

2013 No. 536

COPYRIGHT

RIGHTS IN PERFORMANCES

**The Copyright and Performances (Application to Other
Countries) Order 2013**

Made - - - - - *13th March 2013*
Laid before Parliament *15th March 2013*
Coming into force - - - *6th April 2013*

At the Court at Buckingham Palace, the 13th day of March 2013

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty is satisfied, to the extent this Order relates to a country which is neither a Convention country nor another member State of the European Union, that provision has been or will be made under the law of that country, giving adequate protection to the owners of copyright in respect of works under Part I of the Copyright, Designs and Patents Act 1988(a) and to the owners of rights in respect of British performances.

Accordingly, Her Majesty, by and with the advice of Her Privy Council, in exercise of the powers conferred upon Her by sections 159 and 208 of the Copyright, Designs and Patents Act 1988(b) and by section 2(2) of the European Communities Act 1972(c), makes the following Order:

Introductory

1.—(1) This Order may be cited as the Copyright and Performances (Application to Other Countries) Order 2013 and shall come into force on 6th April 2013.

(2) In this Order—

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

“Berne Convention” means the Convention for the Protection of Literary and Artistic Works adopted in Berne in 1886 and its revisions(d);

(a) 1988 c.48.

(b) Section 159 was amended by regulation 2(2) of, and Schedule 2 to, the Copyright and Related Rights Regulations 2003 S.I. 2003/2498.

(c) 1972 c.68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 c. 51, section 27(1) and by section 3(3) of, and the Schedule to, the European Union (Amendment) Act 2008 c.7 which were brought into force on 1st December 2009 by the European Union (Amendment) Act 2008 (Commencement No. 1) Order 2009 S.I. 2009/3143.

(d) Cm. 1212.

“first published” has the meaning ascribed to it by section 155(3) of the Act;

“Part I” means Part I of the Act (copyright);

“Part II” means Part II of the Act (rights in performances);

“relevant country” means, in relation to the works referred to in article 2(1), each country listed in the first column of the Table and in relation to the works referred to in article 2(2) to (4), each country listed in the first column of the Table corresponding to an entry in the second to fourth columns of the Table;

“relevant declaration under the Rome Convention” means a declaration under Article 16(1)(a)(i) of the Rome Convention (which allows for reservations) by a country party to the Rome Convention that it will not apply the provisions of Article 12 (which provides for payment of a single equitable remuneration for secondary uses of phonograms);

“relevant declaration under the WPPT” means a declaration under Article 15(3) of the WPPT by a country party to the WPPT that it will apply the provisions of Article 15(1) of the WPPT (which confers on performers and producers of phonograms a right to remuneration for broadcasting and communication to the public) only in respect of certain uses, or that it will limit their application in some other way, or that it will not apply these provisions at all;

“Rome Convention” means the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations done at Rome on 6th October 1961(a);

“Table” means the table set out in the Schedule;

“WPPT” means the World Intellectual Property Organisation Performances and Phonograms Treaty adopted in Geneva on 20th December 1996(b); and

“WTO TRIPS” means the Agreement establishing the World Trade Organisation (including the Agreement on Trade-Related Aspects of Intellectual Property Rights) signed in Marrakesh on 15th April 1994(c).

(3) The Copyright and Performances (Application to Other Countries) Order 2012(d) and the Copyright and Performances (Application to Other Countries) (Amendment) Order 2012(e) are revoked.

Application of Part I

2.—(1) All the provisions of Part I relating to literary, dramatic, musical and artistic works, films and typographical arrangement of published editions apply in relation to a relevant country in the manner set out in paragraph (5), subject to article 3.

(2) Where an entry in the second column of the Table shows a plus sign (+), all the provisions of Part I apply to sound recordings in relation to a relevant country in the manner set out in paragraph (5).

(3) Where there is an entry in the third column of the Table, all the provisions of Part I apply to wireless broadcasts in relation to a relevant country in the manner set out in paragraph (5), subject to article 5.

(4) Where there is an entry in the fourth column of the Table, all the provisions of Part I apply to broadcasts other than wireless broadcasts in relation to a relevant country in the manner set out in paragraph (5).

(5) The provisions of Part I apply in relation to—

(a) Cmnd. 2425.

(b) Cm. 3728.

(c) Cm. 3044-6, 3077-80, 3263-5, 3268-9, 3271, 3275-7 and 3282. The Agreement on Trade-Related Aspects of Intellectual Property Rights is published in Cm. 3046.

(d) S.I. 2012/799.

(e) S.I. 2012/1754.

