

1999 No. 1751

COPYRIGHT

The Copyright (Application to Other Countries) Order 1999

<i>Made</i> - - - -	<i>22nd June 1999</i>
<i>Laid before Parliament</i>	<i>1st July 1999</i>
<i>Coming into force</i>	<i>22nd July 1999</i>

At the Court at Windsor Castle, the 22nd day of June 1999

Present,

The Queen's Most Excellent Majesty in Council

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 Copyright, Designs and Patents Act 1988(a), 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) Order 1999 and shall come into force on 22nd July 1999.

(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^(a)); 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 I 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 provisions) 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 except that 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 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.

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 paragraph (2) and article 5 below.

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

(3) 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(5) (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.

(4) For the purposes of paragraphs (2) and (3) 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

(a) 1956 c. 74.

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.

(5) In respect of the countries listed in Schedule 4, this article applies in relation to cable programmes as it applies in relation to broadcasts, subject to article 5 below.

5. Schedule 5 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, 4(1) or 4(5) 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, 4(1) or 4(5) 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 6 to this Order are hereby revoked.

A.K. Galloway
Clerk of the Privy Council

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 and/or the Agreement establishing the World Trade Organisation (including the Agreement on Trade-Related Aspects of Intellectual Property Rights) and/or are member States of the European Community or otherwise give adequate protection under their law.)

Albania
Algeria
Andorra (27th September 1957)
Angola
Antigua and Barbuda
Argentina
Australia (including Norfolk Island)
Austria
Azerbaijan
Bahamas
Bahrain
Bangladesh
Barbados
Belarus
Belgium
Belize
Benin
Bolivia
Bosnia-Herzegovina
Botswana
Brazil
Brunei Darussalam
Bulgaria
Burkina Faso
Burundi
Cameroon
Canada
Cape Verde
Central African Republic
Chad
Chile
China (including Hong Kong)
Colombia
Congo
Costa Rica
Cote d'Ivoire
Croatia
Cuba
Cyprus, Republic of
Czech Republic
Democratic Republic of the Congo
Denmark (including Greenland and the Faeroe Islands)
Djibouti
Dominica
Dominican Republic
Ecuador
Egypt
El Salvador
Equatorial Guinea
Estonia
Fiji

Finland
France (including all Overseas Departments and Territories)
Gabon
Gambia
Georgia
Germany
Ghana
Greece
Grenada
Guatemala
Guinea
Guinea-Bissau
Guyana
Haiti
Holy See
Honduras
Hungary
Iceland
India
Indonesia
Ireland, Republic of
Israel
Italy
Jamaica
Japan
Kampuchea (27th September 1957)
Kazakhstan
Kenya
Korea, Republic of
Kuwait
Kyrgyz Republic
Laos (27th September 1957)
Latvia
Lebanon
Lesotho
Liberia
Libya
Liechtenstein
Lithuania
Luxembourg
Macau
Macedonia
Madagascar
Malawi
Malaysia
Maldives
Moldova
Mali
Malta
Mauritania
Mauritius
Mexico
Monaco
Mongolia
Morocco
Mozambique
Myanmar
Namibia
Netherlands (including Aruba and the Netherlands Antilles)
New Zealand
Nicaragua
Niger

Nigeria
Norway
Pakistan
Panama
Papua New Guinea
Paraguay
Peru
Philippines
Poland
Portugal
Qatar
Romania
Russian Federation
Rwanda
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Saudi Arabia (13th July 1994)
Senegal
Sierra Leone
Singapore
Slovak Republic
Slovenia
Solomon Islands
South Africa
Soviet Union (27th May 1973)
Spain
Sri Lanka
Suriname
Swaziland
Sweden
Switzerland
Taiwan (10th July 1985)
Tajikistan (25th December 1991)
Tanzania
Thailand
Togo
Trinidad and Tobago
Tunisia
Turkey
Uganda
Ukraine
United Arab Emirates
United States of America (including Puerto Rico and all territories and possessions)
Uruguay
Venezuela
Yugoslavia
Zaire
Zambia
Zimbabwe

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 and/or are member States of the European Community or otherwise give adequate protection under their law.)

Argentina
Australia (including Norfolk Island)
Austria
Bangladesh
Barbados
Belgium
Bolivia
Brazil
Bulgaria
Burkina Faso
Canada
Cape Verde
Chile
Colombia
Congo
Costa Rica
Czech Republic
Denmark (including Greenland and the Faeroe Islands)
Dominican Republic
Ecuador
El Salvador
Fiji
Finland
France (including all Overseas Departments and Territories)
Germany
Ghana
Greece
Guatemala
Honduras
Hong Kong
Hungary
Iceland
India
Indonesia
Ireland, Republic of
Italy
Jamaica
Japan
Lebanon
Lesotho
Luxembourg
Macedonia
Malawi
Malaysia
Mexico
Moldova
Monaco
Netherlands
New Zealand
Niger
Nigeria
Norway
Pakistan
Panama

Paraguay
Peru
Philippines
Poland
Portugal
Romania
Saint Lucia
Slovak Republic
Slovenia
Spain
Sweden
Switzerland
Taiwan
Thailand
Uruguay
Venezuela

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 and/or the Agreement establishing the World Trade Organisation (including the Agreement on Trade-Related Aspects of Intellectual Property Rights) and/or are member States of the European Community or otherwise give adequate protection under their law.)

