44E, s.44F) providing circumstances where a published edition of a work is not infringed (s.112DA)

excluding from border measures, copies of copyright material that do not constitute an infringement because of the operation of sections 44E, 44F or 112DA (s.135(10))

addressing the treatment of goods covered by parallel importation provisions, where those goods bear a registered trademark (s.198A).

These changes will allow the importation of genuine (non-pirated) computer programs (including games software), and electronic literary and music items without the permission of the copyright owner.

# Feature Film Exception

It is important to note that the amendments made will not affect media containing ‘feature films’ (eg. some multimedia CDs and DVDs).

‘Feature films’ are defined as films over 20 minutes duration: produced for cinema release or television broadcast; or

for sale or rental to the public where it is reasonable to assume that the viewing of the film would be the main objective of any such sale or rental.

Where an item that contains film does not meet the definition of a feature film, it would be subject to the amended parallel importation provisions, that is, parallel importation of that item would be permitted.

# Effect on Trademarks

The amendments also prevent the use of trademark legislation to circumvent parallel importation provisions of the Copyright Act. Where the Copyright Act allows parallel importation of genuine goods, any trademark used on those genuine goods is not infringed providing the trademark:

was applied to the goods before the importation; and has been applied with the consent of:

* the Australian trademark owner, or
* the owner of the trademark in the place where the trademark was applied.

# Further Information

Copyright owners who are unsure on how the amendments will affect their Notice of Objection are advised to seek legal assistance.

Copies of the Parallel Importation Act and the Copyright Act can be downloaded from [http://scaleplus.gov.au](http://scaleplus.gov.au/). Please note that at the time of printing this notice, the amendments set out in the Parallel Importation Act have not yet been incorporated into the Copyright Act. Until the amendments are incorporated, it will be necessary to read both Acts together.

Other information about the general provisions of copyright can be obtained by contacting:

The Copyright Law Branch in the Attorney-General’s Department on

(02) 6250 6613 or at [www.ag.gov.au/copyright](http://www.ag.gov.au/copyright)

The Australian Copyright Council on (02) 9318 1788 or at [www.copyright.org.au](http://www.copyright.org.au/)

Philomena Carnell National Manager Cargo Branch

for

Chief Executive Officer May 2003