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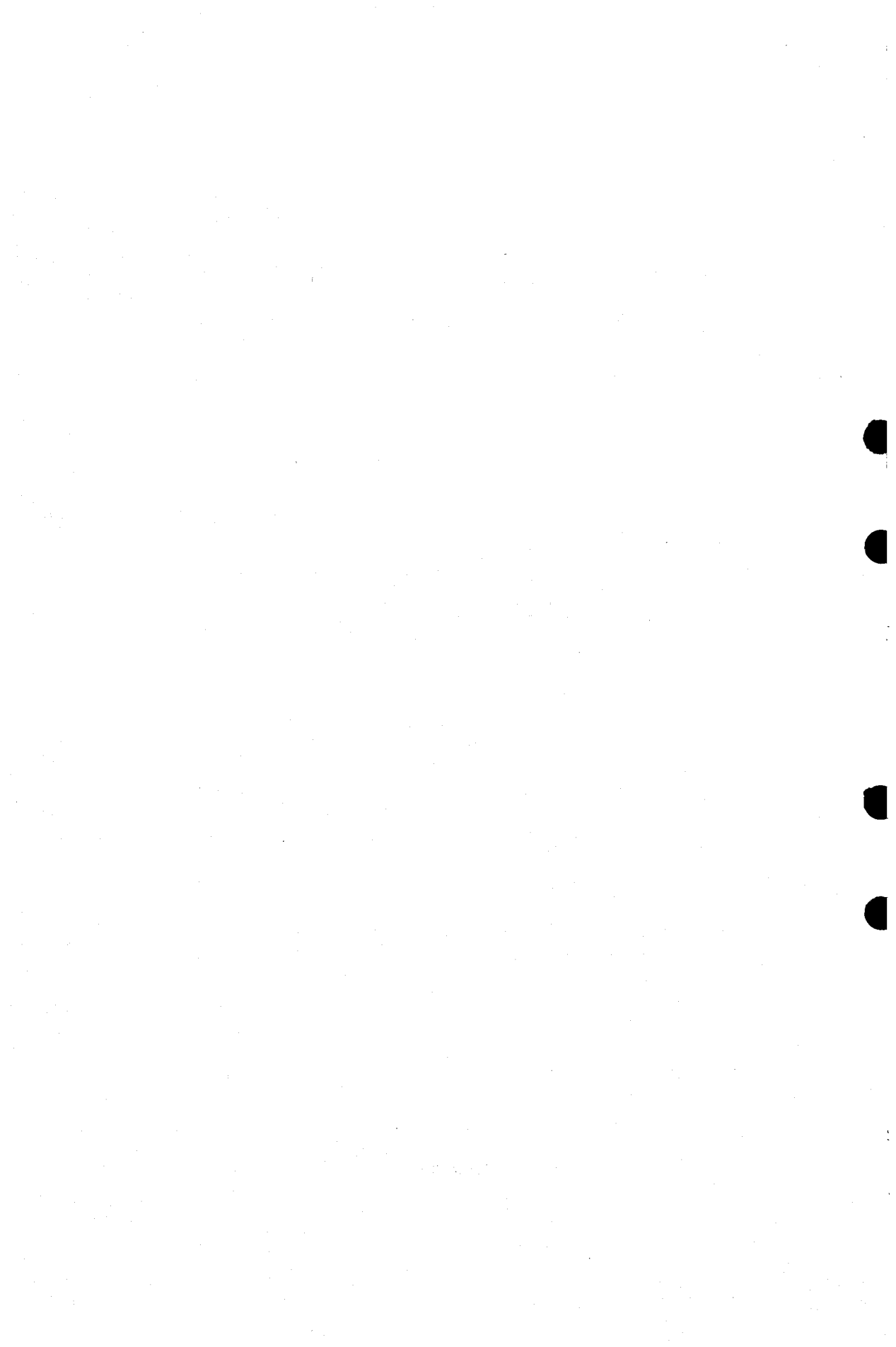
THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

COPYRIGHT AMENDMENT BILL 1981

EXPLANATORY MEMORANDUM

(Circulated by the Attorney-General,
Senator the Honourable P.D. Durack, Q.C.)



