Copyright, Designs and Patents Act 1988

1988 CHAPTER 48

PART II

RIGHTS IN PERFORMANCES

[F1CHAPTER 2

ECONOMIC RIGHTS

Textual Amendments

F1 Ss. 182-205B become Pt. 2 Ch. 2 (1.2.2006) by virtue of The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), **reg. 4(4)** (with reg. 8)

[F2X1Performers' rights]

Editorial Information

X1 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F2 Pt. 2 Ch. 2: cross-heading inserted (1.2.2006) at beginning of Chapter by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), **reg. 4(5)** (with reg. 8)

[F3X2182 Consent required for recording, &c. of live performance.

(1) A performer's rights are infringed by a person who, without his consent—

(a) makes a recording of the whole or any substantial part of a qualifying performance directly from the live performance,

(b) broadcasts live, [F4]. . . the whole or any substantial part of a qualifying performance,

(c) makes a recording of the whole or any substantial part of a qualifying performance directly from a broadcast of, [F5]. . . the live performance.

(2) [F6]. . . . . .

(3) In an action for infringement of a performer's rights brought by virtue of this section damages shall not be awarded against a defendant who shows that at the time of the infringement he believed on reasonable grounds that consent had been given.**]**

Editorial Information

X2 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F3 S. 182 substituted (1.12.1996) by S.I. 1996/2967, **reg. 20(1)** (with Pt. III)

F4 Words in s. 182(1)(b) repealed (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), reg. 2(2), **Sch. 2** (with regs. 31-40)

F5 Words in s. 182(1)(c) repealed (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), reg. 2(2), **Sch. 2** (with regs. 31-40)

F6 S. 182(2) repealed (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), reg. 2(2), **Sch. 2** (with regs. 31-40)

[Consent required for copying of recording.

[F7][X3]**182A** (1) A performer's rights are infringed by a person who, without his consent, makes [F8]. . . a copy of a recording of the whole or any substantial part of a qualifying performance.

[In subsection (1), making a copy of a recording includes making a copy which is [F9](1A) transient or is incidental to some other use of the original recording.**]**

(2) It is immaterial whether the copy is made directly or indirectly.

(3) The right of a performer under this section to authorise or prohibit the making of such copies is referred to in **[**[F10]this Chapter**]** as "reproduction right".**]**

Editorial Information

X3 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F7 S. 182A inserted (1.12.1996) by S.I. 1996/2967, **reg. 20(2)** (with Pt. III)

F8 Words in s. 182A(1) repealed (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I.2003/2498), reg. 2(2), **Sch. 2** (with regs. 31-40)

F9 S. 182A(1A) inserted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), **reg. 8(3)** (with regs. 31-40)

F10 Words in S. 182A(3) substituted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 8** (with reg. 8)

[F11X4 182B Consent required for issue of copies to public.

(1) A performer's rights are infringed by a person who, without his consent, issues to the public copies of a recording of the whole or any substantial part of a qualifying performance.

(2) References in this Part to the issue to the public of copies of a recording are to—

(a) the act of putting into circulation in the EEA copies not previously put into circulation in the EEA by or with the consent of the performer, or

(b) the act of putting into circulation outside the EEA copies not previously put into circulation in the EEA or elsewhere.

(3) References in this Part to the issue to the public of copies of a recording do not include—

(a) any subsequent distribution, sale, hiring or loan of copies previously put into circulation (but see section 182C: consent required for rental or lending), or

(b) any subsequent importation of such copies into the United Kingdom or another EEA state,

except so far as paragraph (a) of subsection (2) applies to putting into circulation in the EEA copies previously put into circulation outside the EEA.

(4) References in this Part to the issue of copies of a recording of a performance include the issue of the original recording of the live performance.

(5) The right of a performer under this section to authorise or prohibit the issue of copies to the public is referred to in **[**[F12]this Chapter**]** as "distribution right".**]**

Editorial Information

X4 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F11 S. 182B inserted (1.12.1996) by S.I. 1996/2967, **reg. 20(2)** (with Pt. III)

F12 Words in s. 182B(5) substituted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 8** (with reg. 8)

[F13X5 182C Consent required for rental or lending of copies to public.

(1) A performer's rights are infringed by a person who, without his consent, rents or lends to the public copies of a recording of the whole or any substantial part of a qualifying performance.

(2) In **[**[F14]this Chapter**]**, subject to the following provisions of this section—

(a) "rental" means making a copy of a recording available for use, on terms that it will or may be returned, for direct or indirect economic or commercial advantage, and

(b) "lending" means making a copy of a recording available for use, on terms that it will or may be returned, otherwise than for direct or indirect economic or commercial advantage, through an establishment which is accessible to the public.

(3) The expressions "rental" and "lending" do not include—

(a) making available for the purpose of public performance, playing or showing in public **[**[F15]or communication to the public**]**;

(b) making available for the purpose of exhibition in public; or

(c) making available for on-the-spot reference use.

(4) The expression "lending" does not include making available between establishments which are accessible to the public.

(5) Where lending by an establishment accessible to the public gives rise to a payment the amount of which does not go beyond what is necessary to cover the operating costs of the establishment, there is no direct or indirect economic or commercial advantage for the purposes of this section.

(6) References in **[**[F14]this Chapter**]** to the rental or lending of copies of a recording of a performance include the rental or lending of the original recording of the live performance.

(7) In **[**[F14]this Chapter**]**—

"rental right" means the right of a performer under this section to authorise or prohibit the rental of copies to the public, and

"lending right" means the right of a performer under this section to authorise or prohibit the lending of copies to the public.**]**

Editorial Information

X5 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F13 S. 182C inserted (1.12.1996) by S.I. 1996/2967, **reg. 20(2)** (with Pt. III)

F14 Words in s. 182C(2)(6)(7) substituted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 8** (with reg. 8)

F15 Words in s. 182C(3)(a) substituted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), reg.2(1), **Sch. 1 para. 6(2)(c)** (with regs. 31-40)

[[F16X6]**182CA Consent required for making available to the public**

(1) A performer's rights are infringed by a person who, without his consent, makes available to the public a recording of the whole or any substantial part of a qualifying

performance by electronic transmission in such a way that members of the public may access the recording from a place and at a time individually chosen by them.

(2) The right of a performer under this section to authorise or prohibit the making available to the public of a recording is referred to in **[**[F17]this Chapter**]** as "making available right.**]**

Editorial Information

X6 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F16 S. 182CA inserted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), **reg. 7(1)** (with regs. 31-40)

F17 Words in s. 182CA(2) substituted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 8** (with reg. 8)

[[F18X7]**182D Right to equitable remuneration for exploitation of sound recording.**

(1) Where a commercially published sound recording of the whole or any substantial part of a qualifying performance—

(a) is played in public, or

[[F19](b) is communicated to the public otherwise than by its being made available to the public in the way mentioned in section 182CA(1),**]**

the performer is entitled to equitable remuneration from the owner of the copyright in the sound recording.

[[F20](1A) In subsection (1), the reference to publication of a sound recording includes making it available to the public by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them.**]**

(2) The right to equitable remuneration under this section may not be assigned by the performer except to a collecting society for the purpose of enabling it to enforce the right on his behalf.

The right is, however, transmissible by testamentary disposition or by operation of law as personal or moveable property; and it may be assigned or further transmitted by any person into whose hands it passes.

(3) The amount payable by way of equitable remuneration is as agreed by or on behalf of the persons by and to whom it is payable, subject to the following provisions.

(4) In default of agreement as to the amount payable by way of equitable remuneration, the person by or to whom it is payable may apply to the Copyright Tribunal to determine the amount payable.

(5) A person to or by whom equitable remuneration is payable may also apply to the Copyright Tribunal—

(a) to vary any agreement as to the amount payable, or

(b) to vary any previous determination of the Tribunal as to that matter;

but except with the special leave of the Tribunal no such application may be made within twelve months from the date of a previous determination.

An order made on an application under this subsection has effect from the date on which it is made or such later date as may be specified by the Tribunal.

(6) On an application under this section the Tribunal shall consider the matter and make such order as to the method of calculating and paying equitable remuneration as it may determine to be reasonable in the circumstances, taking into account the importance of the contribution of the performer to the sound recording.

