

**SECOND SUPPLEMENT TO THE GIBRALTAR
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LEGAL NOTICE NO. 153 OF 2013.

**INTELLECTUAL PROPERTY (COPYRIGHT AND RELATED
RIGHTS) ACT 2005**

INTERPRETATION AND GENERAL CLAUSES ACT

**INTELLECTUAL PROPERTY (COPYRIGHT AND RELATED
RIGHTS) ACT 2005 (AMENDMENT) REGULATIONS 2013**

ARRANGEMENT OF REGULATIONS.

Regulation.

1. Title and commencement.

PART I

**AMENDMENT TO THE INTELLECTUAL PROPERTY
(COPYRIGHT AND RELATED RIGHTS) ACT 2005**

2. Amendment of Act.

PART II

SAVINGS AND TRANSITIONAL PROVISIONS

3. Introductory.
4. Copyright: interpretation.
5. Duration of copyright: general saving.
6. Duration of copyright: application of new provisions.
7. Extended and revived copyright.
8. Ownership of extended copyright.
9. Ownership of revived copyright in works of co-authorship.
10. Prospective ownership of extended or revived copyright.
11. Extended copyright: existing licenses, agreements, etc.
12. Revived copyright: exercise of moral rights.
13. Revived copyright: saving for acts of exploitation when work in public domain, etc.
14. Rights in performance: interpretation.
15. Rights in performance: application in new provisions.
16. Extended performance rights.

17. Entitlement to extended performance rights and new rights.
18. Extended performance rights: existing consents, agreements etc.

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INTERPRETATION AND GENERAL CLAUSES ACT

INTELLECTUAL PROPERTY (COPYRIGHT AND RELATED RIGHTS) ACT 2005 (AMENDMENT) REGULATIONS 2013

In exercise of the powers conferred upon it by section 279 of the Intellectual Property (Copyright and Related Rights) Act 2005 and section 23(g) of the Interpretation and General Clauses Act, and in order to transpose into the law of Gibraltar Directive 2011/77/EU of the European Parliament and of the Council of 27 September 2011 amending Directive 2006/116/EC on the term of protection of copyright and certain related rights, the Government has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Intellectual Property (Copyright and Related Rights) Act 2005 (Amendment) Regulations 2013 and come into operation on 1 November 2013.

PART I

AMENDMENT TO THE INTELLECTUAL PROPERTY (COPYRIGHT AND RELATED RIGHTS) ACT 2005

Amendment of Act.

2.(1) The Intellectual Property (Copyright and Related Rights) Act 2005 is amended in accordance with the provisions of this regulation subject to Part II of these Regulations.

(2) After section 13 insert—

“Works of Co-authorship.

13A.(1) In this Part a “work of co-authorship” means a work produced by the collaboration of the author of a musical work and the author of a literary work where the two works are created in order to be used together.

- (2) References in this Part to a work or the author of a work shall, except as otherwise provided, be construed in relation to a work of co-authorship as references to each of the separate musical and literary works comprised in the work of co-authorship and to each of the authors of such works.”
- (3) In section 15(8) after “joint authorship” insert “or a work of co-authorship”.
- (4) In section 16, in subsection (2)–
- (a) after “subsections (3) and (4)” insert “and section 225A(4)”, and
- (b) in paragraphs (b) and (c), for “50” substitute “70”.
- (5) In section 209(1) at the end insert “or, where copyright in the sound recording has expired pursuant to section 225A(4), from a person who plays the sound recording in public or communicates the sound recording to the public.”.
- (6) In section 217(1)–
- (a) in paragraph (b)–
- (i) after “a recording of the performance” insert “, other than a sound recording.”, and
- (ii) at the end of that paragraph insert “or”,
- (b) after paragraph (b) insert–
- “(c) if during that period a sound recording of the performance is released, 70 years from the end of the calendar year in which it is released.”.
- (7) After section 225 insert–

“Assignment of performer’s property rights in a sound recording.

225A.(1) This section applies where a performer has assigned the following rights concerning a sound recording to the producer of the sound recording–

- (a) reproduction, distribution and making available rights, or
- (b) performer’s property rights.

(2) If, at the end of the 50-year period, the producer has failed to meet one or both of the following conditions, the performer may give a notice in writing to the producer of the performer’s intention to terminate the agreement–

- (a) condition 1 is to issue to the public copies of the sound recording in sufficient quantities;
- (b) condition 2 is to make the sound recording available to the public by electronic transmission in such a way that a member of the public may access the recording from a place and at a time chosen by him or her.

