

INTELLECTUAL PROPERTY LAW SUMMARY



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TABLE OF CONTENTS

INTELLECTUAL PROPERTY LAW	1
SUMMARY	1
2011	Error! Bookmark not defined.
LAWSKOOL PTY LTD	1
CONTENTS	2
Cases	7
Copyright	7
Designs.....	8
Patents	8
Trade marks	8
Index	9
1. Copyright	10
1.1. Overview and Policy of Copyright Law	10
1.1.1 History of Copyright Law	12
1.1.2 Justification	12
1.2 Copyright Protects the Expression of an Idea, Not the Idea Itself.....	13
1.3 Requirement for Copyright to Subsist in a Work	15
1. Remember copyright protection is give to the form of expression of an idea or information, not the idea or information itself.....	15
2. The work or subject matter other than work must be in material form (s 10 CA), except in the case of broadcasts	15
3. No formal requirements or registration system: s 10 CA.....	15
4. Connecting factors must be satisfied	15
1.4 Copyright Subject Matter.....	16
Original Works (s 32 CA)	16
1) Original Literary Works.....	17
2) Original Dramatic Works.....	20
• Once it has been ascertained that the dramatic work is a work and is in material form, that work is sufficiently original to sustain copyright.....	22

3) Original Musical Works.....	22
4) Original Artistic Works.....	23
SMOTW (Part V 22 89 – 92 CA).....	26
1) Sound Recordings: s 89 CA	26
2) Cinematograph Films: s 90 CA.....	26
(i) Computer Games	27
3) Sound and Television Broadcasts: s 91 CA	27
Held:.....	28
4) Published Editions of Works (s 92)	29
1.5 Owing Copyright	29
Owing copyright in works	29
Owing copyright in SMOTW	31
1.6 Copyright Duration	32
1.7 Assignment, Licence and Bequest	34
1.8 Exclusive rights attached to works	35
1.9 Exclusive rights attached to SMOTW	36
1.10 Copyright infringement.....	37
1.11 The Substantiality Requirement.....	38
1.12 Direct infringement.....	39
1) Infringing the right to reproduce.....	39
2) Infringing the right to publish.....	43
3) Infringing the right to perform in public.....	43
4) Infringing the right to communicate to the public	44
5) Infringing the right to make an adaptation.....	45
6) Infringing the right to enter into a commercial rental agreement	47
7) Infringing the right to make a copy.....	47
8) Infringing the right to be heard or seen in public.....	48
9) Infringing the right to make a recording or film of a broadcast.....	48
10) Infringing the right to re-broadcast	48
11) Infringing the right to make a facsimile or photocopy	49
12) Infringing an exclusive right by authorisation	49

1.13 Indirect infringement	51
1) Parallel importation (s 37 – works, s 102 – subject matter).....	53
1) Public performance (s 39 – works).....	54
1.14 Moral rights.....	55
Types of moral rights	55
Application and duration of moral rights.....	59
Avoiding Infringement – consent and defences for infringing moral rights	59
Remedies for infringement of moral rights.....	60
1.15 Defences to copyright infringement.....	61
1. Fair Dealing	61
2. Implied licences	67
2. Legal Exception	68
3. Computer Programs Exception (ss 47AB – 47H).....	68
4. Private and Domestic Use Exception.....	69
5. Sculptures or Artistic Craftsmanship and Buildings Exception	70
6. Compulsory or Statutory License Exception.....	70
1.16 Actions for Infringement of Copyright.....	70
2. Designs	75
2.1 Design concepts	75
2.2 Registrability criteria	77
Newness and Distinctiveness.....	77
2.3 Process of Registering a Design	79
Who can get a design registered?.....	79
Application date = priority date	80
Period of protection of registered design	80
Property rights of registered design owner	80
2.4 Limitations on registrability.....	81
2.5 Actions for Infringement.....	82
2.6 Defences.....	83
2.7 Remedies.....	84
2.8 Overlap between copyright, patents and designs.....	84

