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Copyright (International Protection) Amendment Regulations 2003 (No. /)¹

Statutory Rules 2003 No. 2

337

I, PHILIP MICHAEL JEFFERY, 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 18 DEC 2003 2003

PM Jeffery

Governor-General

By His Excellency's Command

PHILIP RUDDOCK

Attorney-General

1 Name of Regulations

These Regulations are the *Copyright (International Protection) Amendment Regulations 2003 (No. 1)*.

2 Commencement

These Regulations commence on gazettal.

3 Amendment of *Copyright (International Protection) Regulations 1969*

Schedule 1 amends the *Copyright (International Protection) Regulations 1969*.

Schedule 1 Amendments

(regulation 3)

[1] Before regulation 1

insert

Part 1 Preliminary

[2] Subregulation 3 (1), before definition of *at a material time*

insert

amending Regulations means the *Copyright (International Protection) Amendment Regulations 2003 (No. 1)*.

[3] Subregulation 3 (1), after definition of *at a material time*

insert

Berne Convention country:

- (a) means a foreign country that is a party to the International Convention for the Protection of Literary and Artistic Works concluded at Berne on 9 September 1886 (the ***Berne Convention***); and
- (b) if application of the Berne Convention is extended, in accordance with international law, to a territory (however described) of the foreign country — includes that territory.

Note 1 For information as to which countries are parties to the Berne Convention, see, for example, the World Intellectual Property Organization website at www.wipo.int.

Note 2 For the application of these Regulations, before the commencement of the amending Regulations, to a territory of a foreign country, see subregulation 3 (4) before its repeal by the amending Regulations.

foreign country means a country other than Australia.

[4] Subregulation 3 (1), definition of *relevant broadcaster*

substitute

relevant broadcaster, in relation to a sound broadcast or a television broadcast, means a person who:

- (a) is entitled, under the law of the country from which the sound broadcast or television broadcast is made, to make that sound broadcast or television broadcast; and
- (b) is, at a material time:
 - (i) a citizen or national of that country; or
 - (ii) a person resident in, or a body corporate that has its headquarters in, that country.

[5] Subregulation 3 (1), after definition of *relevant broadcaster*

insert

Rome Convention country:

- (a) means a foreign country that is a party to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations done at Rome on 26 October 1961 (the ***Rome Convention***); and
- (b) if application of the Rome Convention is extended, in accordance with international law, to a territory (however described) of the foreign country — includes that territory.

Note 1 For information as to which countries are parties to the Rome Convention, see, for example, the World Intellectual Property Organization website at www.wipo.int.

Note 2 For the application of these Regulations, before the commencement of the amending Regulations, to a territory of a foreign country, see subregulation 3 (4) before its repeal by the amending Regulations.

Schedule 3 country:

- (a) means a country that is specified in Schedule 3 as a country that provides rights for secondary uses of sound recordings; and
- (b) if a territory (however described) of the country also provides those rights — includes that territory.

Note For the application of these Regulations, before the commencement of the amending Regulations, to a territory of a foreign country, see subregulation 3 (4) before its repeal by the amending Regulations.

subject-matter other than a work means any of the following:

- (a) a published edition of a work or works;
- (b) a sound recording;
- (c) a cinematograph film;
- (d) a sound broadcast;
- (e) a television broadcast.

[6] **Subregulation 3 (1), definition of the *International Convention for the Protection of Literary and Artistic Works***

omit

[7] **Subregulation 3 (1), definition of the *Universal Copyright Convention***

substitute

UCC country:

- (a) means a foreign country that:
 - (i) is a party to the Universal Copyright Convention; and
 - (ii) is neither a Berne Convention country nor a WTO country; and
- (b) if application of the Universal Copyright Convention is extended, in accordance with international law, to a territory (however described) of the foreign country — includes that territory.

Note 1 For information as to which countries are parties to the Universal Copyright Convention, see, for example, the United Nations Educational, Scientific and Cultural Organization website at www.unesco.org.

Note 2 For the application of these Regulations, before the commencement of the amending Regulations, to a territory of a foreign country, see subregulation 3 (4) before its repeal by the amending Regulations.

