



# Copyright, Designs and Patents Act 1988

## 1988 CHAPTER 48

### PART II

#### RIGHTS IN PERFORMANCES

#### [<sup>F1</sup>CHAPTER 2

#### ECONOMIC RIGHTS]

#### <sup>X1</sup>[<sup>F1</sup>Performers' property rights]

#### 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

- F1** Crossheading inserted (1.12.1996) by [S.I. 1996/2967](#), [reg. 21\(1\)](#) (with [Pt. III](#))

#### <sup>X2</sup>[<sup>F2</sup>**191**~~Performers' property rights.~~

- (1) The following rights conferred by [<sup>F3</sup>this Chapter] on a performer—  
reproduction right (section 182A),  
distribution right (section 182B),  
rental right and lending right (section 182C),  
[<sup>F4</sup>making available right (section 182CA),]  
are property rights ("<sup>F5</sup>. . . performer's property rights").

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

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- (2) References in [<sup>F3</sup>this Chapter] 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 [<sup>F3</sup>this Chapter] 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 [<sup>F3</sup>this Chapter] 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.]

#### 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

- F2** Ss. 191A-191M inserted (1.12.1996) by [S.I. 1996/2967](#), **reg. 21(1)** (with Pt. III)
- F3** Words in s. 191A(1)-(4) 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. 191A(1) inserted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), **reg. 7(3)** (with [regs. 31-40](#))
- F5** Word in s. 191A(1) omitted by virtue of [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), **reg. 2**, **Sch. para. 4** (with [reg. 8](#))

### <sup>X3</sup>[<sup>F6</sup>191B] 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 [<sup>F7</sup>this Chapter] to doing anything with, or without, the licence of the rights owner shall be construed accordingly.]

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

#### 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

- F6** Ss. 191A-191M inserted (1.12.1996) by [S.I. 1996/2967](#), [reg. 21\(1\)](#) (with [Pt. III](#))
- F7** Words in s. 191B(4) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006](#) ([S.I. 2006/18](#)), [reg. 2](#), [Sch. para. 8](#) (with [reg. 8](#))

### <sup>X4</sup>~~[<sup>F8</sup>191C~~Prospective ownership of a performer's property rights.

- (1) This section applies where by an agreement made in relation to a future recording of a performance, and signed by or on behalf of the performer, the performer purports to assign his performer's property rights (wholly or partially) to another person.
- (2) If on the rights coming into existence the assignee or another person claiming under him would be entitled as against all other persons to require the rights to be vested in him, they shall vest in the assignee or his successor in title by virtue of this subsection.
- (3) A licence granted by a prospective owner of a performer's property rights is binding on every successor in title to his interest (or prospective 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.

References in [<sup>F9</sup>this Chapter] to doing anything with, or without, the licence of the rights owner shall be construed accordingly.

- (4) In subsection (3) "prospective owner" in relation to a performer's property rights means a person who is prospectively entitled to those rights by virtue of such an agreement as is mentioned in subsection (1).]

#### 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

- F8** Ss. 191A-191M inserted (1.12.1996) by [S.I. 1996/2967](#), [reg. 21\(1\)](#) (with [Pt. III](#))
- F9** Words in s. 191C(3) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006](#) ([S.I. 2006/18](#)), [reg. 2](#), [Sch. para. 8](#) (with [reg. 8](#))

### <sup>X5</sup>~~[<sup>F10</sup>191D~~Exclusive licences.

- (1) In [<sup>F11</sup>this Chapter] 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.

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

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- (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

**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

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

**F11** Words in s. 191D(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](#))

### <sup>X6[F12]</sup> **191 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

**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

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

### <sup>X7[F13]</sup> **191 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.

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

- (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

- 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

- F13** 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](#))

### <sup>X8</sup><sup>F14</sup>**191 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

- X8** 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

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

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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](#))

#### 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](#))

### <sup>x9</sup><sup>F15</sup>**191H** 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 191G, 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 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 performer 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.]

#### 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

**F15** Ss. 191A-191M inserted (1.12.1996) by [S.I. 1996/2967](#), [reg. 21\(1\)](#) (with [Pt. III](#))

### <sup>F16</sup>**191H** Assignment of performer's property rights in a sound recording

- (1) This section applies where a performer has [<sup>F17</sup>by an agreement] assigned the following rights concerning a sound recording to the producer of the sound recording—

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- (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.

#### Textual Amendments

**F16** Ss. 191HA-191HB inserted (1.11.2013) by [The Copyright and Duration of Rights in Performances Regulations 2013 \(S.I. 2013/1782\)](#), regs. 1, 9 (with regs. 11-27)



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

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**F17** Words in s. 191HA(1) inserted (6.4.2014) by [The Copyright and Duration of Rights in Performances \(Amendment\) Regulations 2014 \(S.I. 2014/434\)](#), regs. 1, 2

### **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.



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

- (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.]

