

The Copyright (Application to Other Countries) Order 1995*
(as amended by the Copyright (Application to Other Countries) Amendment Order 1997)

ANALYSIS

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* *Entry into force* (of last amending law): April 17, 1997.
Source: Communication from the New Zealand authorities.
Note: Consolidation by the International Bureau of WIPO.

Performers' Rights

Application of Part IX of Act to specified countries [13](#)

Schedules

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 in 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 is 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 agreement, 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) Any performance given in any 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
Algeria
Andorra
Angola
Antigua and Barbuda
Argentina
Australia
Austria
Bahamas
Bahrain
Bangladesh
Barbados
Belarus
Belgium
Belize
Benin
Bolivia
Bosnia and Herzegovina
Botswana
Brazil
Brunei Darussalam
Bulgaria
Burkina Faso
Burundi
Cambodia
Cameroon
Canada
Central African Republic
Chad
Chile
China
Colombia
Congo
Costa Rica
Côte d'Ivoire
Croatia
Cuba
Cyprus
Czech Republic
Denmark
Djibouti
Dominica
Dominican Republic
Ecuador
Egypt
El Salvador

Estonia
Fiji
Finland
France
Gabon
Gambia
Germany
Ghana
Greece
Grenada
Guatemala
Guinea
Guinea-Bissau
Guyana
Haiti
Holy See
Honduras
Hong Kong
Hungary
Iceland
India
Indonesia
Ireland
Israel
Italy
Jamaica
Japan
Kazakstan
Kenya
Korea, Republic of
Kuwait
Laos
Latvia
Lebanon
Lesotho
Liberia
Libya
Liechtenstein
Lithuania
Luxembourg
Macau
Macedonia, former Yugoslav Republic of
Madagascar
Malawi
Malaysia
Maldives

Mali
Malta
Mauritania
Mauritius
Mexico
Monaco
Morocco
Mozambique
Myanmar
Namibia
Netherlands (and the Netherlands Antilles)
Nicaragua
Niger
Nigeria
Norway
Pakistan
Panama
Papua New Guinea
Paraguay
Peru
Philippines
Poland
Portugal
Qatar
Romania
Russian Federation
Rwanda
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Saudi Arabia
Senegal
Sierra Leone
Singapore
Slovak Republic
Slovenia
Solomon Islands
South Africa
Spain
Sri Lanka
Suriname
Swaziland
Sweden
Switzerland
Tajikistan
Tanzania, United Republic of

Thailand
Togo
Trinidad and Tobago
Tunisia
Turkey
Uganda
Ukraine
United Arab Emirates
United Kingdom
United States of America
Uruguay
Venezuela
Zaire
Zambia
Zimbabwe

SECOND SCHEDULE

Cls. 9(2), 10(1)

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

Angola
Antigua and Barbuda
Argentina
Australia
Austria
Bahrain
Bangladesh
Barbados
Belgium
Belize
Benin
Bolivia
Botswana
Brazil
Brunei Darussalam
Bulgaria
Burkina Faso
Burundi
Cameroon
Canada
Central African Republic
Chad
Chile
Colombia

Costa Rica
Côte d'Ivoire
Cuba
Cyprus
Czech Republic
Denmark
Djibouti
Dominica
Dominican Republic
Ecuador
Egypt
El Salvador
Fiji
Finland
France
Gabon
Gambia
Germany
Ghana
Greece
Grenada
Guatemala
Guinea
Guinea-Bissau
Guyana
Haiti
Honduras
Hong Kong
Hungary
Iceland
India
Indonesia
Ireland
Israel
Italy
Jamaica
Japan
Kenya
Korea, Republic of
Kuwait
Lesotho
Liechtenstein
Luxembourg
Macau
Madagascar
Malawi

Malaysia
Maldives
Mali
Malta
Mauritania
Mauritius
Mexico
Morocco
Mozambique
Myanmar
Namibia
Netherlands (and the Netherlands Antilles)
Nicaragua
Niger
Nigeria
Norway
Pakistan
Papua New Guinea
Paraguay
Peru
Philippines
Poland
Portugal
Qatar
Romania
Rwanda
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Senegal
Sierra Leone
Singapore
Slovak Republic
Slovenia
Solomon Islands
South Africa
Spain
Sri Lanka
Suriname
Swaziland
Sweden
Switzerland
Tanzania, United Republic of
Thailand
Togo
Trinidad and Tobago

Tunisia
Turkey
Uganda
United Arab Emirates
United Kingdom
United States of America
Uruguay
Venezuela
Zaire
Zambia
Zimbabwe

THIRD SCHEDULE

Cls. 13

COUNTRIES TO WHICH PART IX OF COPYRIGHT ACT 1994 APPLIES

Angola
Antigua and Barbuda
Argentina
Australia
Austria
Bahrain
Bangladesh
Barbados
Belgium
Belize
Benin
Bolivia
Botswana
Brazil
Brunei Darussalam
Bulgaria
Burkina Faso
Burundi
Cameroon
Canada
Central African Republic
Chad
Chile
Colombia
Costa Rica
Côte d'Ivoire
Cuba
Cyprus
Czech Republic

Denmark
Djibouti
Dominica
Dominican Republic
Ecuador
Egypt
El Salvador
Fiji
Finland
France
Gabon
Gambia
Germany
Ghana
Greece
Grenada
Guatemala
Guinea
Guinea-Bissau
Guyana
Haiti
Honduras
Hong Kong
Hungary
Iceland
India
Indonesia
Ireland
Israel
Italy
Jamaica
Japan
Kenya
Korea, Republic of
Kuwait
Lesotho
Liechtenstein
Luxembourg
Macau
Madagascar
Malawi
Malaysia
Maldives
Mali
Malta
Mauritania

Mauritius
Mexico
Morocco
Mozambique
Myanmar
Namibia
Netherlands (and the Netherlands Antilles)
Nicaragua
Niger
Nigeria
Norway
Pakistan
Papua New Guinea
Paraguay
Peru
Philippines
Poland
Portugal
Qatar
Romania
Rwanda
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Senegal
Sierra Leone
Singapore
Slovak Republic
Slovenia
Solomon Islands
South Africa
Spain
Sri Lanka
Suriname
Swaziland
Sweden
Switzerland
Tanzania, United Republic of
Thailand
Togo
Trinidad and Tobago
Tunisia
Turkey
Uganda
United Arab Emirates
United Kingdom

United States of America
Uruguay
Venezuela
Zaire
Zambia
Zimbabwe

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.