



Jersey

**INTELLECTUAL PROPERTY  
(UNREGISTERED RIGHTS) (APPLICATION,  
TRANSITIONAL PROVISIONS AND  
SAVINGS) (JERSEY) REGULATIONS 2012**

**Official Consolidated Version**

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# INTELLECTUAL PROPERTY (UNREGISTERED RIGHTS) (APPLICATION, TRANSITIONAL PROVISIONS AND SAVINGS) (JERSEY) REGULATIONS 2012

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Jersey

# INTELLECTUAL PROPERTY (UNREGISTERED RIGHTS) (APPLICATION, TRANSITIONAL PROVISIONS AND SAVINGS) (JERSEY) REGULATIONS 2012

THE STATES, in pursuance of Article 408 of the [Intellectual Property \(Unregistered Rights\) \(Jersey\) Law 2011](#), have made the following Regulations –

Commencement [[see endnotes](#)]

## PART 1

### GENERAL

#### 1 Interpretation

- (1) In these Regulations –
  - “Berne Convention” means the Convention for the Protection of Literary and Artistic Works, signed at Berne on 9th September 1886;
  - “Berne Convention country” means a country which is a party to any Act of the Berne Convention;
  - “commencement” means the day the Law comes into force;
  - “Law” means the [Intellectual Property \(Unregistered Rights\) \(Jersey\) Law 2011](#);
  - “Rome Convention” means the Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, adopted in Rome on 26th October 1961;
  - “Rome Convention country” means a country that is a party to the Rome Convention;
  - “WIPO” means the World Intellectual Property Organisation;
  - “WPPT” means the WIPO Performances and Phonograms Treaty adopted at Geneva on 20th December 1996;
  - “WPPT country” means a country that is a party to the WPPT.
- (2) In these Regulations, a reference to an Article or other sub-division of a Law by number only is a reference to the Article or other sub-division of that number in the Law.

## PART 2

### COPYRIGHT

#### 2 Interpretation of this Part

- (1) In this Part –
- “1911 Act” means the Copyright Act 1911 of the United Kingdom as it had effect in Jersey by virtue of the Loi (1913) au sujet des droits d’auteur and includes the offences in Article 1 of that Loi;
- “existing copyright work” means an existing work in which copyright subsisted, in accordance with the 1911 Act and any Order in Council made under it, immediately before commencement;
- “existing work” means a work made before commencement and, for this purpose, a work of which the making extended over a period shall be taken to have been made when its making was completed;
- “Part 1” means Part 1 of the Law and includes any provision of Part 8 or 9 of the Law to the extent that it has effect in relation to or for the purposes of Part 1 of the Law.
- (2) Except where the context otherwise requires, other expressions used in this Part have the same meaning as in Part 1.
- (3) In this Part –
- (a) a reference to copyright subsisting in accordance with the 1911 Act includes the right conferred by section 24 of that Act in substitution for the right subsisting immediately before 8th March 1913;
- (b) a reference to copyright in an existing work that is a sound recording is a reference to copyright under the 1911 Act in records embodying the recording;
- (c) a reference to copyright in an existing work that is a film is a reference to any copyright under the 1911 Act in –
- (i) the film, so far as it constituted a dramatic work for the purposes of the 1911 Act, or
- (ii) the photographs forming part of the film.
- (4) In this Part a reference to a section or other sub-division of an Act by number only is a reference to the section or other sub-division of that number in the 1911 Act.

#### 3 Continuity of law relating to copyright – construction of enactments, instruments, etc.

- (1) Article 17(2) of the [Interpretation \(Jersey\) Law 1954](#) shall apply in relation to the repeal of the 1911 Act and the enactment of Part 1 as it would apply in relation to the repeal and re-enactment, with or without modification, of an enactment.
- (2) A reference in an enactment, instrument or other document to copyright or to a work or other subject-matter in which copyright subsists which, apart from the repeal of the 1911 Act and enactment of Part 1, would be construed as a reference to copyright under the 1911 Act shall be construed, so far as may be required for

continuing its effect, as being or, as the case requires, including, a reference to copyright under Part 1 or to works in which copyright subsists under Part 1.

- (3) Anything done, or having effect as done, under or for the purposes of a provision of the 1911 Act shall have effect as if done under or for the purposes of the corresponding provision of Part 1.
- (4) A reference, express or implied, in the Law or any other enactment or instrument or document, to a provision of the Law relating to copyright shall, so far as the context permits, be construed as including, in relation to times, circumstances and purposes before commencement, a reference to corresponding earlier provisions.
- (5) A reference, express or implied, in an enactment, instrument or other document, to a provision of the 1911 Act shall be construed, so far as may be required for continuing its effect, as a reference to the corresponding provision of the Law.
- (6) This Regulation is subject to any enactment, including a provision of these Regulations, to the contrary.

#### **4 Application of Part 1 to things in existence at commencement**

- (1) Part 1 shall apply in relation to things in existence at commencement as it applies in relation to things coming into existence following commencement.
- (2) Paragraph (1) is subject to any enactment, including a provision of these Regulations, to the contrary.

#### **5 Subsistence of copyright in existing works**

- (1) Following commencement, copyright shall subsist in an existing work in accordance with Part 1 only if it is an existing copyright work.
- (2) However, an existing work that is not an existing copyright work may qualify for copyright protection following commencement –
  - (a) subject to paragraphs (3) to (5), under Article 21, by virtue of the author being a qualifying person prescribed for the purposes of paragraph (2)(d) of that Article; or
  - (b) subject to paragraphs (3) and (4), under Article 22, by virtue of the work being first published in a qualifying country.
- (3) Where copyright subsisted in an existing work in accordance with the 1911 Act but expired before commencement, copyright in the work cannot be revived or acquired following commencement.
- (4) An existing work cannot qualify for copyright protection following commencement if –
  - (a) the work did not qualify for copyright protection in accordance with the 1911 Act, by reason that it did not satisfy the requirements of section 1(1)(a) or (b); and
  - (b) had the work qualified for such copyright protection by reason that it satisfied the requirements of section 1(1)(a) or (b), copyright would have expired before commencement.
- (5) An existing work that was first published before commencement cannot, by virtue of the author being a qualifying person prescribed for the purposes of Article 21(2)(d), qualify for copyright protection following commencement.

