

**EXPLANATORY MEMORANDUM TO
THE COPYRIGHT AND PERFORMANCES (APPLICATION TO OTHER
COUNTRIES) ORDER) 2013**

2013/536

1. This Explanatory Memorandum has been prepared by the Intellectual Property Office, an Executive Agency of the Department of Business, Innovation and Skills, and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the Instrument**
 - 2.1 For the purposes of the Copyright, Designs and Patents Act 1988 (CDPA) this instrument grants protection to certain copyright works originating in other countries. In addition to those that appear on previous orders we are updating the schedule to include and amend entries for Vanuatu, Ghana, Lao People`s Democratic Republic, Samoa and Malaysia. We are also making minor changes to clarify the scope of protection extended in specific areas to certain countries.
 - 2.2 Powers under section 2(2) of the European Communities Act 1972 have been used to implement obligations arising from the Agreement establishing the World Trade Organisation (WTO), in particular the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the World Intellectual Property Office (WIPO) Performances and Phonograms Treaty (WPPT) and the Convention for the Protection of Literary and Artistic Works (Berne). These treaties have been specified as Union Treaties under section 1(3) of the European Communities Act 1972 (as amended).
3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None
4. **Legislative Context**
 - 4.1 This instrument is being made under sections 159 and 208 of the Copyright, Designs, and Patent Act 1988 and section 2(2) of the European Communities Act 1972.
 - 4.2 Vanuatu receives protection for literary, dramatic, musical, and artistic works originating in that country following its accession on 27 December 2012 to the “Berne Convention”.
 - 4.3 Protection resulting from accession to the WPPT has been extended to Malaysia on accession on 27 December 2012 and Ghana 16 February 2013.
 - 4.4 Other protection is extended to Vanuatu, Samoa and Lao People`s Democratic Republic who became members of the WTO and the TRIPS Agreement on 24 August 2012, 10 May 2012, and 2 February 2013 respectively.

- 4.5 Minor changes have been made to the Order to clarify that certain provisions of Part II of the CDPA are not extended to countries who are members of the Rome Convention and/or WPPT, but who have made specific declarations under the respective treaties except where there is evidence that those countries provide adequate protection to British nationals and works.

5. Territorial Extent and Application

- 5.1 This instrument extends to all of the United Kingdom.
- 5.2 This instrument does not extend to the Channel Islands or the Isle of Man. However, the Order does apply in relation to copyright works originating in Jersey or the Isle of Man and the relevant authorities for the Isle of Man have been informed of this instrument.

6. European Convention on Human Rights

- 6.1 As this instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The protection afforded by copyright and the rights granted to performance under the CDPA, extends only to the borders of the United Kingdom. A British copyright work is only protected in a foreign country if that country *agrees* to protect it.
- 7.2 To ensure that the works of authors, performers, producers and broadcasters are protected outside their country of origin a number of international conventions have been adopted.
- 7.3 In the UK the protection granted to works (including performances) depends on the nationality (or habitual residence) of the author or performer or the place of first publication or first broadcast of the work. This instrument extends UK copyright protection to foreign works and performances according to the United Kingdom's international treaty obligations.
- 7.4 Not all copyright protection extended to works originating in other countries is derived from membership of international treaties. In some cases it is extended where other countries provide adequate protection under their own laws for British works.
- 7.5 The instruments are constantly reviewed and are amended on the common commencement dates in April and October. On this occasion the Copyright and Performances (Application to other Countries) Order 2012 and the Copyright and Performances (Application to Other Countries) (Amendment) Order 2012 will be revoked by and consolidated in the Copyright and Performances (Application to Other Countries) Order 2013. A copy will be made available on the website of the Intellectual Property Office.

8. Consultation Outcome

8.1 The Department has held informal discussions with the key affected stakeholders on the contents of this Order. No formal public consultation has been conducted as the changes made by this instrument are directly related to the United Kingdom's existing international obligations.

9. Guidance

9.1 Guidance will not be available.

10. Impact

10.1 An impact assessment has not been prepared.

11. Regulating Small Business

11.1 The legislation does not apply to small business and has no direct impact on UK business.

11.2 There is no need to minimise the impact requirements on small firms employing up to 20 people because the changes confirm the protection for copyright and performances granted to rights holders in other member states that they would already expect to receive.

12. Monitoring and Review

12.1 We now meet our international obligations to protect certain copyright works from Samoa, Vanuatu, Lao People`s Democratic Republic and Ghana.

12.2 The Intellectual Property Office reviews and updates its Orders in Council to grant reciprocity for copyright works and performances as required i.e. whenever a country signs up to a relevant treaty or convention.

13. Contact

13.1 Linda Taylor at the Intellectual Property Office, an executive agency of the Department of Business, Innovation and Skills, can answer any queries regarding the instrument. Contact: 01633 814906 and e-mail: linda.taylor@ipo.gov.uk