

1995 No. 3297 COPYRIGHT RIGHTS IN PERFORMANCES

The Duration of Copyright and Rights in Performances Regulations 1995

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Whereas a draft of the following Regulations has been approved by resolution of each House of Parliament:
Now, therefore, the Secretary of State, being a Minister designated¹ for the purposes of section 2(2) of the European Communities Act 1972² in relation to measures relating to the protection of copyright and rights in performances, in exercise of powers conferred by section 2(2) and (4) of the said Act of 1972, hereby makes the following Regulations:—

PART I INTRODUCTORY PROVISIONS

Citation, commencement and extent

1.—

- (1) These Regulations may be cited as the Duration of Copyright and Rights in Performances Regulations 1995.
- (2) These Regulations come into force on 1st January 1996.
- (3) These Regulations extend to the whole of the United Kingdom.

Interpretation

2. In these Regulations—

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992³, as adjusted by the Protocol signed at Brussels on 17th March 1993⁴; and
“EEA state” means a state which is a contracting party to the EEA Agreement.

Implementation of Directive, &c.

3. These Regulations make provision for the purpose of implementing—

- (a) the main provisions of Council Directive No. 93/98/EEC of 29th October 1993⁵ harmonizing the term of protection of copyright and certain related rights; and
- (b) certain obligations of the United Kingdom created by or arising under the EEA Agreement so far as relevant to the implementation of that Directive.

¹ S.I. 1993/595.

² 1972 c. 68; by virtue of the amendment of section 1(2) of that Act by section 1 of the European Economic Area. Act 1993 (c.51) regulations may be made under section 2(2) to implement obligations of the United Kingdom arising under the EEA Agreement.

³ Cm 2073.

⁴ CM 2183.

⁵ O.J. No. L290, 24.11.93, p.9.

Scheme of the regulations

4. The Copyright, Designs and Patents Act 1988⁶ is amended in accordance with the provisions of Part II of these Regulations, subject to the savings and transitional provisions in Part III of these Regulations.

PART II AMENDMENTS OF THE COPYRIGHT, DESIGNS AND PATENTS ACT 1988

Copyright

Duration of copyright in literary, dramatic, musical or artistic works

5.—

(1) For section 12 (duration of copyright in literary, dramatic, musical or artistic works) substitute—

“Duration of copyright in literary, dramatic, musical or artistic works.

12.—

(1) The following provisions have effect with respect to the duration of copyright in a literary, dramatic, musical or artistic work.

(2) Copyright expires at the end of the period of 70 years from the end of the calendar year in which the author dies, subject as follows.

(3) If the work is of unknown authorship, copyright expires—

- (a) at the end of the period of 70 years from the end of the calendar year in which the work was made, or
- (b) if during that period the work is made available to the public, at the end of the period of 70 years from the end of the calendar year in which it is first so made available,

subject as follows.

(4) Subsection (2) applies if the identity of the author becomes known before the end of the period specified in paragraph (a) or (b) of subsection (3).

(5) For the purposes of subsection (3) making available to the public includes—

- (a) in the case of a literary, dramatic or musical work—
 - (i) performance in public, or
 - (ii) being broadcast or included in a cable programme service;
- (b) in the case of an artistic work—
 - (i) exhibition in public,
 - (ii) a film including the work being shown in public, or
 - (iii) being included in a broadcast or cable programme service;

but in determining generally for the purposes of that subsection whether a work has been made available to the public no account shall be taken of any unauthorised act.

(6) Where the country of origin of the work is not an EEA state and the author of the work is not a national of an EEA state, the duration of copyright is that to which the work is

⁶ 1988 c. 48.

entitled in the country of origin, provided that does not exceed the period which would apply under subsections (2) to (5).

(7) If the work is computer-generated the above provisions do not apply and copyright expires at the end of the period of 50 years from the end of the calendar year in which the work was made.

(8) The provisions of this section are adapted as follows in relation to a work of joint authorship—

(a) the reference in subsection (2) to the death of the author shall be construed—

(i) if the identity of all the authors is known, as a reference to the death of the last of them to die, and

(ii) if the identity of one or more of the authors is known and the identity of one or more others is not, as a reference to the death of the last whose identity is known;

(b) the reference in subsection (4) to the identity of the author becoming known shall be construed as a reference to the identity of any of the authors becoming known;

(c) the reference in subsection (6) to the author not being a national of an EEA state shall be construed as a reference to none of the authors being a national of an EEA state.

(9) This section does not apply to Crown copyright or Parliamentary copyright (see sections 163 to 166) or to copyright which subsists by virtue of section 168 (copyright of certain international organisations).”.

(2) In section 57 (anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author), in subsection (1)(b)(ii) and subsection (2)(b) for “50 years” substitute “70 years”.

(3) In section 154 (qualification for copyright protection by reference to author), in subsection (3) for the paragraph referring to provisions of section 12 substitute—

“section 12 (duration of copyright), and section 9(4) (meaning of “unknown authorship”) so far as it applies for the purposes of section 12, and”.

Duration of copyright in sound recordings and films

6.—

(1) For section 13 (duration of copyright in sound recordings and films) substitute—

“Duration of copyright in sound recordings.

13A.—

(1) The following provisions have effect with respect to the duration of copyright in a sound recording.

