



STATUTORY INSTRUMENTS.

S.I. No. 411 of 2013



EUROPEAN UNION (TERM OF PROTECTION OF COPYRIGHT AND
CERTAIN RELATED RIGHTS) (DIRECTIVE 2011/77/EU)
REGULATIONS 2013

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The Minister for Jobs, Enterprise and Innovation, in exercise of the powers conferred on him by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive 2011/77/EU of the European Parliament and of the Council of 27 September 2011¹, hereby makes the following regulations:

1. (1) These Regulations may be cited as the European Union (Term of Protection of Copyright and Certain Related Rights) (Directive 2011/77/EU) Regulations 2013.

(2) These Regulations come into operation on 1 November 2013.

2. In these Regulations “Principal Act” means the Copyright and Related Rights Act 2000 (No. 28 of 2000).

3. The Principal Act is amended—

(a) in section 24—

(i) by the insertion of the following subsection after subsection (1):

“(1A) Notwithstanding subsection (1), the copyright in a musical composition with words shall expire 70 years after the last of the following persons dies, namely:

(a) the author or authors of the musical composition whose identity is known;

(b) the author or authors of the words whose identity is known;

provided that both the musical composition and the words were specifically created for the musical composition with words and that either the musical composition or the words were protected by copyright in at least one Member State on 1 November 2013, or were created on or after that date.”,

(ii) by the insertion, in subsection (2), of “, or, in the case of a musical composition with words referred to in subsection (1A), a musical composition with words,” after “subsection (1)”, and

¹OJ No. L 265, 11.10.2011, p.1.

(iii) by the insertion of the following subsection after subsection (3):

“(4) In relation to a musical composition with words referred to in subsection (1A), references in subsection (3) and in section 32(1) to the identity of the author becoming known or being disclosed shall be construed as references to the identity of any of the authors of the musical composition or the words becoming known or being disclosed.”,

(b) by the insertion of the following section after section 24:

“Transitional provisions relating to section 24(1A).

24A. (1) Subject to subsection (2), where, in relation to a musical composition with words referred to in section 24(1A)—

- (a) the copyright in either the musical composition or the words had expired prior to 1 November 2013 and is revived by virtue of section 24(1A), or
- (b) the copyright in the musical composition or the words did not expire before 1 November 2013 and is extended by virtue of section 24(1A),

the owner of the copyright as so revived or extended shall be the author, or, in the event that that person is deceased, his or her legal personal representative.

(2) Where, in the case of revived or extended copyright specified in subsection (1), a deed of assignment or other binding legal instrument transferring ownership in the copyright of the musical composition or the words 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 person to whom ownership in the copyright was transferred, the ownership of the copyright shall vest accordingly.

(3) Where, in relation to a musical composition with words referred to in section 24(1A), the copyright in either the musical composition or the words had expired prior to 1 November 2013 and was revived by virtue of section 24(1A) (‘revived copyright’)—

- (a) a person who, before 1 November 2013, undertook the exploitation of such a work at a time when that work was not protected by copyright shall not be regarded as having infringed the revived copyright,
- (b) a person who, before 1 November 2013, undertook the exploitation of such a work at a time when that work was not protected by copyright shall not infringe the revived copyright by continuing that exploitation of that work,

- (c) a person who, before 1 November 2013, made preparations to exploit such a work at a time when that work was not protected by copyright shall not infringe the revived copyright by the exploitation which he or she undertakes of that work on foot of such preparations,
- (d) a person who does anything in relation to a literary, dramatic or musical work or a film that contains a copy of such a work or is an adaptation of such a work, where the literary, dramatic or musical work or film—
 - (i) was made before commencement, or
 - (ii) was made on foot of preparations made before 1 November 2013,
 shall not infringe the revived copyright in such a work if—
 - (I) the copy or adaptation of that work was made before 1 November 2013 at a time when that work was not protected by copyright, or
 - (II) the copy or adaptation of that work was made on foot of preparations made before 1 November 2013 at a time when that work was not protected by copyright, and
- (e) a person who exploits such a work on or after 1 November 2013 shall not infringe revived copyright in that work if the exploitation is done at a time when, or is on foot of preparations made at a time when, the name and the address of a person entitled to authorise the exploitation cannot by reasonable inquiry be ascertained.