(3) If, at any time after the end of the 50 year period, the producer, having met one or both of the conditions referred to in subsection (2), fails to do so, the performer may give a notice in writing to the producer of the performer’s intention to terminate the agreement.

(4) If at the end of the period of 12 months beginning with the date of the notice, the producer has not met the conditions referred to in subsection (2), the agreement terminates and the copyright in the sound recording expires with immediate effect.

(5) An agreement is of no effect in so far as it purports to exclude or restrict the right to give a notice under subsection (2) or (3).

(6) A reference in this section to the assignment of rights includes any arrangement having that effect, whether made directly between the parties or through intermediaries.

(7) In this section—

“50 year period” means—

- (a) where the sound recording is published during the initial period, the period of 50 years from the end of the calendar year in which the sound recording is first published, or
- (b) where during the initial period the sound recording is not published but is made available to the public by being played in public or communicated to the public, the period of 50 years from the end of the calendar year in which it was first made available to the public,

but in determining whether a sound recording has been published, played in public or communicated to the public, no account shall be taken of any unauthorized act,

“initial period” means the period beginning on the date the recording is made and ending 50 years from the end of the calendar year in which the sound recording is made,

“producer” means the person for the time being entitled to the copyright in the sound recording,

“sufficient quantities” means such quantity as to satisfy the reasonable requirements of the public for copies of the sound recording,

“unauthorised” has the same meaning as in section 187.

Payment in consideration of assignment.

225B.(1) A performer who, under an agreement relating to the assignment of rights referred to in section 225A(1) (an “assignment agreement”), is entitled to a non-recurring payment in consideration of the assignment, is entitled to an annual payment for each relevant period from—

- (a) the producer, or

- (b) where the producer has granted an exclusive licence of the copyright in the sound recording, the licensee under the exclusive licence (the “exclusive licensee”).

(2) In the section, “relevant period” means—

- (a) the period of 12 months beginning at the end of the 50-year period, and
- (b) each subsequent period of 12 months beginning with the end of the previous period, until the date on which copyright in the sound recording expires.

(3) The producer or, where relevant, the exclusive licensee gives effect to the entitlement under subsection (1) by remitting to a collecting society for distribution to the performer in accordance with its rules an amount for each relevant period equal to 20% of the gross revenue received during that period in respect of—

- (a) the reproduction and issue to the public of copies of the sound recording, and
- (b) the making available to the public of the sound recording by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them.

(4) The amount required to be remitted under subsection (3) is payable within 6 months of the end of each relevant period and is recoverable by the collecting society as a debt.

(5) Subsection (6) applies where—

- (a) the performer makes a written request to the producer or, where relevant, the exclusive licensee for information in that person’s possession or under that person’s control to enable the performer—
 - (i) to ascertain the amount of the annual payment to which the performer is entitled under subsection (1), or

(ii) to secure its distribution by the collecting society, and

(b) the producer or, where relevant, the exclusive licensee does not supply the information within the period of 90 days beginning with the date of the request.

(6) The performer may apply to the Court for an order requiring the producer or, where relevant, the exclusive licensee to supply the information.

(7) An agreement is of no effect in so far as it purports to exclude or restrict the entitlement under subsection (1).

(8) In the event of any dispute as to the amount required to be remitted under subsection (3), the performer may apply to the Court to determine the amount payable.

(9) Where a performer is entitled under an assignment agreement to recurring payments in consideration of the assignment, the payments must, from the end of the 50-year period, be made in full, regardless of any provision in the agreement which entitles the producer to withhold or deduct sums from the amount payable.

(10) In this section—

“producer” and “50-year period” each has the same meaning as in section 225A,

“exclusive licence” has the same meaning as in section 109, and

“collecting society” has the same meaning as in section 224.”.

(8) In section 231 after the entry for section 207 delete “and” and after the entry for section 208 insert—

“section 225A (assignment of performer’s rights in a sound recording); and

section 225B (payment in consideration of assignment),”.

PART II
SAVINGS AND TRANSITIONAL PROVISIONS

Introductory.

3.(1) References in this Part to “commencement”, without more, are to the date on which these Regulations come into force.

(2) In this Part—

“the 2005 provisions” means the provisions of the Act as they stood immediately before commencement (including the provisions of Schedule 1 to the Act continuing the effect of earlier enactments);

“the Act” means the Intellectual Property (Copyright and Related Rights) Act 2005; and

“the new provisions” means the provisions of the Act as amended by these Regulations.

