



# Copyright, Designs and Patents Act 1988

## 1988 CHAPTER 48

### PART II

#### RIGHTS IN PERFORMANCES

#### [<sup>F1</sup>CHAPTER 3

#### MORAL RIGHTS

#### *[<sup>F1</sup>Supplementary*

#### Textual Amendments

- F1** Ss. 205C-205N and cross-headings inserted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), [art. 6](#) (with [reg. 8](#)) (which inserted provisions accordingly become Pt. 2 Ch. 3 (1.2.2006) by virtue of [S.I. 2006/18](#), [art. 4\(6\)](#) (with [reg. 8](#)))

#### **205I Duration of rights**

- (1) A performer's rights under this Chapter in relation to a performance subsist so long as that performer's rights under Chapter 2 subsist in relation to the performance.
- (2) In subsection (1) "performer's rights" includes rights of a performer that are vested in a successor of his.

#### **205J Consent and waiver of rights**

- (1) It is not an infringement of the rights conferred by this Chapter to do any act to which consent has been given by or on behalf of the person entitled to the right.
- (2) Any of those rights may be waived by instrument in writing signed by or on behalf of the person giving up the right.

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

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- (3) A waiver—
- (a) may relate to a specific performance, to performances of a specified description or to performances generally, and may relate to existing or future performances, and
  - (b) may be conditional or unconditional and may be expressed to be subject to revocation,
- and if made in favour of the owner or prospective owner of a performer's property rights in the performance or performances to which it relates, it shall be presumed to extend to his licensees and successors in title unless a contrary intention is expressed.
- (4) Nothing in this Chapter shall be construed as excluding the operation of the general law of contract or estoppel in relation to an informal waiver or other transaction in relation to either of the rights conferred by this Chapter.

### **205K Application of provisions to parts of performances**

- (1) The right conferred by section 205C (right to be identified as performer) applies in relation to the whole or any substantial part of a performance.
- (2) The right conferred by section 205F (right to object to derogatory treatment of performance) applies in relation to the whole or any part of a performance.

### **205L Moral rights not assignable**

The rights conferred by this Chapter are not assignable.

### **205M Transmission of moral rights on death**

- (1) On the death of a person entitled to a right conferred by this Chapter—
  - (a) the right passes to such person as he may by testamentary disposition specifically direct,
  - (b) if there is no such direction but the performer's property rights in respect of the performance in question form part of his estate, the right passes to the person to whom the property rights pass,
  - (c) if or to the extent that the right does not pass under paragraph (a) or (b) it is exercisable by his personal representatives.
- (2) Where a performer's property rights pass in part to one person and in part to another, as for example where a bequest is limited so as to apply—
  - (a) to one or more, but not all, of the things to which the owner has the right to consent, or
  - (b) to part, but not the whole, of the period for which the rights subsist,

any right which by virtue of subsection (1) passes with the performer's property rights is correspondingly divided.
- (3) Where by virtue of subsection (1)(a) or (1)(b) a right becomes exercisable by more than one person—
  - (a) it is, in the case of the right conferred by section 205F (right to object to derogatory treatment of performance), a right exercisable by each of them and is satisfied in relation to any of them if he consents to the treatment or act in question, and

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- (b) any waiver of the right in accordance with section 205J by one of them does not affect the rights of the others.
- (4) A consent or waiver previously given or made binds any person to whom a right passes by virtue of subsection (1).
- (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.

## **205N Remedies for infringement of moral rights**

- (1) An infringement of a right conferred by this Chapter is actionable as a breach of statutory duty owed to the person entitled to the right.
- (2) Where—
  - (a) there is an infringement of a right conferred by this Chapter,
  - (b) a person falsely claiming to act on behalf of a performer consented to the relevant conduct or purported to waive the right, and
  - (c) there would have been no infringement if he had been so acting,that person shall be liable, jointly and severally with any person liable in respect of the infringement by virtue of subsection (1), as if he himself had infringed the right.
- (3) Where proceedings for infringement of the right conferred on a performer by this Chapter, it shall be a defence to prove—
  - (a) that a person claiming to act on behalf of the performer consented to the defendant's conduct or purported to waive the right, and
  - (b) that the defendant reasonably believed that the person was acting on behalf of the performer.
- (4) In proceedings for infringement of the right conferred by section 205F the court may, if it thinks it an adequate remedy in the circumstances, grant an injunction on terms prohibiting the doing of any act unless a disclaimer is made, in such terms and in such manner as may be approved by the court, dissociating the performer from the broadcast or sound recording of the performance.]

**Changes to legislation:**

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