STATUTORY INSTRUMENTS

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 [F1] or to the World Intellectual Property Organisation Performances and Phonograms Treaty [F2] 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 [F3] or otherwise a Convention country [F4],

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 [F5] and to the owners of rights in respect of British performances [F6].

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 [F7] and, in relation to article 1(3), by section 2(2) of the European Communities Act 1972 [F8], makes the following Order:

F1 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).

F2 Cm.3728.
F3 Cm.2425.
F4 "Convention country" is defined in section 208(2) of the Copyright, Designs and Patents Act 1988.
F5 1988 c.48.
F6 "British performance" is defined in section 208(3) of the Copyright, Designs and Patents Act 1988.
F7 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).
F8 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).

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, **[**F9an 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 F10; and

"WTO" means the World Trade Organisation.

(3) The Copyright and Performances (Application to Other Countries) Order 2013 F11 and the Copyright and Performances (Application to Other Countries) (Amendment) Order 2015 F12 are revoked.

F9 Words in reg. 1(2) substituted (31.12.2020) by The Intellectual Property (Copyright and Related Rights) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/605), regs. 1(2), **33** (with reg. 38) (as amended by S.I. 2020/1050, regs. 1(2), 4); 2020 c. 1, Sch. 5 para. 1(1)
F10 Cm. 3728.
F11 S.I. 2013/536.
F12 S.I. 2015/216.

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) [F13].

F13 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 [F14], Part 1 of the Act applies except that—

(a) section 18A (infringement by rental or lending of work to the public) [F15] does not apply in so far as it relates to lending;

(b) section 20 (infringement by communication to the public) [F16] does not apply to the broadcasting of a sound recording; and

(c) section 107(2A) (criminal liability for communicating to the public) [F17] does not apply in relation to the broadcasting of a sound recording.

F14 Cm.2425; "Rome Convention" is defined in section 159(9) of the Copyright, Designs and Patents Act 1988.

F15 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).

F16 Section 20 was substituted by regulation 6(1) of the Copyright and Related Rights Regulations 2003.

F17 Section 107(2A) was inserted by regulation 26(1)(a) of the Copyright and Related Rights Regulations 2003.

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 [F18]; 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) [F19];

(ii) section 20 (infringement by communication to the public);

(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) [F20].

F18 Cm. 1212; "Berne Convention" is defined in section 159(9) of the Copyright, Designs and Patents Act 1988.

F19 Section 19 was amended by paragraph 3(1) of Schedule 1 to the Copyright and Related Rights Regulations 2003.

F20 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.

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;

(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.