3. Patents	87
3.1 What a patent is and does.....	87
3.2 Elements of Patentability	88
1) Manner of new manufacture (s 18).....	88
Patentable subject matter	91
2) Novelty of anticipated (ss 7, 18(1)(b)).....	93
3) Inventive Step – cf obviousness (ss 7(2),(3)).....	98
4) Innovative Step (ss 7(4),(5))	100
5) Useful (s 18(1)(c)).....	100
6) Must not have been secretly used (s 18(1)(d)	101
7) Sufficiency (s 40(2))	102
8) Clear and succinct and fairly based (s 40(3)).....	103
9) Misrepresentation/fraud (s 138(3)(d)).....	104
3.3 The application process.....	105
The application, specification and priority date.....	105
3.4 Examination by Commissioner.....	106
3.5 Opposition after examination, but prior to patent being granted	106
3.6 Actions for Infringement and Opposition after patent granted.....	107
3.7 Patentee’s exclusive rights.....	108
3.8 Compulsory licenses	108
3.9 Construing the scope of the patent.....	109
3.10 Exploitation.....	109
4) Importation for Sale	110
3.11 Contributory Infringement.....	111
3.12 Remedies (s 122).....	112
3.13 Groundless Threats of Legal Action	113
3.14 Revocation	114
4. Trade Marks	115
4.1 Registered and Unregistered Marks.....	115
4.2 How the Trade Mark System Works	116
1) Application, s 27	116

2) Examination – s 31.....	116
3) Opposition to application – Part V.....	117
4) Registration.....	117
5) Possible revocation.....	118
4.3 Groundless threats – 129.....	118
4.4 Types of Marks.....	119
4.5 Is the Mark a Trade Mark?.....	119
2) TM must be ‘used or intended to be used’: s 17(1).....	120
3) Goods or services (for which the TM is registered) must be provided in the course of trade: s 17(1).....	121
4.6 Is the Mark Registrable as a Trade Mark?.....	122
a) The mark must be capable of distinguishing: s 41.....	122
4.7 Other grounds for rejecting an application.....	130
The applicant is not the owner of the TM: s 58.....	134
Confusion with a well-known mark: s 60.....	138
4.9 Trade Mark Owner Rights (ss 20, 22).....	138
4.10 Trade Mark Infringement (s 120).....	139
4.11 Defences to Trade Mark Infringement.....	142
4.12 Limitations on the exclusive rights of the trade mark owner.....	147
4.13 Grounds for Amendment or Expungement of Trade Mark from Register.....	149
1) Part VIII (ss 85 – 89).....	149
2) Non-use: s 92.....	151
Bibliography.....	152
1. Articles/Books/Reports.....	152
2. Cases Law.....	152
3. Legislation.....	153

Cases

Copyright

<i>Pacific Film Laboratories v Federal Commissioner of Taxation</i> (1970)	1.1
<i>Desktop Marketing v Telstra Corporation</i> (2002)	1.4
<i>Nine Network Australia v ABC</i> (1999)	1.4
<i>CBS Records Australia Ltd v Gross</i> (1989)	1.4
<i>Network Ten v TCN Channel Nine</i> (2004)	1.4
<i>Zeccola v Universal Studios</i> (1982)	1.12
<i>Interstate Parcel Express v Time-Life International</i> (1977)	1.13
<i>De Garis v Neville Jeffress Pidler</i> (1990)	1.15
<i>Donoghue v Allied Newspapers</i> [1938] Ch 106	1.2
<i>Autodesk P/L v Cheung</i> (1990)	1.16
<i>Mono Pumps (New Zealand) Ltd v Katrinya Industries Ltd</i> (1984) 4 IPR 505	1.2
<i>University of London Press Ltd v University Tutorial Press Ltd</i> [1916] 2 Ch 601	1.4
<i>Dick v Yates</i> [1881] Ch 6	1.4
<i>Sunlec International Pty Ltd v Electropar Ltd</i>	1.4
<i>IceTV Pty Ltd v Nine Network Australia Pty Ltd</i> [2009] HCA 14	1.4
<i>Interlego AG v Croner Trading Pty Ltd</i> (1993) 25 IPR 65	1.4
<i>Nine Films & Television Pty Ltd v Ninox Television Ltd</i> [2005] FCA 1404	1.5
<i>Greenfield Products v Rover Scott Bonnar</i> (1900) 17 IPR 417	1.4
<i>Cala Homes (South) Ltd v Alfred McAlpine Homes East Ltd</i> [1995] FSR 818	1.5
<i>Wilson v Weiss Art Pty Ltd</i> (1995) 31 IPR 413	1.7
<i>Concrete Pty Ltd v Parramatta Design & Developments Pty Ltd</i> [2006] HCA 55	1.7
<i>Network Ten Pty Ltd v TCN Channel Nine Pty Ltd</i> [2004] HCA	1.11
<i>Larrikin Music Publishing Pty Ltd v Emi songs Australia Pty Ltd</i> [2010] FCA 29	1.12
<i>Francis Day and Hunter v Bron</i> [1963] Ch 587	1.12
<i>Avel Pty Ltd v Multicoins Amusements Pty Ltd</i> [1990] HCA 58	1.12
<i>APRA v Tolbush</i> (1985) 62 ALR 521	1.12
<i>Telstra Corporation Ltd v APRA</i> [1997] HCA 41	1.12

