



The Duration of Copyright and Rights in Performances Regulations 1995

These regulations amended the Copyright Design and Patents Act 1988 by extending the duration of copyright protection in accordance with a European directive. The Regulations took effect from 1 January 1996.

Duration

The general rule is that from 1 January 1996 copyright in artistic works will last for the life of the author plus 70 years. Artistic works which are computer generated continue to be protected for 50 years from the year in which they were made. There are special rules applying to works of unknown authorship and also special rules applying to certain foreign works not of EEA origin.

Works Affected

The new period of copyright protection applies to:

- New works i.e. works made on or after 1 January 1996;
- Existing works if either:
 - the previous period of copyright protection would have expired on or after 31 December 1995 (in which case the rules relating to Extended Copyright apply); or
 - the previous period of copyright protection expired in the UK before 31 December 1995 but the work was still in copyright in at least one territory in the EEA on 1 July 1995 (in which case the rules on Revived Copyright apply).

It is also provided that nothing in the Regulations shall have the effect of shortening any period of copyright protection that would have applied under the 1988 Act if it is for a longer period than life of the author plus 70 years. This has an effect in relation to engravings that were unpublished as at 1 August 1989 which can be protected to December 2039, if that is beyond life plus 70 years (see Fact Sheet 13) for further details).

Extended Copyright

These provisions apply to existing works where copyright under the 1988 Act would have expired on or after 31 December 1995. Extended copyright is the extra 20 year period after the time when copyright would otherwise have expired.

Who owns the extended copyright?

The owner of the extended copyright is the person who owned the copyright on 31 December 1995 unless by virtue of any grant that person was entitled to the copyright only for a specified period or for a period expressed to be shorter than the full life of copyright under the 1988 Act, in which case the extended copyright will revert back to the original assignee of the copyright on expiry of that shorter period. Prospective owners of such copyright (if an assignment of the prospective copyright has already been entered into) are also expressly provided for and the extended copyright can vest in them. Where existing licences or waivers (such as moral right waivers) have already been granted for the full period of copyright, they will apply in the period of the extended copyright subject to any agreement to the contrary.

Revived Copyright

Revived copyright applies to works in which copyright expired in the UK before 31 December 1995 but which were in copyright in one member state of the EEA on 1 July 1995. From 1 January 1996 such works will come back into copyright in the UK and the rest of the EEA for the remainder of the period of the life of the author plus 70 years. In effect this will apply principally to works whose authors were nationals of an EEA state who died between 1925 and 1945, for example Edvard Munch.

Who owns revived copyright?

The owner of any revived copyright is the person who owned the copyright before it expired, known as the former copyright owner. If the former copyright owner died before 1 January 1996 or was a company that ceased to exist before that date, then the owner of the revived copyright will be the author or the authors heirs or beneficiaries. There are similar provisions as with extended copyright about prospective assignments and licences and waivers.

Exploitation of Revived copyrights

No act undertaken before 1 January 1996 will infringe a revived copyright. It is also not an infringement of a revived copyright to do anything after 1 January 1996 if such acts are done in pursuance of arrangements made before 1 January 1995 at a time when the relevant work was in the public domain in the UK. Arrangements are not defined

but it is believed that it means there must have been either some contractual commitments made or money, time and research invested in a proposed project - not just an idea of doing something with the work. In addition it is not an infringement of the revived copyright to issue copies of a work to the public of those copies were made before 1 July 1995 at a time when the work was in the public domain in the UK. There are similar safeguards where a work has been incorporated into another work.

Licences of Right

Where the use of a revived work does not fall within the above provisions then it will be an infringement of the revived copyright to use the work after 1 January 1996 unless such use is licensed. However, it is provided that such uses may be treated as licensed by the copyright owner automatically subject only to the payment of a reasonable royalty or other remuneration as may be agreed or fixed by the Copyright Tribunal. To avail themselves of this protection, however, users must give reasonable notice of their intention to use the work stating when they intend to do so. Failure to give such a notice will mean that such use will be an infringement of the revived copyright. Once notice is given, the user will be treated as licensed even if the reasonable royalty may not be agreed or determined until later.

The above provisions do not apply if or to the extent that a licence to use the work could be granted by a Licensing Body, whether or not under a licensing scheme.

DACS is a licensing body. DACS licenses the reproduction of its members works on a case by case basis by means of individual licence agreements and in certain circumstances through licensing schemes. Where DACS as the Licensing Body could licence the work, then application must be made to DACS as the licence if right provisions will not apply.

Photographs

These provisions have particular effects when applied to photographs made before 1 August 1989. (Please see fact sheet 14 for further details).

Moral Rights

Moral rights will apply in relation to new works in the normal way under the provisions of the 1988 Act. They will continue to apply as they did in relation to existing works save that they will automatically last for the new period of copyright. Any waivers or assertions of moral rights that have been granted or made in respect of existing works will continue to apply in the extended period of copyright subject to any agreement to the contrary.

However, there are special provisions in relation to moral rights as they apply to revived copyright works. As moral rights do not exist in the UK in respect of authors who died before 1 August 1989, moral rights would not in any event exist in relation to most revived works, but it is possible that photographs taken before 1945 which could revive could have been taken by photographers who survived until after 1 August 1989. Moral rights in such cases can be exercised subject to the proviso that anything which is expressly stated as not to be an infringement of copyright in a revived work will also not infringe moral rights.

Works of Foreign Origin

There are fairly complex rules about whether works of foreign origin (i.e. from outside the EEA or created by non EEA nationals) get this new longer period of copyright protection. In essence they get protected only for the period of protection in their own country of origin if shorter than life plus 70 years.

The content of this fact sheet is of benefit interest only and is not an exhaustive explanation of copyright protection and remedies for infringement. This fact sheet is not intended to apply to specific circumstances. The contents of this fact sheet should not therefore be regarded as constituting legal or other advice and should not be relied upon as such. In relation to any particular problem that you may have, you are advised to seek specific and specialist advice.