



# THE COPYRIGHT (APPLICATION TO OTHER COUNTRIES) ORDER 1995

CATHERINE A. TIZARD, Governor-General

ORDER IN COUNCIL

At Wellington this 10th day of July 1995

Present:

HER EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to sections 204 and 232 of the Copyright Act 1994, Her Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following order.

## ANALYSIS

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2. Interpretation
3. Meaning of "first published"

### *Copyright in Foreign Works other than Sound Recordings, Broadcasts, and Cable Programmes*

4. Foreign works to which section 18 (2) of Act does not apply
5. Foreign works to which section 18 (2) of Act applies
6. Application of Act to foreign works to which section 18 (2) of Act applies
7. Foreign works to which section 19 (1) (b) of Act applies
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### *Copyright in Foreign Works that are Sound Recordings*

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## ORDER

### 1. Title and commencement—

- (1) This order may be cited as the Copyright (Application to Other Countries) Order 1995.
- (2) This order shall come into force on the 1st day of January 1996.

### 2. Interpretation—

In this order, unless the context otherwise requires,—

“Act” means the Copyright Act 1994:

“Foreign work” means a work that does not qualify for copyright under any of sections 18 (1), 19 (1) (a), 20 (1) (a), 20 (2) (a), 26, or 28 of the Act:

“Performance”—

- (a) Means a live performance, being—
  - (i) A dramatic performance, including a dance, a mime, and a performance given with the use of puppets; or
  - (ii) A musical performance; or
  - (iii) A reading or recitation of a literary work; or
  - (iv) A performance of a variety act or any similar presentation; but
- (b) Does not include—
  - (i) A performance referred to in section 47 (1) of the Act; or
  - (ii) A reading, recital, or delivery of any item of news and information; or
  - (iii) A performance of a sporting activity; or
  - (iv) Participation a performance as a member of an audience.

### 3. Meaning of “first published”—

For the purposes of this order, publication in one country shall not be regarded as other than the first publication by reason of simultaneous publication elsewhere; and for this purpose publication elsewhere within the previous 30 days shall be treated as simultaneous.

### *Copyright in Foreign Works other than Sound Recordings, Broadcasts, and Cable Programmes*

### 4. Foreign works to which section 18 (2) of Act does not apply—

In section 18 (2) of the Act, the term “work” does not include—

- (a) A literary, dramatic, musical, or artistic work that is a foreign work that was first published before the 1st day of April 1963; or
- (b) A literary, dramatic, musical, or artistic work that is a foreign work that was first published before the 1st day of January 1995 and whose author was not, at the material time,—
  - (i) A citizen or subject of a country specified in the First Schedule to this order; or
  - (ii) An individual domiciled or resident in a country specified in the First Schedule to this order; or
  - (iii) A body incorporated under the law of a country specified in the First Schedule to this order.

### 5. Foreign works to which section 18 (2) of Act applies—

In section 18 (2) of the Act,—

- (a) The term “work” means a foreign work to which clause 4 of this order does not apply and that is of one of the following descriptions:
  - (i) A literary, dramatic, musical, or artistic work:

- (ii) A film:
- (iii) A typographical arrangement of a published edition:
- (b) The term “prescribed foreign country”, in relation to a work to which paragraph (a) of this clause applies, means a country specified in the First Schedule to this order.

**6. Application of Act to foreign works to which section 18 (2) of Act applies—**

Where, in accordance with clause 5 of this order, a foreign work qualifies for copyright under section 18 (2) of the Act, the provisions of the Act apply to that work, except that the provisions of Part IX of the Act do not apply.

**7. Foreign works to which section 19 (1) (b) of Act applies—**

In section 19 (1) (b) of the Act,—

- (a) The term “work” means a foreign work of one of the following descriptions:
  - (i) A literary, dramatic, musical, or artistic work:
  - (ii) A film:
  - (iii) A typographical arrangement of a published edition:
- (b) The term “prescribed foreign country”, in relation to a work to which paragraph (a) of this clause applies, means a country specified in the First Schedule to this order.

