

2016 No. 1219

COPYRIGHT

RIGHTS IN PERFORMANCES

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

Made - - - - *14th December 2016*
Laid before Parliament *20th December 2016*
Coming into force - - *6th April 2017*

At the Court at Buckingham Palace, the 14th day of December 2016

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty is satisfied, to the extent that this Order relates to a country that—

- (a) is not an EEA state, the Channel Islands, the Isle of Man or Gibraltar, and
- (b) is not—
 - (i) in relation to copyright, a country party to the Berne Convention^(a) or to the World Intellectual Property Organisation Performances and Phonograms Treaty^(b) or a member of the World Trade Organisation, or
 - (ii) in relation to copyright and performances, a country party to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations^(c) or otherwise a Convention country^(d),

that provision has been or will be made under the law of that country giving adequate protection to the owners of copyright under Part 1 of the Copyright, Designs and Patents Act 1988^(e) and to the owners of rights in respect of British performances^(f).

(a) Cm.1212; “Berne Convention” is defined in section 159(9) of the Copyright, Designs and Patents Act 1988 c.48; section 159 of that Act was substituted by section 22(4) of the Intellectual Property Act 2014 (c.18).
(b) Cm.3728.
(c) Cm.2425.
(d) “Convention country” is defined in section 208(2) of the Copyright, Designs and Patents Act 1988.
(e) 1988 c.48.
(f) “British performance” is defined in section 208(3) of the Copyright, Designs and Patents Act 1988.

Accordingly, Her Majesty, by and with the advice of Her Privy Council, in exercise of the powers conferred upon Her by sections 159, 206(4) and 208 of the Copyright, Designs and Patents Act 1988(a) and, in relation to article 1(3), by section 2(2) of the European Communities Act 1972(b), makes the following Order:

PART 1

INTRODUCTORY

Citation, commencement, interpretation and revocation

1.—(1) This Order may be cited as the Copyright and Performances (Application to Other Countries) Order 2016 and comes into force on 6th April 2017.

(2) In this Order—

“the Act” means the Copyright, Designs and Patents Act 1988 and references to a numbered section are references to the section bearing that number in that Act;

“relevant country” means a country other than the United Kingdom, another EEA state, the Channel Islands, the Isle of Man or Gibraltar;

“WPPT” means the World Intellectual Property Organisation Performances and Phonograms Treaty adopted in Geneva on 20th December 1996(c); and

“WTO” means the World Trade Organisation.

(3) The Copyright and Performances (Application to Other Countries) Order 2013(d) and the Copyright and Performances (Application to Other Countries) (Amendment) Order 2015(e) are revoked.

PART 2

LITERARY, DRAMATIC, MUSICAL AND ARTISTIC WORKS, FILMS AND TYPOGRAPHICAL ARRANGEMENTS OF PUBLISHED EDITIONS

Restrictions on the application of Part 1 of the Act by virtue of section 159(1) to certain works first published before 1st June 1957

2.—(1) The application of Part 1 of the Act by virtue of section 159(1) (countries that are parties to the Berne Convention or WTO members) is subject to the restriction specified in paragraph (2).

(2) A literary, dramatic, musical or artistic work first published before 1st June 1957 does not qualify for copyright protection under section 154 (qualification by reference to author)(f).

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- (a) Section 159 was substituted, section 206(4) was inserted and section 208 was amended by section 22 of the Intellectual Property Act 2014 (c.18).
- (b) 1972 c.68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7).
- (c) Cm. 3728.
- (d) S.I. 2013/536.
- (e) S.I. 2015/216.
- (f) Section 154 was amended by regulation 5(3) of the Duration of Copyright and Rights in Performances Regulations 1995 (S.I. 1995/3297), by section 2(3) of the British Overseas Territory Act 2002 c.8, and by regulation 2(2) of, and Schedule 2 to, the Copyright and Related Rights Regulations 2003 (S.I. 2003/2498).

PART 3

SOUND RECORDINGS

Restricted application of section 159(3) in relation to certain sound recordings

3.—(1) The application of Part 1 of the Act by virtue of section 159(3) (countries that are parties to the WPPT) is subject to the restrictions set out in paragraph (2).

