

The Copyright and Rights in Databases (Amendment) Regulations 2003

2003 No. 2501

COPYRIGHT

RIGHTS IN DATABASES

The Copyright and Rights in Databases (Amendment) Regulations 2003

Made 28th September 2003

Laid before Parliament 3rd October 2003

Coming into force 1st November 2003

The Secretary of State, being a Minister designated for the purposes of section 2(2) of the European Communities Act ¹ in relation to measures relating to copyright ² and measures relating to the prevention of unauthorised extraction of the contents of a database and of unauthorised re-utilisation of those contents ³, in exercise of the powers conferred by section 2(2) of that Act, hereby makes the following Regulations:

Citation, commencement and extent

1. -

1. These Regulations may be cited as the Copyright and Rights in Databases (Amendment) Regulations 2003.
2. These Regulations shall come into force on 1st November 2003.
3. These Regulations extend to the whole of the United Kingdom.

Amendment of the Copyright and Rights in Databases Regulations 1997

2. The Copyright and Rights in Databases Regulations 1997 ⁴ are amended as follows.
3. In regulation 2 (implementation of Directive) -
 - a. in paragraph (1)(a) omit "and";
 - b. in paragraph (1)(b) replace "." with ", and"; and
 - c. after paragraph (1)(b) insert -

" (c) an Agreement ⁵ in the form of an exchange of letters between the United Kingdom of Great Britain and Northern Ireland on behalf of the Isle of Man and the European Community extending to the Isle of Man the legal protection of databases as provided for in Chapter III of that Directive."

4. In regulation 12 (interpretation), in paragraph (5), insert, after the word "EEA" in each place where it appears, "or the Isle of Man".

5. In regulation 18 (qualification for database right) -

- a. in paragraph (1)(b) omit "or";
- b. in paragraph (1)(c) for "." substitute ", ";
- c. after paragraph (1)(c) insert -
 - d. " an individual who was habitually resident within the Isle of Man,
 - e. a body which was incorporated under the law of the Isle of Man and which, at that time, satisfied one of the conditions in paragraph (2A), or
 - f. a partnership or other unincorporated body which was formed under the law of the Isle of Man and which, at that time, satisfied the condition in paragraph (2A)(a)."; and
- d. after paragraph (2) insert -

" (2A) The conditions mentioned in paragraphs (1)(e) and (f) are -

 - a. that the body has its central administration or principal place of business within the Isle of Man, or
 - b. that the body has its registered office within the Isle of Man and the body's operations are linked on an ongoing basis with the economy of the Isle of Man."

6. For regulation 26 (introductory) substitute -

" Introductory

26. Expressions used in this Part which are defined for the purposes of Part I of the 1988 Act have the same meaning as in that Part."

7. In regulation 27 (general rule) substitute for "commencement", "1st January 1998".

8. For regulation 28 (general savings) substitute -

" General savings

28. -

1. Nothing in these Regulations affects any agreement made before 1st January 1998.
2. Nothing in these Regulations affects any agreement made after 31st December 1997 and before 1st November 2003 in so far as the effect would only arise as a result of the amendment of these Regulations by the Copyright and Rights in Databases (Amendment) Regulations 2003⁶.
3. No act done in respect of any database, in which database right subsists by virtue of the maker of the database (or one or more of its makers) falling within one of the provisions contained in Regulations 14(4) and 18(1)(a), (b) and (c), -
 - a. before 1st January 1998, or
 - b. after 31st December 1997, in pursuance of an agreement made before 1st January 1998,

shall be regarded as an infringement of database right in the database.

4. No act done in respect of any database, in which database right subsists by virtue of its maker (or one or more of its makers) falling within one of the provisions contained in Regulation 18(1)(d), (e) and (f), -
 - a. before 1st November 2003, or
 - b. after 31st October 2003, in pursuance of an agreement made before 1st November 2003,

shall be regarded as an infringement of database right in the database."

9. In regulation 29 (saving for copyright in certain existing databases) substitute for "commencement", "1st January 1998".

10. For regulation 30 (database right: term applicable to certain existing databases) substitute -

" Database right: term applicable to certain existing databases

30. Where -

- a. the making of any database is completed on or after 1st January 1983, and before 1st January 1998, and
- b. either -
 - i. the database is a database in which database right subsists by virtue of the maker of the database (or one or more of its makers) falling within one of the

provisions contained in Regulations 14(4) and 18(1)(a), (b) and (c) and database right begins to subsist in the database on 1st January 1998, or

- ii. the database is a database in which database right subsists by virtue of its maker (or one or more of its makers) falling within one of the provisions contained in Regulation 18(1)(d), (e) and (f) and database right begins to subsist in the database on 1st November 2003,

then database right shall subsist in the database for a period of fifteen years beginning with 1st January 1998."

Sainsbury of Turville,

Parliamentary Under Secretary of State for Science and Innovation, Department of Trade and Industry

28th September 2003

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Regulations implement the provisions of an Agreement in the form of an exchange of letters between the United Kingdom of Great Britain and Northern Ireland on behalf of the Isle of Man and the European Community extending to the Isle of Man the legal protection of databases as provided for in Chapter III of Directive 96/9/EC⁷, signed at Brussels on 26th March 2003⁸. This Agreement comes into force on 1st November 2003.

The Copyright and Rights in Databases Regulations 1997 (S.I. 1997/3032) ("the 1997 Regulations") provide for a free-standing database right in some databases, a maker of which is connected in the specified way with an EEA state (as defined in section 172A of the Copyright, Designs and Patents Act 1988 (c. 48)). These Regulations extend the protection of Part III of the 1997 Regulations to databases, a maker of which is connected in the same way with the Isle of Man. As a result of these Regulations, the amended 1997 Regulations will apply the same database right to Isle of Man databases as they do to EEA databases. Database right in Isle of Man databases will therefore be of the same duration as that provided for EEA databases, and will apply to databases made before and after 1st January 1998, in line with the existing provisions in the 1997 Regulations. For qualifying Isle of Man databases made on or after 1st January 1983, and before 1st January 1998, protection will run for 15 years from 1st January 1998, as for qualifying EEA databases made during this period. However, in respect of Isle of Man databases there is a general saving in relation to agreements made before 1st November 2003; in particular acts done in pursuance of such agreements whether before or after this date are not regarded as infringing database right.

1:

1972 c. 68; the enabling powers of section 2(2) of this Act were extended by virtue of the amendment of section

1(2) by section 1 of the European Economic Area Act 1993 (c. 51).

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2:

S.I. 1993/595.

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3:

S.I. 1996/3155.

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4:

S.I. 1997/3032, amended by S.I. 2003/1398; there is another amending instrument but it is not relevant.

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5:

OJ No L 89, 5.4.2003, p 12; Cm 5836 Treaty Series No 19 (2003).

➡

6:

S.I. 2003/2501.

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7:

OJ No L 77, 27.3.1996, p 20.

➡

8:

OJ No L 89, 5.4.2003, p 12; Cm 5836 Treaty Series No 19 (2003).

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