

2013 No. 1782

COPYRIGHT

RIGHTS IN PERFORMANCES

**The Copyright and Duration of Rights in Performances
Regulations 2013**

<i>Made</i>	- - - -	<i>17th July 2013</i>
<i>Laid before Parliament</i>		<i>18th July 2013</i>
<i>Coming into force</i>	- -	<i>1st November 2013</i>

The Secretary of State, being a Minister designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to measures relating to copyright and rights in performances, in exercise of powers conferred by that section and section 78 of the Enterprise and Regulatory Reform Act 2013^(c), makes the following Regulations:

PART 1

Introductory Provisions

Citation and commencement

1. These Regulations may be cited as the Copyright and Duration of Rights in Performances Regulations 2013 and come into force on 1st November 2013.

Interpretation

2. In these Regulations “the Act” means the Copyright, Designs and Patents Act 1988^(d).

Scheme of the Regulations

3. The Act is amended in accordance with the provisions of Part 2 of these Regulations, subject to the savings and transitional provisions in Part 3 of these Regulations.

(a) S.I. 1992/707 and S.I. 1993/595.
(b) 1972 c.68.
(c) 2013 c.24.
(d) 1988 c.48.

PART 2

Amendments to the Copyright, Designs and Patents Act 1988

Copyright

Works of Co-authorship

4. After section 10 (Works of joint authorship) insert—

“10A Works of co-authorship

(1) In this Part a “work of co-authorship” means a work produced by the collaboration of the author of a musical work and the author of a literary work where the two works are created in order to be used together.

(2) References in this Part to a work or the author of a work shall, except as otherwise provided, be construed in relation to a work of co-authorship as references to each of the separate musical and literary works comprised in the work of co-authorship and to each of the authors of such works.”.

Duration of copyright in literary, dramatic, musical or artistic works

5. In section 12(8) (Duration of copyright in literary, dramatic, musical or artistic works) after “joint authorship” insert “or a work of co-authorship”.

Duration of copyright in sound recordings

6. In section 13A (Duration of copyright in sound recordings), in subsection (2)—

- (a) after “subsections (4) and (5)” insert “and section 191HA(4)”, and
- (b) in paragraphs (b) and (c), for “50” substitute “70”.

Rights in Performances

Right to equitable remuneration for exploitation of sound recording

7. In section 182D(1) (Right to equitable remuneration for exploitation of sound recording) at the end insert “or, where copyright in the sound recording has expired pursuant to section 191HA(4), from a person who plays the sound recording in public or communicates the sound recording to the public”.

Duration of rights in sound recordings

8. In section 191(2) (Duration of rights)—

- (a) in paragraph (b), after “a recording of the performance” insert “, other than a sound recording,”, and
- (b) after that paragraph, insert—
 - “or
 - (c) if during that period a sound recording of the performance is released, 70 years from the end of the calendar year in which it is released,”.

Rights in relation to an assignment of performers’ property rights in a sound recording

9. After section 191H insert—

“191HA Assignment of performer’s property rights in a sound recording

(1) This section applies where a performer has assigned the following rights concerning a sound recording to the producer of the sound recording—

- (a) reproduction, distribution and making available rights, or
- (b) performer’s property rights.

(2) If, at the end of the 50-year period, the producer has failed to meet one or both of the following conditions, the performer may give a notice in writing to the producer of the performer’s intention to terminate the agreement—

- (a) condition 1 is to issue to the public copies of the sound recording in sufficient quantities;
- (b) condition 2 is to make the sound recording available to the public by electronic transmission in such a way that a member of the public may access the recording from a place and at a time chosen by him or her.

(3) If, at any time after the end of the 50-year period, the producer, having met one or both of the conditions referred to in subsection (2), fails to do so, the performer may give a notice in writing to the producer of the performer’s intention to terminate the agreement.

(4) If at the end of the period of 12 months beginning with the date of the notice, the producer has not met the conditions referred to in subsection (2), the agreement terminates and the copyright in the sound recording expires with immediate effect.

