

European Communities (Term of Protection of Copyright) Regulations, 1995*

(S.I. No. 158 of 1995)

1. —

(1) These Regulations may be cited as the European Communities (Term of Protection of Copyright) Regulations, 1995.

(2) These Regulations shall come into operation on the 1st day of July, 1995.

2.—

In these Regulations:

“the Act of 1963” means the Copyright Act, 1963 (No. 10 of 1963);

“the Berne Convention” means the Berne Convention for the protection of literary and artistic works;

“the Directive” means Council Directive 93/98/EEC of 29 October, 1993 harmonising the term of protection of copyright and certain related rights;

“Directive 92/100/EEC” means Council Directive 92/100/EEC of 19 November, 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property;

“protection” and “term of protection” have the same meaning as they have in the Directive and cognate words shall be construed accordingly;

“the Rome Convention” means the International Convention for the protection of performers, producers of phonograms and broadcasting organisations.

3.—Notwithstanding subsections (4) and (5) of section 8, subsections (5), (6) and (7) of section 9 and subsections (3) and (4) of section 51 of the Act of 1963, the term of copyright subsisting in a literary, dramatic, musical or artistic work shall be the lifetime of the author of the work and a period of seventy years after the author’s death, irrespective of the date when the work is published or otherwise lawfully made available to the public.

4. —

(1) Notwithstanding section 15(2)(a) of the Act of 1963, where a literary, dramatic, musical or artistic work is anonymous or pseudonymous any copyright subsisting in the work by virtue of section 8 or 9 of the Act of 1963 shall continue to subsist for a period of seventy years after the work is published or otherwise lawfully made available to the public.

(2) Without prejudice to section 15(2)(b) of the Act of 1963, where the pseudonym adopted by the author leaves no doubt as to the author’s identity, or if the author discloses his or her identity during the period referred to in paragraph (1) of this Regulation, the term of protection applicable shall be that specified in Regulation 3 of these Regulations.

5. Notwithstanding subsection (5) of section 8, subsections (6) and (7) of section 9 and subsections (3) and (4) of section 51 of the Act of 1963, where the term of protection of a literary, dramatic, musical or artistic work is not calculated from the death of the author or authors of the work and the work has not been published or otherwise lawfully made available to the public within 70 years of its creation the protection shall terminate.

* Official English title.

Entry into force: July 1, 1995.

Source: Communication from the Irish authorities.

6.—Notwithstanding subsection (2) of section 18 of the Act of 1963, copyright subsisting in a cinematograph film shall continue to subsist until the end of the period of 70 years after the death of the last of the following persons to survive, namely –

- (a) the principal director,
- (b) the author of the screenplay,
- (c) the author of the dialogue,
- (d) the composer of music specifically created for use in the cinematograph film.

7. —

(1) Notwithstanding section 17(2) of the Act of 1963, the term of protection as respects the rights of a maker of a sound recording in such a recording or, as the case may be, of a person referred to in section 17(3) of that Act in such a recording, shall expire 50 years after the sound recording is made.

(2) Notwithstanding paragraph (1) of this Regulation, if the sound recording is lawfully published or lawfully communicated to the public during the period referred to in the said paragraph, the term of protection as respects the rights in that recording shall expire 50 years from the date of the first such publication or the first such communication to the public whichever is the earlier.

(3) Notwithstanding section 19(2) of the Act of 1963, the term of protection as respects the rights of a broadcasting organisation in a broadcast shall expire 50 years after the first transmission of the broadcast.

8.—

Any person who, after the expiry of the term of protection as respects the work, recording, broadcast or film concerned, for the first time lawfully publishes or lawfully communicates to the public a previously unpublished literary, dramatic, musical or artistic work, sound recording, broadcast or cinematograph film shall, as respects that work, recording, broadcast or film, be entitled to rights equivalent to the economic rights conferred on owners of copyright by the Act of 1963. The term of protection of such rights shall expire 25 years from the date on which the work, recording, broadcast or film was first lawfully published or lawfully communicated to the public.

9.—

Where a provision of these Regulations provides that a term of protection (including a term of copyright) shall expire a specified period of time after, or, as the case may be, shall subsist or continue to subsist for a specified period of time after, the happening of any event, that period of time shall be calculated from the 1st day of January of the year following the said event and a reference in a provision aforesaid to such a period of time shall be construed accordingly.

10. —

(1) Notwithstanding section 43 of the Act of 1963 or any orders made thereunder where the country of origin (within the meaning of Article 5(4) of the Berne Convention) of a literary, dramatic, musical or artistic work is a third country and the author of the work is not a national of a Member State of the European Union, the term of protection of that work shall expire on whichever of the following is the earlier, namely –

- (a) the date of expiry of the term of protection of that work under the law of the country of origin of the work,
- (b) the date of expiry of the term of protection specified in Regulation 3 of these Regulations.