(7) An agreement is of no effect in so far as it purports—

(a) to exclude or restrict the right to equitable remuneration under this section, or

(b) to prevent a person questioning the amount of equitable remuneration or to restrict the powers of the Copyright Tribunal under this section.

[F21] **[** In this section "collecting society" means a society or other organisation which has (8) as its main object, or one of its main objects, the exercise of the right to equitable remuneration on behalf of more than one performer.**]]**

Editorial Information

X7 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F18 S. 182D inserted (1.12.1996) by S.I. 1996/2967, **reg. 20(2)** (with Pt. III)

F19 S. 182D(1)(b) substituted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), **reg. 7(2)** (with regs. 31-40)

F20 S. 182D(1A) inserted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 3(2)** (with reg. 8)

F21 S. 182D(8) inserted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 3(3)** (with reg. 8)

Modifications etc. (not altering text)

C1 S. 182D modified (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), **reg. 34** (with regs. 31-40)

[X8]183 Infringement of performer's rights by use of recording made without consent.

A performer's rights are infringed by a person who, without his consent—

(a) shows or plays in public the whole or any substantial part of a qualifying performance, or

(b) **[**[F22]communicates to the public**]** the whole or any substantial part of a qualifying performance,

by means of a recording which was, and which that person knows or has reason to believe was, made without the performer's consent.

Editorial Information

X8 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F22 Words in s. 183(b) substituted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), reg. 2(1), **Sch. 1 para. 13(1)(a)** (with regs. 31-40)

[X9]184 Infringement of performer's rights by importing, possessing or dealing with illicit recording.

(1) A performer's rights are infringed by a person who, without his consent—

(a) imports into the United Kingdom otherwise than for his private and domestic use, or

(b) in the course of a business possesses, sells or lets for hire, offers or exposes for sale or hire, or distributes,

a recording of a qualifying performance which is, and which that person knows or has reason to believe is, an illicit recording.

(2) Where in an action for infringement of a performer's rights brought by virtue of this section a defendant shows that the illicit recording was innocently acquired by him or a predecessor in title of his, the only remedy available against him in respect of the infringement is damages not exceeding a reasonable payment in respect of the act complained of.

(3) In subsection (2) "innocently acquired" means that the person acquiring the recording did not know and had no reason to believe that it was an illicit recording.

Editorial Information

X9 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

[X10] Rights of person having recording rights

Editorial Information

X10 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

[X11]185 Exclusive recording contracts and persons having recording rights.

(1) In **[**[F23]this Chapter**]** an "exclusive recording contract" means a contract between a performer and another person under which that person is entitled to the exclusion of all other persons (including the performer) to make recordings of one or more of his performances with a view to their commercial exploitation.

(2) References in **[**[F23]this Chapter**]** to a "person having recording rights", in relation to a performance, are (subject to subsection (3)) to a person—

(a) who is party to and has the benefit of an exclusive recording contract to which the performance is subject, or

(b) to whom the benefit of such a contract has been assigned,

and who is a qualifying person.

(3) If a performance is subject to an exclusive recording contract but the person mentioned in subsection (2) is not a qualifying person, references in **[**[F23]this Chapter**]** to a "person having recording rights" in relation to the performance are to any person—

(a) who is licensed by such a person to make recordings of the performance with a view to their commercial exploitation, or

(b) to whom the benefit of such a licence has been assigned,

and who is a qualifying person.

(4) In this section "with a view to commercial exploitation" means with a view to the recordings being sold or let for hire, or shown or played in public.

Editorial Information

X11 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F23 Words in s. 185(1)-(3) substituted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 8** (with reg. 8)

[X12]186 Consent required for recording of performance subject to exclusive contract.

(1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent or that of the performer, makes a recording of the whole or any substantial part of the performance [F24]. . . .

(2) In an action for infringement of those rights brought by virtue of this section damages shall not be awarded against a defendant who shows that at the time of the infringement he believed on reasonable grounds that consent had been given.

Editorial Information

X12 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F24 Words in s. 186(1) repealed (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), reg. 2(2), **Sch. 2** (with regs. 31-40)

X13 187 Infringement of recording rights by use of recording made without consent.

(1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent or, in the case of a qualifying performance, that of the performer—

(a) shows or plays in public the whole or any substantial part of the performance, or

(b) **[**F25 communicates to the public**]** the whole or any substantial part of the performance,

by means of a recording which was, and which that person knows or has reason to believe was, made without the appropriate consent.

(2) The reference in subsection (1) to "the appropriate consent" is to the consent of—

(a) the performer, or

(b) the person who at the time the consent was given had recording rights in relation to the performance (or, if there was more than one such person, of all of them).

Editorial Information

X13 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F25 Words in s. 187(1)(b) substituted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), reg. 2(1), **Sch. 1 para. 13(1)(b)** (with regs. 31-40)

X14 188 Infringement of recording rights by importing, possessing or dealing with illicit recording.

(1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent or, in the case of a qualifying performance, that of the performer—

(a) imports into the United Kingdom otherwise than for his private and domestic use, or

(b) in the course of a business possesses, sells or lets for hire, offers or exposes for sale or hire, or distributes,

a recording of the performance which is, and which that person knows or has reason to believe is, an illicit recording.

(2) Where in an action for infringement of those rights brought by virtue of this section a defendant shows that the illicit recording was innocently acquired by him or a predecessor in title of his, the only remedy available against him in respect of the

infringement is damages not exceeding a reasonable payment in respect of the act complained of.

(3) In subsection (2) "innocently acquired" means that the person acquiring the recording did not know and had no reason to believe that it was an illicit recording.

Editorial Information

X14 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

[X15] *Exceptions to rights conferred*

Editorial Information

X15 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

[X16]189 Acts permitted notwithstanding rights conferred by [[F26]this Chapter].

The provisions of Schedule 2 specify acts which may be done notwithstanding the rights conferred by **[**[F27]this Chapter**]**, being acts which correspond broadly to certain of those specified in Chapter III of Part I (acts permitted notwithstanding copyright).

Editorial Information

X16 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F26 Words in heading to s. 189 substituted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 8** (with reg. 8)

F27 Words in s. 189 substituted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 8** (with reg. 8)

[X17]190 Power of tribunal to give consent on behalf of performer in certain cases.

[F28](1) **[** The Copyright Tribunal may, on the application of a person wishing to make a copy of a recording of a performance, give consent in a case where the identity or whereabouts of the person entitled to the reproduction right cannot be ascertained by reasonable inquiry.**]**

(2) Consent given by the Tribunal has effect as consent of **[**[F29]the person entitled to the reproduction right**]** for the purposes of—

(a) the provisions of **[**[F30]this Chapter**]** relating to performers' rights, and

(b) section 198(3)(a) (criminal liability: sufficient consent in relation to qualifying performances),

and may be given subject to any conditions specified in the Tribunal's order.

(3) The Tribunal shall not give consent under subsection (1)(a) except after the service or publication of such notices as may be required by rules made under section 150 (general procedural rules) or as the Tribunal may in any particular case direct.

[F31](4) . . . . . .

(5) In any case the Tribunal shall take into account the following factors—

(a) whether the original recording was made with the performer's consent and is lawfully in the possession or control of the person proposing to make the further recording;

(b) whether the making of the further recording is consistent with the obligations of the parties to the arrangements under which, or is otherwise consistent with the purposes for which, the original recording was made.

(6) Where the Tribunal gives consent under this section it shall, in default of agreement between the applicant and **[**[F32]the person entitled to the reproduction right**]**, make such order as it thinks fit as to the payment to be made to **[**[F33]that person**]** in consideration of consent being given.

Editorial Information

X17 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F28 S. 190(1) substituted (1.12.1996) by S.I. 1996/2967, **reg. 23(2)** (with Pt. III)

F29 Words in s. 190(2) substituted (1.12.1996) by S.I. 1996/2967, **reg. 23(3)** (with Pt. III)

F30 Words in s. 190(2)(a) substituted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 8** (with reg. 8)

F31 S. 190(4) omitted (1.12.1996) by virtue of S.I. 1996/2967, **reg. 23(4)** (with Pt. III)

F32 Words in s. 190(6) substituted (1.12.1996) by S.I. 1996/2967, **reg. 23(5)(a)** (with Pt. III)

F33 Words in s. 190(6) substituted (1.12.1996) by S.I. 1996/2967, **reg. 23(5)(b)** (with Pt. III)

[[X18F34]*Duration of rights]*

Editorial Information

X18 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F34 Crossheading substituted (1.12.1996) by S.I. 1996/2967, **reg. 21(5)(a)** (with Pt. III)

[[F35X19]191 Duration of rights.]