(5) An agreement is of no effect in so far as it purports to exclude or restrict the right to give a notice under subsection (2) or (3).

(6) A reference in this section to the assignment of rights includes any arrangement having that effect, whether made directly between the parties or through intermediaries.

(7) In this section—

“50-year period” means

- (a) where the sound recording is published during the initial period, the period of 50 years from the end of the calendar year in which the sound recording is first published, or
- (b) where during the initial period the sound recording is not published but is made available to the public by being played in public or communicated to the public, the period of 50 years from the end of the calendar year in which it was first made available to the public,

but in determining whether a sound recording has been published, played in public or communicated to the public, no account shall be taken of any unauthorised act,

“initial period” means the period beginning on the date the recording is made and ending 50 years from the end of the calendar year in which the sound recording is made,

“producer” means the person for the time being entitled to the copyright in the sound recording,

“sufficient quantities” means such quantity as to satisfy the reasonable requirements of the public for copies of the sound recording,

“unauthorised act” has the same meaning as in section 178.

191HB Payment in consideration of assignment

(1) A performer who, under an agreement relating to the assignment of rights referred to in section 191HA(1) (an “assignment agreement”), is entitled to a non-recurring payment in consideration of the assignment, is entitled to an annual payment for each relevant period from—

- (a) the producer, or

- (b) where the producer has granted an exclusive licence of the copyright in the sound recording, the licensee under the exclusive licence (the “exclusive licensee”).
- (2) In this section, “relevant period” means—
 - (a) the period of 12 months beginning at the end of the 50-year period, and
 - (b) each subsequent period of 12 months beginning with the end of the previous period, until the date on which copyright in the sound recording expires.
- (3) The producer or, where relevant, the exclusive licensee gives effect to the entitlement under subsection (1) by remitting to a collecting society for distribution to the performer in accordance with its rules an amount for each relevant period equal to 20% of the gross revenue received during that period in respect of—
 - (a) the reproduction and issue to the public of copies of the sound recording, and
 - (b) the making available to the public of the sound recording by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them.
- (4) The amount required to be remitted under subsection (3) is payable within 6 months of the end of each relevant period and is recoverable by the collecting society as a debt.
- (5) Subsection (6) applies where—
 - (a) the performer makes a written request to the producer or, where relevant, the exclusive licensee for information in that person’s possession or under that person’s control to enable the performer—
 - (i) to ascertain the amount of the annual payment to which the performer is entitled under subsection (1), or
 - (ii) to secure its distribution by the collecting society, and
 - (b) the producer or, where relevant, the exclusive licensee does not supply the information within the period of 90 days beginning with the date of the request.
- (6) The performer may apply to the county court, or in Scotland to the sheriff, for an order requiring the producer or, where relevant, the exclusive licensee to supply the information.
- (7) An agreement is of no effect in so far as it purports to exclude or restrict the entitlement under subsection (1).
- (8) In the event of any dispute as to the amount required to be remitted under subsection (3), the performer may apply to the Copyright Tribunal to determine the amount payable.
- (9) Where a performer is entitled under an assignment agreement to recurring payments in consideration of the assignment, the payments must, from the end of the 50-year period, be made in full, regardless of any provision in the agreement which entitles the producer to withhold or deduct sums from the amounts payable.
- (10) In this section—
 - “producer” and “50-year period” each has the same meaning as in section 191HA,
 - “exclusive licence” has the same meaning as in section 92, and
 - “collecting society” has the same meaning as in section 191G.”.

Performers’ non-property rights

10. In section 192A(1) (Performer’s non-property rights) after the entry for section 183 delete “and” and after the entry for section 184 insert—

“section 191HA (assignment of performer’s property rights in a sound recording),
and
section 191HB (payment in consideration of assignment).”.

PART 3

Savings, transitional and review provisions

Introductory

Introductory

11.—(1) References in this Part to “commencement”, without more, are to the date on which these Regulations come into force.

(2) In this Part—

“the 1988 provisions” means the provisions of the Act as they stood immediately before commencement (including the provisions of Schedule 1 to the Act continuing the effect of earlier enactments); and

“the new provisions” means the provisions of the Act as amended by these Regulations.

