Draft Regulations laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No. XXXX

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The Copyright and Rights in Performances (Certain Permitted Uses of Orphan Works) Regulations 2014

Made - - - -	*****
Coming into force - -	*29th October 2014*

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(**1**) in relation to matters relating to the protection of copyright and rights in performances(**2**).

In accordance with paragraph 2(2) of Schedule 2 to that Act, a draft of this instrument was laid before Parliament and approved by resolution of each House of Parliament.

The Secretary of State, in exercise of the powers conferred by section 2(2) of that Act makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Copyright and Rights in Performances (Certain Permitted Uses of Orphan Works) Regulations 2014 and come into force on 29th October 2014.

Interpretation

2. In these Regulations "the Act" means the Copyright, Designs and Patents Act 1988(**3**).

Amendments to the Act

3.—(1) After section 44A of the Act(**4**) insert—

(**1**) 1972 c.68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1) and the European Union (Amendment) Act 2008 (c.7), section 3(3) and Part 1 of the Schedule.
(**2**) S.I. 1992/707 and 1993/595.
(**3**) 1988 c.48.
(**4**) Section 44A was inserted by the Legal Deposit Libraries Act 2003 (c.28), section 8(1).

"Orphan works

Permitted uses of orphan works

44B.—(1) Copyright in an orphan work is not infringed by a relevant body in the circumstances set out in paragraph 1(1) of Schedule ZA1 (subject to paragraph 6 of that Schedule).

(2) "Orphan work" and "relevant body" have the meanings given by that Schedule.".

(2) After section 76 of the Act insert—

"CHAPTER 3A

CERTAIN PERMITTED USES OF ORPHAN WORKS

Certain permitted uses of orphan works

76A. Schedule ZA1 makes provision about the use by relevant bodies of orphan works.".

(3) In section 149 of the Act (jurisdiction of the Copyright Tribunal)(**5**), after paragraph (f) insert —

"(fa) paragraph 7 of Schedule ZA1 (application to determine compensation for use of orphan works).".

(4) In Schedule 2 to the Act (rights in performances: permitted acts), after paragraph 6H(**6**)insert —

"Certain permitted uses of orphan works

6I.—(1) The rights conferred by this Chapter are not infringed by a relevant body in the circumstances set out in paragraph 1(2) of Schedule ZA1 (subject to paragraph 6 of that Schedule).

(2) "Relevant body" has the meaning given by that Schedule.".

(5) Before Schedule A1 to the Act(**7**), insert the Schedule ZA1 which is set out in the Schedule to these Regulations.

Name
Parliamentary Under Secretary of State for
Business, Innovation and Skills
Date Department for Business, Innovation and Skills

(**5**) Section 149 has been amended in ways which are not relevant to these regulations.
(**6**) Paragraph 6H of Schedule 2 was inserted by S.I. 1372/2014.
(**7**) Schedule A1 was inserted by the Enterprise and Regulatory Reform Act 2013 (c.24), section 77(4) and Schedule 22, Part 1 paragraph 1.

SCHEDULE Regulation 3(5)

1. Before Schedule A1 to the Act insert—

"SCHEDULE ZA1 Section 76A

CERTAIN PERMITTED USES OF ORPHAN WORKS

PART 1

GENERAL PROVISIONS

Certain permitted uses of orphan works by relevant bodies

1.—(1) A relevant body does not infringe the copyright in a relevant work in its collection which is an orphan work by—

(a) making the orphan work available to the public; or

(b) reproducing the orphan work for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.

(2) A relevant body does not infringe the rights conferred by Chapter 2 of Part 2(**8**) by doing either of the following in relation to a relevant work in its collection which is an orphan work—

(a) making the orphan work available to the public; or

(b) reproducing the orphan work for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.

(3) A relevant body does not commit an offence under section 107(**9**) or 198(**10**) by using an orphan work in a way which, by virtue of this Schedule, does not infringe copyright or the rights conferred by Chapter 2 of Part 2.

(4) This paragraph is subject to paragraph 6 (further requirements for use of orphan works).

