



Jersey

INTELLECTUAL PROPERTY (UNREGISTERED RIGHTS) (WORKS OF FOREIGN PROVENANCE) (JERSEY) ORDER 2012

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Made

Coming into force

THE MINISTER FOR ECONOMIC DEVELOPMENT, in pursuance of Articles 399 and 400 of the Intellectual Property (Unregistered Rights) (Jersey) Law 2011, orders as follows –

1 Interpretation

(1) In this Order, except where the context otherwise requires –

“Berne Convention” means the International Convention for the Protection of Literary and Artistic Works, signed at Berne on 9th September 1886;

“Berne Convention country” means a country which is a party to any Act of the Berne Convention;

“commencement” means the day the Law comes into force;

“Law” means the Intellectual Property (Unregistered Rights) (Jersey) Law 2011;

“Part 1 of the Law” includes any provision of Part 8 or 9 of the Law, to the extent that it has effect in relation to and for the purposes of Part 1 of the Law;

“Part 6 of the Law” includes any provision of Part 8 or 9 of the Law, to the extent that it has effect in relation to and for the purposes of Part 6 of the Law;

“Rome Convention” means the Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, adopted in Rome on 26th October 1961;

“Rome Convention country” means a country that is a party to the Rome Convention;

“WIPO” means the World Intellectual Property Organisation;

“WIPO Copyright Treaty” means the WIPO Copyright Treaty done at Geneva, 2nd to 20th December 1996;

“WIPO copyright country” means a country that is a party to the WIPO Copyright Treaty;

“WPPT” means the WIPO Performances and Phonograms Treaty adopted at Geneva on 20th December 1996;

“WPPT country” means a country that is a party to the WPPT;

“WTO country” means a country that is a member of the World Trade Organization;

“World Trade Organization” means the organization established by the Agreement Establishing the World Trade Organization done at Marrakesh on 15th April 1994 and which includes, as Annex 1C to that Agreement, the Agreement on Trade-Related Aspects of Intellectual Property Rights.

- (2) A reference in this Order to a country being a party to any convention or treaty or a member of an organisation includes a reference to a country to which the convention, treaty or membership extends.

2 Application

- (1) If, following commencement, a country becomes an EEA State, the provisions of this Order relating to EEA States have effect in relation to the country, as an EEA State, from the day that it becomes an EEA State.
- (2) If, following commencement, a country becomes a Berne Convention country, the provisions of this Order relating to Berne Convention countries have effect in relation to the country, as a Berne Convention country, from the day that it becomes a Berne Convention country.
- (3) Paragraph (2) applies, with the necessary modifications, to a country that, following commencement, becomes a Rome Convention country, a WIPO copyright country, a WPPT country or a WTO country as it applies to a country that, following commencement, becomes a Berne Convention country.

3 Copyright – qualifying persons

- (1) The following persons are prescribed for the purposes of Article 21(2)(d) of the Law in its application to all works described in Article 13(1) of the Law –
- (a) individuals who are nationals of, or domiciled or resident in, an EEA State, Guernsey or the Isle of Man; and
- (b) bodies incorporated under the law of an EEA State, Guernsey or the Isle of Man.
- (2) The following persons are prescribed for the purposes of Article 21(2)(d) of the Law in its application to literary, dramatic, artistic and musical works, films and the typographical arrangement of published editions –
- (a) individuals who are nationals of, or domiciled or resident in –

-
- (i) a Berne Convention country,
 - (ii) a WIPO copyright country, or
 - (iii) a WTO country; and
 - (b) bodies incorporated under the law of –
 - (i) a Berne Convention country,
 - (ii) a WIPO copyright country, or
 - (iii) a WTO country.
- (3) The following persons are prescribed for the purposes of Article 21(2)(d) of the Law in its application to sound recordings –
- (a) individuals who are nationals of, or domiciled or resident in –
 - (i) a WTO country,
 - (ii) a WPPT country, or
 - (iii) a Rome Convention country; and
 - (b) bodies incorporated under the law of –
 - (i) a WTO country,
 - (ii) a WPPT country, or
 - (iii) a Rome Convention country.
- (4) The following persons are prescribed for the purposes of Article 21(2)(d) of the Law in its application to wireless broadcasts –
- (a) individuals who are nationals of, or domiciled or resident in –
 - (i) a WTO country, or
 - (ii) a Rome Convention country; and
 - (b) bodies incorporated under the law of –
 - (i) a WTO country, or
 - (ii) a Rome Convention country.