- (a) a person who is a citizen or subject of, or is domiciled or resident in, a relevant country as they apply to a person who is a British citizen or is domiciled or resident in the United Kingdom,
- (b) a body incorporated under the law of a relevant country as they apply in relation to a body incorporated under the law of a part of the United Kingdom,
- (c) the works referred to in paragraphs (1) and (2) first published in a relevant country as they apply in relation to such works first published in the United Kingdom, and
- (d) broadcasts referred to in paragraphs (3) and (4) made from a relevant country as they apply in relation to broadcasts made from the United Kingdom.

Exception relating to literary, dramatic, musical or artistic works

3. Where a literary, dramatic, musical or artistic work was first published before 1st June 1957 it shall not qualify for copyright protection under section 154 of the Act (qualification by reference to author)(a).

Exceptions and modifications relating to sound recordings

4.—(1) Where the entry for a country in the second column of the Table does not include a plus (+) or minus (-) sign, the country is neither a party to the Rome Convention nor the WPPT but is a party to the Berne Convention or the WTO TRIPS or both, and accordingly the provisions of Part I, in so far as they relate to sound recordings, apply in relation to that country, except for the following—

- (a) section 18A (infringement by rental or lending of work to the public)(b) in so far as it applies to lending;
- (b) section 19 (infringement by playing of work in public)(c);
- (c) section 20 (infringement by communication to the public)(d);
- (d) section 26 (secondary infringement: provision of apparatus for infringing performance, &c); and
- (e) section 107(2A) and (3) (criminal liability for communicating to the public or playing a sound recording)(e).

(2) Where the entry for a country in the second column of the Table includes a minus sign (-), the country is not a party to the Rome Convention but is a party to the WPPT, and accordingly the provisions of Part I, in so far as they relate to sound recordings, apply in relation to that country with the following modifications—

- (a) section 18A (infringement by rental or lending of work to the public), except in so far as it applies to lending;
- (b) section 20 (infringement by communication to the public), except that references to communication to the public do not include the broadcasting of a sound recording; and
- (c) section 107(2A) (criminal liability for communicating to the public), except that it does not apply in relation to the broadcasting of a sound recording.

(a) Section 154 of the Act was amended by regulation 5(3) of the Duration of Copyright and Rights in Performances Regulations 1995 S.I. 1995/3297, by section 2(3) of the British Overseas Territories Act 2002 c.8, and by regulation 2(2) of, and Schedule 2 to, the Copyright and Related Rights Regulations 2003.

(b) Section 18A of the Act was inserted by regulation 10(2) of the Copyright and Related Rights Regulations 1996 S.I. 1996/2967 and it was subsequently amended by regulation 2(1) of, and paragraph 6(2) of Schedule 1 to, the Copyright and Related Rights Regulations 2003.

(c) Section 19 of the Act was amended by regulation 2(1) of, and paragraph 3(1) of Schedule 1 to, the Copyright and Related Rights Regulations 2003.

(d) Section 20 of the Act was substituted by regulation 6(1) of the Copyright and Related Rights Regulations 2003.

(e) Section 107(2A) of the Act was inserted by regulation 26(1)(a) of the Copyright and Related Rights Regulations 2003 and section 107(3) of the Act was amended by regulation 2(1) of, and paragraph 9(2) of Schedule 1 to, those Regulations.

Exceptions relating to wireless broadcasts

5.—(1) Where the entry for a country in the third column of the Table includes a minus sign (-), the country is not a party to the Rome Convention but is a party to the WTO TRIPS, and accordingly the following provisions of Part I, in so far as they relate to wireless broadcasts, do not apply in relation to that country—

- (a) section 18A (infringement by rental or lending of work to the public);
- (b) section 19 (infringement by showing or playing of work in public), but only in so far as it relates to broadcasts other than television broadcasts;
- (c) section 20 (infringement by communication to the public), except in relation to broadcasting by wireless telegraphy;
- (d) section 26 (secondary infringement: provision of apparatus for infringing performance, &c), but only in so far as it relates to broadcasts other than television broadcasts;
- (e) section 107(2A) (criminal liability for communicating to the public), except in relation to broadcasting by wireless telegraphy.

(2) The provisions of Part I do not apply in relation to a wireless broadcast made from a place in a country, referred to in paragraph (1), before the relevant date.

(3) The relevant date in relation to a country—

- (a) where its entry in the third column of the Table includes an “(X)”, is 1st June 1957;
- (b) where its entry in the third column of the Table includes a “(Y)”, is 1st January 1996; or
- (c) where there is a date next to its entry in the third column of the Table, is that date.

Application of Part II

6.—(1) Where the entry for a country in the fifth column of the Table is the word “designated”, the country—

- (a) is a party to the Rome Convention and has not made a relevant declaration under the Rome Convention, or
- (b) has made or will make provision giving adequate protection for British performances under its law,

and accordingly that country is designated as enjoying reciprocal protection under Part II.

