
STATUTORY INSTRUMENTS

1993 No. 942

COPYRIGHT

The Copyright (Application to Other Countries) Order 1993

<i>Made</i>	- - - -	<i>31st March 1993</i>
<i>Laid before Parliament</i>		<i>13th April 1993</i>
<i>Coming into force</i>	- -	<i>4th May 1993</i>

At the Court at Buckingham Palace, the 31st day of March 1993

Present,

The Queen's Most Excellent Majesty in Council

Whereas Her Majesty is satisfied that provision has been or will be made—

- (a) in respect of literary, dramatic, musical and artistic works, films and typographical arrangements of published editions, under the law of Uganda,
- (b) in respect of sound recordings, under the laws of Bangladesh, Ghana, Malawi and Thailand,
- (c) in respect of broadcasts, under the law of Malawi,

giving adequate protection to the owners of copyright under Part I of the Copyright, Designs and Patents Act 1988⁽¹⁾:

Now, therefore, Her Majesty, by and with the advice of Her Privy Council, and by virtue of the authority conferred upon Her by section 159 of the said Act, is pleased to order, and it is hereby ordered as follows:—

1.—(1) This Order may be cited as the Copyright (Application to Other Countries) Order 1993 and shall come into force on 4th May 1993.

(2) In this Order—

“the Act” means the Copyright, Designs and Patents Act 1988, and

“first published” shall be construed in accordance with section 155(3) of the Act.

2.—(1) In relation to literary, dramatic, musical and artistic works, films and the typographical arrangements of published editions, sections 153, 154 and 155 of the Act (qualification for copyright protection) apply in relation to—

- (a) persons who are citizens or subjects of a country specified in Schedule I to this Order or are domiciled or resident there as they apply to persons who are British citizens or are domiciled or resident in the United Kingdom;
- (b) bodies incorporated under the law of such a country as they apply in relation to bodies incorporated under the law of a part of the United Kingdom; and
- (c) works first published in such a country as they apply in relation to works first published in the United Kingdom;

but subject to paragraph (2) and article 5 below.

(2) Copyright does not subsist—

- (a) in a literary, dramatic, musical or artistic work by virtue of section 154 of the Act as applied by paragraph (1) above (qualification by reference to author) if it was first published—
 - (i) before 1st June 1957 (commencement of Copyright Act 1956(2)), or
 - (ii) before 1st August 1989 (commencement of Part I of the Act) and at the material time (as defined in section 154(4)(b) of the Act) the author was not a relevant person; or
- (b) in any work by virtue of paragraph (1) above if—
 - (i) a date is, or dates are, specified in Schedule 1 to this Order in respect of the only country or countries relevant to the work for the purposes of paragraph (1) above, and
 - (ii) the work was first published before that date or (as the case may be) the earliest of those dates;

and for the purposes of sub-paragraph (a)(ii) of this paragraph, a “relevant person” is a Commonwealth citizen, a British protected person, a citizen or subject of any country specified in Schedule 1 to this Order, or a person resident or domiciled in the United Kingdom, another country to which the relevant provisions of Part I of the Act extend or (subject to article 5 below) a country specified in Schedule I to this Order.

(3) Where copyright subsists in a work by virtue of paragraph (1) above, the whole of Part I of the Act (including Schedule 1 to the Act) applies in relation to the work, save that in relation to an artistic work consisting of the design of a typeface—

- (a) section 54(2) (articles for producing material in particular typeface) does not apply,
- (b) section 55 (making such articles not an infringement) applies as if the words in subsection (2) from the beginning to “marketed” were omitted, and
- (c) paragraph 14(5) of Schedule 1 (transitional provision) does not apply,

and subject also to articles 5 and 7 below.

3. In relation to sound recordings, article 2 above shall apply as it applies in relation to films, subject to the following modifications—

- (a) sections 19, 20, 26 and 107(3) of the Act (infringement by playing in public, broadcasting or inclusion in a cable programme service and related provisions) apply only if—
 - (i) at least one of the countries relevant to the work for the purposes of article 2(1) above is specified in Schedule 2 to this Order, or
 - (ii) the sound recording in question is a film sound-track accompanying a film; and

- (b) paragraph (1) of article (2) shall (subject to article 5 below) apply as if Indonesia were specified in Schedule 1 to this Order.

