



Copyright, Designs and Patents Act 1988

1988 CHAPTER 48

PART II

RIGHTS IN PERFORMANCES

[^{F1}CHAPTER 2

ECONOMIC RIGHTS]

^{X1}[^{F1}*Delivery up or seizure of illicit recordings*]

Annotations:

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.

Amendments (Textual)

- F1** Heading before s. 195 inserted (1.12.1996) by [S.I. 1996/2967](#), [reg. 21\(5\)\(c\)](#) (with [Pt. III](#))

^{X2}**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 [^{F2}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

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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.

Annotations:

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.

Amendments (Textual)

- F2** 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)

- C1** S. 195 extended by [S.I. 1991/724](#), [art. 2\(1\)\(n\)](#)

^{x3}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.

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- (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.

Annotations:

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.

^{X4}197 Meaning of “illicit recording”.

- (1) In [^{F3}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 [^{F3}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—
- [^{F4}paragraph 1D(3) (copies for text and data analysis for non-commercial research),]
 - [^{F5}paragraph 3A(5) or (6) or 3B(10) (accessible copies of recordings made for disabled persons)]
 - [^{F6}paragraph 1B(5) and (7) (personal copies of recordings for private use),]
 - ^{F7}...
 - [^{F8}paragraph 6(5) (recording by educational establishments of broadcasts),]
 - [^{F4}paragraph 6F(5)(b) (copying by librarians: single copies of published recordings),]
 - [^{F4}paragraph 6G(5)(b) (copying by librarians or archivists: single copies of unpublished recordings),]
 - [^{F4}paragraph 6ZA(7) (copying and use of extracts of recordings by educational establishments),]
 - paragraph 12(2) (recordings of performance in electronic form retained on transfer of principal recording), ^{F9} . . .
 - [^{F4}paragraph 14(6)(b) (recordings of folksongs),]
 - paragraph 16(3) (recordings made for purposes of broadcast ^{F10} . . .),
 - [^{F11}paragraph 17A(2) (recording for the purposes of time-shifting), or

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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.

Annotations:

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.

Amendments (Textual)

- F3** 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)
- F4** Words in s. 197(5) inserted (1.6.2014) by [The Copyright and Rights in Performances \(Research, Education, Libraries and Archives\) Regulations 2014 \(S.I. 2014/1372\)](#), reg. 1, **Sch. para. 7(a)**
- F5** Words in s. 197(5) inserted (1.6.2014) by [The Copyright and Rights in Performances \(Disability\) Regulations 2014 \(S.I. 2014/1384\)](#), reg. 1(1), **Sch. para. 4**
- F6** Words in s. 197(5) inserted (1.10.2014) by [The Copyright and Rights in Performances \(Personal Copies for Private Use\) Regulations 2014 \(S.I. 2014/2361\)](#), regs. 1(1), **4(2)** (with reg. 5) (but note that the amending S.I. was quashed with prospective effect by the High Court in the case of *R (British Academy of Songwriters, Composers and Authors and others) v Secretary of State for Business, Innovation and Skills* [2015] EWHC 2041 (Admin), 17 July 2015)
- F7** Words in s. 197(5) omitted (1.6.2014) by virtue of [The Copyright and Rights in Performances \(Research, Education, Libraries and Archives\) Regulations 2014 \(S.I. 2014/1372\)](#), reg. 1, **Sch. para. 7(b)**
- F8** Words in s. 197(5) substituted (1.6.2014) by [The Copyright and Rights in Performances \(Research, Education, Libraries and Archives\) Regulations 2014 \(S.I. 2014/1372\)](#), reg. 1, **Sch. para. 7(c)**
- F9** 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)
- F10** 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)
- F11** 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)

[^{F12}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).]

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Annotations:

Amendments (Textual)

F12 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**

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 40A(1A)(aa) inserted by 2017 c. 30 s. 31(4)(b)
- s. 40A(1ZA) inserted by 2017 c. 30 s. 31(3)
- s. 249(1A) inserted by 2007 c. 15 s. 143(3)(b)