EXPLANATORY MEMORANDUM TO

THE COPYRIGHT AND PERFORMANCES (APPLICATION TO OTHER COUNTRIES) (AMENDMENT) ORDER 2009

2009 No. 2745

1. This explanatory memorandum has been prepared by the Intellectual Property Office (the operating name of The Patent Office), an Executive Agency of the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 For the purposes of the Copyright, Designs and Patents Act 1988 ("the 1988 Act") this instrument grants protection to certain copyright works of Bermudan origin. It also provides protection for certain Bermudan performances.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None

4. Legislative Content

4.1 This Instrument is being made under sections 159 and 208 of the 1988 Act.

4.2 Bermuda has introduced its own copyright legislation which will provide for protection of UK works and performances. To ensure continued reciprocity in accordance with its international obligations, in particular under the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961), the United Kingdom needs to amend the Copyright and Performances (Applications to Other Countries) Order 2008 to include Bermuda.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

5.2 It does not apply to the Channel Islands. However, the Isle of Man is included in the existing list of countries identified in the Copyright and Performances (Application to other Countries) Order 2008 and the Isle of Man was informed about this instrument.

6. European Convention on Human Rights

As this instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The protection afforded by copyright and the rights granted to performances under the 1988 Act, extends only to the borders of the United Kingdom. Therefore, a British copyright work is only protected in a foreign country if that country *agrees* to protect it.

7.2 To ensure that the works of authors, performers, producers and broadcasters are protected outside their country of origin a series of conventions have been adopted.

7.3 The protection granted to foreign works (and performances) depends on the nationality (or habitual residence) of the author or performer. Further, the protection afforded can also be affected by the place of first publication, broadcast or performance of a work. This Instrument tailors the protection afforded to foreign works and performances according to the United Kingdom's international obligations.

7.4 Bermuda is in the process of introducing adequate copyright protection for the works of UK citizens in its legislation.

Consolidation

7.5 The instruments are constantly reviewed and can be amended during the common commencement dates in April and October. On this occasion only minor amendments have been made to them. This is the first amendment and so it is not necessary to consolidate at this stage. An informal consolidation will, however be available on the website of the Intellectual Property Office.

8. Consultation outcome

8.1 The Department has not consulted the public on this Order. This is because the changes made by this instrument are directly related to the United Kingdom's existing international obligations.

9. Guidance

9.1 The amending Order will be published on the Intellectual Property Office website alongside the existing Orders once approved by Privy Council.

10. Impact

10.1 An Impact Assessment has not been prepared as this Instrument has no impact on the private, voluntary or public sectors.

11. Regulating small business

11.1 The legislation does not apply to small business and has no direct impact on UK business.

11.2 There is no need to minimise the impact of the requirements on small firms employing up to 20 people because the changes confirm the protection for copyright and performances granted to rights holders in the UK and grants foreign businesses protection that they would already expect to receive.

12. Monitoring & Review

12.1 We now meet our international obligation to grant reciprocity for certain copyright works of Bermudan origin.

12.2 The review and updating of our Orders in Council to grant reciprocity for copyright works and performances to new accession States is continuous.

13. Contact

Helen James at the Intellectual Property Office (the operating name of The Patent Office), an executive agency of the Department of Business, Innovation and Skills can answer any queries regarding the instrument.
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