



The Copyright and Related Rights Regulations 1996

These regulations introduced further amendments to the Copyright Designs and Patents Act 1988 from 1 December 1996. The changes were necessary to comply with various European Directives and as such represent a rather mixed bag of provisions.

This fact sheet covers the two principal areas which may be of interest to copyright owners of artistic works or those who use artistic works. The regulations also created a new “publication right” for the first publisher of certain works in which the copyright has expired (see Fact Sheet 22).

The Rental and Lending Rights

Under the 1988 Act there was no rental or lending right in respect of artistic works; copyright owners of artistic works were able to restrain the rental and lending of copies of those works only to the extent that the copies were themselves infringing i.e had been copied or made available to the public without the authorisation of the copyright owner.

Now there are separate rights to authorise rental and lending rights in relation to some artistic works. “Rental” means making a copy available (to the public) for use on terms that it will or may be returned for direct or indirect economic or commercial advantage. “Lending” means doing these acts other than for direct or indirect economic or commercial advantage, through an establishment which is accessible to the public.

Artistic works affected

The rights apply to originals or copies of artistic works, save for works of architecture or “applied art”. Works of architecture include buildings or models for buildings.

The term “applied art” is new to UK copyright law and rather unhelpfully has not been defined in these Regulations. However, it derives from the Berne Convention and is likely to embrace artistic works which are industrially exploited and other works of artistic craftsmanship.

The new rental and lending rights apply to both existing and future artistic works. The position as regards existing works and acts done before 1 December 1996 is dealt with below. The application may be to copies of artistic works in books, or in films or video.

Exclusions and Permitted Acts

The following are specific exclusions from the rental and lending rights which may be relevant to artistic works; making the works available for exhibition in public, or for broadcasting or inclusion in a cable programme service or making available for on the spot reference use.

Other issues relating to Lending

In order to balance the exclusive lending rights of copyright owners with the public interest in ensuring that works were available for public lending (i.e where there is no element of financial gain), the Regulations contain certain other permitted acts in respect of lending.

Firstly, the right is not infringed by the lending of copies of work by an educational establishment. Secondly, the copyright in a work is not infringed by the lending of a book by a public library if the book is within the Public Lending Rights Scheme. The reason for this is that remuneration for the authors of these works, including in some cases for authors of the accompanying illustrations, is secured under the PLR Scheme.

The Secretary of State’s powers under the 1988 Act to order the rental to the public of copies of the works, subject to the payment of a reasonable royalty or other payment is replaced by a new power to order the lending of copies of the work in certain circumstances. None have yet been laid down.

Dealing with the Rental and Lending rights

As the rental and lending rights are part of copyright, they can be transferred, assigned and licensed in anyway. In addition to express assignments, the Regulations provide for deemed transfer of the rental right in certain circumstances. Where an agreement concerning film production is concluded between the creator of an underlying artistic work and a film producer, the creator shall be presumed, unless the agreement provides to the contrary, to have transferred to the film producer any rental right in relation to the film arising by virtue of the inclusion of a copy of the artistic work.

The presumed transfer applies either where there is a contract between the creator and the film producer, or where the contract is made through “intermediaries”. It may not however extend to contracts made by an artist’s heirs or assignees.

Equitable Remuneration for Rental

Where an artist or his intermediaries have made an express or deemed transfer of the rental right in relation to use of his work in a film, he retains the right to receive “equitable remuneration” for any rental of the film. The right to equitable remuneration cannot be assigned by the artist, except to a collecting society for the purposes of enforcement on his behalf.

However, the right can pass to an author’s heirs or by operation of law and can then be dealt with by any person in to whose hands it passes as a result. So, a right to equitable remuneration will only arise as a result of arrangements made by an artist (or his intermediaries) but may be dealt with by his heirs following his death.

The equitable remuneration is payable by the person for the time being entitled to the rental right. This may be the film producer to whom it was initially expressly or transferred or it may be necessary for an artist to identify the successor in title of that producer. It seems that the right cannot be exercised against someone who is merely a licensing the rental rights.

The amount payable by way of equitable remuneration is to be agreed between the respective parties, subject to the right for either party to refer it to the Copyright Tribunal. Agreements purporting to exclude or restrict the right to equitable remuneration are ineffective. There is very little guidance as to what equitable remuneration might be. Nor is it clear what factors the Copyright Tribunal will consider, other than the importance of the contribution of the author to the film. It is perfectly possible that a single payment at the time of transfer of the rental right may be regarded as sufficient.

Existing artistic works

The rental and lending provisions apply to both existing and future works. However, the Regulations are not retrospective in that nothing done before implementation will infringe the new rights. Nor will they apply to a copy of any work acquired by a person before 1 December 1997 for the purposes of rental and lending.

Equitable remuneration will only be payable in respect of rental occurring after 1 April 1997. Where the creator of an artistic work has entered into an agreement for use of his work in a film before 1 July 1994 he will only be able to claim equitable remuneration from 1 April 1997 if he had given notice of that intention to the person then holding the rental right by 1 January 1997.

Cable Re-transmission of Satellite Broadcasts

The Regulations introduce provisions to simplify the administration of cable re-transmission rights. Where owners of copyright in underlying artistic works have a right to restrain a cable re-transmission emanating from another EEA Member State containing their work, the right must now be collectively administered. The cable re-transmission right will be administered through a licensing body appointed by the copyright owner or in default of an express appointment the rights will be deemed to be mandated to a relevant licensing body against whom affected copyright owners should then claim. However, in such cases the copyright owner must claim within the period of three years beginning with the date of the cable re-transmission concerned.

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.