
STATUTORY INSTRUMENTS

2013 No. 536

**The Copyright and Performances
(Application to Other Countries) Order 2013**

Introductory

1.—(1) This Order may be cited as the Copyright and Performances (Application to Other Countries) Order 2013 and shall come into force on 6th April 2013.

(2) In this Order—

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

“Berne Convention” means the Convention for the Protection of Literary and Artistic Works adopted in Berne in 1886 and its revisions⁽¹⁾;

“first published” has the meaning ascribed to it by section 155(3) of the Act;

“Part I” means Part I of the Act (copyright);

“Part II” means Part II of the Act (rights in performances);

“relevant country” means, in relation to the works referred to in article 2(1), each country listed in the first column of the Table and in relation to the works referred to in article 2(2) to (4), each country listed in the first column of the Table corresponding to an entry in the second to fourth columns of the Table;

“relevant declaration under the Rome Convention” means a declaration under Article 16(1)(a) (i) of the Rome Convention (which allows for reservations) by a country party to the Rome Convention that it will not apply the provisions of Article 12 (which provides for payment of a single equitable remuneration for secondary uses of phonograms);

“relevant declaration under the WPPT” means a declaration under Article 15(3) of the WPPT by a country party to the WPPT that it will apply the provisions of Article 15(1) of the WPPT (which confers on performers and producers of phonograms a right to remuneration for broadcasting and communication to the public) only in respect of certain uses, or that it will limit their application in some other way, or that it will not apply these provisions at all;

“Rome Convention” means the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations done at Rome on 6th October 1961⁽²⁾;

“Table” means the table set out in the Schedule;

“WPPT” means the World Intellectual Property Organisation Performances and Phonograms Treaty adopted in Geneva on 20th December 1996⁽³⁾; and

“WTO TRIPS” means the Agreement establishing the World Trade Organisation (including the Agreement on Trade-Related Aspects of Intellectual Property Rights) signed in Marrakesh on 15th April 1994⁽⁴⁾.

(1) Cm. 1212.

(2) Cmnd. 2425.

(3) Cm. 3728.

(4) Cm. 3044-6, 3077-80, 3263-5, 3268-9, 3271, 3275-7 and 3282. The Agreement on Trade-Related Aspects of Intellectual Property Rights is published in Cm. 3046.

(3) The Copyright and Performances (Application to Other Countries) Order 2012⁽⁵⁾ and the Copyright and Performances (Application to Other Countries) (Amendment) Order 2012⁽⁶⁾ are revoked.

Application of Part I

2.—(1) All the provisions of Part I relating to literary, dramatic, musical and artistic works, films and typographical arrangement of published editions apply in relation to a relevant country in the manner set out in paragraph (5), subject to article 3.

(2) Where an entry in the second column of the Table shows a plus sign (+), all the provisions of Part I apply to sound recordings in relation to a relevant country in the manner set out in paragraph (5).

(3) Where there is an entry in the third column of the Table, all the provisions of Part I apply to wireless broadcasts in relation to a relevant country in the manner set out in paragraph (5), subject to article 5.

(4) Where there is an entry in the fourth column of the Table, all the provisions of Part I apply to broadcasts other than wireless broadcasts in relation to a relevant country in the manner set out in paragraph (5).

(5) The provisions of Part I apply in relation to—

- (a) a person who is a citizen or subject of, or is domiciled or resident in, a relevant country as they apply to a person who is a British citizen or is domiciled or resident in the United Kingdom,
- (b) a body incorporated under the law of a relevant country as they apply in relation to a body incorporated under the law of a part of the United Kingdom,
- (c) the works referred to in paragraphs (1) and (2) first published in a relevant country as they apply in relation to such works first published in the United Kingdom, and
- (d) broadcasts referred to in paragraphs (3) and (4) made from a relevant country as they apply in relation to broadcasts made from the United Kingdom.

Exception relating to literary, dramatic, musical or artistic works

3. Where a literary, dramatic, musical or artistic work was first published before 1st June 1957 it shall not qualify for copyright protection under section 154 of the Act (qualification by reference to author)⁽⁷⁾.