(2) Where the entry for a country in the fifth column of the Table is the word “deemed”, the country is not a party to the Rome Convention but is a party to the WPPT, and accordingly that country shall be treated as if it were designated as enjoying reciprocal protection under Part II, except as provided in paragraph (6) and article 7(1).

(3) Where the entry for a country is a minus sign (-) in the fifth column of the Table, the country is neither a party to the Rome Convention nor the WPPT but is a party to the WTO TRIPS, and accordingly that country shall be treated as if it were designated as enjoying reciprocal protection under Part II, except as provided in paragraph (6) and article 7(1) and (2).

(4) Where the entry for a country includes an asterisk (*) in the fifth column of the Table, the country is a party to the Rome Convention but has made a relevant declaration under the Rome Convention, and accordingly that country shall be treated as if it were designated as enjoying reciprocal protection under Part II, except as provided in article 7(3).

(5) Where the entry for a country includes a hash sign (#) in the fifth column of the Table, the country is a party to the WPPT but has made a relevant declaration under the WPPT, and accordingly that country shall be treated as if it were designated as enjoying reciprocal protection under Part II, except as provided in paragraph (6) and article 7(1) and (4).

(6) In relation to the provisions of Part II—

- (a) as applied by paragraphs (2) and (3), and
- (b) to the extent applied by paragraph (5),

the definition of “recording”, in section 180(2) (rights conferred on performers and persons having recording rights)(a), shall be construed as applying only to sound recordings (and not to films).

Exceptions to application of Part II

7.—(1) In relation to article 6(2), (3) and (5), the following provisions of Part II shall not apply—

- (a) section 182C (consent required for rental or lending of copies to public)(b), in so far as it relates to lending;
- (b) section 183 (infringement of performer’s rights by use of recording made without consent)(c);
- (c) sections 185 to 188 (rights of person having recording rights)(d);
- (d) section 198(2) (criminal liability for playing or communicating to the public)(e).

(2) In relation to article 6(3), the following provisions of Part II shall not apply—

- (a) section 182CA (consent required for making available to the public)(f);
- (b) section 182D (right to equitable remuneration for exploitation of sound recording)(g);
- (c) section 198(1A) (criminal liability for making available to the public)(h).

(3) In relation to article 6(4), to the extent that the relevant declaration under the Rome Convention is in force in the law of the country in relation to British performances, the provisions of Part II shall not apply to grant the protection provided under Article 12 of the Rome Convention, unless the recording has been first published in a country which is party to the Rome Convention and which has not made a relevant declaration under that Convention.

(4) In relation to article 6(5), where a country is a party to the WPPT and has made a relevant declaration under the WPPT, the provisions of Part II shall not apply to protect the right provided for in Article 15(1) of the WPPT to the extent the declaration is in force in the law of that country in relation to British performances.

Savings

8.—(1) For the purposes of this article an act is an “excluded act” where—

- (a) a person (A) has incurred any expenditure or liability in connection with the act; and
- (b) he—
 - (i) began in good faith to do the act, or
 - (ii) made in good faith effective and serious preparations to do the act,

-
- (a) Section 180(2) of the Act was amended by regulation 2(2) of, and Schedule 2 to, the Copyright and Related Rights Regulations 2003.
 - (b) Section 182C of the Act was inserted by regulation 20(2) of the Copyright and Related Rights Regulations 1996 and was subsequently amended by regulation 2(1) of, and paragraph 6(2) of Schedule 1 to, the Copyright and Related Rights Regulations 2003 and regulation 2 of, and paragraph 8 of the Schedule to, the Performances (Moral Rights, etc) Regulations 2006 S.I. 2006/18.
 - (c) Section 183 of the Act was amended by regulation 2(1) of, and paragraph 13(1)(a) of Schedule 1 to, the Copyright and Related Rights Regulations 2003.
 - (d) Section 185 of the Act was amended by regulation 2 of, and paragraph 8 of the Schedule to, the Performances (Moral Rights, etc) Regulations 2006; section 186 of the Act was amended by regulation 2(2) of, and Schedule 2 to, the Copyright and Related Rights Regulations 2003; section 187 of the Act was amended by regulation 2(1) of, and paragraph 13(1)(b) of Schedule 1 to, the Copyright and Related Rights Regulations 2003.
 - (e) Section 198(2) of the Act was amended by regulation 2(1) of, and paragraph 4(5) of the Schedule to, the Copyright and Related Rights Regulations 2003 and by regulation 2 of, and paragraph 8 of the Schedule to, the Copyright and Related Rights Regulations 2006.
 - (f) Section 182CA of the Act was inserted by regulation 7(1) of the Copyright and Related Rights Regulations 2003 and was subsequently amended by regulation 2 of, and paragraph 8 of the Schedule to, the Performances (Moral Rights, etc) Regulations 2006.
 - (g) Section 182D of the Act was inserted by regulation 20(2) of the Copyright and Related Rights Regulations 1996 and was subsequently amended by regulation 7(2) of the Copyright and Related Rights Regulations 2003 and regulation 2 of, and paragraph 3 of the Schedule to, the Performances (Moral Rights, etc) Regulations 2006.
 - (h) Section 198(1A) of the Act was inserted by regulation 26(3) of the Copyright and Related Rights Regulations 2003.

