
UK Regulations Bring Copyright and Related Rights into Line with International Treaties

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The UK has introduced the new [Copyright and Related Rights Regulations 2003](#), which came into force on October 31, 2003 (Regulations). The Regulations are necessary to implement into UK law the requirements of the EU's [Directive 2001/29/EC](#) (Directive). In turn, the Directive was required to implement within the EU the requirements of the Berne Amendment (WIPO Copyright Treaty) and the [Phonograms Treaty \(WIPO Performances and Phonograms Treaty\)](#), which were agreed at the World Intellectual Property Organization (WIPO) meeting in Geneva in 1996. See our [April 30, 2002 Internet Alert](#) for a discussion about these changes to U.S. copyright law. The Regulations apply to works created before and after October 31, 2003, but only to infringing acts committed after that date.

Following the thrust of the Directive, the Regulations address four main areas: (1) communications by electronic means, (2) various exceptions to copyright protection, (3) the protection of technical devices/measures designed to prevent unauthorized copying, and (4) miscellaneous changes. Each of those areas is discussed below.

Communication by Electronic Means—A New Right for Copyright Holders

Copyright owners have been given a new exclusive right as part of their copyright—the right to communicate a work to the public by Internet transmission. This right includes communication by way of broadcast and on-demand electronic transmission.

Previously the UK's Copyright Designs and Patents Act 1988 (Act) addressed electronic communications in two ways. The Act referred to the concept of "broadcast," defined as an act of wireless telegraphy. It distinguished such broadcasts from "cable programs" and "cable program services," the definition of which was considered to capture (perhaps inadvertently at the time) Internet transmissions. The Regulations have changed this approach.

Cable program transmissions are now included within the concept of broadcasts. Further, "broadcast" has now been redefined to refer to electronic transmissions for simultaneous reception by the public, transmitted at a time decided by the person making the transmission (thereby excluding on-demand services).

Internet transmissions are expressly excluded from the definition of “broadcast” unless they are Internet simulcasts of conventional broadcasts.

A New Exception to Copyright Protection

The Directive compelled EU member states to implement one new exception to their copyright laws. Several other exceptions were optional.

The mandatory exception applies to temporary copies. The Regulations adopt verbatim the language used by the Directive on this subject. They permit copies that are transient or incidental and an integral and essential part of a technological process, the sole purpose of which is to enable transmission in a network between third parties by an intermediary or a lawful user of the work and which has no independent economic significance. This exception applies to performers' rights in their recordings and all types of copyright work except computer programs and databases.

The Regulations make changes to several other exceptions to copyright contained in the Act.

The existing fair dealing exception for research has been clarified to apply only to non-commercial purposes. An acknowledgement is no longer required if impractical or otherwise impossible.

The existing right of fair dealing for the purposes of criticism or review is now limited to works that have been made available to the public. A similar provision applies to performers' property rights in their recorded performances.

The Regulations provide that it is not a copyright infringement for a lawful user of a computer program to observe, study or test the functioning of a program in order to determine the ideas and principles which underlie any element of it while loading, displaying, running, transmitting or storing it (and this may not be restricted by licence terms).

As to private copying, the Act only permits what is commonly known as VCR or time-shift copying (in other words, copying broadcasts in order to enjoy them later). The Regulations now confine this to being done in domestic (personal) premises only. Subsequent dealings in such copies render the copying an infringement (and such acts include selling, hiring it and offering to do so, as well as communicating it to the public).

Technical Devices/Measures Designed to Prevent Unauthorized Copying

The Regulations introduce to the Act a new concept of protecting (1) technical devices applied to computer programs and (2) effective technical measures applied to other copyright works.

For technical devices attached to computer programs, it will now be a crime if a person: (1) knowingly (or having reason to believe a technical device will be used to make an infringing copy) manufactures for sale or hire, imports, sells, hires (or offers to do so) or possesses the means to remove or circumvent a technical device, the sole intended purpose of such means being to remove or circumvent the technical device, or (2) publishes information intended to enable or assist that removal or circumvention.

The provisions for effective technical measures protecting other copyright works are similar, but

refer to anything done to circumvent the protection measure by a person knowing *or with reasonable grounds to know* (emphasis added) that he or she is pursuing that objective (though there is a special exception for cryptography research).

These changes parallel, to some extent, criminal provisions in the [U.S. Digital Millennium Copyright Act of 1998](#) (DMCA). To see the U.S. Copyright Office's summary of that legislation, click [here](#). The DMCA made it a federal offence to willfully circumvent [encryption or other protective features](#) limiting the copying of digital information for commercial advantage or financial gain. See a discussion of various aspects of the DMCA in our [April 11, 2000](#), [March 13, 2001](#) and [August 13, 2001](#) Internet Alerts). The [penalty](#) for violating this provision of the DMCA is a maximum five-year prison sentence and US\$500,000 fine.

In the UK, if the technical measure prevents what is otherwise a lawful act, then redress may be had by way of complaint to the UK Secretary of State.

The Regulations also introduce into the Act the new unlawful act of removing or altering electronic rights information that may conceal an infringement of copyright. Also prohibited is the importation, or distribution with knowledge, of copies from which such information has been removed or altered. Both may result in criminal punishment.

Other changes

The regulations also affect a number of other miscellaneous changes to the Act. The courts are given the express power to enjoin Internet service providers who have actual knowledge of another person using their services to infringe copyright and performers' property rights. In the U.S., the DMCA took a somewhat different approach, by introducing safe harbor provisions designed to limit the liability of "online service providers" (OSPs) for copyright infringement. Those safe harbors gave Internet service providers and other OSPs a chance to remove infringing material upon receiving notice from the copyright owner or its exclusive licensee, and thus to avoid claims of copyright infringement. See our [April 11, 2000 Internet Alert](#).

The right to show broadcasts in public for free does not extend to sound recordings included within the broadcasts if those sound recordings are authored by someone else. There is an exception for non-profit organizations to play or show in public broadcasts containing such sound recordings.

Non-exclusive licensees now have the right to sue in their own name for infringements that are connected directly to a prior licensed act of the licensee so long as their licence is written and expressly contains such a right of action.

The duration of copyright in unpublished sound recordings has been amended to 50 years from the end of the year in which they are first made available by being played in or communicated to the public.

The coming into force of the Regulations gives copyright owners a new and potentially important right to prevent dissemination of their work to the public by Internet transmission.