

Summary of Argument

Submission by Applicant - Brian Hogan [The Divorce Doctor]

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1. Preamble

1.1. General

1.1.1. This is an application under the Copyright Act 1968 [herein CAct] seeking remedies under Part V, Division 2 and Division 2A and Part IX, Division 1.

1.1.2. The subject is the "piracy" of an e-book [also known as EBook, Ebook, etc but in the CAct "electronic literary or music item", herein EBook]. The title is "A Bloke's Guide to Family Law and Child Support". It has an internet address at <http://www.ablokesguide.com> The author is specified as "The Divorce Doctor", and [as deposed] that is a reference to the applicant [plaintiff] in this action Brian Hogan. I will return to s 127 herebelow.

1.1.3. The action is taken against an entity <http://familylawwebguide.com.au> [herein The WebSite] by way of Internet Address. A possible complication arises because, for all intents and purposes, it would appear that this site was simply set up by the former Howard Government as a "Cash for Comment" site [disguised as a replacement for the failed MensLine Cash for Comment site]. That being the case, until better advice from the Commonwealth, I will be naming the Commonwealth as a respondent.

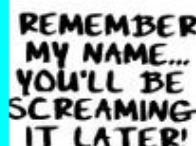
1.1.4. Obviously the only way that a member of the public such as myself can ascertain government funding of such "organisations" is via a Freedom of Information [herein FOI] request. It is also obvious, in my submission, that any Cash for Comment [herein CFC] **intent** by the Howard Government would not be admitted in any FOI document, albeit proof of CFC is not vital to the action. As is normal an FOI request generally simply tells one what is **on** the record and already known, whereas any wrongdoings will logically be **off** the record.

1.1.5. Another complication arises because of the change of government, less than a month after the events complained of in this application. For all these reasons it may well be appropriate, in my submission, for this Honourable Court to give directions [by way of discovery] as to means to determine who should be the respondent[s] to this application/action.

1.2. The Piracy

1.2.1. The main deposed "admission of piracy" is repeated as:

[Conan](#)



SRL-R
member

I see the moderators have removed yet another post about the very badly written and incomprehensible 'Blokes Guide' advertised by the idiot that has the Australian record of being banned by the most forums

I have a copy - its a complete waste of money - he should be paying people to read it instead of trying to rip off people at a very vulnerable stage in their lives - he is worse than a lawyer

Anyone want a **free** pdf copy please email me at

ozziebarbarian@yahoo.com.au

Warning, its a boring read, reading the local telephone directory would be more interesting and useful

1.2.2. Also in an effort to effect some "mediation" as suggested by the CAct I have written a Ministerial Letter to my Federal MP who [as well as the new Attorney General] is probably not aware that the WebSite is operating via taxpayer funding left over from the Howard Regime. As will be apparent from the book itself, while Howard abuses such as WorkChoices are "in the headlights" of the general public and have therefore been quickly "rolled-back" by the new Kevin '07 government, the FLIndustry enjoys a stage of almost complete apathy by the "normal taxpayer" [generally known as J Doe], and then little resistance once each J Doe is "called, one by one like lambs to the slaughter" to meet his doom.

1.2.3. So while J Doe may well be the mythical "fair minded person" who, in the law, must be able to see that "justice is done and **seen** to be done", he is not able to form any opinion on what is **hidden** from him/her. And so it is, to put this dispute into a nutshell, that this book has been written simply in an attempt to put the facts **before** J Doe about the FLIndustry, while the WebSite has the single purpose, in my submission, of helping the FLIndustry to keep the facts **buried**. So the **reason** for the piracy starts and ends with that situation.

1.2.4. It is therefore my hope that the Ministerial, together with a copy of this submission, will act as a type of "circuit breaker" [or perhaps the pre Howard expression of "pump prime" is more appropriate] so that the new government can at least be aware of the facts. In my submission the close bond between the Howard government and the FLIndustry has long since departed from any conspiracy theory to proven fact, but we are yet to learn of the attitude of the new ALP government. Certainly one would hope that they would take up the unfinished business of the Keating/Levarche Reforms that regrettably had only been legislated for 3 months when Howard won office.

1.2.5. Those were of course enunciated in the Press Statement of 8 January 1996 as "There will be access to justice in Family Law, lawyers will be relegated to the sidelines". But until the Ministerial might break some circuits, I will simply wait to see what resolution might come from the new Attorney General.

1.2.6. It may well be that the AG might take an attitude of not only rolling back the CFC WebSite [with a s 195AZA(c), (d) **open apology**] but accepting responsibility on the part of the respondents **and** former government and making a s 195AZA(b) **damages** remedy as an "Act of Grace" payment under s 33 of the Financial Management and Accountability Act 1997. Certainly Kevin '07 is no slouch when it comes to apologies **and** reversing the sins of Howard. And the payment would be **fully funded** by the roll-back [or perhaps throwing overboard] of the WebSite, so under s 33(4) there would be no need to dip into the allocated bucket per,

s 33(4) Payments under this section are to be made out of money appropriated by the Parliament for the purposes of this section.

1.2.7. I will return to the Moral Rights issue herebelow, but here is a "sneak preview" of the remedies, per:

195AZA Remedies for infringements of author's moral rights

(1) Subject to section 203, the relief that a court may grant in an action for an infringement of any of an author's moral rights in respect of a work includes any one or more of the following:

- (a) an injunction (subject to any terms that the court thinks fit);*
- (b) **damages** for loss resulting from the infringement;*
- (c) a **declaration** that a moral right of the author has been infringed;*
- (d) an order that the defendant make a **public apology** for the infringement;*

1.2.8. Obviously such a fairy tale outcome would mean I could therefore withdraw my application to this Honourable Court and everyone could go home with that "warm & cuddly" feeling that is the carrot promised by the FLIndustry, which carrot always ends as a rotten potato.

1.3. Legal Assumptions?

1.3.1. Generally in the law, assumption is not permissible, at least from the Bar side. From the Bench of course after a judge says "doing the best I can ..", he/she will make assumptions, as necessary, in exercising discretion. But in my submission there is a slight crack of a door opening via s 115(4) whereby an applicant can take **proved** infringements and extrapolate them to a greater figure assuming **likely** infringements.

1.3.2. So to use the vernacular of The Castle, I am going to "grab those vibes with both hands" and make some assumptions on the basis of what Walters FM [from the Bench] calls Intellectual Responsibility, as far as the source of the piracy instruction.

