EXPLANATORY MEMORANDUM TO

THE COPYRIGHT AND PERFORMANCES (APPLICATION TO OTHER COUNTRIES) (AMENDMENT) ORDER 2026

2026 No. 103

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Intellectual Property Office, an executive agency of the Department for Science, Innovation and Technology, and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee.

2. Declaration

2.1 Kanishka Narayan MP, Parliamentary Under-Secretary of State for AI and Online Safety at the Department for Science, Innovation and Technology confirms that this Explanatory Memorandum meets the required standard.

2.2 Michael Prior, Director of Rights Policy, at the Intellectual Property Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Francis Roodt at the Intellectual Property Office can be contacted by email at the following address with any queries regarding the instrument: information@ipo.gov.uk. Alternatively, the department can be contacted by telephone: 0300 300 2000.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The UK signed a Comprehensive Economic and Trade Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of India on 24 July 2025 (the "UK-India CETA"). This instrument ensures that the UK is able to meet its obligations under the Intellectual Property Rights Chapter ("IP Chapter") of the UK-India CETA in anticipation of, but not before, its entry into force.

4.2 The UK-India CETA requires the UK to accord Indian nationals and Indian broadcasting organisations the same rights accorded to UK nationals and UK broadcasting organisations in respect of the binding provisions in the IP Chapter of that agreement, subject to certain specified exceptions.

4.3 While UK copyright law already largely achieves this, there are some exceptions in the case of rights in wireless and wired broadcasts and performers' rights regarding their performances in audiovisual works. In anticipation of the UK-India CETA coming into force, this instrument amends existing secondary legislation relating to the rights extended to Indian nationals, Indian broadcasting organisations and

broadcasts from India to ensure the UK meets its obligations under the UK-India CETA.

Where does the legislation extend to, and apply?

4.4 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.

4.5 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland and Northern Ireland.

5. Policy Context

What is being done and why?

5.1 In the UK, copyright protection for foreign works and performances is provided for by the Copyright, Designs and Patents Act 1988 (the CDPA) and the Copyright and Performances (Application to Other Countries) Order 2016 (S.I. 2016/1219) (the 2016 Order). Under the CDPA and the 2016 Order, foreign works and performances are given full, limited, or no protection, based generally on whether and how the country of origin of the work or performance has implemented a relevant treaty and provided reciprocal rights to UK works and performances.

5.2 The IP Chapter of the UK-India CETA includes a number of binding obligations which require both the UK and India to provide each other's nationals (persons, natural or legal, who are domiciled or who have a real and effective industrial or commercial establishment in that customs territory) with the same treatment for certain specified intellectual property rights.

5.3 In advance of the UK-India CETA coming into force certain specific changes are needed to ensure that the UK can meet its obligations under this agreement. This will be achieved by extending rights accorded to UK nationals in respect of their intellectual property to Indian nationals, Indian broadcasting organisations and broadcasts from India. This instrument will therefore extend rights in wireless broadcasts from India (for example, radio and satellite broadcasts) to include rights relating to distribution (this right allows the copyright owner to sell, lease and transfer copies of their works to the public) and communication to the public, so that it is not limited to television broadcasts, as is currently the case. It will also extend all the rights for Indian wireless broadcasts to wired broadcasts (for example cable broadcasts). This instrument will extend certain rights to performances in audiovisual works to Indian performers. This will be achieved by making amendments to the 2016 Order.

5.4 The changes do not have any impact on the intellectual property protections provided in the UK; they only extend existing protections to Indian nationals, Indian broadcasting organisations and broadcasts from India.

What was the previous policy, how is this different?

5.5 Most works and performances from India already received protection under the CDPA and the 2016 Order, because India is party to a relevant treaty (see 6.1 below). However, additional protections for wireless and wired broadcasts for Indian broadcasting organisations and Indian performers' rights in audiovisual works in the UK are not protected under UK law at present. As this is not consistent with the UK-India CETA, a new instrument is necessary to update the 2016 Order.

6. Legislative and Legal Context

How has the law changed?

6.1 The UK is a member of several multilateral treaties on copyright and rights in performances. These treaties require member countries to set minimum standards of copyright protection, which members must extend to works and performances originating in other member countries. The UK and India are both party to a number of these treaties, including:

- The Berne Convention for the Protection of Literary and Artistic Works;
- The World Intellectual Property Organization (WIPO) Copyright Treaty;
- The WIPO Performances and Phonograms Treaty; and
- The WTO (World Trade Organization) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).

