



Copyright, Designs and Patents Act 1988

1988 CHAPTER 48

PART II

RIGHTS IN PERFORMANCES

Remedies for infringement

194 Infringement actionable as breach of statutory duty

An infringement of any of the rights conferred by this Part is actionable by the person entitled to the right as a breach of statutory duty.

195 Order for delivery up

- (1) Where a person has in his possession, custody or control in the course of a business an illicit recording of a performance, a person having performer's rights or recording rights in relation to the performance under this Part may apply to the court for an order that the recording be delivered up to him or to such other person as the court may direct.
- (2) An application shall not be made after the end of the period specified in section 203; and no order shall be made unless the court also makes, or it appears to the court that there are grounds for making, an order under section 204 (order as to disposal of illicit recording).
- (3) A person to whom a recording is delivered up in pursuance of an order under this section shall, if an order under section 204 is not made, retain it pending the making of an order, or the decision not to make an order, under that section.
- (4) Nothing in this section affects any other power of the court.

196 Right to seize illicit recordings

- (1) An illicit recording of a performance which is found exposed or otherwise immediately available for sale or hire, and in respect of which a person would be entitled to apply for an order under section 195, may be seized and detained by him or a person authorised by him.

The right to seize and detain is exercisable subject to the following conditions and is subject to any decision of the court under section 204 (order as to disposal of illicit recording).

- (2) Before anything is seized under this section notice of the time and place of the proposed seizure must be given to a local police station.
- (3) A person may for the purpose of exercising the right conferred by this section enter premises to which the public have access but may not seize anything in the possession, custody or control of a person at a permanent or regular place of business of his and may not use any force.
- (4) At the time when anything is seized under this section there shall be left at the place where it was seized a notice in the prescribed form containing the prescribed particulars as to the person by whom or on whose authority the seizure is made and the grounds on which it is made.
- (5) In this section—
 - “premises” includes land, buildings, fixed or moveable structures, vehicles, vessels, aircraft and hovercraft; and
 - “prescribed” means prescribed by order of the Secretary of State.
- (6) An order of the Secretary of State under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

197 Meaning of “illicit recording”

- (1) In this Part “illicit recording”, in relation to a performance, shall be construed in accordance with this section.
- (2) For the purposes of a performer’s rights, a recording of the whole or any substantial part of a performance of his is an illicit recording if it is made, otherwise than for private purposes, without his consent.
- (3) For the purposes of the rights of a person having recording rights, a recording of the whole or any substantial part of a performance subject to the exclusive recording contract is an illicit recording if it is made, otherwise than for private purposes, without his consent or that of the performer.
- (4) For the purposes of sections 198 and 199 (offences and orders for delivery up in criminal proceedings), a recording is an illicit recording if it is an illicit recording for the purposes mentioned in subsection (2) or subsection (3).
- (5) In this Part “illicit recording” includes a recording falling to be treated as an illicit recording by virtue of any of the following provisions of Schedule 2—
 - paragraph 4(3) (recordings made for purposes of instruction or examination),
 - paragraph 6(2) (recordings made by educational establishments for educational purposes),

paragraph 12(2) (recordings of performance in electronic form retained on transfer of principal recording), or

paragraph 16(3) (recordings made for purposes of broadcast or cable programme),

but otherwise does not include a recording made in accordance with any of the provisions of that Schedule.

(6) It is immaterial for the purposes of this section where the recording was made.