

STATUTORY INSTRUMENTS

**2016 No. 1219**

**The Copyright and Performances  
(Application to Other Countries) Order 2016**

**PART 5**

**PERFORMANCES**

**Restrictions on the application of Part 2 of the Act in respect of countries that have made declarations under Article 16(1)(a)(i) of the Rome Convention**

9.—(1) This article applies to a country [<sup>F1</sup>, other than Australia, Japan and Viet Nam,] which is a party to the Rome Convention<sup>M1</sup> and has made a declaration under Article 16(1)(a) of the Rome Convention that it will not apply the provisions of Article 12 (which provides for the payment of a single equitable remuneration).

(2) Where this article applies, to the extent that the declaration referred to in paragraph (1) is in force in the law of the country in relation to British performances<sup>M2</sup>, the provisions of Part 2 of the Act shall not apply to grant the protection provided for under Article 12 of the Rome Convention unless the recording has been first published in a country which—

- (a) is a party to the Rome Convention; and
- (b) has not made a declaration of the kind referred to in paragraph (1).

**Textual Amendments**

**F1** Words in art. 9(1) inserted (coming into force in accordance with art. 1(2) of the amending S.I.) by [The Copyright and Performances \(Application to Other Countries\) \(Amendment\) Order 2024 \(S.I. 2024/193\)](#), arts. 1(2), **6(1)**

**Marginal Citations**

**M1** Cm. 2425; “Rome Convention” is defined in section 206(6) of the Copyright, Designs and Patents Act 1988.  
**M2** “British performance” is defined in section 208(3) of the Copyright, Designs and Patents Act 1988.

**Application of Part 2 of the Act to WPPT countries which have made a declaration under Article 15(3) of the WPPT and which are party to the Rome Convention**

<sup>F2</sup>**10.** . . . . .

**Textual Amendments**

**F2** Art. 10 omitted (coming into force in accordance with art. 1(2) of the amending S.I.) by virtue of [The Copyright and Performances \(Application to Other Countries\) \(Amendment\) Order 2024 \(S.I. 2024/193\)](#), arts. 1(2), **6(2)**

**Application of Part 2 of the Act to WPPT countries not party to the Rome Convention**

**11.**—(1) This article applies to the countries listed in Part 2 of the Schedule where this article is specified in the entry relating to that country (countries party to the WPPT but not the Rome Convention).

(2) A country to which this article applies is, subject to paragraphs (3) and (4), designated as enjoying reciprocal protection under Part 2 of the Act.

(3) Part 2 of the Act applies subject to the following modifications—

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

(b) the following provisions do not apply—

(i) section 182C (consent required for rental or lending of copies to public), in so far as it relates to lending;

<sup>F3</sup>(ii) . . . . .

(iii) sections 185 to 188 (rights of persons having recording rights); and

(iv) section 198(2) (criminal liability for making available to the public) [<sup>F4</sup>, in so far as it relates to an infringement under section 187].

(4) Where a country to which this article applies [<sup>F5</sup>, other than New Zealand and Singapore,] has made a declaration under Article 15(3) of the WPPT that—

(a) 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,

(b) it will limit the application of the provisions of Article 15(1) of the WPPT in some other way, or

(c) it will not apply the provisions of Article 15(1) of the WPPT at all,

the provisions of Part 2 of the Act shall not apply to protect the right provided for in Article 15(1) of the WPPT to the extent that the declaration is in force in the law of that country in relation to British performances.

