
STATUTORY INSTRUMENTS

2016 No. 1219

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

PART 1

INTRODUCTORY

Citation, commencement, interpretation and revocation

1.—(1) This Order may be cited as the Copyright and Performances (Application to Other Countries) Order 2016 and comes into force on 6th April 2017.

(2) In this Order—

“the Act” means the Copyright, Designs and Patents Act 1988 and references to a numbered section are references to the section bearing that number in that Act;

“relevant country” means a country other than the United Kingdom, [^{F1}an EEA state], the Channel Islands, the Isle of Man or Gibraltar;

“WPPT” means the World Intellectual Property Organisation Performances and Phonograms Treaty adopted in Geneva on 20th December 1996 ^{M1}; and

“WTO” means the World Trade Organisation.

(3) The Copyright and Performances (Application to Other Countries) Order 2013 ^{M2} and the Copyright and Performances (Application to Other Countries) (Amendment) Order 2015 ^{M3} are revoked.

Textual Amendments

F1 Words in [reg. 1\(2\)](#) substituted (31.12.2020) by [The Intellectual Property \(Copyright and Related Rights\) \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/605\)](#), regs. 1(2), [33](#) (with [reg. 38](#)) (as amended by [S.I. 2020/1050](#), regs. 1(2), 4); 2020 c. 1, Sch. 5 para. 1(1)

Marginal Citations

M1 Cm. 3728.

M2 [S.I. 2013/536](#).

M3 [S.I. 2015/216](#).

PART 2

LITERARY, DRAMATIC, MUSICAL AND ARTISTIC WORKS, FILMS AND TYPOGRAPHICAL ARRANGEMENTS OF PUBLISHED EDITIONS

Restrictions on the application of Part 1 of the Act by virtue of section 159(1) to certain works first published before 1st June 1957

2.—(1) The application of Part 1 of the Act by virtue of section 159(1) (countries that are parties to the Berne Convention or WTO members) is subject to the restriction specified in paragraph (2).

[^{F2}(2) Paragraph 5(1) of Schedule 1 to the Act (copyright: transitional provisions and savings) does not apply in relation to a literary, dramatic, musical or artistic work first published before 1st June 1957 in so far as its application would otherwise prevent the work from qualifying for copyright protection under section 154 (qualification by reference to author).]

Textual Amendments

- F2** Art. 2(2) substituted (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), 3

PART 3

SOUND RECORDINGS

Restricted application of section 159(3) in relation to certain sound recordings

3.—(1) The application of Part 1 of the Act by virtue of section 159(3) (countries that are parties to the WPPT [^{F3}: sound recordings]) is subject to the [^{F4}restriction] set out in paragraph (2).

(2) Where a country is a party to the WPPT but not the Rome Convention^{M4}, Part 1 of the Act applies except that—

- (a) section 18A (infringement by rental or lending of work to the public)^{M5} does not apply in so far as it relates to lending;

^{F5}(b)

^{F6}(c)

Textual Amendments

- F3** Words in art. 3(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), 4(a)(i)
- F4** Word in art. 3(1) substituted (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), 4(a)(ii)
- F5** Art. 3(2)(b) 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), 4(b)

- F6** Art. 3(2)(c) 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), 4(b)

Marginal Citations

- M4** Cm.2425; “Rome Convention” is defined in section 159(9) of the Copyright, Designs and Patents Act 1988.
- M5** Section 18A was inserted by regulation 10(2) of the *Copyright and Related Rights Regulations 1996* (S.I. 1996/2967) and subsequently amended by paragraph 6(2) of Schedule 1 to the *Copyright and Related Rights Regulations 2003* (S.I. 2003/2498).

