

Please note that this S.I. [2014/2361] was quashed with prospective effect by the High Court in the case of R (British Academy of Songwriters, Composers and Authors and others) v Secretary of State for Business, Innovation and Skills [2015] EWHC 2041 (Admin), 17 July 2015.

STATUTORY INSTRUMENTS

2014 No. 2361

COPYRIGHT RIGHTS IN PERFORMANCES

The Copyright and Rights in Performances (Personal Copies for Private Use) Regulations 2014

Made - - - - *26th August 2014*
Coming into force - - *1st October 2014*

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(1) in relation to matters relating to copyright and rights in performances(2). In accordance with paragraph 2(2) of Schedule 2 to that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

The Secretary of State, in exercise of the powers conferred by section 2(2) of that Act makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Copyright and Rights in Performances (Personal Copies for Private Use) Regulations 2014 and come into force on 1st October 2014.

(2) In these Regulations “the Act” means the Copyright, Designs and Patents Act 1988(3).

Amendments to the Act

2. The Act is amended in accordance with regulations 3 and 4.

(1) 1972 c.68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1) and the European Union (Amendment) Act 2008 (c.7), section 3(3) and Part 1 of the Schedule.
(2) S.I. 1992/707 and S.I. 1993/595.
(3) 1988 c.48.

Personal copies for private use

3.—(1) After section 28A(4) insert—

“28B Personal copies for private use

(1) The making of a copy of a work, other than a computer program, by an individual does not infringe copyright in the work provided that the copy—

- (a) is a copy of—
 - (i) the individual’s own copy of the work, or
 - (ii) a personal copy of the work made by the individual,
- (b) is made for the individual’s private use, and
- (c) is made for ends which are neither directly nor indirectly commercial.

(2) In this section “the individual’s own copy” is a copy which—

- (a) has been lawfully acquired by the individual on a permanent basis,
- (b) is not an infringing copy, and
- (c) has not been made under any provision of this Chapter which permits the making of a copy without infringing copyright.

(3) In this section a “personal copy” means a copy made under this section.

(4) For the purposes of subsection (2)(a), a copy “lawfully acquired on a permanent basis”—

- (a) includes a copy which has been purchased, obtained by way of a gift, or acquired by means of a download resulting from a purchase or a gift (other than a download of a kind mentioned in paragraph (b)); and
- (b) does not include a copy which has been borrowed, rented, broadcast or streamed, or a copy which has been obtained by means of a download enabling no more than temporary access to the copy.

(5) In subsection (1)(b) “private use” includes private use facilitated by the making of a copy—

- (a) as a back up copy,
- (b) for the purposes of format-shifting, or
- (c) for the purposes of storage, including in an electronic storage area accessed by means of the internet or similar means which is accessible only by the individual (and the person responsible for the storage area).

(6) Copyright in a work is infringed if an individual transfers a personal copy of the work to another person (otherwise than on a private and temporary basis), except where the transfer is authorised by the copyright owner.

(7) If copyright is infringed as set out in subsection (6), a personal copy which has been transferred is for all purposes subsequently treated as an infringing copy.

(8) Copyright in a work is also infringed if an individual, having made a personal copy of the work, transfers the individual’s own copy of the work to another person (otherwise than on a private and temporary basis) and, after that transfer and without the licence of the copyright owner, retains any personal copy.

(9) If copyright is infringed as set out in subsection (8), any retained personal copy is for all purposes subsequently treated as an infringing copy.

(4) Section 28A was inserted into the Act by [S.I. 2003/2498](#), regulations 3 and 8(1).

(10) To the extent that a term of a contract purports to prevent or restrict the making of a copy which, by virtue of this section, would not infringe copyright, that term is unenforceable.”

(2) After section 296ZE(5) insert—

“Remedy where restrictive measures prevent or restrict personal copying

296ZEA.—(1) This section applies where an individual is prevented from making a personal copy of a copyright work, or is restricted in the number of personal copies of it which may be made, because of a restrictive measure applied by or on behalf of the copyright owner.

(2) That individual, or a person being a representative of a class of such individuals, may issue a notice of complaint to the Secretary of State.

(3) Following receipt of a notice of complaint, the Secretary of State may give to the owner of that copyright work or an exclusive licensee such directions as appear to the Secretary of State to be requisite or expedient for the purpose of—

- (a) establishing whether any voluntary measure or agreement relevant to the copyright work subsists, or
- (b) (where it is established there is no subsisting voluntary measure or agreement) ensuring that the owner or exclusive licensee of that copyright work makes available to the complainant or the class of individuals represented by the complainant the means of benefiting from section 28B to the extent necessary to benefit from that section.

