



TRIPLICAT

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Copyright Amendment Regulations 2001 (No. 2)¹

Statutory Rules 2001 No. 2²

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I, WILLIAM PATRICK DEANE, 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 6 FEB 2001 2001

WILLIAM DEANE
Governor-General

By His Excellency's Command

DARYL WILLIAMS
Attorney-General

1 Name of Regulations

These Regulations are the *Copyright Amendment Regulations 2001* (No.).

2

2 Commencement

These Regulations commence on the commencement of the *Copyright Amendment (Digital Agenda) Act 2000*.

3 Amendment of *Copyright Regulations 1969*

Schedule 1 amends the *Copyright Regulations 1969*.

Schedule 1 Amendments

(regulation 3)

[1] After regulation 4B

insert

**4BA Destruction of records or copies —
subsection 47AA (3) of the Act**

- (1) This regulation applies in relation to a recording or film of a work or adaptation that is made for the purpose of simulcasting the work or adaptation in digital form.
- (2) For subsection 47AA (3) of the Act, the relevant date in relation to the recording or film is 12 months after the end of the relevant simulcast period that, in accordance with the *Broadcasting Services Act 1992*, is applicable in relation to the broadcasting service that delivers the simulcast.

[2] **After regulation 4C**

insert

**4D Notice of communication —
paragraph 49 (7A) (c) of the Act**

For paragraph 49 (7A) (c) of the Act, a notice in the form set out in Schedule 4 must be communicated to the person.

[3] **Regulations 17A and 17B**

substitute

**17A Notice requirements — paragraph 104B (b) of
the Act**

For paragraph 104B (b) of the Act:

- (a) the prescribed form is:
 - (i) in relation to a copy of a published edition of a work — the form set out in Schedule 3; and
 - (ii) in relation to a copy of an audio-visual item — the form set out in Schedule 9; and
- (b) a notice must be 297 millimetres long and 210 millimetres wide.

[4] **After regulation 19**

insert

**20 Destruction of copies — subsection 110C (3)
of the Act**

- (1) This regulation applies in relation to a copy of a sound recording or cinematographic film that is made for the purpose of simulcasting the recording or film in digital form.

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- (2) For subsection 110C (3) of the Act, the relevant date in relation to the copy is 12 months after the end of the relevant simulcast period that, in accordance with the *Broadcasting Services Act 1992*, is applicable in relation to the broadcasting service that delivers the simulcast.

[5] Part 5, heading

substitute

**Part 5 Copying and
communication of
broadcasts by
educational and other
institutions**

[6] Regulation 23A

omit

owner, rules and transmission

insert

owner and rules

[7] Subparagraphs 23B (1) (a) (iii) and (iv)

omit each mention of

transmission

insert

broadcast

[8] Regulation 23C*substitute***23C Contents of record — paragraph 135K (1) (b) of the Act**

For paragraph 135K (1) (b) of the Act, a record must contain the following particulars:

- (a) the name of the institution for which the administering body:
 - (i) made the copy or caused the copy to be made; or
 - (ii) communicated the copy or caused the copy to be communicated;
- (b) the Part of the Act in reliance on which the copying or communication was carried out;
- (c) in relation to the making of a copy, the day on which the copy was made;
- (d) in relation to the communication of a copy of a broadcast, the day on which the copy was first communicated;
- (e) in relation to copies of broadcasts that are taken, under subsection 135H (3) of the Act, to have been copied or communicated again, the day on which they were taken to have been copied or communicated again;
- (f) the title, or other identification, of the program, or of each of the programs, included in the broadcast that was copied or communicated;
- (g) the name or call sign of the broadcaster who made the broadcast;
- (h) the day on which, and the time at which, the broadcast commenced;
- (i) the number of copies of the broadcast made by the administering body;
- (j) the number of times a copy of the broadcast was communicated by the administering body.

[9] Regulation 23E*substitute***23E Sending of copies of records — paragraph 135K (1) (d) of the Act**

- (1) This regulation applies to all records that relate to any copying of, or communication of a copy of, a broadcast carried out, or taken, under subsection 135H (3) of the Act, to have been carried out by, or on behalf of, the administering body in a quarter.
- (2) Copies of records that are to be sent to the collecting society under paragraph 135K (1) (d) of the Act must be sent by registered or certified mail, or otherwise as agreed between the administering body and the collecting society, not later than 21 days after the end of the quarter.
- (3) In this regulation:
quarter means a period of 3 months beginning on 1 January, 1 April, 1 July or 1 October in any year.

