



## **BERMUDA**

### **COPYRIGHT AND PERFORMANCES (APPLICATION TO OTHER COUNTRIES) ORDER 2009**

#### **BR 71/2009**

The Minister, in exercise of the powers conferred by sections 194 and 257 of the Copyright and Designs Act 2004, makes the following Order:

#### **Citation**

1 This Order, made under the Copyright and Designs Act 2004 (“the Act”), may be cited as the Copyright and Performances (Application to Other Countries) Order 2009.

#### **Literary, dramatic, musical and artistic works, films and the typographical arrangement of published editions**

2 All the provisions of Part I of the Act, insofar as they relate to literary, dramatic, musical and artistic works, films and the typographical arrangement of published editions, apply in relation to the countries indicated in the second column of the table set out in the Schedule so that those provisions apply—

- (a) in relation to persons who are citizens or subjects of, or are domiciled or resident in, those countries as they apply to persons who have Bermudian status or are domiciled or resident in Bermuda;
- (b) in relation to bodies incorporated under the laws of those countries as they apply in relation to bodies incorporated under the law of Bermuda; and
- (c) in relation to works first published in those countries as they apply in relation to works first published in Bermuda,

subject to paragraph (2).

(2) Where a literary, dramatic, musical or artistic work was first published before 6th August 1962 it shall not qualify for copyright protection by reason of section 191 (qualification by reference to author).

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**Sound recordings**

3 (1) Except for the provisions listed in paragraph (2)(a), all the provisions of Part I of the Act, insofar as they relate to sound recordings, apply in relation to the countries indicated in the third column of the table set out in the Schedule so that those provisions apply—

- (a) in relation to persons who are citizens or subjects of, or are domiciled or resident in, those countries as they apply to persons who have Bermudian status or are domiciled or resident in Bermuda;
- (b) in relation to bodies incorporated under the laws of those countries as they apply in relation to bodies incorporated under the law of Bermuda; and
- (c) in relation to works first published in those countries as they apply in relation to works first published in Bermuda.

(2) Where in the third column of the table set out in the Schedule the entry for a country—

- (a) includes an asterisk (\*), the following provisions of Part I of the Act, insofar as they relate to sound recordings, also apply to that country—
  - (i) section 30 (infringement by rental or lending of work to the public) insofar as it applies to lending;
  - (ii) section 31 (infringement by performance, showing or playing of work in public);
  - (iii) section 32 (infringement by broadcasting);
  - (iv) section 38 (secondary infringement: provision of apparatus for infringing performance, etc); and
  - (v) section 135(3) (criminal liability for public performance, etc);
- (b) includes a hash (#), the following provisions of Part I of the Act, insofar as they relate to sound recordings, also apply to that country—
  - (i) section 32 (infringement by broadcasting), except that it does not apply in relation to the broadcasting of a sound recording; and

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- (ii) section 135(3) (criminal liability for public performance, etc), except that it does not apply in relation to the broadcasting of a sound recording.

**Wireless broadcasts**

4 (1) Except for the provisions listed in paragraph (2), all the provisions of Part I of the Act, insofar as they relate to wireless broadcasts, apply in relation to the countries indicated in the fourth column of the table set out in the Schedule so that those provisions apply—

- (a) in relation to persons who are citizens or subjects of, or are domiciled or resident in, those countries as they apply to persons who have Bermudian status or are domiciled or resident in Bermuda;
- (b) in relation to bodies incorporated under the laws of those countries as they apply in relation to bodies incorporated under the law of Bermuda; and
- (c) in relation to broadcasts made from those countries as they apply in relation to broadcasts made from Bermuda,

subject to paragraphs (3) to (5).

(2) The following provisions of Part I of the Act, insofar as they relate to wireless broadcasts, also apply in relation to a country where its entry in the fourth column of the table set out in the Schedule does not include an asterisk (\*)—

- (a) section 30 (infringement by rental or lending of work to the public);
- (b) section 31 (infringement by performance, showing or playing of work in public), but only insofar as it relates to broadcasts other than television broadcasts;
- (c) section 32 (infringement by broadcasting), except in relation to broadcasting by wireless telegraphy;
- (d) section 38 (secondary infringement: provision of apparatus for infringing performance, etc), but only insofar as it relates to broadcasts other than television broadcasts;
- (e) section 135(3) (criminal liability for public performance, etc), except in relation to broadcasting by wireless telegraphy.