1.3.3. The reason for doing so is to enable the court to better understand my submissions herebelow, particularly in respect of "**Moral Rights**" matters under Part IX, per:

195AJ Derogatory treatment of literary, dramatic or musical work

In this Part:

derogatory treatment, in relation to a literary, dramatic or musical work, means:

(a) *the doing, in relation to the work, of anything that results in a **material distortion** of, the mutilation of, or a **material alteration** to, the work that is prejudicial to the author's **honour or reputation**; or*

(b) *the doing of **anything else** in relation to the work that is prejudicial to the author's honour or reputation.*

1.3.4. My assertion is that the idea **for** and the terms **of** the piracy post, as deposed and repeated hereabove, did not come directly from Conan [or any other person or "glove puppet" at the WebSite], but from "above", meaning as a direct command from Howard via Ruddock. In this way we have the exact same situation depicted in the very skilfully composed song/poem by Bob Dylan "Only a Pawn in the Game", which describes how, typified in the Medgar Evers murder, the "Southern Politicians" used "the poor [and stupid] white man" to act as the KKK against the Negroes, with assurances against prosecution. Here are some of the vibes:

*A South **politician preaches** to the **poor white man**,
 "You got more than the blacks, don't complain.
 You're better than them, you been born with white skin," they explain.
 And the Negro's name
 Is used it is plain
 For the **politician's gain**
 As he rises to fame
 And the poor white remains
 On the caboose of the train
 But it ain't him to blame
 He's only a pawn in their game.*

*The deputy sheriffs, the soldiers, the governors get paid,
 And the marshals and cops get the same,
 But the **poor white man's used** in the hands of them all like a tool.*

*He's taught in his school
From the start by the **rule**
That the **laws** are with **him**
To **protect** his **white skin**
To keep up his hate
So he never thinks straight
'Bout the shape that he's in
But it ain't him to blame
He's only a pawn in their game.*

1.3.5. So while I can not **prove** this, in my submission it would be Intellectually Irresponsible to conclude that it was not "**most likely**". A year before, all of the entities such as Conan etc [with their new "Power Names"] were, to use the vernacular of "FrontLine", simply SoftCocks "competing" with each other for the title "peak body", whatever that might mean. But certainly they were totally scared of me and would never engage in any discussions on Family Law as they knew they would be found wanting, and their peak body "brownie points" would be affected.

1.3.6. But what we see now [for example in the Conan post] is firstly a bold and arrogant HardCock attitude. Even his new avatar "Remember my name .. you'll be screaming it later!" is in the same aggressive manner, and ironically it is what the former abuser of this web site Kay Patterson [before Howard threw her overboard for Pork Barrelling] referred to in 2004 as Toxic Masculinity. Certainly it is the **total opposite** to the original 1999 purpose for which funds were allocated, which was to provide a friendly database/register of non funded voluntary men's help services.

1.3.7. Be all that as it may, the even greater concern is the line:

*Anyone want a **free** pdf copy please email me at
[and **gives** an email address]*

1.3.8. In my submission it would be Intellectually Irresponsible not to conclude that Conan was not only "put up" to this but also was assured he was protected in all ways. Firstly nobody ever, especially the mods/admins, gives their email address in a forum, so it is either a false one or was intended to catch me out by replying [and then spamming me]. But secondly the bolding of "**free**" strongly suggests that, as in the Dylan song, Conan was **told** that if free it was not piracy, which of course is incorrect. So Conan was essentially left holding the baby, but would be protected as in the famous "and now for my little mate" matter. Hence the final words of the song:

*Today, Medgar Evers was buried from the bullet he caught.
They lowered him down as a king.
But when the **shadowy sun sets** on the one
That **fired the gun**
He'll see by his grave
On the stone that remains
Carved next to his name
His **epitaph** plain:
Only a pawn in **their** game.*

1.3.9. To conclude this discussion, it will be readily evident, in my submission, that there was a two barrelled approach here by those pulling Conan's strings. Firstly there was the pure piracy aspect to negate my own distribution process [by sale or otherwise] but secondly and more

importantly was the attempt to remove any desire for blokes to read the book, free or otherwise, [and even for those who had legitimately bought the book] by this Blitzkrieg action on my whole credibility, obviously not telling Conan of Part IX of the CAct regarding Moral Rights.

1.3.10. I am most confident that this analysis is most valid, but as I say I would never be able to prove it, so it is offered on a "take it or leave it" basis, while my actual application essentially leaves it up to the respondents to do their own post mortem on where it all went so wrong and who was to blame for what. It also, as I say, gives some bullets to Kevin '07 should he wish to make an act of grace payment, but with a large dose of "rubbing salt into the wound", especially as the act of grace would be more than covered by the simultaneous action of removing Howard's CFC mouthpiece turned dinosaur.

1.4. Jurisdiction

1.4.1. In my submission this Honourable Court the Federal Magistrates Service [herein FMS] has jurisdiction under the CAct, for Part V per:

Division 4A—Jurisdiction and appeals

131D Jurisdiction of Federal Magistrates Court

Jurisdiction is conferred on the Federal Magistrates Court with respect to civil actions under this Part.

and for Part IX per:

195AZGH Jurisdiction of courts

(5) The Federal Magistrates Court has jurisdiction with respect to matters arising under this Part.

1.4.2. And fortunately the CAct is totally up front and inviting in that one does not need to waste time and heart's ease going to yet another quango commissioner before going to court. I refer here to examples such as the Privacy Act where the direct access to court is hidden in s 98 at the very end, and applicants are simply truncated by the Privacy Commissioner [see Palmer].

2. Applicability

2.1. Proof of Facts

2.1.1. Division 4 of Part V essentially provides presumptions which, if not argued down by the respondent, become proven. So even though the onus is on the respondent I will make some Devil's Advocate type submission to avoid any waste of time on this issue. The applicable sections are s 126 and s 127, per:

Division 4—Proof of facts in civil actions

126 Presumptions as to subsistence and ownership of copyright

In an action brought by virtue of this Part:

(a) *copyright shall be presumed to subsist in the work or other subject-matter to which the action relates if the defendant does not put in issue the question whether copyright subsists in the work or other subject-matter; and*

(b) *where the subsistence of the copyright is established—the plaintiff shall be presumed to be the owner of the copyright if he or she claims to be the owner of the copyright and the defendant does not put in issue the question of his or her ownership.*

127 Presumptions in relation to authorship of work

(1) *Where a name purporting to be that of the author of a literary, dramatic, musical or artistic work appeared on copies of the work as published or a name purporting to be that of the author of an artistic work appeared on the work when it was made, the person whose name so appeared, if it was his or her true name or a name by which he or she was commonly known, shall, in an action brought by virtue of this Part, be presumed, unless the contrary is established, to be the author of the work and to have made the work in circumstances to which subsections 35(4), (5) and (6) do not apply.*

2.1.2. I have deposed all these facts in my affidavit and for good measure put a "Copyright Notice" at the web site, so in my submission there can be no doubt about subsistence and ownership. As to authorship, in my submission it is common knowledge [and I have even deposed transcripts from the Forum of the WebSite to prove such] that Brian Hogan also goes under the name, *inter alia*, of The Divorce Doctor.

2.1.3. In fact, because I [Brian Hogan] have been banned [as Conan states] from so many Cash for Comment sites for "trying to educate the mushrooms" [generally as Divorce Doctor] I tried to join The WebSite as Nicholson, but was of course also banned. In my submission the assumption of s 127 is water tight.

2.2. Definitions etc

2.2.1. Back in Part I of the CAct, in my submission the EBook [as defined above] fits into the CAct as "electronic literary or music item", per:

Part II—Interpretation

10 Interpretation

(1) *In this Act, unless the contrary intention appears:*

electronic literary or music item means:

- (a) *a book in electronic form; or*
- (b) *a periodical publication in electronic form; or*
- (c) *sheet music in electronic form;*

regardless of whether there is a printed form.

2.2.2. Then s 20 seems to do little more than cement s 127 [or vice versa], and in my submission I do not need to add anything in this regard, for now at least.

20 Names under which work is published

(1) *A reference in this Act to the name or names under which a work was published shall be read as a reference to the name or names specified in the work as the name of the author or the names of the authors of the work.*

(2) *For the purposes of this Act, a publication of a work under two or more names shall not be taken to be pseudonymous unless all those names are pseudonyms.*

2.2.3. S 29 talks to publication requirements, and I would ask this Honourable Court to accept that people have in fact purchased the book from my site, without my needing to offend their privacy by deposing sales transactions [but I can if necessary]. Alternatively there is admission in the deposed transcript that the book has been "provided" to certain people. I hasten to add that I did **not** provide a copy to Conan or anyone else at the WebSite.

