

Copyright, Designs and Patents Act 1988

1988 CHAPTER 48

PART II

RIGHTS IN PERFORMANCES

[^{F1}Performers' property rights]

Textual Amendments

F1 Crossheading inserted (1.12.1996) by S.I. 1996/2967, reg. 21(1) (with Pt. III)

VALID FROM 01/12/1996

[^{F2}191A Performers' property rights.

(1) The following rights conferred by this Part on a performer-

reproduction right (section 182A),

distribution right (section 182B),

rental right and lending right (section 182C),

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

- (2) References in this Part 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 this Part 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 this Part 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.]

Textual Amendments

F2 Ss. 191A-191M inserted (1.12.1996) by S.I. 1996/2967, reg. 21(1) (with Pt. III)

VALID FROM 01/12/1996

[^{F3}191B ^{X1} Assignment and licences.

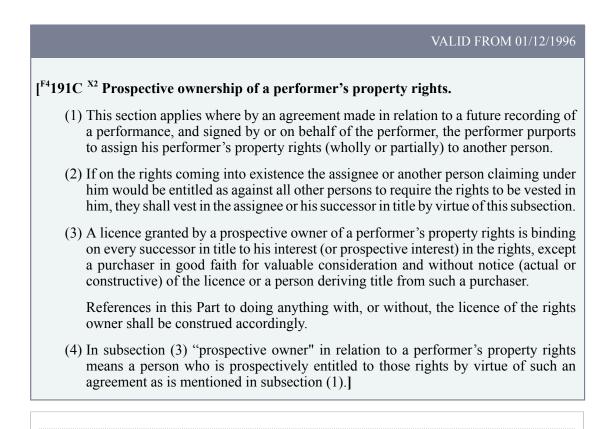
- (1) A performer's property rights are transmissible by assignment, by testamentary disposition or by operation of law, as personal or moveable property.
- (2) An assignment or other transmission of a performer's property rights may be partial, that is, limited so as to apply—
 - (a) to one or more, 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 this Part to doing anything with, or without, the licence of the rights owner shall be construed accordingly.]

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

F3 Ss. 191A-191M inserted (1.12.1996) by S.I. 1996/2967, reg. 21(1) (with Pt. III)



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

F4 Ss. 191A-191M inserted (1.12.1996) by S.I. 1996/2967, reg. 21(1) (with Pt. III)

VALID FROM 01/12/1996

[^{F5}191D ^{X3} Exclusive licences.

- (1) In this Part 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

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

F5 Ss. 191A-191M inserted (1.12.1996) by S.I. 1996/2967, reg. 21(1) (with Pt. III)

VALID FROM 01/12/1996

[^{F6}191E ^{X4} 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

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

F6 Ss. 191A-191M inserted (1.12.1996) by S.I. 1996/2967, reg. 21(1) (with Pt. III)

VALID FROM 01/12/1996

[^{F7}191F ^{X5} 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

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

F7 Ss. 191A-191M inserted (1.12.1996) by S.I. 1996/2967, reg. 21(1) (with Pt. III)

Modifications etc. (not altering text)

C1 S. 191F applied (1.12.1996) by S.I. 1996/2967, reg. 32(1) (with Pt. III)

VALID FROM 01/12/1996 [^{F8}191G ^{X6} 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

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.

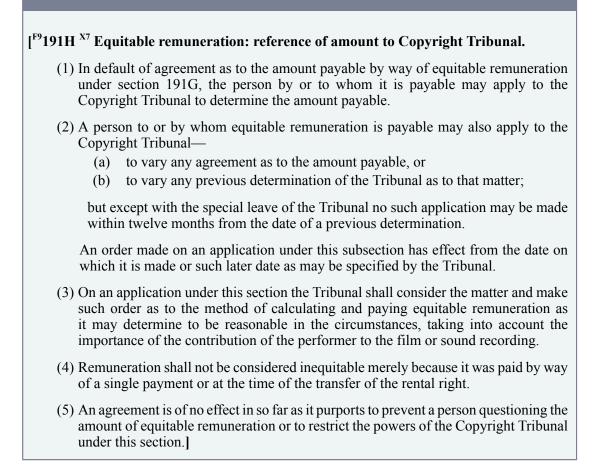
Textual Amendments

F8 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. 191G applied (with modifications) (1.12.1996) by S.I. 1996/2967, reg. 32(2) (with Pt. III)
- C3 S. 191G restricted (1.12.1996) by S.I. 1996/2967, reg. 33 (with Pt. III)