- *Angola (1st December 1996)
- *Antigua and Barbuda (1st January 1996)
- Argentina (2nd March 1992)
- Australia (30th September 1992)
- Austria (1st June 1957)
- *Bahrain (1st January 1996)
- *Bangladesh (1st January 1996)
- Barbados (18th September 1983)
- Belgium (1st June 1957)
- *Belize (1st January 1996)
- *Benin (22nd February 1996)
- Bolivia (24th November 1993)
- *Botswana (1st January 1996)
- Brazil (29th September 1965)
- *Brunei Darussalam (1st January 1996)
- Bulgaria (31st January 1995)
- Burkina Faso (14th January 1988)
- *Burundi (1st January 1996)
- Canada (1st January 1996)
- *Cameroon (1st January 1996)
- Cape Verde (3rd July 1997)
- *Central African Republic (1st January 1996)
- *Chad (19th October 1996)
- Chile (5th September 1974)
- Colombia (17th September 1976)
- Congo (18th May 1964)
- Costa Rica (9th September 1971)
- *Cote D'Ivoire (1st January 1996)
- *Cuba (1st January 1996)
- Cyprus, Republic of (5th May 1970 – television; 1st January 1996 – non-television)
- Czech Republic (1st January 1993)
- *Democratic Republic of the Congo (1st January 1997)
- Denmark (1st June 1957)
- *Djibouti (1st January 1996)
- *Dominica (1st January 1996)
- Dominican Republic (27th January 1987)
- Ecuador (18th May 1964)
- *Egypt (1st January 1996)
- El Salvador (29th June 1979)
- Faeroe Islands (1st February 1962 – television; 1st July 1965 – non-television)
- Fiji (11th April 1972)
- Finland (1st June 1957)
- France (including all Overseas Departments and Territories) (1st June 1957)
- *Gabon (1st January 1996)
- *Gambia (23rd October 1996)
- Germany (1st June 1957)
- *Ghana (1st January 1996)
- Greece (1st June 1957)
- Greenland (1st February 1962 – television; 1st July 1965 – non-television)
- *Grenada (22nd February 1996)
- Guatemala (14th January 1977)
- *Guinea-Bissau (1st January 1996)

*Guinea (1st January 1996)
*Guyana (1st January 1996)
*Haiti (30th January 1996)
Honduras (16th February 1990)
Hong Kong (1st June 1957)
Hungary (10th February 1995)
Iceland (15th June 1994)
Indonesia (1st June 1957)
*India (1st January 1996)
Ireland, Republic of (1st June 1957)
*Israel (1st January 1996)
Italy (1st June 1957)
Jamaica (27th January 1994)
Japan (26th October 1989)
*Kenya (1st January 1996)
*Korea, Republic of (1st January 1996)
*Kuwait (1st January 1996)
*Kyrgyz Republic (20th December 1998)
*Latvia (10th February 1999)
Lebanon (12th August 1997)
Lesotho (26th January 1990)
*Liechtenstein (1st January 1996)
Luxembourg (1st June 1957)
*Macau (1st January 1996)
Macedonia (2nd March 1998)
*Madagascar (1st January 1996)
Malawi (22nd June 1989)
Malaysia (1st June 1957)
*Maldives (1st January 1996)
*Mali (1st January 1996)
*Malta (1st January 1996)
*Mauritania (1st January 1996)
*Mauritius (1st January 1996)
Mexico (18th May 1964)
Moldova (5th December 1995)
Monaco (6th December 1985)
*Mongolia (29th January 1997)
*Morocco (1st January 1996)
*Mozambique (1st January 1996)
*Myanmar (1st January 1996)
*Namibia (1st January 1996)
Netherlands (1st June 1957)
*New Zealand (1st January 1996)
*Nicaragua (1st January 1996)
Niger (18th May 1964)
Nigeria (29th October 1993)
Norway (10th August 1968 – television; 10th July 1978 – non-television)
Panama (2nd September 1983)
*Pakistan (1st January 1996)
*Papua New Guinea (6th June 1996)
Paraguay (26th February 1970)
Peru (7th August 1985)
Philippines (25th September 1984)
Poland (1st January 1996)
Portugal (1st June 1957)
*Qatar (13th January 1996)
Romania (1st January 1996)
*Rwanda (22nd May 1996)
*Saint Kitts and Nevis (21st February 1996)
Saint Lucia (1st January 1996)
*Saint Vincent and the Grenadines (1st January 1996)

