



# Copyright, Designs and Patents Act 1988

## 1988 CHAPTER 48

### PART I

#### COPYRIGHT

#### CHAPTER I

##### SUBSISTENCE, OWNERSHIP AND DURATION OF COPYRIGHT

##### *Introductory*

### **1 Copyright and copyright works**

- (1) Copyright is a property right which subsists in accordance with this Part in the following descriptions of work—
  - (a) original literary, dramatic, musical or artistic works,
  - (b) sound recordings, films, broadcasts or cable programmes, and
  - (c) the typographical arrangement of published editions.
- (2) In this Part “copyright work” means a work of any of those descriptions in which copyright subsists.
- (3) Copyright does not subsist in a work unless the requirements of this Part with respect to qualification for copyright protection are met (see section 153 and the provisions referred to there).

### **2 Rights subsisting in copyright works**

- (1) The owner of the copyright in a work of any description has the exclusive right to do the acts specified in Chapter II as the acts restricted by the copyright in a work of that description.

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- (2) In relation to certain descriptions of copyright work the following rights conferred by Chapter IV (moral rights) subsist in favour of the author, director or commissioner of the work, whether or not he is the owner of the copyright—
- (a) section 77 (right to be identified as author or director),
  - (b) section 80 (right to object to derogatory treatment of work), and
  - (c) section 85 (right to privacy of certain photographs and films).

### *Descriptions of work and related provisions*

## **3 Literary, dramatic and musical works**

- (1) In this Part—

“literary work” means any work, other than a dramatic or musical work, which is written, spoken or sung, and accordingly includes—

- (a) a table or compilation, and
- (b) a computer program;

“dramatic work” includes a work of dance or mime; and

“musical work” means a work consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music.

- (2) Copyright does not subsist in a literary, dramatic or musical work unless and until it is recorded, in writing or otherwise; and references in this Part to the time at which such a work is made are to the time at which it is so recorded.
- (3) It is immaterial for the purposes of subsection (2) whether the work is recorded by or with the permission of the author; and where it is not recorded by the author, nothing in that subsection affects the question whether copyright subsists in the record as distinct from the work recorded.

## **4 Artistic works**

- (1) In this Part “artistic work” means—

- (a) a graphic work, photograph, sculpture or collage, irrespective of artistic quality,
- (b) a work of architecture being a building or a model for a building, or
- (c) a work of artistic craftsmanship.

- (2) In this Part—

“building” includes any fixed structure, and a part of a building or fixed structure;

“graphic work” includes—

- (a) any painting, drawing, diagram, map, chart or plan, and
- (b) any engraving, etching, lithograph, woodcut or similar work;

“photograph” means a recording of light or other radiation on any medium on which an image is produced or from which an image may by any means be produced, and which is not part of a film;

“sculpture” includes a cast or model made for purposes of sculpture.

## **5 Sound recordings and films**

(1) In this Part—

“sound recording” means—

- (a) a recording of sounds, from which the sounds may be reproduced, or
- (b) a recording of the whole or any part of a literary, dramatic or musical work, from which sounds reproducing the work or part may be produced, regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced; and

“film” means a recording on any medium from which a moving image may by any means be produced.

(2) Copyright does not subsist in a sound recording or film which is, or to the extent that it is, a copy taken from a previous sound recording or film.

## **6 Broadcasts**

(1) In this Part a “broadcast” means a transmission by wireless telegraphy of visual images, sounds or other information which—

- (a) is capable of being lawfully received by members of the public, or
- (b) is transmitted for presentation to members of the public;

and references to broadcasting shall be construed accordingly.

(2) An encrypted transmission shall be regarded as capable of being lawfully received by members of the public only if decoding equipment has been made available to members of the public by or with the authority of the person making the transmission or the person providing the contents of the transmission.

(3) References in this Part to the person making a broadcast, broadcasting a work, or including a work in a broadcast are—

- (a) to the person transmitting the programme, if he has responsibility to any extent for its contents, and
- (b) to any person providing the programme who makes with the person transmitting it the arrangements necessary for its transmission;

and references in this Part to a programme, in the context of broadcasting, are to any item included in a broadcast.