29 Publication

(1) *Subject to this section, for the purposes of this Act:*

(a) *a literary, dramatic, musical or artistic work, or an edition of such a work, shall be deemed to have been published if, but only if, reproductions of the work or edition have been supplied (whether by sale or otherwise) to the public;*

2.2.4. As for ownership in my submission this section is a type of machinery statute and I need not make any submission.

35 Ownership of copyright in original works

(1) *This section has effect subject to Parts VII and X.*

(2) *Subject to this section, the author of a literary, dramatic, musical or artistic work is the owner of any copyright subsisting in the work by virtue of this Part.*

3. Nature of Copyright

3.1. General

3.1.1. Division 1 of Part III talks, *inter alia*, to the Nature of Copyright.

Part III—Copyright in original literary, dramatic, musical and artistic works

Division 1—Nature, duration and ownership of copyright in works

31 Nature of copyright in original works

(1) *For the purposes of this Act, unless the contrary intention appears, copyright, in relation to a work, is the exclusive right:*

(a) *in the case of a literary, dramatic or musical work, to do all or any of the following acts:*

(i) *to reproduce the work in a material form;*

(ii) *to publish the work;*

(iii) *to perform the work in public;*

(iv) *to communicate the work to the public;*

(vi) *to make an adaptation of the work;*

(vii) *to do, in relation to a work that is an adaptation of the first-mentioned work, any of the acts specified in relation to the first-mentioned work in subparagraphs (i) to (iv), inclusive; and*

32 Original works in which copyright subsists

(1) *Subject to this Act, copyright subsists in an original literary, dramatic, musical or artistic work that is unpublished and of which the author:*

(a) *was a qualified person at the time when the work was made; or*

(b) *if the making of the work extended over a period—was a qualified person for a substantial part of that period.*

(2) *Subject to this Act, where an original literary, dramatic, musical or artistic work has been published:*

(a) *copyright subsists in the work; or*

(b) *if copyright in the work subsisted immediately before its first publication—copyright continues to subsist in the work; if, but only if:*

(c) *the first publication of the work took place in Australia;*

(d) *the author of the work was a qualified person at the time when the work was first published; or*

(e) *the author died before that time but was a qualified person immediately before his or her death.*

(3) *Notwithstanding the last preceding subsection but subject to the remaining provisions of this Act, copyright subsists in:*

(a) *an original artistic work that is a building situated in Australia; or*

(b) *an original artistic work that is attached to, or forms part of, such a building.*

(4) *In this section, **qualified person** means an Australian citizen or a person resident in Australia.*

3.1.2. In my submission these sections clearly identify my rights as the owner of the copyright.

4. Infringements

4.1. General

4.1.1. Division 2 of Part III moves on to specify what constitutes an infringement of the copyright already established as belonging exclusively to me, per:

Division 2—Infringement of copyright in works

36 Infringement by doing acts comprised in the copyright

(1) *Subject to this Act, the copyright in a literary, dramatic, musical or artistic work is infringed by a person who, not being the owner of the copyright, and without the licence of the owner of the copyright, does in Australia, or authorizes the doing in Australia of, any act comprised in the copyright.*

(1A) *In determining, for the purposes of subsection (1), whether or not a person has authorised the doing in Australia of any act comprised in the copyright in a work, without the licence of the owner of the copyright, the matters that must be taken into account include the following:*

(a) *the extent (if any) of the person's power to prevent the doing of the act concerned;*

(b) *the nature of any relationship existing between the person and the person who did the act concerned;*

(c) *whether the person took any reasonable steps to prevent or avoid the doing of the act, including whether the person complied with any relevant industry codes of practice.*

4.1.2. In my submission the respondent has clearly admitted to doing the following, meaning he/she has infringed the copyright, and I don't feel that there is any necessity to "cut down another tree" to explain that submission.

(i) to **reproduce** the work in a material form;

(ii) to **publish** the work;

(iv) to **communicate** the work to the public;

4.1.3. My submission continues that s 38 also applies, where in my submission the respondent also infringes by that section, per:

38 Infringement by sale and other dealings

(1) *Subject to Division 3, the copyright in a literary, dramatic, musical or artistic work is infringed by a person who, in Australia, and without the licence of the owner of the copyright:*

(a) *sells, lets for hire, or by way of trade offers or exposes for sale or hire, an article;*
or

(b) *by way of trade exhibits an article in public;*

if the person knew, or ought reasonably to have known, that the making of the article constituted an infringement of the copyright or, in the case of an imported article, would, if the article had been made in Australia by the importer, have constituted such an infringement.

(2) *For the purposes of the last preceding subsection, the distribution of any articles:*

(a) *for the purpose of trade; or*

(b) *for any other purpose to an extent that affects prejudicially the owner of the copyright concerned;*

shall be taken to be the sale of those articles.

4.1.4. My submission is that although the respondent offers the EBook for "free" to others, the terms of s 38(2)(b) "for any other purpose to an extent that **affects prejudicially** the owner of the copyright concerned" say that the free offer must "be taken to be the sale of those articles". It would be intellectually irresponsible to conclude that a person surfing in cyberspace would choose to **buy** from me when a **free** copy was available from the respondent. Therefore the free offer **must** be prejudicial.

5. Fair Dealing and International Laws

5.1. General

5.1.1. This part of my submission also is by way of Devil's Advocate submission. The CAct allows an "escape clause" whereby a real or putative respondent is given a defence via what is called generally "fair use". For completeness, these are the sections:

Division 3—Acts not constituting infringements of copyright in works

40 Fair dealing for purpose of research or study

(1) *A fair dealing with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, for the purpose of research or study does not constitute an infringement of the copyright in the work.*

(1A) *A fair dealing with a literary work (other than lecture notes) does not constitute an infringement of the copyright in the work if it is for the purpose of, or associated with, an approved course of study or research by an enrolled external student of an educational institution.*

(1B) *In subsection (1A) the expression **lecture notes** means any literary work produced for the purpose of the course of study or research by a person lecturing or teaching in or in connection with the course of study or research.*

(2) *For the purposes of this Act, the matters to which regard shall be had, in determining whether a dealing with a literary, dramatic, musical or artistic work or with*

an adaptation of a literary, dramatic or musical work, being a dealing by way of reproducing the whole or a part of the work or adaptation, constitutes a fair dealing with the work or adaptation for the purpose of research or study include:

- (a) the purpose and character of the dealing;*
- (b) the nature of the work or adaptation;*

42 Fair dealing for purpose of reporting news

(1) A fair dealing with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, does not constitute an infringement of the copyright in the work if:

- (a) it is for the purpose of, or is associated with, the reporting of news in a newspaper, magazine or similar periodical and a sufficient acknowledgement of the work is made; or*

Division 4—Acts not constituting infringements of copyright in literary, dramatic and musical works

45 Reading or recitation in public or for a broadcast

The reading or recitation in public, or the inclusion in a sound broadcast or television broadcast of a reading or recitation, of an extract of reasonable length from a published literary or dramatic work, or from an adaptation of such a work, does not constitute an infringement of the copyright in the work if a sufficient acknowledgement of the work is made.

5.1.2. However I am quick to make submission to say that none of those escape clauses have any application in the subject case.

5.1.3. But given that the subject case involves The Web and the substantial problems posed to such legislation as the CAct, I will make some submissions on a "take it or leave it" basis.