(1) The following provisions have effect with respect to the duration of the rights conferred by [[F36]this Chapter].

(2) The rights conferred by [[F36]this Chapter] in relation to a performance expire—

(a) at the end of the period of 50 years from the end of the calendar year in which the performance takes place, or

(b) if during that period a recording of the performance is released, 50 years from the end of the calendar year in which it is released,

subject as follows.

(3) For the purposes of subsection (2) a recording is "released" when it is first published, played or shown in public [[F37] or communicated to the public]; but in determining whether a recording has been released no account shall be taken of any unauthorised act.

(4) Where a performer is not a national of an EEA state, the duration of the rights conferred by [[F36]this Chapter] in relation to his performance is that to which the performance is entitled in the country of which he is a national, provided that does not exceed the period which would apply under subsections (2) and (3).

(5) If or to the extent that the application of subsection (4) would be at variance with an international obligation to which the United Kingdom became subject prior to 29th October 1993, the duration of the rights conferred by [[F36]this Chapter] shall be as specified in subsections (2) and (3).]

Editorial Information

X19 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F35 S. 191 substituted (1.1.1996) by S.I. 1995/3297, **reg. 10** (with Pt. III)

F36 Words in s. 191(1)(2)(4)(5) substituted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 8** (with reg. 8)

F37 Words in s. 191(3) substituted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), reg. 2(1), **Sch. 1 para. 8(2)(d)** (with regs. 31-40)

[[F38X20]Performers' property rights]

Editorial Information

X20 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F38 Crossheading inserted (1.12.1996) by S.I. 1996/2967, **reg. 21(1)** (with Pt. III)

[F39X21 191A Performers' property rights.

(1) The following rights conferred by [F40 this Chapter] on a performer—

reproduction right (section 182A),
distribution right (section 182B),
rental right and lending right (section 182C),
[F41 making available right (section 182CA),]

are property rights ("F42 . . . performer's property rights").

(2) References in [F40 this Chapter] to the consent of the performer shall be construed in relation to a performer's property rights as references to the consent of the rights owner.

(3) Where different persons are (whether in consequence of a partial assignment or otherwise) entitled to different aspects of a performer's property rights in relation to a performance, the rights owner for any purpose of [F40 this Chapter] is the person who is entitled to the aspect of those rights relevant for that purpose.

(4) Where a performer's property rights (or any aspect of them) is owned by more than one person jointly, references in [F40 this Chapter] to the rights owner are to all the owners, so that, in particular, any requirement of the licence of the rights owner requires the licence of all of them.]

Editorial Information

X21 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F39 Ss. 191A-191M inserted (1.12.1996) by S.I. 1996/2967, **reg. 21(1)** (with Pt. III)

F40 Words in s. 191A(1)-(4) substituted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 8** (with reg. 8)

F41 Words in s. 191A(1) inserted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), **reg. 7(3)** (with regs. 31-40)

F42 Word in s. 191A(1) omitted by virtue of The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 4** (with reg. 8)

[F43X22 191B Assignment and licences.

(1) A performer's property rights are transmissible by assignment, by testamentary disposition or by operation of law, as personal or moveable property.

(2) An assignment or other transmission of a performer's property rights may be partial, that is, limited so as to apply—

(a) to one or more, but not all, of the things requiring the consent of the rights owner;

(b) to part, but not the whole, of the period for which the rights are to subsist.

(3) An assignment of a performer's property rights is not effective unless it is in writing signed by or on behalf of the assignor.

(4) A licence granted by the owner of a performer's property rights is binding on every successor in title to his interest in the rights, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser; and references in **[**[F44]this Chapter**]** to doing anything with, or without, the licence of the rights owner shall be construed accordingly.**]**

Editorial Information

X22 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F43 Ss. 191A-191M inserted (1.12.1996) by S.I. 1996/2967, **reg. 21(1)** (with Pt. III)

F44 Words in s. 191B(4) substituted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 8** (with reg. 8)

[[F45X23]**191C Prospective ownership of a performer's property rights.**

(1) This section applies where by an agreement made in relation to a future recording of a performance, and signed by or on behalf of the performer, the performer purports to assign his performer's property rights (wholly or partially) to another person.

(2) If on the rights coming into existence the assignee or another person claiming under him would be entitled as against all other persons to require the rights to be vested in him, they shall vest in the assignee or his successor in title by virtue of this subsection.

(3) A licence granted by a prospective owner of a performer's property rights is binding on every successor in title to his interest (or prospective interest) in the rights, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser.

References in **[**[F46]this Chapter**]** to doing anything with, or without, the licence of the rights owner shall be construed accordingly.

(4) In subsection (3) "prospective owner" in relation to a performer's property rights means a person who is prospectively entitled to those rights by virtue of such an agreement as is mentioned in subsection (1).**]**

Editorial Information

X23 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F45 Ss. 191A-191M inserted (1.12.1996) by S.I. 1996/2967, **reg. 21(1)** (with Pt. III)

F46 Words in s. 191C(3) substituted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 8** (with reg. 8)

[F47X24 191H Exclusive licences.

(1) In [F48 this Chapter] an "exclusive licence" means a licence in writing signed by or on behalf of the owner of a performer's property rights authorising the licensee to the exclusion of all other persons, including the person granting the licence, to do anything requiring the consent of the rights owner.

(2) The licensee under an exclusive licence has the same rights against a successor in title who is bound by the licence as he has against the person granting the licence.]

Editorial Information

X24 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F47 Ss. 191A-191M inserted (1.12.1996) by S.I. 1996/2967, **reg. 21(1)** (with Pt. III)

F48 Words in s. 191D(1) substituted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 8** (with reg. 8)

[F49X25 191I Performer's property right to pass under will with unpublished original recording.

Where under a bequest (whether general or specific) a person is entitled beneficially or otherwise to any material thing containing an original recording of a performance which was not published before the death of the testator, the bequest shall, unless a contrary intention is indicated in the testator's will or a codicil to it, be construed as including any performer's rights in relation to the recording to which the testator was entitled immediately before his death.]

Editorial Information

X25 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F49 Ss. 191A-191M inserted (1.12.1996) by S.I. 1996/2967, **reg. 21(1)** (with Pt. III)

[F50X26 191J Presumption of transfer of rental right in case of film production agreement.

(1) Where an agreement concerning film production is concluded between a performer and a film producer, the performer shall be presumed, unless the agreement provides

to the contrary, to have transferred to the film producer any rental right in relation to the film arising from the inclusion of a recording of his performance in the film.

(2) Where this section applies, the absence of signature by or on behalf of the performer does not exclude the operation of section 191C (effect of purported assignment of future rights).

(3) The reference in subsection (1) to an agreement concluded between a performer and a film producer includes any agreement having effect between those persons, whether made by them directly or through intermediaries.

(4) Section 191G (right to equitable remuneration on transfer of rental right) applies where there is a presumed transfer by virtue of this section as in the case of an actual transfer.**]**

Editorial Information

X26 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F50 Ss. 191A-191M inserted (1.12.1996) by S.I. 1996/2967, **reg. 21(1)** (with Pt. III)

Modifications etc. (not altering text)

C2 S. 191F applied (1.12.1996) by S.I. 1996/2967, **reg. 32(1)** (with Pt. III)

[F51X27 191G Right to equitable remuneration where rental right transferred.

(1) Where a performer has transferred his rental right concerning a sound recording or a film to the producer of the sound recording or film, he retains the right to equitable remuneration for the rental.

The reference above to the transfer of rental right by one person to another includes any arrangement having that effect, whether made by them directly or through intermediaries.

(2) The right to equitable remuneration under this section may not be assigned by the performer except to a collecting society for the purpose of enabling it to enforce the right on his behalf.