(2) In this Regulation “third country” means a state (other than the State) that is a party to the Berne Convention.

11. —

(1) Notwithstanding section 43 of the Act of 1963 or any orders made thereunder the term of protection in respect of sound recordings and broadcasts specified in Regulation 7 of these Regulations shall extend to a person who is a holder of rights in a sound recording or broadcast and is a national of a state party to the Rome Convention.

(2) In respect of a holder of rights aforesaid who is neither a national of a Member State of the European Union nor a national of a state party to the Rome Convention the term of protection in such rights shall, notwithstanding the said section 43 or any orders made thereunder, expire on whichever of the following is the earlier, namely –

- (a) the date of expiry of the term of protection provided for such rights under the law of the country of which the said person is a national,
- (b) the date of expiry of the term of protection specified in Regulation 7 of these Regulations.

12.—

The terms of protection provided for in these Regulations shall apply to all literary, dramatic, musical and artistic works, sound recordings, cinematograph films and broadcasts which are protected in at least one Member State of the European Union on the 1st day of July, 1995, pursuant to provisions of the law of that state on copyright or related rights or which meet the criteria for protection set down under Directive 92/100/EEC.

13. —

(1) Where the term of copyright in any literary, dramatic, musical or artistic work, broadcast, sound recording or cinematograph film has, under the Act of 1963, expired prior to the 1st day of July, 1995, and is revived by virtue of these Regulations or where the term of such copyright has not expired and is extended by virtue of these Regulations, the owner of the copyright as so revived or extended shall be the author, broadcasting organisation, maker of the recording or maker of the film, as the case may be, or, in the event that that person is deceased, his or her legal personal representative or if the said person is not a natural person, any successor-in-title of it.

(2) Paragraph (1) of this Regulation shall not apply where a deed of assignment or other binding legal instrument transferring ownership in the original copyright expressly provided that, in the event of any revival or extension of the copyright being effected by or under any enactment, the copyright as so revived or extended would vest in the assignee.

(3) In this Regulation the reference to an author, a maker of a recording or a maker of a film shall, where appropriate, be construed as a reference to the person entitled to copyright in the work, recording or film concerned by virtue of subsection (2), (3) or (4) of section 10, section 17(3) or section 18(3) of the Act of 1963.

(4) In this Regulation “legal personal representative” includes –

- (a) a person who owes, under the law of another Member State of the European Union, legal duties to the deceased person concerned of an equivalent nature to those of such a representative under the Succession Act, 1965 (No. 27 of 1965),
or
- (b) if under the law of such a Member State, title to a deceased person’s estate, as respects the rights concerned, passes, without the necessity for a grant of probate, letters of administration or similar process in relation to the estate, to an heir or beneficiary, the heir or beneficiary concerned.

14. —

(1) Notwithstanding Regulation 13 of these Regulations –

- (a) any person who, before the 29th day of October, 1993, undertook the exploitation of a literary, dramatic, musical or artistic work, broadcast, sound recording or cinematograph film or made preparations of a substantial nature to exploit such a work or other matter, at a time when such work or other matter was not protected under the Act of 1963, shall not be liable to the owner of the copyright in such work or other matter as revived by virtue of these Regulations for such exploitation or, as the case may be, any exploitation which he or she proceeds to make of such work or other matter on foot of preparations as aforesaid and may, in either case, continue such exploitation for the duration of the term of the copyright as so revived without any liability to the said owner,

- (b) any person who, between the 29th day of October, 1993, and the 1st day of July, 1995, undertook the exploitation of a literary, dramatic, musical or artistic work, broadcast, sound recording or cinematograph film or made preparations of a substantial nature to exploit such a work or other matter, at a time when such work or other matter was not protected under the Act of 1963, and can prove that he or she was not aware, and had no reasonable grounds for suspecting, that copyright in the work or other matter concerned would be revived by virtue of these Regulations or any other enactment shall not be liable to the owner of the copyright in such work or other matter as revived by virtue of these Regulations for such exploitation or, as the case may be, any exploitation which he or she proceeds to make of such work or other matter on foot of preparations as aforesaid and may, in either case, continue such exploitation for the duration of the term of the copyright as so revived without any liability to the said owner.

(2) Where a person has acquired (whether before or after the commencement of these Regulations) rights in a work or other matter referred to in paragraph (1) of this Regulation from a person exploiting that work or other matter and copyright in that work or other matter has been revived by virtue of these Regulations, the first-mentioned person shall not be liable to the owner of the copyright as so revived for any exploitation by him or her of the rights acquired if the second-mentioned person is not liable, by virtue of the said paragraph, to the said owner for the exploitation by that second-mentioned person of the work or other matter.

15.—

Nothing in these Regulations shall be construed as having the effect of shortening in the State a term of protection which is longer than the corresponding term provided for in these Regulations where such a term of protection is already running on the 1st day of July, 1995.