

The Key

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AGREEMENT BETWEEN

THE

COMMONWEALTH OF AUSTRALIA

AND

DIRECTOR OF NATIONAL PARKS AND WILDLIFE

IN RELATION TO

COPYRIGHT OWNERSHIP

**Australian Government Solicitor
Robert Garran Offices
National Circuit
BARTON ACT 2600**

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File Reference: OCL 93345932

THIS DEED is made the
1993

23rd

day of

December

BETWEEN

The **COMMONWEALTH OF AUSTRALIA**, represented by the Department of the Environment, Sport and Territories ("the Commonwealth")

AND

The **DIRECTOR OF NATIONAL PARKS AND WILDLIFE**, a body corporate established by section 15 of the *National Parks and Wildlife Conservation Act 1975* (Cth.) ("the Assignee")

WHEREAS:

- A. Subsection 176(2) of the *Copyright Act 1968* (Cth.) ("the Copyright Act") provides, inter alia, that the Commonwealth is the owner of the copyright in an original literary, dramatic, musical or artistic work made by, or under the direction or control of, the Commonwealth.
- B. Section 177 of the Copyright Act provides, inter alia, that the Commonwealth is the owner of the copyright in an original literary, dramatic musical or artistic work first published in Australia if first published by, or under the direction or control of, the Commonwealth. Section 29 of the Copyright Act defines "publication" and provides, inter alia, that for the preceding purpose a publication must have been authorised by the prior copyright owner.
- C. Sub-section 178(2) of the Copyright Act provides, inter alia, that the Commonwealth is the owner of the copyright in a sound recording or cinematograph film made by, or under the direction or control of, the Commonwealth.
- D. Section 179 of the Copyright Act provides, inter alia, that ss. 176, 177 and 178 of the Copyright Act have effect subject to any agreement

made by, or on behalf of, the Commonwealth with the author of the work or with the maker of the sound recording or cinematograph film, by which it is agreed that the copyright in the work, recording or film is to vest in the author or maker, or in any other person specified in the agreement.

- E. Section 196 of the Copyright Act provides, inter alia, that existing copyright is personal property and is transmissible by assignment.
- F. Section 197 of the Copyright Act provides, inter alia, that a purported assignment of future copyright will be effective to vest copyright in the assignee upon the coming into existence of the copyright.
- G. It has been suggested that a consequence of ss.176, 177 and 178 of the Copyright Act is that the copyright subsisting in works, recordings and films made by or under the direction or control of the Assignee, and in works first published in Australia by or under the direction or control of the Assignee, is owned by the Commonwealth and not the Assignee.
- H. While the suggestion referred to in Recital D above is not accepted by the Assignee, the Commonwealth and the Assignee have agreed that it is expedient for the avoidance of doubt for the Commonwealth to assign to the Assignee, on the terms and conditions contained in this Deed, all existing and future copyright in the works, recordings and films referred to in Recital G which the Commonwealth may now, or in the future, own, subject to necessary reservations in relation to copyright which has prior to the date of this Deed been assigned or licensed by the Commonwealth.

NOW THIS DEED WITNESSETH AS FOLLOWS:

- 1. In this Deed, unless the contrary intention appears:
 - (a) "Assignee" includes all precursors and successors of the Director of National Parks and Wildlife by whatever name called;
 - (b) "Film" has the same meaning as 'cinematograph film' in the Copyright Act;
 - (c) "published" has the same meaning as "published" in the Copyright Act;
 - (d) "Recording" has the same meaning as "sound recording" in the Copyright Act;
 - (e) "Work" has the same meaning as "work" in the Copyright Act;

- (f) words importing the singular include the plural and vice versa;
- (g) words importing one gender include the other genders;
- (h) reference to a person includes a body politic, a body corporate, a company, a foreign company, a partnership, an unincorporated association and a natural person;
- (i) reference to "the Copyright Act" includes consolidations, amendments, re-enactments and replacements thereof; and
- (j) reference to a provision of, or definition in, the Copyright Act includes amendments thereto and any provisions or definitions substituted therefor.