(2) Where a country is a party to the WPPT but not the Rome Convention(a), Part 1 of the Act applies except that—

- (a) section 18A (infringement by rental or lending of work to the public)(b) does not apply in so far as it relates to lending;
- (b) section 20 (infringement by communication to the public)(c) does not apply to the broadcasting of a sound recording; and
- (c) section 107(2A) (criminal liability for communicating to the public)(d) does not apply in relation to the broadcasting of a sound recording.

Sound recordings – application of Part 1 of the Act – parties to the Berne Convention and WTO Members

4.—(1) This article applies to a relevant country that—

- (a) is not a party to the Rome Convention or the WPPT; and
- (b) satisfies either or both of the following criteria—
 - (i) the country is a party to the Berne Convention(e); and
 - (ii) the country is a member of the WTO.

(2) Where this article applies to a country, Part 1 of the Act so far as it relates to sound recordings—

- (a) applies in relation to a person who is a citizen or subject of that country or a person domiciled or resident there as it applies in relation to a person who is a British citizen or is domiciled or resident in the United Kingdom,
- (b) applies in relation to a body incorporated under the law of that country as it applies in relation to a body incorporated under the law of a part of the United Kingdom, and
- (c) applies in relation to a sound recording first published in that country as it applies in relation to a sound recording first published the United Kingdom,

(but see paragraph (3)).

(3) The application of Part 1 of the Act by virtue of paragraph (2) is subject to the following modifications—

- (a) section 18A (infringement by rental or lending of work to the public) does not apply in so far as it relates to lending;
- (b) the following provisions do not apply—
 - (i) section 19 (infringement by showing or playing of work in public)(f);
 - (ii) section 20 (infringement by communication to the public);

(a) Cm.2425; “Rome Convention” is defined in section 159(9) of the Copyright, Designs and Patents Act 1988.

(b) Section 18A was inserted by regulation 10(2) of the Copyright and Related Rights Regulations 1996 (S.I. 1996/2967) and subsequently amended by paragraph 6(2) of Schedule 1 to the Copyright and Related Rights Regulations 2003 (S.I. 2003/2498).

(c) Section 20 was substituted by regulation 6(1) of the Copyright and Related Rights Regulations 2003.

(d) Section 107(2A) was inserted by regulation 26(1)(a) of the Copyright and Related Rights Regulations 2003.

(e) Cm. 1212; “Berne Convention” is defined in section 159(9) of the Copyright, Designs and Patents Act 1988.

(f) Section 19 was amended by paragraph 3(1) of Schedule 1 to the Copyright and Related Rights Regulations 2003.

- (iii) section 26 (secondary infringement: provision of apparatus for infringing performance, &c); and
- (iv) section 107(2A) and (3) (criminal liability for communicating to the public or playing sound recording)(a).

Sound recordings – application of Part 1 of the Act – miscellaneous countries

5.—(1) This article applies to the countries listed in Part 1 of the Schedule to this Order.

(2) Where this article applies to a country, Part 1 of the Act so far as it relates to sound recordings—

- (a) applies in relation to a person who is a citizen or subject of that country or a person domiciled or resident there as it applies in relation to a person who is a British citizen or is domiciled or resident in the United Kingdom;
- (b) applies in relation to a body incorporated under the law of that country as it applies in relation to a body incorporated under the law of a part of the United Kingdom; and
- (c) applies in relation to a sound recording first published in that country as it applies in relation to a sound recording first published in the United Kingdom.

PART 4 BROADCASTS

Restrictions on the application of Part 1 of the Act to broadcasts

6.—(1) The application of Part 1 of the Act to broadcasts by virtue of section 159(2) is subject to the restrictions specified in paragraphs (2) and (3).

(2) Part 1 of the Act only applies by virtue of section 159(2) to a wireless broadcast made from a country on or after the date that country became a party to the Rome Convention.

(3) Part 1 of the Act only applies by virtue of section 159(2) to a broadcast, which is not a wireless broadcast, where that broadcast is made from Switzerland.

Application of Part 1 of the Act under section 159(4) – WTO members

7.—(1) This article applies to a relevant country that is a member of the WTO but not a party to the Rome Convention.