COPYRIGHT AMENDMENT BILL 1981

General Outline

The Bill will amend the Copyright Act 1968 to provide for the delivery by broadcasting and television organisations of so-called 'ephemeral' recordings to the Australian Archives. The present provisions of the Copyright Act provide for the delivery of those recordings and films to the National Library.

An 'ephemeral' record (including video tape, cinematograph film or sound record) is a record made by a radio or television broadcaster for the sole purpose of broadcasting a copyright work or recording. The Copyright Act allows the broadcaster, if he has a licence from the owner of the copyright to broadcast a copyright work or recording, to make an ephemeral record without obtaining a further licence to do so, so long as the record is either destroyed within 12 months (or an agreed longer period) of the broadcast, or delivered to the National Library, with the consent of the National Librarian, for retention.

In addition to providing for delivery of ephemeral records to the Australian Archives instead of the National Library, the Bill will add new provisions enabling the Director-General of the Australian Archives to refuse consent to delivery of an ephemeral recording unless he has certified that the recording is of an exceptional documentary character. Where delivery is refused the recording will be destroyed.

Both the present and new provisions are in accordance with the Berne Copyright Convention, of which Australia is a member. The Bill is closely associated with the Archives Bill 1981, which will establish the Australian Archives on a statutory basis, with defined rights of access.

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Notes on Clauses

Clause 1 - Short title, etc.

Sub-clause 1(1) provides for the short title of the Act.

2. Sub-clause 1(2) provides that the Copyright Act 1968 is referred to as the Principal Act.

Clause 2 - Commencement

3. The Act is to come into operation on a date to be fixed by Proclamation.

Clause 3 - Reproduction for purpose of broadcasting

4. Clause 3 amends sub-section 47(5) of the Principal Act. Section 47 permits the making, without permission from the owner of the copyright involved, of a sound recording or a cinematograph film of a copyright literary, dramatic or musical work, or an adaptation of such a work, solely for the purpose of the broadcasting of the work or adaptation, where the broadcasting of the work or adaptation would not constitute an infringement of copyright. Such a recording must, however, be destroyed after 12 months unless it is to be preserved for archival purposes. The amendment will have the effect of requiring the delivery of recordings and films retained for archival purposes to the Australian Archives, with the consent of the Director-General of the Australian Archives, instead of to the National Library. New sub-section 47(6) provides that the Director-General shall not consent to the delivery to the

Australian Archives of a record of film unless he has certified that it is of an exceptional documentary character.

Clause 4 - Reproduction for purpose of including work in television broadcast

5. Clause 4 amends, in a corresponding manner, sub-section 70(5) of the Principal Act. Section 70 permits the making, without permission from the owner of the copyright involved, of a cinematograph film of a copyright artistic work solely for the purpose of the inclusion of the work in a television broadcast, where the inclusion of the work in the television broadcast would not constitute an infringement of copyright. The clause also inserts new sub-section 70(6), which provides that the Director-General shall not consent to the delivery to the Australian Archives of a film unless he has certified that the film is of an exceptional documentary character. Where the Director-General does not consent to delivery, the provisions of sub-section 70(5) require the destruction of the films concerned.

Clause 5 - Making of record embodying sound recording for purpose of broadcasting

6. Clause 5 amends, in a corresponding manner, sub-section 107(5) of the Principal Act. Section 107 permits the making, without permission of the owner of the copyright involved, of a record embodying a copyright sound recording solely for the purpose of the broadcasting of the recording, in association with other matter, where the broadcasting of the recording would not constitute an infringement of copyright. The clause also inserts new sub-section 107(6), which provides

that the Director-General shall not consent to the delivery to the Australian Archives of a record unless he has certified that the record is of an exceptional documentary character. Where the Director-General does not consent to delivery, the provisions of sub-section 107(5) require the destruction of the records concerned.