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(3) The provisions of Part I of the Act do not apply in relation to a wireless broadcast made from a place in a country, referred to in paragraph (4), before the relevant date.

(4) The relevant date in relation to a country—

- (a) where its entry in the fourth column of the table set out in the Schedule includes an “(X)”, is 6th August 1962;
- (b) where its entry in the fourth column of the table set out in the Schedule includes a “(Y)”, is 1st January 1996; or
- (c) where there is a date next to its entry in the fourth column of the table set out in the Schedule, is that date.

(5) For the purposes of section 24(5) of the Act (duration of copyright in repeats) any wireless broadcast which does not qualify for copyright protection shall be disregarded.

### **Other broadcasts**

5 All the provisions of Part I of the Act, insofar as they relate to broadcasts (other than wireless broadcasts), apply in relation to the countries indicated in the fifth column of the table set out in the Schedule so that those provisions apply—

- (a) in relation to persons who are citizens or subjects of, or are domiciled or resident in, those countries as they apply to persons who have Bermudian status or are domiciled or resident in Bermuda;
- (b) in relation to bodies incorporated under the laws of those countries as they apply in relation to bodies incorporated under the law of Bermuda; and
- (c) in relation to broadcasts made from those countries as they apply in relation to broadcasts made from Bermuda.

### **Performances**

6 (1) The countries in respect of which the word “designated” is included in the sixth column of the table set out in the Schedule are designated as enjoying reciprocal protection under Part II of the Act.

(2) The countries in respect of which the word “deemed” is included in the sixth column of the table set out in the Schedule shall be treated as if they were designated as enjoying reciprocal protection under Part II of the Act, except that—

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- (a) in that Part the term “recording” shall be construed as applying only to sound recordings (and not to films); and
- (b) the following provisions of Part II of the Act shall not apply—
  - (i) section 215 (consent required for rental or lending of copies to public), insofar as it relates to lending;
  - (ii) section 216 (right to equitable remuneration for exploitation of sound recording);
  - (iii) section 217 (infringement of performer’s rights by use of recording made without consent);
  - (iv) sections 219 to 222 (rights of person having recording rights);
  - (v) section 245(2) (criminal liability for playing or communicating to the public).

**Savings**

7 (1) For the purposes of this article an act is an “excluded act” where—

- (a) a person (A) has incurred any expenditure or liability in connection with the act; and
- (b) he—
  - (i) began in good faith to do the act; or
  - (ii) made in good faith effective and serious preparations to do the act,

at a time when the act neither infringed nor was restricted by the relevant rights in the work or performance.

(2) Where another person (B) acquires those relevant rights pursuant to this Order, A has the right—

- (a) to continue to do the excluded act; or
- (b) to do the excluded act,

notwithstanding that the excluded act infringes or is restricted by those relevant rights.

(3) Where B, or his exclusive licensee, pays reasonable compensation to A paragraph (2) no longer applies.

(4) Where—

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(a) B offers to pay compensation to A under paragraph (3); but

(b) A and B cannot agree on what compensation is reasonable,

they may refer the matter to arbitration.

(5) In this article “relevant rights” means copyright, the rights conferred by Chapter V of Part I of the Act and the rights conferred by Part II of the Act.

**Commencement**

8 This Order shall come into operation on 12 November 2009.

**SCHEDULE (Articles 2 to 6)**

<i>Country</i>	<i>Article 2 (literary, dramatic, musical and artistic works, films and typographical arrangements)</i>	<i>Article 3 (sound recordings)</i>	<i>Article 4 (wireless broadcasts)</i>	<i>Article 5 (other broadcasts)</i>	<i>Article 6 (performances)</i>
Albania	Applies	Applies (*)	Applies (1 September 2000)		Designated
Algeria	Applies	Applies (*)	Applies (22 April 2007)		Designated
Andorra	Applies	Applies (*)	Applies 25 May 2004)		Designated
Angola	Applies	Applies	Applies (*) (23 November 1996)		Deemed
Antigua and Barbuda	Applies	Applies	Applies (*) (Y)		Deemed
Argentina	Applies	Applies (*)	Applies (2 March 1992)		Designated
Armenia	Applies	Applies (*)	Applies (31		Designated