at a time when the act neither infringed nor was restricted by the relevant rights in the work or performance.

(2) Where another person (B) acquires those relevant rights on or after the coming into force of this Order, A has the right—

- (a) to continue to do the excluded act, or
- (b) to do the excluded act,

notwithstanding that the excluded act infringes or is restricted by those relevant rights under this Order.

(3) Where B, or his exclusive licensee, pays reasonable compensation to A paragraph (2) no longer applies.

(4) Where—

- (a) B offers to pay compensation to A under paragraph (3); but
- (b) A and B cannot agree on what compensation is reasonable,

either person may refer the matter to arbitration.

(5) In this article “relevant rights” means copyright, the rights conferred by Chapter 4 of Part I (moral rights) and the rights conferred by Part II.

Richard Tilbrook
Clerk of the Privy Council

SCHEDULE

Articles 2 to 6

APPLICATION OF PARTS I AND II

| <i>Country</i> | <i>Article 2(2)</i> <i>(sound recordings)</i> | <i>Article 2(3)</i> <i>(wireless broadcasts)</i> | <i>Article 2(4)</i> <i>(other broadcasts)</i> | <i>Article 6</i> <i>(performances)</i> |
|---|--|---|--|---|
| Albania | Applies (+) | Applies (1st September 2000) | | Designated |
| Algeria | Applies (+) | Applies (22nd April 2007) | | Designated |
| Andorra | Applies (+) | Applies (25th May 2004) | | Designated |
| Angola | Applies | Applies (-) (23rd November 1996) | | (-) |
| Antigua and Barbuda | Applies | Applies (-) (Y) | | (-) |
| Argentina | Applies (+) | Applies (2nd March 1992) | | Designated |
| Armenia | Applies (+) | Applies (31st January 2003) | | Designated |
| Australia (including Norfolk Island) | Applies (+) | Applies (30th September 1992) | | Designated(*) (#) |
| Austria | Applies (+) | Applies (X) | Applies | |
| Azerbaijan | Applies (+) | Applies (5th October 2005) | | Designated |
| Bahamas | Applies | | | |
| Bahrain | Applies (+) | Applies (Y) | | Designated |
| Bangladesh | Applies (+) | Applies (-) (Y) | | (-) |
| Barbados | Applies (+) | Applies (18th September 1983) | | Designated |
| Belarus | Applies (+) | Applies (27th May 2003) | | Designated |
| Belgium | Applies (+) | Applies (X) | Applies | |
| Belize | Applies | Applies (-) (Y) | | (-) |
| Benin | Applies (-) | Applies (+) (22nd February 1996) | | Deemed |
| Bermuda | Applies | Applies (6th August 1962) | Applies | Designated |
| Bhutan | Applies | | | |
| Bolivia | Applies (+) | Applies (24th November 1993) | | Designated |
| Bosnia and Herzegovina | Applies(+) | Applies (19th May 2009) | | Designated |
| Botswana | Applies (-) | Applies (-) (Y) | | Deemed |
| Brazil | Applies (+) | Applies (29th September 1965) | | Designated |
| Brunei Darussalam | Applies | Applies (-) (Y) | | (-) |

