
STATUTORY INSTRUMENTS

2016 No. 1219

**The Copyright and Performances
(Application to Other Countries) Order 2016**

PART 5

PERFORMANCES

Restrictions on the application of Part 2 of the Act in respect of countries that have made declarations under Article 16(1)(a)(i) of the Rome Convention

9.—(1) This article applies to a country which is a party to the Rome Convention⁽¹⁾ and has made a declaration under Article 16(1)(a) of the Rome Convention that it will not apply the provisions of Article 12 (which provides for the payment of a single equitable remuneration).

(2) Where this article applies, to the extent that the declaration referred to in paragraph (1) is in force in the law of the country in relation to British performances⁽²⁾, the provisions of Part 2 of the Act shall not apply to grant the protection provided for under Article 12 of the Rome Convention unless the recording has been first published in a country which—

- (a) is a party to the Rome Convention; and
- (b) has not made a declaration of the kind referred to in paragraph (1).

Application of Part 2 of the Act to WPPT countries which have made a declaration under Article 15(3) of the WPPT and which are party to the Rome Convention

10.—(1) This article applies to—

- (a) Australia (including Norfolk Island);
- (b) Chile;
- (c) Costa Rica;
- (d) Korea, Republic of; and
- (e) Macedonia, The Former Yugoslav Republic of.

(2) This article does not affect the application of Part 2 of the Act to a country to which this article applies by virtue of paragraph (bb) (countries party to the Rome Convention) of the definition of “qualifying country” in subsection (1) of section 206 (qualifying countries).

(3) A country to which this article applies is, subject to paragraph (4), designated as enjoying reciprocal protection under Part 2 of the Act.

(4) Part 2 of the Act applies subject to the following modifications—

(1) Cm. 2425; “Rome Convention” is defined in section 206(6) of the Copyright, Designs and Patents Act 1988.
(2) “British performance” is defined in section 208(3) of the Copyright, Designs and Patents Act 1988.

- (a) the definition of recording in section 180(2) (rights conferred on performers and persons having recording rights), shall be construed as applying only to sound recordings (and not to films);
 - (b) the following provisions do not apply—
 - (i) section 182C (consent required for rental or lending of copies to the public)(3), in so far as it relates to lending;
 - (ii) section 183 (infringement of performer’s rights by use of recording made without consent)(4);
 - (iii) sections 185 to 188 (rights of persons having recording rights)(5); and
 - (iv) section 198(2) (criminal liability for making available to the public)(6);
 and
 - (c) the provisions of Part 2 of the Act shall not apply to protect the right provided for in Article 15(1) of the WPPT to the extent that a declaration is in force in the law of a country to which this article applies in relation to British performances.
- (5) In paragraph (4)(c) “declaration” means a declaration made under Article 15(3) of the WPPT by a country to which this article applies that—
- (a) 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;
 - (b) it will limit the application of the provisions of Article 15(1) of the WPPT in some other way; or
 - (c) it will not apply the provisions of Article 15(1) of the WPPT at all.

Application of Part 2 of the Act to WPPT countries not party to the Rome Convention

11.—(1) This article applies to the countries listed in Part 2 of the Schedule where this article is specified in the entry relating to that country (countries party to the WPPT but not the Rome Convention).

(2) A country to which this article applies is, subject to paragraphs (3) and (4), designated as enjoying reciprocal protection under Part 2 of the Act.

(3) Part 2 of the Act applies subject to the following modifications—

- (a) the definition of recording in section 180(2) (rights conferred on performers and persons having recording rights), shall be construed as applying only to sound recordings (and not to films);
- (b) the following provisions do not apply—
 - (i) section 182C (consent required for rental or lending of copies to public), in so far as it relates to lending;
 - (ii) section 183 (infringement of performer’s rights by use of recording made without consent);
 - (iii) sections 185 to 188 (rights of persons having recording rights); and

(3) Section 182C was inserted by regulations 4 and 20(2) of the Copyright and Related Rights Regulations 1996 (S.I. 1996/2967).