Meaning of "relevant body", "relevant work" and "rightholder"

2.—(1) In this Schedule "relevant body" means—

(a) a publicly accessible library, educational establishment or museum,

(b) an archive,

(c) a film or audio heritage institution, or

(d) a public service broadcasting organisation.

(**8**) Chapter 2 of Part 2 has been amended in the following ways: section 182 was substituted by, and sections 182A to 182D were inserted by, S.I 1996/2967 and amended by S.I. 2003/2498, S.I. 2006/18 and S.I 2013/1782; section 183 was amended by S.I. 2003/2498; section 185 was amended by S.I. 2006/18; sections 186 and 187 were amended by S.I. 2003/2498; section 189 was amended by S.I 2006/18; section 190 was amended by S.I 1996/2967 and S.I 2006/18; section 191 was substituted by S.I 1995/3297 and amended by S.I 2003/2498, S.I 2006/18 and S.I. 2013/1782; sections 191A to 191M were inserted by S.I 1996/2967 and sections 191A, 191C, 191Dand 191I were amended by S.I 2003/2498 and S.I. 2006/18; sections 191HA and 191HB were inserted by S.I 2013/1782; sections 192A and 192B were substituted by S.I 1996/2967 and amended by S.I 2006/18 and 2013/1782; and sections 192 and 193 were amended by S.I 1996/2967 and S.I. 2006/18.

(**9**) Section 107 has been amended in ways which are not relevant to these Regulations.

(**10**) Section 198 has been amended by S.I. 2003/2498 and S.I. 2006/18 and in other ways which are not relevant to these Regulations.

(2) Subject to sub-paragraph (4), in this Schedule "relevant work" means a work to which sub-paragraph (3) applies which is—

(a) a work in the form of a book, journal, newspaper, magazine or other writing which is contained in the collection of a publicly accessible library, educational establishment or museum, an archive or a film or audio heritage institution;

(b) a cinematographic or audiovisual work or a sound recording which is contained in the collection of a publicly accessible library, educational establishment or museum, an archive or a film or audio heritage institution; or

(c) a cinematographic or audiovisual work or a sound recording which was commissioned for exclusive exploitation by, or produced by, one or more public service broadcasting organisations on or before 31 December 2002 and is contained in the archives of that organisation or one or more of those organisations.

(3) This sub-paragraph applies to a work if—

(a) it is protected by copyright or rights conferred by Chapter 2 of Part 2, and

(b) the first publication or first broadcast of the work was in a member State.

(4) In this Schedule "relevant work" also includes a work listed in any of paragraphs (a) to (c) of sub-paragraph (2) which—

(a) is protected by copyright or rights conferred by Chapter 2 of Part 2, and

(b) has never been published or broadcast, but

(c) has been made publicly accessible by a relevant body with the consent of the rightholders,

as long as it is reasonable to assume that the rightholders would not oppose the use of the work as mentioned in paragraph 1(1) or (2).

(5) References in this Schedule to a relevant work include—

(a) a work that is embedded or incorporated in, or constitutes an integral part of, a relevant work, and

(b) a performance in relation to which rights are conferred by Chapter 2 of Part 2 and which is embedded or incorporated in, or constitutes an integral part of, a relevant work.

(6) In this Schedule "rightholder" in relation to a relevant work means—

(a) an owner of the copyright in the work,

(b) a licensee under an exclusive licence in relation to the work,

(c) a person with rights under Chapter 2 of Part 2 in relation to a performance recorded by the work, or

(d) a licensee under an exclusive licence in relation to those rights.

(7) In the application of sub-paragraph (6) to a performance by virtue of sub-paragraph (5), the reference in sub-paragraph (6)(c) to a performance recorded by the work is to be read as a reference to the performance.

(8) In this paragraph "public service broadcasting organisation" includes a public service broadcaster within the meaning of section 264 of the Communications Act 2003(**11**).

Meaning of "orphan work"

3.—(1) For the purposes of this Schedule a relevant work is an orphan work if—

(**11**) 2003 c.21.