4.—(1) In relation to broadcasts, sections 153, 154 and 156 of the Act (qualification for copyright protection) apply in relation to—

- (a) persons who are citizens or subjects of a country specified in Schedule 3 to this Order or are domiciled or resident there as they apply to persons who are British citizens or are domiciled or resident in the United Kingdom;
- (b) bodies incorporated under the law of such a country as they apply in relation to bodies incorporated under the law of a part of the United Kingdom; and
- (c) broadcasts made from such a country as they apply to broadcasts made from the United Kingdom;

but subject to paragraphs (2) and (3) and article 5 below.

(2) If the only country or countries relevant to a broadcast for the purposes of paragraph (1) above are identified in Schedule 3 to this Order by the words “television only”, copyright subsists in the broadcast only if it is a television broadcast.

(3) Copyright does not subsist in a broadcast by virtue of paragraph (1) above if it was made before the relevant date.

(4) Where copyright subsists in a broadcast by virtue of paragraph (1) above, the whole of Part I of the Act (including Schedule I to the Act) applies in relation to the broadcast, save that for the purposes of section 14(2) (duration of copyright in repeats)—

- (a) a broadcast shall be disregarded if it was made before the relevant date, and
- (b) a cable programme shall be disregarded if it was included in a cable programme service before the later of the relevant date and 1st January 1985;

and subject also to article 7 below.

(5) For the purposes of paragraphs (3) and (4) above, the “relevant date” is the date or (as the case may be) the earliest of the dates specified in Schedule 3 to this Order in respect of the country or countries relevant to the broadcast for the purposes of paragraph (1) above, being (where different dates are specified for television and nontelevision broadcasts) the date appropriate to the type of broadcast in question.

(6) In respect of Singapore, this article applies in relation to cable programmes as it applies in relation to broadcasts, subject to article 5 below.

5. Schedule 4 to this Order shall have effect so as to modify the application of this Order in respect of certain countries.

6. Nothing in this Order shall be taken to derogate from the effect of paragraph 35 of Schedule 1 to the Act (continuation of existing qualification for copyright protection).

7.—(1) This article applies in any case in which—

- (a) a work was made before 1st August 1989 (commencement of Part I of the Act) and copyright under the Copyright Act 1956 did not subsist in it when it was made, or
- (b) a work is made on or after 1st August 1989 and copyright under the Act does not subsist in it when it is made,

but copyright subsequently subsists in it by virtue of article 2(1), 3 or 4(1) above.

(2) Where in any such case a person incurs or has incurred any expenditure or liability in connection with, for the purpose of or with a view to the doing of an act which at the time is not or was not an act restricted by any copyright in the work, the doing, or continued doing, of that act

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after copyright subsequently subsists in the work by virtue of article 2(1), 3 or 4(1) above shall not be an act restricted by the copyright unless the owner of the copyright or his exclusive licensee (if any) pays such compensation as, failing agreement, may be determined by arbitration.

8. The Orders listed in Schedule 5 to this Order are hereby revoked.

31st March 1993

N. H. Nicholls
Clerk of the Privy Council

SCHEDULE 1

Article 2(1) and (2)

COUNTRIES ENJOYING PROTECTION IN RESPECT OF ALL WORKS EXCEPT BROADCASTS AND CABLE PROGRAMMES

(The countries specified in this Schedule either are parties to the Berne Copyright Convention and/or the Universal Copyright Convention or otherwise give adequate protection under their law.)

Algeria (28th August 1973)
Andorra (27th September 1957)
Argentina
Australia (including Norfolk Island)
Austria
Bahamas
Bangladesh
Barbados
Belgium
Belize
Benin
Bolivia (22nd March 1990)
Brazil
Bulgaria
Burkina Faso
Cameroon
Canada
Central African Republic
Chad
Chile
China
Colombia
Congo
Costa Rica
Cote d'Ivoire
Croatia
Cuba (27th September 1957)
Cyprus, Republic of
Czechoslovakia
Denmark (including Greenland and the Faeroe Islands)
Dominican Republic (8th May 1983)
Ecuador
Egypt
El Salvador (29th March 1979)
Fiji

