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STATUTORY INSTRUMENTS

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**1995 No. 3297**

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

**Part III**

**Savings and transitional provisions**

*Introductory*

**Introductory**

**12.**—(1) References in this Part to “commencement”, without more, are to the date on which these Regulations come into force.

(2) In this Part—

“the 1988 Act” means the Copyright, Designs and Patents Act 1988(1);

“the 1988 provisions” means the provisions of that Act as they stood immediately before commencement (including the provisions of Schedule 1 to that Act continuing the effect of earlier enactments); and

“the new provisions” means the provisions of that Act as amended by these Regulations.

(3) Expressions used in this Part which are defined for the purposes of Part I or II of the 1988 Act, in particular references to the copyright owner, have the same meaning as in that Part.

**Films not protected as such**

**13.** In relation to a film in which copyright does not or did not subsist as such but which is or was protected—

(a) as an original dramatic work, or

(b) by virtue of the protection of the photographs forming part of the film,

references in the new provisions, and in this Part, to copyright in a film are to any copyright in the film as an original dramatic work or, as the case may be, in photographs forming part of the film.

*Copyright*

**Copyright: interpretation**

**14.**—(1) In the provisions of this Part relating to copyright—

(a) “existing”, in relation to a work, means made before commencement; and

(b) “existing copyright work” means a work in which copyright subsisted immediately before commencement.

(2) For the purposes of those provisions a work of which the making extended over a period shall be taken to have been made when its making was completed.

(3) References in those provisions to “moral rights” are to the rights conferred by Chapter IV of Part I of the 1988 Act.

#### **Duration of copyright: general saving**

**15.**—(1) Copyright in an existing copyright work shall continue to subsist until the date on which it would have expired under the 1988 provisions if that date is later than the date on which copyright would expire under the new provisions.

(2) Where paragraph (1) has effect, section 57 of the 1988 Act (anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author) applies as it applied immediately before commencement (that is, without the amendments made by Regulation 5(2)).

#### **Duration of copyright: application of new provisions**

**16.** The new provisions relating to duration of copyright apply—

- (a) to copyright works made after commencement;
- (b) to existing works which first qualify for copyright protection after commencement;
- (c) to existing copyright works, subject to Regulation 15 (general saving for any longer period applicable under 1988 provisions); and
- (d) to existing works in which copyright expired before 31st December 1995 but which were on 1st July 1995 protected in another EEA state under legislation relating to copyright or related rights.

#### **Extended and revived copyright**

**17.** In the following provisions of this Part—

“extended copyright” means any copyright which subsists by virtue of the new provisions after the date on which it would have expired under the 1988 provisions; and

“revived copyright” means any copyright which subsists by virtue of the new provisions after having expired under the 1988 provisions or any earlier enactment relating to copyright.

#### **Ownership of extended copyright**

**18.**—(1) The person who is the owner of the copyright in a work immediately before commencement is as from commencement the owner of any extended copyright in the work, subject as follows.

(2) If he is entitled to copyright for a period less than the whole of the copyright period under the 1988 provisions, any extended copyright is part of the reversionary interest expectant on the termination of that period.

#### **Ownership of revived copyright**

**19.**—(1) The person who was the owner of the copyright in a work immediately before it expired (the “former copyright owner”) is as from commencement the owner of any revived copyright in the work, subject as follows.

(2) If the former copyright owner has died before commencement, or in the case of a legal person has ceased to exist before commencement, the revived copyright shall vest—

- (a) in the case of a film, in the principal director of the film or his personal representatives, and
- (b) in any other case, in the author of the work or his personal representatives.

(3) Where revived copyright vests in personal representatives by virtue of paragraph (2), it shall be held by them for the benefit of the person who would have been entitled to it had it been vested in the principal director or author immediately before his death and had devolved as part of his estate.

### **Prospective ownership of extended or revived copyright**

**20.**—(1) Where by an agreement made before commencement in relation to extended or revived copyright, and signed by or on behalf of the prospective owner of the copyright, the prospective owner purports to assign the extended or revived copyright (wholly or partially) to another person, then if, on commencement the assignee or another person claiming under him would be entitled as against all other persons to require the copyright to be vested in him, the copyright shall vest in the assignee or his successor in title by virtue of this paragraph.

(2) A licence granted by a prospective owner of extended or revived copyright is binding on every successor in title to his interest (or prospective interest) in the right, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser; and references in Part I of the 1988 Act to doing anything with, or without, the licence of the copyright owner shall be construed accordingly.

(3) In paragraph (2) “prospective owner” includes a person who is prospectively entitled to extended or revived copyright by virtue of such an agreement as is mentioned in paragraph (1).