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	January 2003)			
Australia (including Norfolk Island)	Applies	Applies (*)	Applies (30 September 1992)	Designated
Austria	Applies	Applies (*)	Applies (X)	Applies
Azerbaijan	Applies	Applies (*)	Applies (5 October 2005)	Designated
Bahamas	Applies	Applies		
Bahrain	Applies	Applies (*)	Applies (Y)	Designated
Bangladesh	Applies	Applies (*)	Applies (*) (Y)	Deemed
Barbados	Applies	Applies (*)	Applies (18 September 1983)	Designated
Belarus	Applies	Applies (*)	Applies 27 May 2003)	Designated
Belgium	Applies	Applies (*)	Applies (X)	Applies
Belize	Applies	Applies	Applies (*) (Y)	Deemed
Benin	Applies	Applies (#)	Applies (*) (22 February 1996)	Deemed
Bhutan	Applies	Applies		
Bolivia	Applies	Applies (*)	Applies (24 November 1993)	Designated
Bosnia and Herzegovina	Applies	Applies		
Botswana	Applies	Applies (#)	Applies (*) (Y)	Deemed
Brazil	Applies	Applies (*)	Applies (29 September 1965)	Designated
Brunei Darussalam	Applies	Applies	Applies (*) (Y)	Deemed

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Bulgaria	Applies	Applies (*)	Applies (X)	Applies
Burkina Faso	Applies	Applies (*)	Applies (14 January 1988)	Designated
Burundi	Applies	Applies	Applies (*) (Y)	Deemed
Cambodia	Applies	Applies	Applies (*) (13 October 2004)	Deemed
Cameroon	Applies	Applies	Applies (*) (Y)	Deemed
Canada	Applies	Applies (*)	Applies (Y)	Designated
Cape Verde	Applies	Applies (*)	Applies (3 July 1997)	Designated
Central African Republic	Applies	Applies	Applies (*) (Y)	Deemed
Chad	Applies	Applies	Applies (*) (19 October 1996)	Deemed
Chile	Applies	Applies (*)	Applies (5 September 1974)	Designated
China	Applies	Applies (#)	Applies (*) (11 December 2001)	Deemed
Columbia	Applies	Applies (*)	Applies (17 September 1976)	Designated
Comoros	Applies	Applies		
Congo	Applies	Applies (*)	Applies (18 May 1964)	Designated
Costa Rica	Applies	Applies (*)	Applies (9 September 1971)	Designated
Cote d'Ivoire	Applies	Applies	Applies (*) (Y)	Deemed



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Croatia	Applies	Applies (*)	Applies (20 April 2000)	Designated
Cuba	Applies	Applies	Applies (*) (Y)	Deemed
Cyprus	Applies	Applies (*)	Applies (X)	Applies
Czech Republic	Applies	Applies (*)	Applies (X)	Applies
Democratic Republic of the Congo	Applies	Applies	Applies (*) (1 January 1997)	Deemed
Denmark	Applies	Applies (*)	Applies (X)	Applies
Djibouti	Applies	Applies	Applies (*) (Y)	Deemed
Dominica	Applies	Applies (*)	Applies (Y)	Designated
Dominican Republic	Applies	Applies (*)	Applies (27 January 1987)	Designated
Ecuador	Applies	Applies (*)	Applies (18 May 1964)	Designated
Egypt	Applies	Applies	Applies (*) (Y)	Deemed
El Salvador	Applies	Applies (*)	Applies (29 June 1979)	Designated
Equatorial Guinea	Applies	Applies		
Estonia	Applies	Applies (*)	Applies (X)	Applies
Faeroe Islands	Applies	Applies	Applies (1 February 1962)	Designated
Fiji	Applies	Applies (*)	Applies (11 April 1972)	Designated
Finland	Applies	Applies (*)	Applies (X)	Applies
France (including Overseas Departments and Territories)	Applies	Applies (*)	Applies (X)	Applies
Gabon	Applies	Applies (#)	Applies (*) (Y)	Deemed

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Gambia	Applies	Applies	Applies (*) (23 October 1996)		Deemed
Georgia	Applies	Applies (*)	Applies (14 August 2004)		Designated
Germany	Applies	Applies (*)	Applies (X)	Applies	
Ghana	Applies	Applies (*)	Applies (*)(Y)		Deemed
Gibraltar	Applies	Applies (*)	Applies (X)	Applies	Designated
Greece	Applies	Applies (*)	Applies (X)	Applies	
Greenland	Applies	Applies	Applies (1 February 1962)		Designated
Grenada	Applies	Applies	Applies (*) (22 February 1996)		Deemed
Guatemala	Applies	Applies (*)	Applies (14 January 1977)		Designated
Guinea	Applies	Applies (#)	Applies (*)(Y)		Deemed
Guinea-Bissau	Applies	Applies	Applies (*)(Y)		Deemed
Guyana	Applies	Applies	Applies (*)(Y)		Deemed
Haiti	Applies	Applies	Applies (*) (30 January 1996)		Deemed
Holy See	Applies	Applies			
Honduras	Applies	Applies (*)	Applies (16 February 1990)		Designated
Hong Kong	Applies	Applies (*)	Applies (X)		Deemed
Hungary	Applies	Applies (*)	Applies (X)	Applies	

