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STATUTORY INSTRUMENTS

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**1996 No. 2967**

**The Copyright and Related Rights Regulations 1996**

**PART II**

**AMENDMENTS OF THE COPYRIGHT, DESIGNS AND PATENTS ACT 1988**

*Rental and lending right*

**Rental or lending of copyright work**

**10.**—(1) In section 16 (the acts restricted by copyright in a work), in subsection (1), after paragraph (b) insert—

“(ba) to rent or lend the work to the public (see section 18A);”.

(2) After section 18 (infringement of copyright by issue of copies of work), insert—

**“Infringement by rental or lending of work to the public.**

**18A.**—(1) The rental or lending of copies of the work to the public is an act restricted by the copyright in—

- (a) a literary, dramatic or musical work,
- (b) an artistic work, other than—
  - (i) a work of architecture in the form of a building or a model for a building, or
  - (ii) a work of applied art, or
- (c) a film or a sound recording.

(2) In this Part, subject to the following provisions of this section—

- (a) “rental” means making a copy of the work 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 the work 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 work include the rental or lending of the original.”

(3) In section 178 (minor definitions), at the appropriate place insert—

““rental right” means the right of a copyright owner to authorise or prohibit the rental of copies of the work (see section 18A);”;

and omit the definition of “rental”.

(4) In section 179 (index of defined expressions), in the entry relating to the expression “rental” for “section 178” substitute “section 18A(2) to (6)”; and at the appropriate places insert—

“lending section 18A(2) to (6)”

“rental right section 178”.

### **Permitted lending of copyright works**

**11.**—(1) In Chapter III of Part I (acts permitted in relation to copyright works), in the sections relating to education, after section 36 insert—

#### **“Lending of copies by educational establishments**

**36A.** Copyright in a work is not infringed by the lending of copies of the work by an educational establishment.”

(2) In the same Chapter, in the sections relating to libraries and archives, after section 40 insert—

#### **“Lending of copies by libraries or archives.**

**40A.**—(1) Copyright in a work of any description is not infringed by the lending of a book by a public library if the book is within the public lending right scheme. For this purpose—

- (a) “the public lending right scheme” means the scheme in force under section 1 of the Public Lending Right Act 1979, and
- (b) a book is within the public lending right scheme if it is a book within the meaning of the provisions of the scheme relating to eligibility, whether or not it is in fact eligible.

(2) Copyright in a work is not infringed by the lending of copies of the work by a prescribed library or archive (other than a public library) which is not conducted for profit.”

(3) In the same Chapter for section 66 (rental of sound recordings, films and computer programs), and the heading preceding it, substitute—

*“Miscellaneous: lending of works and playing of sound recordings*

#### **Lending to public of copies of certain works.**

**66.**—(1) The Secretary of State may by order provide that in such cases as may be specified in the order the lending to the public of copies of literary, dramatic, musical or artistic works, sound recordings or films shall be treated as licensed by the copyright owner subject only to the payment of such reasonable royalty or other payment as may be agreed or determined in default of agreement by the Copyright Tribunal.

(2) No such order shall apply if, or to the extent that, there is a licensing scheme certified for the purposes of this section under section 143 providing for the grant of licences.

(3) An order may make different provision for different cases and may specify cases by reference to any factor relating to the work, the copies lent, the lender or the circumstances of the lending.

(4) An order shall be made by statutory instrument; and no order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

(5) Nothing in this section affects any liability under section 23 (secondary infringement: possessing or dealing with infringing copy) in respect of the lending of infringing copies.”

(4) In section 143(1) (certification of licensing schemes: relevant provisions), for paragraph (c) substitute—

“(c) section 66 (lending to public of copies of certain works),”.

(5) In section 178 (minor definitions), insert at the appropriate place—

““public library” means a library administered by or on behalf of—

(a) in England and Wales, a library authority within the meaning of the Public Libraries and Museums Act 1964;

(b) in Scotland, a statutory library authority within the meaning of the Public Libraries (Scotland) Act 1955;

(c) in Northern Ireland, an Education and Library Board within the meaning of the Education and Libraries (Northern Ireland) Order 1986;”.

(6) In section 179 (index of defined expressions), at the appropriate place insert—

“public library section 178”.

(7) The following provisions (which relate to lending by public libraries) are repealed—

section 4(2) of the Public Libraries (Scotland) Act 1955(1),

section 8(6) of the Public Libraries and Museums Act 1964(2),

Article 77(3) of the Education and Libraries (Northern Ireland) Order 1986(3),

paragraphs 6, 8 and 34 of Schedule 7 to the Copyright, Designs and Patents Act 1988(4) (which insert the above provisions).