5.1.4. I have recently been threatened from "the other side of the fence" regarding my [fair, in my submission] use of the digital images of another person, albeit in Greece and not Australia. This prompted me to research "International Law" [or American] on such matters. My conclusions were that I fully complied with fair use [USA wise] so, apart from his potential initial problem that I was not in America or Greece, there was in effect no case to answer.

5.1.5. So to return to this application, I am fascinated that the legislature seems to have anticipated such matters [perhaps best described as "Crying Wolf"] and included a "comeback" for the putative respondent whereby he/she can initiate an action to claim damages, even though the threats were never acted upon in a court. The section is contained in Part X of the CAct, per:

202 Groundless threats of legal proceedings in relation to copyright infringement

(1) Where a person, by means of circulars, advertisements or otherwise, threatens a person with an action or proceeding in respect of an infringement of copyright, then, whether the person making the threats is or is not the owner of the copyright or an exclusive licensee, a person aggrieved may bring an action against the first-mentioned person and may obtain a declaration to the effect that the threats are unjustifiable, and an injunction against the continuance of the threats, and may recover such damages (if any) as he or she has sustained, unless the first-mentioned person satisfies the court that the acts in respect of which the action or proceeding was threatened constituted, or, if done, would constitute, an infringement of copyright.

5.1.6. The main issue of submission on this point is to point to the irony in the words of Conan "*Warning, its a boring read, reading the **local telephone directory** would be more interesting and useful*". The irony is that a leading case under American legislation **is** about copyright in a local telephone directory. The case is Feist Publications, Inc. v. Rural Telephone Service Co., 499 US 340,349 (1991). The irony is that if my book had in fact been a telephone directory [or say a compilation, without more, of case names in family law] then Conan would possibly have been able to use the "sweat of the brow" principle, *disapproved* in Feist to escape sanction, at least under American law.

5.1.7. But by the Australian adaption termed "industrious collection principle" in Desktop Marketing Systems Pty Ltd v Telstra Corporation Ltd it seems Conan would **not** have escaped sanction in Australia. My main reason for referring to this irony is to demonstrate the complexity of Copyright Law, even when we are talking to a simple book in hard copy, and in a single country. In my submission the complexity greatly increases when digital documents are distributed on The Web. However it seems that our legislation has kept pace with all the technology [eg Electronic Rights Management], and I intend to explore those matters hereunder.

5.1.8. However, the case which I am intending to *follow* is Fraserside Holdings & Anor v Venus Adult Shops & Ors [2005] FMCA 997 (21 July 2005), which is an "in between" case involving a product in digital [and analog] format but not involving The Web.

6. Remedies

6.1. General

6.1.1. Part V of the CAct turns to remedies. In Fraserside there was a novel approach pleaded by counsel for the applicants which was essentially **accepted** by His Honour Raphael FM [save for the declaration] in regard to the various heads of power/remedy under which to seek remedies, per:

viii) Under what provisions of the copyright act are damages to be awarded. In this regard in their final submissions the applicants claimed:

- *declaratory relief under s.115(2)*
- *injunctive relief under s.115(2)*
- *damages pursuant to s.116 determined upon a **conversion** basis*
- *nominal damages of **one dollar** pursuant to s.115(2)*
- ***additional** damages pursuant to s.115(4).*

6.1.2. Before turning to such matters in my case I will provide these two heads of power for Part V relief, per:

Part V—Remedies and offences
Division 2—Actions by owner of copyright
115 Actions for infringement

(1) Subject to this Act, the owner of a copyright may bring an action for an infringement of the copyright.

(2) Subject to this Act, the relief that a court may grant in an action for an infringement of copyright includes an injunction (subject to such terms, if any, as the court thinks fit) and either damages or an account of profits.

(3) *Where, in an action for infringement of copyright, it is established that an infringement was committed but it is also established that, at the time of the infringement, the defendant was not aware, and had no reasonable grounds for suspecting, that the act constituting the infringement was an infringement of the copyright, the plaintiff is not entitled under this section to any damages against the defendant in respect of the infringement, but is entitled to an account of profits in respect of the infringement whether any other relief is granted under this section or not.*

(4) *Where, in an action under this section:*

(a) *an infringement of copyright is established; and*

(b) *the court is satisfied that it is proper to do so, having regard to:*

(i) *the flagrancy of the infringement; and*

(ia) *the need to deter similar infringements of copyright; and*

(ib) *the conduct of the defendant after the act constituting the infringement or, if relevant, after the defendant was informed that the defendant had allegedly infringed the plaintiff's copyright; and*

(ii) *whether the infringement involved the conversion of a work or other subject-matter from hardcopy or analog form into a digital or other electronic machine-readable form; and*

(iii) *any benefit shown to have accrued to the defendant by reason of the infringement; and*

(iv) *all other relevant matters;*

the court may, in assessing damages for the infringement, award such additional damages as it considers appropriate in the circumstances.

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(5) *Subsection (6) applies to a court hearing an action for infringement of copyright if the court is satisfied that:*

(a) *the infringement (the **proved infringement**) occurred (whether as a result of the doing of an act comprised in the copyright, the authorising of the doing of such an act or the doing of another act); and*

(b) *the proved infringement involved a communication of a work or other subject-matter to the public; and*

(c) *because the work or other subject-matter was communicated to the public, it is likely that there were other infringements (the **likely infringements**) of the copyright by the defendant that the plaintiff did not prove in the action; and*

(d) *taken together, the proved infringement and likely infringements were on a commercial scale.*

(6) *The court may have regard to the likelihood of the likely infringements (as well as the proved infringement) in deciding what relief to grant in the action.*

(7) *In determining for the purposes of paragraph (5)(d) whether, taken together, the proved infringement and the likely infringements were on a commercial scale, the following matters are to be taken into account:*

(a) *the volume and value of any articles that:*

(i) *are infringing copies that constitute the proved infringement; or*

(ii) *assuming the likely infringements actually occurred, would be infringing copies constituting those infringements;*

(b) *any other relevant matter.*

(8) *In subsection (7):*

article *includes a reproduction or copy of a work or other subject-matter, being a reproduction or copy in electronic form.*

116 Rights of owner of copyright in respect of infringing copies

(1) *The owner of the copyright in a work or other subject-matter may bring an action for conversion or detention in relation to:*

- (a) an infringing copy; or*
- (b) a device (including a circumvention device) used or intended to be used for making infringing copies.*

(1A) *In an action for conversion or detention, a court may grant to the owner of the copyright all or any of the remedies that are available in such an action as if:*

- (a) the owner of the copyright had been the owner of the infringing copy since the time the copy was made; or*
- (b) the owner of the copyright had been the owner of the device since the time when it was used or intended to be used for making infringing copies.*

(1B) *Any relief granted by a court in an action for conversion or detention is in addition to any relief that the court may grant under section 115.*

(1C) *A court is not to grant any relief to the owner of the copyright in an action for conversion or detention if the relief that the court has granted or proposes to grant under section 115 is, in the opinion of the court, a sufficient remedy.*

(1D) *In deciding whether to grant relief in an action for conversion or detention and in assessing the amount of damages payable, the court may have regard to the following:*

- (a) the expenses incurred by the defendant, being a person who marketed or otherwise dealt with the infringing copy, in manufacturing or acquiring the infringing copy;*
- (b) whether the expenses were incurred before or after the infringing copy was sold or otherwise disposed of by the defendant;*
- (c) any other matter that the court considers relevant.*

(1E) *If the infringing copy is an article of which only part consists of material that infringes copyright, the court, in deciding whether to grant relief and in assessing the amount of damages payable, may also have regard to the following:*

- (a) the importance to the market value of the article of the material that infringes the copyright;*
- (b) the proportion the material that infringes copyright bears to the article;*
- (c) the extent to which the material that infringes copyright may be separated from the article.*

(2) *A plaintiff is not entitled by virtue of this section to any damages or to any other pecuniary remedy, other than costs, if it is established that, at the time of the conversion or detention:*

- (a) the defendant was not aware, and had no reasonable grounds for suspecting, that copyright subsisted in the work or other subject-matter to which the action relates;*
 - (b) where the articles converted or detained were infringing copies—the defendant believed, and had reasonable grounds for believing, that they were not infringing copies;*
- or*

(c) where an article converted or detained was a device used or intended to be used for making articles—the defendant believed, and had reasonable grounds for believing, that the articles so made or intended to be made were not or would not be, as the case may be, infringing copies.

