EXPLANATORY MEMORANDUM TO THE

COPYRIGHT AND PERFORMANCES (APPLICATION TO OTHER COUNTRIES) ORDER 2005

2005 No.852

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. Description

This Instrument grants protection to certain copyright works of foreign origin. It also provides protection for certain foreign performances.

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

None.

4. Legislative Background

This Instrument is being made under sections 159 and 208 of the Copyright, Designs and Patents Act 1988 ("the 1988 Act") and under section 2(2) of the European Communities Act 1972.

The purpose of this Order is to satisfy the United Kingdom's international obligations under:

- the Berne Convention for the Protection of Literary and Artistic Works;
- the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations; and
- the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

The Order is also necessary to satisfy certain obligations imposed on the United Kingdom that arise from its membership of the European Community. In particular, in relation to performances the obligations imposed by the European Unions membership of TRIPS and also the obligations imposed on member States under Council Decision 2000/278/EC relating to the WIPO Performances and Phonograms Treaty.

This Order reflects the changes made to the 1988 Act by the Copyright and Related Rights Regulations 2003 (in particular, in relation to what were "cable programmes"). It also consolidates the Copyright (Application to the Isle of Man) Order 1992, the Copyright (Application to Other Countries) Order 1999, the Performances (Reciprocal Protection) (Convention Countries and Isle of Man) Order 2003 and the Copyright (Application to Other Countries) (Amendment) Order 2003. In addition it updates the protection granted to

various countries, which have, since the last Orders were made, acceded to one or more of those conventions. In some cases this would grant authors and performers from a particular State protection for the first time, in other cases it would grant them increased protection (where, for example, that State has become a member of the Rome Convention).

5. Extent

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

Not applicable

7. Policy background

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

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; the relevant conventions to which the United Kingdom is a party are listed above.

These conventions require, within their scope, that a foreigner receives "national treatment" in the United Kingdom and likewise a British citizen will receive such treatment in another signatory country.

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 where a work was first published or from where a broadcast was made or a performance given. Therefore, this Instrument tailors the protection afforded to foreign works and performances according to the United Kingdom's international obligations.

8. Impact

A Regulatory Impact Assessment has not been prepared as this Instrument is made in pursuance of the United Kingdom's international obligations.

9. Contact

Judith Sullivan at the Patent Office (an executive agency of the Department of Trade and Industry) [Telephone number: 020 7596 6502 and e-mail: judith.sullivan@patent.gov.uk] can answer any queries regarding the instrument.