

Order on the Application of the Act on Copyright in Relation to Other Countries¹
(Order no. 218 of March 9 2010)

Pursuant to section 88 of the Copyright Act, cf. Consolidated Act No. 202 of February 27 2010, and whereas Denmark has acceded to the Berne Convention for the Protection of Literary and Artistic Works, as revised at Paris on July 24, 1971 (Berne Convention), 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 WIPO Copyright Treaty (WCT) as approved in Geneva on December 20, 1996, the WIPO Performances and Phonograms Treaty (WPPT) as approved in Geneva on December 20, 1996, the following rules are laid down:

Introduction

1. This Order 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 39-46a and section 64, shall be applied subject to the derogations following from sections 3-5 of this Order to

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

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 a Contracting State, the Contracting State in which the work was published shall be deemed to be the country of origin. For works published simultaneously or

¹ The provision of section 20 implements the Council Decision of February 18th 2003 regarding the conclusion of an agreement by exchange of letters between the United Kingdom of Great Britain and Northern Ireland on behalf of the Isle of Man and the European Community extending to the Isle of Man the legal protection of databases according to Chapter III of Directive 96/9/EU (Official Journal 2003, nr. L 989, page 11).

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. For works published in a Contracting State simultaneously with or within 30 days after the first publishing in a non-Contracting State, the Contracting State 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 Contracting State 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 Contracting State and works of art incorporated in buildings or structures situated in a Contracting State, this country shall be deemed to be the country of origin. For cinematographic works, the Contracting State 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 Contracting States which have implemented a *droit de suite* provision as mentioned in Article 14 *ter* of the Berne Convention.

The WIPO Copyright Treaty (WCT)

6. The provisions of sections 2-5 shall apply accordingly in relation to countries which have acceded to the WIPO Copyright Treaty (WCT).

The Universal Copyright Convention

7. The provisions of chapters 1-4 and 6-9 of the Copyright Act, with the exception of the provisions of sections 38-46a and section 64, shall be applied subject to the derogations following from sections 8-10 of this Order 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.

8.-(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.

9. The provision of section 7 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.

10. The provisions of sections 7-9 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.

11. The provisions of chapters 1-4 and 6-9 of the Copyright Act, with the exception of the provisions of sections 38-46a 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

12.-(1) The provisions of section 65 of the Copyright Act (performing artists), with the exception of the references in section 65 to sections 39-46a, shall apply

(i) if the performance has taken place in a Contracting State; 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 Contracting State; or

(iii) if the performance has been reproduced on a sound recording made by a company which has its headquarters in a Contracting State.

(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 simultaneous and unchanged distribution through cable systems or wireless is concerned do not apply to other countries.

13. 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 39-46a, shall apply

(i) if the sound recording has taken place in a Contracting State 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 Contracting State; or

(iii) if the sound recording has been made by a company which has its headquarters in a Contracting State.

14. Notwithstanding the provisions of sections 12 and 13, 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.

15.—(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 Contracting State, or
- (ii) if the broadcaster has its headquarters in other Contracting States.

(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 WIPO Performances and Phonograms Treaty (WPPT)

16.—(1) The provisions of sections 12 and 13 shall apply in relation to other countries which have acceded to the WIPO Performances and Phonograms Treaty (WPPT).

(2) Notwithstanding the provision of subsection (1), 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 not apply to the extent that another Contracting Party makes use of the reservations permitted by Article 15(3) of the Treaty.

(3) The provision of subsection (1) shall not apply to performing artists' performances, which is reproduced on film or other audiovisual production.

(4) The provisions of sections 75c-75e of the Copyright Act shall also apply in relation to countries which have acceded to the WIPO Performances and Phonograms Treaty (WPPT).

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

17.—(1) The provision of sections 2-5 shall apply correspondingly in relation to countries that have acceded to the Agreement on the World Trade Organization (WTO), including the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

(2) The provisions of sections 12, 13 and 15 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 12 and 13 in so far as public performance of recordings is concerned.

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

18.—(1) The provisions on payment of remuneration for reproduction for private use of sections 39-46a 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.

19.–(1) The provisions of sections 65 and 66, cf. sections 39-46a 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 12 and 13, 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.

Agreement on the extension of legal protection of databases to the Isle of Man

20. The provision of section 71 of the Copyright Act shall apply to

(i) databases that are created by persons residing in the Isle of Man, or

(ii) databases that are created by companies headquartered in the Isle of Man.

Coming into Force, etc.

21.–(1) This Order shall come into force on March 14, 2010.

(2) Ordinance No. 1213 of December 17 2002 on the Application of the Copyright Act with Respect to Other Countries etc., and Ordinance No. 159 of March 17, 2004 amending the Ordinance on the Application of the Copyright Act with Respect to Other Countries shall be repealed.

Ministry of Culture, March 9, 2010

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