
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement the provisions of Council Directive No. [92/100/EEC](#) of 19 November 1992 (O.J. No. L346, 27.11.92, page 61) on rental right and lending right and on certain rights related to copyright in the field of intellectual property (“the Rental Directive”) and of Council Directive No. [93/83/EEC](#) of 27 September 1993 (O.J. No. L248, 6.10.93, page 15) on the co-ordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable re-transmission (“the Satellite and Cable Directive”). They also implement certain provisions of Council Directive No. [93/98/EEC](#) (O.J. No. L290, 24.11.93, p. 9) (“the Duration Directive”) harmonising the term of protection of copyright and certain related rights. The Regulations come into force on 1st December 1996.

The Rental Directive requires in particular: that exclusive rental and lending rights (which are defined in the Directive) are granted to authors in respect of all literary, musical and dramatic works and most artistic works; that similar rights are granted to performers in respect of recordings of their performances; and that authors and performers who transfer or are presumed to transfer their exclusive rental rights in sound recordings and films to producers of these works, nevertheless retain a right to equitable remuneration for rental of the sound recording or film. However, the Directive permits derogations to be made in respect of the grant of exclusive lending rights, provided that at least authors are remunerated in respect of lending. The Directive further requires that performers, in addition to producers, are remunerated for broadcasting or other communication to the public of commercially published sound recordings of their performances, and that they are also granted exclusive rights in respect of distribution of recordings of their performances.

The Satellite and Cable Directive harmonises the application of national copyright laws to satellite broadcasts. Since a satellite broadcast may be received in more than one Member State of the European Economic Area, the Directive contains provisions which determine the applicable law in respect of a broadcast. It also contains provisions requiring the cable re-transmission rights of persons other than broadcasting organisations to be exercised collectively only through a licensing body.

Most of the provisions of the Duration Directive were implemented by the Duration of Copyright and Rights in Performances Regulations 1995 (S.I. [1995/3297](#)). However, the Duration Directive also requires a new 25 year protection (called “publication right” in the Regulations) for works in which copyright has expired but which have never before been published; it also maintains and broadens provisions in the Rental Directive and in the Satellite and Cable Directive requiring principal directors of films to be treated for copyright purposes as authors of those works.

The Copyright, Designs and Patents Act 1988 (“the Act”) already grants some of the rights required by the Directives. These regulations amend and extend the Act insofar as its provisions do not conform to or comply with them.

In particular, the Regulations—

- (a) determine in the European Economic Area the applicable law in relation to broadcasts (regulations 5 and 6);
- (b) provide that where the provider of a cable programme service merely receives and immediately re-transmits a broadcast made from another EEA State, the owner of the transmission right in any copyright work included in the broadcast must exercise that right against the service provider through a licensing body except where the owner of that right is a broadcasting organisation (regulation 7);

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- (c) modify an existing exclusive right to issue copies of a work to the public, in particular so as to provide an exclusive right of first distribution within the European Economic Area of copies which is not exhausted by the previous distribution of those copies outside that area (regulation 9);
- (d) extend rental and lending rights to all literary, musical and dramatic works and most artistic works (regulation 10);
- (e) except from lending right the lending by any public library of works subject to the public lending right scheme and any lending by educational establishments and certain other libraries and archives (regulation 11);
- (f) modify an existing power of the Secretary of State to enable him to make orders that the lending of copies of certain copyright works be treated as licensed subject to the payment of royalties (regulation 11);
- (g) provide that where a contract is concluded between an author and a film producer, any exclusive rental right in the film of which the author is or would be owner, is presumed to be transferred to the producer unless the contract provides to the contrary (regulation 12);
- (h) provide that in any case in which an author has transferred or is presumed to have transferred his exclusive rental right in a film or a sound recording to the producer thereof, that right is replaced by an unwaivable right to equitable remuneration in respect of any rental of the films or sound recordings (regulation 14);
 - (i) provide modified and new definitions (as the case may be) in respect of wireless telegraphy, copies, rental and lending (regulations 8, 9 and 10);
- (j) create a new “publication right” in respect of works which, although protected by copyright at some time in the past, are out of copyright and have never previously been made available to the public; this right expires at the end of the period of 25 years from the end of the year in which the work is first published; the work must be first published in the European Economic Area for the right to arise; the right entitles its owner to exclusive rights similar to those granted by copyright but no moral rights attach to it (regulations 16 and 17);
- (k) amend section 9 of the Act to make the principal director of a film an author of it for copyright purposes in addition to the current author, the producer (regulation 18);
- (l) make an amendment to section 11 of the Act, consequential upon making the principal director of a film an author of it, providing that where the director is an employee, his employer is the first owner of the copyright, as in the case of other employed authors (regulation 18);
- (m) clarify the application of regulations 15, 16 and 19 of the Duration of Copyright and Rights in Performances Regulations 1995 in relation to pre-1989 photographs (regulation 19);
- (n) transform an existing statutory right requiring the consent of a performer to the making of copies of a recording of a performance of his, into a new performer’s property right, transmissible as personal or moveable property, and introduce new property rights for a performer requiring his consent to the issue to the public and the rental and lending of copies of recordings of his performance corresponding to the rights granted to an author under regulations 9 and 10 (regulation 20);
- (o) give a performer a right to equitable remuneration in respect of the inclusion in a broadcast or cable programme service or the playing in public of a commercially published sound recording of a performance of his (regulation 20);
- (p) except from any lending right, lending by educational establishments and certain libraries and archives, and modify an existing power of the Secretary of State to enable him to make

