



# Copyright, Designs and Patents Act 1988

## 1988 CHAPTER 48

### PART I

#### COPYRIGHT

#### CHAPTER I

##### SUBSISTENCE, OWNERSHIP AND DURATION OF COPYRIGHT

###### *Descriptions of work and related provisions*

### 3 Literary, dramatic and musical works.

(1) In this Part—

“literary work” means any work, other than a dramatic or musical work, which is written, spoken or sung, and accordingly includes—

- (a) a table or compilation [<sup>F1</sup>other than a database], <sup>F2</sup>. . .
- (b) a computer program; <sup>F3</sup>. . . [<sup>F4</sup>(c) preparatory design material for a computer program][<sup>F5</sup>and
- <sup>F5</sup>(d) a database]

“dramatic work” includes a work of dance or mime; and

“musical work” means a work consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music.

(2) Copyright does not subsist in a literary, dramatic or musical work unless and until it is recorded, in writing or otherwise; and references in this Part to the time at which such a work is made are to the time at which it is so recorded.

(3) It is immaterial for the purposes of subsection (2) whether the work is recorded by or with the permission of the author; and where it is not recorded by the author, nothing in that subsection affects the question whether copyright subsists in the record as distinct from the work recorded.

*Status: Point in time view as at 09/12/2001.*

*Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Cross Heading: Descriptions of work and related provisions. (See end of Document for details)*

#### Textual Amendments

- F1** Words in s. 3(1)(a) inserted (1.1.1998) by [S.I. 1997/3032, reg. 5\(a\)](#) (with Pt. IV)
- F2** Word in s. 3(1) omitted (1.1.1993) by virtue of [S.I. 1992/3233, reg. 3](#)
- F3** Word in s. 3(1)(b) left out (1.1.1998) by virtue of [S.I. 1997/3032, reg. 5\(b\)](#) (with Pt. IV)
- F4** Word and s. 3(1)(c) inserted (1.1.1993) by [S.I. 1992/3233, reg. 3](#)
- F5** S. 3(1)(d) and word preceding it inserted (1.1.1998) by [S.I. 1997/3032, reg. 5\(c\)](#) (with Pt. IV)

### [<sup>F6</sup>3A Databases

- (1) In this Part “database” means a collection of independent works, data or other materials which—
  - (a) are arranged in a systematic or methodical way, and
  - (b) are individually accessible by electronic or other means.
- (2) For the purposes of this Part a literary work consisting of a database is original if, and only if, by reason of the selection or arrangement of the contents of the database the database constitutes the author’s own intellectual creation.]

#### Textual Amendments

- F6** S. 3A inserted (1.1.1998) by [S.I. 1997/3032, reg. 6](#) (with Pt. IV)

### 4 Artistic works.

- (1) In this Part “artistic work” means—
  - (a) a graphic work, photograph, sculpture or collage, irrespective of artistic quality,
  - (b) a work of architecture being a building or a model for a building, or
  - (c) a work of artistic craftsmanship.
- (2) In this Part—
  - “building” includes any fixed structure, and a part of a building or fixed structure;
  - “graphic work” includes—
    - (a) any painting, drawing, diagram, map, chart or plan, and
    - (b) any engraving, etching, lithograph, woodcut or similar work;
  - “photograph” means a recording of light or other radiation on any medium on which an image is produced or from which an image may by any means be produced, and which is not part of a film;
  - “sculpture” includes a cast or model made for purposes of sculpture.

### [<sup>F7</sup>5A Sound recordings.

- (1) In this Part “sound recording” means—
  - (a) a recording of sounds, from which the sounds may be reproduced, or
  - (b) a recording of the whole or any part of a literary, dramatic or musical work, from which sounds reproducing the work or part may be produced,

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regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced.

- (2) Copyright does not subsist in a sound recording which is, or to the extent that it is, a copy taken from a previous sound recording.]

#### Textual Amendments

**F7** Ss. 5A, 5B substituted for s. 5 (1.1.1996) by [S.I. 1995/3297, reg. 9\(1\)](#) (with [Pt. III](#))

### [<sup>F8</sup>**5B** Films.

- (1) In this Part “film” means a recording on any medium from which a moving image may by any means be produced.
- (2) The sound track accompanying a film shall be treated as part of the film for the purposes of this Part.
- (3) Without prejudice to the generality of subsection (2), where that subsection applies—
- references in this Part to showing a film include playing the film sound track to accompany the film, and
  - references to playing a sound recording do not include playing the film sound track to accompany the film.
- (4) Copyright does not subsist in a film which is, or to the extent that it is, a copy taken from a previous film.
- (5) Nothing in this section affects any copyright subsisting in a film sound track as a sound recording.]

#### Textual Amendments

**F8** Ss. 5A, 5B substituted for s. 5 (1.1.1996) by [S.I. 1995/3297, reg. 9\(1\)](#) (with [Pt. III](#))

## 6 Broadcasts.

- (1) In this Part a “broadcast” means a transmission by wireless telegraphy of visual images, sounds or other information which—
- is capable of being lawfully received by members of the public, or
  - is transmitted for presentation to members of the public;
- and references to broadcasting shall be construed accordingly.
- (2) An encrypted transmission shall be regarded as capable of being lawfully received by members of the public only if decoding equipment has been made available to members of the public by or with the authority of the person making the transmission or the person providing the contents of the transmission.
- (3) References in this Part to the person making a broadcast, broadcasting a work, or including a work in a broadcast are—

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- (a) to the person transmitting the programme, if he has responsibility to any extent for its contents, and
- (b) to any person providing the programme who makes with the person transmitting it the arrangements necessary for its transmission;

and references in this Part to a programme, in the context of broadcasting, are to any item included in a broadcast.