The right is, however, transmissible by testamentary disposition or by operation of law as personal or moveable property; and it may be assigned or further transmitted by any person into whose hands it passes.

(3) Equitable remuneration under this section is payable by the person for the time being entitled to the rental right, that is, the person to whom the right was transferred or any successor in title of his.

(4) The amount payable by way of equitable remuneration is as agreed by or on behalf of the persons by and to whom it is payable, subject to section 191H (reference of amount to Copyright Tribunal).

(5) An agreement is of no effect in so far as it purports to exclude or restrict the right to equitable remuneration under this section.

(6) In this section a "collecting society" means a society or other organisation which has as its main object, or one of its main objects, the exercise of the right to equitable remuneration on behalf of more than one performer.**]**

Editorial Information

X27 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F51 Ss. 191A-191M inserted (1.12.1996) by S.I. 1996/2967, **reg. 21(1)** (with Pt. III)

Modifications etc. (not altering text)

C3 S. 191G applied (with modifications) (1.12.1996) by S.I. 1996/2967, **reg. 32(2)** (with Pt. III)

C4 S. 191G restricted (1.12.1996) by S.I. 1996/2967, **reg. 33** (with Pt. III)

[F52X28 191H Equitable remuneration: reference of amount to Copyright Tribunal.

(1) In default of agreement as to the amount payable by way of equitable remuneration under section 191G, the person by or to whom it is payable may apply to the Copyright Tribunal to determine the amount payable.

(2) A person to or by whom equitable remuneration is payable may also apply to the Copyright Tribunal—

(a) to vary any agreement as to the amount payable, or

(b) to vary any previous determination of the Tribunal as to that matter;

but except with the special leave of the Tribunal no such application may be made within twelve months from the date of a previous determination.

An order made on an application under this subsection has effect from the date on which it is made or such later date as may be specified by the Tribunal.

(3) On an application under this section the Tribunal shall consider the matter and make such order as to the method of calculating and paying equitable remuneration as it may determine to be reasonable in the circumstances, taking into account the importance of the contribution of the performer to the film or sound recording.

(4) Remuneration shall not be considered inequitable merely because it was paid by way of a single payment or at the time of the transfer of the rental right.

(5) An agreement is of no effect in so far as it purports to prevent a person questioning the amount of equitable remuneration or to restrict the powers of the Copyright Tribunal under this section.**]**

Editorial Information

X28 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on

1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F52 Ss. 191A-191M inserted (1.12.1996) by S.I. 1996/2967, **reg. 21(1)** (with Pt. III)

[F53X29 191I Infringement actionable by rights owner.

(1) An infringement of a performer's property rights is actionable by the rights owner.

(2) In an action for infringement of a performer's property rights all such relief by way of damages, injunctions, accounts or otherwise is available to the plaintiff as is available in respect of the infringement of any other property right.

(3) This section has effect subject to the following provisions of **[**F54this Chapter**].]**

Editorial Information

X29 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F53 Ss. 191A-191M inserted (1.12.1996) by S.I. 1996/2967, **reg. 21(1)** (with Pt. III)

F54 Words in s. 191I(3) substituted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 8** (with reg. 8)

[F55X30 191J Provisions as to damages in infringement action.

(1) Where in an action for infringement of a performer's property rights it is shown that at the time of the infringement the defendant did not know, and had no reason to believe, that the rights subsisted in the recording to which the action relates, the plaintiff is not entitled to damages against him, but without prejudice to any other remedy.

(2) The court may in an action for infringement of a performer's property rights having regard to all the circumstances, and in particular to—

(a) the flagrancy of the infringement, and

(b) any benefit accruing to the defendant by reason of the infringement,

award such additional damages as the justice of the case may require.**]**

Editorial Information

X30 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F55 Ss. 191A-191M inserted (1.12.1996) by S.I. 1996/2967, **reg. 21(1)** (with Pt. III)

[F56X31 191JA Injunctions against service providers

(1) The High Court (in Scotland, the Court of Session) shall have power to grant an injunction against a service provider, where that service provider has actual knowledge of another person using their service to infringe a performer's property right.

(2) In determining whether a service provider has actual knowledge for the purpose of this section, a court shall take into account all matters which appear to it in the particular circumstances to be relevant and, amongst other things, shall have regard to—

(a) whether a service provider has received a notice through a means of contact made available in accordance with regulation 6(1)(c) of the Electronic Commerce (EC Directive) Regulations 2002 (SI 2002/2013); and

(b) the extent to which any notice includes—

(i) the full name and address of the sender of the notice;

(ii) details of the infringement in question.

(3) In this section "service provider" has the meaning given to it by regulation 2 of the Electronic Commerce (EC Directive) Regulations 2002.

(4) Section 177 applies in respect of this section as it applies in respect of Part 1.]

Editorial Information

X31 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F56 S. 191JA inserted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), **reg. 27(2)** (with regs. 32, 33)

[F57X32 191K Undertaking to take licence of right in infringement proceedings.

(1) If in proceedings for infringement of a performer's property rights in respect of which a licence is available as of right under paragraph 17 of Schedule 2A (powers exercisable in consequence of competition report) the defendant undertakes to take a licence on such terms as may be agreed or, in default of agreement, settled by the Copyright Tribunal under that paragraph—

(a) no injunction shall be granted against him,

(b) no order for delivery up shall be made under section 195, and

(c) the amount recoverable against him by way of damages or on an account of profits shall not exceed double the amount which would have been payable by him as licensee if such a licence on those terms had been granted before the earliest infringement.

(2) An undertaking may be given at any time before final order in the proceedings, without any admission of liability.

(3) Nothing in this section affects the remedies available in respect of an infringement committed before licences of right were available.]

Editorial Information

X32 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F57 Ss. 191A-191M inserted (1.12.1996) by S.I. 1996/2967, **reg. 21(1)** (with Pt. III)

[F58X33 191L Rights and remedies for exclusive licensee.

(1) An exclusive licensee has, except against the owner of a performer's property rights, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment.

(2) His rights and remedies are concurrent with those of the rights owner; and references in the relevant provisions of **[**F59 this Chapter**]** to the rights owner shall be construed accordingly.

(3) In an action brought by an exclusive licensee by virtue of this section a defendant may avail himself of any defence which would have been available to him if the action had been brought by the rights owner.**]**

Editorial Information

X33 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F58 Ss. 191A-191M inserted (1.12.1996) by S.I. 1996/2967, **reg. 21(1)** (with Pt. III)

F59 Words in s. 191L(2) substituted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 8** (with reg. 8)

[F60X34 191M Exercise of concurrent rights.

(1) Where an action for infringement of a performer's property rights brought by the rights owner or an exclusive licensee relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action, the rights owner or, as the case may be, the exclusive licensee may not, without the leave of the court, proceed with the action unless the other is either joined as plaintiff or added as a defendant.

(2) A rights owner or exclusive licensee who is added as a defendant in pursuance of subsection (1) is not liable for any costs in the action unless he takes part in the proceedings.

(3) The above provisions do not affect the granting of interlocutory relief on an application by the rights owner or exclusive licensee alone.

(4) Where an action for infringement of a performer's property rights is brought which relates (wholly or partly) to an infringement in respect of which the rights owner and an exclusive licensee have or had concurrent rights of action—

(a) the court shall in assessing damages take into account—

(i) the terms of the licence, and

(ii) any pecuniary remedy already awarded or available to either of them in respect of the infringement;

(b) no account of profits shall be directed if an award of damages has been made, or an account of profits has been directed, in favour of the other of them in respect of the infringement; and

(c) the court shall if an account of profits is directed apportion the profits between them as the court considers just, subject to any agreement between them; and these provisions apply whether or not the rights owner and the exclusive licensee are both parties to the action.

