
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 2008 (“the 2008 Order”) and the Copyright and Performances (Application to Other Countries) (Amendment) Order 2009 (article 1(3)).

Changes from the 2008 Order include the following:

- 1) protection is given to literary, dramatic, musical and artistic works originating from Yemen following its accession to the Berne Convention;
- 2) the protection given to sound recordings originating from Bosnia and Herzegovina, Liberia, the Republic of Korea and Tajikstan is modified following their accession to the Rome Convention;
- 3) the protection following accession to the World Intellectual Property Organisation Performances and Phonograms Treaty (WPPT) is granted to Trinidad and Tobago, Morocco and Saint Vincent and the Grenadines;
- 4) protection resulting from accession to the Agreement establishing the World Trade Organisation (including the Agreement on Trade-Related Aspects of Intellectual Property Rights) (WTO TRIPS) is granted to Saudi Arabia.

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 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 set out in article 4(1), in so far as they relate to sound recordings, do not apply in relation to that country.

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 including a minus sign (-) next to the word “deemed” 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).

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, unless the sound recording in question has been first published in a country (other than the UK) 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 country has declared it will restrict the application of the provisions of Article 15(1) WPPT. 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.