

WORLD TRADE ORGANIZATION

RESTRICTED

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(95-1443)

**Council for Trade-Related Aspects
of Intellectual Property Rights**

Original: English

NOTIFICATION OF LAWS AND REGULATIONS UNDER ARTICLE 63.2 OF THE AGREEMENT¹

Australia

Supplement

The following communication from the delegation of Australia, dated 19 April 1995, has been received with the request that it be circulated to the Members of the Council for TRIPS.

I am writing to advise the making, on 11 April 1995, of amendments to the *Copyright (International Protection) Regulations*.

These amendments, as they come into force (some are delayed to 1 July 1995), give effect to Australia's obligations, as a member of the World Trade Organization (WTO), to grant copyright protection in relation to other WTO members. The opportunity has also been taken to update Parts I, II and IV of Schedule 1 and to update Schedule 3.

In brief, the amendments add Part V to Schedule 1 which lists all the country members of the WTO. This part is then used in certain ways to extend protection under the Copyright Act in relation to WTO members. The amendments to regulation 13 are based on the view that the regulation has application to all the enforcement provisions under Part XIA of the Copyright Act, both civil and criminal.

¹English only



Statutory Rules 1995 No. 1

Copyright (International Protection) Regulations² (Amendment)

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Copyright Act 1968*.

Dated 4 APRIL 1995 1995.

BILL HAYDEN

Governor-General

By His Excellency's Command,

Minister for Justice

1. Commencement

1.1 Regulations 4, 5, 6, 7 and 8 and subregulations 10.1 and 10.10 commence on 1 July 1995.

[NOTE: The remainder of these Regulations commence on gazettal: see *Acts Interpretation Act 1901*, s. 48.]

2 *Copyright (International Protection) 1995 No.*

2. Amendment

2.1 The Copyright (International Protection) Regulations are amended as set out in these Regulations.

3. Regulation 3 (Interpretation)

3.1 Subregulation 3 (3):

Omit "(a) of section 46 of the *Acts Interpretation Act 1901-1966*," substitute "46 (1) (a) of the *Acts Interpretation Act 1901*,".

4. Regulation 4 (Application of the Act)

4.1 Subregulation 4 (1):

Omit "Part II or Part III", substitute "Part II, Part III or Part V".

4.2 Paragraph 4 (2) (a):

Omit "Part II or Part III", substitute "Part II, Part III or Part V".

4.3 Subregulations 4 (3) and (4):

Omit "Part II or Part III", substitute "Part II, Part III or Part V".

4.4 Subregulation 4 (5):

Omit "Part 1, Part II, Part III or Part IV of".

5. Regulation 4B (Additional application of Act to certain performances)

5.1 Omit the regulation, substitute:

Application of the Act to certain performances having a connection with certain World Trade Organization countries

"4B. (1) In this regulation:

'relevant country' means a country that constitutes, or forms part of, the territory of a country that:

- (a) is specified in Part V of Schedule 1; and
- (b) is not specified in Part IV of Schedule 1.

“(2) The provisions of Part XIA of the Act, relating to:

- (a) sound recordings; and
- (b) sound broadcasts of live performances; and
- (c) sound transmissions of live performances to subscribers of diffusion services;

- apply to the following performances:

- (d) a performance by a performer who is a citizen, national or resident of a relevant country;
- (e) a performance given in a relevant country;
- (f) a performance recorded by a citizen, national or resident of a relevant country;
- (g) a performance broadcast by a relevant broadcaster from a relevant country;
- (h) a performance the first recording of which occurred in a relevant country.”.

6. Regulation 8 (Copyright not to subsist in overseas editions in certain cases)

6.1 Paragraphs 8 (a) and (b):

Omit “Part II or Part III”, substitute “Part II, Part III or Part V”.

7. Regulation 9 (Application of certain provisions of the Act to certain overseas works)

7.1 Subregulations 9 (2) and (3):

Omit “Part I or Part III”, substitute “Part I, Part III or Part V”.

8. Regulation 13 (Modification of application of provisions of the Act to performances)

8.1 Paragraph 13 (2) (a):

After “IV”, insert “or V”.

4 *Copyright (International Protection) 1995 No.*

8.2 Add at the end:

“(4) For the purposes of subregulation (2), if:

- (a) Part V of Schedule 1 is remade; and
- (b) on the remaking, the name of a country is included in the Part; and
- (c) immediately before the remaking, the name of the country was not included in the Part;

the remaking of the Part is taken to be an amendment of these Regulations that inserts the name of the country in Part V.