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Iceland	Applies	Applies (*)	Applies (X)	Applies	Designated
India	Applies	Applies (*)	Applies (*) (Y)		Deemed
Indonesia	Applies	Applies (*)	Applies (X)	Applies	Deemed
Ireland	Applies	Applies (*)	Applies (X)	Applies	
Isle of Man	Applies	Applies (*)	Applies (X)	Applies	Designated
Israel	Applies	Applies (*)	Applies (Y)		Designated
Italy	Applies	Applies (*)	Applies (X)	Applies	
Jamaica	Applies	Applies (*)	Applies (27 January 1994)		Designated
Japan	Applies	Applies (*)	Applies (26 October 1989)		Designated
Jordan	Applies	Applies (#)	Applies (*) (11 April 2000)		Deemed
Kazakhstan	Applies	Applies (#)			Deemed
Kenya	Applies	Applies	Applies (*) (Y)		Deemed
Korea, Democratic People's Republic of	Applies	Applies			
Korea, Republic of	Applies	Applies	Applies (*) (Y)		Deemed
Kuwait	Applies	Applies	Applies (*) (Y)		Deemed
Kyrgyzstan	Applies	Applies (*)	Applies (20 December 1998)		Designated
Lao People's Democratic Republic	Applies	Applies			
Latvia	Applies	Applies (*)	Applies (X)	Applies	
Lebanon	Applies	Applies (*)	Applies (12 August 1997)		Designated

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Lesotho	Applies	Applies (*)	Applies (26 January 1990)		Designated
Liberia	Applies	Applies			
Libyan Arab Jamahiriya	Applies	Applies			
Liechtenstein	Applies	Applies (*)	Applies (X)	Applies	Designated
Lithuania	Applies	Applies (*)	Applies (X)	Applies	
Luxembourg	Applies	Applies (*)	Applies (X)	Applies	
Macao	Applies	Applies	Applies (*) (Y)		Deemed
Macedonia, The Former Yugoslav Republic of	Applies	Applies (*)	Applies (2 March 1998)		Designated
Madagascar	Applies	Applies	Applies (*) (Y)		Deemed
Malawi	Applies	Applies (*)	Applies (22 June 1989)		Deemed
Malaysia	Applies	Applies (*)	Applies (X)		Deemed
Maldives	Applies	Applies	Applies (*) (Y)		Deemed
Mali	Applies	Applies (#)	Applies (*) (Y)		Deemed
Malta	Applies	Applies (*)	Applies (X)	Applies	
Mauritania	Applies	Applies	Applies (*) (Y)		Deemed
Mauritius	Applies	Applies	Applies (*) (Y)		Deemed
Mexico	Applies	Applies (*)	Applies (18 May 1964)		Designated
Micronesia, Federated States of	Applies	Applies			
Moldova, Republic of	Applies	Applies (*)	Applies (5 December 1995)		Designated

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Monaco	Applies	Applies (*)	Applies (6 December 1985)		Designated
Mongolia	Applies	Applies (#)	Applies (*) (29 January 1997))		Deemed
Montenegro	Applies	Applies (*)	Applies (10 June 2003)		Designated
Morocco	Applies	Applies	Applies (*) (Y)		Deemed
Mozambique	Applies	Applies	Applies (*) (Y)		Deemed
Myanmar	Applies	Applies	Applies (*) (Y)		Deemed
Namibia	Applies	Applies	Applies (*) (Y)		Deemed
Nepal	Applies	Applies	Applies (*) (23 April 2004)		Deemed
Netherlands	Applies	Applies (*)	Applies (X)	Applies	
Netherlands Antilles and Aruba	Applies	Applies	Applies (*) (Y)		Deemed
New Zealand	Applies	Applies (*)	Applies (*) (Y)		Deemed
Nicaragua	Applies	Applies (*)	Applies (Y)		Designated
Niger	Applies	Applies (*)	Applies (18 May 1964)		Designated
Nigeria	Applies	Applies (*)	Applies (29 October 1993)		Designated
Norway	Applies	Applies (*)	Applies (X)	Applies	Designated
Oman	Applies	Applies	Applies (*) (9 November 2000)		Deemed
Pakistan	Applies	Applies (*)	Applies (*) (Y)		Deemed
Panama	Applies	Applies (*)	Applies (2		Designated

