

Ordinance on the Application of the Act on Copyright in Relation to Other Countries

- Ordinance No. 1213 of December 17, 2002

WE MARGRETHE THE SECOND, by the Grace of God Queen of Denmark, make it known:

Whereas Denmark has acceded to

- the Berne Convention for the Protection of Literary and Artistic Works, as revised at Paris on July 24, 1971,
- The Universal Copyright Convention, as revised at Paris on the same date,
- the International Convention of October 26, 1961 for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (the Rome Convention), and
- the Agreement of April 15, 1994 on Establishment of the World Trade Organization (WTO) containing an Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS),

the following is laid down pursuant to section 88 of the Copyright Act, cf. Consolidated Act No. 618 of June 27, 2001, as amended by Act No. 1051 of December 17, 2002, as regards the application of the provisions of the Act in relation to other countries:

Introduction

1. This Ordinance extends protection under the Copyright Act to works and other performances or productions, etc. that are not comprised by the immediate protection according to sections 85 and 86 of the Act.

The Berne Convention

2. The provisions of chapters 1-4 and 6-9 of the Copyright Act, with the exception of sections 39-46 and section 64, shall be applied subject to the derogations following from sections 3-5 of this Ordinance to

- (i) works by persons who are nationals of or who have their habitual residence in countries that have acceded to the International Union for the Protection of Literary and Artistic Works (the Berne Union);
- (ii) other works published for the first time in another country of the Union or published in such a country simultaneously with or within 30 days after their first publishing in a country outside the Union;
- (iii) cinematographic works, the producer of which has his headquarters or his habitual residence in another country of the Union;
- (iv) works of architecture situated in another country of the Union;
- (v) works of art which have been incorporated in buildings or structures in

another country of the Union.

3.—(1) Where the term of protection for a work has expired according to the legislation in force in the country of origin of the work, the work shall not enjoy protection under the provisions of the Copyright Act.

(2) For works first published within the Berne Union, the country of the Union in which the work was published shall be deemed to be the country of origin. For works published simultaneously or within 30 days in two or more countries of the Union with different terms of protection, the country which has the shortest term of protection shall be deemed to be the country of origin. For works published in a country of the Union simultaneously with or within 30 days after the first publishing in a country outside the Union, the country of the Union shall be deemed to be the country of origin.

(3) For unpublished works or for works which are not comprised by the provisions of subsection (2), the country of the Union of which the author is a national or where he has his habitual residence shall be deemed to be the country of origin. For works of architecture situated in a country of the Union and works of art incorporated in buildings or structures situated in a country of the Union, this country shall be deemed to be the country of origin. For cinematographic works, the country of the Union in which the producer has his headquarters or habitual residence shall be deemed to be the country of origin.

4. For such works of applied art and industrial designs and models which in the country of origin are solely protected as designs and models, protection shall solely be given under Danish designs legislation.

5. The provision of section 38 of the Copyright Act (droit de suite) shall apply to works of persons who are nationals of or who have their habitual residence in countries of the Union which have implemented a droit de suite provision as mentioned in Article 14 ter of the Berne Convention.

The Universal Copyright Convention

6. The provisions of chapters 1-4 and 6-9 of the Copyright Act, with the exception of the provisions of sections 38-46 and section 64, shall be applied subject to the derogations following from sections 7-9 of this Ordinance to

(i) works by persons who are nationals of countries that are parties to the Universal Copyright Convention of 1952 or the Convention as revised at Paris on July 24, 1971;

(ii) other works published for the first time in another Contracting State;

(iii) works by persons who have their habitual residence in another Contracting State provided that this state, in its legislation, accords such persons equal treatment with its own nationals in respect to the application of the Universal Copyright Convention;

(iv) works by stateless persons and refugees who have their habitual residence

in countries that have acceded to Protocol 1 annexed to the Universal Copyright Convention.

7.—(1) Where the term of protection for a work has expired according to the legislation in force in the country of origin of the work, the work shall not enjoy protection under the provisions of the Copyright Act.

(2) Where a work has been published for the first time in a Contracting State, this country shall be deemed to be the country of origin of the work. In the case of a work being published simultaneously or within 30 days in two or more Contracting States with different terms of protection, the country which has the shortest term of protection shall be deemed to be the country of origin.

(3) Where a work has been published for the first time in a non-Contracting State, the country of which the author is a national shall be deemed to be the country of origin of the work.

(4) For an unpublished work, the country of which the author of the work is a national shall be deemed to be the country of origin.

8. The provision of section 6 shall not apply to works created before the coming into force of the Convention for the state concerned unless this state protects Danish works created before that time.

9. The provisions of sections 6-8 shall not apply to

(i) works comprised by the provisions of section 2; and

(ii) works, the country of origin of which, after January 1, 1951, has withdrawn from the Berne Union, unless such country according to paragraph (b) of the Appendix Declaration Relating to Article XVII of the Convention text as revised at Paris in 1971, is deemed to be a developing country and at the time of its withdrawal from the Berne Union has deposited with the Director General of UNESCO a notification to the effect that it considers itself to be a developing country.

