



# 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>*Delivery up or seizure of illicit recordings*]

#### <sup>X1</sup>197 Meaning of “illicit recording”.

- (1) In [<sup>F1</sup>this Chapter]“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 [<sup>F1</sup>this Chapter]“illicit recording” includes a recording falling to be treated as an illicit recording by virtue of any of the following provisions of Schedule 2—  
[<sup>F2</sup>paragraph 1D(3) (copies for text and data analysis for non-commercial research),]

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*Changes to legislation:* There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Section 197. (See end of Document for details)

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[<sup>F3</sup>paragraph 3A(5) or (6) or 3B(10) (accessible copies of recordings made for disabled persons)]

[<sup>F4</sup>paragraph 1B(5) and (7) (personal copies of recordings for private use),]

<sup>F5</sup>  
...

[<sup>F6</sup>paragraph 6(5) (recording by educational establishments of broadcasts),]

[<sup>F2</sup>paragraph 6F(5)(b) (copying by librarians: single copies of published recordings),]

[<sup>F2</sup>paragraph 6G(5)(b) (copying by librarians or archivists: single copies of unpublished recordings),]

[<sup>F2</sup>paragraph 6ZA(7) (copying and use of extracts of recordings by educational establishments),]

paragraph 12(2) (recordings of performance in electronic form retained on transfer of principal recording), <sup>F7</sup> . . .

[<sup>F2</sup>paragraph 14(6)(b) (recordings of folksongs),]

paragraph 16(3) (recordings made for purposes of broadcast <sup>F8</sup> . . . ),

[<sup>F9</sup>paragraph 17A(2) (recording for the purposes of time-shifting), or

paragraph 17B(2) (photographs of broadcasts),]

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.

#### 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** Words in s. 197(1)(5) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), reg. 2, **Sch. para. 8** (with reg. 8)
- F2** Words in s. 197(5) inserted (1.6.2014) by [The Copyright and Rights in Performances \(Research, Education, Libraries and Archives\) Regulations 2014 \(S.I. 2014/1372\)](#), reg. 1, **Sch. para. 7(a)**
- F3** Words in s. 197(5) inserted (1.6.2014) by [The Copyright and Rights in Performances \(Disability\) Regulations 2014 \(S.I. 2014/1384\)](#), reg. 1(1), **Sch. para. 4**
- F4** Words in s. 197(5) inserted (1.10.2014) by [The Copyright and Rights in Performances \(Personal Copies for Private Use\) Regulations 2014 \(S.I. 2014/2361\)](#), regs. 1(1), **4(2)** (with reg. 5) (but note that the amending S.I. was quashed with prospective effect by the High Court in the case of *R (British Academy of Songwriters, Composers and Authors and others) v Secretary of State for Business, Innovation and Skills* [2015] EWHC 2041 (Admin), 17 July 2015)
- F5** Words in s. 197(5) omitted (1.6.2014) by virtue of [The Copyright and Rights in Performances \(Research, Education, Libraries and Archives\) Regulations 2014 \(S.I. 2014/1372\)](#), reg. 1, **Sch. para. 7(b)**
- F6** Words in s. 197(5) substituted (1.6.2014) by [The Copyright and Rights in Performances \(Research, Education, Libraries and Archives\) Regulations 2014 \(S.I. 2014/1372\)](#), reg. 1, **Sch. para. 7(c)**
- F7** Words in s. 197(5) repealed (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), reg. 2(2), **Sch. 2** (with regs. 31–40)
- F8** Words in s. 197(5) repealed (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), reg. 2(2), **Sch. 2** (with regs. 31–40)

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**F9** Words in s. 197(5) inserted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), **reg. 20(4)** (with [regs. 31-40](#))

**Changes to legislation:**

There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Section 197.