

**EXPLANATORY MEMORANDUM TO**  
**THE COPYRIGHT AND PERFORMANCES (APPLICATION TO OTHER**  
**COUNTRIES) (AMENDMENT) ORDER 2024**

**2024 No. 193**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by The Intellectual Property Office, an Executive Agency of the Department for Science, Innovation and Technology, and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Declaration**

- 2.1 Viscount Camrose, Parliamentary Under Secretary of State (Minister for AI and Intellectual Property) at the Department for Science, Innovation and Technology confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Chris Mills, Director of Rights Policy and Enforcement at the Intellectual Property Office, confirms that this Explanatory Memorandum meets the required standard.

**3. Contact**

- 3.1 David Burns at the Intellectual Property Office, telephone: 01633 811445 or email: david.burns@ipo.gov.uk, can be contacted with any queries regarding the instrument.

**Part One: Explanation, and context, of the Instrument**

**4. Overview of the Instrument**

*What does the legislation do?*

- 4.1 This instrument extends eligibility for certain rights in UK copyright law to certain foreign nationals, in order to implement requirements in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (to enable the UK to accede to CPTPP) and obligations in other treaties on copyright and rights in performances. It does so by removing some of the existing restrictions in UK law on how these rights are extended to foreign nationals.
- 4.2 This will mean more foreign nationals will be eligible under UK law for rights to control how others use their copyright works (such as books and music) and performances, or to receive remuneration for such uses.
- 4.3 These changes will only affect limited classes of works and performances (e.g., works originating from particular countries or works that were made before a certain date), and the impacts of the additional protections that this instrument will confer are expected to be small.
- 4.4 This instrument also corrects an error in the 2016 Order.

*Where does the legislation extend to, and apply?*

- 4.5 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is all of the United Kingdom.

4.6 The territorial application of this instrument (that is, where the instrument produces a practical effect) is all of the United Kingdom.

## 5. Policy Context

### *What is being done and why?*

- 5.1 The government intends for the UK to accede to CPTPP. Before we do so, we must ensure that UK law is consistent with the requirements of that agreement.
- 5.2 The intellectual property (IP) chapter of CPTPP requires parties to provide minimum standards of IP protection in their domestic law and specifies to whom parties must provide these protections. Similar obligations exist in the multilateral treaties on copyright and rights in performances to which the UK is party.
- 5.3 UK copyright law already provides the rights specified in the CPTPP and makes them available to certain foreign nationals. But it does not do so on the exact terms set out in CPTPP or, in some cases, the other treaties.
- 5.4 This results in situations where some creators or performers who qualify for rights under CPTPP or other relevant treaties do not enjoy those rights under UK law. These inconsistencies between UK and international law need to be resolved before the UK accedes to CPTPP, to ensure the UK is meeting its international obligations.
- 5.5 This instrument amends existing secondary legislation (the Copyright and Performances (Application to Other Countries) Order 2016, “the 2016 Order”) to enable certain copyright works and performances from CPTPP parties or certain other countries to qualify for certain protections that weren’t previously available.
- 5.6 This involves several changes to the 2016 Order. In particular, it means changes to protection for the following types of copyright work and performance:
- 5.7 **Literary, dramatic, musical and artistic works first published before 1 June 1957.** Previously, these works (which include books, musical compositions, screenplays, and works of visual art) were only eligible for protection if they were first published (or simultaneously published) in a country that is a member of a relevant treaty on copyright. If a work published before 1 June 1957 was not first published in such a country, the work was not eligible for protection in UK law, even if the creator of the work was a national of such a country. This instrument amends the 2016 Order so that these works can qualify for protection if the creator was a national of such a country. This could mean some works becoming newly eligible for copyright protection in the UK. However, this likely affects only a small class of works. The vast majority of countries are members of at least one of the relevant treaties on copyright, meaning the previous restriction is unlikely to have affected many works. Additionally, the copyright in some pre-1957 works would by now have expired in the UK, in which cases these changes are of no effect.
- 5.8 **Certain older broadcasts.** Currently, some older broadcasts from other countries do not qualify for copyright in UK, for example, if they were made before the other country joined a relevant treaty. This instrument will remove certain restrictions on qualification for protection relating to when a broadcast was made. This will mean some older broadcasts will become newly eligible for copyright protection in the UK.
- 5.9 **Sound recordings from certain countries.** UK law provides producers of sound recordings (such as record labels that produce recorded music) the right to control the broadcasting of their sound recordings. They can use this right to secure licensing fees from those who wish to broadcast their recordings. Most foreign sound recordings

already qualify for this right, but some do not. This instrument expands eligibility for this right to some additional foreign nationals. This is unlikely to result in any significant practical impacts because most or all recorded music that is broadcast in the UK already qualifies for this right.