(2) Copyright expires—

(a) at the end of the period of 50 years from the end of the calendar year in which it is made, or

(b) if during that period it is released, 50 years from the end of the calendar year in which it is released;

subject as follows.

(3) For the purposes of subsection (2) a sound recording is “released” when it is first published, played in public, broadcast or included in a cable programme service; but in determining whether a sound recording has been released no account shall be taken of any unauthorised act.

(4) Where the author of a sound recording is not a national of an EEA state, the duration of copyright is that to which the sound recording is entitled in the country of which the

author is a national, provided that does not exceed the period which would apply under subsections (2) and (3).

(5) If or to the extent that the application of subsection (4) would be at variance with an international obligation to which the United Kingdom became subject prior to 29th October 1993, the duration of copyright shall be as specified in subsections (2) and (3).

Duration of copyright in films.

13B.—

(1) The following provisions have effect with respect to the duration of copyright in a film.

(2) Copyright expires at the end of the period of 70 years from the end of the calendar year in which the death occurs of the last to die of the following persons—

- (a) the principal director,
- (b) the author of the screenplay,
- (c) the author of the dialogue, or
- (d) the composer of music specially created for and used in the film; subject as follows.

(3) If the identity of one or more of the persons referred to in subsection (2)(a) to (d) is known and the identity of one or more others is not, the reference in that subsection to the death of the last of them to die shall be construed as a reference to the death of the last whose identity is known.

(4) If the identity of the persons referred to in subsection (2)(a) to (d) is unknown, copyright expires at—

- (a) the end of the period of 70 years from the end of the calendar year in which the film was made, or
- (b) if during that period the film is made available to the public, at the end of the period of 70 years from the end of the calendar year in which it is first so made available.

(5) Subsections (2) and (3) apply if the identity of any of those persons becomes known before the end of the period specified in paragraph (a) or (b) of subsection (4).

(6) For the purposes of subsection (4) making available to the public includes—

- (a) showing in public, or
- (b) being broadcast or included in a cable programme service;

but in determining generally for the purposes of that subsection whether a film has been made available to the public no account shall be taken of any unauthorised act.

(7) Where the country of origin is not an EEA state and the author of the film is not a national of an EEA state, the duration of copyright is that to which the work is entitled in the country of origin, provided that does not exceed the period which would apply under subsections (2) to (6).

(8) In relation to a film of which there are joint authors, the reference in subsection (7) to the author not being a national of an EEA state shall be construed as a reference to none of the authors being a national of an EEA state.

(9) If in any case there is no person falling within paragraphs (a) to (d) of subsection (2), the above provisions do not apply and copyright expires at the end of the period of 50 years from the end of the calendar year in which the film was made.

(10) For the purposes of this section the identity of any of the persons referred to in subsection (2)(a) to (d) shall be regarded as unknown if it is not possible for a person to ascertain his identity by reasonable inquiry; but if the identity of any such person is once known it shall not subsequently be regarded as unknown.”.

- (2) In Chapter III of Part I (acts permitted in relation to copyright works), after section 66 insert—

“Miscellaneous: films and sound recordings

Films: acts permitted on assumptions as to expiry of copyright, &c.

66A.—

(1) Copyright in a film is not infringed by an act done at a time when, or in pursuance of arrangements made at a time when—

- (a) it is not possible by reasonable inquiry to ascertain the identity of any of the persons referred to in section 13B(2)(a) to (d) (persons by reference to whose life the copyright period is ascertained), and
- (b) it is reasonable to assume—
 - (i) that copyright has expired, or
 - (ii) that the last to die of those persons died 70 years or more before the beginning of the calendar year in which the act is done or the arrangements are made.

(2) Subsection (1)(b)(ii) does not apply in relation to—

- (a) a film in which Crown copyright subsists, or
- (b) a film in which copyright originally vested in an international organization by virtue of section 168 and in respect of which an Order under that section specifies a copyright period longer than 70 years.”.

(3) In section 79(4), 81(5) and 85(2) (exceptions to moral rights: acts which would not infringe copyright) for “section 57 (anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author)” substitute “section 57 or 66A (acts permitted on assumptions as to expiry of copyright, &c.)”.

(4) In section 105(2) (presumptions relevant to films), after paragraph (a) insert—

“(aa) that a named person was the principal director, the author of the screenplay, the author of the dialogue or the composer of music specifically created for and used in the film,”.

Duration of copyright in broadcasts and cable programmes

7.—

(1) For section 14 (duration of copyright in broadcasts and cable programmes) substitute—

“Duration of copyright in broadcasts and cable programmer.

14.—

(1) The following provisions have effect with respect to the duration of copyright in a broadcast or cable programme.

(2) Copyright in a broadcast or cable programme expires at the end of the period of 50 years from the end of the calendar year in which the broadcast was made or the programme was included in a cable programme service, subject as follows.

(3) Where the author of the broadcast or cable programme is not a national of an EEA state, the duration of copyright in the broadcast or cable programme is that to which it is entitled in the country of which the author is a national, provided that does not exceed the period which would apply under subsection (2).

(4) If or to the extent that the application of subsection (3) would be at variance with an international obligation to which the United Kingdom became subject prior to 29th October 1993, the duration of copyright shall be as specified in subsection (2).

(5) Copyright in a repeat broadcast or cable programme expires at the same time as the copyright in the original broadcast or cable programme; and accordingly no copyright arises in respect of a repeat broadcast or cable programme which is broadcast or included in a cable

programme service after the expiry of the copyright in the original broadcast or cable programme.

