

EXPLANATORY STATEMENT

Select Legislative Instrument 2013 No. 134

Subject - *Copyright Act 1968*

Copyright Amendment (International Protection) Regulation 2013

Section 249 of the *Copyright Act 1968* (the Copyright Act) provides the Governor-General with power to make regulations that are required or permitted by the Copyright Act. Section 184 provides that regulations may be made to extend protection under the Copyright Act for works and other subject-matter that are made or first published in foreign countries. The *Copyright (International Protection) Regulations 1969* (the principal Regulations) make provisions to this effect.

Section 89(1) of the Copyright Act provides protection to sound recordings if the maker was a qualified person. Section 89(2) provides protection if the sound recording was made in Australia. Section 89(3) provides protection to sound recordings if the first publication of the recording took place in Australia. Section 105 of the Copyright Act limits section 89(3), by providing that copyright subsisting in a sound recording by virtue of section 89(3), is not infringed by either causing the recording to be heard in public or broadcasting the recording. These rights are two of the four rights in sound recordings provided by section 85 and are commonly referred to as ‘secondary use rights’.

The principal Regulations extend protection to foreign sound recordings if the maker was a citizen, resident or company, or the recording was made or first published, in a country that is a signatory to relevant copyright treaties. If a foreign recording is published in Australia, or seven weeks has elapsed since the date of its first foreign publication, then copyright conferred by the principal Regulations do not include the right to cause the recording to be heard in public or to be broadcast unless the sound recording was made, or the maker of the recording was a citizen of, or company in, a country specified in Schedule 3 of the principal Regulations.

Schedule 3 lists the countries that provide ‘secondary use’ rights in sound recordings. These secondary use rights are found in two international copyright treaties:

- the *Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations* (Rome Convention), and
- the *WIPO Performances and Phonograms Treaty* (WPPT).

As Australia made reservations against relevant articles in these treaties, preserving the operation of parts of the Copyright Act, Australia is not obliged to provide secondary use rights in foreign sound recordings. These reservations permit Australia to limit the conferring of secondary use rights for foreign sound recordings to reciprocity. Based on a reciprocal standard, countries that provide secondary use rights for Australian sound recordings are listed in Schedule 3. Since 2004, when Schedule 3 was last amended, many countries have become parties to one or both of Rome Convention and the WPPT and offer secondary use rights to Australian sound recordings.

Countries are listed in Schedule 3 following notification that they have become parties to either or both of the Rome Convention and the WPPT and an assessment of their domestic legislation shows that they provide secondary use rights in sound recordings.

In preparing the Regulation, the Department consulted with affected foreign governments, the Phonographic and Performance Company of Australia, the domestic copyright collecting society for sound recordings, and the International Federation of the Phonographic Industry. The Department also released an exposure draft of the amendment regulations for public comment.

The Regulation deletes the current Schedule 3 and replaces it with a revised Schedule 3 that updates and lists alphabetically the countries that provide secondary use rights for Australian sound recordings. A list of the countries that have been added to Schedule 3 is at the Attachment. The result would be that sound recordings from these countries are provided the full suite of rights provided in section 85 and where broadcast or publicly performed, are eligible for remuneration.

The Copyright Act specifies no conditions that need to be satisfied before the Governor-General's power to make the Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commenced on 1 July 2013.

Authority: Section 249 of the
Copyright Act 1968

ATTACHMENT

List of countries included in Schedule 3 to the Copyright (International Protection) Regulations 1969

Algeria
Armenia
Azerbaijan
Bahrain
Belgium
Benin
Bosnia and Herzegovina
Botswana
Cyprus
Estonia
France
Georgia
Ghana
Kazakhstan
Liberia
Luxembourg
Malaysia
Malta
Montenegro
Morocco
Oman
Portugal
Republic of Korea
Saint Vincent and the Grenadines
Tajikistan
The former Yugoslav Republic of Macedonia
Trinidad and Tobago
United Arab Emirates
Vietnam