

**EXPLANATORY MEMORANDUM TO  
THE EUROPEAN COMMUNITIES (DEFINITION OF TREATIES) (WIPO  
COPYRIGHT TREATY AND WIPO PERFORMANCES AND PHONOGRAMS  
TREATY) ORDER 2005**

**2005 No.3431**

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.
2. **Description**
  - 2.1 This Order specifies the WIPO Copyright Treaty (“WCT”) and the WIPO Performances and Phonograms Treaty (“WPPT”) as Community Treaties for the purposes of the European Communities Act 1972 (“the 1972 Act”).
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None, but a separate memorandum was sent to that Committee for their assistance.
4. **Legislative background**
  - 4.1 This Order is made under section 1 of the 1972 Act.
5. **Extent**
  - 5.1 This instrument extends to all of the United Kingdom.
6. **European Convention on Human Rights**

The Minister, Lord Sainsbury of Turville, made the following statement regarding Human Rights: in my view the provisions of the draft European Communities (Definition of Treaties) (WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty) Order 2005 are compatible with the Convention rights.
7. **Policy Background**
  - 7.1 The matters covered by the WCT and WPPT are partly within the competence of the European Community; by virtue of Community law on certain aspects of copyright, record producers’ and performers’ rights; and partly within the competence of member States. Indeed, both the Community and member States participated in the negotiations that led to the adoption of the WCT and WPPT. These treaties provide that inter-governmental organisations may, under certain conditions, become parties, and the European Community meets those conditions.
  - 7.2 The matters within the competence of the Community were incorporated in Directive 2001/29/EC of the European Parliament and of the Council on the harmonisation of certain aspects of copyright and related rights in the information society (“the Directive”). The Directive was implemented into

UK law by the Copyright and Related Rights Regulations 2003 (SI 2003/2498), which amended the Copyright, Designs and Patents Act 1988 (“the 1988 Act”). Although the implementation of the Directive meant that UK law complied with the requirements of the WCT, certain obligations under the WPPT were not included in the Directive. In particular, there are no provisions in the Directive (or in UK law) for the protection of performers’ moral rights.

- 7.3 Therefore it is proposed, following the specification of the WCT and WPPT, to make further regulations under section 2(2) of the 1972 Act to amend the 1988 Act. These Regulations will come into force on 1<sup>st</sup> February 2006 and complete the implementation of the WPPT.

## **8. Impact**

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument. However, the specification of the treaties would not, of itself, have any impact on business, charities or voluntary bodies. An RIA will accompany the Regulations mentioned in the preceding paragraph.

## **9. Contact**

Karl Whitfield at the Patent Office: tel: 01633 814734 or e-mail [karl.whitfield@patent.gov.uk](mailto:karl.whitfield@patent.gov.uk) can answer any questions on the Order.

***Lord Sainsbury***

Lord Sainsbury  
Parliamentary Under-Secretary of State  
For Science and Innovation

***12<sup>th</sup> October 2005***

Date