[10] Regulation 23F*omit*

transmission

insert

broadcast

[11] Regulation 23G*substitute***23G Form of record — paragraph 135K (2) (b) of the Act**

For paragraph 135K (2) (b) of the Act, the prescribed form:

- (a) in relation to a record of the copying of a broadcast — is the form set out in Schedule 11AA; and
- (b) in relation to a record of the communication of a copy of a broadcast — is the form set out in Schedule 11AB.

[12] After regulation 23H*insert***23HA Prescribed circumstances — section 135KA of the Act**

An administering body is not required to comply with the requirements of section 135KA of the Act in respect of the communication of copies of broadcasts in either of the following circumstances:

- (a) if the communication is made within the premises of an educational institution administered by the body in such a manner that persons receiving or accessing the communication cannot, by any means provided by the educational institution:
 - (i) make an electronic copy of the broadcast, or any work or other subject matter comprised in the broadcast; or
 - (ii) communicate the broadcast, or any work or subject matter comprised in the broadcast;
- (b) in other circumstances agreed between the body and the collecting society.

23HB Notice requirements — paragraph 135KA (a) of the Act

A notice under paragraph 135KA (a) of the Act must be in the form set out in Schedule 11AC.

[13] Part 5A, heading

substitute

**Part 5A Reproduction and
communication of
works etc by
educational and other
institutions**

[14] Regulation 23JA

after

relevant copyright owner

insert

, remuneration notice

[15] Subregulation 23JC (1)

after

relevant reproduction

insert

in hardcopy form

[16] Regulation 23JE

omit

(1) For

insert

For

[17] Regulation 23JE

after the first mention of

copy

insert

, in hardcopy or analog form,

[18] Subregulation 23JF (1)

omit

licensed copy,

insert

licensed copy made in hardcopy form or analog form,

[19] Subregulation 23JF (2)

after

licensed copy made

insert

in hardcopy form or analog form

[20] Subregulation 23JG (1)

after the first mention of

licensed copy

insert

, in hardcopy form or analog form,

[21] Subregulation 23JG (2)*after the first mention of*

licensed copy

insert

, in hardcopy form or analog form,

[22] Subregulation 23JG (3)*after the first mention of*

licensed copy

insert

, in hardcopy form or analog form,

[23] Regulation 23JJ*after*

licensed copies

insert

, in hardcopy form or analog form,

[24] Regulation 23JJ*after*

certified mail

insert

, or otherwise as agreed between the administering body and the collecting society,

[25] Regulation 23JK*after*

licensed copy

insert

, in hardcopy form or analog form,

[26] After regulation 23JL

insert

23JLA Notice requirements — paragraph 135ZXA (a) of the Act

A notice under paragraph 135ZXA (a) of the Act must be in the form set out in Schedule 11B.

[27] After Part 5A

insert

**Part 6 Retransmission of
free-to-air broadcasts**

23K Identity cards — subsection 135ZZQ (1) of the Act

- (1) For subsection 135ZZQ (1) of the Act, an identity card must:
 - (a) set out the following information:
 - (i) the name of the collecting society;
 - (ii) the name and title of the person to whom the identity card is issued;
 - (iii) the name and title of the person who issued the identity card;
 - (iv) the date on which the identity card is issued;
 - (v) the date on which the identity card will expire; and
 - (b) state that it has been issued under section 135ZZQ of the Act; and
 - (c) be signed by the person to whom it is issued.
- (2) The expiry date stated on an identity card under subparagraph (1) (a) (v) must be no later than 3 years after the day on which the identity card is issued.

**23L Rules of a collecting society —
paragraph 135ZZT (3) (d) of the Act**

- (1) For paragraph 135ZZT (3) (d) of the Act, the rules of a collecting society must contain the following provisions:
- (a) that accounting periods must be determined, in accordance with the rules, by the collecting society for accounting purposes and that no accounting period may extend beyond 30 June in any year;
 - (b) that a consistent practice must be followed with regard to attributing the receipts and expenditure of the collecting society to a particular accounting period;
 - (c) that the collecting society must exercise reasonable diligence in the collection of amounts of equitable remuneration, having regard to the expenses likely to be incurred in the collection of such amounts;
 - (d) that the total amount of any gifts for cultural or benevolent purposes made by the collecting society in respect of any accounting period must not exceed such percentage of the total amount of equitable remuneration received by the society for that accounting period as is specified in the rules;
 - (e) that the administrative costs and other outgoings of the collecting society paid by the society out of the amounts of equitable remuneration collected by it must be reasonable;
 - (f) that the distributable amount, in respect of each accounting period of the collecting society, must be allocated in accordance with a scheme of allocation (*the scheme*) that:
 - (i) is determined in accordance with the rules; and
 - (ii) includes criteria for allocation that are specified in the rules; and