| | | | |
|--|-------------|-------------------------------------|---------------|
| Bulgaria | Applies (+) | Applies (X) | Applies |
| Burkina Faso | Applies (+) | Applies (14th January 1988) | Designated |
| Burundi | Applies | Applies (-) (Y) | (-) |
| Cambodia | Applies | Applies (-) (13th October 2004) | (-) |
| Cameroon | Applies | Applies (-) (Y) | (-) |
| Canada | Applies (+) | Applies (Y) | Designated |
| Cape Verde | Applies (+) | Applies (3rd July 1997) | Designated |
| Central African Republic | Applies | Applies (-) (Y) | (-) |
| Chad | Applies | Applies (-) (19th October 1996) | (-) |
| Chile | Applies (+) | Applies (5th September 1974) | Designated(#) |
| China | Applies(-) | Applies (-) (11th December 2001) | Deemed(#) |
| Colombia | Applies (+) | Applies (17th September 1976) | Designated |
| Comoros | Applies | | |
| Congo | Applies (+) | Applies (18th May 1964) | Designated(*) |
| Costa Rica | Applies (+) | Applies (9th September 1971) | Designated(#) |
| Cote d'Ivoire | Applies | Applies (-) (Y) | (-) |
| Croatia | Applies (+) | Applies (20th April 2000) | Designated |
| Cuba | Applies | Applies (-) (Y) | (-) |
| Cyprus | Applies (+) | Applies (X) | Applies |
| Czech Republic | Applies (+) | Applies (X) | Applies |
| Democratic Republic of the Congo | Applies | Applies (-) (1st January 1997) | (-) |
| Denmark | Applies (+) | Applies (X) | Applies |
| Djibouti | Applies | Applies (-) (Y) | (-) |
| Dominica | Applies (+) | Applies (Y) | Designated |
| Dominican Republic | Applies (+) | Applies (27th January 1987) | Designated |
| Ecuador | Applies (+) | Applies (18th May 1964) | Designated |
| Egypt | Applies | Applies (-) (Y) | (-) |
| El Salvador | Applies (+) | Applies (29th June 1979) | Designated |
| Equatorial Guinea | Applies | | |
| Estonia | Applies (+) | Applies (X) | Applies |
| Faeroe Islands | Applies | Applies (1st February 1962) | Designated |
| Fiji | Applies (+) | Applies (11th April 1972) | Designated(*) |

| | | | |
|---|-------------|-------------------------------------|-----------------------|
| Finland | Applies (+) | Applies (X) | Applies |
| France (including Overseas Departments and Territories) | Applies (+) | Applies (X) | Applies |
| Gabon | Applies (-) | Applies (-) (Y) | Deemed |
| Gambia | Applies | Applies (-) (23rd October 1996) | (-) |
| Georgia | Applies (+) | Applies (14th August 2004) | Designated |
| Germany | Applies (+) | Applies (X) | Applies |
| Ghana | Applies (+) | Applies (-) (Y) | Deemed |
| Gibraltar | Applies (+) | Applies (X) | Applies Designated |
| Greece | Applies (+) | Applies (X) | Applies |
| Greenland | Applies | Applies (1st February 1962) | Designated |
| Grenada | Applies | Applies (-) (22nd February 1996) | (-) |
| Guatemala | Applies (+) | Applies (14th January 1977) | Designated |
| Guinea | Applies (-) | Applies (-) (Y) | Deemed |
| Guinea-Bissau | Applies | Applies (-) (Y) | (-) |
| Guyana | Applies | Applies (-) (Y) | (-) |
| Haiti | Applies | Applies (-) (30th January 1996) | (-) |
| Holy See | Applies | | |
| Honduras | Applies (+) | Applies (16th February 1990) | Designated |
| Hong Kong | Applies (+) | Applies (X) | (-) |
| Hungary | Applies (+) | Applies (X) | Applies |
| Iceland | Applies (+) | Applies (X) | Applies Designated(*) |
| India | Applies (+) | Applies (-) (Y) | (-) |
| Indonesia | Applies (+) | Applies (X) | Applies Deemed |
| Ireland | Applies (+) | Applies (X) | Applies |
| Isle of Man | Applies (+) | Applies (X) | Applies Designated |
| Israel | Applies (+) | Applies (Y) | Designated |
| Italy | Applies (+) | Applies (X) | Applies |
| Jamaica | Applies (+) | Applies (27th January 1994) | Designated |
| Japan | Applies (+) | Applies (26th October 1989) | Designated |
| Jersey, the Balliwick of | Applies (+) | Applies (X) | Applies |
| Jordan | Applies (-) | Applies (-) (11th April 2000) | Deemed |
| Kazakhstan | Applies (-) | | Deemed |
| Kenya | Applies | Applies (-) (Y) | (-) |

