

EXPLANATORY MEMORANDUM TO
THE COPYRIGHT AND PERFORMANCES (APPLICATION TO
OTHERCOUNTRIES) ORDER 2016

2016 No. 1219

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Intellectual Property Office, an Executive Agency of the Department of Business, Energy and Industrial Strategy, and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 When this instrument enters into force the copyright protection conferred on works from third countries which was provided under the Copyright and Performances (Application to Other Countries) Order 2013 (“the 2013 Order”) will be provided under the provisions of the Copyright, Designs and Patents Act 1988 (“CPDA”) which are substituted (section 159 of the CPDA) or amended (section 206 of that Act) by section 22 of the Intellectual Property Act 2014 as well as under this instrument.
- 2.2 The purpose of this instrument is to maintain the position which applied to copyright protection conferred on works from third countries under the 2013 Order (which this instrument revokes) updated to reflect third countries’ adherence to relevant international treaties.

3. Matters of special interest to the Joint Committee on Statutory Instruments

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 This instrument is being made under sections 159, 206(4) and 208 of the CDPA and section 2(2) of the European Communities Act 1972. The instrument cites section 2(2) of the European Communities Act 1972 as one of the powers under which it is made because the 2013 Order, which this instrument revokes, was made under that section (amongst others).
- 4.2 UK membership of certain international treaties and conventions on copyright obliges the UK to protect works and performances originating in other signatory states to the extent required by each international agreement. These include the:
- World Trade Organization’s (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS),
 - The Berne Convention for Protection of Literary and Artistic Works,

- The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations; and
- The World Intellectual Property Organization’s (WIPO) Performances and Phonograms Treaty (WPPT)

4.3 Copyright protection is granted by the application of all or part of the CDPA to works originating in certain other countries and in relation to certain nationals. Reciprocal protection may also be granted to works from other countries on the basis that they provide adequate copyright protection under their own laws, to protect British works and nationals.

4.4 Previously an Order had to be made to update new signatories to any of these international treaties on copyright protection. The CDPA has been amended under section 22 of the Intellectual Property Act 2014 (IPA) to simplify how copyright applies to foreign works and nationals. Protection will now be automatically applied to signatory states. Most foreign works and nationals will now be captured under amended provisions as a result of their membership of certain treaties. However, this Order is needed to apply protection to certain other states that provide reciprocity to British works or to limit the application of protection where countries have made a declaration to limit the application of a treaty and not apply certain provisions.

5. Extent and Territorial Application

5.1 This instrument extends to all of the United Kingdom.

5.2 The territorial application of this instrument is all of the United Kingdom.

6. European Convention on Human Rights

6.1 As this instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 The protection afforded by copyright and the rights granted to performers under the CDPA extends only to the borders of the United Kingdom. A British copyright work is only protected in a foreign country if that country *agrees* to protect it.

7.2 To ensure that the works of authors, performers, producers and broadcasters are protected outside their country of origin a number of international treaties have been adopted. Most countries, including the UK, have ratified one or more of these treaties, which include the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the Berne Convention for Protection of Literary and Artistic Works, and the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (“the Rome Convention”).

7.3 In the UK the protection granted to works (including performances) depends on the nationality (or residence) of the author or performer or the place of first publication or first broadcast of the work. Changes to the CDPA under section 22 of the IPA (Recognition of foreign copyright works and performances) automatically extend UK copyright protection to foreign works and performances according to the United Kingdom’s international treaty obligations. These changes apply provisions of Part I of the CDPA (copyright ownership) directly to works and nationals from:

- any EEA state,
- Channel Islands,
- Isle of Man,
- Gibraltar,
- any party to the Berne Convention or a member of the World Trade Organization, so far as it relates to literary, dramatic, musical and artistic works, films and typographical arrangements of published editions,
- any party to the Rome Convention, so far as it relates to sound recordings and broadcasts; and
- any party to the WPPT, so far as it relates to sound recordings.

7.4 Section 22 also amends the CDPA to apply provisions of Part II (rights in performances) directly to works and nationals from:

- any EEA state,
- Channel Islands,
- Isle of Man,
- Gibraltar; and
- any country which is a party to the Rome Convention.

7.5 As indicated above protection is automatically extended to the majority of rights for foreign works and nationals on the basis of third countries being party to the relevant international convention. Nevertheless this instrument is still required to provide reciprocal protection to works from other third countries which provide adequate copyright protection or to limit the application of certain provisions of Part I and/or Part II of the CPDA, for example to:

- Countries that are WTO members but are not party to either the Rome Convention or the WPPT so performance rights are limited as mentioned in article 12 of the instrument.
- Parties to WPPT which are either not parties to the Rome Convention or parties to the Rome Convention which have submitted declarations that they will not apply all of the provisions of the agreement as set out in articles 9 and 11 of the instrument.

7.6 Signatory states are required to submit notifications to WIPO and the WTO on ratification of any relevant treaty including the adoption of any declarations. Full details of signatory states are made available on the WIPO website.

7.7 This is purely a simplification measure, and the Order, in combination with the commencement of s.22 of the IPA, will not change the protection extended to works and nationals of other countries where that protection already exists.

Consolidation

7.8 This instrument replaces the Copyright and Performances (Application to Other Countries) Order 2013. This instrument is significantly reduced in size compared to previous Orders and has been drafted with the aim of being more easily understood as well as to simplify the process and reduce the need for future revision.

8. Consultation Outcome

- 8.1 The Department has held a technical review and informal discussions with the key affected stakeholders on the contents of this Order. No formal public consultation has been conducted as no substantive changes are made by this instrument (other than changes to update the position of countries since 2013).

9. Guidance

- 9.1 The Intellectual Property Office will issue guidance to provide clarity on the provisions.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
10.2 There is no impact on the public sector
10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
11.2 No specific action is proposed to minimise regulatory burdens on small businesses.
11.3 The basis for the final decision on what action to take to assist small businesses is that this will not change the current arrangements in terms of licensing. The level of copyright protection provided for foreign works and nationals has not changed this is purely a simplification process.

12. Monitoring & review

- 12.1 Following implementation of these measures, we will continue to meet our international obligations to protect certain copyright works from all signatory states to the relevant international treaties and agreements, and it will become easier to update the law in the future. In particular, the requirement for regular amending orders will be reduced as a result of the changes delivered under section 22 IPA.
12.2 We will continue to review and update this legislation as necessary in order to reflect changes in the position of individual countries.

13. Contact

- 13.1 Andrew Sadler, Senior Policy Advisor, at the Intellectual Property Office, an executive agency of the Department of Business, Energy and Industrial Strategy, can answer any queries regarding the instrument. Contact: 01633 813516 and email: Andrew.Sadler@ipo.gov.uk