4 Copyright – qualifying countries

- (1) EEA States, Guernsey and the Isle of Man are prescribed for the purposes of Article 22(2)(b) of the Law in its application to all works described in Article 13(1) of the Law.
- (2) The following countries are prescribed for the purposes of Article 22(2)(b) of the Law in its application to literary, dramatic, artistic and musical works, films and the typographical arrangement of published editions –
 - (a) Berne Convention countries;
 - (b) WIPO copyright countries; and
 - (c) WTO countries.
- (3) The following countries are prescribed for the purposes of Article 22(2)(b) of the Law in its application to sound recordings –
 - (a) WTO countries;
 - (b) WPPT countries; and

- (c) Rome Convention countries.
- (4) The following countries are prescribed for the purposes of Article 22(2)(b) of the Law in its application to wireless broadcasts –
 - (a) WTO countries; and
 - (b) Rome Convention countries.

5 Restrictions on qualification for copyright under Article 3 or 4

- (1) A wireless broadcast made from a country other than an EEA State, Guernsey or the Isle of Man shall not qualify for copyright protection by virtue Article 3 or 4 if the wireless broadcast is made before the date the country becomes a WTO country or Rome Convention country.
- (2) A repeat broadcast shall not qualify for copyright protection by virtue of Article 3 or 4 if the repeat broadcast is broadcast more than 50 years after the end of the calendar year in which the original broadcast was made.

6 Database right – qualifying countries and persons

- (1) EEA States, Guernsey and the Isle of Man are prescribed for the purposes of sub-paragraph (b) of the definition “qualifying country” in Article 198(2) of the Law.
- (2) Individuals who are nationals of an EEA State are prescribed for the purposes of sub-paragraph (e) of the definition “qualifying person” in Article 198(2) of the Law.

7 Publication right – qualifying countries and persons

- (1) EEA States are prescribed for the purposes of sub-paragraph (b) of the definition “qualifying country” in Article 218(1) of the Law.
- (2) The following persons are prescribed for the purposes of sub-paragraph (c) of the definition “qualifying person” in Article 218(1) of the Law –
 - (a) individuals who are nationals of an EEA State; and
 - (b) bodies incorporated under the law of an EEA State.

8 Fraudulent reception of transmissions – qualifying countries

EEA States are prescribed for the purposes of Article 249(1)(b) of the Law.

9 Performers’ protection – qualifying individuals

Individuals who are nationals of, or domiciled or resident in, one of the following countries are prescribed for the purposes of sub-paragraph (c) of the definition “qualifying individual” in Article 254(1) of the Law –

- (a) EEA States;
- (b) Guernsey;

-
- (c) the Isle of Man;
 - (d) WTO countries;
 - (e) WPPT countries; and
 - (f) Rome Convention countries.

10 Performers' protection – qualifying countries

The following countries are prescribed for the purposes of sub-paragraph (b) of the definition “qualifying country” in Article 254(1) of the Law –

- (a) EEA States;
- (b) Guernsey;
- (c) the Isle of Man;
- (d) WTO countries;
- (e) WPPT countries; and
- (f) Rome Convention countries.