Sound recordings – application of Part 1 of the Act – parties to the Berne Convention and WTO Members

- 4.—(1) This article applies to a relevant country that—
- (a) is not a party to the Rome Convention or the WPPT; and
 - (b) satisfies either or both of the following criteria—
 - (i) the country is a party to the Berne Convention ^{M6}; and
 - (ii) the country is a member of the WTO.
- (2) Where this article applies to a country, Part 1 of the Act so far as it relates to sound recordings—
- (a) applies in relation to a person who is a citizen or subject of that country or a person domiciled or resident there as it applies in relation to a person who is a British citizen or is domiciled or resident in the United Kingdom,
 - (b) applies in relation to a body incorporated under the law of that country as it applies in relation to a body incorporated under the law of a part of the United Kingdom, and
 - (c) applies in relation to a sound recording first published in that country as it applies in relation to a sound recording first published the United Kingdom,
- (but see paragraph (3)).
- (3) The application of Part 1 of the Act by virtue of paragraph (2) is subject to the following modifications—
- (a) section 18A (infringement by rental or lending of work to the public) does not apply in so far as it relates to lending;
 - (b) the following provisions do not apply—
 - (i) section 19 (infringement by showing or playing of work in public) ^{M7};
 - (ii) section 20 (infringement by communication to the public);
 - (iii) section 26 (secondary infringement: provision of apparatus for infringing performance, &c); and
 - (iv) section 107(2A) and (3) (criminal liability for communicating to the public or playing sound recording) ^{M8}.

Marginal Citations

- M6** Cm. 1212; “Berne Convention” is defined in section 159(9) of the Copyright, Designs and Patents Act 1988.

Changes to legislation: There are currently no known outstanding effects for the The Copyright and Performances (Application to Other Countries) Order 2016. (See end of Document for details)

- M7** Section 19 was amended by paragraph 3(1) of Schedule 1 to the Copyright and Related Rights Regulations 2003.
- M8** Section 107(2A) was inserted by regulations 3 and 26(1)(a) of the Copyright and Related Rights Regulations 2003 and section 107(3) was amended by paragraph 9(2) of Schedule 1 to those Regulations.

Sound recordings – application of Part 1 of the Act – miscellaneous countries

5.—(1) This article applies to the countries listed in Part 1 of the Schedule to this Order.

(2) Where this article applies to a country, Part 1 of the Act so far as it relates to sound recordings—

- (a) applies in relation to a person who is a citizen or subject of that country or a person domiciled or resident there as it applies in relation to a person who is a British citizen or is domiciled or resident in the United Kingdom;
- (b) applies in relation to a body incorporated under the law of that country as it applies in relation to a body incorporated under the law of a part of the United Kingdom; and
- (c) applies in relation to a sound recording first published in that country as it applies in relation to a sound recording first published in the United Kingdom.

PART 4

BROADCASTS

Restrictions on the application of Part 1 of the Act to broadcasts

6.—(1) The application of Part 1 of the Act to broadcasts by virtue of section 159(2) is subject to the [^{F7}restriction specified in paragraph (3)].

^{F8}(2)

(3) Part 1 of the Act only applies by virtue of section 159(2) to a broadcast, which is not a wireless broadcast, where that broadcast is made from Switzerland.

Textual Amendments

- F7** Words in art. 6(1) substituted (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 \(S.I. 2024/193\)](#), art. 1(2), **5(1)(a)**
- F8** Art. 6(2) 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), **5(1)(b)**

Application of Part 1 of the Act under section 159(4) – WTO members

7.—(1) This article applies to a relevant country that is a member of the WTO but not a party to the Rome Convention.

(2) Where this article applies to a relevant country, Part 1 of the Act applies to a wireless broadcast in relation to that country in the manner set out in paragraph (4) subject to paragraph (3).

(3) The application of Part 1 of the Act by virtue of paragraph (2) is subject to the following modifications—

- (a) section 18A (infringement by rental of work to the public) does not apply;
 - (b) section 19 (infringement by showing or playing the work in public) only applies in relation to television broadcasts;
 - (c) section 20 (infringement by communication to the public) only applies in relation to broadcasting by wireless telegraphy;
 - (d) section 26 (secondary infringement: provision of apparatus for infringing performance, &c) [^{F9}only applies in relation] to television broadcasts;
 - (e) section 107(2A) (criminal liability for communicating to the public) only applies in relation to broadcasting by wireless telegraphy; ^{F10}...
 - ^{F10}(f)
- (4) Part 1 of the Act applies in relation to—
- (a) a person who is a citizen or subject of a relevant country or a person domiciled or resident there as it applies in relation 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 it applies in relation to a body incorporated under the law of a part of the United Kingdom; and
 - (c) a wireless broadcast made from that country as it applies in relation to a wireless broadcast made from the United Kingdom.

