Statement Limiting the Right to Equitable Remuneration of Certain Rome Convention or WPPT Countries
SOR/2014-181

REGULATORY IMPACT ANALYSIS STATEMENT
(This statement is not part of the Statement.)

Issues

When Canada ratifies the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty (WPPT), adopted in Geneva on December 20, 1996, performers and makers of sound recordings from WPPT countries will be eligible for equitable remuneration under section 19 of the Copyright Act. The Minister of Industry intends to issue a Statement to limit the scope of section 19 for right holders of certain WPPT countries that do not offer a similar right.

In addition, this Statement will ensure that Canada continues to provide an equitable remuneration right to performers and makers of sound recordings from member countries of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention) to the extent that these countries offer a similar right. The Statement will therefore provide an update to the Limitation of the Right to Equitable Remuneration of Certain Rome Convention Countries Statement (SOR/99-143) published in 1999, by accounting for any changes to the domestic laws of countries listed therein, or any countries that have since acceded to the Rome Convention.

Background

The Copyright Act provides performers and makers of sound recordings with equitable remuneration when their sound recording is performed in public (for example the playing of music in a restaurant) or is communicated to the public by telecommunication (for example radio broadcasts).

The WPPT and the Rome Convention provide the flexibility to its members to limit the scope of this equitable remuneration. A number of countries have availed themselves of this flexibility.

In accordance with the WPPT and the Rome Convention, the Minister of Industry has the power to issue a statement to limit the scope and duration of the equitable remuneration right afforded to foreign sound recordings to the extent that it is limited in their country of origin.

Objectives

The objective of this Statement is to limit the scope and duration of protection of the right to remuneration in sound recordings originating from a WPPT or Rome Convention country, if that country does not offer a right similar in scope and duration to that granted in Canada.

Description

The Statement will limit the remuneration right in sound recordings originating from the following countries:

• (a) Barbados
• (b) Bolivia
• (c) Cabo Verde
• (d) Congo
• (e) Costa Rica
• (f) Japan
• (g) Lebanon
• (h) Lesotho
• (i) Monaco
• (j) People’s Republic of China (including Hong Kong and Macao)
• (k) Singapore
• (l) United States of America
• (m) Vietnam

“One-for-One” Rule

The “One-for-One” Rule does not apply to this proposed Statement, as there is no change in administrative costs imposed by the Statement on businesses.

Small business lens

The small business lens does not apply to this proposed Statement, as there are no increased costs imposed on small business. In fact, the Statement will limit copyright royalties’ payments vis-à-vis sound recordings from countries that do not offer the full scope of equitable remuneration.

Consultation

Stakeholders that represent rights holders and users of copyright-protected sound recordings were consulted in the spring of 2013. The consultation involved an explanation of the proposed approach, and a review of preliminary analysis of the scope of the equitable remuneration right in certain WPPT countries.

The list of consulted stakeholders included a collective society representing performers and makers of sound recordings, sports leagues and sports clubs, media and telecommunications companies and retail and service business representatives.

In addition, Industry Canada had also informed potential countries of the Minister’s intent to limit the scope of the equitable remuneration right for sound recordings originating from those countries in Canada. Industry Canada sought confirmation by those countries of the interpretation of their domestic copyright framework with respect to the scope of the equitable remuneration right for Canadian performers and makers in those countries.

The Statement was published in the Canada Gazette, Part I, on March 1, 2014, followed by a 30-day comment period. Comments were received from a foreign government, a collective society representing Canadian and foreign performers and makers of sound recordings, an intellectual property professional organization, professional sports clubs, Canadian subscription and non-subscription radio undertakings, and various domestic businesses and trade associations.

Some of the comments sought to provide assistance in the interpretation of foreign regimes, particularly that of the United States, to ensure that the Statement correctly reflected their operation. Other comments aimed at improving the clarity of the Statement. Finally, several of the comments expressed support for the Statement as published in Part I. The departments of
Industry Canada and Canadian Heritage have reviewed the comments, which informed the changes made to the Statement to more closely reflect foreign regimes for the remuneration right.

The comments were all taken into consideration for the purpose of determining whether Canadian sound recordings are granted abroad a right to remuneration similar in scope and duration to that provided by subsection 19(1.2) of the Copyright Act.

**Rationale**

The Statement will ensure continued reciprocity between relevant countries and Canada in terms of remuneration for certain uses of sound recordings. Without this Statement in place prior to Canada’s ratification of the WPPT, Canadian businesses will be required to pay a substantial increase in copyright royalties to foreign rights holders for certain uses of sound recordings. However, Canadian rights holders would not receive the similar benefit of collecting increased royalties abroad for those same uses of their sound recordings.

Updating the original Statement for Rome Convention countries to reflect changes to their equitable remuneration regime for Canadian rights holders is expected to have an overall minimal impact on Canadian businesses.

**Implementation, enforcement and service standards**

Implementation, enforcement and service standards are not applicable.

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1 Published in the Canada Gazette, Part II on July 30, 2014.