- (6) The subsistence, following commencement, of copyright in an existing copyright work or in any other existing work that qualifies for copyright in accordance with paragraph (2) is subject to the exceptions, deeming provisions and modifications in the following provisions of this Part.

## **6 Definition “unauthorized” – Article 2**

Part 1 shall have effect in relation to things done before commencement with the substitution for the definition “unauthorized” in Article 2(1) of the following definition –

“ ‘unauthorized’, as regards anything done in relation to a work, means done otherwise than –

- (a) by or with the consent or acquiescence of the copyright owner; or
- (b) if copyright does not subsist in the work, by or with the licence of the author or any person lawfully claiming under him;”.

## **7 Definition “author” – Article 3**

- (1) Subject to paragraphs (2) and (3), who is the author, in relation to an existing work, shall be determined in accordance with the law in force at the time the work was made.
- (2) For the purposes of the moral rights conferred by Chapter 5 of Part 1, who is the author, in relation to an existing work, shall be determined in accordance with Part 1.
- (3) For the purposes of determining the duration of copyright in an existing work that is a photograph, who is the author, in relation to the work, shall be determined in accordance with Part 1.

## **8 Databases**

Part 1 shall have effect in relation to an existing copyright work that is a database as if it were an original literary work.

## **9 Sound recordings**

Part 1 shall have effect in relation to an existing copyright work that is a sound recording as if it were a sound recording within the meaning of Part 1.

## **10 Films**

- (1) Part 1 shall not have effect in relation to an existing work that is a film, as a film.
- (2) Instead, Part 1 shall have effect –
  - (a) in relation to an existing work that is a film that was an original dramatic work within the meaning of the 1911 Act, as if it were an original dramatic work within the meaning of Part 1; and
  - (b) in relation to photographs that form part of a film that is an existing work, as if the photographs were not part of a film.
- (3) Notwithstanding Article 17(2), an existing work that is a sound track to a film shall not be treated as part of the film.



## **11 Broadcasts**

- (1) Copyright cannot subsist in a broadcast made before commencement.
- (2) Paragraph (1) shall not prevent an existing work that is a sound recording or film recording that is a recording of a broadcast qualifying for copyright protection as a sound recording or film.
- (3) Part 1 shall have effect, in relation to an existing sound recording of a broadcast that qualifies for copyright protection, as if it were a sound recording within the meaning of Part 1.
- (4) Regulation 10 applies to an existing film recording of a broadcast as it applies to other existing works that are films.

## **12 Published editions**

Copyright cannot subsist in a typographical arrangement of a published edition made before commencement.

## **13 Computer-generated works**

Copyright can only subsist, following commencement, in an existing work which is computer-generated if and to the extent that the work has an author.

## **14 Design capable of registration**

Copyright shall not subsist, following commencement, in an existing work which is a design to which the 1911 Act could not apply by virtue of section 22.

## **15 Treatment of construction of building as publication of work – Article 9(3)**

Article 9(3) shall apply only where construction of the building begins following commencement.

## **16 Qualification for copyright protection – Articles 20 to 23**

An existing copyright work shall be deemed to satisfy the qualification requirements described in Articles 20 to 23 including, as the case requires, the requirements prescribed for the purposes of Articles 21(2)(d) and 22(2)(b).

## **17 Existing photographs and sound recordings – Article 21**

Article 21(2) is modified in its application to an existing work that is a photograph or sound recording so as to substitute for sub-paragraph (c) the following sub-paragraph –

“(c) a body corporate with an established place of business in Jersey;”

## **18 Ownership of copyright**

- (1) Who is the first owner of copyright in an existing work shall be determined in accordance with the law in force at the time the work was made.

- (2) In the case of a plate or other original ordered by a person before commencement in the circumstances described in paragraph (a) of the proviso to section 5(1), who is the first owner of copyright shall be determined in accordance with the law in force at the time the plate or other original was ordered.
- (3) Subject to paragraph (4), where, by virtue of these Regulations, copyright in an existing copyright work is extended, the person who is the owner of the copyright in the work immediately before commencement is, at commencement, the owner of the extended copyright.
- (4) If the person described in paragraph (3) is entitled to copyright for a period less than the whole of the copyright period that applies (disregarding the extended period of copyright), the extended period of copyright is part of the reversionary interest expectant on the termination of that period.

## **19 Duration of copyright: general rule**

- (1) This Regulation has effect with respect to the duration of copyright in existing works.
- (2) The duration of copyright in an existing work shall be determined in accordance with Part 1.
- (3) This Regulation is subject to Regulations 20 to 23.

## **20 Regulations 21 to 23: interpretation**

- (1) In Regulations 21 to 23 and this Regulation, a reference to an EEA State shall be construed as if the United Kingdom, Jersey, Guernsey and the Isle of Man were also EEA States.<sup>1</sup>
- (2) In Regulations 21 to 23 –
  - (a) a reference to a national of an EEA State includes a reference to a body incorporated under the law of an EEA State; and
  - (b) a reference to a national of a country includes a reference to a body incorporated under the law of a country.

## **21 Duration of copyright in foreign literary, dramatic, musical or artistic works – Article 25**

- (1) Where the country of origin of an existing work that is a literary, dramatic, musical or artistic work is not an EEA State and the author of the work is not a national of an EEA State, the duration of copyright in the work shall be whichever is the lesser of –
  - (a) the term to which the work is entitled in the country of origin; and
  - (b) the term determined in accordance with Part 1.
- (2) If the work is of joint authorship, the reference in paragraph (1) to the author not being a national of an EEA State shall be construed as a reference to none of the authors being such a person.
- (3) The country of origin of a work shall be determined in accordance with the following provisions of this Regulation.