Exceptions and modifications relating to sound recordings

4.—(1) Where the entry for a country in the second column of the Table does not include a plus (+) or minus (-) sign, the country is neither a party to the Rome Convention nor the WPPT but is a party to the Berne Convention or the WTO TRIPS or both, and accordingly the provisions of Part I, in so far as they relate to sound recordings, apply in relation to that country, except for the following—

- (a) section 18A (infringement by rental or lending of work to the public)⁽⁸⁾ in so far as it applies to lending;

⁽⁵⁾ [S.I. 2012/799](#).

⁽⁶⁾ [S.I. 2012/1754](#).

⁽⁷⁾ Section 154 of the Act was amended by regulation 5(3) of the Duration of Copyright and Rights in Performances Regulations 1995 [S.I. 1995/3297](#), by section 2(3) of the British Overseas Territories Act 2002 [c.8](#), and by regulation 2(2) of, and Schedule 2 to, the Copyright and Related Rights Regulations 2003.

⁽⁸⁾ Section 18A of the Act was inserted by regulation 10(2) of the Copyright and Related Rights Regulations 1996 [S.I. 1996/2967](#) and it was subsequently amended by regulation 2(1) of, and paragraph 6(2) of Schedule 1 to, the Copyright and Related Rights Regulations 2003.

- (b) section 19 (infringement by playing of work in public)(9);
- (c) section 20 (infringement by communication to the public)(10);
- (d) section 26 (secondary infringement: provision of apparatus for infringing performance, &c); and
- (e) section 107(2A) and (3) (criminal liability for communicating to the public or playing a sound recording)(11).

(2) Where the entry for a country in the second column of the Table includes a minus sign (-), the country is not a party to the Rome Convention but is a party to the WPPT, and accordingly the provisions of Part I, in so far as they relate to sound recordings, apply in relation to that country with the following modifications—

- (a) section 18A (infringement by rental or lending of work to the public), except in so far as it applies to lending;
- (b) 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
- (c) 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.

Exceptions relating to wireless broadcasts

5.—(1) Where the entry for a country in the third column of the Table includes a minus sign (-), the country is not a party to the Rome Convention but is a party to the WTO TRIPS, and accordingly the following provisions of Part I, in so far as they relate to wireless broadcasts, do not apply in relation to that country—

- (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 in so far 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 in so far as it relates to broadcasts other than television broadcasts;
- (e) section 107(2A) (criminal liability for communicating to the public), except in relation to broadcasting by wireless telegraphy.

(2) The provisions of Part I do not apply in relation to a wireless broadcast made from a place in a country, referred to in paragraph (1), before the relevant date.

(3) The relevant date in relation to a country—

- (a) where its entry in the third column of the Table includes an “(X)”, is 1st June 1957;
- (b) where its entry in the third column of the Table includes a “(Y)”, is 1st January 1996; or
- (c) where there is a date next to its entry in the third column of the Table, is that date.

Application of Part II

6.—(1) Where the entry for a country in the fifth column of the Table is the word “designated”, the country—

(9) 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.

(10) Section 20 of the Act was substituted by regulation 6(1) of the Copyright and Related Rights Regulations 2003.

(11) 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.

- (a) is a party to the Rome Convention and has not made a relevant declaration under the Rome Convention, or
- (b) has made or will make provision giving adequate protection for British performances under its law,

and accordingly that country is designated as enjoying reciprocal protection under Part II.

(2) Where the entry for a country in the fifth column of the Table is the word “deemed”, the country is not a party to the Rome Convention but is a party to the WPPT, and accordingly that country shall be treated as if it were designated as enjoying reciprocal protection under Part II, except as provided in paragraph (6) and article 7(1).

(3) Where the entry for a country is a minus sign (-) in the fifth column of the Table, the country is neither a party to the Rome Convention nor the WPPT but is a party to the WTO TRIPS, and accordingly that country shall be treated as if it were designated as enjoying reciprocal protection under Part II, except as provided in paragraph (6) and article 7(1) and (2).

(4) Where the entry for a country includes an asterisk (*) in the fifth column of the Table, the country is a party to the Rome Convention but has made a relevant declaration under the Rome Convention, and accordingly that country shall be treated as if it were designated as enjoying reciprocal protection under Part II, except as provided in article 7(3).