#### Textual Amendments

**F16** Ss. 191HA-191HB inserted (1.11.2013) by [The Copyright and Duration of Rights in Performances Regulations 2013 \(S.I. 2013/1782\)](#), regs. 1, 9 (with regs. 11-27)

### <sup>X10</sup><sup>F18</sup>**19 Infringement actionable by rights owner.**

- (1) An infringement of a performer's property rights is actionable by the rights owner.
- (2) In an action for infringement of a performer's property rights all such relief by way of damages, injunctions, accounts or otherwise is available to the plaintiff as is available in respect of the infringement of any other property right.
- (3) This section has effect subject to the following provisions of [<sup>F19</sup>this Chapter].]

#### Editorial Information

**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.

#### Textual Amendments

**F18** Ss. 191A-191M inserted (1.12.1996) by [S.I. 1996/2967](#), [reg. 21\(1\)](#) (with [Pt. III](#))

**F19** Words in s. 191I(3) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), [reg. 2](#), [Sch. para. 8](#) (with [reg. 8](#))

### <sup>X11</sup><sup>F20</sup>**19 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.]

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

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#### 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

**F20** Ss. 191A-191M inserted (1.12.1996) by [S.I. 1996/2967](#), [reg. 21\(1\)](#) (with [Pt. III](#))

### <sup>X12</sup>~~F21~~ **191A Injunctions against service providers**

- (1) The High Court (in Scotland, the Court of Session) shall have power to grant an injunction against a service provider, where that service provider has actual knowledge of another person using their service to infringe a performer's property right.
- (2) In determining whether a service provider has actual knowledge for the purpose of this section, a court shall take into account all matters which appear to it in the particular circumstances to be relevant and, amongst other things, shall have regard to—
  - (a) whether a service provider has received a notice through a means of contact made available in accordance with regulation 6(1)(c) of the Electronic Commerce (EC Directive) Regulations 2002 (SI 2002/2013); and
  - (b) the extent to which any notice includes—
    - (i) the full name and address of the sender of the notice;
    - (ii) details of the infringement in question.
- (3) In this section “ service provider ” has the meaning given to it by regulation 2 of the Electronic Commerce ( EC Directive) Regulations 2002.
- (4) Section 177 applies in respect of this section as it applies in respect of Part 1.]

#### 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

**F21** S. 191JA inserted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), [reg. 27\(2\)](#) (with [regs. 32, 33](#))

### <sup>X13</sup>~~F22~~ **191B 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—

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

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- (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.]

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**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.

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**Textual Amendments**

**F22** Ss. 191A-191M inserted (1.12.1996) by [S.I. 1996/2967](#), **reg. 21(1)** (with [Pt. III](#))

<sup>X14</sup><sup>F23</sup> **19 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 [<sup>F24</sup>this Chapter] 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.]

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**Editorial Information**

**X14** 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.

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**Textual Amendments**

**F23** Ss. 191A-191M inserted (1.12.1996) by [S.I. 1996/2967](#), **reg. 21(1)** (with [Pt. III](#))

**F24** Words in s. 191L(2) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006](#) ([S.I. 2006/18](#)), **reg. 2**, **Sch. para. 8** (with [reg. 8](#))

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

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**X15<sup>F25</sup> 191M 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 in respect of which they have concurrent rights of action, the rights owner or, as the case may be, the exclusive licensee may not, without the leave of the court, proceed with the action unless the other is either joined as plaintiff or added as a defendant.
- (2) A rights owner or exclusive licensee who is added as a defendant in pursuance of subsection (1) is not liable for any costs in the action unless he takes part in the proceedings.
- (3) The above provisions do not affect the granting of interlocutory relief on an application by the rights owner or exclusive licensee alone.
- (4) Where an action for infringement of a performer's property rights is brought which relates (wholly or partly) to an infringement in respect of which the rights owner and an exclusive licensee have or had concurrent rights of action—
  - (a) the court shall in assessing damages take into account—
    - (i) the terms of the licence, and
    - (ii) any pecuniary remedy already awarded or available to either of them in respect of the infringement;
  - (b) no account of profits shall be directed if an award of damages has been made, or an account of profits has been directed, in favour of the other of them in respect of the infringement; and
  - (c) the court shall if an account of profits is directed apportion the profits between them as the court considers just, subject to any agreement between them; and these provisions apply whether or not the rights owner and the exclusive licensee are both parties to the action.
- (5) The owner of a performer's property rights shall notify any exclusive licensee having 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.]

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**Editorial Information**

**X15** 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.

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**Textual Amendments**

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**Changes to legislation:**

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