**8. Application of Act to foreign works to which section 19 (1) (b) of Act applies—**

Where, in accordance with clause 7 of this order, a foreign work qualifies for copyright under section 19 (1) (b) of the Act, the provisions of the Act apply to that work, except that the provisions of Part IX of the Act do not apply.

*Copyright in Foreign Works that are Sound Recordings*

**9. Application of Act to sound recordings—**

- (1) In sections 18 (2) and 19 (1) (b) of the Act,—
  - (a) The term “work” includes a foreign work that is a sound recording:
  - (b) The term “prescribed foreign country”, in relation to a foreign work that as a sound recording, means a country specified in the First Schedule to this order.
- (2) Where, in accordance with subclause (1) of this clause, a foreign work that is a sound recording qualifies for copyright under section 18 (2) or section 19 (1) (b) of the Act, the provisions of the Act apply to that work, except that—
  - (a) Sections 32 (2) to (4), 33 (b), 39, and 131 (3) (b) of the Act apply only if—
    - (i) The country specified in the First Schedule to this order is also specified in the Second Schedule to this order; or
    - (ii) The sound recording is a film sound-track accompanying a film:
  - (b) The provisions of Part IX of the Act do not apply.

*Copyright in Foreign Works that are Broadcasts*

**10. Application of Act to broadcasts—**

- (1) In—
  - (a) Section 18 (2) of the Act, the term “work” includes a foreign work that is a broadcast made on or after the 1st day of January 1995:
  - (b) Sections 18 (2) and 20 (1) (b) of the Act the term “prescribed foreign country”, in relation to a foreign work that is a broadcast made on or after the 1st day of January 1995, means a country specified in the Second Schedule to this order.

(2) Where, in accordance with subclause (1) of this clause, a foreign work that is a broadcast made on or after the 1st day of January 1995 qualifies for copyright under section 18 (2) or section 20 (1) (b) of the Act, the provisions of the Act apply to that work, except that—

- (a) For the purposes of section 24 (2) of the Act, copyright shall not exist in a repeated broadcast made on or after the 1st day of January 1995 where the initial broadcast was made before that date;
- (b) The provisions of Part IX of the Act do not apply.

### *Expenditure or Liability Incurred in Connection with Copyright Work*

#### **11. Expenditure or liability incurred in connection with copyright work—**

- (1) This clause applies in any case where—
  - (a) A work was made before the commencement of this order; and
  - (b) When the work was made, copyright did not exist in the work under the Copyright Act 1962 or section 230 of the Copyright Act 1994; and
  - (c) Copyright exists in the work pursuant to clauses 5, 7, 9 (1), or 10 (1) of this order.
- (2) Where, in any case to which subclause (1) of this clause applies, a person incurred any expenditure or liability relating to an act that, at the time the act was done, was not an act restricted by copyright in the work, the person does not do an act restricted by copyright by doing, or continuing to do, that act in respect of the work when copyright exists in the work.
- (3) Notwithstanding subclause (2) of this clause, an act that under that subclause is not an act restricted by copyright when copyright exists in the work may become an act restricted by copyright if the owner of the copyright or his or her exclusive licensee (if any) pays the person such compensation for the person's expenditure or liability as may be agreed upon or, in default of a cement, as shall be determined by arbitration in accordance with the provisions of the Arbitration Act 1908.

### *Transitional Provision*

#### **12. Application of provisions of Act to foreign works in which copyright existed at commencement—**

Notwithstanding anything in this order, the provisions of the Act—

- (a) Apply to any foreign work in which copyright existed immediately before the commencement of the Act; and
- (b) Are deemed to be satisfied, so far as they relate to qualification for copyright, by every foreign work in which copyright existed immediately before the commencement of the Act.

#### **13. Application of Part IX of Act to specified countries—**

The provisions of Part IX of the Act are hereby declared to apply in relation to—

- (a) An performance given in an of the countries specified in the Third Schedule to this order; and
- (b) Any performance given in any country by a citizen or subject of or a person domiciled or resident in any of the countries specified in the Third Schedule to this order.



