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**Council for Trade-Related Aspects
of Intellectual Property Rights**

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REVIEW OF LEGISLATION ON COPYRIGHT AND RELATED RIGHTS

United Kingdom¹

The present document reproduces the questions put the delegation of the United Kingdom and the responses given in the review of legislation on copyright and related rights at the Council's meeting of 22 to 25 July 1996².

REPLIES TO QUESTIONS POSED BY THE UNITED STATES

1. *Please explain whether and how the United Kingdom's law provides protection for works, phonograms and performances from other WTO Members, and whether and how it does so on the basis of national treatment, as required by TRIPS Article 3 (generally, with respect to all copyrights and neighbouring rights) and Article 9.1 (incorporating Berne Article 5(1)). In particular, please indicate how national treatment is afforded with respect to the distribution of levies for private copying under Article 44 of the Copyright Act.*

In respect of copyright and those related rights provided for in Section 1 of Part II of the TRIPS Agreement, copyright works (and in UK law phonograms are treated as a category of copyright work) from other countries and foreign performances are given the same protection as works and performances of UK origin thus satisfying the national treatment requirements of Articles 3 and 9.1. UK copyright law is applied to works from other countries by orders made under Section 159 of the Copyright, Designs and Patents Act 1988; performers from countries designated in orders made under Section 208 of that Act enjoy protection in respect of their performances. The Copyright (Application to Other Countries) (Amendment) Order 1995 (SI 1995 No. 2987) and the Performances (Reciprocal Protection) (Convention Countries) Order 1995 (SI 1995 No. 2990) made under these Sections respectively gave effect to the UK's obligation to other WTO countries from 1 January 1996 where these obligations were not already met by existing Orders implementing the UK's obligations under other international copyright conventions or otherwise.

UK copyright law has no provisions relating to the distribution of levies for private copying.

¹United Kingdom's notification of laws and regulations in the area of copyright and related rights under Article 63.2 of the Agreement has been circulated in documents IP/N/1/GBR/1 and IP/N/1/GBR/C/1 and 2.

²The minutes of the meeting have been circulated in document IP/C/M/8.

[Follow-up question]

Please explain whether and how any revenues generated from the imposition of private copying or blank tape levies in the United Kingdom are distributed on the basis of national treatment to rightholders on the basis of national treatment to rightholders from all WTO Members, regardless of the type of rightholder.

The UK has no blank tape, equipment or any other levy for private copying, which is why it answered that there are no provisions relating to the distribution of levies.

2. *Does the United Kingdom apply the "rule of the shorter term" to phonograms and performances from other WTO Members? If so, please explain how you justify such action under TRIPS Article 4.*

The UK term of protection for producers of sound recordings and performers is 50 years from the end of the calendar year in which the recording is made (i.e. fixation) or the performance takes place respectively, that is the minimum term set out in Article 14.5 of TRIPS. If during this period the recording, or a recording of the performance, is released, the term expires 50 years from the end of the calendar year in which it is released. US producers and performers will only receive a term longer than 50 years, which can apply where a recording is not released in the year it is made or the year of the performance, if the term is not longer than that applying in the US.

3. *Please explain whether and how the United Kingdom protects against both the direct and indirect reproduction of phonograms as required by TRIPS Article 14.2, including by digital transmission in the context of subscription or interactive services.*

Under UK law, copyright in a sound recording gives the owner of copyright the exclusive right to copy the work (see Section 16(1)(a) of the 1988 Act) and action is possible for copyright infringement where unauthorised copying of the sound recording occurs. Moreover, Section 16(3)(b) specifically states that this restricted Act applies whether done directly or indirectly and regardless of whether any intervening Acts infringe copyright. This will cover copying of a sound recording from a digital transmission.

[Follow-up question]

Does the reproduction right for phonograms under United Kingdom law include in its scope reproductions made from broadcasts?

The UK has already said in its original answer that the reproduction right for an owner of copyright in a sound recording will cover copying of a sound recording from a digital transmission. Copying of a sound recording from a broadcast, whether digital or otherwise, will also be covered by the reproduction right for the same reasons as set out in the original answer.