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- (iii) provides for the allocation of potential shares in the distributable amount to qualified persons;
 - (g) that, in relation to each potential share in the distributable amount allocated to a qualified person in accordance with the scheme of the collecting society, an amount representing the share:
 - (i) if the qualified person is, at the time of allocation, a member of the society — must be paid, as soon as is reasonably possible after the allocation, to the qualified person; or
 - (ii) if the qualified person is not, at the time of allocation, a member of the society:
 - (A) must be paid, as soon as is reasonably possible after the allocation, into a trust fund operated by the society for purposes referred to in paragraph (h); and
 - (B) subject to sub-subparagraph (C), must be held in that fund in accordance with the rules of the society; and
 - (C) if the qualified person becomes a member while the amount is held in the trust fund — must be distributed to the person as soon as is reasonably possible after he or she becomes a member;
 - (h) that a trust fund must be operated by the collecting society for purposes that include the holding on trust for any relevant copyright owner who is not, and whose agent is not, a member of the society of any potential share allocated to that owner in accordance with the scheme;

- (i) that any part of a distributable amount that, in relation to an accounting period, cannot for any reason be distributed must be held on trust in the trust fund referred to in paragraph (h) until distribution becomes possible or until the end of a specified period of not less than 4 years, whichever happens first;
 - (j) that a member of the collecting society, including a member who is a relevant copyright owner or the agent of a relevant copyright owner, must, on request, be given reasonable access to the records of the society.
- (2) In this regulation:
- distributable amount**, in relation to an accounting period of the collecting society, means the amount of equitable remuneration received by the society that is:
- (a) attributable to that period (in accordance with the practice of the society); or
 - (b) otherwise available for distribution;
- after the payment or reservation, out of that amount, of the non-distributable amount.
- equitable remuneration** means the equitable remuneration payable by retransmitters under section 135ZZM of the Act.
- non-distributable amount**, in relation to an accounting period, means:
- (a) amounts attributable to that period that are paid or held, in accordance with the rules of the society, for:
 - (i) gifts made by the society; and
 - (ii) administrative costs and other outgoings of the society; and
 - (b) amounts to be carried forward, in accordance with the rules of the society, to the next accounting period.

potential share means a share that is:

- (a) a share in a distributable amount; and
- (b) represented by an amount that will be distributed in the circumstances referred to in subparagraph (1) (g) (i) or (ii).

qualified person, in relation to a collecting society, means:

- (a) a member of the collecting society who is a relevant copyright owner or the agent of a relevant copyright owner; or
- (b) a relevant copyright owner who is not a member of the collecting society and whose agent, if any, is not a member.

[28] After regulation 25A

insert

**25B Retention of declarations —
subsection 203G (3) of the Act**

For subsection 203G (3) of the Act, the retention period for a declaration under subsection 116A (3) or 132 (5F) of the Act is 6 years from the day on which the declaration is made.

[29] Schedule 3*substitute***Schedule 3**

(regulations 4B and 17A)

**PRESCRIBED FORM OF NOTICE FOR SECTIONS 39A
AND 104B OF THE COPYRIGHT ACT 1968,
IN RELATION TO THE REPRODUCTION OF WORKS
AND THE COPYING OF PUBLISHED EDITIONS**

COMMONWEALTH OF AUSTRALIA

*Copyright Regulations 1969***WARNING**

Copyright owners are entitled to take legal action against persons who infringe their copyright. A reproduction of material that is protected by copyright may be a copyright infringement. Certain dealings with copyright will not constitute an infringement, including:

- A reproduction that is a fair dealing under the *Copyright Act 1968 (the Act)*, including a fair dealing for the purposes of research or study; or
- A reproduction that is authorised by the copyright owner.

It is a fair dealing to make a reproduction for the purposes of research or study, of one or more articles on the same subject in a periodical publication, or, in the case of any other work, of a reasonable portion of a work.

In the case of a published work in hardcopy form that is not less than 10 pages and is not an artistic work, 10% of the number of pages, or one chapter, is a reasonable portion.

In the case of a published work in electronic form only, a reasonable portion is not more than, in the aggregate, 10% of the number of words in the work.

More extensive reproduction may constitute fair dealing. To determine whether it does, it is necessary to have regard to the criteria set out in subsection 40 (2) of the Act.