### **Extended copyright: existing licences, agreement, &c.**

**21.**—(1) Any copyright licence, any term or condition of an agreement relating to the exploitation of a copyright work, or any waiver or assertion of moral rights, which—

- (a) subsists immediately before commencement in relation to an existing copyright work, and
- (b) is not to expire before the end of the copyright period under the 1988 provisions,

shall continue to have effect during the period of any extended copyright, subject to any agreement to the contrary.

(2) Any copyright licence, or term or condition relating to the exploitation of a copyright work, imposed by order of the Copyright Tribunal which—

- (a) subsists immediately before commencement in relation to an existing copyright work, and
- (b) is not to expire before the end of the copyright period under the 1988 provisions,

shall continue to have effect during the period of any extended copyright, subject to any further order of the Tribunal.

### **Revived copyright: exercise of moral rights**

**22.**—(1) The following provisions have effect with respect to the exercise of moral rights in relation to a work in which there is revived copyright.

(2) Any waiver or assertion of moral rights which subsisted immediately before the expiry of copyright shall continue to have effect during the period of revived copyright.

(3) Moral rights are exercisable after commencement by the author of a work or, as the case may be, the director of a film in which revived copyright subsists, as with any other copyright work.

(4) Where the author or director died before commencement—

- (a) the rights conferred by—
  - section 77 (right to identification as author or director),
  - section 80 (right to object to derogatory treatment of work), or
  - section 85 (right to privacy of certain photographs and films),
 are exercisable after commencement by his personal representatives, and
- (b) any infringement after commencement of the right conferred by section 84 (false attribution) is actionable by his personal representatives.

(5) Any damages recovered by personal representatives by virtue of this Regulation in respect of an infringement after a person's death shall devolve as part of his estate as if the right of action had subsisted and been vested in him immediately before his death.

(6) Nothing in these Regulations shall be construed as causing a moral right to be exercisable if, or to the extent that, the right was excluded by virtue of paragraph 23 or 24 of Schedule 1 on the commencement of the 1988 Act or would have been so excluded if copyright had not previously expired.

**Revived copyright: saving for acts of exploitation when work in public domain, &c.**

**23.**—(1) No act done before commencement shall be regarded as infringing revived copyright in a work.

- (2) It is not an infringement of revived copyright in a work—
  - (a) to do anything after commencement in pursuance of arrangements made before 1st January 1995 at a time when copyright did not subsist in the work, or
  - (b) to issue to the public after commencement copies of the work made before 1st July 1995 at a time when copyright did not subsist in the work.

(3) It is not an infringement of revived copyright in a work to do anything after commencement in relation to a literary, dramatic, musical or artistic work or a film made before commencement, or made in pursuance of arrangements made before commencement, which contains a copy of that work or is an adaptation of that work if—

- (a) the copy or adaptation was made before 1st July 1995 at a time when copyright did not subsist in the work in which revived copyright subsists, or
- (b) the copy or adaptation was made in pursuance of arrangements made before 1st July 1995 at a time when copyright did not subsist in the work in which revived copyright subsists.

(4) It is not an infringement of revived copyright in a work to do after commencement anything which is a restricted act in relation to the work if the act is done at a time when, or is done in pursuance of arrangements made at a time when, the name and address of a person entitled to authorise the act cannot by reasonable inquiry be ascertained.

(5) In this Regulation “arrangements” means arrangements for the exploitation of the work in question.

(6) It is not an infringement of any moral right to do anything which by virtue of this Regulation is not an infringement of copyright.

**Revived copyright: use as of right subject to reasonable royalty**

**24.**—(1) In the case of a work in which revived copyright subsists any acts restricted by the copyright shall be treated as licensed by the copyright owner, subject only to the payment of such reasonable royalty or other remuneration as may be agreed or determined in default of agreement by the Copyright Tribunal.

(2) A person intending to avail himself of the right conferred by this Regulation must give reasonable notice of his intention to the copyright owner, stating when he intends to begin to do the acts.

(3) If he does not give such notice, his acts shall not be treated as licensed.

(4) If he does give such notice, his acts shall be treated as licensed and a reasonable royalty or other remuneration shall be payable in respect of them despite the fact that its amount is not agreed or determined until later.

(5) This Regulation does not apply if or to the extent that a licence to do the acts could be granted by a licensing body (within the meaning of section 116(2) of the 1988 Act), whether or not under a licensing scheme.

(6) No royalty or other remuneration is payable by virtue of this Regulation in respect of anything for which a royalty or other remuneration is payable under Schedule 6 to the 1988 Act.