Universal Copyright Convention means the Universal Copyright Convention concluded at Geneva on 6 September 1952.

WTO country:

- (a) means a foreign country (including a separate customs territory) that is a member of the World Trade Organization; and
- (b) if the foreign country's membership in the World Trade Organization is extended, in accordance with international law, to include a territory (however described) of the foreign country — includes that territory.

Note 1 For information as to which countries are members of the World Trade Organization, see, for example, the World Trade Organization website at www.wto.org.

Note 2 For the application of these Regulations, before the commencement of the amending Regulations, to a territory of a foreign country, see subregulation 3 (4) before its repeal by the amending Regulations.

[8] Subregulations 3 (2) and (4)

omit

[9] Regulations 4 to 13

substitute

**Part 2 Application of Act to works
and subject-matter other than
a work**

**4 Protection — Berne Convention countries, UCC
countries, Rome Convention countries and WTO
countries**

*Work, and subject-matter other than a work, made or first
published in a foreign country*

- (1) Subject to these Regulations, a provision of the Act that applies in relation to a literary, dramatic, musical or artistic work or edition first published, or a sound recording or cinematograph film made or first published, in Australia (an ***Australian work or subject-matter***) applies in relation to a literary, dramatic, musical or artistic work or edition first published, or a sound recording or cinematograph film made or first published, in a Berne Convention country, a UCC country or a WTO country (a ***foreign work or subject-matter***):
 - (a) in the same way as the provision applies, under the Act, in relation to an Australian work or subject-matter; and
 - (b) as if the foreign work or subject-matter were made or first published in Australia.

Artistic work that is a building, or is attached to or forms part of a building, in a foreign country

- (2) Subject to these Regulations, a provision of the Act that applies in relation to an artistic work that is a building (or that is attached to, or forms part of, a building) situated in Australia (an **Australian artistic work**) applies in relation to an artistic work that is a building (or that is attached to, or forms part of, a building) situated in a Berne Convention country, a UCC country or a WTO country (a **foreign artistic work**):
- (a) in the same way as the provision applies, under the Act, in relation to an Australian artistic work; and
 - (b) as if the foreign artistic work were situated in Australia.

Work and subject-matter other than a work — citizen or national of a foreign country

- (3) Subject to these Regulations, a provision of the Act relating to a work or subject-matter other than a work that applies in relation to a person who, at a material time, is an Australian citizen applies in relation to a person who, at a material time, is a citizen or national of a Berne Convention country, a UCC country or a WTO country (a **foreign citizen**):
- (a) in the same way as the provision applies, under the Act, in relation to an Australian citizen; and
 - (b) as if the foreign citizen were an Australian citizen.

Work and subject-matter other than a work — person resident in a foreign country

- (4) Subject to these Regulations, a provision of the Act relating to a work or subject-matter other than a work that applies in relation to a person who, at a material time, is resident in Australia (an **Australian resident**) applies in relation to a person who, at a material time, is resident in a Berne Convention country, a UCC country or a WTO country (a **foreign resident**):
- (a) in the same way as the provision applies, under the Act, in relation to an Australian resident; and
 - (b) as if the foreign resident were an Australian resident.

Work and subject-matter other than a work — body incorporated under the law of a foreign country

- (5) Subject to these Regulations, a provision of the Act relating to a work or subject-matter other than a work that applies in relation to a body incorporated, at a material time, under the law of the Commonwealth or of a State (an **Australian body corporate**) applies in relation to a body incorporated, at a material time, under the law of a Berne Convention country, a UCC country or a WTO country (a **foreign body corporate**):
- (a) in the same way as the provision applies, under the Act, in relation to an Australian body corporate; and
 - (b) as if the foreign body corporate were an Australian body corporate.