(5) The owner of a performer's property rights shall notify any exclusive licensee having concurrent rights before applying for an order under section 195 (order for delivery up) or exercising the right conferred by section 196 (right of seizure); and the court may on the application of the licensee make such order under section 195 or, as the case may be, prohibiting or permitting the exercise by the rights owner of the right conferred by section 196, as it thinks fit having regard to the terms of the licence.**]**

Editorial Information

X34 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F60 Ss. 191A-191M inserted (1.12.1996) by S.I. 1996/2967, **reg. 21(1)** (with Pt. III)

[F61X35 Non-property rights]

Editorial Information

X35 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F61 Ss. 192A, 192B and crossheading substituted for s. 192 (1.12.1996) by S.I. 1996/2967, **reg. 21(2)** (with Pt. III)

[F62X36 192A Performers' non-property rights.

(1) the rights conferred on a performer by -

section 182 (consent required for recording, &c. of live performance),

section 183 (infringement of performer's rights by use of recording made without consent), and

section 184 (infringement of performer's rights importing, possessing or dealing with illicit recording),

are not assignable or transmissible, except to the following extent.

They are referred to in **[**[F63]this Chapter**]** as "[F64]. . . performer's non-property rights".

(2) On the death of a person entitled to any such right—

(a) the right passes to such person as he may by testamentary disposition specifically direct, and

(b) if or to the extent that there is no such direction, the right is exercisable by his personal representatives.

(3) References in **[**[F63]this Chapter**]** to the performer, in the context of the person having any such right, shall be construed as references to the person for the time being entitled to exercise those rights.

(4) Where by virtue of subsection (2)(a) a right becomes exercisable by more than one person, it is exercisable by each of them independently of the other or others.

(5) Any damages recovered by personal representatives by virtue of this section in respect of an infringement after a person's death shall devolve as part of his estate as if the right of action had subsisted and been vested in him immediately before his death.**]**

Editorial Information

X36 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F62 Ss. 192A, 192B and crossheading substituted for s. 192 (1.12.1996) by S.I. 1996/2967, **reg. 21(2)** (with Pt. III)

F63 Words in s. 192A(1)(3) substituted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 8** (with reg. 8)

F64 Word in s. 192A(1) omitted by virtue of The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 5** (with reg. 8)

[[F65X37]**192B Transmissibility of rights of person having recording rights.**

(1) The rights conferred by **[**[F66]this Chapter**]** on a person having recording rights are not assignable or transmissible.

(2) This does not affect section 185(2)(b) or (3)(b), so far as those provisions confer rights under **[**[F66]this Chapter**]** on a person to whom the benefit of a contract or licence is assigned.**]**

Editorial Information

X37 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F65 Ss. 192A, 192B and crossheading substituted for s. 192 (1.12.1996) by S.I. 1996/2967, **reg. 21(2)** (with Pt. III)

F66 Words in s. 192B(1)(2) substituted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 8** (with reg. 8)

[X38]193 Consent.

(1) Consent for the purposes of **[**[F67]this Chapter**][**[F68]by a person having a performer's non-property rights, or by a person having recording rights,**]** may be given in relation to a specific performance, a specified description of performances or performances generally, and may relate to past or future performances.

(2) A person having recording rights in a performance is bound by any consent given by a person through whom he derives his rights under the exclusive recording contract or licence in question, in the same way as if the consent had been given by him.

(3) Where **[**[F69]a performer's non-property right**]** passes to another person, any consent binding on the person previously entitled binds the person to whom the right passes in the same way as if the consent had been given by him.

Editorial Information

X38 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F67 Words in s. 193(1) substituted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 8** (with reg. 8)

F68 Words in s. 193(1) inserted (1.12.1996) by S.I. 1996/2967, **reg. 21(3)(a)** (with Pt. III)

F69 Words in s. 193(3) substituted (1.12.1996) by S.I. 1996/2967, **reg. 21(3)(b)** (with Pt. III)

X39F70 . . .

Editorial Information

X39 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Status: *Point in time view as at 26/05/2008.*
Changes to legislation: *There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Chapter 2. (See end of Document for details)*

Textual Amendments

F70 Crossheading before s. 194 omitted (1.12.1996) by virtue of S.I. 1996/2967, **reg. 21(5)(b)** (with Pt. III)

[X40]194 Infringement actionable as breach of statutory duty.

An infringement of **[**[F71]—

(a) a performer's non-property rights, or

(b) any right conferred by **[**[F72]this Chapter**]** on a person having recording rights,**]**

is actionable by the person entitled to the right as a breach of statutory duty.

Editorial Information

X40 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F71 Words in s. 194 substituted (1.12.1996) by S.I. 1996/2967, **reg. 21(4)** (with Pt. III)

F72 Words in s. 194(b) substituted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 8** (with reg. 8)

[[F73X41]Delivery up or seizure of illicit recordings]

Editorial Information

X41 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F73 Heading before s. 195 inserted (1.12.1996) by S.I. 1996/2967, **reg. 21(5)(c)** (with Pt. III)

[X42]195 Order for delivery up.

(1) Where a person has in his possession, custody or control in the course of a business an illicit recording of a performance, a person having performer's rights or recording rights in relation to the performance under **[**[F74]this Chapter**]** may apply to the court for an order that the recording be delivered up to him or to such other person as the court may direct.

(2) An application shall not be made after the end of the period specified in section 203; and no order shall be made unless the court also makes, or it appears to the court that there are grounds for making, an order under section 204 (order as to disposal of illicit recording).

(3) A person to whom a recording is delivered up in pursuance of an order under this section shall, if an order under section 204 is not made, retain it pending the making of an order, or the decision not to make an order, under that section.

(4) Nothing in this section affects any other power of the court.

Editorial Information

X42 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F74 Words in s. 195(1) substituted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 8** (with reg. 8)

Modifications etc. (not altering text)

C5 S. 195 extended by S.I. 1991/724, **art. 2(1)(n)**

[X43]196 Right to seize illicit recordings.

(1) An illicit recording of a performance which is found exposed or otherwise immediately available for sale or hire, and in respect of which a person would be entitled to apply for an order under section 195, may be seized and detained by him or a person authorised by him.

The right to seize and detain is exercisable subject to the following conditions and is subject to any decision of the court under section 204 (order as to disposal of illicit recording).

(2) Before anything is seized under this section notice of the time and place of the proposed seizure must be given to a local police station.

(3) A person may for the purpose of exercising the right conferred by this section enter premises to which the public have access but may not seize anything in the possession, custody or control of a person at a permanent or regular place of business of his and may not use any force.

(4) At the time when anything is seized under this section there shall be left at the place where it was seized a notice in the prescribed form containing the prescribed particulars as to the person by whom or on whose authority the seizure is made and the grounds on which it is made.

(5) In this section—

"premises" includes land, buildings, fixed or moveable structures, vehicles, vessels, aircraft and hovercraft; and

"prescribed" means prescribed by order of the Secretary of State.

(6) An order of the Secretary of State 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.

Editorial Information

X43 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

[X44]197 Meaning of "illicit recording".

(1) In **[**[F75]this Chapter**]**"illicit recording", in relation to a performance, shall be construed in accordance with this section.

(2) For the purposes of a performer's rights, a recording of the whole or any substantial part of a performance of his is an illicit recording if it is made, otherwise than for private purposes, without his consent.

(3) For the purposes of the rights of a person having recording rights, a recording of the whole or any substantial part of a performance subject to the exclusive recording contract is an illicit recording if it is made, otherwise than for private purposes, without his consent or that of the performer.

(4) For the purposes of sections 198 and 199 (offences and orders for delivery up in criminal proceedings), a recording is an illicit recording if it is an illicit recording for the purposes mentioned in subsection (2) or subsection (3).

(5) In **[**[F75]this Chapter**]**"illicit recording" includes a recording falling to be treated as an illicit recording by virtue of any of the following provisions of Schedule 2—

paragraph 4(3) (recordings made for purposes of instruction or examination),

paragraph 6(2) (recordings made by educational establishments for educational purposes),

paragraph 12(2) (recordings of performance in electronic form retained on transfer of principal recording), [F76]. . .

paragraph 16(3) (recordings made for purposes of broadcast [F77]. . .),

[[F78]paragraph 17A(2) (recording for the purposes of time-shifting), or

paragraph 17B(2) (photographs of broadcasts),**]**

but otherwise does not include a recording made in accordance with any of the provisions of that Schedule.

(6) It is immaterial for the purposes of this section where the recording was made.