“(5) This regulation is taken not to apply to, or to affect the application of, section 248QA of the Act as applied by a provision of these Regulations.”.

9. The Schedules

9.1 Heading:

Omit the heading.

10. Schedule 1 (Countries to which the provisions of the Act apply)

10.1 Heading:

Omit the heading, substitute:

“SCHEDULE 1

Regulations 3, 4,
4A, 4B, 8, 9, 10,
11, 12 and 13

**COUNTRIES TO WHICH THE PROVISIONS OF THE ACT
APPLY”.**

10.2 Part I heading:

Omit the heading, substitute:

“PART I

**STATES PARTY TO THE BERNE CONVENTION FOR THE
PROTECTION OF LITERARY AND ARTISTIC WORKS”.**

10.3 Part 1:

Insert the following countries in the appropriate alphabetical position determined on a letter-by-letter basis:

“Estonia
Guyana
Lithuania
Russian Federation
Saint Kitts and Nevis
Tanzania”.

10.4 Part II heading:

Omit the heading, substitute:

“PART II

STATES PARTY TO THE UNIVERSAL COPYRIGHT
CONVENTION THAT ARE NOT PARTY TO THE BERNE
CONVENTION”.

10.5 Part II:

Omit “Russian Federation”.

10.6 Part II:

After “Saint Vincent and the Grenadines”, insert “Saudi Arabia”.

10.7 Part III heading:

Omit the heading, substitute:

“PART III

COUNTRIES WITH WHICH AUSTRALIA HAS CONCLUDED A
BILATERAL COPYRIGHT AGREEMENT”.

10.8 Part IV heading:
Omit the heading, substitute:

“PART IV

STATES PARTY TO THE INTERNATIONAL CONVENTION
FOR THE PROTECTION OF PERFORMERS, PRODUCERS OF
PHONOGRAMS AND BROADCASTING ORGANISATIONS
(ROME CONVENTION)”.

10.9 Part IV:
After “Honduras”, insert:
“Hungary
Iceland”.

10.10 Add at the end:

“PART V

MEMBERS OF THE WORLD TRADE ORGANIZATION

| | | |
|---------------------|--------------------|-------------------------------------|
| Antigua and Barbuda | Iceland | Romania |
| Argentina | India | Saint Lucia |
| Austria | Indonesia | Saint Vincent and the Grenadines |
| Bahrain | Ireland | Senegal |
| Bangladesh | Italy | Singapore |
| Barbados | Jamaica | Slovak Republic |
| Belgium | Japan | South Africa |
| Belize | Kenya | Spain |
| Brazil | Korea, Republic of | Sri Lanka |
| Brunei Darussalam | Kuwait | Suriname |
| Canada | Luxembourg | Swaziland |
| Chile | Macau | Sweden |
| Costa Rica | Malaysia | Tanzania |
| Côte d'Ivoire | Malta | Thailand |
| Czech Republic | Mauritius | Trinidad and Tobago |
| Denmark | Mexico | Tunisia |
| Dominica | Morocco | Turkey |
| Dominican Republic | Myanmar | Uganda |
| Finland | Namibia | United Kingdom |
| France | Netherlands | United States of America |
| Gabon | New Zealand | Uruguay |
| Germany | Nigeria | Venezuela |
| Ghana | Norway | Zambia |
| Greece | Pakistan | Zimbabwe”. |
| Guyana | Paraguay | |
| Honduras | Peru | |
| Hong Kong | Philippines | |
| Hungary | Portugal | |

8 Copyright (International Protection) 1995 No.

11. Schedule 3

11.1 Heading:

Omit the heading, substitute:

“SCHEDULE 3 Regulations 6 and 7

**COUNTRIES THAT PROVIDE RIGHTS FOR SECONDARY
USES OF SOUND RECORDINGS”.**

11.2 Insert the following countries in the appropriate alphabetical position determined on a letter-by-letter basis:

“Barbados

Bolivia

Chile

Dominican Republic

Greece

Honduras

Jamaica

Panama”.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 1995.
2. Statutory Rules 1969 No. 60 as amended by 1969 No. 65; 1974 No. 137; 1980 No. 276; 1981 No. 74; 1983 No. 127; 1984 No. 43; 1990 Nos. 356 and 357; 1991 Nos. 451 and 452; 1992 No. 124; 1993 No. 214; 1994 No. 114.

EXPLANATORY STATEMENT

STATUTORY RULES 1995 NO.