- (4) If the work is first published in an EEA State, and is not simultaneously published elsewhere, the country of origin is an EEA State.
- (5) If the work is first published simultaneously in 2 or more countries, one or more of which is an EEA State, the country of origin is an EEA State.
- (6) Paragraphs (7) to (9) apply to a work to which neither paragraph (4) or (5) applies.
- (7) If the work is first published in a Berne Convention country and is not simultaneously published elsewhere, the country of origin is that country.
- (8) If the work is first published simultaneously in 2 or more countries, only one of which is a Berne Convention country, the country of origin is that country.
- (9) If the work is first published simultaneously in 2 or more countries of which 2 or more are Berne Convention countries, the country of origin is the Berne Convention country which grants the shorter or shortest period of copyright protection.
- (10) If the work is unpublished or is a published work to which none of paragraphs (4) to (9) apply, the country of origin is –
  - (a) if the work is a film and the maker of the film has his or her headquarters in, or is domiciled or resident in an EEA State or Berne Convention country – that State or country;
  - (b) if the work is a work of architecture constructed in an EEA State or Berne Convention country – that State or country;
  - (c) if the work is an artistic work incorporated in a building or other structure situated in an EEA State or Berne Convention country – that State or country; or
  - (d) in the case of any other work, the EEA State or country of which the author of the work is a national.
- (11) In this Regulation, references to simultaneous publication are to publication within 30 days of the first publication.

## **22 Duration of copyright in foreign sound recordings – Article 26**

Where the author of an existing work that is a sound recording is not a national of an EEA State, the duration of copyright in the sound recording shall be whichever is the lesser of –

- (a) the term to which the sound recording is entitled in the country of which the author is a national; and
- (b) the term determined in accordance with Part 1.

## **23 Duration of copyright in repeat broadcasts – Article 28**

- (1) Subject to paragraph (2), copyright in a repeat broadcast following commencement of a broadcast originally made before commencement shall expire at the end of the period of 50 years from the end of the calendar year in which the original broadcast was made.
- (2) If the author of the repeat broadcast is not a national of an EEA State, the duration of copyright in the repeat broadcast shall be whichever is the lesser of –
  - (a) the term to which the work is entitled in the country of which the author is a national; and

- (b) the term determined in accordance with paragraph (1).
- (3) No copyright shall arise in a repeat broadcast that is broadcast after the end of the period of copyright that would otherwise apply in its case in accordance with paragraph (1) or (2).

## **24 Saving for right to restrain publication of article**

Notwithstanding the repeal of the 1911 Act, the author of an existing copyright work that is an article or other contribution to a newspaper, magazine, or similar periodical shall continue, following commencement, to have the right, conferred by paragraph (b) of the proviso to section 5(1) in the absence of any agreement to the contrary, to restrain publication of the work otherwise than as part of a newspaper, magazine, or similar periodical.

## **25 Limitation of right in respect of essay, etc. made before commencement of 1911 Act**

Where an existing copyright work made before 8th March 1913 consists of an essay, article or portion forming part of, and first published in, a review, magazine or other periodical or work of a like nature, the copyright shall be subject to any right of publishing the essay, article or portion in a separate form to which the author was entitled on that date or would, if the 1911 Act had not been passed, have become entitled under section 18 of the Copyright Act 1842 of the United Kingdom.

## **26 Whether activities infringe copyright in existing work**

- (1) The 1911 Act shall continue to apply for the purpose of determining whether anything done before commencement constitutes an infringement of copyright.
- (2) Part 1 shall apply for the purpose of determining whether anything done following commencement constitutes an infringement of copyright.
- (3) Anything done following commencement pursuant to an agreement made before commencement shall not infringe any copyright in a work if, had it been done before commencement, it would not have infringed copyright in the work.
- (4) Anything done following commencement pursuant to arrangements made before commencement for the exploitation of an existing work shall not infringe copyright in the work if –
  - (a) had it been done before commencement, it would not have infringed copyright in the work; or
  - (b) there was no copyright in the work before commencement.

## **27 Pre-1911 Act works – acts restricted by copyright**

- (1) Where, in the case of a dramatic or musical work made before 8th March 1913, the right conferred by the 1911 Act did not include the sole right to perform the work in public, the acts restricted by the copyright shall be treated as not including –
  - (a) performing the work in public;
  - (b) communicating the work to the public; or
  - (c) doing any of the above in relation to an adaptation of the work.

- (2) Where, in the case of a dramatic or musical work made before 8th March 1913, the right conferred by the 1911 Act consisted only of the sole right to perform the work in public, the acts restricted by the copyright shall be treated as consisting only of those acts.

## **28 Rights of copyright owner in foreign sound recording – Articles 34, 35 and 41**

- (1) This Regulation applies to a sound recording that is –
- (a) an existing copyright work –
    - (i) in which, immediately before commencement, copyright subsisted under the 1911 Act by virtue of the extension of the protection of that Act by Order in Council under section 29, and
    - (ii) which is not first published in Jersey following commencement; or
  - (b) an existing work which –
    - (i) is not an existing copyright work, and
    - (ii) qualifies for copyright only by virtue of its author being a person prescribed for the purposes of Article 21(2)(d) or its country of first publication being a country prescribed for the purposes of Article 22(2)(b).
- (2) Articles 34, 35 and 41 shall not apply in the work’s case if –
- (a) the author is not a national of, or domiciled or resident in, or a body incorporated under the law of, the United Kingdom, Guernsey, the Isle of Man or any other WPPT country or Rome Convention country; and
  - (b) the country of first publication (if any) is not the United Kingdom, Guernsey, the Isle of Man or any other WPPT country or Rome Convention country.<sup>2</sup>
- (3) Articles 34, 35 (to the extent that it would otherwise apply to a broadcast of a sound recording) and 41 shall not apply in the work’s case if –
- (a) the author is not a national of, or domiciled or resident in, or a body incorporated under the law of the United Kingdom, Guernsey, the Isle of Man or any other Rome Convention country;
  - (b) the country of first publication (if any) is not the United Kingdom, Guernsey, the Isle of Man or any other Rome Convention country; and
  - (c) the work satisfies either or both of the conditions in paragraph (4).<sup>3</sup>
- (4) The conditions are that –
- (a) the author of the work is a national of, or domiciled or resident in, or a body incorporated under, the law of a WPPT country; or
  - (b) the country of first publication (if any) of the work is a WPPT country.

