
STATUTORY INSTRUMENTS

2005 No. 852

**The Copyright and Performances
(Application to Other Countries) Order 2005**

Introductory

1.—(1) This Order may be cited as the Copyright and Performances (Application to Other Countries) Order 2005 and shall come into force on 1st May 2005.

(2) In this Order “the Act” means the Copyright, Designs and Patents Act 1988.

Literary, dramatic, musical and artistic works, films and the typographical arrangement of published editions

2.—(1) All the provisions of Part 1 of the Act, insofar as they relate to literary, dramatic, musical and artistic works, films and the typographical arrangement of published editions, apply in relation to the countries indicated in the second column of the table set out in the Schedule so that those provisions apply—

- (a) in relation to persons who are citizens or subjects of, or are domiciled or resident in, those countries as they apply to persons who are British citizens or are domiciled or resident in the United Kingdom,
- (b) in relation to bodies incorporated under the laws of those countries as they apply in relation to bodies incorporated under the law of a part of the United Kingdom, and
- (c) in relation to works first published in those countries as they apply in relation to works first published in the United Kingdom,

subject to paragraph (2).

(2) Where a literary, dramatic, musical or artistic work was first published before 1st June 1957 it shall not qualify for copyright protection by reason of section 154 (qualification by reference to author).

Sound recordings

3.—(1) Except for the provisions listed in paragraph (2)(a), all the provisions of Part 1 of the Act, insofar as they relate to sound recordings, apply in relation to the countries indicated in the third column of the table set out in the Schedule so that those provisions apply—

- (a) in relation to persons who are citizens or subjects of, or are domiciled or resident in, those countries as they apply to persons who are British citizens or are domiciled or resident in the United Kingdom,
- (b) in relation to bodies incorporated under the laws of those countries as they apply in relation to bodies incorporated under the law of a part of the United Kingdom, and
- (c) in relation to works first published in those countries as they apply in relation to works first published in the United Kingdom.

(2) Where in the third column of the table set out in the Schedule the entry for a country—

- (a) includes an asterisk (*), the following provisions of Part 1 of the Act, insofar as they relate to sound recordings, also apply to that country—
 - (i) section 18A (infringement by rental or lending of work to the public)(1) in so far as it applies to lending;
 - (ii) section 19 (infringement by playing of work in public)(2);
 - (iii) section 20 (infringement by communication to the public)(3);
 - (iv) section 26 (secondary infringement: provision of apparatus for infringing performance, &c); and
 - (v) section 107(2A) and (3) (criminal liability for communicating to the public or playing a sound recording)(4);
- (b) includes a hash (#), the following provisions of Part 1 of the Act, insofar as they relate to sound recordings, also apply to that country—
 - (i) section 20 (infringement by communication to the public), except that references to communication to the public do not include the broadcasting of a sound recording; and
 - (ii) section 107(2A) (criminal liability for communicating to the public), except that it does not apply in relation to the broadcasting of a sound recording.

Wireless broadcasts

4.—(1) Except for the provisions listed in paragraph (2), all the provisions of Part 1 of the Act, insofar as they relate to wireless broadcasts, apply in relation to the countries indicated in the fourth column of the table set out in the Schedule so that those provisions apply—

- (a) in relation to persons who are citizens or subjects of, or are domiciled or resident in, those countries as they apply to persons who are British citizens or are domiciled or resident in the United Kingdom,
- (b) in relation to bodies incorporated under the laws of those countries as they apply in relation to bodies incorporated under the law of a part of the United Kingdom, and
- (c) in relation to broadcasts made from those countries as they apply in relation to broadcasts made from the United Kingdom,

subject to paragraphs (3) to (5).

(2) The following provisions of Part 1 of the Act, insofar as they relate to wireless broadcasts, also apply in relation to a country where its entry in the fourth column of the table set out in the Schedule does not include an asterisk (*)—

- (a) section 18A (infringement by rental or lending of work to the public);
- (b) section 19 (infringement by showing or playing of work in public), but only insofar as it relates to broadcasts other than television broadcasts;
- (c) section 20 (infringement by communication to the public), except in relation to broadcasting by wireless telegraphy;
- (d) section 26 (secondary infringement: provision of apparatus for infringing performance, &c), but only insofar as it relates to broadcasts other than television broadcasts;

(1) Section 18A of the Act was inserted by regulation 10(2) of the Copyright and Related Rights Regulations 1996 (SI 1996/2967).
 (2) Section 19 of the Act was amended by regulation 2(1) of, and paragraph 3(1) of Schedule 1 to, the Copyright and Related Rights Regulations 2003.
 (3) Section 20 of the Act was substituted by regulation 6(1) of the Copyright and Related Rights Regulations 2003.
 (4) Section 107(2A) of the Act was inserted by regulation 26(1)(a) of the Copyright and Related Rights Regulations 2003 and section 107(3) of the Act was amended by regulation 2(1) of, and paragraph 9(2) of Schedule 1 to, those Regulations.