Issued by the Authority of the Minister for Justice

Copyright Act 1968

Copyright (International Protection) Regulations (Amendment)

Sections 184 and 248U of the *Copyright Act 1968* (the Act) provide that, subject to certain limitations, regulations may be made applying the provisions of the Act in relation to foreign countries in certain specified ways. Section 249 of the 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 Regulations) apply provisions of the Act in the ways specified in sections 184 and 248U in relation to the countries listed in the Schedules of the Regulations.

The regulations amend the Regulations to give effect to Australia's copyright obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and update the Regulations in other respects.

The TRIPS Agreement is an integral part of the Agreement Establishing the World Trade Organization (WTO), that was done at Marrakesh on 15 April 1994. The WTO Agreement came into force for Australia on 1 January 1995. The regulations amend the Regulations to grant the rights under the Act in relation to members of the WTO.

The Regulations also amend the Regulations to update the list of countries in Schedules 1 and 3 of the Regulations.

The regulations amend the Regulations to add new Part V to Schedule 1 of the Regulations. Countries in this part are members of the WTO. The regulations add references to this new part of Schedule 1 to regulation 4 thereby providing for the application of the copyright provisions of the Act in relation to WTO members in the same way as it is currently extended in relation to countries in Parts I, II and III of Schedule 1 by that regulation.

Part V of Schedule 1 lists all members of the WTO. Many countries listed in other parts of Schedule 1 are repeated in new Part V of Schedule 1. This repetition is not intended to have any legal consequence.

The regulations amend the Regulations to extend protection to performers who have a relevant connection with a WTO member that is not also a member of

the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the Rome Convention). This regulation would grant the minimum performers' rights as required by the TRIPS Agreement. Protection is already afforded to performers having a relevant connection with countries that are members of the Rome Convention.

To effect this change, the regulations amend the Regulations to repeal and replace regulation 4B. Regulation 4B previously provided performers' protection for US and Australian performers. Such protection applies under new regulation 4B as the USA is a member of the WTO and is in new Part V of Schedule 1. The operation of section 48 of the *Acts Interpretation Act 1901* ensures that any action arising out of previous regulation 4B, prior to its repeal, is saved. Amendments to the Act by the *Copyright (World Trade Organization Amendments) Act 1994* have removed the necessity to refer to Australian nationals in the Regulations.

The regulations amend regulation 13 of the Regulations to protect persons who have made an investment in a recorded performance prior to it being protected by reason of the inclusion of a country in Part V of Schedule 1. The regulation, however, also amends regulation 13 to ensure that section 248QA of the Act operates without restriction. Section 248QA provides criminal sanctions against commercial dealings with existing unauthorised recordings.

The regulations have the effect of adding to and making omissions from the list of countries in Parts I, II and IV of Schedule 1 of the Regulations to take account of new accessions to the relevant conventions. The countries in Part I of Schedule 1 of the Regulations are members of the Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention). The countries in Part II of Schedule 1 are members of the Universal Copyright Convention (the UCC) that are not also members of the Berne Convention. The countries in Part IV of Schedule 1 are members of the Rome Convention.

Schedule 3 in the Regulations is amended by the regulations. Schedule 3 comprises countries that provide adequate broadcast rights and rights to cause the sound recording to be heard in public to copyright owners in sound recordings.

Headings to the Schedules are added by the regulations to make clearer the scheme in the Regulations of granting rights in relation to members of agreements or treaties to which Australia is also a party. This amendment is of particular assistance in relation to Part II of Schedule 1 that lists countries that are members of the UCC that are not also members of the Berne Convention.

Details of the regulations are set out in the Attachment.

Details of Copyright (International Protection) Regulations (Amendment):

Other than as provided in regulation 1, these Regulations commence on gazettal.

Regulation 1: Commencement

Subregulation 1.1 provides that regulations 4, 5, 6, 7 and 8 and subregulations 10.1 and 10.10 commence on 1 July 1995. This date is the same as the date of the commencement of Part 4 of the *Copyright (World Trade Organization Amendments) Act 1994* (Copyright (WTOA) Act) that made changes to the performers' protection provisions of the Act to conform it to requirements under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Regulation 2: Amendment

Subregulation 2.1 is a machinery provision that provides that the Copyright (International Protection) Regulations are amended as set out in the Copyright (International Protection) Regulations (Amendment).

Regulation 3: Interpretation

Subregulation 3.1 makes a minor amendment to update the reference to the *Acts Interpretation Act 1901* in subregulation 3(3) of the Regulations.