(4) Section 183 was amended by paragraphs 1 and 13(1)(a) of Schedule 1 to the Copyright and Related Rights Regulations 2003 (S.I. 2003/2498).

(5) Section 185 was amended by paragraphs 1 and 8 of the Schedule to the Performances (Moral Rights etc.) Regulations 2006 (S.I. 2006/18). Section 186 was amended by Schedule 2 to the Copyright and Related Rights Regulations 2003. Section 187 was amended by paragraphs 1 and 13(1)(b) of Schedule 1 to the Copyright and Related Rights Regulations 2003.

(6) Section 198(2) was amended by paragraph 1 and 4(5) of Schedule 1 to the Copyright and Related Rights Regulations 2003 and by paragraphs 1 and 8 of the Schedule to the Performances (Moral Rights etc.) Regulations 2006.

(iv) section 198(2) (criminal liability for making available to the public).

(4) Where a country to which this article applies has made a declaration under Article 15(3) of the WPPT that—

(a) 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,

(b) it will limit the application of the provisions of Article 15(1) of the WPPT in some other way, or

(c) it will not apply the provisions of Article 15(1) of the WPPT at all,

the provisions of Part 2 of the Act shall not apply to protect the right provided for in Article 15(1) of the WPPT to the extent that the declaration is in force in the law of that country in relation to British performances.

Application of Part 2 of the Act to WTO countries

12.—(1) This article applies to a country listed in Part 2 of the Schedule to this Order where this article is specified in the entry relating to that country (WTO members not party to the Rome Convention or the WPPT).

(2) A country to which this article applies is, subject to paragraph (3), designated as enjoying reciprocal protection under Part 2 of the Act.

(3) Part 2 of the Act applies subject to the following modifications—

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

(b) the following provisions do not apply—

(i) section 182C (consent required for rental or lending of copies to public), in so far as it relates to lending;

(ii) section 182CA (consent required for making available to the public)(7);

(iii) section 182D (right to equitable remuneration for exploitation of sound recording)(8);

(iv) section 183 (infringement of performer’s rights by use of recording made without consent);

(v) sections 185 to 188 (rights of persons having recording rights); and

(vi) section 198(1A) and (2) (criminal liability for making available to the public)(9).

Saving

13.—(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) A—

(i) began in good faith to do the act, or

(7) Section 182CA was inserted by regulation 7(1) of the Copyright and Related Rights Regulations 2003 (S.I. 2003/2498).

(8) Section 182D was inserted by regulation 20(2) of the Copyright and Related Rights Regulations 1996 (S.I. 1996/2967) and was amended by regulation 7(2) of the Copyright and Related Rights Regulations 2003, by paragraphs 1 and 3(1) and (3) of the Schedule to the Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18) and by regulation 7 of the Copyright and Duration of Rights in Performances Regulation 2013 (S.I. 2013/1782).

(9) Section 198(1A) was inserted by regulations 3 and 26(3)(a) of the Copyright and Related Rights Regulations 2003.

(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 as a consequence of the provisions
of this Order on or after its coming into force, 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.

(3) Where B or, as the case may be, B's exclusive licensee in respect of the relevant rights pays
reasonable compensation to A, paragraph (2) no longer applies.

(4) Where—

- (a) B or, as the case may be, B's exclusive licensee offers to pay compensation to A under
paragraph (3), but
- (b) A and B or, as the case may be, B's exclusive licensee cannot agree on what compensation
is reasonable,

either person may refer the matter to arbitration.

(5) In this article—

- (a) "exclusive licensee" means a licensee under an exclusive licence (as defined in
section 92(1) or 191D(1)(**10**)); and
- (b) "relevant rights" means copyright, the rights conferred by Chapter 4 of Part 1 of the Act
(moral rights) and the rights conferred by Part 2 of the Act.