



Copyright, Designs and Patents Act 1988

1988 CHAPTER 48

PART II

RIGHTS IN PERFORMANCES

Performers' rights

181 ^{X1} Qualifying performances.

A performance is a qualifying performance for the purposes of the provisions of this Part relating to performers' right if it is given by a qualifying individual (as defined in section 206) or takes place in a qualifying country (as so defined).

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.

[^{F1}182] **Consent required for recording, &c. of live performance.**

- (1) A performer's rights are infringed by a person who, without his consent—
- (a) makes a recording of the whole or any substantial part of a qualifying performance directly from the live performance,
 - (b) broadcasts live, or includes live in a cable programme service, the whole or any substantial part of a qualifying performance,
 - (c) makes a recording of the whole or any substantial part of a qualifying performance directly from a broadcast of, or cable programme including, the live performance.

Status: Point in time view as at 01/10/2003. 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' rights. (See end of Document for details)

- (2) A performer's rights are not infringed by the making of any such recording by a person for his private and domestic use.
- (3) In an action for infringement of a performer's rights brought by virtue of this section damages shall not be awarded against a defendant who shows that at the time of the infringement he believed on reasonable grounds that consent had been given.]

Textual Amendments

F1 S. 182 substituted (1.12.1996) by S.I. 1996/2967, reg. 20(1) (with Pt. III)

[^{F2}182A Consent required for copying of recording.

- (1) A performer's rights are infringed by a person who, without his consent, makes, otherwise than for his private and domestic use, a copy of a recording of the whole or any substantial part of a qualifying performance.
- (2) It is immaterial whether the copy is made directly or indirectly.
- (3) The right of a performer under this section to authorise or prohibit the making of such copies is referred to in this Part as "reproduction right".]

Textual Amendments

F2 S. 182A inserted (1.12.1996) by S.I. 1996/2967, reg. 20(2) (with Pt. III)

[^{F3}182B ^{X2} Consent required for issue of copies to public.

- (1) A performer's rights are infringed by a person who, without his consent, issues to the public copies of a recording of the whole or any substantial part of a qualifying performance.
- (2) References in this Part to the issue to the public of copies of a recording are to—
 - (a) the act of putting into circulation in the EEA copies not previously put into circulation in the EEA by or with the consent of the performer, or
 - (b) the act of putting into circulation outside the EEA copies not previously put into circulation in the EEA or elsewhere.
- (3) References in this Part to the issue to the public of copies of a recording do not include—
 - (a) any subsequent distribution, sale, hiring or loan of copies previously put into circulation (but see section 182C: consent required for rental or lending), or
 - (b) any subsequent importation of such copies into the United Kingdom or another EEA state,

except so far as paragraph (a) of subsection (2) applies to putting into circulation in the EEA copies previously put into circulation outside the EEA.
- (4) References in this Part to the issue of copies of a recording of a performance include the issue of the original recording of the live performance.

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- (5) The right of a performer under this section to authorise or prohibit the issue of copies to the public is referred to in this Part as “distribution right”.]

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

- F3** S. 182B inserted (1.12.1996) by S.I. 1996/2967, reg. 20(2) (with Pt. III)

[^{F4}182C Consent required for rental or lending of copies to public.

- (1) A performer's rights are infringed by a person who, without his consent, rents or lends to the public copies of a recording of the whole or any substantial part of a qualifying performance.
- (2) In this Part, subject to the following provisions of this section—
- (a) “rental” means making a copy of a recording available for use, on terms that it will or may be returned, for direct or indirect economic or commercial advantage, and
- (b) “lending” means making a copy of a recording available for use, on terms that it will or may be returned, otherwise than for direct or indirect economic or commercial advantage, through an establishment which is accessible to the public.
- (3) The expressions “rental” and “lending” do not include—
- (a) making available for the purpose of public performance, playing or showing in public, broadcasting or inclusion in a cable programme service;
- (b) making available for the purpose of exhibition in public; or
- (c) making available for on-the-spot reference use.
- (4) The expression “lending” does not include making available between establishments which are accessible to the public.
- (5) Where lending by an establishment accessible to the public gives rise to a payment the amount of which does not go beyond what is necessary to cover the operating costs of the establishment, there is no direct or indirect economic or commercial advantage for the purposes of this section.
- (6) References in this Part to the rental or lending of copies of a recording of a performance include the rental or lending of the original recording of the live performance.
- (7) In this Part—
- “rental right” means the right of a performer under this section to authorise or prohibit the rental of copies to the public, and
- “lending right” means the right of a performer under this section to authorise or prohibit the lending of copies to the public.]

Status: Point in time view as at 01/10/2003. 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' rights. (See end of Document for details)

Textual Amendments

F4 S. 182C inserted (1.12.1996) by S.I. 1996/2967, reg. 20(2) (with Pt. III)

VALID FROM 31/10/2003

^{X3}182CA Consent required for making available to the public

- (1) A performer's rights are infringed by a person who, without his consent, makes available to the public a recording of the whole or any substantial part of a qualifying performance by electronic transmission in such a way that members of the public may access the recording from a place and at a time individually chosen by them.
- (2) The right of a performer under this section to authorise or prohibit the making available to the public of a recording is referred to in this Part as "making available right".

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.

[^{F5}182D Right to equitable remuneration for exploitation of sound recording.

- (1) Where a commercially published sound recording of the whole or any substantial part of a qualifying performance—
 - (a) is played in public, or
 - (b) is included in a broadcast or cable programme service,

the performer is entitled to equitable remuneration from the owner of the copyright in the sound recording.

- (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) 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 the following provisions.
- (4) In default of agreement as to the amount payable by way of equitable remuneration, the person by or to whom it is payable may apply to the Copyright Tribunal to determine the amount payable.

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- (5) 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.
- (6) 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 sound recording.
- (7) An agreement is of no effect in so far as it purports—
- (a) to exclude or restrict the right to equitable remuneration under this section, or
 - (b) to prevent a person questioning the amount of equitable remuneration or to restrict the powers of the Copyright Tribunal under this section.]

Textual Amendments

F5 S. 182D inserted (1.12.1996) by S.I. 1996/2967, reg. 20(2) (with Pt. III)

183 Infringement of performer's rights by use of recording made without consent.

A performer's rights are infringed by a person who, without his consent—

- (a) shows or plays in public the whole or any substantial part of a qualifying performance, or
- (b) broadcasts or includes in a cable programme service the whole or any substantial part of a qualifying performance,

by means of a recording which was, and which that person knows or has reason to believe was, made without the performer's consent.

184 ^{X4} Infringement of performer's rights by importing, possessing or dealing with illicit recording.

(1) A performer's rights are infringed by a person who, without his consent—

- (a) imports into the United Kingdom otherwise than for his private and domestic use, or
- (b) in the course of a business possesses, sells or lets for hire, offers or exposes for sale or hire, or distributes,

a recording of a qualifying performance which is, and which that person knows or has reason to believe is, an illicit recording.

(2) Where in an action for infringement of a performer's rights brought by virtue of this section a defendant shows that the illicit recording was innocently acquired by him or a predecessor in title of his, the only remedy available against him in respect of the infringement is damages not exceeding a reasonable payment in respect of the act complained of.

Status: Point in time view as at 01/10/2003. This version of this cross heading contains provisions that are not valid for this point in time.

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- (3) In subsection (2) “innocently acquired” means that the person acquiring the recording did not know and had no reason to believe that it was an illicit recording.

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.

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