6.1.3. I admit to having difficulty understanding [in Fraser's] the concept of "conversion", which word is not listed in the definitions of s 10. The only clue is per:

*s 21(1A) For the purposes of this Act, a work is taken to have been reproduced if it is **converted** into or from a digital or other electronic machine-readable form, and any article embodying the work in such a form is taken to be a reproduction of the work.*

*Note: The reference to the **conversion** of a work into a digital or other electronic machine-readable form includes the first digitisation of the work.*

So my interpretation is that it is not a "legal word", deeply embedded in Common Law and safe from mere "Greasers" [the law student term for Mechanical Engineering students, at least in the 1960s] such as myself. It seems to simply refer to, in this case, conversion from VHS to DVD etc, in which case it would seem to be esoteric [or even Kafkaesque, given that this is Raphael FM, with his beautiful deliverance of that word in G & G?] to split hairs when the only issue seems to be that "piracy **was done**", irrespective of how.

6.1.4. But in my submission if I **do** split hairs [without understanding why] and explore the applicability to my case, firstly the main conversion was by myself when I took my "sweat of the brow" work of over 5 years gestation in Microsoft Word2 and **converted** it to Adobe Acrobat9 [pdf] so that it was compatible with The Web. Then I have **uploaded** the pdf file to a Web Host [in this case ZanySpace] but with a "protection device". Conan [or someone] has **downloaded** that pdf file [and I will deal hereunder with the matter of bypassing the protection] and says that he will **send** the file [so far having circled the world several times in CyberSpace] as an attachment to an email on many **more** journeys around the world.

6.1.5. I will return to "moral issues" under Part IX, but I will simply remark here that the I.T. Industry is as quick to close ranks on "secret methods" as are lawyers. My main source of tips on Web Design is a huge American forum called htmlforums.com, but when I asked how to convert Word to pdf I was greeted with the normal stony silence from the experts but simply referral to EBooks **from** these experts. I then willingly **paid** US\$35 for such an EBook, was happy I got value for money and most of all had no thoughts of searching for a pirate copy.

6.1.6. But to my way of thinking the **only** thing that matters to me is how many times a person "got" my book without me receiving \$29.95 [but "say to you" \$30 to round off the mathematics]. I therefore propose to plead the initial damages under s 115(2) and not s 116. Under s 115(2) I firstly seek injunctive relief to arrest the practice verified by Conan [but of course after the horse has **well and truly bolted** "down Kosciusko way to join the wild bush horses", to use the colloquial]. Secondly I do not seek any declaratory relief here but will return to such matters under Part IX.

6.1.7. Thirdly I will *follow* the Fraser's mathematical methods in estimating damages. In broad figures supplied by the FCA, there are about 50,000 new blokes every year starting their journey on what the FLIndustry calls the Yellow Brick Road [ie to their doom]. Now my book has built in "foot in mouth" revelations via such as Robinson Caruso Syndrome, Stockholm Syndrome, Not Invented Here Syndrome etc which say, even if Conan was to shout praise for my book from the rooftops, if taking notice of the advice meant forfeiting bragging rights at the pub

per "*that's nothing, let me tell you what they dun to me*", then only [but say to you] 10% would buy the book, save themselves from doom, but forfeit bragging rights. It is the nature of the beast unfortunately for blokes, but fortunately for the FLIndustry, but that is what the book is about.

6.1.8. So with a 90% reduction via my own documented "foot in mouth", that equates to \$150,000 per annum that I potentially lost, and to continue to be magnanimous in my "but say to you", I will draw a line in the sand of **but one year** and seek \$150,000 under s 115(2).

6.1.9. The next invitation in the CAct is s 115(4) and in Fraserside His Honour said:

*60. I think the two heads of damage should be **considered separately**. In this case this is because the s.116 damages have **not been inflated** in any way and are, if anything, an underestimate. The Copyright Act makes it quite **clear** what the award under s.115(4) is for, particularly now that the element of **deterrence** has been included. In this case, had there been no question of **acquiescence**, I would have awarded the applicants the sum of **\$100,000** damages under s.115(4) in addition to the conversion damages already awarded.
[...]*

*Doing the best I can and acting as a jury I would **reduce** the damages awarded because of the acquiescence of the second respondent to **\$85,000**.*

6.1.10. In my submission there is nothing in the CAct to distinguish "the two heads of damage" [s 115(4) and s 116] from [s 115(4) and s 115(2)], so in my submission **my** two heads [nominated so far] need to be considered **separately** as well. As will become apparent, discounting **will** be required under other Heads of Relief but not to this point.

6.1.11. Then in *following Fraserside* I note that His Honour simply "had a figure in mind" [I presume from former authorities], that figure being \$100,000. But in my submission we need to be very clear that Fraserside was about two competitors, not only in the porn market but in this case concerning **illegal** product. As His Honour said:

*40. There is still a residual power to **refuse** protection to works having a **grossly immoral tendency** by present day standards: *Stevens v Avery* (1988) Ch 449. Public policy considerations for not enforcing copyright in photographs was considered by the Court of Appeal of Hong Kong in *Mak Hau Shing v Oriental Press Group Limited* (1996) HKCFI 204. Here it was suggested that the photographs had been taken under circumstances of force or coercion. This was rejected by the court who declined to give the defendants leave to defend on this ground. In the course of his judgment Godfrey JA said:*

*"We are concerned with an argument that the court should, on public policy grounds, refuse to enforce the photographer's copyright in photographs such as were taken here. It is not suggested the photographs were indecent or obscene or otherwise of a grossly immoral tendency; certainly, on public policy grounds, the **law will not enforce copyright in photographs of that nature.**"*

*These cases put the respondents' case **at its highest**.*

*41. The task faced by the court is an unenviable one. The material provided to the court by way of exhibits and produced in the process of delivery up would doubtless be **morally offensive** to a great many people. The sale or distribution of these DVDs in New South Wales and Queensland is **illegal**.*

6.1.12. So in my submission, if Fraserside [as we see] was teetering on the brink of being dismissed with costs, but the applicants still were granted relief under this Head, then my case might be expected to amount to a million, but I will once again limit my claim to a magnanimous but say to you of \$100,000 [there being no acquiescence in my case].

6.1.13. But my case can also be *distinguished* from Fraserside in that I can also claim under s 115 ss(5), (6) and (7), with actual Head of [additional] Relief at s 115(6). If I put my Greaser hat back on I would submit that the CAct is referring here to the "critical mass" or "chain reaction" theory of the atomic bomb, and I was privileged in 1962 to see a demonstration of this by Julius Sumner Miller at the Physics Building of the University of Sydney. The experiment consisted of about 100 mouse traps loaded with Ping Pong balls, and when an object was thrown into the centre, within a second or two all of the traps were sprung in an amazing "fireworks display" of Ping Pong balls.