VALID FROM 01/12/1996

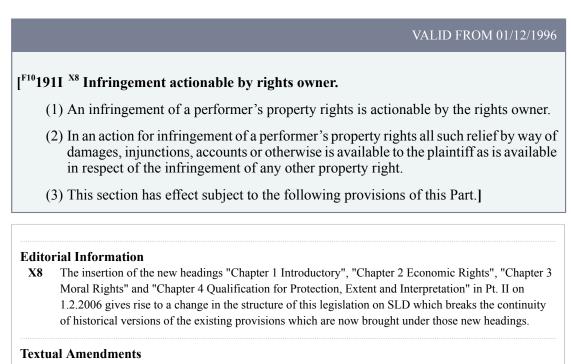


Editorial Information

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

F9 Ss. 191A-191M inserted (1.12.1996) by S.I. 1996/2967, reg. 21(1) (with Pt. III)



F10 Ss. 191A-191M inserted (1.12.1996) by S.I. 1996/2967, reg. 21(1) (with Pt. III)

VALID FROM 01/12/1996

[^{F11}191J ^{X9} 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,

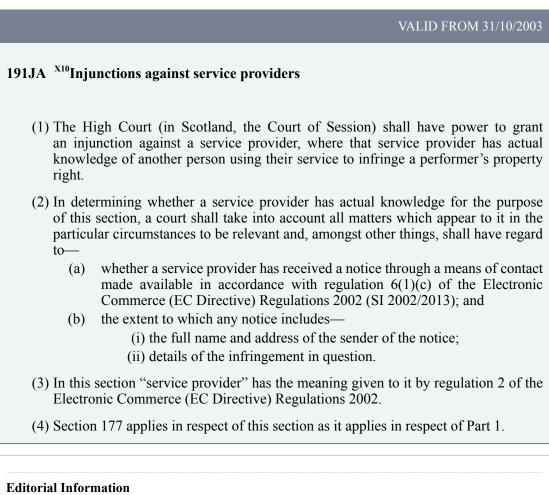
award such additional damages as the justice of the case may require.]

Editorial Information

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.

Textual Amendments

F11 Ss. 191A-191M inserted (1.12.1996) by S.I. 1996/2967, reg. 21(1) (with Pt. III)



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.

VALID FROM 01/12/1996

[^{F12}191K^{X11} 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

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

F12 Ss. 191A-191M inserted (1.12.1996) by S.I. 1996/2967, reg. 21(1) (with Pt. III)

VALID FROM 01/12/1996

[^{F13}191L^{X12} 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 this Part 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

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.

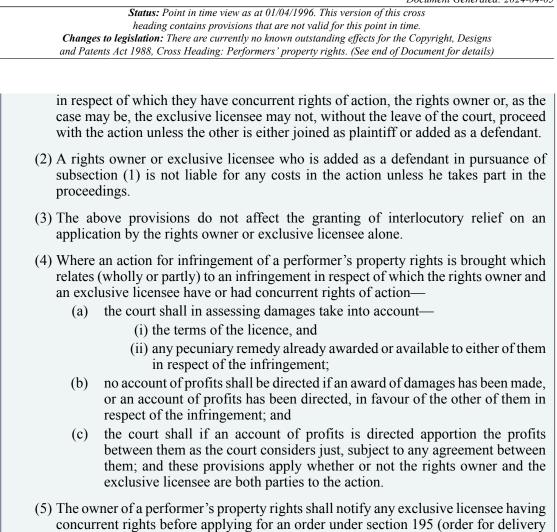
Textual Amendments

F13 Ss. 191A-191M inserted (1.12.1996) by S.I. 1996/2967, reg. 21(1) (with Pt. III)

VALID FROM 01/12/1996

[^{F14}191M^{X13} 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



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

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

F14 Ss. 191A-191M inserted (1.12.1996) by S.I. 1996/2967, reg. 21(1) (with Pt. III)

192 Transmission of rights.

- (1) The rights conferred by this Part are not assignable or transmissible, except to the extent that performers' rights are transmissible in accordance with the following provisions.
- (2) On the death of a person entitled to performer's rights—
 - (a) the rights pass 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 rights are exercisable by his personal representatives;

and references in this Part to the performer, in the context of the person having performers' rights, shall be construed as references to the person for the time being entitled to exercise those rights.

- (3) 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.
- (4) The above provisions do not affect section 185(2)(b) or (3)(b), so far as those provisions confer rights under this Part on a person to whom the benefit of a contract or licence is assigned.
- (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.

Status:

Point in time view as at 01/04/1996. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation:

There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Cross Heading: Performers' property rights.