11 Design right – qualifying countries and individuals

- (1) EEA States, Guernsey and the Isle of Man are prescribed for the purposes of sub-paragraph (b) of the definition “qualifying country” in Article 341(1) of the Law.
- (2) WTO countries are prescribed for the purposes of sub-paragraph (b) of the definition “qualifying country” in Article 341(1) of the Law in its application in relation only to designs that are semiconductor topographies.
- (3) Individuals who are nationals of, or domiciled or resident in an EEA State, Guernsey or the Isle of Man are prescribed for the purposes of sub-paragraph (c) of the definition “qualifying individual” in Article 341(1) of the Law.
- (4) Individuals who are nationals of, or domiciled or resident in, a WTO country are prescribed for the purposes of sub-paragraph (c) of the definition “qualifying individual” in Article 341(1) of the Law in its application in relation only to designs that are semiconductor topographies.

12 Part 1 of the Law modified in its application to certain copyright works of foreign provenance

- (1) Schedule 1 has effect to modify Part 1 of the Law in its application to certain copyright works of foreign provenance that are made following commencement.
- (2) For the purposes of the reference in this Article to works made following commencement, a work of which the making extended over a period shall be taken to have been made when its making was completed.

13 Part 6 of the Law modified in its application to certain qualifying performances of foreign provenance

Schedule 2 has effect to modify Part 6 of the Law in its application to certain qualifying performances of foreign provenance, whether taking place before or following commencement.

14 Saving

- (1) This Article applies where a person –
 - (a) began, in good faith, to do an act or made, in good faith, effective and serious preparations to do an act, in connection with a work, database, performance or design; and
 - (b) incurred any expenditure or liability in connection with the act,
at a time when the act neither infringed nor was restricted by copyright or by any other right conferred by the Law in the work, database, performance or design.
- (2) If, by virtue of this Order, another person (the “rights owner”) acquires copyright or any other right conferred by the Law in the work, database, performance or design, a person who has acted as described in paragraph (1) has the right –
 - (a) to continue to so act; or
 - (b) to so act,
notwithstanding that the act infringes or is restricted by the right so acquired in the work, database, performance or design.
- (3) However, paragraph (2) shall cease to apply if the rights owner (or his or her exclusive licensee) pays reasonable compensation to the person.
- (4) If the rights owner (or licensee) offers to pay compensation to the person, but the rights owner (or licensee) and the person cannot agree on what compensation is reasonable, either of them may refer the matter to arbitration.

15 Citation and commencement

This Order may be cited as the Intellectual Property (Unregistered Rights) (Works of Foreign Provenance) (Jersey) Order 2012 and shall come into force on the same day as the Law.

Signed.....

Date.....

Minister for Economic Development

SCHEDULE 1

(Article 12(1))

**MODIFICATION OF PART 1 OF THE LAW – COPYRIGHT WORKS OF
FOREIGN PROVENANCE****1 Application and interpretation of Schedule 1**

- (1) This Schedule applies to works made following commencement.
- (2) In this Schedule –
 - (a) a reference to an EEA State shall be construed as if Jersey, Guernsey and the Isle of Man were also EEA States;
 - (b) a reference to a national of an EEA State includes a reference to a body incorporated under the law of an EEA State;
 - (c) a reference to a national of a country includes a reference to a body incorporated under the law of the country.

2 Duration of copyright in literary, dramatic, musical and artistic works

- (1) Notwithstanding Part 1 of the Law, where the country of origin of a literary, dramatic, musical or artistic work is not an EEA State and the author of the work is not a national of an EEA State, the duration of copyright in the work shall be whichever is the lesser of –
 - (a) the term to which the work is entitled in the country of origin; and
 - (b) the term determined in accordance with Part 1 of the Law.
- (2) If the work is of joint authorship, the reference in sub-paragraph (1) to the author not being a national of an EEA State shall be construed as a reference to none of the authors being such a person.

3 Duration of copyright in sound recordings

- Notwithstanding Part 1 of the Law, where the author of a sound recording is not a national of an EEA State, the duration of copyright in the sound recording shall be whichever is the lesser of –
- (a) the term to which the sound recording is entitled in the country of which the author is a national; and
 - (b) the term determined in accordance with Part 1 of the Law.