Editorial Information

X44 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F75 Words in s. 197(1)(5) substituted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 8** (with reg. 8)

F76 Words in s. 197(5) repealed (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), reg. 2(2), **Sch. 2** (with regs. 31-40)

F77 Words in s. 197(5) repealed (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), reg. 2(2), **Sch. 2** (with regs. 31-40)

F78 Words in s. 197(5) inserted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), **reg. 20(4)** (with regs. 31-40)

[F79 197A Presumptions relevant to recordings of performances

(1) In proceedings brought by virtue of this Part with respect to the rights in a performance, where copies of a recording of the performance as issued to the public bear a statement that a named person was the performer, the statement shall be admissible as evidence of the fact stated and shall be presumed to be correct until the contrary is proved.

(2) Subsection (1) does not apply to proceedings for an offence under section 198 (criminal liability for making etc. illicit recordings); but without prejudice to its application in proceedings for an order under section 199 (order for delivery up in criminal proceedings).**]**

Textual Amendments

F79 S. 197A inserted (29.4.2006) by The Intellectual Property (Enforcement, etc.) Regulations 2006 (S.I. 2006/1028), reg. 2(2), **Sch. 2 para. 10**

X45 *Offences*

Editorial Information

X45 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

X46 198 Criminal liability for making, dealing with or using illicit recordings.

(1) A person commits an offence who without sufficient consent—

(a) makes for sale or hire, or

(b) imports into the United Kingdom otherwise than for his private and domestic use, or

(c) possesses in the course of a business with a view to committing any act infringing the rights conferred by **[**F80 this Chapter**]**, or

(d) in the course of a business—

(i) sells or lets for hire, or

(ii) offers or exposes for sale or hire, or

(iii) distributes,

a recording which is, and which he knows or has reason to believe is, an illicit recording.

[F81 (1A) A person who infringes a performer's making available right—

(a) in the course of a business, or

(b) otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the making available right,

commits an offence if he knows or has reason to believe that, by doing so, he is infringing the making available right in the recording.**]**

(2) A person commits an offence who causes a recording of a performance made without sufficient consent to be—

(a) shown or played in public, or

[[F82](b) communicated to the public,**]**

thereby infringing any of the rights conferred by **[**[F80]this Chapter**]**, if he knows or has reason to believe that those rights are thereby infringed.

(3) In subsections (1) and (2) "sufficient consent" means—

(a) in the case of a qualifying performance, the consent of the performer, and

(b) in the case of a non-qualifying performance subject to an exclusive recording contract—

(i) for the purposes of subsection (1)(a) (making of recording), the consent of the performer or the person having recording rights, and

(ii) for the purposes of subsection (1)(b), (c) and (d) and subsection (2) (dealing with or using recording), the consent of the person having recording rights.

The references in this subsection to the person having recording rights are to the person having those rights at the time the consent is given or, if there is more than one such person, to all of them.

(4) No offence is committed under subsection (1) or (2) by the commission of an act which by virtue of any provision of Schedule 2 may be done without infringing the rights conferred by **[**[F80]this Chapter**]**.

(5) A person guilty of an offence under subsection (1)(a), (b) or (d)(iii) is liable—

(a) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;

(b) on conviction on indictment to a fine or imprisonment for a term not exceeding **[**[F83]ten**]** years, or both.

[[F84](5A) A person guilty of an offence under subsection (1A) is liable—

(a) on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum, or both;

(b) on conviction on indictment to a fine or imprisonment for a term not exceeding two years, or both.**]**

(6) A person guilty of any other offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale or imprisonment for a term not exceeding six months, or both.

Editorial Information

X46 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F80 Words in s. 198(1)(c)(2)(4) substituted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 8** (with reg. 8)

F81 S. 198(1A) inserted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), **reg. 26(3)(a)** (with regs. 31-40)

F82 S. 198(2)(b) substituted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), reg. 2(1), **Sch. 1 para. 4(5)** (with regs. 31-40)

F83 S. 198(5)(b) substituted (20.11.2002) by 2002 c. 25, **s. 1(3)(5)**; S.I. 2002/2749, **art. 2**

F84 S. 198(5A) inserted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), **reg. 26(3)(b)** (with regs. 31-40)

[F85X47 198A Enforcement by local weights and measures authority.

(1) It is the duty of every local weights and measures authority to enforce within their area the provisions of section 198.

(2) The following provisions of the Trade Descriptions Act 1968 apply in relation to the enforcement of that section by such an authority as in relation to the enforcement of that Act—

section 27 (power to make test purchases),

section 28 (power to enter premises and inspect and seize goods and documents),

section 29 (obstruction of authorised officers), and

section 33 (compensation for loss, &c. of goods seized).

(3) Subsection (1) above does not apply in relation to the enforcement of section 198 in Northern Ireland, but it is the duty of the Department of Economic Development to enforce that section in Northern Ireland.

For that purpose the provisions of the [M1]Trade Descriptions Act 1968 specified in subsection (2) apply as if for the references to a local weights and measures authority and any officer of such an authority there were substituted references to that Department and any of its officers.

(4) Any enactment which authorises the disclosure of information for the purpose of facilitating the enforcement of the Trade Descriptions Act 1968 shall apply as if section 198 were contained in that Act and as if the functions of any person in relation to the enforcement of that section were functions under that Act.

(5) Nothing in this section shall be construed as authorising a local weights and measures authority to bring proceedings in Scotland for an offence.**]**

Editorial Information

X47 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F85 S. 198A inserted (6.4.2007) by 1994 c. 33, **ss. 165(3)**, 172(2); S.I. 2007/621, **art. 2**

Marginal Citations

M1 1968 c. 29.

[X48]199 Order for delivery up in criminal proceedings.

(1) The court before which proceedings are brought against a person for an offence under section 198 may, if satisfied that at the time of his arrest or charge he had in his possession, custody or control in the course of a business an illicit recording of a performance, order that it be delivered up to a person having performers' rights or recording rights in relation to the performance or to such other person as the court may direct.

(2) For this purpose a person shall be treated as charged with an offence—

(a) in England, Wales and Northern Ireland, when he is orally charged or is served with a summons or indictment;

(b) in Scotland, when he is cautioned, charged or served with a complaint or indictment.

(3) An order may be made by the court of its own motion or on the application of the prosecutor (or, in Scotland, the Lord Advocate or procurator-fiscal), and may be made whether or not the person is convicted of the offence, but shall not be made—

(a) after the end of the period specified in section 203 (period after which remedy of delivery up not available), or

(b) if it appears to the court unlikely that any order will be made under section 204 (order as to disposal of illicit recording).

(4) An appeal lies from an order made under this section by a magistrates' court—

(a) in England and Wales, to the Crown Court, and

(b) in Northern Ireland, to the county court;

and in Scotland, where an order has been made under this section, the person from whose possession, custody or control the illicit recording has been been removed may, without predudice to any other form of appeal under any rule of law, appeal against that order in the same manner as against sentence.

(5) A person to whom an illicit recording is delivered up in pursuance of an order under this section shall retain it pending the making of an order, or the decision not to make an order, under section 204.

(6) Nothing in in this section affects the powers of the court under **[**[F86]section 143 of the Powers of Criminal Courts (Sentencing) Act 2000**]**, **[**[F87]Part II of the Proceeds of Crime (Scotland) Act 1995**]** or **[**[F88]Article 11 of the Criminal Justice (Northern Ireland) Order 1994**]** (general provisions as to forfeiture in criminal proceedings).

Editorial Information

X48 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F86 Words in s. 199(6) substituted (25.8.2000) by 2000 c. 6 ss. 165, 168, Sch. 9 para. 116

F87 Words in s. 199(6) substituted (1.4.1996) by 1995 c. 20, ss. 5, 7(2), **Sch. 4 para. 70(3)**
F88 Words in s. 199(6) substituted (9.1.1995) by S.I. 1994/2795 (N.I. 15), art. 26(1), **Sch. 2 para. 14**; S.R. 1994/446, **art. 2**

[X49]200 Search warrants.