6.1.14. And so it is that these sub-sections are preceded by the words:

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and the clincher as to additional relief is whether:

*(d) taken **together**, the **proved** infringement and **likely** infringements were on a **commercial** scale.*

6.1.15. I have already made submission to say the horse has bolted. As seen Conan offered the pirated book free on a National Forum, and as seen from the deposed transcripts, people did in fact ask for an emailed copy, so there are **proved** infringements. Then to quote again from Walters FM, it would, in my submission, be intellectually irresponsible to not conclude that these blokes then emailed it to others and so on and on, thus invoking the **chain reaction** which, in my submission, is envisaged by these sub-sections. These are therefore **likely** infringements.

6.1.16. It is not obvious to me as to what sub-section these are "additional to" [ie s 115 (2) or (4)], but I am thinking it is s 115(2). So, because of this additional avenue for relief, I am simply renegeing on a small part of my former magnanimity and adding \$150,000 to that claim under s 115(2)

6.1.17. But before departing these Heads of Relief at ss 115, 116 I would like to make some submission at s 116 in respect of detention. To repeat this section:

*s 116(1) The owner of the copyright in a work or other subject-matter may bring an action for conversion or **detention** in relation to:*

(a) an infringing copy; or

*(b) a **device** (including a circumvention device) used or intended to be used for making infringing copies.*

6.1.18. It is my submission that the WebSite itself is a device "*used or intended to be used for making infringing copies*". Prior to 2007 and the Howard injection of Cash for Comment such people as Conan may well have had the same aims as they now display, but they had no technological means to carry out their "dirty deeds". For example a group called Dads on the Air had a forum within which many of these people such as Conan tried to disseminate their ideas and actions. But that forum was provided by the same host Zanyspace that I use for my EBook and Zanyspace, by way of its own ethics, put fetters on such as the deposed post of Conan.

6.1.19. Certainly Zanyspace would never have allowed **piracy** as seen once the Howard government introduced Cash for Comment, virtually **insisting** on piracy from those such as Conan who took up the Cash for Comment offer.

6.1.20. So although I would like to include under s 116 a pleading that there be detention of this WebSite, I doubt that this Honourable Court would see that as a remedy that it might be able order. So having said that, it is hoped that the new government will, once being **advised** of this dinosaur from the failed Howard government by copy of this submission, act quickly to detain and "terminate with extreme prejudice" this dinosaur.

7. More Remedies

7.1. General

7.1.1. To further *distinguish* my case from Fraserside, in my submission I have a right to explore the remedies available via Division 2A, which states:

Division 2A—Actions in relation to technological protection measures and electronic rights management information

Subdivision A—Technological protection measures

116AM Geographical application

- (1) *This Subdivision applies to acts done in Australia.*
- (2) *This section does not, by implication, affect the interpretation of any other provision of this Act.*

116AN Circumventing an access control technological protection measure

- (1) *An owner or exclusive licensee of the copyright in a work or other subject-matter may bring an action against a person if:*
 - (a) *the work or other subject-matter is protected by an access control technological protection measure; and*
 - (b) *the person does an act that results in the circumvention of the access control technological protection measure; and*
 - (c) *the person knows, or ought reasonably to know, that the act would have that result.*

116AQ Remedies in actions under this Subdivision

- (1) *Without limiting the relief that a court may grant in an action under this Subdivision, the relief may include:*
 - (a) *an injunction, subject to such terms, if any, as the court thinks fit; and*
 - (b) *damages or an account of profits; and*
 - (c) *if the doing of an act, which is the subject of the action, involved a circumvention device—an order that the circumvention device be destroyed or dealt with as specified in the order.*
- (2) *In assessing damages, the court may award such additional damages as it considers appropriate, having regard to:*
 - (a) *the flagrancy of the defendant's acts that are the subject of the action; and*

- (b) *the need to deter similar acts; and*
 - (c) *the conduct of the defendant after the acts or, if relevant, after the defendant was informed that the defendant had allegedly done an act that would be the subject of an action under this Subdivision; and*
 - (d) *any benefit shown to have accrued to the defendant as a result of those acts; and*
 - (e) *any other relevant matters.*
- (3) *If:*
- (a) *an action has been commenced against a person under this Subdivision; and*
 - (b) *the doing of an act by the person, which is the subject of the action, involved a device; and*
 - (c) *the device appears to the court to be a circumvention device;*
- the court may order that the device be delivered up to the court upon such conditions as the court considers appropriate.*
- (4) *This section does not, by implication, affect the interpretation of any other provision of this Act.*

Subdivision B—Electronic rights management information

116B Removal or alteration of electronic rights management information

- (1) *This section applies if:*
- (a) *either:*
 - (i) *a person removes, from a copy of a work or other subject-matter in which copyright subsists, any electronic rights management information that relates to the work or other subject-matter; or*
 - (ii) *a person alters any electronic rights management information that relates to a work or other subject-matter in which copyright subsists; and*
 - (b) *the person does so without the permission of the owner or exclusive licensee of the copyright; and*
 - (c) *the person knew, or ought reasonably to have known, that the removal or alteration would induce, enable, facilitate or conceal an infringement of the copyright in the work or other subject-matter.*
- (2) *If this section applies, the owner or exclusive licensee of the copyright may bring an action against the person.*
- (3) *In an action under subsection (2), it must be presumed that the defendant knew, or ought reasonably to have known, that the removal or alteration to which the action relates would have the effect referred to in paragraph (1)(c) unless the defendant proves otherwise.*

116C Distribution to the public etc. of works whose electronic rights management information has been removed or altered

- (1) *This section applies if:*
- (a) *a person does any of the following acts in relation to a work or other subject-matter in which copyright subsists without the permission of the owner or exclusive licensee of the copyright:*
 - (i) *distributes a copy of the work or other subject-matter to the public;*
 - (ii) *imports into Australia a copy of the work or other subject-matter for distribution to the public;*
 - (iii) *communicates a copy of the work or other subject-matter to the public; and*
 - (b) *either:*

- (i) *any electronic rights management information that relates to the work or other subject-matter has been removed from the copy of the work or subject-matter; or*
- (ii) *any electronic rights management information that relates to the work or other subject-matter has been altered; and*
- (c) *the person knew that the electronic rights management information had been so removed or altered without the permission of the owner or exclusive licensee of the copyright; and*
- (d) *the person knew, or ought reasonably to have known, that the act referred to in paragraph (a) that was done by the person would induce, enable, facilitate or conceal an infringement of the copyright in the work or other subject-matter.*

116D Remedies in actions under this Subdivision

- (1) *The relief that a court may grant in an action under this Subdivision includes an injunction (subject to such terms, if any, as the court thinks fit) and either damages or an account of profits.*
- (2) *If, in an action under this Subdivision, the court is satisfied that it is proper to do so, having regard to:*
 - (a) *the flagrancy of the defendant's actions that are the subject of the action; and*
 - (b) *any benefit shown to have accrued to the defendant as a result of those acts; and*
 - (c) *any other relevant matters;**the court may, in assessing damages, award such additional damages as it considers appropriate in the circumstances.*

7.1.2. I will first explain, as deposed, what these terms mean in my case. It was obvious to me that I must have some form of protection or people would simply download my EBook without payment. So I went to the same htmlforums.com and got the same silent treatment from the [former Y2K Freak] "experts". I then devised my own protection system and although I realised it might not be broken by the "average bloke" [and it has not been], it **would** be [no matter how smart it was] by those so called [by themselves] I.T. Professionals who specialise in "hacking", Y2K and the like.