4 Further modifications of Part 1 of Law – sound recordings

- (1) This paragraph applies to a work that qualifies for copyright protection only by virtue of either or both of –
 - (a) the author being a person prescribed in Article 3; and

-
- (b) the country of first publication (if any) being a country prescribed in Article 4.
 - (2) The provisions of the Law specified in sub-paragraph (3) shall not apply in the work's case if –
 - (a) the author is not a national of, or domiciled or resident in, Guernsey, the Isle of Man, a WPPT country or a Rome Convention country; and
 - (b) the country of first publication (if any) is not Guernsey, the Isle of Man, a WPPT country or a Rome Convention country.
 - (3) The provisions are –
 - (a) Article 34;
 - (b) Article 35;
 - (c) Article 41; and
 - (d) Article 139(3) and (4).
 - (4) The provisions of the Law specified in sub-paragraph (6) shall not apply in the work's case if –
 - (a) the author is not a national of, or domiciled or resident in, Guernsey, the Isle of Man or a Rome Convention country;
 - (b) the country of first publication (if any) is not Guernsey, the Isle of Man or a Rome Convention country; and
 - (c) the work satisfies either or both of the conditions in sub-paragraph (5).
 - (5) The conditions are that –
 - (a) the author of the work is a national of, or domiciled or resident in, a WPPT country; or
 - (b) the country of first publication (if any) of the work is a WPPT country.
 - (6) The provisions are –
 - (a) Article 34;
 - (b) Article 35, to the extent that it would otherwise apply to a broadcast of a sound recording;
 - (c) Article 41;
 - (d) Article 139(3), to the extent that it would otherwise apply to a broadcast of a sound recording; and
 - (e) Article 139(4).

5 Duration of copyright in films

- (1) Notwithstanding Part 1 of the Law, where the country of origin of a film is not an EEA State and the author of the film is not a national of an EEA State, the duration of copyright is whichever is the lesser of –
 - (a) the term to which the work is entitled in the country of origin; and
 - (b) the term determined in accordance with Part 1 of the Law.

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- (2) In relation to a film of which there are joint authors, the reference in sub-paragraph (1) to the author not being a national of an EEA State shall be construed as a reference to none of the authors being such a person.

6 Duration of copyright in broadcasts

- (1) Subject to sub-paragraph (2), copyright in a broadcast that is a repeat of a broadcast originally made before the day on which the repeat broadcast qualified for copyright by virtue of Article 3(1) or (4) or 4(1) or (4) shall expire at the end of the period of 50 years from the end of the calendar year in which the original broadcast was made.
- (2) Notwithstanding Part 1 of the Law, where the author of a broadcast is not a national of an EEA State, the duration of copyright in the broadcast shall be whichever is the lesser of –
- (a) the term to which the work is entitled in the country of which the author is a national; and
 - (b) the term determined in accordance with Part 1 of the Law.

7 Further modifications of Part 1 of Law – wireless broadcasts

- (1) This paragraph applies to a wireless broadcast if –
- (a) the broadcast qualifies for copyright protection only by virtue of either or both of –
 - (i) the author being a person prescribed in Article 3, and
 - (ii) the broadcast being made from a place in a country that is prescribed in Article 4;
 - (b) the author is not a national of, or domiciled or resident in Guernsey, the Isle of Man or a Rome Convention country; and
 - (c) the broadcast is not made from a place in Guernsey, the Isle of Man or a Rome Convention country.
- (2) Articles 34 and 41 of the Law shall only apply in the broadcast's case to the extent that they relate to showing a television wireless broadcast in public.
- (3) Articles 35 and 139(3) of the Law shall only apply in the broadcast's case to the extent that they relate to a wireless broadcast by wireless telegraphy.