(6) A repeat broadcast or cable programme means one which is a repeat either of a broadcast previously made or of a cable programme previously included in a cable programme service.”.

(2) In the closing words of paragraph 9 of Schedule 1 (repeats of pre-1957 broadcasts and pre-1985 cable programmes) for “section 14(2)” substitute “section 14(5)”.

Meaning of country of origin

8.—

(1) In Chapter I of Part I (subsistence, ownership and duration of copyright), after section 15 insert—

“Meaning of country of origin.

15A.—

(1) For the purposes of the provisions of this Part relating to the duration of copyright the country of origin of a work shall be determined as follows.

(2) If the work is first published in a Berne Convention country and is not simultaneously published elsewhere, the country of origin is that country.

(3) If the work is first published simultaneously in two or more countries only one of which is a Berne Convention country, the country of origin is that country.

(4) If the work is first published simultaneously in two or more countries of which two or more are Berne Convention countries, then—

- (a) if any of those countries is an EEA state, the country of origin is that country; and
- (b) if none of those countries is an EEA state, the country of origin is the Berne Convention country which grants the shorter or shortest period of copyright protection.

(5) If the work is unpublished or is first published in a country which is not a Berne Convention country (and is not simultaneously published in a Berne Convention country), the country of origin is—

- (a) if the work is a film and the maker of the film has his headquarters in, or is domiciled or resident in a Berne Convention country, that country;
- (b) if the work is—
 - (i) a work of architecture constructed in a Berne Convention country, or
 - (ii) an artistic work incorporated in a building or other structure situated in a Berne Convention country,

that country;

(c) in any other case, the country of which the author of the work is a national.

(6) In this section—

- (a) a “Berne Convention country” means a country which is a party to any Act of the International Convention for the Protection of Literary and Artistic Works signed at Berne on 9th September 1886; and
- (b) references to simultaneous publication are to publication within 30 days of first publication.”.

(2) In section 179 (index of defined expressions: Part I), at the appropriate place insert—
“country of origin section 15A”.

Treatment of film sound tracks

9.—

- (1) For section 5 (sound recordings and films) substitute—

“Sound recordings.

5A.—

- (1) In this Part “sound recording” means—
- (a) a recording of sounds, from which the sounds may be reproduced, or
 - (b) a recording of the whole or any part of a literary, dramatic or musical work, from which sounds reproducing the work or part may be produced,

regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced.

- (2) Copyright does not subsist in a sound recording which is, or to the extent that it is, a copy taken from a previous sound recording.

Films.

5B.—

- (1) In this Part “film” means a recording on any medium from which a moving image may by any means be produced.

- (2) The sound track accompanying a film shall be treated as part of the film for the purposes of this Part.

- (3) Without prejudice to the generality of subsection (2), where that subsection applies—

- (a) references in this Part to showing a film include playing the film sound track to accompany the film, and
- (b) references to playing a sound recording do not include playing the film sound track to accompany the film.

- (4) Copyright does not subsist in a film which is, or to the extent that it is, a copy taken from a previous film.

- (5) Nothing in this section affects any copyright subsisting in a film sound track as a sound recording.”.

- (2) In section 80(6) (derogatory treatment of film), omit the words following paragraph (b).

- (3) In section 117 (licensing schemes to which ss.118 to 123 apply)—

- (a) in paragraph (a) omit “(or film sound-tracks when accompanying a film)”, and
- (b) in paragraph (b) omit “(other than film sound-tracks when accompanying a film)”.

- (4) In section 124 (licences to which ss.125 to 128 apply)—

- (a) in paragraph (a) omit “(or film sound-tracks when accompanying a film)”, and
- (b) in paragraph (b) omit “(other than a film sound-track when accompanying a film)”.

- (5) In section 179⁷ (index of defined expressions: Part I)—

- (a) in the entry relating to the expression “film” for “section 5” substitute “section 5B”; and
- (b) in the entry relating to the expression “sound recording” for “sections 5 and 135A” substitute “sections 5A and 135A”

- (6) In section 212 (index of defined expressions: Part II)—

- (a) in the entry relating to the expression “film” for “section 5” substitute “section 5B”; and
- (b) in the entry relating to the expression “sound recording” for “section 5” substitute “section 5A”.

⁷ Section 179 was amended by the Broadcasting Act 1990 (c. 42), section 175(3)(b).

Rights in performances

Duration of rights in performances

10. In Part II (rights in performances), for section 191 (duration of rights) substitute—

“Duration of rights

191.—

(1) The following provisions have effect with respect to the duration of the rights conferred by this Part.

(2) The rights conferred by this Part in relation to a performance expire—

- (a) at the end of the period of 50 years from the end of the calendar year in which the performance takes place, or
- (b) if during that period a recording of the performance is released, 50 years from the end of the calendar year in which it is released,

subject as follows.

(3) For the purposes of subsection (2) a recording is “released” when it is first published, played or shown in public, broadcast or included in a cable programme service; but in determining whether a recording has been released no account shall be taken of any unauthorised act.

(4) Where a performer is not a national of an EEA state, the duration of the rights conferred by this Part in relation to his performance is that to which the performance is entitled in the country of which he is a national, provided that does not exceed the period which would apply under subsections (2) and (3).