*Senegal (1st January 1996)
*Sierra Leone (1st January 1996)
Singapore (1st June 1957)
Slovak Republic (1st January 1993)
Slovenia (1st January 1996)
*Solomon Islands (26th July 1996)
*South Africa (1st January 1996)
Spain (1st June 1957)
*Sri Lanka (1st January 1996)
*Suriname (1st January 1996)
*Swaziland (1st January 1996)
Sweden (1st June 1957)
Switzerland (24th September 1993)
*Tanzania (1st January 1996)
*Thailand (1st January 1996)
*Togo (1st January 1996)
*Trinidad and Tobago (1st January 1996)
*Tunisia (1st January 1996)
*Turkey (1st January 1996)
*Uganda (1st January 1996)
*United Arab Emirates (10th April 1996)
*United States (1st January 1996)
Uruguay (4th July 1977)
Venezuela (1st January 1996)
*Zambia (1st January 1996)
*Zimbabwe (1st January 1996)

SCHEDULE 4

Article 4(5)

COUNTRIES ENJOYING PROTECTION IN RESPECT OF CABLE PROGRAMMES

(The countries specified in this Schedule are either member States of the European Community or otherwise give adequate protection under their law.)

Austria
Belgium
Denmark
Finland
France (including all Overseas Departments and Territories)
Germany
Greece
Indonesia
Ireland, Republic of
Italy
Luxembourg
Netherlands
Portugal
Singapore
Spain
Sweden

SCHEDULE 5

Article 5

MODIFICATIONS

1. In respect of the countries listed in Schedule 4, in the application of article 4(2) above in relation to cable programmes by virtue of article 4(5), the relevant date is 1st January 1985.
2. In respect of the territory of Taiwan—
 - (a) article 2(1)(a) and (2) above shall apply as if the reference 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.
3. In the application of Part I of the Act by virtue of article 4 (broadcasts) above in relation to those countries identified in Schedule 3 to this Order by an asterisk, section 16 applies to broadcasts as if subsection (1)(b) (issue of copies of a work to the public), subsection (1)(d) (broadcast of a work or inclusion in a cable programme service) insofar as it relates to inclusion in a cable programme service and subsection (1)(c) (performing, showing or playing a work in public) insofar as it relates to broadcasts other than television broadcasts, were omitted.
4. The derogations in respect of broadcasts set out in paragraph 3 apply also to Cyprus save that they apply only in respect of non-television broadcasts.

SCHEDULE 6

Article 8

ORDERS IN COUNCIL REVOKED

<i>Number</i>	<i>Title</i>
S.I. 1993/942	The Copyright (Application to Other Countries) Order 1993
S.I. 1994/263	The Copyright (Application to Other Countries) (Amendment) Order 1994
S.I. 1995/2987	The Copyright (Application to Other Countries) (Amendment) Order 1995

EXPLANATORY NOTE

(This note is not part of the Order)

This Order applies or continues to apply 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 or continue to receive copyright protection in the United Kingdom. The Order revokes and replaces the Copyright (Application to Other Countries) Order 1993 and its amending Orders (article 8).

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 are parties to the Berne Copyright Convention (Cmnd. 5002), and/or to the Universal Copyright Convention (Cmnd. 4905) and/or to the Agreement establishing the World Trade Organisation (Cmnd. 2556–59, 2561–69, 2571–74) (including the Agreement on Trade-Related Aspects of Intellectual Property Rights) and/or are member States of the European Community; or otherwise give adequate protection under their laws; the countries in respect of which a date is specified are countries whose works do not enjoy copyright protection in the United Kingdom where published in those countries before that date. 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. 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), member States of the European Community and countries otherwise giving adequate protection).

Article 4 provides protection for broadcasts originating in any country in Schedule 3. These countries are parties to the Rome Convention or to the European Agreement on the Protection of Television Broadcasts (Cmnd. 1163) and/or to the Agreement establishing the World Trade Organisation (including the Agreement on Trade-Related Aspects of Intellectual Property Rights) and/or are member States of the European Community or otherwise give adequate protection under their laws. Protection does not extend to broadcasts made before the specified dates. The protection for Singapore, Indonesia and member States of the European Community also extends to cable programmes (article 4(5) and Schedule 4).

Article 5 modifies the Order in respect of the member States of the European Community, Cyprus, Indonesia, Singapore and the territory of Taiwan.

Article 6 preserves existing qualifications and article 7 preserves contrary acquired rights.

This Order clarifies the position with regard to member States of the European Community and, further, takes account of the accession of—

- (i) Azerbaijan, Belarus, Cape Verde, Equatorial Guinea, Grenada, Haiti, Mongolia and Panama to the Berne Copyright Convention; and
- (ii) Angola, Benin, Cameroon, Chad, Democratic Republic of the Congo, Gambia, Grenada, Haiti, Kyrgyz Republic, Latvia, Madagascar, Mongolia, Papua New Guinea, Qatar, Rwanda, St Kitts and Nevis, Solomon Islands and United Arab Emirates to the Agreement establishing the World Trade Organisation (including the Agreement on Trade-Related Aspects of Intellectual Property Rights); and
- (iii) Canada, Cape Verde, Lebanon, Macedonia, Poland, Romania, Saint Lucia, Slovenia and Venezuela to the International (Rome) Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations.

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