<i>APRA v Jain</i> (1990) 26 FCR 53	1.12
<i>APRA v Metro on George Pty Ltd</i> [2004] FCA 1123	1.12
<i>Cooper v Universal Music Australia Pty Ltd</i> [2006] FCAFC 187	1.12
TCN Channel Nine Pty Ltd v Network Ten Pty Ltd (2002) 55 IPR 112	1.15

Designs

<i>Malleys Ltd v J W Tomlin P/L</i> (1961)	2.1
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Patents

<i>National Research Development Corporation v Commissioner of Patents</i> (1959)	3.2
<i>Nicarо Holdings v Martin Engineering</i> (1990)	3.2
<i>Aktiebolaget v Alphapharm</i> (2002)	3.2
<i>Samuel Taylor v S A Brush</i> (1950)	3.2
<i>NV Philips Gloeilampenfabrieken v Mirabella International</i> (1995) 32 IPR 449	3.2
<i>Woo-Suk Hwang</i> [2004] APO 24	3.2
<i>Neilson v Minister of Public Works (NSW)</i> (1914) 18 CLR 423	3.2
<i>Meyer Taylor Pty Ltd v Vicarr Industries Ltd</i> [1977] HCA 19	3.2
<i>H Kundebeck A/S v Alphapharm Pty Ltd</i> [2009] FCAFC 70	3.2
<i>ICI Chemicals & Polymers Ltd v Lubrizol Corp Inc</i> [1999] FCA 345	3.2
<i>Martin Engineering v Trison Holdings</i> (1989) 14 IPR 330	3.2

Trade marks

<i>Transport Tyres v Montana</i> (1999)	4.3
<i>Imperial Group Ltd v Philip Morris & Co Ltd</i> [1980]	4.5
<i>Mark Foy's Ltd v Davis Coop</i> (1956)	4.6
<i>Kenman Kandy Case</i> (2001)	4.6
<i>Moorgate Tobacco v Philip Morris</i> (No 2) (1984)	4.8
<i>Aston v Harlee</i> (1960)	4.8

<i>Shell Company v Esso</i> (1963)	4.10
<i>Coca-Cola v All-Fect Distributors Ltd</i> (1999)	4.10
<i>Angoves Pty Ltd v Johnson</i> (1982)	4.11
<i>Wingate Marketing v Levi Strauss & Co</i> (1994)	4.11

Index

- **SMOT** – subject matter other than works
- **CR** – copyright
- **CA** – *Copyright Act 1968 (Cth)*
- **TM** – trade mark
- **Anticipation:** lack of novelty. Where an invention has been anticipated (i.e. in some way foreshadowed or revealed) it will no longer be considered to be novel and hence patentable. In deciding whether there has been an anticipating you follow through the various tests for novelty laid down in the Act.
- **Obviousness:** reference to the inventiveness requirement. Obviousness is the converse of inventiveness. Where person has only done what was obvious, that person has not been inventive, or has not taken an ‘inventive step’ and hence the ‘invention’ will not be patentable. Again when deciding whether there is obviousness present you follows through the various tests for inventive step laid down in the Act.
- **Integers:** are features of the invention, eg the fact that a spring is coiled clockwise rather than anticlockwise. Sometimes these integers are considered **essential** for the invention; but if they are of minor importance they will be dubbed **inessential integers**.
- **Workshop variations/adjustments or improvements or just variants:** which normally arise with questions of inventiveness. The words are used to indicate changes to the ‘invention’ which have not involved an inventive step. **Workshop improvements** are said to come about through ordinary methods of trial and error. They are similar to the substitution of a mechanical equivalent

which again does not require any inventiveness to carry out. (Usually discussed when it is novelty which is being discussed and indicates which changes will not be taken into account when it is being decided)

- **Subject matter:** for the grant of a patent. This means that there is no patentable invention on the basis that nothing has been invented.
- **Combination patents:** comprised of integers, some or all of which are known but which a in combination produce a new and better result through the interaction of the integers.
- **Mere collection of known integers:** if the integers do not interact in this way but simply continue to perform their known functions, usually being denied registration.

