



The Publication Right

The Copyright and Related Rights Regulations 1996 introduced this new “publication right” from 1 December 1996. The UK was required to introduce the right to comply with a European directive. The new right applies throughout the EEA.

The new right has sometimes been referred to as the “treasure trove” right, because in effect it gives a new lease of life, in terms of protection, to old works that have never before seen the light of day.

What works can be the subject of the new right?

The new right applies to literary, dramatic, musical and artistic works and films which:

- Were at one time protected by copyright. There may be some difficulty in establishing whether certain early unpublished works were ever entitled to copyright protection, either under the early copyright legislation or as a matter of common law, so as to qualify for the publication right.
- Have never before been published anywhere which means, broadly, made available to the public by one means or another (but no account is taken of any publication which was not authorised either by the copyright owner or in the case of a “public domain” work by the owner of the physical medium in which the work is embodied.
- That copyright protection law has expired. Under the 1911 and 1956 Acts many unpublished works continued to have perpetual copyright until publication. The 1988 Act brought that to an end but gave a further fifty year period from implementation in relation to existing unpublished works. As a result many unpublished works will still be protected by copyright until at least 2039. In terms of artistic works this applies to unpublished engravings (see Fact Sheet 13).

Qualifying for the new right

The work will only qualify for publication right if first publication is in the EEA and the publisher of the work (or at least one joint publisher) is at the time of first publication a national of an EEA State. This contrasts with the usual rule in copyright, where qualification may be on the grounds of nationality or place of first publication. The person first publishing the work obtains the “publication right”.

Nature of the publication right

It is a property right equivalent to copyright, save in duration. In effect, a person who obtains the publication right has a virtual copyright protection in the work itself for a period of twenty five years from the end of the calendar year of first publication..

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