## **29 Infringing copies – Article 42**

- (1) Whether or not an article that was made before commencement is an infringing copy, or would have been an infringing copy if it had been made in Jersey, shall be determined in accordance with the law in force at the time the article was made.
- (2) Notwithstanding paragraph (1), an article made before commencement that was an infringing copy by virtue of the 1911 Act but which, if made following

commencement, would not be an infringing copy by virtue of Chapter 4 of Part 1, is not an infringing copy.

- (3) A librarian or archivist who, before commencement, made a copy of a work and supplied it to a person, reasonably believing the person required the copy for the purposes of research or private study, shall not, following commencement, incur any liability for infringement of copyright by reason of the act.

### **30 Permitted acts – Chapter 4**

- (1) Subject to paragraphs (3) and (4), a provision of Chapter 4 of Part 1 that, following commencement, would permit anything done in relation to an existing work or a copy, made before commencement, of an existing work, shall be taken to have been in force at all material times.
- (2) For the purposes of the application of Chapter 4 of Part 1 to existing works, a reference to the copyright owner shall be construed in accordance with the law in force at the material time.
- (3) Paragraph (4) applies to a design first recorded or embodied in a design document or model less than 10 years before commencement.
- (4) Article 79 shall not apply in relation to the design until the expiry of 10 years following the date the design was first recorded or embodied in the design document or model.
- (5) Paragraph (4) does not affect any rule of law preventing or restricting the enforcement of copyright in relation to a design.

### **31 Assignment, licence, etc., by first owner after commencement of 1911 Act**

- (1) Where the author of an existing copyright work that is a literary, dramatic, musical or artistic work was the first owner of the copyright in it, no assignment of the copyright and no grant of any interest in it, made by him or her (otherwise than by will) after 8th March 1913 and before commencement shall be operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of 25 years from the death of the author.
- (2) The reversionary interest in the copyright expectant on the termination of the period referred to in paragraph (1) may, following commencement, be assigned by the author during his or her life but in the absence of any assignment shall, on his or her death, devolve as part of his or her estate.
- (3) Nothing in this Regulation affects –
  - (a) an assignment of the reversionary interest by a person to whom it has been assigned;
  - (b) an assignment of the reversionary interest, after the death of the author, by any person becoming entitled to it; or
  - (c) an assignment of the copyright after the reversionary interest has fallen in.
- (4) Nothing in this Regulation applies to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work.
- (5) In paragraph (4) “collective work” means –
  - (a) an encyclopaedia, dictionary, yearbook or similar work;
  - (b) a newspaper, review, magazine or similar periodical; or

- (c) a work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated.

### **32 Assignment or grant by author before commencement of 1911 Act**

- (1) Without prejudice to the generality of Regulation 3, this Regulation applies where –
  - (a) the author of a work made before 8th March 1913 had, before that date made such an assignment or grant as is mentioned in paragraph (a) of the proviso to section 24(1); and
  - (b) copyright subsists in the work by virtue of these Regulations and Part 1.
- (2) If, before commencement, any event occurred or notice was given which, in accordance with paragraph (a) of the said proviso had any operation –
  - (a) affecting the ownership of the right conferred by the 1911 Act in relation to the work; or
  - (b) creating, transferring or terminating an interest, right or licence in respect of that right,that event or notice shall have the corresponding operation in relation to the copyright in the work under Part 1.
- (3) Any right which, at a time after commencement would, by virtue of paragraph (a) of the said proviso, have been exercisable in relation to the work, or to the right conferred by the 1911 Act, if the Act had not been repealed, shall be exercisable in relation to the work or to the copyright in it under Part 1, as the case may be.
- (4) If, in accordance with paragraph (a) of the said proviso, the right conferred by the 1911 Act would have reverted to the author or his or her personal representative on the date referred to in that paragraph, and that date falls after commencement then, on that date –
  - (a) the copyright in the work under Part 1 shall revert to the author or his or her personal representatives, as the case may be; and
  - (b) any interest of any other person in that copyright which subsists on that date by virtue of any document made before the commencement of the 1911 Act shall determine.

### **33 Statutory licences under 1911 Act**

- (1) Section 19(2) to (8), and regulations made under that section, shall continue to apply, for one year following commencement, in a case where, before commencement, a person was entitled, by virtue of section 19(2), to make records without infringing copyright in the work.
- (2) The number of records that a person may make pursuant to the right described in paragraph (1) shall not exceed the number intended to be sold, as stated by the person in his or her notice given, before commencement, pursuant to section 19(2)(b).
- (3) In a case where, before commencement, a person has, in the case of a work, complied with the requirements of the proviso to section 3 and regulations made under it, those provisions shall continue to apply, following commencement, as respects reproduction by that person of that work.

### **34 Moral rights – Chapter 5**

- (1) No right of action shall arise under Chapter 5 of Part 1 in respect of anything done before commencement.
- (2) The rights conferred by Articles 105 and 108 shall only apply in relation to an existing work if the author of the work has not died before commencement.
- (3) The rights conferred by Articles 105 and 108 shall not apply in relation to an existing work –
  - (a) where the copyright first vested in the author, to anything which, by virtue of an assignment of copyright or a licence granted before commencement, may be done without infringing copyright; or
  - (b) where copyright first vested in a person other than the author, to anything done by or with the licence of the copyright owner.
- (4) The right conferred by Article 112 only applies in relation to an existing work where the person who would have the right has not died before commencement.
- (5) Where the right conferred by Article 112 applies in relation to an existing work, the right arises where anything described in any of paragraphs (2) to (6) of that Article is done following commencement, notwithstanding that the false attribution was inserted in or affixed to the work or copy before commencement.

### **35 Right to privacy of certain photographs and films – Article 113**

The right conferred by Article 113 shall not apply to photographs taken or films made before commencement.

### **36 Dealings in copyright works – Chapter 6**

- (1) Without prejudice to the generality of Regulation 3, any document made or event occurring before commencement which had any operation –
  - (a) affecting the ownership of the copyright in an existing work; or
  - (b) creating, transferring or terminating an interest, right or licence in respect of the copyright in an existing work,shall have the corresponding operation in relation to copyright in the work under Part 1.
- (2) Expressions used in a document described in paragraph (1) shall be construed in accordance with their effect immediately before commencement.
- (3) This Regulation is subject to any express provision to the contrary in these Regulations.