(1) Where a justice of the peace (in Scotland, a sheriff or justice of the peace) is satisfied by information on oath given by a constable (in Scotland, by evidence on oath) that there are reasonable grounds for believing—

(a) that an offence under **[**[F89]section 198(1) or (1A)**]**(offences of making, importing **[**[F90], possessing, selling etc.**]** or distributing illicit recordings) has been or is about to be committed in any premises, and

(b) that evidence that such an offence has been or is about to be committed is in those premises,

he may issue a warrant authorising a constable to enter and search the premises, using such reasonable force as is necessary.

(2) The power conferred by subsection (1) does not, in England and Wales, extend to authorising a search for material of the kinds mentioned in section 9(2) of the [M2]Police and Criminal Evidence Act 1984 (certain classes of personal or confidential material).

(3) A warrant under subsection (1)—

(a) may authorise persons to accompany any constable executing the warrant, and

(b) remains in force for **[**[F91]three months**]** from the date of its issue.

[[F92](3A) In executing a warrant issued under subsection (1) a constable may seize an article if he reasonably believes that it is evidence that any offence under **[**[F93]section 198(1) or (1A)**]** has been or is about to be committed.**]**

(4) In this section "premises" includes land, buildings, fixed or moveable structures, vehicles, vessels, aircraft and hovercraft.

Editorial Information

X49 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F89 Words in s. 200(1)(a) substituted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), **reg. 26(4)(a)** (with regs. 31-40)
F90 Words in s. 200(1)(a) inserted (20.11.2002) by 2002 c. 25, **s. 2(3)(a)(ii)**; S.I. 2002/2749, **art. 2**
F91 Words in s. 200(3)(b) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 174(1), 178, **Sch. 16 para. 6(3)**; S.I. 2005/3495, **art. 2(1)(s)** (subject to art. 2(2))
F92 S. 200(3A) inserted (20.11.2002) by 2002 c. 25, **s. 2(3)(b)**; S.I. 2002/2749, **art. 2**
F93 Words in s. 200(3A) substituted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), **reg. 26(4)(b)** (with reg. 31-40)

Marginal Citations

M2 1984 c. 60.

[X50]201 False representation of authority to give consent.

(1) It is an offence for a person to represent falsely that he is authorised by any person to give consent for the purposes of **[**[F94]this Chapter**]** in relation to a performance, unless he believes on reasonable grounds that he is so authorised.

(2) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both.

Editorial Information

X50 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F94 Words in s. 201(1) substituted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 8** (with reg. 8)

[X51]202 Offence by body corporate: liability of officers.

(1) Where an offence under **[**[F95]this Chapter**]** committed by a body corporate is proved to have been committed with the consent or connivance of a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In relation to a body corporate whose affairs are managed by its members "director" means a member of the body corporate.

Editorial Information

X51 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F95 Words in s. 202(1) substituted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 8** (with reg. 8)

[X52] Supplementary provisions with respect to delivery up and seizure

Editorial Information

X52 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on

1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

[X53]203 Period after which remedy of delivery up not available.

(1) An application for an order under section 195 (order for delivery up in civil proceedings) may not be made after the end of the period of six years from the date on which the illicit recording in question was made, subject to the following provisions.

(2) If during the whole or any part of that period a person entitled to apply for an order—
- (a) is under a disability, or
- (b) is prevented by fraud or concealment from discovering the facts entitling him to apply,

an application may be made by him at any time before the end of the period of six years from the date on which he ceased to be under a disability or, as the case may be, could with reasonable diligence have discovered those facts.

(3) In subsection (2) "disability"—
- (a) in England and Wales, has the same meaning as in the [M3]Limitation Act 1980;
- (b) in Scotland, means legal disability within the meaning of the [M4]Prescription and Limitations (Scotland) Act 1973;
- (c) in Northern Ireland, has the same meaning as in the [M5]Statute of Limitation (Northern Ireland) 1958.

(4) An order under section 199 (order for delivery up in criminal proceedings) shall not, in any case, be made after the end of the period of six years from the date on which the illicit recording in question was made.

Editorial Information

X53 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Marginal Citations

M3 1980 c. 58.
M4 1973 c. 52.
M5 1958 c. 10 (N.I.).

[X54]204 Order as to disposal of illicit recording.

(1) An application may be made to the court for an order that an illicit recording of a performance delivered up in pursuance of an order under section 195 or 199, or seized and detained in pursuance of the right conferred by section 196, shall be—
- (a) forfeited to such person having performer's rights or recording rights in relation to the performance as the court may direct, or
- (b) destroyed or otherwise dealt with as the court may think fit,

or for a decision that no such order should be made.

(2) In considering what order (if any) should be made, the court shall consider whether other remedies available in an action for infringement of the rights conferred by **[**[F96]this Chapter**]** would be adequate to compensate the person or persons entitled to the rights and to protect their interests.

(3) Provision shall be made by rules of court as to the service of notice on persons having an interest in the recording, and any such person is entitled—

(a) to appear in proceedings for an order under this section, whether or not he was served with notice, and

(b) to appeal against any order made, whether or not he appeared;

and an order shall not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

(4) Where there is more than one person interested in a recording, the court shall make such order as it thinks just and may (in particular) direct that the recording be sold, or otherwise dealt with, and the proceeds divided.

(5) If the court decides that no order should be made under this section, the person in whose possession, custody or control the recording was before being delivered up or seized is entitled to its return.

(6) References in this section to a person having an interest in a recording include any person in whose favour an order could be made in respect of the recording

[[F97](a) under this section or under section 114 or 231 of this Act;

(b) under section 24D of the Registered Designs Act 1949;

(c) under section 19 of Trade Marks Act 1994 (including that section as applied by regulation 4 of the Community Trade Mark Regulations 2006 (SI 2006/1027)); or

(d) under regulation 1C of the Community Design Regulations 2005 (SI 2005/2339).**]**

Editorial Information

X54 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F96 Words in s. 204(2) substituted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 8** (with reg. 8)

F97 Words in s. 204(6) substituted (29.4.2006) by The Intellectual Property (Enforcement, etc.) Regulations 2006 (S.I. 2006/1028), reg. 2(2), **Sch. 2 para. 11**

Modifications etc. (not altering text)

C6 S. 204 extended by S.I. 1991/724, **art. 2(1)(n)**

Status: *Point in time view as at 26/05/2008.*
Changes to legislation: *There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Chapter 2. (See end of Document for details)*

X55[F98204A Forfeiture of illicit recordings: England and Wales or Northern Ireland

(1) In England and Wales or Northern Ireland where illicit recordings of a performance have come into the possession of any person in connection with the investigation or prosecution of a relevant offence, that person may apply under this section for an order for the forfeiture of the illicit recordings.

(2) For the purposes of this section "relevant offence" means—

(a) an offence under **[**F99section 198(1) or (1A)**]**(criminal liability for making or dealing with illicit recordings),

(b) an offence under the Trade Descriptions Act 1968 (c. 29),

F100**[**(ba) an offence under the Business Protection from Misleading Marketing Regulations 2008,

(bb) an offence under the Consumer Protection from Unfair Trading Regulations 2008, or**]**

(c) an offence involving dishonesty or deception.

(3) An application under this section may be made—

(a) where proceedings have been brought in any court for a relevant offence relating to some or all of the illicit recordings, to that court, or

(b) where no application for the forfeiture of the illicit recordings has been made under paragraph (a), by way of complaint to a magistrates' court.

(4) On an application under this section, the court shall make an order for the forfeiture of any illicit recordings only if it is satisfied that a relevant offence has been committed in relation to the illicit recordings.

(5) A court may infer for the purposes of this section that such an offence has been committed in relation to any illicit recordings if it is satisfied that such an offence has been committed in relation to illicit recordings which are representative of the illicit recordings in question (whether by reason of being part of the same consignment or batch or otherwise).

(6) Any person aggrieved by an order made under this section by a magistrates' court, or by a decision of such a court not to make such an order, may appeal against that order or decision—

(a) in England and Wales, to the Crown Court, or

(b) in Northern Ireland, to the county court.

(7) An order under this section may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under section 111 of the Magistrates' Courts Act 1980 (c. 43) or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1987/1675 (N.I. 26)) (statement of case)).

(8) Subject to subsection (9), where any illicit recordings are forfeited under this section they shall be destroyed in accordance with such directions as the court may give.