| | | | | |
|--|-------------|------------------------------------|-------------------|------------|
| Korea, Democratic People's Republic of | Applies | | | |
| Korea, Republic of | Applies(+) | Applies (18th March 2009) | Designated(#) | |
| Kuwait | Applies | Applies (-) (Y) | (-) | |
| Kyrgyzstan | Applies (+) | Applies (20th December 1998) | Designated | |
| Lao People's Democratic Republic | Applies | Applies (-) 3rd February 2013 | (-) | |
| Latvia | Applies (+) | Applies (X) | Applies | |
| Lebanon | Applies (+) | Applies (12th August 1997) | Designated | |
| Lesotho | Applies (+) | Applies (26th January 1990) | Designated | |
| Liberia | Applies(+) | Applies (16th December 2005) | Designated | |
| Libyan Arab Jamahiriya | Applies | | | |
| Liechtenstein | Applies (+) | Applies (X) | Applies | Designated |
| Lithuania | Applies (+) | Applies (X) | Applies | |
| Luxembourg | Applies (+) | Applies (X) | Applies | |
| Macao | Applies | Applies (-) (Y) | (-) | |
| Macedonia, The Former Yugoslav Republic of | Applies (+) | Applies (2nd March 1998) | Designated(*) (#) | |
| Madagascar | Applies | Applies (-) (Y) | (-) | |
| Malawi | Applies (+) | Applies (22nd June 1989) | Deemed (-) | |
| Malaysia | Applies (+) | Applies (X) | Deemed | |
| Maldives | Applies | Applies (-) (Y) | (-) | |
| Mali | Applies (-) | Applies (-) (Y) | Deemed | |
| Malta | Applies (+) | Applies (X) | Applies | |
| Mauritania | Applies | Applies (-) (Y) | (-) | |
| Mauritius | Applies | Applies (-) (Y) | (-) | |
| Mexico | Applies (+) | Applies (18th May 1964) | Designated | |
| Micronesia, Federated States of | Applies | | | |
| Moldova, Republic of | Applies (+) | Applies (5th December 1995) | Designated | |
| Monaco | Applies (+) | Applies (6th December 1985) | Designated(*) | |
| Mongolia | Applies (-) | Applies (-) (29th January 1997) | Deemed | |
| Montenegro | Applies (+) | Applies (10th June 2003) | Designated | |
| Morocco | Applies (-) | Applies (-) (Y) | Deemed | |
| Mozambique | Applies | Applies (-) (Y) | (-) | |

| | | | | |
|---|-------------|-------------------------------------|---------|---------------|
| Myanmar | Applies | Applies (-) (Y) | | (-) |
| Namibia | Applies | Applies (-) (Y) | | (-) |
| Nepal | Applies | Applies (-) (23rd April 2004) | | (-) |
| Netherlands | Applies (+) | Applies (X) | Applies | |
| Netherlands Antilles, Curacao, Sint Maarten and Aruba | Applies | Applies (-) (Y) | | Deemed |
| New Zealand | Applies (+) | Applies (-) (Y) | | (-) |
| Nicaragua | Applies (+) | Applies (Y) | | Designated |
| Niger | Applies (+) | Applies (18th May 1964) | | Designated(*) |
| Nigeria | Applies (+) | Applies (29th October 1993) | | Designated |
| Norway | Applies (+) | Applies (X) | Applies | Designated |
| Oman | Applies | Applies (-) (9th November 2000) | | Deemed |
| Pakistan | Applies (+) | Applies (-) (Y) | | (-) |
| Panama | Applies (+) | Applies (2nd September 1983) | | Designated |
| Papua New Guinea | Applies | Applies (-) (9th June 1996) | | Deemed (-) |
| Paraguay | Applies (+) | Applies (26th February 1970) | | Designated |
| Peru | Applies (+) | Applies (7th August 1985) | | Designated |
| Philippines | Applies (+) | Applies (25th September 1984) | | Designated |
| Poland | Applies (+) | Applies (X) | Applies | |
| Portugal | Applies (+) | Applies (X) | Applies | |
| Qatar | Applies | Applies (-) (13th January 1996) | | Deemed |
| Romania | Applies (+) | Applies (X) | Applies | |
| Russian Federation | Applies (+) | Applies (26th May 2003) | | Designated |
| Rwanda | Applies | Applies (-) (22nd May 1996) | | (-) |
| Saint Kitts and Nevis | Applies | Applies (-) (21st February 1996) | | (-) |
| Saint Lucia | Applies (+) | Applies (Y) | | Designated |
| Saint Vincent and the Grenadines | Applies (-) | Applies (-) (Y) | | Deemed |
| Samoa | Applies | Applies (-) 10th May 2012 | | (-) |
| Saudi Arabia | Applies | Applies (-) (11th December 2005) | | (-) |
| Senegal | Applies (-) | Applies (+)(Y) | | Deemed |