A court may impose penalties and award damages in relation to offences and infringements relating to copyright material.

Higher penalties may apply, and higher damages may be awarded, for offences and infringements involving the conversion of material into digital or electronic form.

[30] After Schedule 3B

insert

Schedule 4

(regulation 4D)

**FORM OF NOTICE FOR PARAGRAPH 49 (7A) (c) OF
THE COPYRIGHT ACT 1968**

COMMONWEALTH OF AUSTRALIA

Copyright Regulations 1969

WARNING

This material has been provided to you pursuant to section 49 of the *Copyright Act 1968* (***the Act***) for the purposes of research or study. The contents of the material may be subject to copyright protection under the Act.

Further dealings by you with this material may be a copyright infringement. To determine whether such a communication would be an infringement, it is necessary to have regard to the criteria set out in Part 3, Division 3 of the Act.

[31] After Schedule 8*insert***Schedule 9**

(regulation 17A)

**PRESCRIBED FORM OF NOTICE FOR SECTION 104B
OF THE COPYRIGHT ACT 1968 IN RELATION TO THE
COPYING OF AUDIO-VISUAL ITEMS**

COMMONWEALTH OF AUSTRALIA

*Copyright Regulations 1969***WARNING**

Copyright owners are entitled to take legal action against persons who infringe their copyright. Unless otherwise permitted by the *Copyright Act 1968* (*the Act*), unauthorised use of audio-visual items in which copyright subsists may infringe copyright in that item.

It is not an infringement of copyright in an audio-visual item to use that item in a manner that is a fair dealing under section 103C of the Act.

Section 103C of the Act relates to fair dealing for the purpose of research or study and sets out the matters that must be considered in determining whether a reproduction of an audio-visual item is a fair dealing.

A court may impose penalties and award damages in relation to offences and infringements relating to copyright material.

Higher penalties may apply, and higher damages may be awarded, for offences and infringements involving the conversion of material into digital or electronic form.

[32] Schedule 11*omit*

Dated the day of , 19

insert

Dated

[33] Schedule 11AA*omit each mention of*

transmission

insert

broadcast

[34] After Schedule 11AA*insert***Schedule 11AB**

(regulation 23G)

*Copyright Act 1968***RECORD OF THE COMMUNICATION OF A COPY OF A
BROADCAST IN RELIANCE ON PART VA OF THE
COPYRIGHT ACT 1968**

1. The name of the institution for which the communication of a copy of a broadcast was made
2. The day on which the communication was first made
3. The title, or other identification, of the program or programs included in the copy communicated
4. The name or call sign of the broadcasting station that made the broadcast

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5. The day on which the broadcast commenced
 6. The time when the broadcast commenced
 7. The number of times the copy of the broadcast
was communicated

Schedule 11AC

(regulation 23HB)

FORM OF NOTICE FOR PARAGRAPH 135KA (a) OF THE COPYRIGHT ACT 1968

COMMONWEALTH OF AUSTRALIA

Copyright Regulations 1969

WARNING

This material has been copied and communicated to you by or on behalf of [*insert name of institution*] pursuant to Part VA of the *Copyright Act 1968 (the Act)*.

The material in this communication may be subject to copyright under the Act. Any further copying or communication of this material by you may be the subject of copyright protection under the Act.

Do not remove this notice.

[35] After Schedule 11A*insert***Schedule 11B**

(regulation 23JLA)

**FORM OF NOTICE FOR PARAGRAPH 135ZX (a) OF
THE COPYRIGHT ACT 1968**

COMMONWEALTH OF AUSTRALIA

*Copyright Regulations 1969***WARNING**

This material has been reproduced and communicated to you by or on behalf of [*insert name of institution*] pursuant to Part VB of the *Copyright Act 1968 (the Act)*.

The material in this communication may be subject to copyright under the Act. Any further reproduction or communication of this material by you may be the subject of copyright protection under the Act.

Do not remove this notice.

Notes

1. These Regulations amend Statutory Rules 1969 No. 58, as amended by 1981 Nos. 148 and 355; 1982 No. 65; 1983 Nos. 126, 128 and 293; 1984 Nos. 175 and 275; 1987 No. 34; 1988 No. 125; 1990 Nos. 4, 5, 76 and 301; 1992 No. 165; 1993 No. 228; 1995 No. 129; 1998 No. 359/
2. Notified in the *Commonwealth of Australia Gazette* on 2001.

; 2000 No. 7
13 February