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STATUTORY INSTRUMENTS

1989 No. 1293

COPYRIGHT

The Copyright (Application to Other Countries) (No. 2) Order 1989

<i>Made</i>	- - - -	<i>28th July 1989</i>
<i>Laid before Parliament</i>		<i>31st July 1989</i>
<i>Coming into force</i>	- -	<i>1st August 1989</i>

At the Court at Windsor Castle, the 28th day of July 1989

Present,

The Queen's Most Excellent Majesty in Council

Whereas Her Majesty is satisfied that, in respect of the classes of works to which this Order relates, provision has been made under the laws of Singapore and the territory of Taiwan and (in the case of sound recordings only) under the laws of Australia, Indonesia, New Zealand and Pakistan, giving adequate protection to the owners of copyright under Part I of the Copyright, Designs and Patents Act 1988(1):

Now, therefore, Her Majesty, by and with the advice of Her Privy Council, and by virtue of the authority conferred upon Her by section 159 of the said Act, is pleased to order, and it is hereby ordered, as follows:—

1.—(1) This Order may be cited as the Copyright (Application to Other Countries) (No. 2) Order 1989 and shall come into force on 1st August 1989.

(2) In this Order—

“the Act” means the Copyright, Designs and Patents Act 1988, and

“first published” shall be construed in accordance with section 155(3) of the Act.

2.—(1) In relation to literary, dramatic, musical and artistic works, films and the typographical arrangements of published editions, sections 153, 154 and 155 of the Act (qualification for copyright protection) apply in relation to—

- (a) persons who are citizens or subjects of a country specified in Schedule 1 to this Order or are domiciled or resident there as they apply to persons who are British citizens or are domiciled or resident in the United Kingdom;
- (b) bodies incorporated under the law of such a country as they apply in relation to bodies incorporated under the law of a part of the United Kingdom; and
- (c) works first published in such a country as they apply in relation to works first published in the United Kingdom;

but subject to paragraph (2) and article 5 below.

(2) Copyright does not subsist—

- (a) in a literary, dramatic, musical or artistic work by virtue of section 154 of the Act as applied by paragraph (1) above (qualification by reference to author) if it was first published—
 - (i) before 1st June 1957 (commencement of Copyright Act 1956(2)), or
 - (ii) before 1st August 1989 (commencement of Part I of the Act) and at the material time (as defined in section 154(4)(b) of the Act) the author was not a relevant person; or
- (b) in any work by virtue of paragraph (1) above if—
 - (i) a date is, or dates are, specified in Schedule 1 to this Order in respect of the only country or countries relevant to the work for the purposes of paragraph (1) above, and
 - (ii) the work was first published before that date or (as the case may be) the earliest of those dates;

and for the purposes of sub-paragraph (a)(ii) of this paragraph, a “relevant person” is a Commonwealth citizen, a British protected person, a citizen or subject of any country specified in Schedule 1 to this Order, or a person resident or domiciled in the United Kingdom, another country to which the relevant provisions of Part I of the Act extend or (subject to article 5 below) a country specified in Schedule 1 to this Order.

(3) Where copyright subsists in a work by virtue of paragraph (1) above, the whole of Part I of the Act (including Schedule 1 to the Act) applies in relation to the work, save that in relation to an artistic work consisting of the design of a typeface—

- (a) section 54(2) (articles for producing material in particular typeface) does not apply,
- (b) section 55 (making such articles not an infringement) applies as if the words in subsection (2) from the beginning to “marketed” were omitted, and
- (c) paragraph 14(5) of Schedule 1 (transitional provision) does not apply,

and subject also to articles 5 and 7 below.

3. In relation to sound recordings, article 2 above shall apply as it applies in relation to films, subject to the following modifications:

- (a) sections 19, 20, 26 and 107(3) of the Act (infringement by playing in public, broadcasting or inclusion in a cable programme service and related provisions) apply only if—
 - (i) at least one of the countries relevant to the work for the purposes of article 2(1) above is specified in Schedule 2 to this Order, or
 - (ii) the sound recording in question is a film sound-track accompanying a film; and

- (b) paragraph (1) of article 2 shall (subject to article 5 below) apply as if Indonesia were specified in Schedule 1 to this Order.

