

Copyright (International Protection) Amendment Regulations 1998 (No. 1) 1998 No. 360

EXPLANATORY STATEMENT

Statutory Rules 1998 No. 360

Issued by the authority of the Attorney-General

Copyright Act 1968

Copyright (International Protection) Amendment Regulations 1998 (No. 1)

The *Copyright Act 1968* (the Act) grants and determines the scope of copyright in Australia.

Sections 184 of the Act (in relation to works and subject matter other than works) and 248U of the Act (in relation to performers' rights) authorise the making of regulations to apply the provisions of the Act in relation to foreign countries in certain specified ways.

Subsections 184(3) and 248U(3) provide that the power to so extend the provisions of the Act is restricted to countries that are members of a convention relating to copyright or the protection of performers respectively, to which Australia is also a party, or to countries, in respect of the relevant class of works or other subject matter to which those provisions relate, of which the Governor-General is satisfied that provision has been, or will be, made under the law of that country by virtue of which adequate protection is, or will be, given to Australian copyrights/performances.

Section 249 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters that are required or permitted by the Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Copyright (International Protection) Regulations* (the Principal Regulations) apply provisions of the Act in the ways specified in sections 184 and 248U in relation to the countries listed in the Schedules to the Principal Regulations. The purpose of the amendment regulations is to update the lists of countries specified in the Schedules and to simplify the provisions of the Principal Regulations regarding the term of copyright protection.

Regulation 5 provides that copyright subsisting in a published work or film by reason only of the operation of the Principal Regulations ceases to subsist on the expiry of the term of protection in the country of origin. "The country of origin" is defined in subregulation 3(1) by reference, inter alia, to publication first or "simultaneously" in one or more countries set out in Schedule 1 to the Principal Regulations. Under subregulation 3(1) publication occurs "simultaneously" in a country if a work or film is published there within 30 days of first publication in another country.

The amendment regulations repeal regulation 5 and consequently omit the definitions of "simultaneously" and "the country of origin" in subregulation 3(1) of the Principal Regulations. Because of the growth in membership of the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPs) and the *Berne Convention for the Protection of Literary and Artistic Works* (the Berne Convention), the great majority of countries relevantly listed in Schedule 1 to the Principal Regulations provide, or will soon provide, for duration of protection which is the same as, or in some cases greater than, that provided in Australia. (Both TRIPs, in part, and the Berne Convention are treaties which oblige members to provide minimum standards of copyright protection.) Consequently, regulation 5 has little practical effect.

Repeal of regulation 5 simplifies the application of the Principal Regulations and makes the law more easily ascertainable without prejudicing any national interest. Regulation 5 in its terms gives effect to a comparison of terms of protection permitted under the Berne Convention and TRIPs. Such a comparison is not mandatory and repeal is therefore equally consistent with these international instruments.

The amendment regulations also update the lists of countries set out in the Schedules to the Principal Regulations to take account of new accessions and memberships to the relevant treaties.

Details of the amendment regulations are included in the Attachment.

The amendment regulations commence on gazettal.

ATTACHMENT

Regulation 1 provides that the amendment regulations are the *Copyright (International Protection) Amendment Regulations 1998* and the appropriate number is inserted.

Regulation 2 provides that the amendment regulations commence on gazettal.

Regulation 3 is a machinery provision that provides that Schedule 1 to the amendment regulations amends the Principal Regulations.

Schedule 1, item 1 amends the name of the Principal Regulations, in accordance with current drafting practice, so that the Principal Regulations are titled the *Copyright (International Protection) Regulations 1969*.

Schedule 1, items 2 and 3 amend regulation 3 to omit the definitions of "simultaneously" and "the country of origin" as a consequence of the repeal of regulation 5 effected by item 5.

Schedule 1, item 4 omits mention of "Part III" from regulation 4 as a consequence of the omission of Part III of Schedule 1 to the Principal Regulations effected by item 13.

Schedule 1, item 5 omits regulation 5.

Schedule 1, item 6 omits mention of "Part III" from regulation 8 as a consequence of the omission of Part III of Schedule 1 to the Principal Regulations effected by item 13.

Schedule 1, item 7 amends the heading to regulation 9 to insert "and other subject matter" after "overseas works" to more accurately describe the substance of that provision.

Schedule 1, item 8 omits each mention of "Part III" from regulation 9 as a consequence of the omission of Part III of Schedule 1 to the Principal Regulations effected by item 13.

Schedule 1, item 9 omits "Zaire" from Part 1 of Schedule 1 as a consequence of that country now being named "Democratic Republic of the Congo" and inserted as such by item 10.

Schedule 1, item 10 amends Part 1 of Schedule 1 to add the following countries that have joined the Berne Convention since the Schedule was last updated in December 1995: Algeria, Bahrain, Belarus, Botswana, Cape Verde, Cuba, Democratic Republic of the Congo (formerly Zaire), Dominican Republic, Equatorial Guinea, Grenada, Guatemala, Indonesia, the Republic of Korea, Mongolia, Panama, Singapore and Swaziland.

Schedule 1, item 11 amends the heading to Part II of Schedule 1 to describe the amended list of countries as "States Party to the Universal Copyright Convention that are not Party to the Berne Convention nor Members of the World Trade Organization".

Schedule 1, item 12 amends the Principal Regulations to omit Algeria, Belarus, Cuba, Dominican Republic, Guatemala, the Republic of Korea and Panama from the list in Part II of Schedule 1 as a consequence of those countries having joined the Berne Convention or the WTO since the Schedule was last updated in December 1995. That item also omits Bangladesh, Belize and Nicaragua from the list in Part H of Schedule 1 as a consequence of those countries being members of the WTO.

Schedule 1, item 13 omits Part III of Schedule 1. This Part lists countries with which Australia has a bilateral agreement for the protection of copyright. It is, however, unnecessary to make separate reference to those agreements in the Principal Regulations as both countries listed in that Part have joined the Berne Convention and the WTO. Works and subject matter with a

relevant connection to those countries will have copyright protection in Australia based on that membership.

Schedule 1, item 14 adds Canada, Cape Verde, Former Yugoslav Republic of Macedonia, Lebanon, Poland, Saint Lucia, Slovenia and Venezuela to Part IV of Schedule 1, which lists the members of the *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations*, as a result of the accession of those countries to that convention.

Schedule 1, item 15 inserts further countries in Part V of Schedule 1. Part V of Schedule 1 lists countries which are members of the WTO. The countries to be added have become members of the WTO since the Part was last amended in December 1995. Those countries are: Angola, Benin, Bulgaria, Cameroon, Chad, Congo, Democratic Republic of the Congo, Ecuador, Fiji, Gambia, Grenada, Haiti, Madagascar, Mongolia, Niger, Panama, Papua New Guinea, Qatar, Rwanda, Saint Kitts and Nevis, Solomon Islands and the United Arab Emirates.

Schedule 1, item 16 omits "Union of Soviet Socialist Republics" and substitutes "Russian Federation" as a consequence of the break-up of the Soviet Union and the formation of the Russian Federation as the principal successor country. The list of countries in Schedule 3 is used in relation to the provision under regulations 6 and 7 of a public performance and broadcast right in respect of sound recordings. Unlike Schedule 1, Schedule 3 is not included to meet treaty obligations. The protection for sound recordings which it provides is extended voluntarily to recordings originating in the listed foreign jurisdictions on the basis of an assessment that the laws of those countries provide for similar protection.