(5) If or to the extent that the application of subsection (4) would be at variance with an international obligation to which the United Kingdom became subject prior to 29th October 1993, the duration of the rights conferred by this Part shall be as specified in subsections (2) and (3).”.

Supplementary

Meaning of EEA national and EEA state

11.—

(1) In Chapter X of Part I (miscellaneous and general provisions), after section 172 insert—

“Meaning of EEA national and EEA state.

172A.—

(1) In this Part—

“EEA national” means a national of an EEA state; and

“EEA state” means a state which is a contracting party to the EEA Agreement.

(2) References in this Part to a person being an EEA national shall be construed in relation to a body corporate as references to its being incorporated under the law of an EEA state.

(3) The “EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992, as adjusted by the Protocol signed at Brussels on 17th March 1993.”.

(2) In section 179 (index of defined expressions: Part I), at the appropriate place insert—
“EEA national and EEA state section 172A”.

(3) In section 211(1) (expressions in Part II having same meaning as in Part I), at the appropriate place insert—

“EEA national,”.

(4) In section 212 (index of defined expressions: Part II), at the appropriate place insert—

“EEA national section 211(1) (and section 172A)”.

PART III SAVINGS AND TRANSITIONAL PROVISIONS

Introductory

Introductory

12.—

(1) References in this Part to “commencement”, without more, are to the date on which these Regulations come into force.

(2) In this Part—

“the 1988 Act” means the Copyright, Designs and Patents Act 1988⁸ ;

“the 1988 provisions” means the provisions of that Act as they stood immediately before commencement (including the provisions of Schedule 1 to that Act continuing the effect of earlier enactments); and

“the new provisions” means the provisions of that Act as amended by these Regulations.

(3) Expressions used in this Part which are defined for the purposes of Part I or II of the 1988 Act, in particular references to the copyright owner, have the same meaning as in that Part.

Films not protected as such

13. In relation to a film in which copyright does not or did not subsist as such but which is or was protected—

(a) as an original dramatic work, or

(b) by virtue of the protection of the photographs forming part of the film,

references in the new provisions, and in this Part, to copyright in a film are to any copyright in the film as an original dramatic work or, as the case may be, in photographs forming part of the film.

Copyright

Copyright: interpretation

14.—

(1) In the provisions of this Part relating to copyright—

(a) “existing”, in relation to a work, means made before commencement; and

(b) “existing copyright work” means a work in which copyright subsisted immediately before commencement.

(2) For the purposes of those provisions a work of which the making extended over a period shall be taken to have been made when its making was completed.

⁸ 1988 c. 48.

(3) References in those provisions to “moral rights” are to the rights conferred by Chapter IV of Part I of the 1988 Act.

Duration of copyright: general saving

15.—

(1) Copyright in an existing copyright work shall continue to subsist until the date on which it would have expired under the 1988 provisions if that date is later than the date on which copyright would expire under the new provisions.

(2) Where paragraph (1) has effect, section 57 of the 1988 Act (anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author) applies as it applied immediately before commencement (that is, without the amendments made by Regulation 5(2)).

Duration of copyright: application of new provisions

16. The new provisions relating to duration of copyright apply—

- (a) to copyright works made after commencement;
- (b) to existing works which first qualify for copyright protection after commencement;
- (c) to existing copyright works, subject to Regulation 15 (general saving for any longer period applicable under 1988 provisions); and
- (d) to existing works in which copyright expired before 31st December 1995 but which were on 1st July 1995 protected in another EEA state under legislation relating to copyright or related rights.

Extended and revived copyright

17. In the following provisions of this Part—

“extended copyright” means any copyright which subsists by virtue of the new provisions after the date on which it would have expired under the 1988 provisions; and

“revived copyright” means any copyright which subsists by virtue of the new provisions after having expired under the 1988 provisions or any earlier enactment relating to copyright.

Ownership of extended copyright

18.—

(1) The person who is the owner of the copyright in a work immediately before commencement is as from commencement the owner of any extended copyright in the work, subject as follows.

(2) If he is entitled to copyright for a period less than the whole of the copyright period under the 1988 provisions, any extended copyright is part of the reversionary interest expectant on the termination of that period.

Ownership of revived copyright

19.—

(1) The person who was the owner of the copyright in a work immediately before it expired (the “former copyright owner”) is as from commencement the owner of any revived copyright in the work, subject as follows.

(2) If the former copyright owner has died before commencement, or in the case of a legal person has ceased to exist before commencement, the revived copyright shall vest—

- (a) in the case of a film, in the principal director of the film or his personal representatives, and
- (b) in any other case, in the author of the work or his personal representatives.

(3) Where revived copyright vests in personal representatives by virtue of paragraph (2), it shall be held by them for the benefit of the person who would have been entitled to it had it been vested in the principal director or author immediately before his death and had devolved as part of his estate.

Prospective ownership of extended or revived copyright

20.—

(1) Where by an agreement made before commencement in relation to extended or revived copyright, and signed by or on behalf of the prospective owner of the copyright, the prospective owner purports to assign the extended or revived copyright (wholly or partially) to another person, then if, on commencement the assignee or another person claiming under him would be entitled as against all other persons to require the copyright to be vested in him, the copyright shall vest in the assignee or his successor in title by virtue of this paragraph.