4.—(1) In relation to broadcasts, sections 153, 154 and 156 of the Act (qualification for copyright protection) apply in relation to—

- (a) persons who are citizens or subjects of a country specified in Schedule 3 to this Order or are domiciled or resident there as they apply to persons who are British citizens or are domiciled or resident in the United Kingdom;
- (b) bodies incorporated under the law of such a country as they apply in relation to bodies incorporated under the law of a part of the United Kingdom; and
- (c) broadcasts made from such a country as they apply to broadcasts made from the United Kingdom;

but subject to paragraphs (2) and (3) and article 5 below.

(2) If the only country or countries relevant to a broadcast for the purposes of paragraph (1) above are identified in Schedule 3 to this Order by the words“TV only”, copyright subsists in the broadcast only if it is a television broadcast.

(3) Copyright does not subsist in a broadcast by virtue of paragraph (1) above if it was made before the relevant date.

(4) Where copyright subsists in a broadcast by virtue of paragraph (1) above, the whole of Part I of the Act (including Schedule 1 to the Act) applies in relation to the broadcast, save that for the purposes of section 14(2) (duration of copyright in repeats)—

- (a) a broadcast shall be disregarded if it was made before the relevant date, and
- (b) a cable programme shall be disregarded if it was included in a cable programme service before the later of the relevant date and 1st January 1985;

and subject also to article 7 below.

(5) For the purposes of paragraphs (3) and (4) above, the“relevant date” is the date or (as the case may be) the earliest of the dates specified in Schedule 3 to this Order in respect of the country or countries relevant to the broadcast for the purposes of paragraph (1) above, being (where different dates are specified for television and non-television broadcasts) the date appropriate to the type of broadcast in question.

(6) In respect of Singapore, this article applies in relation to cable programmes as it applies in relation to broadcasts, subject to article 5 below.

5. Schedule 4 to this Order shall have effect so as to modify the application of this Order in respect of certain countries.

6. Nothing in this Order shall be taken to derogate from the effect of paragraph 35 of Schedule 1 to the Act (continuation of existing qualification for copyright protection).

7.—(1) This article applies in any case in which—

- (a) a work was made before 1st August 1989 (commencement of Part I of the Act) and copyright under the Copyright Act 1956 did not subsist in it when it was made, or
- (b) a work is made on or after 1st August 1989 and copyright under the Act does not subsist in it when it is made, but copyright subsequently subsists in it by virtue of article 2(1), 3 or 4(1) above.

(2) Where in any such case a person incurs or has incurred any expenditure or liability in connection with, for the purpose of or with a view to the doing of an act which at the time is not or was not an act restricted by any copyright in the work, the doing, or continued doing, of that act after copyright subsequently subsists in the work by virtue of article 2(1), 3 or 4(1) above shall not

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be an act restricted by the copyright unless the owner of the copyright or his exclusive licensee (if any) pays such compensation as, failing agreement, may be determined by arbitration.

8. The Orders listed in Schedule 5 to this Order are hereby revoked insofar as they form part of the law of the United Kingdom.

G. I. de Deney
Clerk of the Privy Council

SCHEDULE 1

Article 2(1) and (2)

COUNTRIES ENJOYING PROTECTION IN RESPECT OF ALL
WORKS EXCEPT BROADCASTS AND CABLE PROGRAMMES

(The countries specified in this Schedule either are parties to the Berne Copyright Convention and/or the Universal Copyright Convention or otherwise give adequate protection under their law.)

Algeria (28th August 1973)
Andorra (27th September 1957)
Argentina
Australia (including Norfolk Island)
Austria
Bahamas
Bangladesh
Barbados
Belgium
Belize
Benin
Brazil
Bulgaria
Burkina
Cameroon
Canada
Central African Republic
Chad
Chile
Colombia
Congo, People's Republic of
Costa Rica
Côte d'Ivoire
Cuba (27th September 1957)
Cyprus, Republic of
Czechoslovakia
Denmark (including the Faeroe Islands)
Dominican Republic (8th May 1983)
Ecuador (27th September 1957)
Egypt El Salvador (29th March 1979)
Fiji
Finland
France (including all Overseas Departments and Territories)
Gabon
German Democratic Republic (and Berlin (East))

