

EXPLANATORY STATEMENT

Issued by the Authority of the Attorney-General

Copyright Act 1968

Copyright (International Protection) Amendment Regulations 2022

Purpose

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

The *Copyright (International Protection) Regulations 1969* (the Regulations) provide for the application of certain provisions of the Act to countries other than Australia.

The Regulations are made under the authority of sections 184 and 249 of the Act.

Section 184 of the Act provides, in part, that the Governor-General may make regulations to extend protection under the Act for works and other subject-matter that are made or first published in foreign countries.

Section 249 of the Act provides, in part, 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 purpose of the *Copyright (International Protection) Amendment Regulations 2022* (the Amendment Regulations) is to update the protection provided to foreign countries under the Regulations in accordance with Australia's treaty obligations and commitment to protecting international sound recordings. Part 1 of the Amendment Regulations extends protection for secondary uses of sound recordings provided under the Act to seven additional countries.

Secondary uses of sound recordings are the rights to:

- cause a sound recording to be heard in public, e.g. playing recorded music in a gym, cafe, and
- broadcast a sound recording to the public, e.g. a radio station playing recorded music.

As a condition for the making of regulations, section 184 specifies that the country to which a provision of the Act is being applied must be a party to an international agreement specified in relation to the provision of the Act, or that the Minister must be satisfied that adequate protection is or will be given under the law of the foreign country in the related class of works.

This condition is met as the seven countries are party to either or both the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention), and/or the World Intellectual Property

Organization Performances and Phonograms Treaty (WPPT), without reservations for the secondary use of sound recordings.

Countries that accede to or ratify one or both of these two treaties, without reservations for the secondary use of sound recordings, have committed under international law to protect the secondary use of sound recordings on a reciprocal basis. As each of these seven additional countries provides protection for secondary uses of sound recordings under domestic laws, these countries will extend these rights to Australia.

The effect of Australia extending protection to these seven countries under the Amendment Regulations is that copyright owners that are nationals of these countries will have exclusive rights to cause a recording to be heard in public, and to broadcast a recording to the public in Australia and therefore benefit from royalties paid for the use of their sound recordings in Australian broadcasts and public performances. In turn, Australian copyright owners will also benefit from reciprocal protection for the secondary uses of sound recordings in broadcasts and public performances in these seven additional countries.

The practical effect will be that the Phonographic and Performance Company of Australia (PPCA), the copyright collecting society responsible for licencing for the use of recorded music in Australia and distribution of royalties to rights holders, will be able to collect royalties from these countries when Australian recorded music is played overseas and vice versa.

The details of these amendments are set out in [Attachment 1](#).

The Amendment Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

Consultation

The following stakeholders were consulted in relation to the amendments in Part 1 of the Amendment Regulations and supported the amendments:

- The Phonographic Performance Company of Australia, and
- The International Intellectual Property Section of the Department of Foreign Affairs and Trade.

Regulation Impact Statement

The Office of Impact Analysis assessed the Amendment Regulations as having minor regulatory impact on business, community organisations and individuals. As such, a Regulation Impact Statement is not required (reference OBPR22-03636).

Statement of Compatibility with Human Rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at [Attachment 2](#).

Notes on Sections

Section 1—Name

Section 1 provides for this instrument to be cited as the *Copyright (International Protection) Amendment Regulations 2022* (the Amendment Regulations).

Section 2—Commencement

Section 2 provides for the commencement of the Amendment Regulations.

Part 1 of the Amendment Regulations will commence on 1 January 2023 to align with the business practices of the Phonographic Performance Company of Australia (PPCA). The PPCA is the main body affected by the amendments to Schedule 3 to the *Copyright (International Protection) Regulations 1969*. The PPCA is the copyright collecting society responsible for licencing for the use of recorded music in Australia and distribution of royalties to rights holders.

Section 3—Authority

Section 3 provides that the Amendment Regulations are made under the authority of the *Copyright Act 1968* (the Act).

Sections 184 and 249 of the Act authorise the making of regulations in relation to foreign works and other subject matter.

Section 184(1)(a) of the Act provides that the regulations made under the Act may apply any of the provisions of the Act in relation to sound recordings made or first published in a country in a like manner as those provisions apply in relation to sound recordings made or first published in Australia.

As a condition, paragraph 184(3) provides that before the Governor-General makes a regulation applying a provision of the Act for the purposes of subsection 184(1) either:

- the country to which a provision of the Act is being applied must be a party to an international agreement specified by the Regulations, or
- the Minister must be satisfied that adequate protection is or will be given under the law of the foreign country in the related class of works.

