
STATUTORY INSTRUMENTS

1995 No. 3297

**The Duration of Copyright and Rights
in Performances Regulations 1995**

Part II

Amendments of the Copyright, Designs and Patents Act 1988

Copyright

Duration of copyright in literary, dramatic, musical or artistic works

5.—(1) For section 12 (duration of copyright in literary, dramatic, musical or artistic works) substitute—

“12 Duration of copyright in literary, dramatic, musical or artistic works.

(1) The following provisions have effect with respect to the duration of copyright in a literary, dramatic, musical or artistic work.

(2) Copyright expires at the end of the period of 70 years from the end of the calendar year in which the author dies, subject as follows.

(3) If the work is of unknown authorship, copyright expires—

(a) at the end of the period of 70 years from the end of the calendar year in which the work was made, or

(b) if during that period the work is made available to the public, at the end of the period of 70 years from the end of the calendar year in which it is first so made available,

subject as follows.

(4) Subsection (2) applies if the identity of the author becomes known before the end of the period specified in paragraph (a) or (b) of subsection (3).

(5) For the purposes of subsection (3) making available to the public includes—

(a) in the case of a literary, dramatic or musical work—

(i) performance in public, or

(ii) being broadcast or included in a cable programme service;

(b) in the case of an artistic work—

(i) exhibition in public,

(ii) a film including the work being shown in public, or

(iii) being included in a broadcast or cable programme service;

but in determining generally for the purposes of that subsection whether a work has been made available to the public no account shall be taken of any unauthorised act.

(6) Where the country of origin of the work is not an EEA state and the author of the work is not a national of an EEA state, the duration of copyright is that to which the work is entitled in the country of origin, provided that does not exceed the period which would apply under subsections (2) to (5).

(7) If the work is computer-generated the above provisions do not apply and copyright expires at the end of the period of 50 years from the end of the calendar year in which the work was made.

(8) The provisions of this section are adapted as follows in relation to a work of joint authorship—

- (a) the reference in subsection (2) to the death of the author shall be construed—
 - (i) if the identity of all the authors is known, as a reference to the death of the last of them to die, and
 - (ii) if the identity of one or more of the authors is known and the identity of one or more others is not, as a reference to the death of the last whose identity is known;
- (b) the reference in subsection (4) to the identity of the author becoming known shall be construed as a reference to the identity of any of the authors becoming known;
- (c) the reference in subsection (6) to the author not being a national of an EEA state shall be construed as a reference to none of the authors being a national of an EEA state.

(9) This section does not apply to Crown copyright or Parliamentary copyright (see sections 163 to 166) or to copyright which subsists by virtue of section 168 (copyright of certain international organisations).”.

(2) In section 57 (anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author), in subsection (1)(b)(ii) and subsection (2)(b) for “50 years” substitute “70 years”.

(3) In section 154 (qualification for copyright protection by reference to author), in subsection (3) for the paragraph referring to provisions of section 12 substitute—

“section 12 (duration of copyright), and section 9(4) (meaning of “unknown authorship”) so far as it applies for the purposes of section 12, and.”

Duration of copyright in sound recordings and films

6.—(1) For section 13 (duration of copyright in sound recordings and films) substitute—

“13A Duration of copyright in sound recordings.

(1) The following provisions have effect with respect to the duration of copyright in a sound recording.

(2) Copyright expires—

- (a) at the end of the period of 50 years from the end of the calendar year in which it is made, or
- (b) if during that period it is released, 50 years from the end of the calendar year in which it is released;

subject as follows.

(3) For the purposes of subsection (2) a sound recording is “released” when it is first published, played in public, broadcast or included in a cable programme service; but in determining whether a sound recording has been released no account shall be taken of any unauthorised act.

(4) Where the author of a sound recording is not a national of an EEA state, the duration of copyright is that to which the sound recording is entitled in the country of which the author is a national, provided that does not exceed the period which would apply under subsections (2) and (3).

(5) If or to the extent that the application of subsection (4) would be at variance with an international obligation to which the United Kingdom became subject prior to 29th October 1993, the duration of copyright shall be as specified in subsections (2) and (3).

13B Duration of copyright in films.

(1) The following provisions have effect with respect to the duration of copyright in a film.

(2) Copyright expires at the end of the period of 70 years from the end of the calendar year in which the death occurs of the last to die of the following persons—

- (a) the principal director,
- (b) the author of the screenplay,
- (c) the author of the dialogue, or
- (d) the composer of music specially created for and used in the film;

subject as follows.

(3) If the identity of one or more of the persons referred to in subsection (2)(a) to (d) is known and the identity of one or more others is not, the reference in that subsection to the death of the last of them to die shall be construed as a reference to the death of the last whose identity is known.

(4) If the identity of the persons referred to in subsection (2)(a) to (d) is unknown, copyright expires at—

- (a) the end of the period of 70 years from the end of the calendar year in which the film was made, or
- (b) if during that period the film is made available to the public, at the end of the period of 70 years from the end of the calendar year in which it is first so made available.