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Germany, Federal Republic of (and Berlin (West))
Ghana
Greece
Guatemala (28th October 1964)
Guinea, Republic of
Haiti (27th September 1957)
Holy See Hungary
Iceland
India
Ireland, Republic of
Israel
Italy
Japan
Kampuchea (27th September 1957)
Kenya
Korea, Republic of (1st October 1987)
Laos (27th September 1957)
Lebanon
Liberia
Libya
Liechtenstein
Luxembourg
Madagascar
Malawi
Mali
Malta
Mauritania
Mauritius
Mexico
Monaco
Morocco
Netherlands (including Aruba and the Netherlands Antilles)
New Zealand
Nicaragua (16th August 1961)
Niger
Nigeria
Norway
Pakistan
Panama (17th October 1962)
Paraguay (11th March 1962)

Peru
Philippines
Poland
Portugal
Romania
Rwanda
St. Vincent and the Grenadines
Senegal
Singapore
South Africa
Soviet Union (27th May 1973)
Spain
Sri Lanka
Suriname
Sweden
Switzerland
Taiwan, territory of (10th July 1985)
Thailand
Togo
Trinidad and Tobago
Tunisia
Turkey United States of America (including Puerto Rico and all territories and possessions)
Uruguay
Venezuela
Yugoslavia
Zaire
Zambia
Zimbabwe

SCHEDULE 2

Article 3(a)(i)

COUNTRIES ENJOYING FULL PROTECTION FOR SOUND RECORDINGS

(The countries specified in this Schedule either are parties to the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations or otherwise give adequate protection under their law.)

Australia (including Norfolk Island)
Austria
Barbados
Brazil
Burkina

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Chile
Colombia
Congo, People's Republic of
Costa Rica
Czechoslovakia
Denmark (including the Faeroe Islands)
Dominican Republic
Ecuador
El Salvador
Fiji
Finland
France (including all Overseas Departments and Territories)
Germany, Federal Republic of (and Berlin (West))
Guatemala
Indonesia
Ireland, Republic of
Italy
Luxembourg
Mexico
Monaco
New Zealand
Niger
Norway
Pakistan
Panama
Paraguay
Peru
Philippines
Sweden
Taiwan, territory of
Uruguay 3

SCHEDULE 3

Article 4(1), (2) and (5)

COUNTRIES ENJOYING PROTECTION IN RESPECT OF BROADCASTS

(The countries specified in this Schedule either are parties to the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations and/or the European Agreement on the Protection of Television Broadcasts or otherwise give adequate protection under their law.)

Austria (9th June 1973)

Barbados (18th September 1983)
Belgium—TV only (8th March 1968)
Brazil (29th September 1965)
Burkina (14th January 1988)
Chile (5th September 1974)
Colombia (17th September 1976)
Congo, People's Republic of (18th May 1964)
Costa Rica (9th September 1971)
Cyprus, Republic of—TV only (5th May 1970)
Czechoslovakia (14th August 1964)
Denmark (including the Faeroe Islands) (1st February 1962—television; 1st July 1965—non-television)
Dominican Republic (27th January 1987)
Ecuador (18th May 1964)
El Salvador (29th June 1979)
Fiji (11th April 1972)
Finland (21st October 1983)
France (including all Overseas Departments and Territories) (1st July 1961—television; 3rd July 1987—non-television)
Germany, Federal Republic of (and Berlin (West)) (21st October 1966)
Guatemala (14th January 1977)
Ireland, Republic of (19th September 1979)
Italy (8th April 1975)
Luxembourg (25th February 1976)
Mexico (18th May 1964)
Monaco (6th December 1985)
Niger (18th May 1964)
Norway (10th August 1968—television; 10th July 1978—non-television)
Panama (2nd September 1983)
Paraguay (26th February 1970)
Peru (7th August 1985)
Philippines (25th September 1984)
Singapore (1st June 1957)
Spain—TV only (19th November 1971)
Sweden (1st July 1961—television; 18th May 1964—non-television)
Uruguay (4th July 1977)

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SCHEDULE 4

Article 5

MODIFICATIONS

1. In respect of Indonesia, article 2(1)(a) above as applied by article 3(b) above shall apply as if the reference to persons domiciled in Indonesia were omitted.
2. In respect of Singapore—
 - (a) articles 2(1)(a) and (2) and 4(1)(a) above shall apply as if the references to persons domiciled in Singapore were omitted, and
 - (b) in the application of article 4(3) above in relation to cable programmes by virtue of article 4(6), the relevant date is 1st January 1985.
3. In respect of the territory of Taiwan—
 - (a) article 2(1)(a) and (2) above shall apply as if the references to persons domiciled or resident in the territory of Taiwan were limited to such persons who are also citizens or subjects of China, and
 - (b) in the application of Part I of the Act by virtue of article 2(3) above, subsection (1) of section 21 (infringement by making adaptation) applies as if subsection (3)(a)(i) of that section (translation of literary or dramatic work) were omitted.

