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STATUTORY INSTRUMENTS

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**1989 No. 1293**

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

**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<sup>(1)</sup>), 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 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