## SCHEDULES

### FIRST SCHEDULE

Cls. 4, 5, 7, 9

#### COUNTRIES TO WHICH COPYRIGHT ACT 1994 (EXCEPT PART IX) APPLIES, IN RESPECT OF ALL WORKS EXCEPT BROADCASTS AND CABLE PROGRAMMES

Albania	Croatia
Algeria	Cuba
Andorra	Cyprus
Antigua and Barbuda	Czech Republic
Argentina	Denmark
Australia	Djibouti
Austria	Dominica
Bahamas	Dominican Republic
Bahrain	Ecuador
Bangladesh	Egypt
Barbados	El Salvador
Belarus	Estonia
Belgium	Fiji
Belize	Finland
Benin	France
Bolivia	Gabon
Bosnia and Herzegovina	Gambia
Botswana	Germany
Brazil	Ghana
Brunei Darussalam	Greece
Bulgaria	Guatemala
Burkina Faso	Guinea
Cambodia	Guinea-Bissau
Cameroon	Guyana
Canada	Haiti
Central African Republic	Holy See
Chad	Honduras
Chile	Hong Kong
China	Hungary
Colombia	Iceland
Congo	India
Costa Rica	Indonesia
Côte d'Ivoire	
Ireland	Panama
Israel	Paraguay
Italy	Peru
Jamaica	Philippines
Japan	Poland
Kazakhstan	Portugal
Kenya	Romania
Korea, Republic of	Russian Federation
Kuwait	Rwanda
Laos	Saint Kitts and Nevis



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Latvia	Saint Lucia
Lebanon	Saint Vincent and the Grenadines
Lesotho	Saudi Arabia
Liberia	Senegal
Libya	Singapore
Liechtenstein	Slovak Republic
Lithuania	Slovenia
Luxembourg	South Africa
Macau	Spain
Macedonia, former Yugoslav Republic of	Sri Lanka
Madagascar	Suriname
Malawi	Swaziland
Malaysia	Sweden
Maldives	Switzerland
Mali	Tajikistan
Malta	Tanzania, United Republic of
Mauritania	Thailand
Mauritius	Togo
Mexico	Trinidad and Tobago
Monaco	Tunisia
Morocco	Turkey
Myanmar	Uganda
Namibia	Ukraine
Netherlands (and the Netherlands Antilles)	United Kingdom
Nicaragua	United States of America
Niger	Uruguay
Nigeria	Venezuela
Norway	Zaire
Pakistan	Zambia
	Zimbabwe

## SECOND SCHEDULE

Cls. 9 (2), 10 (1)

### COUNTRIES TO WHICH COPYRIGHT ACT 1994 (EXCEPT PART IX) APPLIES, IN RESPECT OF SOUND RECORDING AND BROADCASTS

Antigua and Barbuda	Kenya
Argentina	Korea, Republic of
Australia	Kuwait
Austria	Lesotho
Bahrain	Luxembourg
Bangladesh	Macau
Barbados	Malawi
Belgium	Malaysia
Belize	Maldives
Botswana	Mali
Brazil	Malta
Brunei Darussalam	Mauritania
Burkina Faso	Mauritius
Canada	Mexico



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Central African Republic	Morocco
Chile	Myanmar
Colombia	Namibia
Costa Rica	Netherlands (and the Netherlands Antilles)
Côte d'Ivoire	Nigeria
Cuba	Norway
Czech Republic	Pakistan
Denmark	Paraguay
Djibouti	Peru
Dominica	Philippines
Dominican Republic	Poland
Egypt	Portugal
El Salvador	Romania
Finland	Saint Lucia
France	Saint Vincent and the Grenadines
Gabon	Senegal
Germany	Singapore
Ghana	Slovak Republic
Greece	South Africa
Guinea Bissau	Spain
Guyana	Sri Lanka
Honduras	Suriname
Hong Kong	Swaziland
Hungary	Sweden
Iceland	Switzerland
India	Tanzania, United republic of
Indonesia	Thailand
Ireland	Togo
Israel	Trinidad ans Tobago
Italy	Tunisia
Jamaica	Turkey
Japan	Uganda
United Kingdom	Venezuela
United States of America	Zambia
Uruguay	Zimbabwe

