



# Copyright, Designs and Patents Act 1988

## 1988 CHAPTER 48

### PART II

#### RIGHTS IN PERFORMANCES

##### *Rights of person having recording rights*

#### **185 Exclusive recording contracts and persons having recording rights**

- (1) In this Part an “exclusive recording contract” means a contract between a performer and another person under which that person is entitled to the exclusion of all other persons (including the performer) to make recordings of one or more of his performances with a view to their commercial exploitation.
- (2) References in this Part to a “person having recording rights”, in relation to a performance, are (subject to subsection (3)) to a person—
  - (a) who is party to and has the benefit of an exclusive recording contract to which the performance is subject, or
  - (b) to whom the benefit of such a contract has been assigned, and who is a qualifying person.
- (3) If a performance is subject to an exclusive recording contract but the person mentioned in subsection (2) is not a qualifying person, references in this Part to a “person having recording rights” in relation to the performance are to any person—
  - (a) who is licensed by such a person to make recordings of the performance with a view to their commercial exploitation, or
  - (b) to whom the benefit of such a licence has been assigned, and who is a qualifying person.
- (4) In this section “with a view to commercial exploitation” means with a view to the recordings being sold or let for hire, or shown or played in public.

**186 Consent required for recording of performance subject to exclusive contract**

- (1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent or that of the performer, makes a recording of the whole or any substantial part of the performance, otherwise than for his private and domestic use.
- (2) In an action for infringement of those 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.

**187 Infringement of recording rights by use of recording made without consent**

- (1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent or, in the case of a qualifying performance, that of the performer—
  - (a) shows or plays in public the whole or any substantial part of the performance, or
  - (b) broadcasts or includes in a cable programme service the whole or any substantial part of the performance,by means of a recording which was, and which that person knows or has reason to believe was, made without the appropriate consent.
- (2) The reference in subsection (1) to “the appropriate consent” is to the consent of—
  - (a) the performer, or
  - (b) the person who at the time the consent was given had recording rights in relation to the performance (or, if there was more than one such person, of all of them).

**188 Infringement of recording rights by importing, possessing or dealing with illicit recording**

- (1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent or, in the case of a qualifying performance, that of the performer—
  - (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 the 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 those 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.
- (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.