### **37 Prospective ownership of copyright – Article 119**

Article 119 shall not apply in relation to an agreement made before commencement.

### **38 Exclusive licences – Article 120**

Article 120 shall not apply in relation to an exclusive licence granted before commencement.



### **39 Bequest of unpublished work construed as including copyright – Article 121**

- (1) Article 121 shall not apply where the testator making the bequest died before commencement.
- (2) Section 17(2) shall continue to apply where an author making a bequest of a manuscript which has not been published or performed or delivered in public died before commencement.

### **40 Film production agreements – Article 122**

- (1) Article 122 shall apply in relation to an agreement made before commencement.
- (2) In its application pursuant to paragraph (1), Article 122 is modified so as to omit paragraph (3).

### **41 Right to equitable remuneration – Article 123**

- (1) No right to equitable remuneration shall arise under Article 123 in respect of anything done before commencement.
- (2) No rights shall arise under Article 123 in respect of the rental, following commencement, of a sound recording or film made (whether before or following commencement) pursuant to an agreement made before commencement with a person who is, in relation to the work, the author to whom Article 123 applies.

### **42 Extended copyright and existing licences and agreements**

Any copyright licence and any term or condition of an agreement relating to the exploitation of a copyright work which –

- (a) subsists immediately before commencement in relation to an existing copyright work; and
- (b) is not to expire before the end of the copyright period under the 1911 Act,

shall continue to have effect during the period of any extended copyright, subject to any agreement to the contrary.

### **43 Compulsory licences granted pursuant to 1911 Act**

- (1) A licence granted in relation to an existing copyright work in compliance with an order made under section 4 and which subsists immediately before commencement shall continue to subsist following commencement, subject to paragraph (2) and the terms and conditions specified in the order.
- (2) A licence described in paragraph (1) shall expire upon whichever is the earlier of –
  - (a) the date it would expire in accordance with its terms;
  - (b) the expiry of one year following commencement.

### **44 Civil remedies for infringement – Chapter 7**

- (1) Articles 127 and 128 shall apply only in relation to an infringement of copyright committed following commencement.

- (2) Sections 6 and 8 shall continue to have effect in relation to an infringement of copyright committed before commencement.
- (3) Articles 129 and 131 shall apply in relation to infringing copies and other articles, whether made before or following commencement.
- (4) Section 7 shall continue to have effect following commencement, for the purposes only of proceedings commenced, pursuant to that section, before commencement.
- (5) Articles 132, 133 and 134 shall apply only in relation to a licence granted following commencement.
- (6) Articles 136 to 138 shall apply only in relation to proceedings brought under Part 1.

#### **45 Offences – Article 139**

- (1) Article 139 shall apply only in relation to acts done following commencement.
- (2) Section 11 and Article 1 of the Loi (1913) au sujet des droits d’auteur shall continue to have effect in relation to acts done before commencement.

#### **46 Offences: foreign sound recordings – Article 139**

- (1) This Regulation applies to a sound recording that is –
  - (a) an existing copyright work –
    - (i) in which, immediately before commencement, copyright subsisted under the 1911 Act by virtue of the extension of the protection of that Act by Order in Council under section 29, and
    - (ii) which is not first published in Jersey following commencement; or
  - (b) an existing work which –
    - (i) is not an existing copyright work, and
    - (ii) qualifies for copyright only by virtue of its author being a person prescribed for the purposes of Article 21(2)(d) or its country of first publication being a country prescribed for the purposes of Article 22(2)(b).
- (2) Article 139(3) and (4) shall not apply in the work’s case if –
  - (a) the author is not a national of, or domiciled or resident in, or a body incorporated under the law of, the United Kingdom, Guernsey, the Isle of Man or any other WPPT country or Rome Convention country; and
  - (b) the country of first publication (if any) is not the United Kingdom, Guernsey, the Isle of Man or any other WPPT country or Rome Convention country.<sup>4</sup>
- (3) Article 139(3) (to the extent that it would otherwise apply to a broadcast of a sound recording) and Article 139(4) shall not apply in the work’s case if –
  - (a) the author is not a national of, or domiciled or resident in, or a body incorporated under the law of, the United Kingdom, Guernsey, the Isle of Man or any other Rome Convention country;
  - (b) the country of first publication (if any) is not the United Kingdom, Guernsey, the Isle of Man or any other Rome Convention country; and
  - (c) the work satisfies either or both of the conditions in paragraph (4).<sup>5</sup>

- (4) The conditions are that –
  - (a) the author is a national of, or domiciled or resident in, or a body incorporated under, the law of a WPPT country; or
  - (b) the country of first publication (if any) is a WPPT country.

#### **47 Copyright licensing – Chapter 8**

- (1) Subject to paragraphs (2) to (10), Chapter 8 of Part 1 shall apply to –
  - (a) an existing licensing scheme;
  - (b) an existing licence under an existing licensing scheme;
  - (c) an existing licence granted by a licensing body otherwise than in pursuance of a licensing scheme,as it applies to a licensing scheme that comes into operation following commencement and to a licence that is granted following commencement.
- (2) An existing licensing scheme under which licences may be granted permitting the making and supply of accessible copies, as described in Article 52, shall, until the transition date, be taken to have been notified for the purposes of Article 52, in accordance with Article 180.
- (3) An existing licensing scheme under which licences may be granted permitting the making of recordings of broadcasts or copies of such recordings as described in Article 58(1) or the communication to the public of recordings of broadcasts or copies of such recordings as described in Article 58(2) shall, until the transition date, be taken to have been notified for the purposes of Article 58, in accordance with Article 180.
- (4) An existing licensing scheme under which licences may be granted permitting the making of reprographic copies, as described in Article 59(1), shall, until the transition date, be taken to have been notified for the purposes of Article 59, in accordance with Article 180.
- (5) An existing licensing scheme under which licences may be granted permitting the copying of an abstract or the issue of copies of an abstract to the public, as described in Article 88(1), shall, until the transition date, be taken to have been notified for the purposes of Article 88, in accordance with Article 180.
- (6) An existing licensing scheme under which licences may be granted permitting the making of copies of broadcast and the issue of such copies to the public, as described in Article 102(1), shall, until the transition date, be taken to have been notified for the purposes of Article 102, in accordance with Article 180.
- (7) For the purposes of paragraph (2), (3), (4), (5) or (6), the “transition date” is whichever is the earliest of –
  - (a) the first date on which, following commencement, the existing licensing scheme is modified;
  - (b) the first date on which, following commencement, a licence is granted permitting the act described in that paragraph;
  - (c) the first date on which, following commencement, any term of existing licences permitting the act described in that paragraph is modified (including any term as to the amount of any fee or charge); and
  - (d) the expiry of the period of one year following commencement.