(3) Expressions used in this Part which are defined for the purposes of Part 1 or Part 2 of the Act have the same meaning as in that Part.

Copyright

Copyright: interpretation

12.—(1) In the provisions of this Part relating to copyright—

(a) “existing” in relation to a work, means made before commencement; and

(b) “existing copyright work” means a work in which copyright subsisted immediately before commencement.

(2) For the purposes of those provisions a work of which the making extended over a period shall be taken to have been made when its making was completed.

(3) References in those provisions to “moral rights” are to the rights conferred by Chapter IV of Part I of the Act.

Duration of copyright: general saving

13. Copyright in an existing copyright work shall continue to subsist until the date on which it would have expired under the 1988 provisions if that date is later than the date on which copyright would expire under the new provisions.

Duration of copyright: application of new provisions

14. The new provisions relating to duration of copyright in sound recordings and works comprised in works of co-authorship apply—

(a) to sound recordings and works of co-authorship made after commencement;

(b) to existing sound recordings and works of co-authorship which first qualify for copyright protection after commencement;

(c) to existing sound recordings in which copyright subsisted immediately before commencement;

(d) to works of co-authorship of which either or both the musical work and the literary work were existing copyright works; and

(e) to works of co-authorship of which the musical work or the literary work were on commencement protected as copyright works in another EEA state under legislation relating to copyright or related rights.

Extended and revived copyright

15. In the following provisions of this Part—

- (a) “extended copyright” means any copyright which subsists by virtue of the new provisions after the date on which it would have expired under the 1988 provisions; and
- (b) “revived copyright” means any copyright in a musical or literary work comprised in a work of co-authorship which subsists by virtue of the new provisions after having expired under the 1988 provisions or any earlier enactment relating to copyright.

Ownership of extended copyright

16.—(1) The person who is the owner of the copyright in a sound recording or in a work comprised in a work of co-authorship immediately before commencement is as from commencement the owner of any extended copyright in the sound recording or work, subject as follows.

(2) If he or she is entitled to copyright for a period less than the whole of the copyright period under the 1988 provisions, any extended copyright is part of the reversionary interest expectant on the termination of that period.

Ownership of revived copyright in works of co-authorship

17.—(1) The person who was the owner of the copyright in a musical or literary work comprised in the work of co-authorship immediately before it expired (the “former copyright owner”) is as from commencement the owner of any revived copyright in the work, subject as follows.

(2) If the former copyright owner has died before commencement, or in the case of a legal person has ceased to exist before commencement, the revived copyright shall vest in the author of the work or his or her personal representatives.

(3) Where revived copyright vests in personal representatives by virtue of paragraph (2), it shall be held by them for the benefit of the person who would have been entitled to it had it been vested in the author immediately before his or her death and had devolved as part of his or her estate.

Prospective ownership of extended or revived copyright

18.—(1) Where by an agreement made before commencement in relation to extended or revived copyright, and signed by or on behalf of the prospective owner of the copyright, the prospective owner purports to assign the extended or revived copyright (wholly or partially) to another person, then if, on commencement the assignee or another person claiming under the assignee would be entitled as against all other persons to require the copyright to be vested in him or her, the copyright shall vest in the assignee or his or her successor in title by virtue of this paragraph.

(2) A licence granted by a prospective owner of extended or revived copyright is binding on every successor in title to the prospective owner’s interest (or prospective interest) in the right, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser and references in Part 1 of the Act to do anything with, or without, the licence of the copyright owner shall be construed accordingly.

(3) In paragraph (2) “prospective owner” includes a person who is prospectively entitled to extended or revived copyright by virtue of such an agreement as is mentioned in paragraph (1).

Extended copyright: existing licences, agreements, &c.

19.—(1) Subject to sections 191HA(5) and 191HB(7) and (9), any copyright licence, any term or condition of an agreement relating to the exploitation of a copyright work, or any waiver or assertion of moral rights, which—

- (a) subsists immediately before commencement in relation to an existing copyright work, and

(b) is not to expire before the end of the copyright period under the 1988 provisions, shall continue to have effect during the period of any extended copyright, subject to any agreement to the contrary.