2. In consideration of the sum of \$1.00 paid by the Assignee to the Commonwealth, the receipt of which is hereby acknowledged, and subject to clauses 5 and 6, the Commonwealth hereby assigns to the Assignee all of its existing and future copyright (including the right to sue for damages and other relief for past infringements) in Works, Recordings and Films where it owns, or would but for this Deed in the future own, such copyright by reason of:

- (a) the Works being made, or first published in Australia, by or under the direction or control of the Assignee; or
- (b) the Recordings or Films being made by or under the direction or control of the Assignee,

whether or not the Assignee was acting as servant or agent of the Commonwealth.

3. The effective date of the assignment of copyright with respect to each Work, Recording and Film referred to in clause 2 shall be:

- (a) where the Work, Recording or Film was, or will be, made by or under the direction or control of the Assignee, the date when it was, or is, made; and
- (b) where the Work was, or will be, first published in Australia by or under the direction or control of the Assignee, the date when it was, or is, first published in Australia.

4. Where:

- (a) the Assignee has entered into, or does in the future enter into, an agreement with a person for the making of a Work, Recording

or Film by that person or another person ("the Copyright Agreement");

- (b) that Work, Recording or Film is made by or under the direction or control of the Assignee;
- (c) the Copyright Agreement provides for the copyright in that work, Recording or Film to vest in, or be assigned to, any person (which may include that person, the Commonwealth or the Assignee); and
- (d) it is necessary for the Assignee to have the authorisation of, or for the Copyright Agreement to be ratified by, the Commonwealth, in order to make valid at law the said vesting or assignment of copyright as contemplated in the Copyright Agreement;

the Commonwealth hereby grants such authorisation and provides such ratification to the extent necessary to make valid the said vesting or assignment of copyright.

- 5. Any copyright vested in, or assigned to, a person under an agreement referred to in clause 4, shall not be taken to be included in the copyright being assigned under clause 2.
- 6. Any copyright which the Commonwealth has assigned to any person (which may include the Assignee) prior to the date of this Deed shall not be taken to be included in the copyright being assigned under clause 2.

7. Where:

- (a) prior to the date of this Deed, the Commonwealth had granted a licence ("the Licence") to any person ("the Licensee") with respect to any copyright assigned under clause 2;
- (b) the Licence was in force immediately prior to the execution of this Deed; and
- (c) it is necessary for the Licence to be ratified by the Assignee in order to make the Licence valid at law;

the Assignee hereby provides such ratification to the extent necessary to make valid the Licence. Subject to any contrary agreement in writing between the Parties:

- (d) any such Licence shall remain in full force and effect as a licence granted by the Commonwealth to the Licensee;

- (e) the Commonwealth shall remain responsible for its obligations under any such Licence;
 - (f) the Commonwealth may retain any royalties payable to it under any such Licence;
 - (g) the Commonwealth shall use its best endeavours to identify and provide particulars to the Assignee of any such Licences; and
 - (h) the Commonwealth shall consult with the Assignee regarding the exercise of any right of termination enjoyed by the Commonwealth under any such Licence.
8. The Commonwealth shall execute and perform any further instrument or thing which may be necessary or convenient for further giving effect to the intention of this Deed.

IN WITNESS WHEREOF the parties hereto have executed this Deed on the date first above written.

SIGNED SEALED AND DELIVERED)

for and on the behalf of the)
COMMONWEALTH OF AUSTRALIA)

by:)

[Handwritten signature]

.....
Stuart Hammett

(print name)

.....
Secretary, DEST

(print title)

in the presence of :

A. McKinnay

[Handwritten mark]

SIGNED SEALED AND DELIVERED)

for and on behalf of the)
DIRECTOR OF NATIONAL PARKS)
AND WILDLIFE)

by:)

[Handwritten signature]

.....
BRIDGEWATER

(print name)

.....
DIRECTOR, NPWS

(print title)

in the presence of :

G. BRANST



[Handwritten signature]