



Appendix D – Item 11 of the Copyright Amendment Bill 1992

Proposed section 126A of the *Copyright Act 1968*

- (1) In an action brought under this Part in relation to a sound recording, copyright is presumed to subsist in the sound recording if:
 - (a) the plaintiff files an affidavit;
 - (i) stating that the record embodying the sound recording or its container bore a label or mark specifying the date and place of first publication of the sound recording; and
 - (ii) specifying that date and place; and
 - (b) the date and place of first publication specified in the affidavit are such as, if proved, would support the subsistence of copyright in the sound recording on the day on which the action is instituted.
- (2) If the subsistence of copyright is presumed under subsection (1), the plaintiff is presumed to be entitled to bring the action under this Part in relation to the sound recording if the affidavit filed by the plaintiff asserts:
 - (a) that the plaintiff is the maker of the sound recording and is specified on the label or container of the record embodying the sound recording as the maker of the sound recording; and
 - (b) that the plaintiff has not assigned the copyright in the sound recording.
- (3) If the plaintiff is not the maker of the sound recording, the plaintiff is presumed to be entitled to bring the action under this Part in relation to the sound recording if the affidavit filed by the plaintiff;

- (a) asserts that the plaintiff is entitled to bring the action as assignee or exclusive licensee of the copyright in the sound recording:
 - (i) from the maker; or
 - (ii) from a person other than the maker; or
 - (b) asserts that the plaintiff is entitled to bring the action as owner of the copyright under subsection 97(3).
- (4) An affidavit filed by the plaintiff under paragraph (3)(a) must list all the persons through whom the plaintiff claims to have the assignment or exclusive licence of the copyright in the sound recording.
- (5) The presumptions under subsections (1), (2) and (3) operate unless the contrary is established.