(4) In deciding whether to give such directions, the Secretary of State must consider whether the restrictive measure unreasonably prevents or restricts the making of personal copies, in particular having regard to—

- (a) the right of the copyright owner to adopt adequate measures limiting the number of personal copies which may be made, and
- (b) whether other copies of the work are commercially available on reasonable terms by or with the authority of the copyright owner in a form which does not prevent or unreasonably restrict the making of personal copies.

(5) The Secretary of State may also give directions—

- (a) as to the form and manner in which a notice of complaint in subsection (2) may be delivered,
- (b) as to the form and manner in which evidence of any voluntary measure or agreement may be delivered, and
- (c) generally as to the procedure to be followed in relation to a complaint made under this section,

and shall publish directions given under this subsection in such manner as the Secretary of State thinks will secure adequate publicity for them.

(6) Subsections (5) to (8) of section 296ZE—

- (a) apply to directions under subsection (3)(a) or (b) as they apply to directions under section 296ZE(3)(a) or (b), and
- (b) apply to directions under subsection (5) as they apply to directions under section 296ZE(4).

(7) This section does not apply to copyright works made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them.

(8) In this section—

“restrictive measure” means any technology, device or component designed, in the normal course of its operation, to protect the rights of copyright owners, which has the effect of preventing a copyright work from being copied (in whole or in part) or restricting the number of copies which may be made;

“personal copy” means a copy of a copyright work which may be made under section 28B;

“voluntary measure or agreement” has the same meaning as in section 296ZE, except that the reference to carrying out a permitted act is to be read as a reference to making a personal copy.

(9) Subsections (1) to (8) apply with any necessary adaptations to—

(a) rights in performances, and in this context “personal copy” refers to a copy of a recording of a performance which may be made under paragraph 1B of Schedule 2 without infringing the rights conferred by Chapter 2 of Part II (rights in performances), and

(b) publication right.”

(3) In Schedule 2, after paragraph 1A(6) insert—

“Personal copies of recordings for private use

1B.—(1) The making of a copy of a recording of a performance by an individual does not infringe the rights conferred by this Chapter provided that the copy—

(a) is a copy of—

(i) the individual’s own copy of the recording, or

(ii) a personal copy of the recording made by the individual,

(b) is made for the individual’s private use, and

(c) is made for ends which are neither directly nor indirectly commercial.

(2) In this paragraph “the individual’s own copy” is a copy of a recording which—

(a) has been lawfully acquired by the individual on a permanent basis,

(b) is not an illicit recording, and

(c) has not been made under any provision of this Schedule which permits the making of a copy without infringing the rights conferred by this Chapter.

(3) In this paragraph a “personal copy” means a copy made under this paragraph.

(4) The rights conferred by this Chapter in a recording are infringed if an individual transfers a personal copy of the recording to another person (otherwise than on a private and temporary basis), except where the transfer is authorised by the rights owner.

(5) If the rights conferred by this Chapter are infringed as set out in sub-paragraph (4), a personal copy which has been transferred is for all purposes subsequently treated as an illicit recording.

(6) Paragraph 1A of Schedule 2 was inserted into the Act by [S.I. 2003/2498](#), regulations 3 and 8(2).

(6) The rights conferred by this Chapter in a recording are also infringed if an individual, having made a personal copy of the recording, transfers the individual's own copy of the recording to another person (otherwise than on a private and temporary basis) and, after that transfer and without the consent of the rights owner, retains any personal copy.

(7) If the rights conferred by this Chapter are infringed as set out in sub-paragraph (6), any retained personal copy is for all purposes subsequently treated as an illicit recording.

(8) To the extent that a term of a contract purports to prevent or restrict the making of a copy which, by virtue of this paragraph, would not infringe any right conferred by this Chapter, that term is unenforceable.

(9) Expressions used but not defined in this paragraph have the same meaning as in section 28B."

Consequential amendments

4.—(1) In the list of provisions in section 27(6)(7), before the entry for section 31A(6) and (9) insert—

“section 28B(7) and (9) (personal copies for private use),”.

(2) In the list of provisions in section 197(5)(8), before the entry for paragraph 4(3) insert—
“paragraph 1B(5) and (7) (personal copies of recordings for private use),”.

(3) In section 296ZF(9), in the heading and in subsection (4), for “296ZE” substitute “296ZEA”.