(4) It is not an infringement of any moral right conferred by Chapter 7 of Part II to do anything which by virtue of subsection (3) is not an infringement of copyright.”,

(c) in section 26—

(i) by the substitution, in paragraph (b), of “available, or” for “available.”, and

(ii) by the insertion of the following paragraph after paragraph (b):

“(c) notwithstanding paragraph (b), where the sound recording is lawfully made available to the public during the period specified in paragraph (a), and—

(i) where the rights of the performer and the producer would still have been protected on 1 November 2013, had the European Union (Term

of Protection of Copyright and Certain Related Rights) (Directive 2011/77/EU) Regulations 2013 not come into operation on that date, or

(ii) where the sound recording is created on or after 1 November 2013,

70 years after the date of such making available.”,

(d) in section 32—

(i) by the insertion, in subsection (1), of “or subsection (1A), as the case may be,” after “subsection (1)”, and

(ii) by the insertion, in subsection (2), of “or a musical composition with words,” after “artistic work,”,

(e) in section 208, by the insertion of the following subsections after subsection (1):

“(1A) Where the copyright of the producer in a sound recording has expired pursuant to section 299A(3), the performer in the sound recording has, subject to subsection (1B), a right to equitable remuneration from the person who—

(a) plays the sound recording in public, or

(b) includes the sound recording in a broadcast or cable programming service.

(1B) The period during which the performer is entitled to equitable remuneration after the expiry of the producer’s copyright pursuant to section 299A(3), is the period of copyright that would have remained pursuant to section 26, had the copyright of the producer in the sound recording not expired pursuant to section 299A(3).”,

(f) by the substitution of the following section for section 291:

“Duration of rights.

291. (1) The rights conferred by this Part shall expire 50 years after the date of the performance.

(2) Notwithstanding subsection (1)—

(a) if a recording of the performance is lawfully made available to the public within the period referred to in subsection (1), the rights shall expire 50 years from the date the recording is first so made available, and

(b) notwithstanding paragraph (a) but subject to subsection (3), if a sound recording of the performance is lawfully made

available to the public within the period referred to in subsection (1), the rights shall expire 70 years from the date the recording is first so made available.

(3) Subsection (2)(b) applies to a sound recording—

(a) in regard to which the rights of the performer and the producer would still have been protected on 1 November 2013, had the European Union (Term of Protection of Copyright and Certain Related Rights) (Directive 2011/77/EU) Regulations 2013 not come into operation on that date, or

(b) that is created on or after 1 November 2013.

(4) The terms provided for in subsections (1) and (2) shall be calculated from the first day of January of the year following the event that gives rise to them.”,

(g) by the insertion of the following sections after section 299—

“Termination of assignment agreement.

299A. (1) If, in relation to a sound recording of a performance—

(a) the performer has made an assignment agreement with the producer,

(b) a period of at least 50 years has elapsed after the sound recording was first lawfully made available to the public,

(c) the producer does not offer copies of the sound recording for sale in sufficient quantities, or does not make it available to the public, by wire or wireless means, in such a way that members of the public may access it from a place and time chosen by them,

the performer may, in writing, notify the producer of the performer’s intention to terminate the assignment agreement referred to in paragraph (a).

(2) If, not later than one year from the date of notification by the performer of his or her intention to terminate the assignment agreement, the producer has not offered copies of the sound recording for sale, or made it available to the public, as described in subsection (1)(c), the performer may terminate the assignment agreement by notice in writing to the producer.

(3) Upon the termination of the assignment agreement in accordance with subsection (2), all rights of the producer in the sound recording shall expire and the rights transferred or assigned to the producer by the performer under the assignment agreement shall revert to the performer.

(4) An agreement is void in so far as it purports to exclude or restrict the right to terminate an assignment agreement conferred by this section.

(5) Where the performance of more than one performer is captured in a sound recording and more than one assignment agreement has been made in relation to that sound recording, subsection (3) shall not take effect until the last of the existing assignment agreements in relation to that sound recording has been terminated in accordance with subsection (2).

(6) In this section and in sections 299B to 299E—

‘assignment agreement’ means an agreement between the performer and the producer by which the performer transfers or assigns one or more of the transmissible rights conferred on him or her by this Part to the producer;

‘producer’ means the person for the time being entitled to the copyright in the sound recording.

Annual supplementary remuneration.

299B. (1) If, in relation to a sound recording of a performance—

- (a) the performer has made an assignment agreement that gives the performer the right to claim a non-recurring remuneration, and
- (b) the minimum period specified in section 299A(1)(b) has elapsed,

the performer shall have the right to obtain an annual supplementary remuneration from the producer for each full year immediately following the fiftieth year after the sound recording was first lawfully made available to the public.

(2) The right of the performer to obtain an annual supplementary remuneration in accordance with this section shall not be waived by the performer and an agreement is void in so far as it purports to exclude or restrict that right.

(3) The overall amount to be set aside, at least once a year, by a producer for payment of annual supplementary remuneration pursuant to this section shall correspond to 20% of the gross revenue that the producer has derived for the preceding full year referred to in subsection (1).