7.1.3. As seen I was correct and my "Greaser" protection system was easily broken by the respondents. To explain the proof of breaking, I devised a detection system by way of a Google AdSense entry on the page that a surfer **should** only get to after **paying**. The deposed AdSense entry for 16 November 2007 is not matched by any PayPal purchase [as is normally the case] meaning that the protection system **was** bypassed. I would ask this Honourable Court to accept that the Conan assertion on that same day that he "had" the file, is in fact proof that he [or other respondents of the WebSite] did in fact bypass my system, as rudimentary as it would appear to an experienced hacker.

7.1.4. My submission goes on to say that the CAct does not suggest any competition or degree of difficulty in the hacking/bypassing, but rather talks to the **intent** of the hacker/bypasser and the degree of flagrancy, and in my submission that is **admitted** by the pure audacity implicit in the Conan post [irrespective of whether he was used as a pawn or not].

7.1.5. So to return to those two lovely judicial expressions, "doing the best I can" and "to be intellectually responsible", I am seeking \$100,000 "basic" remedy under s 116D and \$100,000 additional remedy.

8. Moral Rights

8.1. General

8.1.1. The final avenue of relief is via Part IX, Moral Rights. It goes without saying that Fraserside did not attempt to obtain any relief under "moral grounds", nor were they "individuals" per s 190. I have already deposed evidence of what I described hereabove as a Blitzkrieg of "derogatory treatment" [see s 195AJ] on my "honour or reputation" in relation to the EBook, which, in my submission, infringes s 195AQ.

8.1.2. It is noted that this Part also offers the offender an "escape clause", for example s 195AS, so I will also do my normal Devil's Advocate submission which simply says that the respondents have never at any time attempted any **justification** of their derogatory treatment, and in fact to say that I am "*the idiot that has the Australian record of being banned by the most forums*" is, in my submission, the ultimate **compliment** to anyone with integrity.

8.1.3. On the other hand, as the days pass "the chickens are coming home to roost" on many of the matters of which I speak in the book, and I have documented some at the web site for the book [or will do in the future]. But, in my submission, the CAct does not require one to "blow one's own trumpet" as the onus is fully on the respondent to disprove that there was reasonable excuse for the derogatory act.

8.1.4. these are the various applicable sections:

Part IX—Moral rights of performers and of authors of literary, dramatic, musical or artistic works and cinematograph films

Division 1—Preliminary

189 Definitions

In this Part, unless the contrary intention appears:

literary work means a literary work in which copyright subsists.

190 Moral rights conferred on individuals

Only individuals have moral rights.

192 Rights to be additional to other rights

(1) The moral rights of the author of a work are in addition to any other rights in relation to the work that the author or anyone else has under this Act.

Division 4—Right of integrity of authorship of a work

195AI Author's right of integrity of authorship

- (1) The author of a work has a right of integrity of authorship in respect of the work.*
- (2) The author's right is the right not to have the work subjected to derogatory treatment.*

195AJ Derogatory treatment of literary, dramatic or musical work

In this Part:

derogatory treatment, in relation to a literary, dramatic or musical work, means:

- (a) the doing, in relation to the work, of anything that results in a material distortion of, the mutilation of, or a material alteration to, the work that is prejudicial to the author's honour or reputation; or*

(b) the doing of anything else in relation to the work that is prejudicial to the author's honour or reputation.

Division 6—Infringement of moral rights

Subdivision A—Infringement of moral rights of authors

195AQ Infringement of right of integrity of authorship

(1) This section has effect subject to this Subdivision.

(2) A person infringes an author's right of integrity of authorship in respect of a work if the person subjects the work, or authorises the work to be subjected, to derogatory treatment.

*(3) If a literary, dramatic or musical work has been subjected to derogatory treatment of a kind mentioned in paragraph (a) of the definition of **derogatory treatment** in section 195AJ that infringes the author's right of integrity of authorship in respect of the work, a person infringes the author's right of integrity of authorship in respect of the work if the person does any of the following in respect of the work as so derogatorily treated:*

- (a) reproduces it in a material form;*
- (b) publishes it;*
- (c) performs it in public;*
- (d) communicates it to the public;*
- (e) makes an adaptation of it.*

8.1.5. We then move on to the Head of Power/Damage, per:

Division 7—Remedies for infringements of moral rights

Subdivision A—Remedies for infringement of moral rights of authors

195AZ Actions for infringement of author's moral rights

If a person infringes any of the moral rights of an author in respect of a work, the infringement is not an offence but the author or a person representing the author may bring an action in respect of the infringement, subject to any co-authorship agreement in force under section 195AN to which the author is a party.

8.1.6. However, unlike all other Heads of Damage s 195AZGG involves some trading off or discounting, per:

Subdivision C—Miscellaneous

195AZGG Saving of other rights and remedies

- (1) Subject to this section, this Part does not affect any right of action or other remedy, whether civil or criminal, in proceedings brought otherwise than under this Part.*
- (2) Any damages recovered in proceedings brought under this Part are to be taken into account in assessing damages in proceedings brought otherwise than under this Part and arising out of the same event or transaction.*
- (3) Any damages recovered in proceedings brought otherwise than under this Part are to be taken into account in proceedings brought under this Part and arising out of the same event or transaction.*

8.1.7. With that in mind I turn to remedies applicable to the infringements, per s 195AZA:

195AZA Remedies for infringements of author's moral rights

(1) *Subject to section 203, the relief that a court may grant in an action for an infringement of any of an author's moral rights in respect of a work includes any one or more of the following:*

- (a) *an injunction (subject to any terms that the court thinks fit);*
- (b) *damages for loss resulting from the infringement;*
- (c) *a declaration that a moral right of the author has been infringed;*
- (d) *an order that the defendant make a public apology for the infringement;*
- (e) *an order that any false attribution of authorship, or derogatory treatment, of the work be removed or reversed.*

8.1.8. Firstly I would seek an additional clause in the injunction sought hereabove to include Moral Rights. Secondly I would seek an order for the respondents to fund an advertisement in The Australian [national newspaper] both in print and at their web site, as well as a UTube video, making a public apology, in terms that were acceptable to myself. I would not logically seek an apology at The WebSite as, one way or the other, I don't think it will exist much longer, but if it does, or morphs once again I would seek an apology. I would also seek an apology at my own web sites.

8.1.9. As for damages, as a Professional Engineer, Morals & Ethics are axiomatic. For example the I.T. Industry was able to get away with gross fraud of some \$200 Billion with Y2K with the simple statement "*we had no idea 2000 came after 1999*" whereas the designers of the Sydney Harbour Bridge could not claim, had it fallen over in 2000, "*Oh you wanted it to stay up past 1999?*". Therefore even when I moved into perhaps the most morally dubious of all fields, ie Family Law, I retained my Morals & Integrity, and as mentioned above, in a Kafkaesque type of juxtaposition, I insisted on paying for the EBook I used as a tutorial on converting my own EBook to pdf, even though I surmised that the author was probably one of those involved in Y2K.

8.1.10. In this way Moral & Ethical matters are paramount in my makeup, so doing the best I can to put a figure on the damages I say \$500,000, but with a reduction to \$400,000 because of s 195AZGG.