8 Determination of country of origin for the purposes of paragraphs 2 and 5

- (1) For the purposes of paragraphs 2 and 5, the country of origin of a work shall be determined in accordance with this paragraph.
- (2) If the work is first published in an EEA State, and is not simultaneously published elsewhere, the country of origin is an EEA State.
- (3) If the work is first published simultaneously in 2 or more countries, one or more of which is an EEA State, the country of origin is an EEA State.

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- (4) Sub-paragraphs (5) to (7) apply to a work to which neither sub-paragraph (2) or (3) applies.
 - (5) If the work is first published in a Berne Convention country and is not simultaneously published elsewhere, the country of origin is that country.
 - (6) If the work is first published simultaneously in 2 or more countries, only one of which is a Berne Convention country, the country of origin is that country.
 - (7) If the work is first published simultaneously in 2 or more countries of which 2 or more are Berne Convention countries, the country of origin is the Berne Convention country which grants the shorter or shortest period of copyright protection.
 - (8) If the work is unpublished or is a published work to which none of sub-paragraphs (2) to (7) apply, the country of origin is –
 - (a) if the work is a film and the maker of the film has his or her headquarters in, or is domiciled or resident in an EEA State or Berne Convention country – that State or country;
 - (b) if the work is a work of architecture constructed in an EEA State or Berne Convention country – that State or country;
 - (c) if the work is an artistic work incorporated in a building or other structure situated in an EEA State or Berne Convention country – that State or country; or
 - (d) in the case of any other work, the EEA State or country of which the author of the work is a national.
 - (9) In this paragraph, references to simultaneous publication are to publication within 30 days of the first publication.

SCHEDULE 2

(Article 13)

**MODIFICATION OF PART 6 OF THE LAW – QUALIFYING
PERFORMANCES OF FOREIGN PROVENANCE****1 Application of Schedule 2**

This Schedule applies to qualifying performances, whether taking place before or following commencement.

2 Duration of performers' protection

Notwithstanding Article 272 of the Law, where the performer of a performance is not a national of an EEA State, the duration of the rights conferred by Part 6 of the Law in relation to the performance shall be whichever is the lesser of –

- (a) the term to which the performance is entitled in the country of which the performer is a national; and
- (b) the term determined in accordance with Part 6 of the Law.

3 Further modifications of Part 6 of Law

- (1) This paragraph applies to a performance that is a qualifying performance only by virtue of either or both of –
 - (a) the performer being an individual prescribed in Article 9; and
 - (b) the performance taking place in a country prescribed in Article 10.
- (2) Part 6 of the Law is modified as specified in sub-paragraph (3), in its application in relation to the performance, if –
 - (a) the performer is not a national of or domiciled or resident in Guernsey, the Isle of Man, a WPPT country or a Rome Convention country; and
 - (b) the performance does not take place in Guernsey, the Isle of Man, a WPPT country or a Rome Convention country.
- (3) The modifications are that –
 - (a) in Article 254(1) of the Law, the definition “recording” shall not include a film recording; and
 - (b) the following Articles of the Law shall not apply –
 - (i) Article 263,
 - (ii) Article 264,
 - (iii) Article 266,
 - (iv) Articles 268 to 271, and
 - (v) Article 318(2) and (3).

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- (4) Part 6 of the Law is modified as specified in sub-paragraph (6), in its application in relation to the performance, if –
- (a) the performer is not a national of, or domiciled or resident in, Guernsey, the Isle of Man or a Rome Convention country;
 - (b) the performance does not take place in Guernsey, the Isle of Man or a Rome Convention country; and
 - (c) the performance satisfies either or both of the conditions in sub-paragraph (5).
- (5) The conditions are that –
- (a) the performer is a national of, or domiciled or resident in, a WPPT country; or
 - (b) the performance takes place in a WPPT country.
- (6) The modifications are that –
- (a) in Article 254(1) of the Law, the definition “recording” shall not include a film recording; and
 - (b) the following Articles of the Law shall not apply –
 - (i) Article 264,
 - (ii) Article 266,
 - (iii) Articles 268 to 271, and
 - (iv) Article 318(3).