(4) The right of a performer referred to in subsection (1) to obtain an annual supplementary remuneration in accordance with this section shall be administered by a collecting society on his or her behalf as follows:

- (a) the producer shall pay the annual supplementary remuneration referred to in subsection (1) to which the performer is entitled to a collecting society within one month of its having been set aside;
- (b) the collecting society shall then distribute the annual supplementary remuneration referred to in paragraph (a) to the performer.

(5) For the purposes of this section, the producer or the former producer of a sound recording shall, if requested by the performer in writing, inform the performer in writing as soon as may be, and in any event not more than 40 days after receipt of the said request, of any information in the possession of the producer or former producer that may be necessary for the performer in order to secure payment of that remuneration.

(6) If the producer or the former producer fails to supply the information specified in subsection (5) within the period specified in that subsection, the performer may seek an injunction from the High Court requiring the producer or former producer to provide the information.

(7) The ‘gross revenue’ referred to in subsection (3) means the revenue, before deducting costs, derived by the producer from the exclusive rights of distribution, reproduction and making available of the sound recording.

Recurring payments.

299C. If, in relation to a sound recording of a performance—

- (a) an assignment agreement gives the performer the right to claim recurring payments, and
- (b) the period specified in section 299A(1)(b) has elapsed,

neither advance payments nor any contractually defined deductions shall be deducted from the payments made to the performer after the period referred to in paragraph (b) has elapsed.

Application of sections 299A to 299C.

299D. Sections 299A to 299C shall apply to assignment agreements in relation to sound recordings—

- (a) in regard to which the rights of the performer and the producer would still have been protected on 1 November 2013, had the European Union (Term of Protection of Copyright and Certain Related Rights) (Directive 2011/77/EU) Regulations 2013 not come into operation on that date, or
- (b) that are created on or after 1 November 2013.

Deemed continuation in force and modification of assignment agreements.

299E. (1) Where an assignment agreement was made before 1 November 2013, it shall be deemed to continue in force, unless it clearly indicates otherwise, until the expiration of the rights of the performer under this Act that were transmitted pursuant to the assignment agreement, or until the assignment agreement is terminated pursuant to section 299A.

(2) An assignment agreement that entitles a performer to recurring payments and which was concluded before 1 November 2013 may be modified for the benefit of the performer once the period specified in section 299A(1)(b) has elapsed until the expiration of the rights of the performer under this Act that were transmitted pursuant to the assignment agreement, or until the assignment agreement is terminated pursuant to section 299A.”, and

(h) by the substitution of the following section for section 315:

“Duration of moral rights.

315. (1) The rights conferred by this Part shall expire 50 years after the date of the performance.

(2) Notwithstanding subsection (1)—

(a) if a recording of the performance is lawfully made available to the public within the period referred to in subsection (1), the rights shall expire 50 years from the date the recording is first so made available, and

(b) notwithstanding paragraph (a) but subject to subsection (3), if a sound recording of the performance is lawfully made available to the public within the period referred to in subsection (1), the rights shall expire 70 years from the date the recording is first so made available.

(3) Subsection (2)(b) applies to a sound recording—

(a) in regard to which the rights of the performer and the producer would still have been protected on 1 November 2013, had the European Union (Term of Protection of Copyright and Certain Related Rights) (Directive 2011/77/EU) Regulations 2013 not come into operation on that date, or

(b) that is created on or after 1 November 2013.

(4) The terms provided for in subsections (1) and (2) shall be calculated from the first day of January of the year following the event that gives rise to them.”.

4. For the avoidance of doubt, the duration of copyright in works referred to in paragraph 9(1) of Part I of the First Schedule to the Principal Act shall be determined, where applicable, in accordance with the Principal Act as amended by these Regulations.



GIVEN under the Official Seal of the Minister for Jobs, Enterprise and Innovation,
31 October 2013.

DERMOT CURRAN,

A Person Authorised Under Section 15 of the Ministers and Secretaries Act 1924 to Authenticate the Seal of the Minister for Jobs, Enterprise and Innovation.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Regulations transpose Directive 2011/77/EU of the European Parliament and of the Council of 27 September 2011 amending Directive 2006/116/EC on the term of protection of copyright and certain related rights into Irish law. In line with the Directive, the Regulations extend the term of protection for performers and for producers of sound recordings from 50 to 70 years.

The Regulations introduce also new measures to benefit performers in sound recordings in the later stages of their career such as: a 20% fund for session musicians to obtain additional payments during the extended 20 year term; a provision whereby performers can reclaim their rights from producers if, in the extended period, a record company does not market a recording and, a 'clean slate' provision, whereby producers will not be entitled to make deductions from the contractual royalties due to featured performers during the extended term of protection. The Regulations implement also harmonised rules governing the term of protection of copyright in musical compositions with words, i.e. where the lyricist and the composer are different persons.

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