(2) A licence granted by a prospective owner of extended or revived copyright is binding on every successor in title to his interest (or prospective interest) in the right, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser; and references in Part I of the 1988 Act to doing anything with, or without, the licence of the copyright owner shall be construed accordingly.

(3) In paragraph (2) “prospective owner” includes a person who is prospectively entitled to extended or revived copyright by virtue of such an agreement as is mentioned in paragraph (1).

Extended copyright: existing licences, agreement, &c.

21.—

(1) Any copyright licence, any term or condition of an agreement relating to the exploitation of a copyright work, or any waiver or assertion of moral rights, which—

- (a) subsists immediately before commencement in relation to an existing copyright work, and
- (b) is not to expire before the end of the copyright period under the 1988 provisions,

shall continue to have effect during the period of any extended copyright, subject to any agreement to the contrary.

(2) Any copyright licence, or term or condition relating to the exploitation of a copyright work, imposed by order of the Copyright Tribunal which—

- (a) subsists immediately before commencement in relation to an existing copyright work, and
- (b) is not to expire before the end of the copyright period under the 1988 provisions,

shall continue to have effect during the period of any extended copyright, subject to any further order of the Tribunal.

Revived copyright: exercise of moral rights

22.—

(1) The following provisions have effect with respect to the exercise of moral rights in relation to a work in which there is revived copyright.

(2) Any waiver or assertion of moral rights which subsisted immediately before the expiry of copyright shall continue to have effect during the period of revived copyright.

(3) Moral rights are exercisable after commencement by the author of a work or, as the case may be, the director of a film in which revived copyright subsists, as with any other copyright work.

(4) Where the author or director died before commencement—

- (a) the rights conferred by—
 - section 77 (right to identification as author or director),
 - section 80 (right to object to derogatory treatment of work), or
 - section 85 (right to privacy of certain photographs and films),

are exercisable after commencement by his personal representatives, and

(b) any infringement after commencement of the right conferred by section 84 (false attribution) is actionable by his personal representatives.

(5) Any damages recovered by personal representatives by virtue of this Regulation in respect of an infringement after a person's death shall devolve as part of his estate as if the right of action had subsisted and been vested in him immediately before his death.

(6) Nothing in these Regulations shall be construed as causing a moral right to be exercisable if, or to the extent that, the right was excluded by virtue of paragraph 23 or 24 of Schedule 1 on the commencement of the 1988 Act or would have been so excluded if copyright had not previously expired.

Revived copyright: saving for acts of exploitation when work in public domain, &c.

23.—

(1) No act done before commencement shall be regarded as infringing revived copyright in a work.

(2) It is not an infringement of revived copyright in a work—

(a) to do anything after commencement in pursuance of arrangements made before 1st January 1995 at a time when copyright did not subsist in the work, or

(b) to issue to the public after commencement copies of the work made before 1st July 1995 at a time when copyright did not subsist in the work.

(3) It is not an infringement of revived copyright in a work to do anything after commencement in relation to a literary, dramatic, musical or artistic work or a film made before commencement, or made in pursuance of arrangements made before commencement, which contains a copy of that work or is an adaptation of that work if—

(a) the copy or adaptation was made before 1st July 1995 at a time when copyright did not subsist in the work in which revived copyright subsists, or

(b) the copy or adaptation was made in pursuance of arrangements made before 1st July 1995 at a time when copyright did not subsist in the work in which revived copyright subsists.

(4) It is not an infringement of revived copyright in a work to do after commencement anything which is a restricted act in relation to the work if the act is done at a time when, or is done in pursuance of arrangements made at a time when, the name and address of a person entitled to authorise the act cannot by reasonable inquiry be ascertained.

(5) In this Regulation "arrangements" means arrangements for the exploitation of the work in question.

(6) It is not an infringement of any moral right to do anything which by virtue of this Regulation is not an infringement of copyright.

Revived copyright: use as of right subject to reasonable royalty

24.—

(1) In the case of a work in which revived copyright subsists any acts restricted by the copyright shall be treated as licensed by the copyright owner, subject only to the payment of such reasonable royalty or other remuneration as may be agreed or determined in default of agreement by the Copyright Tribunal.

(2) A person intending to avail himself of the right conferred by this Regulation must give reasonable notice of his intention to the copyright owner, stating when he intends to begin to do the acts.

(3) If he does not give such notice, his acts shall not be treated as licensed.

(4) If he does give such notice, his acts shall be treated as licensed and a reasonable royalty or other remuneration shall be payable in respect of them despite the fact that its amount is not agreed or determined until later.

(5) This Regulation does not apply if or to the extent that a licence to do the acts could be granted by a licensing body (within the meaning of section 116(2) of the 1988 Act), whether or not under a licensing scheme.

(6) No royalty or other remuneration is payable by virtue of this Regulation in respect of anything for which a royalty or other remuneration is payable under Schedule 6 to the 1988 Act.

Revived copyright: application to Copyright Tribunal

25.—

(1) An application to settle the royalty or other remuneration payable in pursuance of Regulation 24 may be made to the Copyright Tribunal by the copyright owner or the person claiming to be treated as licensed by him.

(2) The Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.

(3) Either party may subsequently apply to the Tribunal to vary the order, and the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.

(4) An application under paragraph (3) shall not, except with the special leave of the Tribunal, be made within twelve months from the date of the original order or of the order on a previous application under that paragraph.