- orders that the lending of copies of films or sound recordings is to be treated as licensed subject to the payment of royalties (regulation 20(3));
- (q) make provision for dealings, rights and remedies in respect of the new performer's property rights (regulation 21);
 - (r) provide that where a contract is concluded between a performer and a film producer, any exclusive rental right in the film of which the performer is the owner is presumed to be transferred to the producer, unless the contract provides to the contrary (regulation 21);
 - (s) provide that in any case in which a performer has transferred or is presumed to have transferred his exclusive rental right in a film or a sound recording to the producer thereof, that right is replaced by an unwaivable right to equitable remuneration in respect of any rental of the film or the sound recording (regulation 21);
 - (t) make provision for licensing schemes and licensing bodies in respect of performer's property rights similar to those which exist in respect of copyright (regulation 22);
 - (u) in respect of both copyright and performer's rights, make consequential modifications to existing provisions in respect of the jurisdiction of the Copyright Tribunal (regulations 14 and 24).

The Regulations come into force on 1st December 1996 and in Part III—

- (a) subject as expressly provided in the special transitional provisions and savings (regulations 28 to 36), make provision for and apply to works made and performances given before that date; except as expressly provided, nothing in the Regulations affects any agreement entered into before 19th November 1992 (the date of the adoption by the EC Council of the Rental Directive); acts done before 1st December 1996 do not infringe any new right arising under the Regulations nor do they give rise to any remuneration arising by virtue of these regulations, and acts done after 1st December 1996 in pursuance of an agreement made before 19th November 1992, do not infringe any new right arising under the Regulations (regulations 25, 26 and 27);
- (b) have effect in relation to broadcasts made after 1st December 1996 and make provision in respect of language-related satellite broadcasting exploitation rights in international co-production agreements made before 1st January 1995 (regulations 28 and 29);
- (c) ensure that the new rights in relation to a performance conferred by these Regulations are exercisable by the performer from 1st December 1996 (regulation 30);
- (d) where before 1st December 1996 the owner of the copyright in a literary, dramatic, musical, or artistic work or the owner of performer's rights in a performance, authorises a person to make a copy of the work or a copy of a recording of the performance, subject to any agreement to the contrary, any new rights in the copies made vest on 1st December 1996 in the person so authorised (regulation 31);
- (e) ensure that the presumption of transfer of rental rights by an author or performer applies to agreements concluded before 1st December 1996 subject to the right to equitable remuneration and the transitional provisions relating thereto (regulation 32);
- (f) limit the right to equitable remuneration to the rental after 1st April 1997 of films and sound recordings but provide also that where the rental after that date is in pursuance of an agreement made before 1st July 1994, the right arises only if the author or performer gives notice before 1st January 1997 of his intention to exercise that right (regulation 33);
- (g) provide that the new rights under the Regulations do not apply to existing copies of literary, dramatic, musical or artistic works, films or sound recordings or copies of recordings of a performance which have been acquired before commencement for the purpose of renting or lending to the public (regulation 34);

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- (h) make the principal director of a film an author of it from 1st December 1996 in respect of a film made on or after 1st July 1994. However, it is not to be an infringement of any new right acquired by a principal director under the Regulations to do anything after 1st December 1996 in pursuance of arrangements for the exploitation of the film made prior to 19th November 1992 (regulation 36).