

COPYRIGHT (INTERNATIONAL PROTECTION) AMENDMENT REGULATIONS
2024

EXPLANATORY STATEMENT

Issued by authority of the Attorney-General
under section 184 and 249 of *Copyright Act 1968*

PURPOSE AND OPERATION OF THE INSTRUMENT

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 and 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 2024* (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 two additional countries – St Kitts and Nevis, and Uganda.; and updates one official country name – Netherlands (Kingdom of the).

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 of the Act 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 two countries are party to one 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. In this case, both countries are a party to WPPT.

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 two additional countries have acceded to WPPT, and provide protection for secondary uses of sound recordings under domestic laws, these countries will extend these rights to Australia following the commencement of the Amendment Regulations.

The effect of Australia extending protection to these two 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 two 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 A](#).

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

The Amendment Regulations are not subject to sunseting under section 11 (1) of the *Legislation (Exemptions and Other Matters) Regulation 2015* because this is an instrument for the sole purpose of which, or a primary purpose of which, is to give effect to an international obligation of Australia.

CONSULTATION

Consultation was undertaken including with foreign countries where required.

Stakeholders, including those below, support the amendments:

- PPCA, and
- Department of Foreign Affairs and Trade.

Consultation also included discussions with the Uganda Registration Services Bureau to clarify domestic laws for the secondary use of sound recordings.

IMPACT ANALYSIS

The Amendment Regulations have minor regulatory impact on business, community organisations and individuals. The Office of Impact Analysis (OIA) determined that detailed analysis is not required under the Australian Government Policy Impact Analysis Framework (reference: OIA24-07683).

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

NOTES ON SECTIONS

Section 1 – Name

Section 1 provides for this instrument to be cited as the *Copyright (International Protection) Amendment Regulations 2024* (the Amendment Regulations).

Section 2 – Commencement

Section 2 provides for the Amendment Regulations to commence on 1 January 2025.

Part 1 of the Amendment Regulations will commence on 1 January 2025 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.

Subsection 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, subsection 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:

- a. 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
- b. 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 both countries are party to one 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). In this case, both countries are a party to 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 – Schedules

Section 4 provides that each instrument that is 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

Copyright (International Protection) Regulations 1969

Item [1] – Schedule 3 (table)

This item amends Schedule 3 to the Regulations by omitting “Netherlands” and substituting “Netherlands (Kingdom of the)” in line with Australia’s international protocols.

Item [2] – Schedule 3 (table)

This item extends protection for secondary uses of sound recordings by inserting Saint Kitts and Nevis into the table.

Item [3] – Schedule 3 (table)

This item extends protection for secondary uses of sound recordings by inserting Uganda into the table.

The effect of extending protection to these two 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 two 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 two countries provided reciprocal protection for secondary uses, a review was undertaken by the Attorney-General's Department. The status of the two countries regarding the Rome Convention and/or WPPT treaties was considered, and the legislation of these countries was examined to ensure that domestic laws provide adequate protection for secondary uses.

The review confirmed that both countries are party to one or both of the Rome Convention or the WPPT. In this case, both countries are a party to WPPT. The review confirmed that both countries' domestic laws provide adequate protection for secondary uses.

Part 2 – Application of the Amendments

Copyright (International Protection) Regulations 1969

Item [4] In the appropriate position in Part 4

This item specifies that the amendments of Schedule 3 apply in relation to:

- a. a recording heard in public on or after 1 January 2025; and
- b. a broadcast made on or after 1 January 2025.

Item 4 specifies that Part 1 of Schedule 1 to the Amendment Regulations commences on 1 January 2025.

This clarifies that Australian broadcasts and public performances of sound recordings from the newly added countries to Schedule 3 are protected from 1 January 2025 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 2024

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 2024* (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 two additional countries. Copyright owners of sound recordings in these two 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 2025; and
- b. a broadcast made on or after 1 January 2025.

This clarifies that Australian broadcasts and public performances of sound recordings from the newly added two countries to Schedule 3 are protected from 1 January 2025 onwards.

Human rights implications

Freedom of expression under Article 19 of Universal Declaration of Human Rights may be limited for non-copyright owners. Should non-copyright owners cause a recording to be heard in public or broadcast without a licence from the relevant copyright owner or collecting society, then these non-copyright owners may be infringing the exclusive rights of the copyright owner.

However, non-copyright owners are not prevented from broadcasting a sound recording or causing a sound recording to be heard in public; they are required to pay a licence fee. This limitation is permissible, because it is reasonable, necessary and proportionate, in order to balance the human rights of copyright owners outlined below. Copyright remuneration paid to copyright owners in these two new Schedule 3 countries will have no additional impact on Australian businesses as they already operate under licences with the Phonographic Performance Company of Australia Limited (PPCA). The PPCA is the non-profit copyright collecting society that provides blanket licences for the use of recorded music in Australia. These licences enable businesses to play recorded music in public, while safeguarding the rights of recording artists and labels and ensuring that they receive remuneration for their music.

This Instrument engages the right to freedom of expression under Article 19 of the Universal Declaration of Human Rights and under Article 19 of the International Covenant on Civil and Political Rights. This is because copyright owners of sound recordings in these two countries will

have exclusive rights to cause a recording to be heard in public, and to broadcast a recording to the public in Australia. Australian copyright owners will benefit from the exclusive rights to cause a recording to be heard in public, and to broadcast a recording to the public in these two additional countries.

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 two 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 two additional countries.

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

Conclusion

This Instrument is compatible with human rights.