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STATUTORY INSTRUMENTS

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**2013 No. 1782**

**The Copyright and Duration of Rights  
in Performances Regulations 2013**

**PART 2**

**Amendments to the Copyright, Designs and Patents Act 1988**

**Rights in Performances**

**Right to equitable remuneration for exploitation of sound recording**

7. In section 182D(1) (Right to equitable remuneration for exploitation of sound recording) at the end insert “or, where copyright in the sound recording has expired pursuant to section 191HA(4), from a person who plays the sound recording in public or communicates the sound recording to the public”.

**Duration of rights in sound recordings**

8. In section 191(2) (Duration of rights)—

- (a) in paragraph (b), after “a recording of the performance” insert “, other than a sound recording,”, and
- (b) after that paragraph, insert—
  - “or
  - (c) if during that period a sound recording of the performance is released, 70 years from the end of the calendar year in which it is released,”.

**Rights in relation to an assignment of performers’ property rights in a sound recording**

9. After section 191H insert—

**“191HA Assignment of performer’s property rights in a sound recording**

(1) This section applies where a performer has assigned the following rights concerning a sound recording to the producer of the sound recording—

- (a) reproduction, distribution and making available rights, or
- (b) performer’s property rights.

(2) If, at the end of the 50-year period, the producer has failed to meet one or both of the following conditions, the performer may give a notice in writing to the producer of the performer’s intention to terminate the agreement—

- (a) condition 1 is to issue to the public copies of the sound recording in sufficient quantities;

(b) condition 2 is to make the sound recording available to the public by electronic transmission in such a way that a member of the public may access the recording from a place and at a time chosen by him or her.

(3) If, at any time after the end of the 50-year period, the producer, having met one or both of the conditions referred to in subsection (2), fails to do so, the performer may give a notice in writing to the producer of the performer's intention to terminate the agreement.

(4) If at the end of the period of 12 months beginning with the date of the notice, the producer has not met the conditions referred to in subsection (2), the agreement terminates and the copyright in the sound recording expires with immediate effect.

(5) An agreement is of no effect in so far as it purports to exclude or restrict the right to give a notice under subsection (2) or (3).

(6) A reference in this section to the assignment of rights includes any arrangement having that effect, whether made directly between the parties or through intermediaries.

(7) In this section—

“50-year period” means

(a) where the sound recording is published during the initial period, the period of 50 years from the end of the calendar year in which the sound recording is first published, or

(b) where during the initial period the sound recording is not published but is made available to the public by being played in public or communicated to the public, the period of 50 years from the end of the calendar year in which it was first made available to the public,

but in determining whether a sound recording has been published, played in public or communicated to the public, no account shall be taken of any unauthorised act,

“initial period” means the period beginning on the date the recording is made and ending 50 years from the end of the calendar year in which the sound recording is made,

“producer” means the person for the time being entitled to the copyright in the sound recording,

“sufficient quantities” means such quantity as to satisfy the reasonable requirements of the public for copies of the sound recording,

“unauthorised act” has the same meaning as in section 178.

### **191HB Payment in consideration of assignment**

(1) A performer who, under an agreement relating to the assignment of rights referred to in section 191HA(1) (an “assignment agreement”), is entitled to a non-recurring payment in consideration of the assignment, is entitled to an annual payment for each relevant period from—

(a) the producer, or

(b) where the producer has granted an exclusive licence of the copyright in the sound recording, the licensee under the exclusive licence (the “exclusive licensee”).

(2) In this section, “relevant period” means—

(a) the period of 12 months beginning at the end of the 50-year period, and

(b) each subsequent period of 12 months beginning with the end of the previous period, until the date on which copyright in the sound recording expires.

(3) The producer or, where relevant, the exclusive licensee gives effect to the entitlement under subsection (1) by remitting to a collecting society for distribution to the performer in accordance with its rules an amount for each relevant period equal to 20% of the gross revenue received during that period in respect of—

- (a) the reproduction and issue to the public of copies of the sound recording, and
- (b) the making available to the public of the sound recording 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.

(4) The amount required to be remitted under subsection (3) is payable within 6 months of the end of each relevant period and is recoverable by the collecting society as a debt.

(5) Subsection (6) applies where—

- (a) the performer makes a written request to the producer or, where relevant, the exclusive licensee for information in that person's possession or under that person's control to enable the performer—
  - (i) to ascertain the amount of the annual payment to which the performer is entitled under subsection (1), or
  - (ii) to secure its distribution by the collecting society, and
- (b) the producer or, where relevant, the exclusive licensee does not supply the information within the period of 90 days beginning with the date of the request.

(6) The performer may apply to the county court, or in Scotland to the sheriff, for an order requiring the producer or, where relevant, the exclusive licensee to supply the information.

(7) An agreement is of no effect in so far as it purports to exclude or restrict the entitlement under subsection (1).

(8) In the event of any dispute as to the amount required to be remitted under subsection (3), the performer may apply to the Copyright Tribunal to determine the amount payable.

(9) Where a performer is entitled under an assignment agreement to recurring payments in consideration of the assignment, the payments must, from the end of the 50-year period, be made in full, regardless of any provision in the agreement which entitles the producer to withhold or deduct sums from the amounts payable.

(10) In this section—

- “producer” and “50-year period” each has the same meaning as in section 191HA,
- “exclusive licence” has the same meaning as in section 92, and
- “collecting society” has the same meaning as in section 191G.”.

### **Performers' non-property rights**

**10.** In section 192A(1) (Performer's non-property rights) after the entry for section 183 delete “and” and after the entry for section 184 insert—

“section 191HA (assignment of performer's property rights in a sound recording), and section 191HB (payment in consideration of assignment)”.