(5) Subsections (2) and (3) apply if the identity of any of those persons becomes known before the end of the period specified in paragraph (a) or (b) of subsection (4).

(6) For the purposes of subsection (4) making available to the public includes—

- (a) showing in public, or
- (b) being broadcast or included in a cable programme service;

but in determining generally for the purposes of that subsection whether a film has been made available to the public no account shall be taken of any unauthorised act.

(7) Where the country of origin is not an EEA state and the author of the film is not a national of an EEA state, the duration of copyright is that to which the work is entitled in the country of origin, provided that does not exceed the period which would apply under subsections (2) to (6).

(8) In relation to a film of which there are joint authors, the reference in subsection (7) to the author not being a national of an EEA state shall be construed as a reference to none of the authors being a national of an EEA state.

(9) If in any case there is no person falling within paragraphs (a) to (d) of subsection (2), the above provisions do not apply and copyright expires at the end of the period of 50 years from the end of the calendar year in which the film was made.

(10) For the purposes of this section the identity of any of the persons referred to in subsection (2)(a) to (d) shall be regarded as unknown if it is not possible for a person to ascertain his identity by reasonable inquiry; but if the identity of any such person is once known it shall not subsequently be regarded as unknown.”.

(2) In Chapter III of Part I (acts permitted in relation to copyright works), after section 66 insert—

“Miscellaneous: films and sound recordings

Films: acts permitted on assumptions as to expiry of copyright, &c.

66A.—(1) Copyright in a film is not infringed by an act done at a time when, or in pursuance of arrangements made at a time when—

- (a) it is not possible by reasonable inquiry to ascertain the identity of any of the persons referred to in section 13B(2)(a) to (d) (persons by reference to whose life the copyright period is ascertained), and
- (b) it is reasonable to assume—
 - (i) that copyright has expired, or
 - (ii) that the last to die of those persons died 70 years or more before the beginning of the calendar year in which the act is done or the arrangements are made.

(2) Subsection (1)(b)(ii) does not apply in relation to—

- (a) a film in which Crown copyright subsists, or
- (b) a film in which copyright originally vested in an international organisation by virtue of section 168 and in respect of which an Order under that section specifies a copyright period longer than 70 years.”.

(3) In section 79(4), 81(5) and 85(2) (exceptions to moral rights: acts which would not infringe copyright) for “section 57 (anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author)” substitute “section 57 or 66A (acts permitted on assumptions as to expiry of copyright, &c.)”.

(4) In section 105(2) (presumptions relevant to films), after paragraph (a) insert—

- “(aa) that a named person was the principal director, the author of the screenplay, the author of the dialogue or the composer of music specifically created for and used in the film,”.

Duration of copyright in broadcasts and cable programmes

7.—(1) For section 14 (duration of copyright in broadcasts and cable programmes) substitute—

“14 Duration of copyright in broadcasts and cable programmes.

(1) The following provisions have effect with respect to the duration of copyright in a broadcast or cable programme.

(2) Copyright in a broadcast or cable programme expires at the end of the period of 50 years from the end of the calendar year in which the broadcast was made or the programme was included in a cable programme service, subject as follows.

(3) Where the author of the broadcast or cable programme is not a national of an EEA state, the duration of copyright in the broadcast or cable programme is that to which it is entitled in the country of which the author is a national, provided that does not exceed the period which would apply under subsection (2).

(4) If or to the extent that the application of subsection (3) would be at variance with an international obligation to which the United Kingdom became subject prior to 29th October 1993, the duration of copyright shall be as specified in subsection (2).

(5) Copyright in a repeat broadcast or cable programme expires at the same time as the copyright in the original broadcast or cable programme; and accordingly no copyright arises in respect of a repeat broadcast or cable programme which is broadcast or included in a cable programme service after the expiry of the copyright in the original broadcast or cable programme.

(6) A repeat broadcast or cable programme means one which is a repeat either of a broadcast previously made or of a cable programme previously included in a cable programme service.”.

(2) In the closing words of paragraph 9 of Schedule 1 (repeats of pre-1957 broadcasts and pre-1985 cable programmes) for “section 14(2)” substitute “section 14(5)”.

Meaning of country of origin

8.—(1) In Chapter I of Part I (subsistence, ownership and duration of copyright), after section 15 insert—

“Meaning of country of origin.

15A.—(1) For the purposes of the provisions of this Part relating to the duration of copyright the country of origin of a work shall be determined as follows.

(2) If the work is first published in a Berne Convention country and is not simultaneously published elsewhere, the country of origin is that country.

(3) If the work is first published simultaneously in two or more countries only one of which is a Berne Convention country, the country of origin is that country.

(4) If the work is first published simultaneously in two or more countries of which two or more are Berne Convention countries, then—

- (a) if any of those countries is an EEA state, the country of origin is that country; and
- (b) if none of those countries is an EEA state, the country of origin is the Berne Convention country which grants the shorter or shortest period of copyright protection.