(5) An order under paragraph (3) has effect from the date on which it is made or such later date as may be specified by the Tribunal.

Film sound tracks: application of near provisions

26.—

(1) The new provisions relating to the treatment of film sound tracks apply to existing sound tracks as from commencement.

(2) The owner of any copyright in a film has as from commencement corresponding rights as copyright owner in any existing sound track treated as part of the film; but without prejudice to any rights of the owner of the copyright in the sound track as a sound recording.

(3) Anything done before commencement under or in relation to the copyright in the sound recording continues to have an effect and shall have effect, so far as concerns the sound track, in relation to the film as in relation to the sound recording.

(4) It is not an infringement of the copyright in the film (or of any moral right in the film) to do anything after commencement in pursuance of arrangements for the exploitation of the sound recording made before commencement.

Rights in performances

Rights in performances: interpretation

27.—

(1) In the provisions of this Part relating to rights in performances—

(a) “existing”, in relation to a performance, means given before commencement; and

(b) “existing protected performance” means a performance in relation to which rights under Part II of the 1988 act (rights in performances) subsisted immediately before commencement.

(2) References in this Part to performers’ rights are to the rights given by section 180(1)(a) of the 1988 Act and references to recording rights are to the rights given by section 180(1)(b) of that Act.

Duration of rights in performances: general saving

28. Any rights under Part II of the 1988 Act in an existing protected performance shall continue to subsist until the date on which they would have expired under the 1988 provisions if that date is later than the date on which the rights would expire under the new provisions.

Duration of rights in performances: application of new provisions

29. The new provisions relating to the duration of rights under Part II of the 1988 Act apply—

- (a) to performances taking place after commencement;
- (b) to existing performances which first qualify for protection under Part II of the 1988 Act after commencement;
- (c) to existing protected performances, subject to Regulation 28 (general saving for any longer period applicable under 1988 provisions); and
- (d) to existing performances—
 - (i) in which rights under Part II of the 1988 Act expired after the commencement of that Part and before 31st December 1995, or
 - (ii) which were protected by earlier enactments relating to the protection of performers and in which rights under that Part did not arise by reason only that the performance was given at a date such that the rights would have ceased to subsist before the commencement of that Part,

but which were on 1st July 1995 protected in another EEA state under legislation relating to copyright or related rights.

Extended and revived performance rights

30. In the following provisions of this Part—

“extended performance rights” means rights under Part II of the 1988 Act which subsist by virtue of the new provisions after the date on which they would have expired under the 1988 provisions; and
“revived performance rights” means rights under Part II of the 1988 Act which subsist by virtue of the new provisions—

- (a) after having expired under the 1988 provisions, or
- (b) in relation to a performance which was protected by earlier enactments relating to the protection of performers and in which rights under that Part did not arise by reason only that the performance was given at a date such that the rights would have ceased to subsist before the commencement of that Part.

References in the following provisions of this Part to “revived pre-1988 rights” are to revived performance rights within paragraph (b) of the above definition.

Entitlement to extended or revived performance rights

31.—

(1) Any extended performance rights are exercisable as from commencement by the person who was entitled to exercise those rights immediately before commencement, that is—

- (a) in the case of performers’ rights, the performer or (if he has died) the person entitled by virtue of section 192(2) of the 1988 Act to exercise those rights;
- (b) in the case of recording rights, the person who was within the meaning of section 185 of the 1988 Act the person having those rights.

(2) Any revived performance rights are exercisable as from commencement—

- (a) in the case of rights which expired after the commencement of the 1988 Act, by the person who was entitled to exercise those rights immediately before they expired;

- (b) in the case of revived pre-1988 performers' rights, by the performer or his personal representatives;
- (c) in the case of revived pre-1988 recording rights, by the person who would have been the person having those rights immediately before the commencement of the 1988 Act or, if earlier, immediately before the death of the performer, applying the provisions of section 185 of that Act to the circumstances then obtaining.

(3) Any remuneration or damages received by a person's personal representatives by virtue of a right conferred on them by paragraph (1) or (2) shall devolve as part of that person's estate as if the right had subsisted and been vested in him immediately before his death.

Extended performance rights: existing consents, agreement, &c.

32. Any consent, or any term or condition of an agreement, relating to the exploitation of an existing protected performance which—

- (a) subsists immediately before commencement, and
- (b) is not to expire before the end of the period for which rights under Part II of the 1988 Act subsist in relation to that performance,

shall continue to subsist during the period of any extended performance rights, subject to any agreement to the contrary.

Revived performance rights: saving for acts of exploitation when performance in public domain, &c.

33.—

(1) No act done before commencement shall be regarded as infringing revived performance rights in a performance.

(2) It is not an infringement of revived performance rights in a performance—

- (a) to do anything after commencement in pursuance of arrangements made before 1st January 1995 at a time when the performance was not protected, or
- (b) to issue to the public after commencement a recording of a performance made before 1st July 1995 at a time when the performance was not protected.

(3) It is not an infringement of revived performance rights in a performance to do anything after commencement in relation to a sound recording or film made before commencement, or made in pursuance of arrangements made before commencement, which contains a recording of the performance if—

- (a) the recording of the performance was made before 1st July 1995 at a time when the performance was not protected, or
- (b) the recording of the performance was made in pursuance of arrangements made before 1st July 1995 at a time when the performance was not protected.

