



Copyright, Designs and Patents Act 1988

1988 CHAPTER 48

PART I

COPYRIGHT

CHAPTER III

ACTS PERMITTED IN RELATION TO COPYRIGHT WORKS

Miscellaneous: broadcasts and cable programmes

68 Incidental recording for purposes of broadcast or cable programme.

- (1) This section applies where by virtue of a licence or assignment of copyright a person is authorised to broadcast or include in a cable programme service—
 - (a) a literary, dramatic or musical work, or an adaptation of such a work,
 - (b) an artistic work, or
 - (c) a sound recording or film.
- (2) He shall by virtue of this section be treated as licensed by the owner of the copyright in the work to do or authorise any of the following for the purposes of the broadcast or cable programme—
 - (a) in the case of a literary, dramatic or musical work, or an adaptation of such a work, to make a sound recording or film of the work or adaptation;
 - (b) in the case of an artistic work, to take a photograph or make a film of the work;
 - (c) in the case of a sound recording or film, to make a copy of it.
- (3) That licence is subject to the condition that the recording, film, photograph or copy in question—
 - (a) shall not be used for any other purpose, and
 - (b) shall be destroyed within 28 days of being first used for broadcasting the work or, as the case may be, including it in a cable programme service.

Status: Point in time view as at 01/10/1996.

Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Cross Heading: Miscellaneous: broadcasts and cable programmes. (See end of Document for details)

- (4) A recording, film, photograph or copy made in accordance with this section shall be treated as an infringing copy—
- (a) for the purposes of any use in breach of the condition mentioned in subsection (3)(a), and
 - (b) for all purposes after that condition or the condition mentioned in subsection (3)(b) is broken.

69 Recording for purposes of supervision and control of broadcasts and cable programmes.

- (1) Copyright is not infringed by the making or use by the British Broadcasting Corporation, for the purpose of maintaining supervision and control over programmes broadcast by them, of recordings of those programmes.
- [^{F1}(2) Copyright is not infringed by anything done in pursuance of—
- (a) section 11(1), 95(1) or 167(1) of the Broadcasting Act 1990 or section 115(4) or (6), 116(5) or 117 of the Broadcasting Act 1996;
 - (b) a condition which, by virtue of section 11(2) or 95(2) of the Broadcasting Act 1990, is included in a licence granted under Part I or III of that Act or Part I or II of the Broadcasting Act 1996; or
 - (c) a direction given under section 109(2) of the Broadcasting Act 1990 (power of Radio Authority to require production of recordings etc).
- (3) Copyright is not infringed by—
- (a) the use by the Independent Television Commission or the Radio Authority, in connection with the performance of any of their functions under the Broadcasting Act 1990 or the Broadcasting Act 1996, of any recording, script or transcript which is provided to them under or by virtue of any provision of those Acts; or
 - (b) the use by the Broadcasting Standards Commission, in connection with any complaint made to them under the Broadcasting Act 1996, of any recording or transcript requested or required to be provided to them, and so provided, under section 115(4) or (6) or 116(5) of that Act.]

Textual Amendments

- F1** S. 69(2)(3) substituted (1.10.1996 for specified purposes and otherwise 1.4.1997) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. III para. 31** (with s. 43(6)); S.I. 1996/2120, art. 4, **Sch. 1**; S.I. 1997/1005, art. 4

70 Recording for purposes of time-shifting.

The making for private and domestic use of a recording of a broadcast or cable programme solely for the purpose of enabling it to be viewed or listened to at a more convenient time does not infringe any copyright in the broadcast or cable programme or in any work included in it.

71 Photographs of television broadcasts or cable programmes.

The making for private and domestic use of a photograph of the whole or any part of an image forming part of a television broadcast or cable programme, or a copy of such

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a photograph, does not infringe any copyright in the broadcast or cable programme or in any film included in it.

72 Free public showing or playing of broadcast or cable programme.

- (1) The showing or playing in public of a broadcast or cable programme to an audience who have not paid for admission to the place where the broadcast or programme is to be seen or heard does not infringe any copyright in—
 - (a) the broadcast or cable programme, or
 - (b) any sound recording or film included in it.
- (2) The audience shall be treated as having paid for admission to a place—
 - (a) if they have paid for admission to a place of which that place forms part; or
 - (b) if goods or services are supplied at that place (or a place of which it forms part)—
 - (i) at prices which are substantially attributable to the facilities afforded for seeing or hearing the broadcast or programme, or
 - (ii) at prices exceeding those usually charged there and which are partly attributable to those facilities.
- (3) The following shall not be regarded as having paid for admission to a place—
 - (a) persons admitted as residents or inmates of the place;
 - (b) persons admitted as members of a club or society where the payment is only for membership of the club or society and the provision of facilities for seeing or hearing broadcasts or programmes is only incidental to the main purposes of the club or society.
- (4) Where the making of the broadcast or inclusion of the programme in a cable programme service was an infringement of the copyright in a sound recording or film, the fact that it was heard or seen in public by the reception of the broadcast or programme shall be taken into account in assessing the damages for that infringement.

[^{F2}73 Reception and re-transmission of broadcast in cable programme service.

