

SUBSIDIARY LEGISLATION 415.02

**REVIVAL OF COPYRIGHT AND NEIGHBOURING
RIGHTS (PROTECTION) AND EXHAUSTION OF
DISTRIBUTION RIGHTS (EXTENSION)
REGULATIONS**

1st May, 2004

LEGAL NOTICE 197 of 2004.

1. The title of these regulations is the Revival of Copyright and Neighbouring Rights (Protection) and Exhaustion of Distribution Rights (Extension) Regulations. Citation.

2. In these regulations, unless the context otherwise requires - "Act" means the Copyright Act; Cap. 415.

"arrangements" means arrangements for the exploitation of the work in question;

"commencement" means the date on which these regulations come into force;

"EEA Agreement" means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992, as adjusted by the Protocol signed at Brussels on 17th March 1993 and as subsequently amended;

"EEA state" means a state which is a contracting party to the EEA Agreement;

"media-related production" means performances, audiovisual works, recordings and broadcasts that according to the provisions of the Act, are protected by neighbouring rights;

"revived rights" means any copyright or neighbouring rights which subsist by virtue of the provisions of the Act, after having expired under the provisions of the preceding Copyright Act or any other earlier enactment relating to copyright or related rights and revived in terms of regulation 3.

3. Copyright and neighbouring rights in terms of the provisions of the Act shall revive in works and media-related productions whose protection under the provisions of the preceding Copyright Act or any other earlier enactment relating to copyright or related rights had expired before the coming into force of the Act, but were on the 1st May, 2004, still protected in an EEA state under legislation relating to copyright or related rights. Revival of copyright and neighbouring rights.

4. (1) The person who was the owner of the copyright or related rights in a work or media-related production immediately before it expired (hereinafter called "the former rights owner") is as from commencement the owner of any revived rights in the work or media-related production. Ownership of revived rights.

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(2) Where the former rights owner has died before commencement, or, in the case of a legal person, has ceased to exist before commencement, the revived rights shall vest in his or its rightful successors

Exercise of moral rights in respect of revived copyright and performer's rights.

5. (1) Any waiver or assertion of moral rights which subsisted immediately before expiry of copyright or performer's rights shall continue to have effect during the period of revived copyright or performer's rights, as the case may be.

(2) Moral rights are exercisable after commencement by the author of a work or by the performer in respect of his performances, as with any other copyright work or performance.

(3) Where the author died before commencement -

(a) the rights conferred by article 12 of the Act are exercisable after commencement by the persons indicated in subarticle (3) thereof, and

(b) the relative infringements after commencement of these rights are actionable by the persons indicated in article 44 of the Act.

(4) Where the performer died before commencement -

(a) the rights conferred by article 23 of the Act, are exercisable after commencement by the persons indicated in subarticle (2) thereof, and

(b) the relative infringements after commencement of these rights are actionable by the persons indicated in article 44 of the Act.

Acts of exploitation when work was in public domain.

6. (1) No act done before commencement shall be regarded as infringing revived rights in a work or media-related production.

(2) It is not an infringement of revived rights in a work or media-related production -

(a) to do anything after commencement in pursuance of arrangements made before the 1st May, 2004 at a time when copyright or any related right did not subsist in the work or media-related production, or

(b) to issue to the public after commencement copies or recordings of the work or media-related production made before the 1st May, 2004 at a time when copyright or any related right did not subsist in the work or media-related production.

(3) It is not an infringement of revived rights in a work or media-related production to do anything after commencement in relation to a work or a media-related production made before commencement, or made in pursuance of arrangements made before commencement, which contains a copy of that work or is an adaptation of that work or a recording of that media-related production if -

(a) the copy, recording or adaptation was made before the

1st May, 2004 at a time when copyright or related rights did not subsist in the work or media-related production in which revived rights subsist, or

- (b) the copy, recording or adaptation was made in pursuance of arrangements made before the 1st May, 2004 at a time when copyright or related rights did not subsist in the work or media-related production in which revived rights subsist.

(4) It is not an infringement of revived rights in a work or media-related production to do after commencement anything which is a restricted act in relation to the work or media-related production if the act is done at a time when, or is done in pursuance of arrangements made at a time when the name and address of a person entitled to authorise the act cannot by reasonable inquiry be ascertained.

(5) It is not an infringement of any moral right to do anything which by virtue of these regulations is not an infringement of copyright or neighbouring rights.

7. (1) In the case of a work or media-related production in which revived rights subsist, any act restricted by the copyright or neighbouring rights shall be treated as licensed or consented to by the copyright owner or neighbouring rights owner or by the collecting society as authorized under article 52 of the Act, subject only to the payment of such equitable royalty or other remuneration as may be agreed individually or through the collecting society or determined in default of agreement by the Copyright Board at the request of the copyright owner or neighbouring rights owner or the collecting society or the person claiming to be treated as licensed by him or the society or as having his consent.

Use as of right
subject to equitable
royalty.

(2) A person intending to avail himself of the right conferred by this regulation must give reasonable notice in writing of his intention to the copyright owner or neighbouring rights owner or collecting society, stating when he intends to begin to do the acts. If he fails to give such notice, his acts shall not be deemed as licensed or as having the owner's consent.

8. (1) For the purposes of articles 8 and 20 of the Act, "market" shall as from the 1st May, 2004 mean the market covered by the EEA Agreement.

Extension of
territorial scope of
exhaustion of
distribution rights.

(2) Further to article 31 of the Act, the first sale in an EEA state of a copy of a database by the rightholder or with his consent shall exhaust the right to control the resale of that copy.

(3) Further to article 34 of the Act, when a topography or a semiconductor product has been put on the market of an EEA state by the rightholder or with his consent, the exclusive right to authorize or prevent the commercial exploitation or the importation of that topography or of that semiconductor product shall be exhausted.