
EXPLANATORY NOTE

(This note is not part of the Order)

Part 1 of the Copyright, Designs and Patents Act 1988 (“the Act”) confers copyright on the creators of certain works. Part 2 of the Act confers rights on performers and persons having recording rights in relation to a performance. The purpose of this Order is to apply Part 1 of the Act to works originating from other countries and to confer on certain countries reciprocal protection under Part 2 of the Act. In this Order the term “country” includes territories, by reason of sections 178 and 211 of the Act.

By reason of section 153(3) of the Act this Order will not affect works in which copyright already subsists. Further, by reason of paragraph 35 of Schedule 1 to the Act, any work in which copyright subsisted under the Copyright Act 1956 (c.74) is deemed to satisfy the requirements of qualification for copyright protection.

Article 2 qualifies literary, dramatic, musical and artistic works, films and typographical arrangements of published editions for copyright protection where they are connected to the countries indicated in the second column of the Schedule. All of those countries are parties to the Berne Copyright Convention (Cm. 1212), to the Universal Copyright Convention (Cmnd. 5844) or to the Agreement establishing the World Trade Organisation (including the Agreement on Trade-Related Aspects of Intellectual Property Rights (Cm. 3044-6, 3080, 3263-4, 3268-9, 3271, 3275-7 and 3282)) or are member States of the European Community or the European Free Trade Agreement; or otherwise give adequate protection under their laws.

Article 3 qualifies sound recordings for copyright protection where they are connected to the countries indicated in the third column of the Schedule. The protection extends to lending, playing in public or broadcasting if the country of origin is marked by an asterisk. All such countries are parties to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Cmnd. 2425) (“the Rome Convention”) or are member States of the European Community or the European Free Trade Agreement; or otherwise give adequate protection under their laws.

Different protection is given to those countries marked by a hash. All such countries are parties to the World Intellectual Property Organisation (WIPO) Performances and Phonograms Treaty (Cmnd. 3736) (“the WPPT”), but not parties to the Rome Convention. The United Kingdom has not ratified the WPPT, but it has agreed to ratify it along with the European Community and with the other member States in accordance with Council Decision 2000/278/EC (O.J. No L 89, 11.4.2000, p.6). Protection is therefore accorded to contracting parties in anticipation of ratification on the basis that upon ratification those countries will provide protection under their laws.

Article 4 qualifies wireless broadcasts for copyright protection where they are connected to the countries indicated in the fourth column of the Schedule. These countries are parties to the Rome Convention or are member States of the European Community or the European Free Trade Agreement; or otherwise give adequate protection under their laws.

Those countries marked by an asterisk, which receive more limited protection, are parties to the Agreement establishing the World Trade Organisation (including the Agreement on Trade-Related Aspects of Intellectual Property Rights), but not to the Rome Convention. Protection does not extend to wireless broadcasts made before the specified dates. By reason of paragraph 9(a) of Schedule 1 to the Act, protection never extends to such broadcasts made before 1st June 1957.

Article 5 qualifies broadcasts (other than wireless broadcasts) for copyright protection where they are connected to the countries indicated in the fifth column of the Schedule. These countries are

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member States of the European Community or the European Free Trade Agreement or otherwise give adequate protection under their laws. By reason of paragraph 9(b) of Schedule 1 to the Act, protection does not extend to such broadcasts made before 1st January 1985.

Article 6 qualifies certain performances and persons having recording protection under Part 2 where they are connected to the countries indicated in the sixth column of the Schedule.

Paragraph (1) grants reciprocal protection to certain countries in respect of their performers and persons having recording rights. These countries are parties to the Rome Convention.

Paragraph (2) applies where it is not possible to grant reciprocal protection, but the United Kingdom is obliged to grant limited protection to performers, by reason of both it and the European Community being party to the Agreement establishing the World Trade Organisation (including the Agreement on Trade-Related Aspects of Intellectual Property Rights). All such countries are marked with an asterisk.

This article also grants reciprocal protection to certain countries (those not marked with an asterisk) for the making available of a performance, by reason of the United Kingdom's and the European Community's undertaking to become a party to the WPPT.

Article 7 is a savings provision.

This Order uses powers given by the Act and by the European Communities Act 1972 to implement various Community obligations of the United Kingdom. The powers under the Act are also used to implement certain other international obligations.

This Order replaces the Copyright and Performances (Application to Other Countries) Order 2006 (SI 2006/316) ("the 2006 Order") which is revoked by *article 1(3)*. This Order provides a consolidated list of the protection afforded to other countries. The only substantive changes from the 2006 Order are that certain works originating from Samoa are protected for the first time following its accession to the Berne Convention; the protection of sound recordings, broadcasts and performances originating from the Syrian Arab Republic has been modified following its accession to the Rome Convention; and the protection afforded to sound recordings and performances originating from Benin has been modified following its accession to the WPPT. The entries for Bulgaria and Romania have been revised as a result of their accession to the European Union.

In addition, now that the Act no longer extends to Gibraltar (see the Copyright (Gibraltar) Revocation Order 2006 (SI 2006/1039)), Part 1 has now been applied to Gibraltar. Following Montenegro's Declaration of Independence from Serbia adopted by the National Assembly of Montenegro on 3rd June 2006, Serbia and Montenegro are dealt with separately in this Order.