Transitional provisions

5.—(1) Paragraph (2) applies to a copy of a work—

- (a) made before the date on which these Regulations come into force, and
- (b) which could have been made under section 28B of the Act had that section been in force at the time when the copy was made.

(2) On and after the date on which these Regulations come into force, the copy is to be treated as a personal copy of the work made under section 28B of the Act (therefore it is not an infringing copy by virtue of section 27(2) of the Act even if its making infringed copyright).

(3) Paragraph (4) applies to a copy of a recording of a performance—

- (a) made before the date on which these Regulations come into force, and
- (b) which could have been made under paragraph 1B of Schedule 2 to the Act had that paragraph been in force at the time when the copy was made.

(4) On and after the date on which these Regulations come into force, the copy is to be treated as a personal copy of the recording made under paragraph 1B of Schedule 2 to the Act.

26th August 2014

Baroness Neville-Rolfe
Parliamentary Under Secretary of State for
Business, Innovation and Skills
Department for Business, Innovation and Skills

(7) Section 27(6) has been amended but none of the amendments are relevant.

(8) Section 197(5) has been amended but none of the amendments are relevant.

(9) Section 296ZF was inserted into the Act by [S.I. 2003/2498](#), regulations 3 and 24(1).

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Copyright, Designs and Patents Act 1988 (“the Act”). Article 5(2)(b) of Directive 2001/29 of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ No L167, 22.6.2001. p.10) permits Member States to provide for an exception to the copyright and related rights provided under the Directive in respect of reproductions on any medium made by a natural person for private use for non-commercial ends. The second sub-paragraph of Article 6(4) of the Directive provides that Member States may take appropriate measures to ensure that rightholders make available to the beneficiary of an exception provided for in accordance with Article 5(2)(b) the means of benefiting from that exception, without preventing rightholders from adopting adequate measures (such as technological measures) regarding the number of reproductions which may be taken. These Regulations amend the way in which this exception is implemented in the UK.

Regulation 3 inserts new sections 28B and 296ZEA and new paragraph 1B of Schedule 2 into the Act.

New section 28B provides that an individual may make personal copies of a copyright work (other than a computer program) which is lawfully owned by that individual, provided the copies are made for that individual’s private use, without infringing copyright in the work. Any personal copies must be destroyed if the individual transfers the work from which they were made to another person, unless the copyright owner authorises the transfer of the personal copies to that person. Any personal copy which is not so destroyed or is transferred to another person without the authorisation of the copyright owner shall be treated as an infringing copy for the purposes of the Act. Subsection (10) provides that any term of a contract which prevents or restricts the making of a personal copy in accordance with section 28B is unenforceable.

New section 296ZEA provides a complaints procedure to the Secretary of State where the application of any technology, device or component has the effect of preventing a copyright work from being copied (in whole or in part) or restricting the number of copies which may be made. In the absence of any voluntary measure or agreement by the copyright owner which enables the individual to make personal copies, the Secretary of State may direct the copyright owner to take steps to ensure that the individual has the means of benefiting from section 28B. In deciding whether to give such directions the Secretary of State must consider whether the measure unreasonably prevents or restricts the making of personal copies having regard to the right of the copyright owner to adopt adequate measures limiting the number of copies which may be made and whether other copies of the work are commercially available on reasonable terms in a form which does not prevent or unreasonably restrict the making of personal copies.

New paragraph 1B of Schedule 2 provides an equivalent personal copying exception to that in new section 28B in relation to the copying of a recording of a performance. The making of a copy of a recording of a performance in accordance with paragraph 1B does not infringe the rights conferred by Chapter 2 of Part II of the Act (rights in performances).

Regulation 4 contains consequential amendments to sections 27, 197 and 296ZF of the Act.

Regulation 5(1) and (2) contain a transitional provision which provides that a copy of a work made by an individual prior to commencement of these Regulations will be treated as a personal copy of the work for the purposes of new section 28B if the copy could have been made under section 28B had those provisions been in force at the time the copy was made. Regulation 5(3) and

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(4) make an equivalent transitional provision in relation to copies of recordings which could have been made under paragraph 1B of Schedule 2.

A full impact assessment of the effect that this instrument will have on the cost of business and the voluntary sector is available from the Intellectual Property Office, Concept House, Cardiff Road, Newport, NP10 8QQ and is annexed to the Explanatory Memorandum (together with a transposition note) which is available alongside the instrument on www.legislation.gov.uk.