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Finland
France (including all Overseas Departments and Territories)
Gabon
Gambia
Germany
Ghana
Greece
Guatemala (28th October 1964)
Guinea, Republic of
Guinea-Bissau
Haiti (27th September 1957)
Holy See
Honduras
Hungary
Iceland
India
Ireland, Republic of
Israel
Italy
Japan
Kampuchea (27th September 1957)
Kenya
Korea, Republic of (1st October 1987)
Laos (27th September 1957)
Lebanon
Lesotho
Liberia
Libya
Liechtenstein
Luxembourg
Madagascar
Malawi
Malaysia
Mali
Malta
Mauritania
Mauritius
Mexico
Monaco
Morocco

Netherlands (including Aruba and the Netherlands Antilles)
New Zealand
Nicaragua (16th August 1961)
Niger
Nigeria
Norway
Pakistan
Panama (17th October 1962)
Paraguay
Peru
Philippines
Poland
Portugal
Romania
Rwanda
St. Vincent and the Grenadines
Senegal
Singapore
Slovenia
South Africa
Soviet Union (27th May 1973)
Spain
Sri Lanka
Suriname
Sweden
Switzerland
Taiwan, territory of (10th July 1985)
Thailand
Togo
Trinidad and Tobago
Tunisia
Turkey
Uganda (20th July 1964)
United States of America (including Puerto Rico and all territories and possessions)
Uruguay
Venezuela
Yugoslavia
Zaire
Zambia
Zimbabwe

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SCHEDULE 2

Article 3(a)(i)

COUNTRIES ENJOYING FULL PROTECTION FOR SOUND RECORDINGS

(The countries specified in this Schedule either are parties to the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations or otherwise give adequate protection under their law.)

Argentina
Australia (including Norfolk Island)
Austria
Bangladesh
Barbados
Brazil
Burkina Faso
Chile
Colombia
Congo
Costa Rica
Czechoslovakia
Denmark (including Greenland and the Faeroe Islands)
Dominican Republic
Ecuador
El Salvador
Fiji
Finland
France (including all Overseas Departments and Territories)
Germany
Ghana
Greece
Guatemala
Honduras
India
Indonesia
Ireland, Republic of
Italy
Japan
Lesotho
Luxembourg
Malawi
Malaysia
Mexico
Monaco

New Zealand
Niger
Norway
Pakistan
Panama
Paraguay
Peru
Philippines
Spain
Sweden
Taiwan, territory of
Thailand
Uruguay

SCHEDULE 3

Article 4(1), (2) and (5)

COUNTRIES ENJOYING PROTECTION IN RESPECT OF BROADCASTS

(The countries specified in this Schedule either are parties to the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations and/or the European Agreement on the Protection of Television Broadcasts or otherwise give adequate protection under their law.)

Argentina (2nd March 1992)
Australia (30th September 1992)
Austria (9th June 1973)
Barbados (18th September 1983)
Belgium (8th March 1968—television only)
Brazil (29th September 1965)
Burkina Faso (14th January 1988)
Chile (5th September 1974)
Colombia (17th September 1976)
Congo (18th May 1964)
Costa Rica (9th September 1971)
Cyprus, Republic of (5th May 1970)
Czechoslovakia (14th August 1964)
Denmark (including Greenland and the Faeroe Islands) (1st February 1962—television; 1st July 1965—non-television)
Dominican Republic (27th January 1987)
Ecuador (18th May 1964)
El Salvador (29th June 1979)
Fiji (11th April 1972)

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Finland (21st October 1983)
France (including 11 Overseas Departments and Territories) (1st July 1961—television; 3rd July 1987—television only)
1987—non-television)
Germany (21st October 1966)
Greece (6th January 1993)
Guatemala (14th January 1977)
Honduras (16th February 1990)
Ireland, Republic of (19th September 1979)
Italy (8th April 1975)
Japan (26th October 1989)
Lesotho (26th January 1990)
Luxembourg (25th February 1976)
Malawi (22nd June 1989)
Malaysia (1st June 1957)
Mexico (18th May 1964)
Monaco (6th December 1985)
Niger (18th May 1964)
Norway (10th August 1968—television; 10th July 1978—non-television)
Panama (2nd September 1983)
Paraguay (26th February 1970)
Peru (7th August 1985)
Philippines (25th September 1984)
Singapore (1st June 1957)
Spain (19th November 1971—television; 14th November 1991—non-television)
Sweden (1st July 1961—television; 18th May 1964—non-television)
Uruguay (4th July 1977)