[<sup>F9</sup>(4) For the purposes of this Part, the place from which a broadcast is made is the place where, under the control and responsibility of the person making the broadcast, the programme-carrying signals are introduced into an uninterrupted chain of communication (including, in the case of a satellite transmission, the chain leading to the satellite and down towards the earth).]

[<sup>F10</sup>(4A) Subsections (3) and (4) have effect subject to section 6A (safeguards in case of certain satellite broadcasts).]

- (5) References in this Part to the reception of a broadcast include reception of a broadcast relayed by means of a telecommunications system.
- (6) Copyright does not subsist in a broadcast which infringes, or to the extent that it infringes, the copyright in another broadcast or in a cable programme.

#### Textual Amendments

- F9** S. 6(4) substituted (1.12.1996 with effect as mentioned in reg. 28 of the amending S.I.) by [S.I. 1996/2967, reg. 5](#)
- F10** S. 6(4A) inserted (1.12.1996 with effect as mentioned in reg. 28 of the amending S.I.) by [S.I. 1996/2967, reg. 6\(1\)](#)

#### [<sup>F11</sup>6A Safeguards in case of certain satellite broadcasts.

- (1) This section applies where the place from which a broadcast by way of satellite transmission is made is located in a country other than an EEA State and the law of that country fails to provide at least the following level of protection—
  - (a) exclusive rights in relation to broadcasting equivalent to those conferred by section 20 (infringement by broadcasting) on the authors of literary, dramatic, musical and artistic works, films and broadcasts;
  - (b) a right in relation to live broadcasting equivalent to that conferred on a performer by section 182(1)(b) (consent required for live broadcast of performance); and
  - (c) a right for authors of sound recordings and performers to share in a single equitable remuneration in respect of the broadcasting of sound recordings.
- (2) Where the place from which the programme-carrying signals are transmitted to the satellite (“the uplink station”) is located in an EEA State—
  - (a) that place shall be treated as the place from which the broadcast is made, and
  - (b) the person operating the uplink station shall be treated as the person making the broadcast.
- (3) Where the uplink station is not located in an EEA State but a person who is established in an EEA State has commissioned the making of the broadcast—
  - (a) that person shall be treated as the person making the broadcast, and

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- (b) the place in which he has his principal establishment in the European Economic Area shall be treated as the place from which the broadcast is made.]

#### Textual Amendments

**F11** S. 6A inserted (1.12.1996 with effect as mentioned in reg. 28 of the amending S.I.) by [S.I. 1996/2967](#), [reg. 6\(2\)](#)

## 7 Cable programmes.

### (1) In this Part—

“cable programme” means any item included in a cable programme service; and

“cable programme service” means a service which consists wholly or mainly in sending visual images, sounds or other information by means of a telecommunications system, otherwise than by wireless telegraphy, for reception—

- (a) at two or more places (whether for simultaneous reception or at different times in response to requests by different users), or  
(b) for presentation to members of the public,

and which is not, or so far as it is not, excepted by or under the following provisions of this section.

### (2) The following are excepted from the definition of “cable programme service”—

- (a) a service or part of a service of which it is an essential feature that while visual images, sounds or other information are being conveyed by the person providing the service there will or may be sent from each place of reception, by means of the same system or (as the case may be) the same part of it, information (other than signals sent for the operation or control of the service) for reception by the person providing the service or other persons receiving it;
- (b) a service run for the purposes of a business where—
- (i) no person except the person carrying on the business is concerned in the control of the apparatus comprised in the system,
  - (ii) the visual images, sounds or other information are conveyed by the system solely for purposes internal to the running of the business and not by way of rendering a service or providing amenities for others, and
  - (iii) the system is not connected to any other telecommunications system;
- (c) a service run by a single individual where—
- (i) all the apparatus comprised in the system is under his control,
  - (ii) the visual images, sounds or other information conveyed by the system are conveyed solely for domestic purposes of his, and
  - (iii) the system is not connected to any other telecommunications system;
- (d) services where—
- (i) all the apparatus comprised in the system is situated in, or connects, premises which are in single occupation, and
  - (ii) the system is not connected to any other telecommunications system,

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- other than services operated as part of the amenities provided for residents or inmates of premises run as a business;
- (e) services which are, or to the extent that they are, run for persons providing broadcasting or cable programme services or providing programmes for such services.
- (3) The Secretary of State may by order amend subsection (2) so as to add or remove exceptions, subject to such transitional provision as appears to him to be appropriate.
- (4) An order shall be made by statutory instrument; and no order shall be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.
- (5) References in this Part to the inclusion of a cable programme or work in a cable programme service are to its transmission as part of the service; and references to the person including it are to the person providing the service.
- (6) Copyright does not subsist in a cable programme—
- (a) if it is included in a cable programme service by reception and immediate re-transmission of a broadcast, or
  - (b) if it infringes, or to the extent that it infringes, the copyright in another cable programme or in a broadcast.

## **8 Published editions.**

- (1) In this Part “published edition”, in the context of copyright in the typographical arrangement of a published edition, means a published edition of the whole or any part of one or more literary, dramatic or musical works.
- (2) Copyright does not subsist in the typographical arrangement of a published edition if, or to the extent that, it reproduces the typographical arrangement of a previous edition.

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