### THIRD SCHEDULE

#### COUNTRIES TO WHICH PART IX OF COPYRIGHT ACT 1994 APPLIES

Cl. 13

Antigua and Barbuda	Iceland
Argentina	India
Australia	Indonesia
Austria	Ireland
Bahrain	Israel
Bangladesh	Italy
Barbados	Jamaica
Belgium	Japan
Belize	Kenya
Botswana	Korea, Republic of



Bran	Kuwait
Brunei Darussalam	Lesotho
Burkina Faso	Luxembourg
Canada	Macau
Central African Republic	Malawi
Chile	Malaysia
Colombia	Maldives
Costa Rica	Mali
Côte d'Ivoire	Malta
Cuba	Mauritania
Czech Republic	Mauritius
Denmark	Mexico
Djibouti	Morocco
Dominica	Myanmar
Dominican Republic	Namibia
Egypt	Netherlands (and the Netherlands Antilles)
El Salvador	Nigeria
Finland	Norway
France	Pakistan
Gabon	Paraguay
Germany	Peru
Ghana	Philippines
Greece	Poland
Guinea-Bissau	Portugal
Guyana	Romania
Honduras	Saint Lucia
Hong Kong	Saint Vincent and the Grenadines
Hungary	
Senegal	Togo
Singapore	Trinidad and Tobago
Slovak Republic	Tunisia
South Africa	Turkey
Spain	Uganda
Sri Lanka	United Kingdom
Suriname	United States of America
Swaziland	Uruguay
Sweden	Venezuela
Switzerland	Zambia
Tanzania, United Republic of	Zimbabwe
Thailand	

MARIE SHROFF,  
Clerk of the Executive Council.

#### EXPLANATORY NOTE

*This note is not part of the order, but is intended to indicate its general effect.*

This order comes into force on 1 January 1996.

*Clauses 4 to 9 apply to works that are literary, dramatic, musical, and artistic works, sound recordings, films, and typographical arrangements of published editions and that qualify for copyright either because the author is a citizen or subject of, or a person domiciled or resident in, or a body incorporated under the law of, a country specified in the *First Schedule* or because the works are first published in a country specified in the *First Schedule*. The clauses apply the provisions of the Copyright Act 1994 to such works. However, Part IX of the Act does not apply to them, and some of the infringement provisions apply to sound recordings only if the country specified in the *First Schedule* is also specified in the *Second Schedule* or if the sound recording is a film sound-track.*





*Clause 10* applies to broadcasts made on or after 1 January 1995 that qualify for copyright because the author is a citizen or subject of, or a person domiciled or resident in, or a body incorporated under the law of, a country specified in the *Second Schedule* or because the broadcast is made from a country specified in the *Second Schedule*. The clause applies the provisions of the Copyright Act 1994 to such broadcasts. However, Part IX of the Act does not apply to them, and the Act's provision on copyright in repeated broadcasts is modified.

*Clause 13* applies the provisions of Part IX of the Copyright Act 1994 to performances given in, or given by subjects or citizens of or persons resident or domiciled in, the countries specified in the *Third Schedule* to the order. Part IX deals with performers' rights in their performances.

The countries specified in the *First Schedule* are parties to one, some, or all of—

- (a) The Berne Convention for the Protection of Literary and Artistic Works, 9 September 1886, completed at Paris 4 May 1896; revised at Berlin 13 November 1908 and completed at Berne 20 March 1914; revised at Rome 2 June 1928, at Brussels 26 June 1948, at Stockholm 14 July 1967, and at Paris 24 July 1971, and amended at Paris 2 October 1979;
- (b) The Universal Copyright Convention adopted at Geneva 6 September 1952 and annexed Protocols 1, 2, and 3;
- (c) The Agreement establishing the World Trade Organisation done at Marrakesh 15 April 1994 (World Trade Organisation Agreement).

The countries specified in the *Second* and *Third Schedules* are parties to the World Trade Organisation Agreement.

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This order is administered in the Department of Justice.

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