(4) It is not an infringement of revived performance rights in a performance to do after commencement anything at a time when, or in pursuance of arrangements made at a time when, the name and address of a person entitled to authorise the act cannot by reasonable inquiry be ascertained.

(5) In this Regulation "arrangements" means arrangements for the exploitation of the performance in question.

(6) References in this Regulation to a performance being protected are—

- (a) in relation to the period after the commencement of the 1988 Act, to rights under Part II of that Act subsisting in relation to the performance, and
- (b) in relation to earlier periods, to the consent of the performer being required under earlier enactments relating to the protection of performers.

Revived performance rights: use as of right subject to reasonable remuneration

34.—

(1) In the case of a performance in which revived performance rights subsist any acts which require the consent of any person under Part II of the 1988 Act (the “rights owner”) shall be treated as having that consent, subject only to the payment of such reasonable remuneration as may be agreed or determined in default of agreement by the Copyright Tribunal.

(2) A person intending to avail himself of the right conferred by this Regulation must give reasonable notice of his intention to the rights owner, stating when he intends to begin to do the acts.

(3) If he does not give such notice, his acts shall not be treated as having consent.

(4) If he does give such notice, his acts shall be treated as having consent and reasonable remuneration shall be payable in respect of them despite the fact that its amount is not agreed or determined until later.

Revived performance rights: application to Copyright Tribunal

35.—

(1) An application to settle the remuneration payable in pursuance of Regulation 34 may be made to the Copyright Tribunal by the rights owner or the person claiming to be treated as having his consent.

(2) The Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.

(3) Either party may subsequently apply to the Tribunal to vary the order, and the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.

(4) An application under paragraph (3) shall not, except with the special leave of the Tribunal, be made within twelve months from the date of the original order or of the order on a previous application under that paragraph.

(5) An order under paragraph (3) has effect from the date on which it is made or such later date as may be specified by the Tribunal.

Supplementary

Construction of references to EEA states

36.—

(1) For the purpose of the new provisions relating to the term of copyright protection applicable to a work of which the country of origin is not an EEA state and of which the author is not a national of an EEA state—

- (a) a work first published before 1st July 1995 shall be treated as published in an EEA state if it was on that date regarded under the law of the United Kingdom or another EEA state as having been published in that state;
- (b) an unpublished film made before 1st July 1995 shall be treated as originating in an EEA state if it was on that date regarded under the law of the United Kingdom or another EEA state as a film whose maker had his headquarters in, or was domiciled or resident in, that state; and
- (c) the author of a work made before 1st July 1995 shall be treated as an EEA national if he was on that date regarded under the law of the United Kingdom or another EEA state as a national of that state.

The references above to the law of another EEA state are to the law of that state having effect for the purposes of rights corresponding to those provided for in Part I of the 1988 Act.

(2) For the purposes of the new provisions relating to the term of protection applicable to a performance where the performer is not a national of an EEA state, the performer of a performance given

before 1st July 1995 shall be treated as an EEA national if he was on that date regarded under the law of the United Kingdom or another EEA state as a national of that state.

The reference above to the law of another EEA state is to the law of that state having effect for the purposes of rights corresponding to those provided for in Part II of the 1988 Act.

(3) In this Regulation “another EEA state” means an EEA state other than the United Kingdom.

Ian Taylor,
Parliamentary Under-Secretary of State
For Science and Technology,
Department of Trade and Industry

19th December 1995

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement all of those provisions of Council Directive No. 93/100/EEC (O.J. No. L 290, 24.11.93, p. 9) (“the Directive”) which harmonise the term of protection of copyright and certain related rights. The Regulations come into force on 1st January 1996.

The Copyright, Designs and Patents Act 1988 (“the Act”) already grants some of the terms of protection required by the Directive. These regulations amend and extend the Act insofar as its provisions do not conform to or comply with the requirements of the Directive. They also implement in respect of that Act, insofar as required by, or consequential upon the modifications made in implementation of the Directive, the obligation imposed by the European Economic Area Act 1993 in accordance with the United Kingdom’s obligations under the European Economic Area Agreement, to substitute for any reference to a Member State of the European Community, a reference to an EEA State.

The provisions of the Directive harmonising the duration of copyright increase the existing period of copyright in literary, dramatic, musical and artistic works in the United Kingdom from the life of the author plus 50 years, to the life of the author plus 70 years. The manner in which the duration of copyright in films is calculated is modified by the Directive so as to be similar in length to that of literary, dramatic, musical and artistic works although based on the life not of the author of a film, but of certain persons connected with the film. The starting point for calculation of the present 50 year period of protection of rights in performances is also modified by the Directive with the result that the overall duration of those rights will, in some cases, increase. The Directive also requires reciprocal duration of copyright and performer’s rights in the case of works and performances connected with countries not members of the EEA.

Transitional provisions have the following effect where the period of protection is increased:

- in relation to duration of copyright, in the case of works in which copyright subsists on 31st December 1995, the duration of copyright is extended from 1st January 1996; in the case of works in which copyright has expired in the United Kingdom before 1st July 1995, but which are protected on that date under the copyright legislation of any other State in the EEA, copyright will revive on 1st January 1996 and will then expire on a date 70 years after the author’s death;
- in relation to duration of rights in performances, to provide for both extending and reviving rights in performances where this occurs as a result of the application of the modified starting point for calculating the term of protection of existing performances.