(5) Where the entry for a country includes a hash sign (#) in the fifth column of the Table, the country is a party to the WPPT but has made a relevant declaration under the WPPT, and accordingly that country shall be treated as if it were designated as enjoying reciprocal protection under Part II, except as provided in paragraph (6) and article 7(1) and (4).

(6) In relation to the provisions of Part II—

- (a) as applied by paragraphs (2) and (3), and
- (b) to the extent applied by paragraph (5),

the definition of “recording”, in section 180(2) (rights conferred on performers and persons having recording rights)(**12**), shall be construed as applying only to sound recordings (and not to films).

Exceptions to application of Part II

7.—(1) In relation to article 6(2), (3) and (5), the following provisions of Part II shall not apply—

- (a) section 182C (consent required for rental or lending of copies to public)(**13**), in so far as it relates to lending;
- (b) section 183 (infringement of performer’s rights by use of recording made without consent)(**14**);
- (c) sections 185 to 188 (rights of person having recording rights)(**15**);
- (d) section 198(2) (criminal liability for playing or communicating to the public)(**16**).

(12) Section 180(2) of the Act was amended by regulation 2(2) of, and Schedule 2 to, the Copyright and Related Rights Regulations 2003.

(13) Section 182C of the Act was inserted by regulation 20(2) of the Copyright and Related Rights Regulations 1996 and was subsequently amended by regulation 2(1) of, and paragraph 6(2) of Schedule 1 to, the Copyright and Related Rights Regulations 2003 and regulation 2 of, and paragraph 8 of the Schedule to, the Performances (Moral Rights, etc) Regulations 2006 *S.I. 2006/18*.

(14) Section 183 of the Act was amended by regulation 2(1) of, and paragraph 13(1)(a) of Schedule 1 to, the Copyright and Related Rights Regulations 2003.

(15) Section 185 of the Act was amended by regulation 2 of, and paragraph 8 of the Schedule to, the Performances (Moral Rights, etc) Regulations 2006; section 186 of the Act was amended by regulation 2(2) of, and Schedule 2 to, the Copyright and Related Rights Regulations 2003; section 187 of the Act was amended by regulation 2(1) of, and paragraph 13(1)(b) of Schedule 1 to, the Copyright and Related Rights Regulations 2003.

(16) Section 198(2) of the Act was amended by regulation 2(1) of, and paragraph 4(5) of the Schedule to, the Copyright and Related Rights Regulations 2003 and by regulation 2 of, and paragraph 8 of the Schedule to, the Copyright and Related Rights Regulations 2006.

- (2) In relation to article 6(3), the following provisions of Part II shall not apply—
- (a) section 182CA (consent required for making available to the public)(**17**);
 - (b) section 182D (right to equitable remuneration for exploitation of sound recording)(**18**);
 - (c) section 198(1A) (criminal liability for making available to the public)(**19**).

(3) In relation to article 6(4), to the extent that the relevant declaration under the Rome Convention is in force in the law of the country in relation to British performances, the provisions of Part II shall not apply to grant the protection provided under Article 12 of the Rome Convention, unless the recording has been first published in a country which is party to the Rome Convention and which has not made a relevant declaration under that Convention.

(4) In relation to article 6(5), where a country is a party to the WPPT and has made a relevant declaration under the WPPT, the provisions of Part II shall not apply to protect the right provided for in Article 15(1) of the WPPT to the extent the declaration is in force in the law of that country in relation to British performances.

Savings

- 8.**—(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 on or after the coming into force of 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 under this Order.

(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 I (moral rights) and the rights conferred by Part II.

(17) Section 182CA of the Act was inserted by regulation 7(1) of the Copyright and Related Rights Regulations 2003 and was subsequently amended by regulation 2 of, and paragraph 8 of the Schedule to, the Performances (Moral Rights, etc) Regulations 2006.

(18) Section 182D of the Act was inserted by regulation 20(2) of the Copyright and Related Rights Regulations 1996 and was subsequently amended by regulation 7(2) of the Copyright and Related Rights Regulations 2003 and regulation 2 of, and paragraph 3 of the Schedule to, the Performances (Moral Rights, etc) Regulations 2006.

(19) Section 198(1A) of the Act was inserted by regulation 26(3) of the Copyright and Related Rights Regulations 2003.

Status: *This is the original version (as it was originally made).*

Richard Tilbrook
Clerk of the Privy Council