5.10 **Performances from certain CPTPP Parties.** UK law provides performers (such as musicians and actors) with a range of rights. This includes the right to be paid ‘equitable remuneration’ when sound recordings of their performances are broadcast or played in public in the UK. That remuneration is paid by the owner of the recording (such as a record label). Under UK law as it is expected to be amended by the Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Bill (“the CPTPP Bill”), a performer will qualify for this right if they are a national or resident of, or they give their performance in, or the sound recording is first or simultaneously published in, or the producer of the sound recording is a national or resident of, or a body incorporated under the law of, the UK or another country that provides equivalent protection to UK performers in its domestic law. This instrument adds certain CPTPP Parties to this list of countries. This may lead to some performers becoming newly eligible for this right, and therefore to additional remuneration from the owners of the recordings of their performances, in future. However, the practical impacts of this are likely to be small as most performers whose performances are broadcast or played in the UK will, by virtue of the changes in the CPTPP Bill, qualify for this right in UK law once that Bill takes effect, regardless of this instrument.

5.11 These changes are being made in order to bring UK law into line with the requirements of the CPTPP (and therefore to enable the UK to accede to the CPTPP) and of the multilateral treaties on copyright and rights in performances.

*What was the previous policy, how is this different?*

5.12 The previous policy in this area was to extend or restrict the availability of rights under UK law for certain works and performances from other countries in line with the UK’s obligations in relation to such countries under the multilateral treaties and trade agreements. The 2016 Order is updated regularly as necessary to achieve this, such as when the UK joins a new trade agreement.

5.13 This instrument is being made to implement the obligations in CPTPP and to resolve certain inconsistencies between UK law and the treaties on copyright and rights in performances. This instrument therefore represents a continuation of existing policy, rather than a change to policy.

## **6. Legislative and Legal Context**

*How has the law changed?*

6.1 The UK is party to several multilateral treaties on copyright and rights in performances. These treaties require member countries to provide minimum standards of protection to copyright works (such as films, music, and books) or performances from other member countries. These treaties include:

- The Berne Convention for the Protection of Literary and Artistic Works;
- The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the Rome Convention);
- The WIPO (World Intellectual Property Organization) Copyright Treaty (WCT);
- The WIPO Performances and Phonograms Treaty (WPPT); and

- The WTO (World Trade Organization) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).
- 6.2 The UK is also party to several bilateral and plurilateral trade agreements. Many of these replicate, and in some cases go further than, the obligations in the multilateral treaties. These trade agreements require the UK to provide certain levels of protection to works and performances from trading partners.
  - 6.3 These trade agreements will soon include the CPTPP, to which the UK is in the process of acceding. When the CPTPP enters into force for the UK, it will require the UK to provide protections to copyright works and performances that qualify for protection under the provisions of the CPTPP.
  - 6.4 In the UK, protection for foreign works and performances is provided for by Parts 1 and 2 of the Copyright, Designs and Patents Act 1988 (“the CDPA”) and the 2016 Order. Under the CDPA and the 2016 Order, foreign works and performances are given full, limited, or no protection, based generally on whether and how the country of origin of the work or performance has implemented a relevant treaty.
  - 6.5 The CDPA confers protection on foreign nationals if they meet specified eligibility criteria (e.g., if they are a national of a country that is party to a specified copyright treaty to which the UK is also party).
  - 6.6 The 2016 Order further extends or restricts protection in certain cases (e.g., to restrict the protection extended to a country that does not provide equivalent copyright protection to UK nationals). This currently includes restrictions applied to some CPTPP countries that are inconsistent with the requirements of CPTPP, as well as some restrictions that are inconsistent with other treaties to which the UK is party.
  - 6.7 This instrument amends the 2016 Order to ensure CPTPP countries are treated in accordance with CPTPP and to resolve inconsistencies between UK law and other UK international obligations.
  - 6.8 The changes referred to in Section 5.7 relating to certain works published before 1 June 1957 are implemented through amendments to Article 2 of the 2016 Order, made by Article 3 of the present instrument.
  - 6.9 The changes relating to certain sound recordings are implemented through amendments to Article 3 of the 2016 Order, made by Article 4 of the present instrument.
  - 6.10 The changes relating to broadcasts are implemented through amendments to Articles 6 to 8 of the 2016 Order, made by Article 5 of the present instrument.
  - 6.11 The changes relating to performances are implemented through amendments to Articles 9 and 11 of the 2016 Order, made by Article 6 of the present instrument.
  - 6.12 The present instrument also makes some further minor changes. The 2016 Order applies certain restrictions to the protection extended to performances from countries which are not party to the Rome Convention. This is done by reference to a list of countries in Part 2 of the Schedule to the 2016 Order. That list must be updated as countries join a relevant treaty. Article 6 of this instrument will remove a number of countries from this list that are party to the Rome Convention.
  - 6.13 Article 6 of this instrument also revokes Article 10 of the 2016 Order. This Article was defective and did not have any practical effect. This correction is being done to ensure the legislation is clear and effective.