The provisions of Part II of the Regulations, which amend the Act:

- (a) increase the duration of copyright in literary, dramatic, musical and artistic works of known authorship to life plus 70 years; make new provision for the duration of copyright in films to be linked to the lives of persons connected with a film and to last until 70 years after the death of the last of those persons to die; increase the duration of copyright in respect of works of unknown authorship to 70 years after the date upon which the

work is either made, or if made available to the public during that period, from the date upon which it is first made available (regulations 5 and 6);

- (b) make provision for reciprocal duration of copyright in literary, dramatic, musical and artistic works, films, sound recordings and broadcasts connected with countries other than EEA States, such that the period of protection granted in the United Kingdom to those works is that granted under the legislation of the country of origin of the work, or (in the case of sound recordings and broadcasts) of which the author is a national, subject, however, to application of this provision not being at variance with any international obligation to which the United Kingdom became subject prior to 29th October 1993 (regulations 5, 6, 7 and 8);
- (c) modify the meaning of “released”, in connection with the calculation of the duration of copyright in sound recordings so as to include “playing in public” (regulation 6);
- (d) make consequential amendments to existing provisions relating to acts permitted on assumptions as to the expiry of copyright on the death of the author (regulation 5);
- (e) make similar provision in relation to acts permitted on assumptions as to the expiry of copyright in a film on the death of persons by reference to whose life the copyright period in a film is ascertained (regulation 6);
- (f) make provision for a sound track accompanying a film to be treated as part of the film for the purposes of Part I of the Act (regulation 9);
- (g) modify existing provisions relating to the duration of rights in a performance such that these rights are protected for 50 years from when the performance takes place, or if a recording of the performance is released within that period, for 50 years from when the recording is first released; and also such that, where a performer is not a national of an EEA State, the duration of rights in the performance is that accorded in the country of which the performer is a national in similar manner to the provision on reciprocal duration of copyright (regulation 10);

Part III of the Regulations (which contains the transitional provisions and savings), provides—

- (a) for the Regulations to apply not only to works made after 1st January 1996 but also to works made before that date (regulation 14);
- (b) for the saving of any period of copyright which would be longer than that to which a work might otherwise be entitled under the Regulations (regulation 15);
- (c) for those Regulations which increase the duration of copyright in the United Kingdom to life plus seventy years to apply not only to works made after 1st January 1996 but also to works made before that date in which copyright continues to subsist on 31st December 1995, and further, to apply to works made, and in which copyright in the United Kingdom expired, before that date but which were protected on 1st July 1995 under legislation relating to copyright in any other EEA State: extended and revived copyright (regulations 16 and 17);
- (d) for the determination of the ownership of both extended and revived copyright (regulations 18, 19 and 20);
- (e) in relation to extended copyright, for any licence, term or condition of an agreement or waiver or assertion of moral rights, or any such licence, term or condition imposed by the Copyright Tribunal, effective throughout the duration of the original period of copyright, to continue throughout the period of extended copyright (regulation 21);
- (f) who is to exercise moral rights in respect of a revived copyright (regulation 22);
- (g) a saving in respect of arrangements made before 1st January 1995 so that any acts done after 1st January 1996 in pursuance of such arrangements are not to be infringements of revived copyright (regulation 23);
- (h) a saving in respect of the issue to the public after 1st January 1996 of copies of a revived copyright work made before 1st July 1995 and at a time when copyright in the revived work had expired (regulation 23);

- (i) a saving for acts done in respect of revived copyright works after 1st January 1996, where the owner of the right cannot be found by reasonable inquiry (regulation 23);
- (j) a saving for acts done after 1st January 1996 in respect of a literary, dramatic, musical or artistic work or film which contains a copy of, or is an adaptation of, a revived work and the copy or adaptation was made before 1st July 1995, or in pursuance of arrangements made before that date and at a time when copyright did not subsist in the revived work (regulation 23);
- (k) for a licence of right to do any of the acts restricted by copyright in respect of revived copyright works subject only to the payment of royalties or other payments as may be agreed or, in default of agreement, be fixed by the Copyright Tribunal, except where a licence could be granted by a licensing body (regulations 24 and 25);
- (l) for the saving of any period of protection of rights which would be longer than that to which a performance might otherwise be entitled under the Regulations (regulation 28);
- (m) for the Regulations which modify the starting point for the calculation of the duration of rights in performances in the United Kingdom to apply not only to performances taking place after 1st January 1996 but also to performances which take place before that date in which rights under Part II of the Act subsist on 31st December 1995 and further, to apply to performances in which rights under Part II of the Act, or under any earlier enactment, expired in the United Kingdom before 1st July 1995, in the event that they were protected on 1st July 1995 under legislation relating to copyright or related rights in any other EEA State: extended and revived performance rights (regulations 29 and 30);
- (n) for the determination of ownership of both extended and any revived performance rights (regulation 31);
- (o) in relation to extended and any revived performance rights, for savings corresponding to those made in respect of extended and revived copyright works, subject to necessary modifications (regulations 32 and 33);
- (p) for a licence of right to do any of the acts for which consent would otherwise be required in respect of a performance in which any revived performance rights subsist subject only to the payment of royalties or other payments as may be agreed or, in default of agreement, be fixed by the Copyright Tribunal (regulations 34 and 35).