(4) For the purposes of this Part the place from which a broadcast is made is, in the case of a satellite transmission, the place from which the signals carrying the broadcast are transmitted to the satellite.

(5) References in this Part to the reception of a broadcast include reception of a broadcast relayed by means of a telecommunications system.

(6) Copyright does not subsist in a broadcast which infringes, or to the extent that it infringes, the copyright in another broadcast or in a cable programme.

## **7 Cable programmes**

(1) In this Part—

“cable programme” means any item included in a cable programme service; and

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“cable programme service” means a service which consists wholly or mainly in sending visual images, sounds or other information by means of a telecommunications system, otherwise than by wireless telegraphy, for reception—

(a) at two or more places (whether for simultaneous reception or at different times in response to requests by different users), or

(b) for presentation to members of the public,

and which is not, or so far as it is not, excepted by or under the following provisions of this section.

(2) The following are excepted from the definition of “cable programme service”—

(a) a service or part of a service of which it is an essential feature that while visual images, sounds or other information are being conveyed by the person providing the service there will or may be sent from each place of reception, by means of the same system or (as the case may be) the same part of it, information (other than signals sent for the operation or control of the service) for reception by the person providing the service or other persons receiving it;

(b) a service run for the purposes of a business where—

(i) no person except the person carrying on the business is concerned in the control of the apparatus comprised in the system,

(ii) the visual images, sounds or other information are conveyed by the system solely for purposes internal to the running of the business and not by way of rendering a service or providing amenities for others, and

(iii) the system is not connected to any other telecommunications system;

(c) a service run by a single individual where—

(i) all the apparatus comprised in the system is under his control,

(ii) the visual images, sounds or other information conveyed by the system are conveyed solely for domestic purposes of his, and

(iii) the system is not connected to any other telecommunications system;

(d) services where—

(i) all the apparatus comprised in the system is situated in, or connects, premises which are in single occupation, and

(ii) the system is not connected to any other telecommunications system, other than services operated as part of the amenities provided for residents or inmates of premises run as a business;

(e) services which are, or to the extent that they are, run for persons providing broadcasting or cable programme services or providing programmes for such services.

(3) The Secretary of State may by order amend subsection (2) so as to add or remove exceptions, subject to such transitional provision as appears to him to be appropriate.

(4) An order shall be made by statutory instrument; and no order shall be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.

(5) References in this Part to the inclusion of a cable programme or work in a cable programme service are to its transmission as part of the service; and references to the person including it are to the person providing the service.

(6) Copyright does not subsist in a cable programme—

- (a) if it is included in a cable programme service by reception and immediate re-transmission of a broadcast, or
- (b) if it infringes, or to the extent that it infringes, the copyright in another cable programme or in a broadcast.

## **8 Published editions**

- (1) In this Part “published edition”, in the context of copyright in the typographical arrangement of a published edition, means a published edition of the whole or any part of one or more literary, dramatic or musical works.
- (2) Copyright does not subsist in the typographical arrangement of a published edition if, or to the extent that, it reproduces the typographical arrangement of a previous edition.

### *Authorship and ownership of copyright*

## **9 Authorship of work**

- (1) In this Part “author”, in relation to a work, means the person who creates it.
- (2) That person shall be taken to be—
  - (a) in the case of a sound recording or film, the person by whom the arrangements necessary for the making of the recording or film are undertaken;
  - (b) in the case of a broadcast, the person making the broadcast (see section 6(3)) or, in the case of a broadcast which relays another broadcast by reception and immediate re-transmission, the person making that other broadcast;
  - (c) in the case of a cable programme, the person providing the cable programme service in which the programme is included;
  - (d) in the case of the typographical arrangement of a published edition, the publisher.
- (3) In the case of a literary, dramatic, musical or artistic work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken.
- (4) For the purposes of this Part a work is of “unknown authorship” if the identity of the author is unknown or, in the case of a work of joint authorship, if the identity of none of the authors is known.
- (5) For the purposes of this Part the identity of an author shall be regarded as unknown if it is not possible for a person to ascertain his identity by reasonable inquiry; but if his identity is once known it shall not subsequently be regarded as unknown.