Sound broadcast or television broadcast made from a place in a foreign country

- (6) Subject to these Regulations, a provision of the Act that applies in relation to a sound broadcast, or a television broadcast, referred to in section 91 of the Act (an **Australian broadcast**) applies in relation to a sound broadcast, or a television broadcast, made at a material time by a relevant broadcaster from a place in a Rome Convention country (a **foreign broadcast**):
- (a) in the same way as the provision applies, under the Act, in relation to an Australian broadcast; and
 - (b) as if the foreign broadcast were an Australian broadcast.

Broadcasts made before 1 January 1992

- (7) Copyright does not, under subregulation (6), subsist in Australia in a sound broadcast or a television broadcast made from a place outside Australia before 1 January 1992.

Modification of Act

- (8) To the extent that this regulation is inconsistent with the Act, the application of the Act by these Regulations is modified.

5 Copyright not to subsist in overseas editions in certain cases

- (1) Copyright that, under the Act, subsists in a published edition of a work or works by reason only of the operation of these Regulations subsists only so long as protection in the nature of copyright subsists in relation to the edition under the law of a relevant country.
- (2) In this regulation:
relevant country means a Berne Convention country, a UCC country or a WTO country:
 - (a) in which the edition was first published; or
 - (b) of which the publisher of the edition was a citizen or national at a material time; or
 - (c) in which the publisher, being an individual, was resident at a material time; or
 - (d) under the law of which the publisher, being a body corporate, was incorporated at a material time.
- (3) To the extent that this regulation is inconsistent with the Act, the application of the Act by these Regulations is modified.

6 Copyright in certain sound recordings may include right to cause the recording to be heard in public

- (1) This regulation applies to a published sound recording if:
 - (a) under the Act, copyright subsists in the recording by reason only of the operation of these Regulations, or the operation of these Regulations and subsection 89 (3) of the Act; and
 - (b) either:
 - (i) the recording has been published in Australia; or
 - (ii) a period of 7 weeks has elapsed from the date of the first publication of the recording.

Note A sound recording first published in a foreign country could, under subsection 29 (5) of the Act, be a sound recording that is taken to be first published in Australia, to which subsection 89 (3) of the Act applies.

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- (2) Copyright that subsists in the recording includes the exclusive right to cause the recording to be heard in public, only if:
- (a) the maker of the recording was, at the time when the recording was made:
 - (i) a citizen or national of a Schedule 3 country; or
 - (ii) a person resident in, or a body corporate incorporated under the law of, a Schedule 3 country; or
 - (b) the recording was made in a Schedule 3 country.
- (3) The application of section 105 of the Act by these Regulations is modified by the operation of this regulation.

7 Copyright in certain sound recordings may include right to broadcast the recording

- (1) This regulation applies to a published sound recording if:
- (a) under the Act, copyright subsists in the recording by reason only of the operation of these Regulations, or the operation of these Regulations and subsection 89 (3) of the Act; and
 - (b) either:
 - (i) the recording has been published in Australia; or
 - (ii) a period of 7 weeks has elapsed from the date of the first publication of the recording and the recording is not a performance-related recording.

Note A sound recording first published in a foreign country could, under subsection 29 (5) of the Act, be a sound recording that is taken to be first published in Australia, to which subsection 89 (3) of the Act applies.

- (2) Copyright that subsists in the recording includes the exclusive right to broadcast the recording, only if:
- (a) the maker of the recording was, at the time when the recording was made:
 - (i) a citizen or national of a Schedule 3 country; or
 - (ii) a person resident in, or a body corporate incorporated under the law of, a Schedule 3 country; or
 - (b) the recording was made in a Schedule 3 country.

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- (3) For this regulation, a recording is a ***performance-related recording*** if:
- (a) the recording consists of, or includes, a musical work in which copyright subsists; and
 - (b) the musical work:
 - (i) was made for the purpose of being performed, or has been performed, in association with a dramatic work; or
 - (ii) has been included in a cinematograph film; and
 - (c) recordings of the musical work have not been supplied (whether by sale or otherwise) to the public in Australia.
- (4) For paragraph (3) (c), a supply of recordings of a musical work is disregarded if the supply was done otherwise than by, or with the licence of, the owner of the copyright in the work.
- (5) The application of section 105 of the Act by these Regulations is modified by the operation of this regulation.