| | | | | |
|--|-------------|-----------------------------------|---------|------------|
| Serbia | Applies (+) | Applies (10th June 2003) | | Designated |
| Sierra Leone | Applies | Applies (-) (Y) | | (-) |
| Singapore | Applies (-) | Applies (X) | Applies | Deemed(#) |
| Slovak Republic | Applies (+) | Applies (X) | Applies | |
| Slovenia | Applies (+) | Applies (X) | Applies | |
| Solomon Islands | Applies | Applies (-) (26th July 1996) | | Deemed (-) |
| South Africa | Applies | Applies (-) (Y) | | (-) |
| Spain | Applies (+) | Applies (X) | Applies | |
| Sri Lanka | Applies | Applies (-) (Y) | | (-) |
| Sudan | Applies | | | |
| Suriname | Applies | Applies (-) (Y) | | (-) |
| Swaziland | Applies | Applies (-) (Y) | | (-) |
| Sweden | Applies (+) | Applies (X) | Applies | |
| Switzerland | Applies (+) | Applies (X) | Applies | Designated |
| Syrian Arab Republic | Applies (+) | Applies (13th May 2006) | | Designated |
| Taiwan | Applies (+) | Applies (-) (1st January 2002) | | (-) |
| Tajikistan | Applies(+) | Applies (19th May 2008) | | Designated |
| Tanzania, United Republic of | Applies | Applies (+)(Y) | | (-) |
| Thailand | Applies (+) | Applies (-) (Y) | | (-) |
| Togo | Applies (+) | Applies (Y) | | Designated |
| Tonga | Applies | Applies (-) (27th July 2007) | | (-) |
| Trinidad and Tobago | Applies (-) | Applies (-) (Y) | | Deemed |
| Tunisia | Applies | Applies (-) (Y) | | (-) |
| Turkey | Applies (+) | Applies (Y) | | Designated |
| Uganda | Applies | Applies (-) (Y) | | (-) |
| Ukraine | Applies (+) | Applies (12th June 2002) | | Designated |
| United Arab Emirates | Applies (+) | Applies (10th April 1996) | | Designated |
| United States of America (including Puerto Rico and all territories and possessions) | Applies (-) | Applies (-) (Y) | | Deemed(#) |
| Uruguay | Applies (+) | Applies (4th July 1977) | | Designated |
| Uzbekistan | Applies | | | |
| Vanuatu | Applies | Applies (-) (24th August 2012) | | (-) |
| Venezuela | Applies (+) | Applies (Y) | | Designated |

| | | | |
|----------|-------------|-----------------------------|---------------|
| Vietnam | Applies (+) | Applies (1st March 2007) | Designated(*) |
| Yemen | Applies | | |
| Zambia | Applies | Applies (-) (Y) | (-) |
| Zimbabwe | Applies | Applies (-) (Y) | (-) |

EXPLANATORY NOTE

(This note is not part of the Order)

Part I of the Copyright, Designs and Patents Act 1988 (“the Act”) confers copyright on the creators of certain works. Part II 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 I to works originating from other countries and to confer on certain countries reciprocal protection under Part II. This Order provides a consolidated list of countries in relation to which provisions of the Act apply. In this Order the term “country” includes any territory, by virtue of sections 178 and 211 of the Act.

This Order revokes the Copyright and Performances (Application to Other Countries) Order 2012 (“the 2012 Order”) and the Copyright and Performances (Application to Other Countries) (Amendment) Order 2012 (article 1(3)).

Changes in the Table from the 2012 Order include the following:

- 1) entries in relation to Samoa and Lao People’s Democratic Republic in columns 3 and 5 following their accession to WTO TRIPS on 10th May 2012 and 2nd February 2013 respectively;
- 2) entries in relation to Vanuatu following its accession to WTO TRIPS on 24th August 2012 and to the Berne Convention on 27th December 2012; and
- 3) amendments to the entries in the fifth column in relation to Malaysia and Ghana following their accession to the WPPT on 27th December 2012 and 16th February 2013 respectively.

Powers under section 2(2) of the European Communities Act 1972 are used to implement obligations arising under the WTO TRIPS and the WPPT. Under section 1(3) of the European Communities Act 1972, the Agreement establishing the World Trade Organisation and the WPPT have been specified as EU Treaties in the following instruments: the European Communities (Definition of Treaties) (The Agreement Establishing the World Trade Organisation) Order 1995 (S.I. 1995/265) and the European Communities (Definition of Treaties) (WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty) Order 2005 (S.I. 2005/3431). Both the European Union and the United Kingdom have now ratified the WPPT.

By virtue of section 153(3) of the Act this Order will not affect works in which copyright already subsists. Further, by virtue 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 applies the provisions of Part I to copyright works in relation to the relevant countries. Any exceptions or modifications to the application of Part I to copyright works in relation to the relevant countries are set out in articles 3 to 5.

Literary, dramatic, musical and artistic works, films and typographical arrangements of published editions qualify for copyright protection under Part I where they are connected to the countries indicated in the first column of the Table (article 2(1)). All of those countries are parties to the Berne Convention or to the Universal Copyright Convention (as revised in 1971) (Cmnd. 5844) or to the WTO TRIPS or are member States of the European Economic Area or otherwise give adequate protection under their laws.