- (8) A right of referral shall not arise under Article 147 in respect of terms of a licensing scheme that are proposed before commencement.
- (9) A right to apply to the licensing authority shall not arise under Article 150 –
  - (a) in respect of a refusal, by an operator of a licensing scheme, that occurs before commencement; or
  - (b) where a licence was granted in accordance with a licensing scheme but expired or otherwise ceased to have effect before commencement.
- (10) A right of referral shall not arise under Article 154 in respect of the terms of a licence that are proposed before commencement.
- (11) For the purposes of paragraph (7)(b), the grant of a licence does not include the renewal of an existing licence.
- (12) In this Regulation –

“existing licensing scheme” means a licensing scheme that is in operation immediately before commencement;

“existing licence” means a licence that is in operation immediately before commencement.

#### **48 States Assembly copyright – Article 182**

- (1) Subject to the following paragraphs of this Regulation, Article 182 shall apply to an existing work if –
  - (a) copyright subsisted in the work immediately before commencement and such copyright was not owned by the Crown; and
  - (b) had the work been made following commencement, copyright in it would be States Assembly copyright.
- (2) The person or entity who, immediately before commencement, was the owner of copyright in a work to which Article 182 applies by virtue of paragraph (1) shall be the owner immediately following commencement.
- (3) Where the States Assembly is not, immediately following commencement, the owner of copyright in a work to which Article 182 applies by virtue of paragraph (1) or by, virtue of Regulation 24, the author reserves the right conferred by paragraph (b) of the proviso to section 5(1) –
  - (a) any right to exploit the work to which the States Assembly was entitled immediately before commencement shall continue, following commencement, upon the same terms; and
  - (b) if or to the extent that the States was not entitled, immediately before commencement, to the right to exploit the work, paragraph (4) shall apply.
- (4) The States Assembly shall, following commencement, be in the same position as regards infringement of copyright in a work to which Article 182 applies by virtue of paragraph (1) as if it were the holder of a licence granted by, as the case requires, the owner of the copyright in the work or the author.
- (5) Where the States Assembly exploits a work in reliance on a deemed licence under paragraph (4), the owner of the copyright in the work or author, as the case requires, may, by notice in writing given to the Greffier of the States, require payment of a royalty by the States Assembly for such use.

- (6) Where notice has been given under paragraph (5), either the owner of the copyright or author, as the case requires, or the Greffier of the States may apply to the licensing authority for the licensing authority to settle the terms of payment.
- (7) Where an application is made under paragraph (6), the licensing authority shall consider the matter and make such order as the licensing authority may determine to be reasonable in the circumstances.
- (8) The following provisions shall apply, with the necessary modifications, to an order made pursuant to paragraph (7) as they apply to an order made under Article 169(1), as if any reference in them to the right conferred by Article 168 was a reference to the right conferred by paragraph (4) of this Regulation –
  - (a) Article 169(2);
  - (b) Articles 171 and 172.
- (9) Where a work was made, before 9th December 2005, by –
  - (a) a person in the course of his or her employment, under a contract of service or apprenticeship, by the States or a Committee of the States; or
  - (b) a person who, at the time the work was made, was a délégué appointed under the Loi (1937) sur l'atténuation des peines et sur la mise en liberté surveillée and had signed a contract of employment with the Probation Board of the Royal Court,the person shall, for the purposes of determining ownership of the work pursuant to section 5, be deemed to have been, at the time the work was made, a States employee.

#### **49 States copyright – Article 183**

- (1) Subject to the following paragraphs of this Regulation, Article 183 shall apply to an existing work if –
  - (a) copyright subsisted in the work immediately before commencement and such copyright was not owned by the Crown; and
  - (b) had the work been made following commencement, copyright in it would be States copyright.
- (2) The person or entity who, immediately before commencement, was the owner of copyright in a work to which Article 183 applies by virtue of paragraph (1) shall be the owner immediately following commencement.
- (3) Where the States are not, immediately following commencement, the owner of copyright in a work to which Article 183 applies by virtue of paragraph (1) or, by virtue of Regulation 24, the author reserves the right conferred by paragraph (b) of the proviso to section 5(1) –
  - (a) any right to exploit the work to which the States were entitled immediately before commencement shall continue, following commencement, upon the same terms; and
  - (b) if or to the extent that the States were not entitled, immediately before commencement, to the right to exploit the work, paragraph (4) shall apply.
- (4) The States shall, following commencement, be in the same position as regards infringement of copyright in a work to which Article 183 applies by virtue of paragraph (1) as if they were the holder of a licence granted by, as the case requires, the owner of the copyright in the work or the author.