Part 3 Application of Act to performances

8 Protection — Rome Convention countries and WTO countries

Definitions

- (1) In this regulation:
- applicable provision***, in relation to a participating country, means:
- (a) if the participating country is a WTO country but not a Rome Convention country — a provision of Part XIA of the Act relating to sound recordings, or sound broadcasts of live performances; and
 - (b) in any other case — each provision of Part XIA of the Act.
- participating country*** means:
- (a) a Rome Convention country; or
 - (b) a WTO country.

Performance given in a foreign country

- (2) An applicable provision applies in relation to a performance given in a participating country (a ***foreign performance***):
- (a) in the same way as the provision applies, under the Act, in relation to a performance given in Australia; and
 - (b) as if the foreign performance were given in Australia.

Citizen or national of a foreign country

- (3) An applicable provision applies in relation to a person who, at a material time, is a citizen or national of a participating country (a ***foreign citizen***):
- (a) in the same way as the provision applies, under the Act, in relation to a person who, at a material time, is an Australian citizen; and
 - (b) as if the foreign citizen were an Australian citizen.

Person resident in a foreign country

- (4) An applicable provision applies in relation to a person who, at a material time, is resident in a participating country (a ***foreign resident***):
- (a) in the same way as the provision applies, under the Act, in relation to a person who, at a material time, is resident in Australia; and
 - (b) as if the foreign resident were resident in Australia.

Performance incorporated in a sound recording, a sound broadcast or a television broadcast having connection with a foreign country

- (5) For subregulation (2), a reference to a performance given in a participating country is taken to include a reference to:
- (a) a performance that is incorporated in a sound recording if:
 - (i) the maker of the recording is, at the time when the recording is made:
 - (A) a citizen or national of the participating country; or

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- (B) a person resident in, or a body corporate incorporated under the law of, the participating country; or
 - (ii) the first recording of the performance occurred in the participating country; and
 - (b) a performance (other than a performance to which paragraph (a) applies) that is incorporated in a sound broadcast or a television broadcast if the broadcast is made, by a relevant broadcaster, from a place in the participating country.

Performance given before 2 January 1992

- (6) Subject to subregulation (7), no rights arising under this regulation subsist in Australia in relation to a performance given before 2 January 1992 if the performance relates to a Rome Convention country.
- (7) Subregulation (6) does not apply if:
 - (a) the country is also a WTO country; and
 - (b) the rights arising under this regulation are in relation to a provision of Part XIA of the Act relating to sound recordings, or sound broadcasts of live performances.

Modification of Act

- (8) To the extent that this regulation is inconsistent with the Act, the application of the Act by these Regulations is modified.

Part 4 Works made etc before application of Act and Regulations

9 Works made before 1 July 1912

- (1) This regulation applies to a work that was made before 1 July 1912 if:
 - (a) the work was first published or performed in a country that is a Berne Convention country or a WTO country; or

- (b) the author of the work was, at a material time, a citizen or national of, or resident in, a country that is a Berne Convention country or a WTO country.
- (2) Division 5 of Part XI of the Act applies to the work as if:
 - (a) for the purpose of determining whether a right (*existing right*) subsisted immediately before the commencement of the Copyright Act, 1911:
 - (i) the work was first published or performed in Australia; or
 - (ii) the author of the work was, at a material time, an Australian citizen or resident in Australia; and
 - (b) any right that, by virtue of section 24 of the Copyright Act, 1911, would have been conferred in place of any existing right were a right conferred by the Copyright Act, 1911.

10 Works first published before 1 May 1969

- (1) This regulation applies to a work that was first published, before the commencement of the Act, in a country that is a Berne Convention country or a WTO country.
- (2) Section 210 of the Act applies to the work as if, for the purpose of determining whether copyright subsisted under the Copyright Act, 1911, the work was first published in Australia.