### **Revived copyright: application to Copyright Tribunal**

**25.**—(1) An application to settle the royalty or other remuneration payable in pursuance of Regulation 24 may be made to the Copyright Tribunal by the copyright owner or the person claiming to be treated as licensed by him.

(2) The Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.

(3) Either party may subsequently apply to the Tribunal to vary the order, and the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.

(4) An application under paragraph (3) shall not, except with the special leave of the Tribunal, be made within twelve months from the date of the original order or of the order on a previous application under that paragraph.

(5) An order under paragraph (3) has effect from the date on which it is made or such later date as may be specified by the Tribunal.

### **Film sound tracks: application of new provisions**

**26.**—(1) The new provisions relating to the treatment of film sound tracks apply to existing sound tracks as from commencement.

(2) The owner of any copyright in a film has as from commencement corresponding rights as copyright owner in any existing sound track treated as part of the film; but without prejudice to any rights of the owner of the copyright in the sound track as a sound recording.

(3) Anything done before commencement under or in relation to the copyright in the sound recording continues to have effect and shall have effect, so far as concerns the sound track, in relation to the film as in relation to the sound recording.

(4) It is not an infringement of the copyright in the film (or of any moral right in the film) to do anything after commencement in pursuance of arrangements for the exploitation of the sound recording made before commencement.

### *Rights in performances*

#### **Rights in performances: interpretation**

**27.**—(1) In the provisions of this Part relating to rights in performances—

(a) “existing”, in relation to a performance, means given before commencement; and

- (b) “existing protected performance” means a performance in relation to which rights under Part II of the 1988 act (rights in performances) subsisted immediately before commencement.

(2) References in this Part to performers' rights are to the rights given by section 180(1)(a) of the 1988 Act and references to recording rights are to the rights given by section 180(1)(b) of that Act.

#### **Duration of rights in performances: general saving**

**28.** Any rights under Part II of the 1988 Act in an existing protected performance shall continue to subsist until the date on which they would have expired under the 1988 provisions if that date is later than the date on which the rights would expire under the new provisions.

#### **Duration of rights in performances: application of new provisions**

- 29.** The new provisions relating to the duration of rights under Part II of the 1988 Act apply—
- (a) to performances taking place after commencement;
  - (b) to existing performances which first qualify for protection under Part II of the 1988 Act after commencement;
  - (c) to existing protected performances, subject to Regulation 28 (general saving for any longer period applicable under 1988 provisions); and
  - (d) to existing performances—
    - (i) in which rights under Part II of the 1988 Act expired after the commencement of that Part and before 31st December 1995, or
    - (ii) which were protected by earlier enactments relating to the protection of performers and in which rights under that Part did not arise by reason only that the performance was given at a date such that the rights would have ceased to subsist before the commencement of that Part,

but which were on 1st July 1995 protected in another EEA state under legislation relating to copyright or related rights.

#### **Extended and revived performance rights**

- 30.** In the following provisions of this Part—
- “extended performance rights” means rights under Part II of the 1988 Act which subsist by virtue of the new provisions after the date on which they would have expired under the 1988 provisions; and
- “revived performance rights” means rights under Part II of the 1988 Act which subsist by virtue of the new provisions—
- (a) after having expired under the 1988 provisions, or
  - (b) in relation to a performance which was protected by earlier enactments relating to the protection of performers and in which rights under that Part did not arise by reason only that the performance was given at a date such that the rights would have ceased to subsist before the commencement of that Part.

References in the following provisions of this Part to “revived pre-1988 rights” are to revived performance rights within paragraph (b) of the above definition.

### **Entitlement to extended or revived performance rights**

**31.**—(1) Any extended performance rights are exercisable as from commencement by the person who was entitled to exercise those rights immediately before commencement, that is—

- (a) in the case of performers' rights, the performer or (if he has died) the person entitled by virtue of section 192(2) of the 1988 Act to exercise those rights;
- (b) in the case of recording rights, the person who was within the meaning of section 185 of the 1988 Act the person having those rights.

(2) Any revived performance rights are exercisable as from commencement—

- (a) in the case of rights which expired after the commencement of the 1988 Act, by the person who was entitled to exercise those rights immediately before they expired;
- (b) in the case of revived pre-1988 performers' rights, by the performer or his personal representatives;
- (c) in the case of revived pre-1988 recording rights, by the person who would have been the person having those rights immediately before the commencement of the 1988 Act or, if earlier, immediately before the death of the performer, applying the provisions of section 185 of that Act to the circumstances then obtaining.

(3) Any remuneration or damages received by a person's personal representatives by virtue of a right conferred on them by paragraph (1) or (2) shall devolve as part of that person's estate as if the right had subsisted and been vested in him immediately before his death.

