



# Copyright, Designs and Patents Act 1988

## 1988 CHAPTER 48

### PART I

#### COPYRIGHT

#### CHAPTER V

##### DEALINGS WITH RIGHTS IN COPYRIGHT WORKS

**Modifications etc. (not altering text)**

**C1** Pt. I Ch. V (ss. 90-95) applied (with modifications) (1.12.1996) by S.I. 1996/2967, reg. 17(1)-(3) (with Pt. III)

#### *Copyright*

#### **90 Assignment and licences.**

- (1) Copyright is transmissible by assignment, by testamentary disposition or by operation of law, as personal or moveable property.
- (2) An assignment or other transmission of copyright may be partial, that is, limited so as to apply—
  - (a) to one or more, but not all, of the things the copyright owner has the exclusive right to do;
  - (b) to part, but not the whole, of the period for which the copyright is to subsist.
- (3) An assignment of copyright is not effective unless it is in writing signed by or on behalf of the assignor.
- (4) A licence granted by a copyright owner is binding on every successor in title to his interest in the copyright, except a purchaser in good faith for valuable consideration

*Status: Point in time view as at 01/10/1996. This version of this chapter 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, Chapter V. (See end of Document for details)*

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 copyright owner shall be construed accordingly.

**Modifications etc. (not altering text)**

**C2** Ss. 90-93, 96-98, 101, 102 applied (1.1.1998) by S.I. 1997/3032, reg. 23 (with Pt. IV)

**91 Prospective ownership of copyright.**

(1) Where by an agreement made in relation to future copyright, and signed by or on behalf of the prospective owner of the copyright, the prospective owner purports to assign the future copyright (wholly or partially) to another person, then if, on the copyright coming into existence, the assignee or another person claiming under him would be entitled as against all other persons to require the copyright to be vested in him, the copyright shall vest in the assignee or his successor in title by virtue of this subsection.

(2) In this Part—

“future copyright” means copyright which will or may come into existence in respect of a future work or class of works or on the occurrence of a future event; and

“prospective owner” shall be construed accordingly, and includes a person who is prospectively entitled to copyright by virtue of such an agreement as is mentioned in subsection (1).

(3) A licence granted by a prospective owner of copyright is binding on every successor in title to his interest (or prospective interest) in the right, 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 copyright owner shall be construed accordingly.

**Modifications etc. (not altering text)**

**C3** Ss. 90-93, 96-98, 101, 102 applied (1.1.1998) by S.I. 1997/3032, reg. 23 (with Pt. IV)

**92 Exclusive licences.**

(1) In this Part an “exclusive licence” means a licence in writing signed by or on behalf of the copyright owner authorising the licensee to the exclusion of all other persons, including the person granting the licence, to exercise a right which would otherwise be exercisable exclusively by the copyright 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.

**Modifications etc. (not altering text)**

**C4** Ss. 90-93, 96-98, 101, 102 applied (1.1.1998) by S.I. 1997/3032, reg. 23 (with Pt. IV)

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### 93 Copyright to pass under will with unpublished work.

Where under a bequest (whether specific or general) a person is entitled, beneficially or otherwise, to—

- (a) an original document or other material thing recording or embodying a literary, dramatic, musical or artistic work which was not published before the death of the testator, or
- (b) an original material thing containing a sound recording or film 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 the copyright in the work in so far as the testator was the owner of the copyright immediately before his death.

#### Modifications etc. (not altering text)

C5 Ss. 90-93, 96-98, 101, 102 applied (1.1.1998) by S.I. 1997/3032, reg. 23 (with Pt. IV)

VALID FROM 01/12/1996

#### [<sup>F1</sup>93A Presumption of transfer of rental right in case of film production agreement.

- (1) Where an agreement concerning film production is concluded between an author and a film producer, the author 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 by virtue of the inclusion of a copy of the author's work in the film.
- (2) In this section "author" means an author, or prospective author, of a literary, dramatic, musical or artistic work.
- (3) Subsection (1) does not apply to any rental right in relation to the film arising by virtue of the inclusion in the film of the screenplay, the dialogue or music specifically created for and used in the film.
- (4) Where this section applies, the absence of signature by or on behalf of the author does not exclude the operation of section 91(1) (effect of purported assignment of future copyright).
- (5) The reference in subsection (1) to an agreement concluded between an author and a film producer includes any agreement having effect between those persons, whether made by them directly or through intermediaries.
- (6) Section 93B (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.]