(2) Any copyright licence, or term or condition relating to the exploitation of a copyright work, imposed by order of the Copyright Tribunal which—

(a) subsists immediately before commencement in relation to an existing copyright work, and

(b) is not to expire before the end of the copyright period under the 1988 provisions,

shall continue to have effect during the period of any extended copyright, subject to any further order of the Tribunal.

Revived copyright: exercise of moral rights

20.—(1) The following provisions have effect with respect to the exercise of moral rights in relation to a work comprised in a work of co-authorship in which there is revived copyright.

(2) Any waiver or assertion of moral rights which subsisted immediately before the expiry of copyright shall continue to have effect during the period of revived copyright.

(3) Moral rights are exercisable after commencement by the author of a work as with any other copyright work.

(4) Where the author died before commencement—

(a) the rights conferred by—

(i) section 77 (right to identification as author or director); or

(ii) section 80 (right to object to derogatory treatment of work),

are exercisable after commencement by his personal representatives, and

(b) any infringement after commencement of the right conferred by section 84 (false attribution) is actionable by his personal representatives.

(5) Any damages recovered by personal representatives by virtue of this regulation in respect of an infringement after a person's death shall devolve as part of his or her estate as if the right of action had subsisted and been vested in him or her immediately before his or her death.

(6) Nothing in these Regulations shall be construed as causing a moral right to be exercisable if, or to the extent that, the right was excluded by virtue of paragraph 23 of Schedule 1 on the commencement of the Act or would have been so excluded if copyright had not previously expired.

Revived copyright: saving for acts of exploitation when work in public domain, &c.

21.—(1) No act done before commencement shall be regarded as infringing revived copyright in a work.

(2) It is not an infringement of revived copyright in a work—

(a) to do anything after commencement in pursuance of arrangements made before commencement at a time when copyright did not subsist in the work, or

(b) to issue to the public after commencement copies of the work made before commencement at a time when copyright did not subsist in the work.

(3) It is not an infringement of revived copyright in a work to do anything after commencement in relation to a literary, dramatic or musical work or a film made before commencement or made in pursuance of arrangements made before commencement, which contains a copy of that work or is an adaptation of that work if—

(a) the copy or adaptation was made before commencement at a time when copyright did not subsist in the work in which revived copyright subsists, or

(b) the copy or adaptation was made in pursuance of arrangements made before commencement at a time when copyright did not subsist in the work in which revived copyright subsists.

(4) It is not an infringement of revived copyright in a work to do after commencement anything which is a restricted act in relation to the work if the act is done at a time when, or is done in pursuance of arrangements made at a time when, the name and address of a person entitled to authorise the act cannot by reasonable inquiry be ascertained.

(5) In this regulation “arrangements” means arrangements for the exploitation of the work in question.

(6) It is not an infringement of any moral right to do anything which by virtue of this regulation is not an infringement of copyright.

Rights in performances

Rights in performances: interpretation

22.—(1) In the provisions of this Part relating to rights in performances—

“existing protected performance” means a performance in a sound recording in relation to which rights under Part II of the Act (rights in performances) subsisted immediately before commencement,

“a new right” means a right arising by virtue of regulation 9 in relation to an assignment of a performer’s property rights in a sound recording.

References in this Part to performers’ rights are to the rights given by section 180(1)(a) of the Act.

Rights in performances: application of new provisions

23. The new provisions relating to the duration of performers’ rights in sound recordings and rights in relation to an assignment of performers’ rights in a sound recording apply—

- (a) to performances taking place after commencement;
- (b) to existing performances which first qualify for protection under Part II of the 1988 Act after commencement; and
- (c) to existing protected performances.

Extended performance rights

24. In the following provisions of this Part “extended performance rights” means rights under Part II of the Act which subsist by virtue of the new provisions after the date on which they would have expired under the 1988 provisions.

