



Copyright, Designs and Patents Act 1988

1988 CHAPTER 48

PART II

RIGHTS IN PERFORMANCES

[^{F1}CHAPTER 2

ECONOMIC RIGHTS]

^{x1} *Offences*

^{x1}198 Criminal liability for making, dealing with or using illicit recordings.

- (1) A person commits an offence who without sufficient consent—
- (a) makes for sale or hire, or
 - (b) imports into the United Kingdom otherwise than for his private and domestic use, or
 - (c) possesses in the course of a business with a view to committing any act infringing the rights conferred by [^{F1}this Chapter], or
 - (d) in the course of a business—
 - (i) sells or lets for hire, or
 - (ii) offers or exposes for sale or hire, or
 - (iii) distributes,a recording which is, and which he knows or has reason to believe is, an illicit recording.

[^{F2}(1A) A person who infringes a performer's making available right—

- (a) in the course of a business, or
- (b) otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the making available right,

Status: Point in time view as at 08/06/2010. This version of this provision has been superseded.

Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Section 198. (See end of Document for details)

commits an offence if he knows or has reason to believe that, by doing so, he is infringing the making available right in the recording.]

(2) A person commits an offence who causes a recording of a performance made without sufficient consent to be—

(a) shown or played in public, or

[^{F3}(b) communicated to the public,]

thereby infringing any of the rights conferred by [^{F1}this Chapter], if he knows or has reason to believe that those rights are thereby infringed.

(3) In subsections (1) and (2) “sufficient consent” means—

(a) in the case of a qualifying performance, the consent of the performer, and

(b) in the case of a non-qualifying performance subject to an exclusive recording contract—

(i) for the purposes of subsection (1)(a) (making of recording), the consent of the performer or the person having recording rights, and

(ii) for the purposes of subsection (1)(b), (c) and (d) and subsection (2) (dealing with or using recording), the consent of the person having recording rights.

The references in this subsection to the person having recording rights are to the person having those rights at the time the consent is given or, if there is more than one such person, to all of them.

(4) No offence is committed under subsection (1) or (2) by the commission of an act which by virtue of any provision of Schedule 2 may be done without infringing the rights conferred by [^{F1}this Chapter].

(5) A person guilty of an offence under subsection (1)(a), (b) or (d)(iii) is liable—

(a) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding [^{F4}£50,000], or both;

(b) on conviction on indictment to a fine or imprisonment for a term not exceeding [^{F5}ten] years, or both.

[^{F6}(5A) A person guilty of an offence under subsection (1A) is liable—

(a) on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding [^{F4}£50,000], or both;

(b) on conviction on indictment to a fine or imprisonment for a term not exceeding two years, or both.]

(6) A person guilty of any other offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale or imprisonment for a term not exceeding six months, or both.

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.

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Textual Amendments

- F1** Words in s. 198(1)(c)(2)(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](#))
- F2** S. 198(1A) inserted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), [reg. 26\(3\)\(a\)](#) (with [regs. 31-40](#))
- F3** S. 198(2)(b) substituted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), [reg. 2\(1\)](#), [Sch. 1 para. 4\(5\)](#) (with [regs. 31-40](#))
- F4** Words in s. 198(5)(a)(5A)(a) substituted (8.6.2010) by [Digital Economy Act 2010 \(c. 24\)](#), [ss. 42\(3\), 47\(1\)](#)
- F5** S. 198(5)(b) substituted (20.11.2002) by [2002 c. 25, s. 1\(3\)\(5\)](#); [S.I. 2002/2749](#), [art. 2](#)
- F6** S. 198(5A) inserted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), [reg. 26\(3\)\(b\)](#) (with [regs. 31-40](#))

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