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	September 1983)			
Papua New Guinea	Applies	Applies	Applies (*) (9 June 1996)	Deemed
Paraguay	Applies	Applies (*)	Applies (26 February 1970)	Designated
Peru	Applies	Applies (*)	Applies (7 August 1985)	Designated
Philippines	Applies	Applies (*)	Applies (25 September 1984)	Designated
Poland	Applies	Applies (*)	Applies (X)	Applies
Portugal	Applies	Applies (*)	Applies (X)	Applies
Qatar	Applies	Applies	Applies (*) (13 January 1996)	Deemed
Romania	Applies	Applies (*)	Applies (X)	Applies
Russian Federation	Applies	Applies (*)	Applies (26 May 2003)	Designated
Rwanda	Applies	Applies	Applies (*) (22 May 1996)	Deemed
Saint Kitts and Nevis	Applies	Applies	Applies (*) (21 February 1996)	Deemed
Saint Lucia	Applies	Applies (*)	Applies (Y)	Designated
Saint Vincent and the Grenadines	Applies	Applies	Applies (*)(Y)	Deemed
Samoa	Applies	Applies		
Saudi Arabia	Applies	Applies		
Senegal	Applies	Applies (#)	Applies (*)(Y)	Deemed

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Serbia	Applies	Applies (*)	Applies (10 June 2003)		Designated
Sierra Leone	Applies	Applies	Applies (*) (Y)		Deemed
Singapore	Applies	Applies (#)	Applies (X)	Applies	Deemed
Slovak Republic	Applies	Applies (*)	Applies (X)	Applies	
Slovenia	Applies	Applies (*)	Applies (X)	Applies	
Solomon Islands	Applies	Applies	Applies (*) (26 July 1996)		Deemed
South Africa	Applies	Applies	Applies (*) (Y)		Deemed
Spain	Applies	Applies (*)	Applies (X)	Applies	
Sri Lanka	Applies	Applies	Applies (*) (Y)		Deemed
Sudan	Applies	Applies			
Suriname	Applies	Applies	Applies (*) (Y)		Deemed
Swaziland	Applies	Applies	Applies (*) (Y)		Deemed
Sweden	Applies	Applies (*)	Applies (X)	Applies	
Switzerland	Applies	Applies (*)	Applies (X)	Applies	Designated
Syrian Arab Republic	Applies	Applies (*)	Applies (13 May 2006)		Designated
Taiwan	Applies	Applies (*)	Applies (*) (1 January 2002)		Deemed
Tajikistan	Applies	Applies			
Tanzania, United Republic of	Applies	Applies	Applies (*) (Y)		Deemed
Thailand	Applies	Applies (*)	Applies (*) (Y)		Deemed
Togo	Applies	Applies (*)	Applies (Y)		Designated
Tonga	Applies	Applies	Applies (*) (27 July 2007)		Deemed

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Trinidad and Tobago	Applies	Applies	Applies (*) (Y)		Deemed
Tunisia	Applies	Applies	Applies (*) (Y)		Deemed
Turkey	Applies	Applies (*)	Applies (Y)		Designated
Uganda	Applies	Applies	Applies (*) (Y)		Deemed
Ukraine	Applies	Applies (*)	Applies (12 June 2002)		Designated
United Arab Emirates	Applies	Applies (*)	Applies (10 April 1996)		Designated
United Kingdom	Applies	Applies (*)	Applies (X)	Applies	Designated
United States of America (including Puerto Rico and all territories and possessions)	Applies	Applies (#)	Applies (*) (Y)		Deemed
Uruguay	Applies	Applies (*)	Applies (4 July 1977)		Designated
Uzbekistan	Applies	Applies			
Venezuela	Applies	Applies (*)	Applies (Y)		Designated
Vietnam	Applies	Applies (*)	Applies (1 March 2007)		Designated
Zambia	Applies	Applies	Applies (*) (Y)		Deemed
Zimbabwe	Applies	Applies	Applies (*) (Y)		Deemed

Made this 5th day of November, 2009

Minister of Energy, Telecommunications and E-Commerce