(9) On making an order under this section the court may direct that the illicit recordings to which the order relates shall (instead of being destroyed) be forfeited to the person having the performers' rights or recording rights in question or dealt with in such other way as the court considers appropriate.**]**

Editorial Information

X55 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F98 S. 204A inserted (20.11.2002) by 2002 c. 25, **s. 4**; S.I. 2002/2749, **art. 2**

F99 Words in s. 204A(2)(a) substituted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), **reg. 26(4)(c)** (with regs. 31-40)

F100 S. 204A(2)(ba)(bb) and word substituted (26.5.2008) for word by The Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/1277), reg. 1, **Sch. 2 para. 42** (with reg. 28(2)(3))

X56F101 204B Forfeiture: Scotland

(1) In Scotland the court may make an order under this section for the forfeiture of any illicit recordings.

(2) An order under this section may be made—

(a) on an application by the procurator-fiscal made in the manner specified in section 134 of the Criminal Procedure (Scotland) Act 1995 (c. 46), or

(b) where a person is convicted of a relevant offence, in addition to any other penalty which the court may impose.

(3) On an application under subsection (2)(a), the court shall make an order for the forfeiture of any illicit recordings only if it is satisfied that a relevant offence has been committed in relation to the illicit recordings.

(4) The court may infer for the purposes of this section that such an offence has been committed in relation to any illicit recordings if it is satisfied that such an offence has been committed in relation to illicit recordings which are representative of the illicit recordings in question (whether by reason of being part of the same consignment or batch or otherwise).

(5) The procurator-fiscal making the application under subsection (2)(a) shall serve on any person appearing to him to be the owner of, or otherwise to have an interest in, the illicit recordings to which the application relates a copy of the application, together with a notice giving him the opportunity to appear at the hearing of the application to show cause why the illicit recordings should not be forfeited.

(6) Service under subsection (5) shall be carried out, and such service may be proved, in the manner specified for citation of an accused in summary proceedings under the Criminal Procedure (Scotland) Act 1995.

(7) Any person upon whom notice is served under subsection (5) and any other person claiming to be the owner of, or otherwise to have an interest in, illicit recordings to which an application under this section relates shall be entitled to appear at the hearing of the application to show cause why the illicit recordings should not be forfeited.

(8) The court shall not make an order following an application under subsection (2)(a)—

(a) if any person on whom notice is served under subsection (5) does not appear, unless service of the notice on that person is proved, or

(b) if no notice under subsection (5) has been served, unless the court is satisfied that in the circumstances it was reasonable not to serve such notice.

(9) Where an order for the forfeiture of any illicit recordings is made following an application under subsection (2)(a), any person who appeared, or was entitled to appear, to show cause why the illicit recordings should not be forfeited may, within 21 days of the making of the order, appeal to the High Court by Bill of Suspension.

(10) Section 182(5)(a) to (e) of the Criminal Procedure (Scotland) Act 1995 shall apply to an appeal under subsection (9) as it applies to a stated case under Part 2 of that Act.

(11) An order following an application under subsection (2)(a) shall not take effect—

(a) until the end of the period of 21 days beginning with the day after the day on which the order is made, or

(b) if an appeal is made under subsection (9) above within that period, until the appeal is determined or abandoned.

(12) An order under subsection (2)(b) shall not take effect—

(a) until the end of the period within which an appeal against the order could be brought under the Criminal Procedure (Scotland) Act 1995 (c. 46), or

(b) if an appeal is made within that period, until the appeal is determined or abandoned.

(13) Subject to subsection (14), illicit recordings forfeited under this section shall be destroyed in accordance with such directions as the court may give.

(14) On making an order under this section the court may direct that the illicit recordings to which the order relates shall (instead of being destroyed) be forfeited to the person having the performers' rights or recording rights in question or dealt with in such other way as the court considers appropriate.

(15) For the purposes of this section—

[[F102]"relevant offence" means—

(a) an offence under section 198(1) or (1A) (criminal liability for making or dealing with illicit recordings),

(b) an offence under the Trade Descriptions Act 1968,

(c) an offence under the Business Protection from Misleading Marketing Regulations 2008,

(d) an offence under the Consumer Protection from Unfair Trading Regulations 2008, or

(e) any offence involving dishonesty or deception;**]**

"the court" means—

(a) in relation to an order made on an application under subsection (2)(a), the sheriff, and

(b) in relation to an order made under subsection (2)(b), the court which imposed the penalty.

Editorial Information

X56 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F101 S. 204B inserted (20.11.2002) by 2002 c. 25, **s. 4**; S.I. 2002/2749, **art. 2**

F102 Words in s. 204(15) substituted (26.5.2008) by The Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/1277), reg. 1, **Sch. 2 para. 43** (with reg. 28(2)(3))

[X57]205 Jurisdiction of county court and sheriff court.

(1) In England, Wales and Northern Ireland a county court may entertain proceedings under—

section 195 (order for delivery up of illicit recording), or

section 204 (order as to disposal of illicit recording),

[[F103]save that, in Northern Ireland, a county court may entertain such proceedings only**]**where the value of the illicit recordings in question does not exceed the county court limit for actions in tort.

(2) In Scotland proceedings for an order under either of those provisions may be brought in the sheriff court.

(3) Nothing in this section shall be construed as affecting the jurisdiction of the High Court or, in Scotland, the Court of Session.

Editorial Information

X57 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F103 Words in s. 205(1) inserted by S.I. 1991/724, art. 2(8), **Schedule Part I**

[X58F104Licensing of performers' property rights]

Editorial Information

X58 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F104 S. 205A and crossheading inserted (1.12.1996) by S.I. 1996/2967, **reg. 22(1)** (with Pt. III)

[[F105X59]205A Licensing of performers' property rights.

The provisions of Schedule 2A have effect with respect to the licensing of performers' property rights.**]**

Editorial Information

X59 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F105 S. 205A inserted (1.12.1996) by S.I. 1996/2967, **reg. 22(1)** (with Pt. III)

[X60F106 Jurisdiction of Copyright Tribunal]

Editorial Information

X60 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F106 S. 205B and crossheading inserted (1.12.1996) by S.I. 1996/2967, **reg. 24** (with Pt. III)

[F107X61205B Jurisdiction of Copyright Tribunal.

(1) The Copyright Tribunal has jurisdiction under **[**F108this Chapter**]** to hear and determine proceedings under—

(a) section 182D (amount of equitable remuneration for exploitation of commercial sound recording);

(b) section 190 (application to give consent on behalf of owner of reproduction right);

(c) section 191H (amount of equitable remuneration on transfer of rental right);

[F109(cc) paragraph 19 of Schedule 2 (determination of royalty or other remuneration to be paid with respect to re-transmission of broadcast including performance or recording);**]**

(d) paragraph 3, 4 or 5 of Schedule 2A (reference of licensing scheme);

(e) paragraph 6 or 7 of that Schedule (application with respect to licence under licensing scheme);

(f) paragraph 10, 11 or 12 of that Schedule (reference or application with respect to licensing by licensing body);

(g) paragraph 15 of that Schedule (application to settle royalty for certain lending);

(h) paragraph 17 of that Schedule (application to settle terms of licence available as of right).

(2) The provisions of Chapter VIII of Part I (general provisions relating to the Copyright Tribunal) apply in relation to the Tribunal when exercising any jurisdiction under **[**F108this Chapter**]**.

(3) Provision shall be made by rules under section 150 prohibiting the Tribunal from entertaining a reference under paragraph 3, 4 or 5 of Schedule 2A (reference of licensing scheme) by a representative organisation unless the Tribunal is satisfied that the organisation is reasonably representative of the class of persons which it claims to represent.**]**

Editorial Information

X61 The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

Textual Amendments

F107 S. 205B inserted (1.12.1996) by S.I. 1996/2967, **reg. 24** (with Pt. III)

F108 Words in s. 205B(1)(2) substituted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 8** (with reg. 8)

F109 S. 205B(cc) inserted (1.10.1996) by 1996 c. 55, s. 138, **Sch. 9 para. 4** (with s. 43(6)); S.I. 1996/2120, art. 4(1), **Sch. 1**

Status:
Point in time view as at 26/05/2008.

Changes to legislation:
There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Chapter 2.