11 Sound recording made before 1 May 1969 — UCC countries

- (1) This regulation applies to a sound recording in which copyright subsists, under the Act, by reason only of either, or both, of the following:
 - (a) the maker of the sound recording having been, at the time when the recording was made:
 - (i) a citizen or national of a country that is a UCC country; or
 - (ii) a person resident in, or a body corporate incorporated under the law of, a country that is a UCC country;

- (b) the first publication of the recording having taken place in a country that is a UCC country.
- (2) Section 89 of the Act, as applied by regulation 4, does not apply to the sound recording if the recording was made before 1 May 1969.

12 **Published works etc relating to post-1969 UCC countries**

- (1) This regulation applies to:
 - (a) a literary, dramatic, musical or artistic work or edition that was first published in a country that is a post-1969 UCC country; and
 - (b) a published sound recording or a published cinematograph film that was made or first published in a country that is a post-1969 UCC country; and
 - (c) a published artistic work that is a building (or that is attached to, or forms part of, a building) situated in a post-1969 UCC country; and
 - (d) a published work the author of which, an edition the publisher of which, or a published sound recording or a published cinematograph film the maker of which, was at a material time:
 - (i) a citizen or national of a country that is a post-1969 UCC country; or
 - (ii) a person resident in, or a body corporate incorporated under the law of, a country that is a post-1969 UCC country.
- (2) Copyright that, under the Act, subsists in a work, edition, recording or film by reason of the operation of these Regulations does not subsist in a work, edition, recording or film mentioned in subregulation (1), if the work, edition, recording or film was first published before the day on which the country became a party to the Universal Copyright Convention.
- (3) In this regulation:
post-1969 UCC country means a UCC country that became a party to the Universal Copyright Convention after 1 May 1969.

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- (4) To the extent that this regulation is inconsistent with the Act, the application of the Act by these Regulations is modified.

13 Action taken in relation to works etc before a foreign country becomes a country to which these Regulations apply

- (1) This regulation applies if:
- (a) a person (the *affected person*) has taken any action in relation to a work, a subject-matter other than a work or a performance at any time before the date of a relevant event; and
 - (b) the affected person has, because of the action, incurred expenditure or liability; and
 - (c) either:
 - (i) the action, being a use of the work, subject-matter or performance, was at the time lawful; or
 - (ii) the action was taken for the purpose of, or with a view to, a use of the work, subject-matter or performance at a time when the use would, but for the relevant event, have been lawful.
- (2) The affected person continues to be entitled to any right and interest, arising in connection with the action, that is subsisting and valuable immediately before the date of the relevant event, unless the exclusive right holder has agreed to pay reasonable compensation to the affected person.
- (3) In this regulation:
- convention country* means:
- (a) a Berne Convention country; or
 - (b) a UCC country; or
 - (c) a Rome Convention country; or
 - (d) a WTO country.
- exclusive right holder* means the person who, as a result of the relevant event, has the exclusive right over the use of the work, subject-matter or performance.
- relevant event* means:
- (a) the commencement of the amending Regulations; or

- (b) after that commencement, an event that results in a foreign country (or a territory of a foreign country) becoming a convention country in relation to which these Regulations apply in relation to the work, subject-matter or performance.
- (4) To the extent that this regulation is inconsistent with the Act, the application of the Act by these Regulations is modified.
- (5) Despite subregulation (4), subregulation (2) applies subject to section 248QA of the Act as applied by these Regulations.

Note A person of the kind described in subregulation (1) who took an action described in that subregulation may, if regulation 11, 12 or 13 of these Regulations (as in force before the commencement of the amending Regulations) applied to the person, continue, in the absence of reasonable compensation, to be entitled, under that regulation, to a right or interest arising in connection with the action.

14 Saving

Nothing in regulation 13 affects any right or interest preserved, or liability arising, under any of regulations 11, 12 and 13 as in force before the commencement of the amending Regulations.

[10] Schedule 1

omit

[11] Schedule 3, heading

substitute

Schedule 3 Countries that provide rights for secondary uses of sound recordings

(subregulation 3 (1) and regulations 6 and 7)

Notes

1. These Regulations amend 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; 1995 Nos. 67 and 436; 1998 No. 360; 2001 No. 29.
2. Notified in the *Commonwealth of Australia Gazette* on / 2003 23 December