Textual Amendments

- F9** Words in art. 7(3)(d) substituted (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), **5(2)(a)**
- F10** Art. 7(3)(f) and word 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), **5(2)(b)**

Application of Part 1 of the Act under section 159(4) – miscellaneous countries

8.—^{F11}(1) This paragraph applies to a member State, Indonesia, Singapore, South Korea, Ukraine, Norway, Iceland, Liechtenstein, Australia and New Zealand.]

^{F12}(2) This paragraph applies to [^{F13}Malta], Hong Kong, Indonesia, Malawi, Malaysia, Singapore and New Zealand.]

(3) Where paragraph (1) applies to a country, Part 1 of the Act applies to a broadcast which is not a wireless broadcast in relation to that country in the manner set out in paragraph (5)(a), (b) and (d).

(4) Where paragraph (2) applies to a country, Part 1 of the Act applies to a wireless broadcast in relation to that country in the manner set out in paragraph (5)(a), (b) and (c) subject to paragraph (6).

(5) Part 1 of the Act applies in relation to—

- (a) a person who is a citizen or subject of that country or a person domiciled or resident there as it applies in relation 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 that country as it applies in relation to a body incorporated under the law of a part of the United Kingdom;
- (c) a wireless broadcast made from that country as it applies in relation to a wireless broadcast made from the United Kingdom; and

- (d) a broadcast which is not a wireless broadcast made from that country as it applies in relation to a broadcast which is not a wireless broadcast made from the United Kingdom.
- (6) Part 1 of the Act only applies to a wireless broadcast made on or after 1st June 1957 or, in the case of Malawi, on or after 22nd June 1989.

Textual Amendments

- F11** Art. 8(1) substituted (15.4.2023) by [The Copyright and Performances \(Application to Other Countries\) \(Amendment\) Order 2023 \(S.I. 2023/296\)](#), arts. 1, **2(2)(a)**
- F12** Art. 8(2) substituted (15.4.2023) by [The Copyright and Performances \(Application to Other Countries\) \(Amendment\) Order 2023 \(S.I. 2023/296\)](#), arts. 1, **2(2)(b)**
- F13** Word in art. 8(2) substituted (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), **5(3)**

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 [^{F14}, other than Australia, Japan and Viet Nam,] which is a party to the Rome Convention^{M9} 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^{M10}, 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

- F14** 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

- M9** Cm. 2425; “Rome Convention” is defined in section 206(6) of the Copyright, Designs and Patents Act 1988.
- M10** “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

^{F15}10.

Textual Amendments

F15 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;

^{F16}(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) [^{F17}, in so far as it relates to an infringement under section 187].

(4) Where a country to which this article applies [^{F18}, 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

F16 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)**

F17 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)**

F18 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) ^{M11};
 - (iii) section 182D (right to equitable remuneration for exploitation of sound recording) ^{M12};
 - (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) ^{M13}.

Marginal Citations

M11 Section 182CA was inserted by regulation 7(1) of the [Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#).

M12 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 \(S.I. 2013/1782\)](#).

M13 Section 198(1A) was inserted by regulations 3 and 26(3)(a) of the [Copyright and Related Rights Regulations 2003](#).

^{F19} 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

F19 [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) ^{M14}); 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

M14 Section 191D was inserted by regulations 4 and 21(1) of the [Copyright and Related Rights Regulations 1996 \(S.I. 1996/2967\)](#).

Ceri King
Deputy Clerk of the Privy Council

Changes to legislation:

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