The condition has been met, as all seven countries are party to one, or both, of the Rome Convention or the WPPT.

Section 249 of the Act provides, in part, 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.

Section 4—Schedules

Section 4 provides that an instrument specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in that Schedule, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Part 1—Amendments

Part 1 amends Schedule 3 to the Regulations and extends protection for secondary uses of sound recordings to seven other countries:

Belize
Congo
Cook Islands
Kiribati
Sao Tome and Principe
Senegal
Vanuatu

The effect of extending protection to these seven countries under the Amendment Regulations is that copyright owners that are nationals of these countries will have exclusive rights to cause a recording to be heard in public, and to broadcast a recording to the public in Australia and therefore, benefit from royalties paid for the use of their sound recordings in Australian broadcasts and public performances.

Australian copyright owners will also benefit from reciprocal protections for the secondary uses of sound recordings in broadcasts and public performances in these seven additional countries.

The practical effect of extending protection to these countries will be that the PPCA is able to collect royalties from these countries when Australian recorded music is played overseas and vice versa.

To determine whether these seven countries provided reciprocal protection for secondary uses, a review was undertaken. The status of the seven countries regarding the Rome Convention or WPPT treaties was considered, and the legislation of these countries was examined to ensure that their laws provide adequate protection for secondary uses.

The review confirmed that all seven countries are party to one, or both, of the Rome Convention or the WPPT and that their domestic laws provide adequate protection for secondary uses.

In addition to extending protection to these seven countries, Part 1 also updates the names of 11 countries already in Schedule 3 in line with Australia's international protocols. The updated names of these countries are:

Bahamas
Bolivia (Plurinational State of)
Czechia

North Macedonia
Holy See
Republic of Moldova
Slovakia
Türkiye
United Kingdom of Great Britain and Northern Ireland
Venezuela (Bolivarian Republic of)
Viet Nam

Part 2 —Application of the Amendments

Part 2 specifies that Part 1 of Schedule 1 to the Amendment Regulations applies in relation to:

- (a) a recording heard in public on or after 1 January 2023; and
- (b) a broadcast made on or after 1 January 2023.

Part 2 notes that Part 1 of Schedule 1 to the Amendment Regulations commences on 1 January 2023.

This clarifies that Australian broadcasts and public performances of sound recordings from the newly added countries to Schedule 3 are protected from 1 January 2023 onwards.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Copyright (International Protection) Amendment Regulations 2022

This Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Instrument

The purpose of the *Copyright (International Protection) Amendment Regulations 2022* (the Amendment Regulations) is to update the protection provided to foreign countries in the *Copyright (International Protection) Regulations 1969* in accordance with Australia's treaty obligations and commitment to protecting international sound recordings.

Part 1 of the Amendment Regulations extends protection for secondary uses of sound recordings to seven additional countries. Copyright owners of sound recordings in these seven countries will have the exclusive rights to cause a recording to be heard in public, and to broadcast a recording to the public in Australia.

Part 2 of the Amendment Regulations applies in relation to:

- (a) a recording heard in public on or after 1 January 2023; and
- (b) a broadcast made on or after 1 January 2023.

This clarifies that Australian broadcasts and public performances of sound recordings from the newly added seven countries to Schedule 3 are protected from 1 January 2023 onwards.

Human rights implications

This Instrument engages the right to freedom of opinion and expression regardless of frontiers under Article 19 of the Universal Declaration of Human Rights, because copyright owners of sound recordings in these seven countries will have exclusive rights to cause a recording to be heard in public, and to broadcast a recording to the public in Australia.

This Instrument also engages the right to protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author under Article 27 of the Universal Declaration of Human Rights and under Article 15(1)(c) of the International Covenant on Economic, Social and Cultural Rights.

Part 1 and Part 2 will promote the right to benefit from the protection of moral and material interests because copyright owners of sound recordings from the seven additional countries will be able to materially benefit from royalties paid for the use of their sound recordings in Australian broadcasts and public performances.

Australian copyright owners will also be able to benefit from reciprocal protections offered by, and the royalties paid for the use of their sound recordings in broadcasts and public performances in these seven additional countries.

The remaining provisions of the Instrument are mechanical changes and will have a minimal impact on the rights engaged.

Conclusion

This Disallowable Instrument is compatible with human rights because it promotes the right to freedom of opinion and expression and the right to benefit from the protection of moral and material interests.

The Honourable Mark Dreyfus KC MP
Attorney-General