Entitlement to extended performance rights and new rights

25.—(1) Any extended performance rights and any new rights are exercisable as from commencement by the performer or (if he or she has died) the person entitled to exercise those rights by virtue of section 191B(1) or 192A of the Act.

(2) Any remuneration or damages received by a person’s personal representatives by virtue of a right conferred on them by paragraph (1) shall devolve as part of that person’s estate as if the right had subsisted and been vested in him or her immediately before his or her death.

Extended performance rights: existing consents, agreements, &c.

26. Subject to the provisions of sections 191HA(5) and 191HB(7) and (9), any consent, or any term or condition of an agreement, relating to the exploitation of an existing protected performance which—

- (a) subsists immediately before commencement, and
- (b) is not to expire before the end of the period for which rights under Part II of the Act subsist in relation to that performance,

shall continue to subsist during the period of any extended performance rights, subject to any agreement to the contrary.

Review

27.—(1) Before the end of each review period, the Secretary of State must—

- (a) carry out a review of regulations 4 to 26,
- (b) set out the conclusions of the review in a report, and
- (c) lay the report before Parliament.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Directive (which is implemented by means of regulations 4 to 26) is implemented in other Member States and must in particular—

- (a) consider whether and if so, to what extent certain producers should be subject to the obligation to pay the annual payment referred to in section 191HB of the Act (as inserted by regulation 9) having regard to the provisions of Recital (12) of the Directive, and
- (b) consider whether to implement the provision set out in Article 10a, paragraph 2 of Directive 2006/116/EC^(a) as inserted by Article 1(4) of the Directive.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by those regulations,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) In this Regulation—

“Directive” means Directive 2011/77/EU^(b) of the European Parliament and of the Council of 27th September 2011 amending Directive 2006/116/EC on the term of protection of copyright and related rights;

“Review period” means—

- (a) the period of five years beginning with the day on which regulations 4 to 26 come into force, and
- (b) subject to paragraph (5), each successive period of five years.

(5) If a report under this regulation is laid before Parliament before the last day of the review period to which it relates, the following review period is to begin with the day on which that report is laid.

17th July 2013

Younger of Leckie
Parliamentary Under Secretary of State for Business, Innovation and Skills
Department for Business, Innovation and Skills

(a) OJ No L 372, 27.12.2006, p12.

(b) OJ No L 265, 11.10.2011, p1.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Copyright, Designs and Patents Act 1988 (“the Act”) and implement the provisions of Directive 2011/77/EU of the European Parliament and of the Council of 27 September 2011 amending Directive 2006/116/EC on the term of protection of copyright and certain related rights (OJ No L265, 11.10.2011, p. 1).

Regulation 4 inserts in section 10A of the Act a new definition of a work of co-authorship as a musical composition with words where the author of the music and the author of the lyrics have collaborated together to produce the work.

Regulation 5 amends section 12(8) of the Act to include a reference to a work of co-authorship so as to provide that copyright in the works comprised in a work of co-authorship will expire 70 years after the death of the last surviving author.

Regulation 6 amends section 13A of the Act to extend the period of copyright in a sound recording which is published or made available to the public from 50 years to 70 years.

Regulation 7 amends section 182D of the Act to provide that where copyright in a sound recording has expired pursuant to the exercise by the performer of the rights conferred under new section 191HA inserted by regulation 9, the responsibility for payment of equitable remuneration should be discharged by the user i.e. the person who plays the sound recording in public or communicates the sound recording to the public, in place of the producer.

Regulation 8 amends section 191 of the Act to extend the duration of a performer’s rights in a sound recording which is released from 50 years to 70 years.

Regulation 9 inserts new sections 191HA and 191HB in the Act:

New section 191HA provides that where a performer has assigned the reproduction, distribution and making available rights in a sound recording to the producer, the performer may serve notice to terminate that assignment at the expiry of the 50 year period (as defined in sub-section (7)) if the producer has failed to sell the sound recording in sufficient quantities or to make it available on the internet. If at the end of the notice period the producer has failed to exploit the recording, the agreement terminates and the producer’s copyright in the sound recording expires.