Sound recordings qualify for copyright protection under Part I where they are connected to the countries indicated by an entry in the second column of the Table (article 2(2)). The protection extends to lending, playing in public or broadcasting if the entry in the second column includes a plus sign (+). All such countries are parties to the Rome Convention or are member States of the European Economic Area or otherwise give adequate protection under their laws.

Where the entry for a country in the second column of the Table does not include a plus (+) or minus (-) sign, the country is neither a party to the Rome Convention nor to the WPPT but is a party to the Berne Convention or the WTO TRIPS or both. Accordingly, the provisions of Part I, in so far as they relate to sound recordings, apply in relation to that country, except for those provisions set out in article 4(1).

Different protection is given to those countries where a minus sign (-) is included in the second column of the Table (article 4(2)). All such countries are parties to the WPPT, but not parties to the Rome Convention. All the provisions of Part I apply to sound recordings in relation to countries party to the WPPT, except that sections 20 and 107(2) of the Act do not apply to broadcasts as these are not covered by the WPPT and section 18A of the Act only applies to rental as lending is not covered by the WPPT.

Wireless broadcasts qualify for copyright protection under Part I where they are connected to the countries indicated by an entry in the third column of the Table. These countries are parties to the Rome Convention or are member States of the European Economic Area or otherwise give adequate protection under their laws, unless a minus sign (-) is included in the third column of the Table.

As indicated in article 5, the countries marked by a minus sign (-) in the third column of the Table receive more limited protection. These countries are parties to the WTO TRIPS, but not to the Rome Convention.

Protection does not extend to wireless broadcasts made before the specified dates. By virtue of paragraph 9(a) of Schedule 1 to the Act, protection never extends to such broadcasts made before 1st June 1957 and this is reflected in article 5(2) and (3)(a) and the letter “(X)” in the third column of the Table. Countries which qualify for protection in relation to wireless broadcasts by virtue of their membership of the WTO TRIPS on its coming into force on 1st January 1996 are indicated by the letter “(Y)” in the third column of the Table (article 5(3)(b)).

Broadcasts (other than wireless broadcasts) qualify for copyright protection where they are connected to the countries indicated in the fourth column of the Table. These countries are member States of the European Economic Area or otherwise give adequate protection under their laws. By virtue of paragraph 9(b) of Schedule 1 to the Act, protection does not extend to such broadcasts made before 1st January 1985.

Article 6(1) provides that performances and persons having recording rights in relation to a performance qualify for protection under Part II where they are connected to the countries indicated by the word “designated” in the fifth column of the Table. These are the countries “designated” as enjoying full protection. These are countries which are parties to the Rome Convention and have not made a relevant declaration under the Rome Convention or which have made or will make provision giving adequate protection for British performances under their laws.

Where a country is not a party to the Rome Convention, but is a party to the WPPT and has not made a relevant declaration under the WPPT, the provisions of Part II apply, with certain limitations referred to in article 6(2). These countries are indicated by the word “deemed” in the fifth column of the Table.

Where a country is neither a party to the Rome Convention nor the WPPT but is a party to the WTO TRIPS, more limited protection is granted under Part II as provided in article 6(3). This is indicated by the minus sign (-) in the fifth column of the Table.

The effect of the relevant declarations to the Rome Convention and the WPPT are clarified in articles 6(4) and (5) and 7(3) and (4). The Order implements paragraph (3)(b) of the UK

declaration made under Article 16(1) of the Rome Convention, (United Nations Treaty Series, vol. 496).

Where a country is a party to the Rome Convention but has made a relevant declaration under that Convention, the country is treated as if it were designated, except that Part II will not protect the right under Article 12 of the Rome Convention to the extent that the declaration is in force in the law of that country in relation to British performances, unless the sound recording in question has been first published in a country which is a party to the Rome Convention and has not made a relevant declaration under that Convention. These countries are indicated by including an asterisk (*) in the fifth column of the Table.

Where a country is a party to the WPPT and has made a relevant declaration under the WPPT, the country shall be treated as if it were deemed as enjoying protection under Part II, except to the extent the declaration is in force in the law of that country in relation to British performances. These countries are indicated by including a hash sign (#) in the fifth column of the Table.

A member State of the European Union is a qualifying country for the purposes of Part II by virtue of section 206(1)(b) of the Act.

Article 8 is a savings provision.

No impact assessment has been produced for this instrument as no impact on the private or voluntary sectors is foreseen. An Explanatory Memorandum is available alongside the instrument on www.legislation.gov.uk.

© Crown copyright 2013

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

STATUTORY INSTRUMENTS

2013 No. 536

COPYRIGHT

RIGHTS IN PERFORMANCES

The Copyright and Performances (Application to Other
Countries) Order 2013

£5.75

E6094 03/2013 136094T 19585

ISBN 978-0-11-153697-1



9 780111 536971