### **Extended performance rights: existing consents, agreement, &c.**

**32.** Any consent, or any term or condition of an agreement, relating to the exploitation of an existing protected performance which—

- (a) subsists immediately before commencement, and
- (b) is not to expire before the end of the period for which rights under Part II of the 1988 Act subsist in relation to that performance,

shall continue to subsist during the period of any extended performance rights, subject to any agreement to the contrary.

### **Revived performance rights: saving for acts of exploitation when performance in public domain, &c.**

**33.**—(1) No act done before commencement shall be regarded as infringing revived performance rights in a performance.

(2) It is not an infringement of revived performance rights in a performance—

- (a) to do anything after commencement in pursuance of arrangements made before 1st January 1995 at a time when the performance was not protected, or
- (b) to issue to the public after commencement a recording of a performance made before 1st July 1995 at a time when the performance was not protected.

(3) It is not an infringement of revived performance rights in a performance to do anything after commencement in relation to a sound recording or film made before commencement, or made in pursuance of arrangements made before commencement, which contains a recording of the performance if—

- (a) the recording of the performance was made before 1st July 1995 at a time when the performance was not protected, or

- (b) the recording of the performance was made in pursuance of arrangements made before 1st July 1995 at a time when the performance was not protected.
- (4) It is not an infringement of revived performance rights in a performance to do after commencement anything at a time when, or in pursuance of arrangements made at a time when, the name and address of a person entitled to authorise the act cannot by reasonable inquiry be ascertained.
- (5) In this Regulation “arrangements” means arrangements for the exploitation of the performance in question.
- (6) References in this Regulation to a performance being protected are—
  - (a) in relation to the period after the commencement of the 1988 Act, to rights under Part II of that Act subsisting in relation to the performance, and
  - (b) in relation to earlier periods, to the consent of the performer being required under earlier enactments relating to the protection of performers.

#### **Revived performance rights: use as of right subject to reasonable remuneration**

**34.**—(1) In the case of a performance in which revived performance rights subsist any acts which require the consent of any person under Part II of the 1988 Act (the “rights owner”) shall be treated as having that consent, subject only to the payment of such reasonable remuneration as may be agreed or determined in default of agreement by the Copyright Tribunal.

(2) A person intending to avail himself of the right conferred by this Regulation must give reasonable notice of his intention to the rights owner, stating when he intends to begin to do the acts.

(3) If he does not give such notice, his acts shall not be treated as having consent.

(4) If he does give such notice, his acts shall be treated as having consent and reasonable remuneration shall be payable in respect of them despite the fact that its amount is not agreed or determined until later.

#### **Revived performance rights: application to Copyright Tribunal**

**35.**—(1) An application to settle the remuneration payable in pursuance of Regulation 34 may be made to the Copyright Tribunal by the rights owner or the person claiming to be treated as having his consent.

(2) The Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.

(3) Either party may subsequently apply to the Tribunal to vary the order, and the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.

(4) An application under paragraph (3) shall not, except with the special leave of the Tribunal, be made within twelve months from the date of the original order or of the order on a previous application under that paragraph.

(5) An order under paragraph (3) has effect from the date on which it is made or such later date as may be specified by the Tribunal.

### *Supplementary*

#### **Construction of references to EEA states**

**36.**—(1) For the purpose of the new provisions relating to the term of copyright protection applicable to a work of which the country of origin is not an EEA state and of which the author is not a national of an EEA state—

- (a) a work first published before 1st July 1995 shall be treated as published in an EEA state if it was on that date regarded under the law of the United Kingdom or another EEA state as having been published in that state;
- (b) an unpublished film made before 1st July 1995 shall be treated as originating in an EEA state if it was on that date regarded under the law of the United Kingdom or another EEA state as a film whose maker had his headquarters in, or was domiciled or resident in, that state; and
- (c) the author of a work made before 1st July 1995 shall be treated as an EEA national if he was on that date regarded under the law of the United Kingdom or another EEA state as a national of that state.

The references above to the law of another EEA state are to the law of that state having effect for the purposes of rights corresponding to those provided for in Part I of the 1988 Act.

(2) For the purposes of the new provisions relating to the term of protection applicable to a performance where the performer is not a national of an EEA state, the performer of a performance given before 1st July 1995 shall be treated as an EEA national if he was on that date regarded under the law of the United Kingdom or another EEA state as a national of that state.

The reference above to the law of another EEA state is to the law of that state having effect for the purposes of rights corresponding to those provided for in Part II of the 1988 Act.

(3) In this Regulation “another EEA state” means an EEA state other than the United Kingdom.