SCHEDULE 4

Article 5

MODIFICATIONS

1. In respect of Indonesia, article 2(1)(a) above as applied by article 3(b) above shall apply as if the reference to persons domiciled in Indonesia were omitted.
2. In respect of Singapore—
 - (a) articles 2(1)(a) and (2) and 4(1)(a) above shall apply as if the references to persons domiciled in Singapore were omitted, and
 - (b) in the application of article 4(3) above in relation to cable programmes by virtue of article 4(6), the relevant date is 1st January 1985.
3. In respect of the territory of Taiwan—

- (a) article 2(1)(a) and (2) above shall apply as if the reference to persons domiciled or resident in the territory of Taiwan were limited to such persons who are also citizens or subjects of China, and
- (b) in the application of Part I of the Act by virtue of article 2(3) above, subsection (1) of section 21 (infringement by making adaptation) applies as if subsection (3)(a)(i) of that section (translation of literary or dramatic work) were omitted.

SCHEDULE 5

Article 8

ORDERS IN COUNCIL REVOKED

Number	Title
S.I. 1989/1293	The Copyright (Application to Other Countries) (No. 2) Order 1989
S.I. 1989/2415	The Copyright (Application to Other Countries) (No. 2) (Amendment) Order 1989
S.I. 1990/2153	The Copyright (Application to Other Countries) (No. 2) (Amendment) Order 1990

EXPLANATORY NOTE

(This note is not part of the Order)

This Order applies or continues to apply the provisions of Part I of, and Schedule 1 to, the Copyright, Designs and Patents Act 1988 to works of different types originating in the countries specified in the Schedules to the Order, with the effect that those works receive or continue to receive copyright protection in the United Kingdom. The Order revokes and replaces the Copyright (Application to Other Countries) (No. 2) Order 1989 and its amending Orders (article 8).

Article 2 provides protection for literary, dramatic, musical and artistic works, films and published editions originating in any country in Schedule 1. All of those countries are either parties to the Berne Copyright Convention (Cmnd. 5002), the Universal Copyright Convention (Cmnd. 4905) or both; or otherwise give adequate protection under their laws; the countries in respect of which a date is specified are countries whose works do not enjoy copyright protection in the United Kingdom where published in those countries before that date. Protection is excluded for literary, dramatic, musical and artistic works first published in a non-Schedule country before 1st June 1957 or, if the author was not a qualifying person at the time of publication, before 1st August 1989. Typeface designs are excluded.

Article 3 provides protection for sound recordings originating in any country in Schedule 1 or Indonesia. The protection extends to playing in public or broadcasting only if the country of origin of the recording is in Schedule 2 (parties to the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Cmnd. 2425) and countries otherwise giving adequate protection).

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Article 4 provides protection for broadcasts originating in any country in Schedule 3. These countries are parties either to the Rome Convention or to the European Agreement on the Protection of Television Broadcasts (Cmnd. 1163) or otherwise give adequate protection under their laws. Protection does not extend to broadcasts made before the specified dates. The protection for Singapore also covers cable programmes.

Article 5 modifies the Order in respect of Indonesia, Singapore and the territory of Taiwan.

Article 6 preserves existing qualifications and article 7 preserves contrary acquired rights.

This Order takes account of—

- (a) the accession of—
 - (i) China, Croatia (formerly part of the Federal Republic of Yugoslavia), Ecuador, Gambia, Guinea-Bissau, Honduras, Lesotho, Paraguay and Slovenia (formerly part of the Federal Republic of Yugoslavia) to the Berne Copyright Convention; and
 - (ii) Bolivia to the Universal Copyright Convention; and
 - (iii) Argentina, Australia, Greece, Honduras, Japan, Lesotho and Spain to the International (Rome) Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations; and
- (b) the making of provision—
 - (i) in respect of literary, dramatic, musical and artistic works, films and typographical arrangements of published editions, under the law of Uganda,
 - (ii) in respect of sound recordings, under the laws of Bangladesh, Ghana, Malawi and Thailand, and
 - (iii) in respect of broadcasts, under the law of Malawi, giving adequate protection to owners of copyright in such works under Part I of the Copyright, Designs and Patents Act 1988; and
- (c) the unification of the German Democratic Republic into the Federal Republic of Germany, on 3rd October 1990; and
- (d) modification of the entry relating to Denmark so as to include Greenland as part of that country.