(2) Where this article applies to a relevant country, Part 1 of the Act applies to a wireless broadcast in relation to that country in the manner set out in paragraph (4) subject to paragraph (3).

(3) The application of Part 1 of the Act by virtue of paragraph (2) is subject to the following modifications—

- (a) section 18A (infringement by rental of work to the public) does not apply;
- (b) section 19 (infringement by showing or playing the work in public) only applies in relation to television broadcasts;
- (c) section 20 (infringement by communication to the public) only applies in relation to broadcasting by wireless telegraphy;
- (d) section 26 (secondary infringement: provision of apparatus for infringing performance, &c) does not apply in so far as it relates to television broadcasts;

(a) Section 107(2A) was inserted by regulations 3 and 26(1)(a) of the Copyright and Related Rights Regulations 2003 and section 107(3) was amended by paragraph 9(2) of Schedule 1 to those Regulations.

- (e) section 107(2A) (criminal liability for communicating to the public) only applies in relation to broadcasting by wireless telegraphy; and
 - (f) Part 1 of the Act only applies to a broadcast made on or after 1st January 1996 or, if later, the date on which the relevant country became a member of the WTO.
- (4) Part 1 of the Act applies in relation to—
- (a) a person who is a citizen or subject of a relevant country or a person domiciled or resident there as it applies in relation to a person who is a British citizen or is domiciled or resident in the United Kingdom;
 - (b) a body incorporated under the law of a relevant country as it applies in relation to a body incorporated under the law of a part of the United Kingdom; and
 - (c) a wireless broadcast made from that country as it applies in relation to a wireless broadcast made from the United Kingdom.

Application of Part 1 of the Act under section 159(4) – miscellaneous countries

8.—(1) This paragraph applies to the following countries—

- (a) Indonesia; and
- (b) Singapore.

(2) This paragraph applies to the following countries—

- (a) Hong Kong;
- (b) Indonesia;
- (c) Malawi;
- (d) Malaysia; and
- (e) Singapore.

(3) Where paragraph (1) applies to a country, Part 1 of the Act applies to a broadcast which is not a wireless broadcast in relation to that country in the manner set out in paragraph (5)(a), (b) and (d).

(4) Where paragraph (2) applies to a country, Part 1 of the Act applies to a wireless broadcast in relation to that country in the manner set out in paragraph (5)(a), (b) and (c) subject to paragraph (6).

(5) Part 1 of the Act applies in relation to—

- (a) a person who is a citizen or subject of that country or a person domiciled or resident there as it applies in relation to a person who is a British citizen or is domiciled or resident in the United Kingdom;
- (b) a body incorporated under the law of that country as it applies in relation to a body incorporated under the law of a part of the United Kingdom;
- (c) a wireless broadcast made from that country as it applies in relation to a wireless broadcast made from the United Kingdom; and
- (d) a broadcast which is not a wireless broadcast made from that country as it applies in relation to a broadcast which is not a wireless broadcast made from the United Kingdom.

(6) Part 1 of the Act only applies to a wireless broadcast made on or after 1st June 1957 or, in the case of Malawi, on or after 22nd June 1989.

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^(a) 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^(b), 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—

- (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)^(c), in so far as it relates to lending;
 - (ii) section 183 (infringement of performer’s rights by use of recording made without consent)^(d);

(a) Cm. 2425; “Rome Convention” is defined in section 206(6) of the Copyright, Designs and Patents Act 1988.

(b) “British performance” is defined in section 208(3) of the Copyright, Designs and Patents Act 1988.

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

(d) 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).

- (iii) sections 185 to 188 (rights of persons having recording rights)(a); and
 - (iv) section 198(2) (criminal liability for making available to the public)(b);
- 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
 - (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.

(a) 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.

(b) 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.

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)(a);
 - (iii) section 182D (right to equitable remuneration for exploitation of sound recording)(b);
 - (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)(c).

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
 - (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,

(a) Section 182CA was inserted by regulation 7(1) of the Copyright and Related Rights Regulations 2003 (S.I. 2003/2498).
(b) 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).
(c) Section 198(1A) was inserted by regulations 3 and 26(3)(a) of the Copyright and Related Rights Regulations 2003.

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)(a)); 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.