## **10 Works of joint authorship**

- (1) In this Part a “work of joint authorship” means a work produced by the collaboration of two or more authors in which the contribution of each author is not distinct from that of the other author or authors.
- (2) A broadcast shall be treated as a work of joint authorship in any case where more than one person is to be taken as making the broadcast (see section 6(3)).

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- (3) References in this Part to the author of a work shall, except as otherwise provided, be construed in relation to a work of joint authorship as references to all the authors of the work.

## **11 First ownership of copyright**

- (1) The author of a work is the first owner of any copyright in it, subject to the following provisions.
- (2) Where a literary, dramatic, musical or artistic work is made by an employee in the course of his employment, his employer is the first owner of any copyright in the work subject to any agreement to the contrary.
- (3) This section does not apply to Crown copyright or Parliamentary copyright (see sections 163 and 165) or to copyright which subsists by virtue of section 168 (copyright of certain international organisations).

### *Duration of copyright*

## **12 Duration of copyright in literary, dramatic, musical or artistic works**

- (1) Copyright in a literary, dramatic, musical or artistic work expires at the end of the period of 50 years from the end of the calendar year in which the author dies, subject to the following provisions of this section.
- (2) If the work is of unknown authorship, copyright expires at the end of the period of 50 years from the end of the calendar year in which it is first made available to the public; and subsection (1) does not apply if the identity of the author becomes known after the end of that period.

For this purpose making available to the public includes—

- (a) in the case of a literary, dramatic or musical work—
  - (i) performance in public, or
  - (ii) being broadcast or included in a cable programme service;
- (b) in the case of an artistic work—
  - (i) exhibition in public,
  - (ii) a film including the work being shown in public, or
  - (iii) being included in a broadcast or cable programme service;

but in determining generally for the purposes of this subsection whether a work has been made available to the public no account shall be taken of any unauthorised act.

- (3) If the work is computer-generated neither of the above provisions applies and copyright expires at the end of the period of 50 years from the end of the calendar year in which the work was made.
- (4) In relation to a work of joint authorship—
- (a) the reference in subsection (1) to the death of the author shall be construed —
    - (i) if the identity of all the authors is known, as a reference to the death of the last of them to die, and

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- (ii) if the identity of one or more of the authors is known and the identity of one or more others is not, as a reference to the death of the last of the authors whose identity is known; and
- (b) the reference in subsection (2) to the identity of the author becoming known shall be construed as a reference to the identity of any of the authors becoming known.

(5) This section does not apply to Crown copyright or Parliamentary copyright (see sections 163 to 166) or to copyright which subsists by virtue of section 168 (copyright of certain international organisations).

### **13 Duration of copyright in sound recordings and films**

- (1) Copyright in a sound recording or film expires—
  - (a) at the end of the period of 50 years from the end of the calendar year in which it is made, or
  - (b) if it is released before the end of that period, 50 years from the end of the calendar year in which it is released.
- (2) A sound recording or film is “released” when—
  - (a) it is first published, broadcast or included in a cable programme service, or
  - (b) in the case of a film or film sound-track, the film is first shown in public;but in determining whether a work has been released no account shall be taken of any unauthorised act.

### **14 Duration of copyright in broadcasts and cable programmes**

- (1) Copyright in a broadcast or cable programme expires at the end of the period of 50 years from the end of the calendar year in which the broadcast was made or the programme was included in a cable programme service.
- (2) Copyright in a repeat broadcast or cable programme expires at the same time as the copyright in the original broadcast or cable programme; and accordingly no copyright arises in respect of a repeat broadcast or cable programme which is broadcast or included in a cable programme service after the expiry of the copyright in the original broadcast or cable programme.
- (3) A repeat broadcast or cable programme means one which is a repeat either of a broadcast previously made or of a cable programme previously included in a cable programme service.

### **15 Duration of copyright in typographical arrangement of published editions**

Copyright in the typographical arrangement of a published edition expires at the end of the period of 25 years from the end of the calendar year in which the edition was first published.