10. The provisions of chapters 1-4 and 6-9 of the Copyright Act, with the exception of the provisions of sections 38-46 and section 64, shall apply to works first published by the United Nations (UN), by the specialized agencies attached to the UN or by the Organization of American States, and to unpublished works which the above organizations are entitled to publish.

The Rome Convention

11.—(1) The provisions of section 65 of the Copyright Act (performing artists) and the provisions of the Act relating thereto, with the exception of the references in section 65 to sections 39-46, shall apply

(i) if the performance has taken place in a country that has acceded to the Rome Convention; or

(ii) if the performance has been reproduced on a sound recording made by a

person who is a national of or who has his habitual residence in a country that has acceded to the Rome Convention; or

(iii) if the performance has been reproduced on a sound recording made by a company which has its headquarters in a country that has acceded to the Rome Convention.

(2) The provisions of section 65(1), (2) and (4) of the Copyright Act on making performances and recordings available to the public shall in so far as distribution through cable systems is concerned not apply to other countries.

12. The provisions of section 66 of the Copyright Act (producers of sound recordings) and the provisions of the Act relating thereto, with the exception of the references in section 66 to sections 39-46, shall apply

(i) if the sound recording has taken place in a country that has acceded to the Rome Convention; or

(ii) if the sound recording has been made by a person who is a national of or who has his habitual residence in a country that has acceded to the Rome Convention; or

(iii) if the sound recording has been made by a company which has its headquarters in a country that has acceded to the Rome Convention.

13. Notwithstanding the provisions of sections 11 and 12, the provision of section 68(2) of the Copyright Act on remuneration to producers of sound recordings and performing artists in case of public performance of published sound recordings shall apply only to the extent that and for the term during which the country concerned protects sound recordings with attachment to Denmark. The fact that the country concerned does not protect either of the two groups of rightholders as mentioned in section 68(2) shall not be deemed to be a difference in the extent of the protection.

14.—(1) The provision of section 69 of the Copyright Act (broadcasters) and the provisions of the Act relating thereto shall apply

(i) if the radio and television broadcast has taken place in a country that has acceded to the Rome Convention; or

(ii) if the broadcaster has its headquarters in other countries that have acceded to the Rome Convention.

(2) The provision of section 69(1) of the Copyright Act on retransmission of radio and television broadcasts shall not apply to other countries in so far as distribution through cable systems is concerned.

The Agreement on the World Trade Organization (WTO), including Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

15.—(1) The provision of section 2 of this Ordinance, with the derogations following from sections 3-5 shall apply correspondingly in relation to countries that have acceded to the Agreement on the World Trade Organization (WTO),

including Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

(2) The provisions of sections 11, 12 and 14 shall with the derogations contained in these provisions apply correspondingly in relation to countries that have acceded to the Agreement on the World Trade Organization (WTO), including the TRIPS Agreement. The provisions of section 65(2) and section 66(1) of the Copyright Act shall, however, apply only in relation to the countries mentioned in sections 11 and 12 in so far as public performance of recordings is concerned.

Special Provisions on Payment of Remuneration in accordance with Sections 39-46 of the Copyright Act on Remuneration for Reproduction for Private Use

16.—(1) The provisions on payment of remuneration for reproduction for private use of sections 39-46 of the Copyright Act shall apply to

(i) works and photographic pictures created or produced by persons who are nationals of or who have their habitual residence in other countries provided that a blank tapes remuneration scheme has been implemented in the country concerned which provides a possibility for payment of remuneration to Danish rightholders; and

(ii) cinematographic works, the producer of which has his headquarters or his habitual residence in another country provided that a blank tapes remuneration scheme has been implemented in the country concerned which provides a possibility for payment of remuneration to Danish rightholders.

(2) The provisions of subsection (1) shall not apply where the term of protection for the work or the picture has expired in the country of the rightholder.

17.—(1) The provisions of sections 65 and 66, cf. sections 39-46 of the Copyright Act, on payment of remuneration for reproduction for private use shall apply to performances and sound recordings with attachment to other countries, cf. the criteria of sections 11 and 12, provided that a blank tapes remuneration scheme has been implemented in the country concerned which provides a possibility for payment of remuneration to Danish rightholders.

(2) The provision of subsection (1) shall not apply where the term of protection for the performance or the sound recording has expired in the country of the rightholder.

Coming into Force, etc.

18.—(1) This Ordinance shall come into force on December 22, 2002.

(2) Ordinance No. 964 of December 12, 1995 on the Application of the Copyright Act with Respect to Other Countries, etc., shall be repealed.

Made at Christiansborg Castle, December 17, 2002
Under Our Royal Hand and Seal

Margrethe R.
/Brian Mikkelsen