In line with the UK's obligations under these treaties, Indian nationals enjoyed a significant degree of protection in relation to their copyright and related rights in the UK. The UK is also party to several bilateral and plurilateral Free Trade Agreements. Many of these replicate and, in some cases, go further than the copyright obligations in the multilateral treaties and require both parties to provide higher levels of copyright protection to rightsholders and performances from these trading partners.

6.2 When trade agreements enter into force they will typically require the UK to provide new copyright protections to its trading partners which include, in relation to the UK-India CETA, additional rights in broadcasts and performances originating in India.

6.3 The instrument achieves this in the following way:

- Article 3 amends article 8 of the 2016 Order, so that article 8 provides for the application of Part 1 of the CDPA to India in relation to wired and wireless broadcasts.
- Article 4(1) inserts a new article 12B into the 2016 Order to extend the application of Part 2 of the CDPA to rights in Indian performances. It also confirms the exception of the application of section 182D (right to equitable remuneration for exploitation of a sound recording) regarding Indian performances.
- Article 4(2) deletes the entry relating to India in Schedule Part 2 (Countries which are not Parties to the Rome Convention - Application of Part 2 of the CDPA under articles 11 and 12) of the 2016 Order. This has the effect of removing the application of article 11 of the 2016 Order to performances relating to India which limited the application of Part 2 of the CDPA to sound recordings and not films.

These changes are conditional on, and will only be effective from, the date the UK-India CETA comes into force.

Why was this approach taken to change the law?

6.4 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 No consultation has been carried out for this instrument. The impacts of its changes on UK broadcasters and performers are minimal.

7.2 The Department for International Trade (as it was then)[1] conducted a public consultation in May 2021, seeking views from a wide range of stakeholders, to inform negotiation objectives and support the government's understanding of the economic, environmental and social impacts of an FTA with India.

7.3 The consultation included questions on intellectual property. The Government's response to the consultation was published as part of the UK's Strategic Approach paper[2].

8. Applicable Guidance

8.1 The Intellectual Property Office maintains guidance on the protection of foreign works and performances in UK copyright law[3]. This guidance will be updated to reflect this instrument before its entry into force or shortly thereafter.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the impact is expected to be below the de minimis threshold of £10 million per year.

9.2 The Government has published an impact assessment which sets out the potential economic, sectoral, distributional and environmental impacts of the wider/full UK-India CETA including an overview on the IP Chapter[4].

Impact on businesses, charities and voluntary bodies

9.3 There is no, or no significant, impact on business, charities or voluntary bodies. The provisions that extend existing rights to Indian nationals, Indian broadcasting organisations and broadcasts from India are unlikely to have significant impacts. This is because the content of those broadcasts in the UK already enjoyed limited protection under existing law.

9.4 The legislation does impact small or micro businesses. No specific action is proposed to minimise regulatory burdens in small and micro businesses. This is because the impact of the instrument, including on small and micro businesses, is expected to be minimal for the reasons set out in paragraph 9.1.

9.5 There is no, or no significant, impact on the public sector for the reasons in paragraph 9.1.

[1] Draft Explanatory Memorandum on the Comprehensive Economic and Trade Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of India - https://assets.publishing.service.gov.uk/media/6881f4d5901d5f8d47120586/uk-india-ceta-draft-explanatory-memorandum.pdf

[2] UK-India Free Trade Agreement, The UK's Strategic Approach (see Chapter 3) - https://assets.publishing.service.gov.uk/media/61e1b75e8fa8f5058d5a76bf/uk-india-free-trade-agreement-the-uks-strategic-approach.pdf

[3] Guidance on the protection of foreign works and performances in UK copyright law - https://www.gov.uk/government/publications/uk-copyright-protection-for-foreign-works-and-nationals/uk-copyright-protection-for-foreign-works-and-nationals

[4] UK-India Free Trade Agreement: impact assessment - https://www.gov.uk/government/publications/uk-india-free-trade-agreement-impact-assessment

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Kanishka Narayan MP has made the following statement: "taking account of the economic impact of this provision, a review would be disproportionate".

10.2 A General Review article is included in the UK-India CETA where parties agree to review the UK-India CETA at Ministerial level within five years of the date of entry into force of the agreement and then every five years or at such times as may be agreed.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The UK agreed the UK-India CETA on 24 July 2025. This instrument ensures that the UK is able to meet its obligations in the IP Chapter of that agreement in anticipation of, but not before, the entry into force of the agreement.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").