1. Copyright

1.1. Overview and Policy of Copyright Law

- Copyright is the right to reproduce or copy (and to pursue related rights concerning) an original expression of an idea. The central object of copyright law was to encourage creation and publication – thereby sharing knowledge and ideas – with the incentive of retaining control over the right to copy and, therefore, a royalty stream in exchange for permission to copy.
- The power for the federal government to legislate intellectual property issues is provided in s 51 of the Australian Constitution. Specifically:
 - Section 51(xviii) is a head of power which allows the federal government to legislate in regards to ‘copyrights, patents of inventions and designs, and trade marks’
 - Section 51 (v) postal, telegraphic, telephonic, and other like services;
 - Section 51 (xxix) external affairs. This allows the government to enact domestic laws to give effect to international treaties (e.g. the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)).

- Australian copyright law is governed almost completely by the *Copyright Act 1968* (Cth) ('CA'). There is no common law copyright in Australia.
- Copyright is a form of personal property: s 96 CA. Copyright is transmissible by assignment, by will (can be bequeathed by testator/testatrix) and by devolution by operation of law (situation of bankruptcy/liquidation).
- Do not confuse copyright with a chattel. Copyright is incorporeal. It is immaterial and not a *thing*.

Pacific Film Laboratories v Federal Commissioner of Taxation (1970) (High Court)

Facts:

- The Commissioner applied sales tax to the photographic prints developed by Pacific Film and paid for by its customers.
- Pacific Film objected to the assessment on the basis that the customer owned the copyright in the film negatives, that Pacific Film was authorised by the customer to reproduce prints from these negatives, that Pacific Film had no property right in these prints and therefore was not selling anything to the customer which might be taxed.

Held:

- The High Court held that Pacific Film was confused between the chattel right in the print (owned by Pacific Film) and the copyright in the negative (owned by the customer). The customer had authorised Pacific Film to reproduce negatives but the chattel produced in the process of this reproduction was owned by Pacific Film.
- Property in a chattel may be held by one person, and copyright held by another.
- Pacific Film had the general property in the print or duplicate which it manufactured out of its own materials and none the less so because the copyright in the negative or transparency was in some other person. Sales tax applied to the prints as chattels. The print was made with the authority of the owner, there was no infringement.

1.1.1 History of Copyright Law

Copyright law began with the prevalence of the printing press in England. The Crown saw this as a threat to their power, as books and pamphlets can be easily used to distribute criticisms of the Royal Family. To mitigate this threat the Crown entered into agreement with the Stationers' Company (a printing press guild). The Stationers' Company was given a monopoly on printing. They would collect writings from authors and pay them a fee for the use of their writings in printing (including the importation of books from overseas). So the Stationers' Company effectively acted as a censor for the Crown.

This lasted until the end of the 17th century, when lobbies for authorship rights began. This gave rise to the Statute of Anne, which gave rights to authors for the first time. However, they only received these rights upon registration with the Stationers' Company. The preamble of the Statute of Anne encouraged 'learned men to write useful books'.

In the 18th century after the question was raised as to whether common law offered any copyright protection. This was supported in *Mill v Taylor*. However, 5 years the Court in *Donaldson v Beckett* held that copyright is exclusively a creature of statute. This is enshrined in s 8 of the CA in Australian copyright laws.

In the 18th and 19th century there was a whole host of new acts, each of which deals with a specific types of work (one for engravings, one for photography etc.)

Only in the late 19th century and early 20th century did copyright take its modern form. In England, the various individual copyright acts were consolidated into the *Copyright Act of 1911*. This was similarly adopted by Australia.

Only in the last 20 years has there been a split in the copyright laws of UK and Australia. One reason why there has been a divergence in the two laws is that fact that UK is now part of EU and its copyright laws have become very Europeanised.



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