- (5) Where the States exploit a work in reliance on a deemed licence under paragraph (4), the owner of the copyright in the work or author, as the case requires, may, by notice in writing given to the Greffier of the States, require payment of a royalty by the States for such use.
- (6) Where notice has been given under paragraph (5), either the owner of the copyright or author, as the case requires, or the Greffier of the States may apply to the licensing authority for the licensing authority to settle the terms of payment.
- (7) Where an application is made under paragraph (6), the licensing authority shall consider the matter and make such order as the licensing authority may determine to be reasonable in the circumstances.
- (8) The following provisions shall apply, with the necessary modifications, to an order made pursuant to paragraph (7) as they apply to an order made under Article 169(1), as if any reference in them to the right conferred by Article 168 was a reference to the right conferred by paragraph (4) of this Regulation –
  - (a) Article 169(2);
  - (b) Articles 171 and 172.
- (9) Where a work was made, before 9th December 2005, by –
  - (a) a person in the course of his or her employment, under a contract of service or apprenticeship, by the States or a Committee of the States; or
  - (b) a person who, at the time the work was made, was a *délégué* appointed under the Loi (1937) sur l'atténuation des peines et sur la mise en liberté surveillée and had signed a contract of employment with the Probation Board of the Royal Court,the person shall, for the purposes of determining ownership of the work pursuant to section 5, be deemed to have been, at the time the work was made, a States employee.
- (10) In this Regulation “States” means –
  - (a) the Chief Minister, in relation to a work of which the Chief Minister would have been the first owner of copyright by virtue of Article 183(2), if the work had been made following commencement;
  - (b) the Bailiff, in relation to a work of which the Bailiff would have been the first owner of copyright, by virtue of Article 183(3), if the work has been made following commencement;
  - (c) the Attorney General, in relation to a work of which the Attorney General would have been the first owner of copyright, by virtue of Article 183(4), if the work had been made following commencement.

## **50 Crown copyright – Article 184**

- (1) Article 184 shall apply to an existing work only if, immediately before commencement, copyright subsisted in the work and was vested in the Crown.
- (2) Article 184 shall apply to a work described in paragraph (1) with the following modifications –
  - (a) the omission of paragraph (1);
  - (b) in paragraph (2), the substitution for the words “Subject to paragraph (1)” of the words “Subject to any agreement made before commencement with the author regarding ownership”.

- (3) This Regulation does not apply to a work to which Regulation 52 applies.

**51 Copyright in enactments and revised edition – Article 186**

- (1) Article 186(1) shall apply to existing enactments and existing revised editions.  
(2) In this Regulation, “revised edition” has the same meaning as in Article 186.

**52 Copyright in Acts and Measures – Article 187**

- (1) Article 187 shall apply to existing Acts of Parliament, Orders in Council and Measures of the General Synod of the Church of England.  
(2) For the purposes of the application of Article 187 to existing works pursuant to paragraph (1), references in that Article to Measures of the General Synod of the Church of England includes references to Church Assembly Measures.

**53 International organizations – Article 188**

Article 188 shall apply to an existing work only if it is first published following commencement.

**54 University copyright previously saved under 1911 Act**

- (1) Copyright that subsisted immediately before commencement by virtue of the saving in section 33 shall continue to subsist until the end of 2039 and shall then expire.  
(2) The following provisions of Part 1 shall apply in relation to the rights described in paragraph (1) as they apply to copyright under Part 1 –  
(a) Chapter 4;  
(b) Chapter 7;  
(c) Chapter 8,  
and Parts 8 and 9 shall also apply, to the extent necessary for the operation of those provisions of Part 1.

**PART 3**

**DATABASE RIGHT**

**55 Interpretation of this Part**

- (1) In this Part –  
“existing database” means a database completed before commencement;  
“Part 2” means Part 2 of the Law and includes any provision of Part 8 or 9 of the Law to the extent that it has effect in relation to or for the purposes of Part 2 of the Law.  
(2) Other expressions used in this Part have the same meaning as in Part 2.

## **56 Database right in existing databases**

Database right shall, from commencement, subsist in an existing database if, had Part 2 been in force at all material times, database right would have subsisted in the database immediately before commencement.

## **57 Duration of database right – Article 197**

Article 197(1) and (2) shall have effect in relation to an existing database in which database right subsists by virtue of Regulation 56 as if they had been in force at all material times.

## **58 Permitted acts – Chapter 2**

- (1) A provision of Chapter 2 of Part 2 that, following commencement, would permit anything done in relation to an existing database shall be taken to have been in force at all material times.
- (2) For the purposes of the application of Chapter 2 of Part 2 to existing databases, the reference in Article 202(2) to Chapter 4 of Part 1 shall be construed as a reference to that Chapter as it has effect by virtue of Regulation 30.

## **59 Whether agreements, activities and arrangements infringe database right**

- (1) Nothing in Part 2 shall affect any agreement made before commencement.
- (2) Anything done –
  - (a) before commencement; or
  - (b) following commencement, in pursuance of an agreement made before commencement,shall not infringe database right.
- (3) Anything done following commencement pursuant to arrangements made before commencement for the exploitation of an existing database shall not infringe database right in the database.

## **60 States, States Assembly and Crown**

- (1) Notwithstanding Article 194(3) to (5) –
  - (a) where, by virtue of these Regulations, States Assembly copyright subsists in an existing database and the States Assembly is the owner of the copyright, the States Assembly shall be regarded as the maker of the database;
  - (b) where, by virtue of these Regulations, States copyright subsists in an existing database and the States are the owner of the copyright, the States shall be regarded as the maker of the database.
  - (c) where, by virtue of these Regulations, Crown copyright subsists in an existing database, the Crown shall be regarded as the maker of the database.
- (2) Where by virtue of Regulation 48(3)(a), the States Assembly has a right to exploit an existing database in which copyright subsists, the States Assembly shall also have a right to exploit, on the same terms, any database right that subsists in the database.



- (3) Where, by virtue of Regulation 48(3)(b) and (4), the States Assembly is deemed to be the holder of a licence to exploit an existing database in which copyright subsists, Regulation 48(4) to (8) shall apply, with the necessary modifications, for the purpose of deeming the States Assembly to be the holder of a licence to exploit any database right that subsists in the database.
- (4) Where, by virtue of Regulation 49(3)(a), the States have a right to exploit an existing database in which copyright subsists, the States shall also have a right to exploit, on the same terms, any database right that subsists in the database.
- (5) Where, by virtue of Regulation 49(3)(b) and (4), the States are deemed to be the holder of a licence to exploit an existing database in which copyright subsists, Regulation 49(4) to (8) shall apply, with the necessary modifications, for the purpose of deeming the States to be the holder of a licence to exploit any database right that subsists in the database.
- (6) In paragraphs (1)(b), (4) and (5), “States” has the same meaning as in Regulation 49(10).