(5) If the work is unpublished or is first published in a country which is not a Berne Convention country (and is not simultaneously published in a Berne Convention country), the country of origin is—

- (a) if the work is a film and the maker of the film has his headquarters in, or is domiciled or resident in a Berne Convention country, that country;
- (b) if the work is—
 - (i) a work of architecture constructed in a Berne Convention country, or
 - (ii) an artistic work incorporated in a building or other structure situated in a Berne Convention country,that country;

(c) in any other case, the country of which the author of the work is a national.

(6) In this section—

- (a) a “Berne Convention country” means a country which is a party to any Act of the International Convention for the Protection of Literary and Artistic Works signed at Berne on 9th September 1886; and

(b) references to simultaneous publication are to publication within 30 days of first publication.”.

(2) In section 179 (index of defined expressions: Part I), at the appropriate place insert—

“country of origin

section 15A.”

Treatment of film sound tracks

9.—(1) For section 5 (sound recordings and films) substitute—

“5A Sound recordings.

(1) In this Part “sound recording” means—

- (a) a recording of sounds, from which the sounds may be reproduced, or
- (b) a recording of the whole or any part of a literary, dramatic or musical work, from which sounds reproducing the work or part may be produced,

regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced.

(2) Copyright does not subsist in a sound recording which is, or to the extent that it is, a copy taken from a previous sound recording.

5B Films.

(1) In this Part “film” means a recording on any medium from which a moving image may by any means be produced.

(2) The sound track accompanying a film shall be treated as part of the film for the purposes of this Part.

(3) Without prejudice to the generality of subsection (2), where that subsection applies—

- (a) references in this Part to showing a film include playing the film sound track to accompany the film, and
- (b) references to playing a sound recording do not include playing the film sound track to accompany the film.

(4) Copyright does not subsist in a film which is, or to the extent that it is, a copy taken from a previous film.

(5) Nothing in this section affects any copyright subsisting in a film sound track as a sound recording.”.

(2) In section 80(6) (derogatory treatment of film), omit the words following paragraph (b).

(3) In section 117 (licensing schemes to which ss.118 to 123 apply)—

- (a) in paragraph (a) omit “(or film sound-tracks when accompanying a film)”, and
- (b) in paragraph (b) omit “(other than film sound-tracks when accompanying a film)”.

(4) In section 124 (licences to which ss.125 to 128 apply)—

- (a) in paragraph (a) omit “(or film sound-tracks when accompanying a film)”, and
- (b) in paragraph (b) omit “(other than a film sound-track when accompanying a film)”.

(5) In section 179(1) (index of defined expressions: Part I)—

(1) Section 179 was amended by the Broadcasting Act 1990 (c. 42), section 175(3)(b).

- (a) in the entry relating to the expression “film” for “section 5” substitute “section 5B”; and
 - (b) in the entry relating to the expression “sound recording” for “sections 5 and 135A” substitute “sections 5A and 135A”
- (6) In section 212 (index of defined expressions: Part II)—
- (a) in the entry relating to the expression “film” for “section 5” substitute “section 5B”; and
 - (b) in the entry relating to the expression “sound recording” for “section 5” substitute “section 5A”.

Rights in performances

Duration of rights in performances

10. In Part II (rights in performances), for section 191 (duration of rights) substitute—

“Duration of rights.

191.—(1) The following provisions have effect with respect to the duration of the rights conferred by this Part.

- (2) The rights conferred by this Part in relation to a performance expire—
 - (a) at the end of the period of 50 years from the end of the calendar year in which the performance takes place, or
 - (b) if during that period a recording of the performance is released, 50 years from the end of the calendar year in which it is released,

subject as follows.

(3) For the purposes of subsection (2) a recording is “released” when it is first published, played or shown in public, broadcast or included in a cable programme service; but in determining whether a recording has been released no account shall be taken of any unauthorised act.

(4) Where a performer is not a national of an EEA state, the duration of the rights conferred by this Part in relation to his performance is that to which the performance is entitled in the country of which he is a national, provided that does not exceed the period which would apply under subsections (2) and (3).

(5) If or to the extent that the application of subsection (4) would be at variance with an international obligation to which the United Kingdom became subject prior to 29th October 1993, the duration of the rights conferred by this Part shall be as specified in subsections (2) and (3).”.

Supplementary

Meaning of EEA national and EEA state

11.—(1) In Chapter X of Part I (miscellaneous and general provisions), after section 172 insert—

“Meaning of EEA national and EEA state.

172A.—(1) In this Part—

“EEA national” means a national of an EEA state; and

“EEA state” means a state which is a contracting party to the EEA Agreement.

(2) References in this Part to a person being an EEA national shall be construed in relation to a body corporate as references to its being incorporated under the law of an EEA state.

(3) The “EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992, as adjusted by the Protocol signed at Brussels on 17th March 1993.”.

(2) In section 179 (index of defined expressions: Part I), at the appropriate place insert—

“EEA national and EEA state	section 172A”.
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(3) In section 211(1) (expressions in Part II having same meaning as in Part I), at the appropriate place insert—

“EEA national,”.

(4) In section 212 (index of defined expressions: Part II), at the appropriate place insert—

“EEA national	section 211(1) (and section 172A)”.
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