#### Textual Amendments

F1 S. 93A inserted (1.12.1996) by S.I. 1996/2967, reg. 12 (with Pt. III)

#### Modifications etc. (not altering text)

C6 S. 93A applied (with modifications) (1.12.1996) by S.I. 1996/2967, reg. 32(1) (with Pt. III)

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VALID FROM 01/12/1996

*<sup>F2</sup>Right to equitable remuneration where rental right transferred*

**Textual Amendments**

**F2** S. 93B and crossheading inserted (1.12.1996) by [S.I. 1996/2967](#), [reg. 14\(1\)](#) (with [Pt. III](#))

**<sup>F3</sup>93B Right to equitable remuneration where rental right transferred.**

- (1) Where an author to whom this section applies 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 authors to whom this section applies are—

- (a) the author of a literary, dramatic, musical or artistic work, and
- (b) the principal director of a film.

- (2) The right to equitable remuneration under this section may not be assigned by the author 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 93C (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) References in this section to the transfer of rental right by one person to another include any arrangement having that effect, whether made by them directly or through intermediaries.
- (7) 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 under this section on behalf of more than one author.

**Textual Amendments**

**F3** S. 93B inserted (1.12.1996) by [S.I. 1996/2967](#), [reg. 14\(1\)](#) (with [Pt. III](#))

**Modifications etc. (not altering text)**

- C7** S. 93B applied (with modifications) (1.12.1996) by [S.I. 1996/2967](#), [reg. 32\(2\)](#) (with [Pt. III](#))
- C8** S. 93B restricted (1.12.1996) by [S.I. 1996/2967](#), [reg. 33](#) (with [Pt. III](#))

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#### **F<sup>4</sup>93C 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 93B, 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 under that section 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 author 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.]

#### **Textual Amendments**

**F4** S. 93C inserted (1.12.1996) by [S.I. 1996/2967](#), [reg. 14\(1\)](#) (with [Pt. III](#))

### *Moral rights*

#### **94 Moral rights not assignable.**

The rights conferred by Chapter IV (moral rights) are not assignable.

#### **95 Transmission of moral rights on death.**

- (1) On the death of a person entitled to the right conferred by section 77 (right to identification of author or director), section 80 (right to object to derogatory treatment of work) or section 85 (right to privacy of certain photographs and films)—
  - (a) the right passes to such person as he may by testamentary disposition specifically direct,
  - (b) if there is no such direction but the copyright in the work in question forms part of his estate, the right passes to the person to whom the copyright passes, and
  - (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 copyright forming part of a person's estate passes in part to one person and in part to another, as for example where a bequest is limited so as to apply—

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- (a) to one or more, but not all, of the things the copyright owner has the exclusive right to do or authorise, or
  - (b) to part, but not the whole, of the period for which the copyright is to subsist, any right which passes with the copyright by virtue of subsection (1) is correspondingly divided.
- (3) Where by virtue of subsection (1)(a) or (b) a right becomes exercisable by more than one person—
- (a) it may, in the case of the right conferred by section 77 (right to identification of author or director), be asserted by any of them;
  - (b) it is, in the case of the right conferred by section 80 (right to object to derogatory treatment of work) or section 85 (right to privacy of certain photographs and films), 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
  - (c) any waiver of the right in accordance with section 87 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 infringement after a person's death of the right conferred by section 84 (false attribution) is actionable by his personal representatives.
- (6) 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.

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