- (e) section 107(2A) (criminal liability for communicating to the public), except in relation to broadcasting by wireless telegraphy.
- (3) The provisions of Part 1 of the Act do not apply in relation to a wireless broadcast made from a place in a country, referred to in paragraph (4), before the relevant date.
- (4) The relevant date in relation to a country—
 - (a) where its entry in the fourth column of the table set out in the Schedule includes an “(X)”, is 1st June 1957;
 - (b) where its entry in the fourth column of the table set out in the Schedule includes a “(Y)”, is 1st January 1996; or
 - (c) where there is a date next to its entry in the fourth column of the table set out in the Schedule, is that date.
- (5) For the purposes of section 14(5) of the Act (duration of copyright in repeats)(5) any wireless broadcast which does not qualify for copyright protection shall be disregarded.

Other broadcasts

5. All the provisions of Part 1 of the Act, insofar as they relate to broadcasts (other than wireless broadcasts), apply in relation to the countries indicated in the fifth column of the table set out in the Schedule so that those provisions apply—
- (a) in relation to persons who are citizens or subjects of, or are domiciled or resident in, those countries as they apply to persons who are British citizens or are domiciled or resident in the United Kingdom,
 - (b) in relation to bodies incorporated under the laws of those countries as they apply in relation to bodies incorporated under the law of a part of the United Kingdom, and
 - (c) in relation to broadcasts made from those countries as they apply in relation to broadcasts made from the United Kingdom.

Performances

- 6.—(1) The countries in respect of which the word “designated” is included in the sixth column of the table set out in the Schedule are designated as enjoying reciprocal protection under Part 2 of the Act.
- (2) The countries in respect of which the word “deemed” is included in the sixth column of the table set out in the Schedule shall be treated as if they were designated as enjoying reciprocal protection under Part 2 of the Act, except that—
- (a) in that Part the term “recording” shall be construed as applying only to sound recordings (and not to films);
 - (b) the following provisions of Part 2 of the Act shall not apply—
 - (i) section 182C (consent required for rental or lending of copies to public), insofar as it relates to lending(6);
 - (ii) section 182D (right to equitable remuneration for exploitation of sound recording);
 - (iii) section 183 (infringement of performer’s rights by use of recording made without consent);
 - (iv) sections 185 to 188 (rights of person having recording rights);

(5) Section 14 of the Act was substituted by regulation 7(1) of the Duration of Copyright and Rights in Performances Regulations 1995 (SI 1995/3297) and it was subsequently amended by regulation 2(2) of, and Schedule 2 to, the Copyright and Related Rights Regulations 2003.

(6) Sections 182B to 182D were inserted by regulation 20(2) of the Copyright and Related Rights Regulations 1996.

- (v) section 198(2) (criminal liability for playing or communicating to the public); and
- (c) where in the sixth column of the table set out in the Schedule the entry for a country includes an asterisk (*), the following provisions of Part 2 of the Act shall also not apply—
 - (i) section 182CA (consent required for making available to the public)(7);
 - (ii) section 198(1A) (criminal liability for making available to the public).

Savings

- 7.—(1) For the purposes of this article an act is an “excluded act” where—
- (a) a person (A) has incurred any expenditure or liability in connection with the act; and
 - (b) he—
 - (i) began in good faith to do the act, or
 - (ii) made in good faith effective and serious preparations to do the act,
 at a time when the act neither infringed nor was restricted by the relevant rights in the work or performance.
 - (2) Where another person (B) acquires those relevant rights pursuant to this Order, A has the right —
 - (a) to continue to do the excluded act, or
 - (b) to do the excluded act,
 notwithstanding that the excluded act infringes or is restricted by those relevant rights.
 - (3) Where B, or his exclusive licensee, pays reasonable compensation to A paragraph (2) no longer applies.
 - (4) Where—
 - (a) B offers to pay compensation to A under paragraph (3); but
 - (b) A and B cannot agree on what compensation is reasonable,
 either person may refer the matter to arbitration.
 - (5) In this article “relevant rights” means copyright, the rights conferred by Chapter 4 of Part 1 of the Act and the rights conferred by Part 2 of the Act.

Revocations

8. The following Orders are revoked—
- (a) the Copyright (Application to the Isle of Man) Order 1992(8);
 - (b) the Copyright (Application to Other Countries) Order 1999(9);
 - (c) the Performances (Reciprocal Protection) (Convention Countries and Isle of Man) Order 2003(10);
 - (d) the Copyright (Application to Other Countries)(Amendment) Order 2003(11).

(7) Section 182CA and section 198(1A) of the Act were inserted by regulations 7(1) and 26(3) of the Copyright and Related Rights Regulations 2003 respectively.

(8) [SI 1992/1313](#).

(9) [SI 1999/1751](#).

(10) [SI 2003/773](#).

(11) [SI 2003/774](#).

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

K Galloway
Clerk of the Privy Council