Regulation 4: (Application of the Act)

Regulation 4 extends the foreign application of the copyright provisions of the Act to apply to members of the WTO.

Subregulation 4.1 amends subregulation 4(1) by adding a reference to Part V of Schedule 1. New Part V of Schedule 1 lists the members of the WTO.

Subregulation 4(1) applies the provisions of the Act in relation to literary, dramatic, musical and artistic works and editions first published and sound recordings, cinematograph films made or first published in any of the countries listed in Parts I, II and III of Schedule 1. The effect of subregulation 4.1 is to apply subregulation 4(1) in relation to WTO countries as listed in Part V of Schedule 1.

Subregulation 4.2 amends subregulation 4(2) by adding a reference to Part V of Schedule 1. Subregulation 4(2) applies the provisions of the Act in relation to artistic works that are buildings situated in a country that is included in Parts I, II and III of Schedule 1. The effect of subregulation 4.2 is to apply subregulation 4(2) to WTO members as listed in Part V of Schedule 1.

Subregulation 4.3 amends subregulations 4(3) and 4(4) by adding a reference to Part V of Schedule 1. Subregulation 4(3) applies the copyright provisions of the Act in relation to citizens or nationals of countries listed in Parts I, II and III of Schedule 1 in the same way as the provisions are applied to Australian citizens. The effect of subregulation 4.3 is to also extend this provision to citizens or nationals of WTO members as listed in Part V of Schedule 1.

Subregulation 4(4) applies the copyright provisions of the Act to residents of countries listed in Parts I, II and III of Schedule 1 in the same way as the provisions are applied to Australian residents. The effect of subregulation 4.3 is to apply subregulation 4(4) to WTO members as listed in Part V of Schedule 1.

Subregulation 4.4 amends subregulation 4(5) to delete references to Parts I-IV of Schedule 1. Subregulation 4(5) applies the provisions of the Act to bodies incorporated under the law of a country listed in Parts I-IV of Schedule 1 in the same way as the provisions of the Act apply to bodies incorporated under a law of the Commonwealth or of a State. The effect of subregulation 4.4 is to extend this provision to corporations incorporated in any country listed in Schedule 1, which includes the WTO members in Part V of Schedule 1.

Regulation 5: Regulation 4B (Additional application of the Act to certain performances)

Subregulation 5.1 repeals and replaces existing regulation 4B. Existing regulation 4B extended certain performers' rights in Part XIA of the Act to US and Australian nationals where the performer or the performance had a relevant connection with Australia, the USA or a country in Part IV of Schedule 1 (a "relevant country").

Existing regulation 4B extended certain performers' provisions of Part XIA of the Act in relation to performances fixed in a sound recording, the sound broadcast of performances and the sound diffusion of performances by cable. A relevant connection is where a performance is given in relevant country, recorded by a national of a relevant country, broadcast from a relevant country and when the performance is first recorded in a relevant country.

New regulation 4B makes identical provision in relation to performers having a relevant connection with a country in Part V of Schedule 1 that is not also in Part IV of Schedule 1. The USA is one of these countries. The provision has been broadened to apply to countries additional to the USA.

The references to Australian nationals and to countries in Part IV of Schedule 1 in existing regulation 4B are omitted in new regulation 4B. These references are no longer necessary following a change to the Act made by the Copyright (WTOA) Act whereby a performance will attract protection if there is a connection through nationality of the performer or country of performance. Previously, both relevant nationality and relevant country of performance were necessary connecting factors.

owners in sound recordings for the secondary uses of sound recordings. It is the policy of the Government that countries that are listed in Schedule 3 must, at least, provide rights to equitable remuneration for the broadcast and public performance of sound recordings. The countries that would be included in the proposed regulations by this amendment have become members of the Rome Convention and have not reserved their obligations in relation to Article 12. At a minimum, Article 12 of the Rome Convention requires the payment of equitable remuneration for the broadcast and public performance of sound recordings.

Regulations 6 and 7 of the Regulations provide that copyright in sound recordings does not include the exclusive right to cause the sound recording to be heard in public, or rights in respect of broadcast unless the sound recording was made in a Schedule 3 country or was made by a national, citizen or resident of a Schedule 3 country.

Subregulation 11.2 adds the following countries to Schedule 3: Barbados, Bolivia, Chile, Dominican Republic, Greece, Honduras, Jamaica and Panama. These additions bring the Schedule up to date. These countries are considered to provide adequate rights for copyright owners in sound recordings in that they provide broadcast rights and the right to cause a sound recording to be heard in public.