4. *Please explain whether and how the United Kingdom provides full retroactive protection to works, phonograms and performances from other WTO Members, as required by TRIPS Articles 9.1, 14.6 and 70.2, each of which incorporate by reference or rely upon Berne Article 18. Please give the date back to which such protection extends with respect to each category of subject matter. Additionally, please describe the way in which Article 7 of the United Kingdom's Copyright Orders will apply to those who relied on the public domain status of a work after copyright protection is restored, or is provided to a work that is still protected in its country of origin and has not had a full term of protection in the United Kingdom. In particular, we are interested in learning if there are any limitations on the activities of these reliance parties either in scope or duration.*

Copyright works, including phonograms (which are treated as such - see answer to question 1), and performers from other countries are protected as explained in answer to Question 1.

There is no single date to which the protection extends back since protection is always future protection but is given in respect of an existing copyright work or recording of a particular performance after it has qualified for protection in respect of any period which continues to subsist calculated from the date prior to qualification on which the work or recording of that performance was made, as required by TRIPS. Whether protection exists therefore depends upon whether the term, which would have applied to a particular work or recording of a performance had it always been protected, has expired.

Existing sound recordings made from at least as long ago as 1946 may be protected in the UK. The Copyright, Designs and Patents Act 1988 (which has been amended by the Duration of Copyright and Rights in Performances Regulations 1995) in paragraph 12 of Schedule 1 confirms the term of protection in the Copyright Act 1956 for sound recordings made before 1 June 1957 (i.e. the date of commencement of the 1956 Act). The 1956 Act in paragraph 11 of Schedule 7 gives a term of 50 years from making for sound recordings made before commencement of the Act. The 1995 Regulations may result in sound recordings made before 1946 being protected.

For literary, dramatic, musical and artistic works, under the 1995 Regulations mentioned above, protection may apply to existing works where the author died 70 years ago, i.e. in 1926. The 1988 Act, which the 1995 Regulations amend, confirmed the protection for works made before commencement of that Act in paragraph 12 of Schedule 1 by reference to Sections 2 and 3 of the 1956 Act, which should be read in the light of the transitional provisions in Schedule 7 of the 1956 Act with regard to works existing before commencement of the 1956 Act.

The Copyright (Application to Other Countries) Order 1993 as amended by the 1995 Order mentioned above gives effect to retroactive protection, subject, of course, to the term of protection having not already ceased, for all copyright works from all WTO countries. The 1995 Order does not restore any copyright because Article 18 of Berne does not require works that have already fallen into the public domain through expiry of copyright protection to be protected. Article 7 of the 1993 Order (amended by the 1995 Order) gives some protection to those who have or may be about to use a work newly protected by copyright. Article 7 allows the continued doing of certain acts unless the copyright owner pays compensation as settled by arbitration in the absence of agreement. How long the Act can be continued would depend on whether the Act fell within the scope of the Article. It would ultimately be for the courts to decide whether this is the case in any particular circumstances.

As far as performers rights are concerned, the 1995 Order mentioned above in reply to Question 1 grants reciprocal protection, i.e. the same as that applying under Part II of the Copyright, Designs and Patents Act 1988 to UK performers (except where there are limitations on this reciprocity as is indicated in the relevant Order). TRIPS Article 14.6 requires Article 18 of Berne to extend only to those rights of performers in sound recordings granted by TRIPS. By definition, the only right relevant here is the right to authorise the reproduction of a fixation of a performance. Section 180(3) in Part II of the 1988 Act ensures that insofar as rights in recordings are concerned, those rights apply after qualification to recordings of performances made prior to qualification except that no act carried out in relation to such a recording either prior to qualification, or after qualification but in pursuance of arrangements made before qualification, can be an infringement of rights arising after qualification. As with copyright, the extent to which existing performances are protected depends on whether the term of protection, had the performance always been protected, has already expired.

5. *Please explain the criminal and civil remedies available for copyright infringement and the extent to which they fully implement the obligations in TRIPS Articles 41, 45, 50 and 61. In the response, please specify, inter alia, whether these remedies may include the seizure, forfeiture and destruction of infringing articles and equipment used to make the infringing articles, as required by Article 46 and 61, and the manner in which the grant of civil provisional relief is provided in accordance with TRIPS Article 50. Please also explain how civil damages are measured in the case of computer program infringement and when and how attorney's fees and court costs are awarded.*

It is the UK's understanding that questions relating to the enforcement of intellectual property rights are to be considered later in the scrutiny process. Nevertheless, we would refer you to the UK's response to the checklist on enforcement which will be circulated shortly for details on the enforcement of intellectual property rights in the UK. Should you require any further clarification or if you have any follow-up questions then we would be pleased to discuss them on a bilateral basis or later in the scrutiny process when issues relating to enforcement are addressed.