SCHEDULE 5

Article 8

ORDERS IN COUNCIL REVOKED

Number	Title
S.I. 1979/1715	The Copyright (International Conventions) Order 1979
S.I. 1980/1723	The Copyright (International Conventions) (Amendment) Order 1980
S.I. 1983/1708	The Copyright (International Conventions) (Amendment) Order 1983
S.I. 1984/549	The Copyright (International Conventions) (Amendment) Order 1984
S.I. 1984/1987	The Copyright (International Conventions) (Amendment No. 2) Order 1984
S.I. 1985/1777(3)	The Copyright (Taiwan) Order 1985
S.I. 1986/2235	The Copyright (International Conventions) (Amendment) Order 1986
S.I. 1987/940(4)	The Copyright (Singapore) Order 1987
S.I. 1987/2060	The Copyright (International Conventions) (Amendment) Order 1987

(3) S.I. [1985/1777](#) has been extended to certain countries by S.I. [1987/1826](#) and [1987/1833](#) but these instruments do not affect the law of the United Kingdom.

(4) S.I. [1987/940](#) has been extended to certain countries by S.I. [1987/1030](#) and [1988/1297](#) but these instruments do not affect the law of the United Kingdom.

Number	Title
S.I. 1988/250	The Copyright (International Conventions) (Amendment) Order 1988
S.I. 1988/797	The Copyright (Sound Recordings) (Indonesia) Order 1988
S.I. 1988/1307	The Copyright (International Conventions) (Amendment No. 2) Order 1988
S.I. 1988/1855	The Copyright (International Conventions) (Amendment No. 3) Order 1988
S.I. 1989/157	The Copyright (International Conventions) (Amendment) Order 1989
S.I. 1989/988	The Copyright (Application to Other Countries) Order 1989

EXPLANATORY NOTE

(This note is not part of the Order)

This Order applies the provisions of Part I of, and Schedule 1 to, the Copyright, Designs and Patents Act 1988 to works of different types originating in the countries specified in the Schedules to the Order, with the effect that those works receive copyright protection in the United Kingdom. The Order supersedes, and is in the same terms as, the Copyright (Application to Other Countries) Order 1989, which it revokes before that Order comes into force.

Article 2 provides protection for literary, dramatic, musical and artistic works, films and published editions originating in any country in Schedule 1. All of those countries (except Singapore and the territory of Taiwan) are parties to the Berne Copyright Convention (Cmnd. 5002), the Universal Copyright Convention (Cmnd. 4905) or both; the countries in respect of which a date is specified are parties to the Universal Copyright Convention alone whose works did not enjoy copyright protection in the United Kingdom before accession (i.e., non-Commonwealth parties), together with the territory of Taiwan. Protection is excluded for literary, dramatic, musical and artistic works first published in a non-Schedule country before 1st June 1957 or, if the author was not a qualifying person at the time of publication, before 1st August 1989. Typeface designs are excluded.

Article 3 provides protection for sound recordings originating in any country in Schedule 1 or Indonesia. The protection extends to playing in public or broadcasting only if the country of origin of the recording is in Schedule 2 (parties to the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Cmnd. 2425) and countries otherwise giving adequate protection).

Article 4 provides protection for broadcasts originating in any country in Schedule 3. These countries are all parties to the Rome Convention, except for Belgium, Cyprus and Spain, which are parties only to the European Agreement on the Protection of Television Broadcasts (Cmnd. 1163), and Singapore. Protection does not extend to broadcasts made before the specified dates. The protection for Singapore also covers cable programmes.

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Article 5 modifies the Order in respect of Indonesia, Singapore and the territory of Taiwan. They are party to no relevant convention and the protection of their works depends wholly upon reciprocal protection for British works in their law. The modifications ensure as precise reciprocity as possible.

Article 6 preserves existing qualifications.

Article 7 preserves contrary acquired rights.

Article 8 revokes the Copyright (Application to Other Countries) Order 1989 referred to above and various Orders in Council made under the Copyright Act 1956 (which was repealed on 1st August 1989).