

## **Division 2—Actions by performers**

### **248G What constitutes unauthorised use**

- (1) A person makes an unauthorised use of a performance if the person, at any time during the protection period of the performance and without the authority of the performer:
  - (a) makes a direct or indirect recording of the performance; or
  - (b) broadcasts or re-broadcasts the performance, either directly from the live performance or from an unauthorised recording of it.
  
- (2) A person makes an unauthorised use of a performance if the person, at any time during the protection period of the performance and without the authority of the performer:
  - (a) makes a copy of a recording of the performance that the person knows, or ought reasonably to know, is an unauthorised recording;
  - (b) makes a copy of an exempt recording of the performance, being a copy that the person knows, or ought reasonably to know, is not itself an exempt recording;
  - (c) makes, for use in a sound-track, a copy of an authorised sound recording of the performance and the person knows, or ought reasonably to know, that the making of the sound recording was not authorised for the purpose of use in that or any other sound-track;
  - (d) has in his or her possession a recording of the performance, for the purpose of:
    - (i) selling it, letting it for hire, or by way of trade offering or exposing it for sale or hire; or
    - (ii) distributing it for the purpose of trade, or for any other purpose that will affect prejudicially the financial interests of the performer or performers in the performance;being a recording that the person knows, or ought reasonably to know, is an unauthorised recording;

- (e) sells, lets on hire, or by way of trade exhibits in public or offers or exposes for sale or hire, a recording of the performance that the person knows, or ought reasonably to know, is an unauthorised recording;
  - (f) distributes a recording of the performance for the purpose of trade, or for any other purpose to an extent that will affect prejudicially the financial interests of the performer or performers in the performance, being a recording that the person knows, or ought reasonably to know, is an unauthorised recording;
  - (g) imports a recording of the performance into Australia for the purpose of:
    - (i) selling it, letting it for hire, or by way of trade exhibiting it in public or offering or exposing it for sale or hire; or
    - (ii) distributing it for the purpose of trade, or for any other purpose to an extent that will affect prejudicially the financial interests of the performer or performers in the performance;  
being a recording that the person knows, or ought reasonably to know, is an unauthorised recording; or
  - (h) causes a recording of the performance to be heard or seen in public, being a recording that the person knows, or ought reasonably to know, is an unauthorised recording.
- (3) A person who broadcasts or re-broadcasts an authorised recording of a performance without the authority of the performer does not, by so doing, make an unauthorised use of the performance.
- (4) This section applies only to acts done in Australia.

### **248H Copying sound recordings for broadcasting**

- (1) Despite paragraph 248G(2)(c), where the making of a copy of a sound recording of a performance for use in a sound-track would, but for this subsection, be an unauthorised use of the performance under that paragraph, the making by a person of such a copy solely for the purpose of use in a broadcast by that person is not an unauthorised use of the performance.