(3) Expressions used in this Part which are defined for the purposes of Part I or Part III of the Act have the same meaning as in that Part.

Copyright: interpretation.

4.(1) In the provisions of this Part relating to copyright—

“existing” in relation to a work, means made before commencement; and

“existing copyright work” means a work in which copyright subsisted immediately before commencement.

(2) For the purposes of those provisions a work of which the making extended over a period shall be taken to have been made when its making was completed.

(3) References in those provisions to “moral rights” are to the rights conferred by Chapter IV of Part I of the Act.

Duration of copyright: general saving.

5. Copyright in an existing copyright work shall continue to subsist until the date on which it would have expired under the 2005 provisions if that date is later than the date on which copyright would expire under the new provisions.

Duration of copyright: application of new provisions.

6. The new provisions relating to duration of copyright in sound recordings and works comprised in works of co-authorship apply—

- (a) to sound recordings and works of co-authorship made after commencement;
- (b) to existing sound recordings and works of co-authorship which first qualify for copyright protection after commencement;
- (c) to existing sound recordings in which copyright subsisted immediately before commencement;
- (d) to works of co-authorship of which either or both the musical work and the literary work were existing copyright works; and
- (e) to works of co-authorship of which the musical work or the literary work were on commencement protected as copyright works in Gibraltar, the United Kingdom or another EEA state under legislation relating to copyright or related rights.

Extended and revived copyright.

7. In the following provisions of this Part—

“extended copyright” means any copyright which subsists by virtue of the new provisions after the date on which it would have expired under the 2005 provisions; and

“revived copyright” means any copyright in a musical or literary work comprised in a work of co-authorship which subsists by virtue of the new provisions after having expired under the 2005 provisions or any earlier enactment relating to copyright.

Ownership of extended copyright.

8.(1) The person who is the owner of the copyright in a sound recording or in a work comprised in a work of co-authorship immediately before commencement is as from commencement the owner of any extended copyright in the sound recording or work, subject as follows.

(2) If he or she is entitled to copyright for a period less than the whole of the copyright period under the 2005 provisions, any extended copyright is part of the reversionary interest expectant on the termination of that period.

Ownership of revived copyright in works of co-authorship.

9.(1) The person who was the owner of the copyright in a musical or literary work comprised in the work of co-authorship immediately before it expired (the “former copyright owner”) is as from commencement the owner of any revived copyright in the work, subject as follows.

(2) If the former copyright owner has died before commencement, or in the case of a legal person has ceased to exist before commencement, the revived copyright shall vest in the author of the work or his or her personal representatives.

(3) Where revived copyright vests in personal representatives by virtue of subregulation (2), it shall be held by them for the benefit of the person who would have been entitled to it had it been vested in the author immediately before his or her death and had devolved as part of his or her estate.

Prospective ownership of extended or revived copyright.

10.(1) Where by an agreement made before commencement in relation to extended or revived copyright, and signed by or on behalf of the prospective owner of the copyright, the prospective owner purports to assign the extended or revived copyright (wholly or partially) to another person, then if, on commencement the assignee or another person claiming under the assignee would be entitled as against all other persons to require the copyright to be vested in him or her, the copyright shall vest in the assignee or his or her successor in title by virtue of this regulation.

(2) A licence granted by a prospective owner of extended or revived copyright is binding on every successor in title to the prospective owner’s interest (or prospective interest) in the right, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the

licence or a person deriving title from such a purchaser and references in Part I of the Act to do anything with, or without, the licence or the copyright owner shall be construed accordingly.

(3) In subregulation (2) “prospective owner” includes a person who is prospectively entitled to extended or revived copyright by virtue of such an agreement as is mentioned in subregulation (1).

Extended copyright: existing licences, agreements, etc.

11.(1) Subject to sections 225A(5) and 225B(7) and (9), any copyright licence, any term or condition of an agreement relating to the exploitation of a copyright work, or any waiver or assertion of moral rights, which—

- (a) subsists immediately before commencement in relation to an existing copyright work, and
- (b) is not to expire before the end of the copyright period under the 2005 provisions,

shall continue to have effect during the period of any extended copyright, subject to any agreement to the contrary.

(2) Any copyright licence, or term or condition relating to the exploitation of a copyright work, imposed by order of the Court which—

- (a) subsists immediately before commencement in relation to an existing copyright work, and
- (b) is not to expire before the end of the copyright period under the 2005 provisions,

shall continue to have effect during the period of any extended copyright, subject to any further order of the Court.

Revived copyright: exercise of moral rights.