## **PART 4**

### **CIRCUMVENTION OF PROTECTION MEASURES AND ELECTRONIC RIGHTS MANAGEMENT**

#### **61 Application of Part 4 of Law**

- (1) Part 4 shall not apply to anything done before commencement.
- (2) In paragraph (1) “Part 4” means Part 4 of the Law and includes any provision of Part 8 or 9 of the Law to the extent that it has effect in relation to or for the purposes of Part 4.

## **PART 5**

### **FRAUDULENT RECEPTION OF TRANSMISSIONS**

#### **62 Application of Part 5 of Law**

- (1) Part 5 shall not apply to anything done before commencement.
- (2) In paragraph (1) “Part 5” means Part 5 of the Law and includes any provision of Part 8 or 9 of the Law to the extent that it has effect in relation to or for the purposes of Part 5 of the Law.

## **PART 6**

### **PERFORMERS’ PROTECTION**

#### **63 Interpretation of this Part**

- (1) In this Part –  
“moral rights” means the rights conferred by Chapter 7 of Part 6;

“Part 6” means Part 6 of the Law and includes any provision of Part 8 or 9 of the Law to the extent that it has effect in relation to or for the purposes of Part 6 of the Law.

- (2) Other expressions used in this Part of these Regulations have the same meaning as in Part 6.

#### **64 Application of rights conferred by Part 6 of Law to performances taking place before commencement**

- (1) The rights conferred by Part 6 (other than moral rights) shall apply in relation to performances taking place before commencement.
- (2) Paragraph (1) is subject to the following provisions of this Part of these Regulations.
- (3) Moral rights shall not arise in a performance taking place before commencement.

#### **65 Whether agreements, activities and arrangements infringe rights conferred by Part 6 of Law**

- (1) Nothing in Part 6 shall affect any agreement made before commencement.
- (2) Anything done –
  - (a) before commencement; or
  - (b) following commencement, in pursuance of an agreement made before commencement,shall not infringe any rights conferred by Part 6.
- (3) Anything done following commencement pursuant to arrangements made before commencement for the exploitation of a performance that took place before commencement shall not infringe any rights conferred by Part 6.

#### **66 Permitted acts – Chapter 3**

- (1) A provision of Chapter 3 of Part 6 that, following commencement, would permit anything done in relation to a performance taking place before commencement, a recording of such a performance or a copy of such a recording, shall be taken to have been in force at all material times.
- (2) For the purposes of the application of Chapter 3 of Part 6 to a performance taking place before commencement, a reference to the owner of the rights conferred by Chapter 2 of Part 6 shall be construed as if Chapter 2 had been in force at the material time.

#### **67 Recordings made before commencement**

A recording of a performance made before commencement is not –

- (a) an illicit recording; or
- (b) made without the consent of the performer or a person having recording rights.

**68 Remuneration rights – Article 264**

No right to equitable remuneration shall arise under Article 264 in respect of anything done before commencement.

**69 Film production agreements – Article 303**

Article 303 shall apply in relation to an agreement made before commencement.

**70 Right to equitable remuneration – Article 304**

No rights shall arise under Article 304 in respect of the rental, following commencement, of a sound recording or film made (whether before or following commencement) pursuant to an agreement made before commencement with a performer of whose performance a recording is included in the sound recording or film.

**71 Offences – Articles 318 and 320**

Articles 318 and 320 shall apply only in relation to things done following commencement.

## **PART 7**

### **DESIGN RIGHT**

**72 Interpretation of this Part**

- (1) In this Part “Part 7” means Part 7 of the Law and includes any provision of Part 8 or 9 of the Law to the extent that it has effect in relation to or for the purposes of Part 7 of the Law.
- (2) Other expressions used in this Part of these Regulations have the same meaning as in Part 7.

**73 Application of design right**

Design right shall not subsist in a design –

- (a) recorded in a design document before commencement; or
- (b) to which an article has been made before commencement.

**74 Whether agreements, activities and arrangements infringe design right**

- (1) Nothing in Part 7 shall affect any agreement made before commencement.
- (2) Anything done –
  - (a) before commencement; or
  - (b) following commencement, in pursuance of an agreement made before commencement,shall not infringe design right.

- (3) Anything done following commencement pursuant to arrangements made before commencement for the exploitation of a design shall not infringe design right.

**75 Infringing article – Article 344**

An article made before commencement is not an infringing article.

**PART 8**

**LIABILITY OF AND REMEDIES AGAINST SERVICE PROVIDERS**

**76 Application and construction of Schedule 1 to the Law**

- (1) Schedule 1 to the Law shall not affect the liability of a service provider for anything done before commencement.
- (2) The reference in paragraph 2(1) of Schedule 1 to the Law to any right conferred by Part 1 of the Law shall be construed as including a reference to any right conferred by Part 1 of the Law as applied by Part 2 of these Regulations.
- (3) In paragraph (1), “service provider” has the same meaning as in Schedule 1 to the Law.

**PART 9**

**CLOSING**

**77 Citation**

These Regulations may be cited as the Intellectual Property (Unregistered Rights) (Application, Transitional Provisions and Savings) (Jersey) Regulations 2012.

## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement
Intellectual Property (Unregistered Rights) (Application, Transitional Provisions and Savings) (Jersey) Regulations 2012	<a href="#">R&amp;O.147/2012</a>	18 December 2012
Intellectual Property (Unregistered Rights) (Application, Transitional Provisions and Savings) (Amendment) (Jersey) Regulations 2019	<a href="#">R&amp;O.114/2019</a>	11pm on 31 January 2020 – Regulations 1, 6, 7 and 8 ( <a href="#">R&amp;O.3/2020</a> ) Not in force – Regulations 2, 3, 4 and 5

### Table of Endnote References

- 
- <sup>1</sup> Regulation 20(1)      amended by R&O.114/2019  
<sup>2</sup> Regulation 28(2)      amended by R&O.114/2019  
<sup>3</sup> Regulation 28(3)      amended by R&O.114/2019  
<sup>4</sup> Regulation 46(2)      amended by R&O.114/2019  
<sup>5</sup> Regulation 46(3)      amended by R&O.114/2019