**Textual Amendments**

**F3** Art. 11(3)(b)(ii) omitted (coming into force in accordance with art. 1(2) of the amending S.I.) by virtue of [The Copyright and Performances \(Application to Other Countries\) \(Amendment\) Order 2024 \(S.I. 2024/193\)](#), arts. 1(2), **6(3)(a)(i)**

**F4** Words in art. 11(3)(b)(iv) inserted (coming into force in accordance with art. 1(2) of the amending S.I.) by [The Copyright and Performances \(Application to Other Countries\) \(Amendment\) Order 2024 \(S.I. 2024/193\)](#), arts. 1(2), **6(3)(a)(ii)**

- F5** Words in art. 11(4) inserted (coming into force in accordance with art. 1(2) of the amending S.I.) by [The Copyright and Performances \(Application to Other Countries\) \(Amendment\) Order 2024 \(S.I. 2024/193\)](#), arts. 1(2), **6(3)(b)**

### Application of Part 2 of the Act to WTO countries

**12.**—(1) This article applies to a country listed in Part 2 of the Schedule to this Order where this article is specified in the entry relating to that country (WTO members not party to the Rome Convention or the WPPT).

(2) A country to which this article applies is, subject to paragraph (3), designated as enjoying reciprocal protection under Part 2 of the Act.

(3) Part 2 of the Act applies subject to the following modifications—

- (a) the definition of recording in section 180(2) (rights conferred on performers and persons having recording rights), shall be construed as applying only to sound recordings (and not to films); and
- (b) the following provisions do not apply—
  - (i) section 182C (consent required for rental or lending of copies to public), in so far as it relates to lending;
  - (ii) section 182CA (consent required for making available to the public) <sup>M3</sup>;
  - (iii) section 182D (right to equitable remuneration for exploitation of sound recording) <sup>M4</sup>;
  - (iv) section 183 (infringement of performer's rights by use of recording made without consent);
  - (v) sections 185 to 188 (rights of persons having recording rights); and
  - (vi) section 198(1A) and (2) (criminal liability for making available to the public) <sup>M5</sup>.

#### Marginal Citations

- M3** Section 182CA was inserted by regulation 7(1) of the [Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#).
- M4** Section 182D was inserted by regulation 20(2) of the [Copyright and Related Rights Regulations 1996 \(S.I. 1996/2967\)](#) and was amended by regulation 7(2) of the [Copyright and Related Rights Regulations 2003](#), by paragraphs 1 and 3(1) and (3) of the Schedule to the [Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#) and by regulation 7 of the [Copyright and Duration of Rights in Performances Regulation 2013 \(S.I. 2013/1782\)](#).
- M5** Section 198(1A) was inserted by regulations 3 and 26(3)(a) of the [Copyright and Related Rights Regulations 2003](#).

### [<sup>F6</sup>Application of Part 2 of the Act to Malta

**12A.** Malta is designated as enjoying reciprocal protection under Part 2 of the Act.]

#### Textual Amendments

- F6** [Art. 12A](#) inserted (26.6.2021) by [The Copyright and Performances \(Application to Other Countries\) \(Amendment\) Order 2021 \(S.I. 2021/636\)](#), arts. 1, **2(3)**

## Saving

13.—(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) A—

(i) began in good faith to do the act, or

(ii) made in good faith effective and serious preparations to do the act,

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 as a consequence of the provisions of this Order on or after its coming into force, 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.

(3) Where B or, as the case may be, B's exclusive licensee in respect of the relevant rights pays reasonable compensation to A, paragraph (2) no longer applies.

(4) Where—

(a) B or, as the case may be, B's exclusive licensee offers to pay compensation to A under paragraph (3), but

(b) A and B or, as the case may be, B's exclusive licensee cannot agree on what compensation is reasonable,

either person may refer the matter to arbitration.

(5) In this article—

(a) “exclusive licensee” means a licensee under an exclusive licence (as defined in section 92(1) or 191D(1) <sup>M6</sup>); and

(b) “relevant rights” means copyright, the rights conferred by Chapter 4 of Part 1 of the Act (moral rights) and the rights conferred by Part 2 of the Act.

### Marginal Citations

**M6** Section 191D was inserted by regulations 4 and 21(1) of the [Copyright and Related Rights Regulations 1996 \(S.I. 1996/2967\)](#).

**Changes to legislation:**

There are currently no known outstanding effects for the The Copyright and Performances (Application to Other Countries) Order 2016, PART 5.