12.(1) The following provisions have effect with respect to the exercise of moral rights in relation to a work comprised in a work of co-authorship in which there is revived copyright.

(2) Any waiver or assertion of moral rights which subsisted immediately before the expiry of copyright shall continue to have effect during the period of revived copyright.

(3) Moral rights are exercisable after commencement by the author of a work as with any other copyright work.

(4) Where the author died before commencement—

(a) the rights conferred by—

(i) section 94; or

(ii) section 97,

are exercisable after commencement by his personal representatives, and

(b) any infringement after commencement of the right conferred by section 101 is actionable by his personal representatives.

(5) Any damages recovered by personal representatives by virtue of this regulation in respect of an infringement after a person's death shall devolve as part of his or her estate as if the right of action had subsisted and been vested in him or her immediately before his or her death.

(6) Nothing in these Regulations shall be construed as causing a moral right to be exercisable if, or to the extent that, the right was excluded by virtue of paragraph 20 of Schedule 1 of the commencement of the Act or would have been so excluded if copyright had not previously expired.

Revived copyright: saving for acts of exploitation when work in public domain, etc.

13.(1) No act done before commencement shall be regarded as infringing revived copyright in a work.

(2) It is not an infringement of revived copyright in a work—

(a) to do anything after commencement in pursuance of arrangements made before commencement at a time when copyright did not subsist in the work, or

- (b) to issue to the public after commencement copies of the work made before commencement at a time when copyright did not subsist in the work.

(3) It is not an infringement of revived copyright in a work to do anything after commencement in relation to a literary, dramatic or musical work or a film made before commencement or made in pursuance of arrangements made before commencement, which contains a copy of that work or is an adaptation of that work if—

- (a) the copy or adaptation was made before commencement at a time when copyright did not subsist in the work in which revived copyright subsists, or
- (b) the copy or adaptation was made in pursuance of arrangements made before commencement at a time when copyright did not subsist in the work in which revived copyright subsists.

(4) It is not an infringement of revived copyright in a work to do after commencement anything which is a restricted act in relation to the work if the act is done at a time when, or is done in pursuance of arrangements made at a time when, the name and address of a person entitled to authorise the act cannot by reasonable inquiry be ascertained.

(5) In this regulation “arrangements” means arrangements for the exploitation of the work in question.

(6) It is not an infringement of any moral right to do anything which by virtue of this regulation is not an infringement of copyright.

Rights in performance: interpretation.

14.(1) In the provisions of this Part relating to rights in performances—

“existing protected performance” means a performance in a sound recording in relation to which rights under Part III of the Act subsisted immediately before commencement,

“a new right” means a right arising by virtue of regulation 2(7) in relation to an assignment of a performer’s property rights in a sound recording.

(2) References in this Part to performers' rights are to the rights given by sections 201 to 209 of the Act.

Rights in performance: application in new provisions.

15. The new provisions relating to the duration of performers' rights in sound recordings and rights in relation to an assignment of performers' rights in a sound recording apply—

- (a) to performances taking place after commencement;
- (b) to existing performances which first qualify for protection under Part III of the 2005 provisions after commencement; and
- (c) to existing protected performances.

Extended performance rights.

16. In the following provisions of this Part “extended performance rights” means rights under Part III of the Act which subsist by virtue of the new provisions after the date on which they would have expired under the 2005 provisions.

Entitlement to extended performance rights and new rights.

17.(1) Any extended performance rights and any new rights are exercisable as from commencement by the performer or (if he or she died) the person entitled to exercise those rights by virtue of section 219(1) or 231 of the Act.

(2) Any remuneration or damages received by a person's personal representatives by virtue of a right conferred on them by paragraph (1) shall devolve as part of that person's estate as if the right had subsisted and been vested in him or her immediately before his or her death.

Extended performance rights: existing consents, agreements etc.

18. Subject to the provisions of sections 225A(5) and 225B(7) and (9), any consent, or any term or condition of an agreement, relating to the exploitation of an existing protected performance which—

- (a) subsists immediately before commencement, and

- (b) is not to expire before the end of the period for which rights under Part III of the Act subsist in relation to that performance,

shall continue to subsist during the period of any extended performance rights, subject to any agreement to the contrary.

Dated 31st October, 2013.

F R PICARDO,
For the Government.

EXPLANATORY MEMORANDUM

These Regulations to transpose into the law of Gibraltar Directive 2011/77/EU of the European Parliament and of the Council of 27 September 2011 amending Directive 2006/116/EC on the term of protection of copyright and certain related rights.

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