New section 191HB provides that where a performer who has assigned such rights to a producer in consideration of a single payment (as opposed to a recurring payment), with effect from the end of the 50 year period, the performer is entitled to receive an annual payment until the expiry of the copyright in the sound recording. The producer or, where relevant, the exclusive licensee is under an obligation to pay to a Collecting Society, for distribution to the performer, 20% of the gross revenue received in respect of sales and downloads of the sound recording. Any disputes regarding the sum payable may be referred by the performer to the Copyright Tribunal. Subsection (9) provides that where a performer is entitled to recurring payments under an assignment of rights, the producer is not entitled to deduct sums from such payments with effect from the end of the 50 year period notwithstanding any provision in the agreement permitting such deductions.

Regulation 10 amends section 192A so as provide that the rights conferred on the performer under new sections 191HA and 191HB are transmissible on the death of the performer.

Part 3 of the Regulations (which contains transitional provisions and savings), provides—

- (a) for the new provisions relating to duration of copyright in sound recordings to apply not only to sound recordings made after 1st November 2013 but also to sound recordings in which copyright subsisted immediately before that date (regulations 12 and 14);
- (b) for the saving of any period of copyright which would be longer than that to which a work might otherwise be entitled under the Regulations (regulation 13);
- (c) for those Regulations which increase the duration of copyright for works comprised in a work of co-authorship to 70 years from the death of the last surviving author, to apply not only to works made after 1st November 2013 but also to works made before that date in

which copyright continues to subsist on 31st October 2013, and further to apply to works where the copyright in either the musical work or the literary work expired before that date but where the copyright in the related literary work or musical work continued to subsist on 31st October 2013 under the 1988 provisions or which were protected on 1st November 2013 under legislation relating to copyright or related rights in any other EEA State (regulation 14 and 15);

- (d) for the determination of the ownership of both extended and revived copyright (regulation 16, 17 and 18);
- (e) in relation to extended copyright, subject to the provisions of sections 191HA and 191HB, for any licence, term or condition of an agreement or waiver or assertion of moral rights, or any such licence, term or condition imposed by the copyright tribunal, effective throughout the duration of the original period of copyright to continue throughout the period of extended copyright (regulation 19);
- (f) who is to exercise moral rights in respect of a revived copyright in a work of co-authorship (regulation 20);
- (g) a saving in respect of arrangements made before 1st November 2013 so that any acts done after 1st November 2013 in pursuance of such arrangements are not to be regarded as infringements of revived copyright (regulation 21);
- (h) a saving in respect of the issue to the public after 1st November 2013 of copies of a revived copyright work made before that date and at a time when copyright in the revived work had expired (regulation 21);
- (i) a saving for acts done in respect of revived copyright works after 1st November 2013, where the owner of the right cannot be found by reasonable inquiry (regulation 21);
- (j) a saving for acts done after 1st November 2013 in respect of works which contain a copy of, or is an adaptation of a revived work which was made before 1st November 2013 or in pursuance of arrangements before that date (regulation 21);
- (k) for the new provisions relating to the duration of performers' rights in sound recordings and in relation to an assignment of performers' rights in a sound recording to a producer to apply to performances taking place after 1st November 2013 and to performances in a sound recording in which rights under Part II of the Act subsisted immediately before that date (regulation 23);
- (l) for the determination of ownership of extended performance rights and new rights (regulation 25);
- (m) in relation to extended performance rights, for savings corresponding to those made in respect of extended copyright works (regulation 26).

Regulation 27 imposes a duty on the Secretary of State to carry out a review of the regulations before 1st November 2018 and to prepare a report to Parliament of the conclusions of the review.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Intellectual Property Office, Concept House, Cardiff Road, Newport, NP10 8QQ and is annexed to the Explanatory Memorandum (together with a transposition note) which is available alongside the instrument on www.legislation.gov.uk

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£5.75

UK201307174 07/2013 19585

<http://www.legislation.gov.uk/id/uksi/2013/1782>

ISBN 978-0-11-110186-5



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