Ceri King
Deputy Clerk of the Privy Council

SCHEDULE

Articles 5, 11 and 12

PART 1

SOUND RECORDINGS – APPLICATION OF PART 1 OF THE ACT – MISCELLANEOUS COUNTRIES

Bangladesh

Ghana

Hong Kong

India

Indonesia

Malawi

Malaysia

New Zealand

Pakistan

Taiwan

Thailand

(a) Section 191D was inserted by regulations 4 and 21(1) of the Copyright and Related Rights Regulations 1996 (S.I. 1996/2967).

PART 2

COUNTRIES WHICH ARE NOT PARTIES TO THE ROME CONVENTION – APPLICATION OF PART 2 OF THE ACT UNDER ARTICLES 11 AND 12

<i>Country</i>	<i>Applicable article</i>
Afghanistan	Article 12
Angola	Article 12
Antigua and Barbuda	Article 12
Bangladesh	Article 12
Belize	Article 12
Benin	Article 11
Botswana	Article 11
Brunei Darussalam	Article 12
Burundi	Article 12
Cambodia	Article 12
Cameroon	Article 12
Canada	Article 11
Central African Republic	Article 12
Chad	Article 12
China	Article 11
Côte d'Ivoire	Article 12
Cuba	Article 12
Democratic Republic of Congo	Article 12
Djibouti	Article 12
Egypt	Article 12
Gabon	Article 11
Gambia	Article 12
Ghana	Article 11
Grenada	Article 12
Guinea	Article 11
Guinea-Bissau	Article 12
Guyana	Article 12
Haiti	Article 12
Hong Kong	Article 11
India	Article 12
Indonesia	Article 11
Jordan	Article 11
Kenya	Article 12
Kuwait	Article 12
Lao People's Democratic Republic	Article 12
Macao	Article 11
Madagascar	Article 11
Malawi	Article 12
Malaysia	Article 11
Maldives	Article 12
Mali	Article 11
Mauretania	Article 12
Mauritius	Article 12

Mongolia	Article 11
Morocco	Article 11
Mozambique	Article 12
Myanmar	Article 12
Namibia	Article 12
Nepal	Article 12
Netherlands Antilles, Curaçao, Sint Maarten and Aruba	Article 11
New Zealand	Article 12
Oman	Article 11
Pakistan	Article 12
Papua New Guinea	Article 12
Qatar	Article 11
Rwanda	Article 12
Saint Kitts and Nevis	Article 12
Saint Vincent and the Grenadines	Article 11
Samoa	Article 12
Saudi Arabia	Article 12
Senegal	Article 11
Seychelles	Article 12
Sierra Leone	Article 12
Singapore	Article 11
Solomon Islands	Article 12
South Africa	Article 12
Sri Lanka	Article 12
Suriname	Article 12
Swaziland	Article 12
Taiwan	Article 12
Tanzania, United Republic of	Article 12
Thailand	Article 12
Tonga	Article 12
Trinidad and Tobago	Article 11
Tunisia	Article 12
Uganda	Article 12
United States of America (including Puerto Rico and all territories and possessions)	Article 11
Vanuatu	Article 12
Yemen	Article 12
Zambia	Article 12
Zimbabwe	Article 12

EXPLANATORY NOTE

(This note is not part of the Order)

Part 1 of the Copyright, Designs and Patents Act 1988 (“the Act”) confers copyright on the creators of certain works. Part 2 of the Act confers rights on performers and persons having recording rights in relation to a performance. Under section 159 of the Act, Part 1 of the Act applies to works originating from certain countries and may be applied to works originating from

other countries. Under section 206 of the Act, Part 2 applies to performances connected with certain countries. Under section 208, Part 2 protection may be conferred in relation to performances connected with certain additional countries. The purpose of this Order is to—

- a) restrict the application of Part 1 of the Act under section 159(1) in relation to certain countries;
- b) apply Part 1 to works originating from certain additional countries;
- c) restrict the application of Part 2 of the Act to performances connected with certain countries; and
- d) apply, with certain limitations, the protection of Part 2 to performances connected with certain countries.

No impact assessment has been produced for this instrument as no impact on the private or voluntary sector is foreseen. An explanatory memorandum is available alongside this instrument on the Legislation UK website at www.legislation.gov.uk.

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