9. Standing Back

9.1. General

9.1.1. To complete my submission I will do what the FCA often calls "the third step" in property matters [which is incidentally covered in my book], whereby after looking at contribution at step 1 [s 79(4)(a),(b),(c) etc] and step 2, the so called "s 75(2) factors", it returns to s 79(2) because of the "shall not", just to make sure, by "standing back going forward", all is just & equitable, per:

(2) *The court **shall not** make an order under this section unless it is satisfied that, in all the circumstances, it is just and equitable to make the order.*

9.1.2. In my submission it is appropriate to also do so in this case for reasons I will detail. When I was considering the question of paperback versus EBook publishing I naturally did some detailed research on the subject. The global consensus about EBooks can be described in a few words.

9.1.3. There is unanimous agreement that with the "exponential explosion of Internet Technology" over some 10 years the EBook is firstly totally logical and secondly totally "Green" as hardcopy books continue to gobble up rain forests etc, with "Kyoto implications".

9.1.4. Objections based on eye strain to reading on a monitor have largely vanished with the affordability of LCD monitors in recent time. Even objections based upon a love of "flipping pages in bed" can be argued down by the exponential **decrease** in the cost of printers, whereby an EBook purchaser may simply [and **legally**] print their EBook if they desire.

9.1.5. The bottom line of my research was that the volume of EBooks **should** logically be 100 fold what it is, and it **would** be, save for the one problem of **piracy**.

9.1.6. And so to return to my submissions hereabove I note that the "plentiful well of cases" I normally find on AustLii/Google on virtually any legislation, proved to be very sparse indeed for the CAct, and for EBooks in particular.

9.1.7. As seen, for copyright of digital images, a question arises if the huge Google Corporation is **allowed** to copy and pass on many billions of digital images, but because of the power of big business the matter **has never been litigated**, nor **will** it be. So the closest a researcher might get to case law concerns [analog] telephone books.

9.1.8. The exact same situation applies to the Y2K fraud, the matter **has never been litigated**.

9.1.9. Then, as seen, with EBooks the closest one comes to a test case is some porn movies. And again the reason is the matter **has never been properly litigated**. And once again it would be intellectually irresponsible not to conclude that the huge publishing houses [hard copy] provide the same inducement to lawyers to "agree not to disagree/litigate", nor to conclude that the hackers that actually do the pirating are not "supported" by the big business interests.

9.1.10. But the CAct itself has meticulously kept track of all "likely sins" so there is no excuse on that count **not** to litigate. Then there is the matter that in most cases [save for Stephen King etc, who eventually stopped publishing EBooks because of piracy] the author is a "little person" and without the financial resources to employ lawyers, nor the legal abilities to understand the CAct and litigate "in person". And a search on the Internet for advice in litigation reveals the same "code of silence" as to legal remedies, but many "softly softly" articles badly disguised as advertisements for eg ACME Incription Services.

9.1.11. But the other aspect of the CAct which I wish to stress emphatically is the treatment of **deterrence** in the award of damages, eg:

s 115(4) Where, in an action under this section:

(a) an infringement of copyright is established; and

(b) the court is satisfied that it is proper to do so, having regard to:

*(i) the **flagrancy** of the infringement; and*

*(ia) the **need to deter similar infringements** of copyright; and*

[...]

*the court may, in assessing damages for the infringement, award such **additional damages** as it **considers appropriate** in the circumstances.*

9.1.12. So to conclude this standing back summary, the owner/author of an EBook can **not** say that "the law is a paper tiger" in arresting piracy, both for their own relief and in setting a

deterrent authority, but rather it is the problems such owners/authors encounter in **prosecuting** their rights. My summary then goes on to say that the damages I am seeking from these several Heads of Remedy may well seem excessive in total, even though I have argued "on the low side" at each Head individually.

9.1.13. Finally my summary says that if my case was to become an authority that would substantially deter anyone pirating in the future, then the damages become minuscule by comparison. But if I was to also win the case but with greatly diminished damages awarded, that would simply open the floodgates to piracy, safe in the knowledge that the worst that could happen would be the pirate would simply lose what he already gained.

10. Privacy Similarities

10.1. General

10.1.1. In my submission it would be almost recalcitrant not to mention an almost parallel situation in relation to the matter of Privacy Protection where the High Court in Lenah Game Meats has virtually "cleared the path" [especially per Victoria Park] for Privacy Invasion to be considered a Tort, and I have made mention hereabove of the Kafkaesque use of the PAct where the CSA tries to use it in **reverse** to protect **itself** from its victims. Not only must Lenah be seen as a type of open invitation but Kirby J is very active on UTube "campaigning against privacy abuse"

10.1.2. And the further similarity is that the "correct vehicle" in both privacy and copyright would seem to be an individual, per Kirby J in Lenah Game Meats:

*190 Privacy and corporations: The fact that the respondent is a corporation is a further reason for **delaying** a response to this question. This is because **doubt exists** as to whether a corporation is apt to enjoy any common law right to privacy[258]. In so far as, in Australia, the elucidation of this aspect of the common law is influenced by the content of universal principles of fundamental rights, Art 17 of the International Covenant on Civil and Political Rights[259] appears to relate **only to the privacy of the human individual**. It does not appear to apply to a corporation or **agency** of government[260]. The foregoing view is reinforced by the way in which the right to privacy has developed in the United States, where it has had a long gestation[261].*

*191 Because it is unnecessary for me to reach a final conclusion on this question, I will refrain from doing so. Cases from other jurisdictions (and some from Australia) demonstrate that there are **many instances of invasions of the privacy of individual human beings** that are likely to present the question raised by the respondent in circumstances **more promising of success** than the present.*

10.1.3. So in my submission it all gets back to the question of "**someone has to argue it**", and from the legal industry side of the fence, I quote from Michael Watt to the 1994 Joint Select Committee:

21.21 The Joint Committee received substantial evidence which suggested that despite the specific requirement of section 79(4)(g) of the Family Law Act 1975 that existing and expected child support liabilities under the Child Support (Assessment) Act 1989 must be taken into account in property settlements, the legal profession and the judiciary may not

have fully adjusted to the impact of the Child Support Scheme on property settlements. Michael Watt from the Law Council of Australia stated that:

*It is probably not just the court, it is probably the **profession as well**. We have all been so **ingrained** over the entire duration of the Family Law Act's history, which is not a short time now, to thinking that the custodial parent starts with an extra 10 per cent and the question is whether **she** [sic?] gets any more than that. As Michael [Taussig] was saying when you were asking the question, **someone has got to argue it and I do not think the profession has been arguing as assiduously as it should be.***

10.1.4. So apart from the Freudian slip of assuming the mother **would** be the custodial parent, that new found confession and promise of "justice for all" fell flat on its face as far as Watt, Taussig or **anyone at all** in the FLIndustry ever arguing Division 5 of Part 7 of the CSAAct in such a manner. Furthermore when similar questions [about Part 6A] were put to Watt when he became a judge in Butler vs Man he **went out of his way** to avoid answering them, and the Full Court supported him. And so it is a **wonderful result** that as of 1 July 2008, the legislative changes passed by the Howard government **fully admit** that Part 6A was in fact used **illegally** from 1992 to 2008, thus fully proving the arguments I made for Mr Butler in Butler vs Man, that victory explanation now being posted **free** as an addendum to the EBook.

10.1.5. Yes indeed, it must not only be an individual that argues this matter but a **self represented** individual, and on that point I rest my case.