- (1) This section applies where a broadcast made from a place in the United Kingdom is, by reception and immediate re-transmission, included in a cable programme service.
- (2) The copyright in the broadcast is not infringed—
 - (a) if the inclusion is in pursuance of a relevant requirement, or
 - (b) if and to the extent that the broadcast is made for reception in the area in which the cable programme service is provided and forms part of a qualifying service.
- (3) The copyright in any work included in the broadcast is not infringed if and to the extent that the broadcast is made for reception in the area in which the cable programme service is provided; but where the making of the broadcast was an infringement of the copyright in the work, the fact that the broadcast was re-transmitted as a programme in a cable programme service shall be taken into account in assessing the damages for that infringement.
- (4) Where—
 - (a) the inclusion is in pursuance of a relevant requirement, but

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- (b) to any extent, the area in which the cable programme service is provided (“the cable area”) falls outside the area for reception in which the broadcast is made (“the broadcast area”),
- the inclusion in the cable programme service (to the extent that it is provided for so much of the cable area as falls outside the broadcast area) of any work included in the broadcast shall, subject to subsection (5), be treated as licensed by the owner of the copyright in the work, subject only to the payment to him by the person making the broadcast of such reasonable royalty or other payment in respect of the inclusion of the broadcast in the cable programme service as may be agreed or determined in default of agreement by the Copyright Tribunal.
- (5) Subsection (4) does not apply if, or to the extent that, the inclusion of the work in the cable programme service is (apart from that subsection) licensed by the owner of the copyright in the work.
- (6) In this section “qualifying service” means, subject to subsection (8), any of the following services—
- (a) a regional or national Channel 3 service,
 - (b) Channel 4, Channel 5 and S4C,
 - (c) the teletext service referred to in section 49(2) of the ^{M1}Broadcasting Act 1990,
 - (d) the service referred to in section 57(1A)(a) of that Act (power of S4C to provide digital service), and
 - (e) the television broadcasting services and teletext service of the British Broadcasting Corporation;
- and expressions used in this subsection have the same meaning as in Part I of the ^{M2}Broadcasting Act 1990.
- (7) In this section “relevant requirement” means a requirement imposed under—
- (a) section 78A of the Broadcasting Act 1990 (inclusion of certain services in local delivery services provided by digital means), or
 - (b) paragraph 4 of Part III of Schedule 12 to that Act (inclusion of certain services in diffusion services originally licensed under the ^{M3}Cable and Broadcasting Act 1984).
- (8) The Secretary of State may by order amend subsection (6) so as to add any service to, or remove any service from, the definition of “qualifying service”.
- (9) The Secretary of State may also by order—
- (a) provide that in specified cases subsection (3) is to apply in relation to broadcasts of a specified description which are not made as mentioned in that subsection, or
 - (b) exclude the application of that subsection in relation to broadcasts of a specified description made as mentioned in that subsection.
- (10) Where the Secretary of State exercises the power conferred by subsection (9)(b) in relation to broadcasts of any description, the order may also provide for subsection (4) to apply, subject to such modifications as may be specified in the order, in relation to broadcasts of that description.
- (11) An order under this section may contain such transitional provision as appears to the Secretary of State to be appropriate.

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- (12) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Textual Amendments

F2 Ss. 73, 73A substituted for s. 73 (1.10.1996) by 1996 c. 55, s. 138, **Sch. 9 para. 1** (with s. 43(6)); S.I. 1996/2120, art. 4, **Sch. 1**

Marginal Citations

M1 1990 c. 42.

M2 1990 c. 42.

M3 1984 c. 46.

^{F3}73A **Royalty or other sum payable in pursuance of section 73(4).**

- (1) An application to settle the royalty or other sum payable in pursuance of subsection (4) of section 73 (reception and re-transmission of broadcast in cable programme service) may be made to the Copyright Tribunal by the copyright owner or the person making the broadcast.
- (2) The Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.
- (3) Either party may subsequently apply to the Tribunal to vary the order, and the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.
- (4) An application under subsection (3) shall not, except with the special leave of the Tribunal, be made within twelve months from the date of the original order or of the order on a previous application under that subsection.
- (5) An order under subsection (3) has effect from the date on which it is made or such later date as may be specified by the Tribunal.

Textual Amendments

F3 Ss. 73, 73A substituted for s. 73 (1.10.1996) by 1996 c. 55, s. 138, **Sch. 9 para. 1** (with s. 43(6)); S.I. 1996/2120, art. 4, **Sch. 1**

74 Provision of sub-titled copies of broadcast or cable programme.

- (1) A designated body may, for the purpose of providing people who are deaf or hard of hearing, or physically or mentally handicapped in other ways, with copies which are sub-titled or otherwise modified for their special needs, make copies of television broadcasts or cable programmes and issue copies to the public, without infringing any copyright in the broadcasts or cable programmes or works included in them.
- (2) A “designated body” means a body designated for the purposes of this section by order of the Secretary of State, who shall not designate a body unless he is satisfied that it is not established or conducted for profit.

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- (3) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) This section does not apply if, or to the extent that, there is a licensing scheme certified for the purposes of this section under section 143 providing for the grant of licences.

75 Recording for archival purposes.

- (1) A recording of a broadcast or cable programme of a designated class, or a copy of such a recording, may be made for the purpose of being placed in an archive maintained by a designated body without thereby infringing any copyright in the broadcast or cable programme or in any work included in it.
- (2) In subsection (1) “designated” means designated for the purposes of this section by order of the Secretary of State, who shall not designate a body unless he is satisfied that it is not established or conducted for profit.
- (3) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Status:

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Changes to legislation:

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