

**Family Risk Matrix – Implications for Australians Arising from the Copyright Amendment Bill 2006**

<b>Conduct</b>	<b>Potential Liability</b>	<b>Maximum Penalty</b>
<p>Rob and Michelle regularly tape programs off the TV to watch later. Sometimes they lend these tapes to their next door neighbour when she misses the original broadcast.</p>	<p>The new law will permit making a copy of a broadcast, provided it is used in the household and by family members. This means that lending it to non-family members will be a breach of copyright, making the tape an infringing copy. (It would not have been if they'd kept it in the home.)</p> <p>Possession of a device (the video recorder) which is to be used for making an infringing copy is a criminal offence under the proposed new laws (Section 132AL)</p>	<p>Rob and Michelle will be liable for damages if sued by the copyright owner for making the infringing copy. The amount will be determined by the court. They may also have substantial legal costs.</p> <p>Section 132AL specifies a maximum penalty of \$6600 if prosecuted as a 'strict liability' offence, where knowledge or criminal intent are not required to be proved. If it can be shown that they intended to make the infringing copies, summary and indictable offences attracting fines of up to \$60,500 or 5 years in jail may apply.</p>
<p>Margaret is a 63 year old grandmother. Her family recently connected her to the internet so she could stay in touch with relatives overseas. Her 14 year old grandson Ben sometimes comes to stay.</p>	<p>Downloading music without permission exposes Ben to liability for damages for making an infringing copy.</p> <p>Allowing others to access files on</p>	<p>Ben will be liable for damages if sued by the copyright owner for making any infringing copies (downloads).</p> <p>Each copy distributed is a separate</p>

<p>Unbeknown to Margaret, Ben sometimes downloads music from the Net and copies it on his MP3 player. His file sharing program is also set to upload.</p>	<p>your system may constitute unauthorised distribution which is a criminal offence under the proposed new laws (Section 132AI). Margaret may be criminally liable for possessing a device (the computer) for making an infringing copy and a separate criminal offence of distributing an infringing copy in a way that is prejudicial to the copyright owner (through the upload facility on the program).</p> <p>The fact that Margaret has no idea what Ben is doing, or that this is illegal is not a defence. Strict liability applies to these offences, where knowledge or criminal intent are not required to be proven.</p>	<p>offence. Section 132AI specifies a maximum penalty of \$6600 per offence if prosecuted as a strict liability offence.</p> <p>Section 132AL specifies a maximum penalty of \$6600 if prosecuted as a strict liability offence.</p>
<p>The Cooper family decide to celebrate young Josh's birthday with a picnic at the local zoo. Gathered around the cake, they sing Happy Birthday much to the delight of passing onlookers.</p>	<p>'Happy Birthday' is a copyright work which remains protected until 2030. Depending on whether the zoo holds a performance licence, the family may be infringing through an unauthorised performance of this work in a place of public entertainment. This is a criminal offence. (Section 132AN).</p>	<p>Section 132AN contains strict liability offence provisions for which maximum fines of \$6600 per work (ie. song) applies.</p>

<p>Mr Cooper captures the performance on his video camera and posts it to his family's social networking web page for relatives and friends to see.</p>	<p>This potentially involves two criminal offences. The possession of a device for making an infringing copy (Section 132AL) and the distribution of an infringing copy (of the song/s)</p>	<p>Section 132AL carries a maximum fine of \$6600 when prosecuted as a strict liability offence. The copying of each song is a separate offence. Section 132AI for the distribution offence/s (as above).</p>
<p>Richard and Tina are excited that their 12 year old daughter Jessica has the lead role in 'Cats' at the end of year school musical. Tina reminds Richard to take his new digital video camera to record the performance of their talented young daughter. He proudly uploads the clip onto the school's website so that the school community and friends overseas can enjoy the performance.</p>	<p>Richard didn't understand that although the school had permission for the performance, their license did not extend to recording by third parties, or for distribution. 'Cats' contains music that is subject to copyright.</p> <p>Richard made an infringing copy then distributed it. This is a potential breach of Section 132AI. Richard and/or the school may also be liable for distribution of an unauthorised recording (Section 248PJ) – this is also a criminal offence.</p>	<p>Section 132AI carries a maximum fine of \$6600 as a strict liability offence</p> <p>Section 248PJ provides a maximum fine of \$6600.</p>

<p>Roger has decided to make a CD backup copy of songs he legally purchased on the internet through an authorised download service. He has already burnt them onto a CD to listen to in his car.</p>	<p>Depending on the licensing terms for the downloads, making a second CD copy may be an infringement of copyright.</p> <p>If it is, then the possession of a device to be used for making an infringing copy (Section 132AL) will be a criminal offence – so using the computer and CD burner to make unauthorised backups will be illegal.</p>	<p>Section 132AN contains strict liability offence provisions for which maximum fines of \$6600 per work (ie. song) applies.</p> <p>Section 132AL carries a maximum fine of \$6600 when prosecuted as a strict liability offence. The copying of each song is a separate offence.</p>
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