- 6.14 These changes are being made using powers in sections 159, 206 and 208 of the CDPA. Section 206 of the CDPA is expected to be amended by the CPTPP Bill to insert an additional power into section 206 (but this instrument does not rely on this new power).

*Why was this approach taken to change the law?*

- 6.15 This approach is necessary to bring UK law into line with the requirements of CPTPP and other relevant treaties. Not making these changes to the legislation would mean that some copyright works and performances from other countries would not be eligible for rights under UK law to which they should be entitled under CPTPP or the other treaties. In that case the UK could not accede to CPTPP without being in breach of its obligations under that agreement.

## **7. Consultation**

*Summary of consultation outcome and methodology*

- 7.1 No consultation has been carried out for this instrument because it makes changes that are necessary to comply with the requirements of CPTPP and other treaties on copyright and rights in performances. There is little flexibility in how we implement those requirements, and it would therefore not be appropriate to consult publicly on them. Additionally, we expect any impacts of the changes to be minimal.

## **8. Applicable Guidance**

- 8.1 The Intellectual Property Office maintains guidance on gov.uk on the protection of foreign works and performances in UK copyright law. This guidance will be updated to reflect this instrument before its entry into force.

## **Part Two: Impact and the Better Regulation Framework**

## **9. Impact Assessment**

- 9.1 A full Impact Assessment has not been prepared for this instrument because the impacts are expected to be minimal and fall below the de minimis threshold.

*Impact on businesses, charities and voluntary bodies*

- 9.2 There is no, or no significant, impact on business, charities or voluntary bodies. These changes will only affect limited classes of copyright works and performances. We expect those works and performances to be of limited economic or commercial significance in the UK. As such, providing the creators and performers with additional rights to control how their works or performances are used, or to be remunerated for such uses, is unlikely to result in any significant impacts on the owners or any other party.
- 9.3 The legislation does impact small or micro businesses. No specific action is proposed to minimise the impact of the requirements on small or micro businesses because the impact of the instrument on such businesses is expected to be minimal.
- 9.4 There is no, or no significant, impact on the public sector for the same reasons as set out in paragraphs 9.2 and 9.3.

## **10. Monitoring and review**

### *What is the approach to monitoring and reviewing this legislation?*

- 10.1 The Intellectual Property Office will keep the amended 2016 Order under review, both in relation to its consistency with the requirements of the treaties on copyright and rights in performances (for example, as and when new countries join those treaties) and the impacts of the legislation on creators, performers, users of copyright works and performances, and consumers.
- 10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Viscount Camrose has made the following statement: It is not appropriate in the circumstances to make provision for review as, taking into account the economic impact of this provision, a review would be disproportionate.

## **Part Three: Statements and Matters of Particular Interest to Parliament**

## **11. Matters of special interest to Parliament**

### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 11.1 Article 6(2) of this instrument corrects an error in S.I. 2016/1219 and so (following consultation with the S.I. Registrar) this instrument will be issued free of charge to all known recipients of that Statutory Instrument.

## **12. European Convention on Human Rights**

- 12.1 The Parliamentary Under Secretary of State (Minister for AI and Intellectual Property) has made the following statement regarding Human Rights:  
“In my view, the provisions of the Copyright and Performances (Application to Other Countries) (Amendment) Order 2024 are compatible with the Convention rights.”

## **13. The Relevant European Union Acts**

- 13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).