## **Presumption of transfer of rental right in case of film production agreement**

**12.** In Chapter V of Part I (dealings with rights in copyright works), after section 93 insert—

### **“Presumption of transfer of rental right in case of film production agreement.**

**93A.—**(1) Where an agreement concerning film production is concluded between an author and a film producer, the author shall be presumed, unless the agreement provides to the contrary, to have transferred to the film producer any rental right in relation to the film arising by virtue of the inclusion of a copy of the author’s work in the film.

(2) In this section “author” means an author, or prospective author, of a literary, dramatic, musical or artistic work.

(3) Subsection (1) does not apply to any rental right in relation to the film arising by virtue of the inclusion in the film of the screenplay, the dialogue or music specifically created for and used in the film.

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(1) 1955 c. 27.  
(2) 1964 c. 75.  
(3) S.I.1986/594 (N.I.3).  
(4) 1988 c. 48.

(4) Where this section applies, the absence of signature by or on behalf of the author does not exclude the operation of section 91(1) (effect of purported assignment of future copyright).

(5) The reference in subsection (1) to an agreement concluded between an author and a film producer includes any agreement having effect between those persons, whether made by them directly or through intermediaries.

(6) Section 93B (right to equitable remuneration on transfer of rental right) applies where there is a presumed transfer by virtue of this section as in the case of an actual transfer.”.

### **Rental and lending: applications to Copyright Tribunal**

**13.**—(1) In section 133 (licences to reflect payments in respect of underlying rights), for subsection (1) (considerations relevant to rental of certain works) substitute—

“(1) In considering what charges should be paid for a licence—

- (a) on a reference or application under this Chapter relating to licences for the rental or lending of copies of a work, or
- (b) on an application under section 142 (royalty or other sum payable for lending of certain works), the Copyright Tribunal shall take into account any reasonable payments which the owner of the copyright in the work is liable to make in consequence of the granting of the licence, or of the acts authorised by the licence, to owners of copyright in works included in that work.”.

(2) For section 142 (royalty or other sum payable for rental of sound recording, film or computer program), and the heading preceding it, substitute—

*“Royalty or other sum payable for lending of certain works*

#### **142 Royalty or other sum payable for lending of certain works.**

(1) An application to settle the royalty or other sum payable in pursuance of section 66 (lending of copies of certain copyright works) may be made to the Copyright Tribunal by the copyright owner or the person claiming to be treated as licensed by him.

(2) The Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.

(3) Either party may subsequently apply to the Tribunal to vary the order, and the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.

(4) An application under subsection (3) shall not, except with the special leave of the Tribunal, be made within twelve months from the date of the original order or of the order on a previous application under that subsection.

(5) An order under subsection (3) has effect from the date on which it is made or such later date as may be specified by the Tribunal.”.

(3) In section 149 (jurisdiction of the Copyright Tribunal), in paragraph (e) for “rental of sound recording, film or computer program” substitute “lending of certain works”.

### **Right to equitable remuneration where rental right transferred**

**14.**—(1) In Chapter V of Part I (dealings with rights in copyright works), after section 93A (inserted by regulation 12) insert—

*“Right to equitable remuneration where rental right transferred*

**Right to equitable remuneration where rental right transferred.**

**93B.**—(1) Where an author to whom this section applies has transferred his rental right concerning a sound recording or a film to the producer of the sound recording or film, he retains the right to equitable remuneration for the rental.

The authors to whom this section applies are—

- (a) the author of a literary, dramatic, musical or artistic work, and
- (b) the principal director of a film.

(2) The right to equitable remuneration under this section may not be assigned by the author 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) Equitable remuneration under this section is payable by the person for the time being entitled to the rental right, that is, the person to whom the right was transferred or any successor in title of his.

(4) 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 section 93C (reference of amount to Copyright Tribunal).

(5) An agreement is of no effect in so far as it purports to exclude or restrict the right to equitable remuneration under this section.

(6) References in this section to the transfer of rental right by one person to another include any arrangement having that effect, whether made by them directly or through intermediaries.

(7) In this section a “collecting society” means a society or other organisation which has as its main object, or one of its main objects, the exercise of the right to equitable remuneration under this section on behalf of more than one author.

**Equitable remuneration: reference of amount to Copyright Tribunal.**

**93C.**—(1) In default of agreement as to the amount payable by way of equitable remuneration under section 93B, the person by or to whom it is payable may apply to the Copyright Tribunal to determine the amount payable.

(2) A person to or by whom equitable remuneration is payable under that section 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.

(3) 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 author to the film or sound recording.

(4) Remuneration shall not be considered inequitable merely because it was paid by way of a single payment or at the time of the transfer of the rental right.

(5) An agreement is of no effect in so far as it purports to prevent a person questioning the amount of equitable remuneration or to restrict the powers of the Copyright Tribunal under this section.”.

(2) In section 149 (jurisdiction of the Copyright Tribunal), before paragraph (a) insert—

“(zb) section 93C (application to determine amount of equitable remuneration under section 93B);”.

### **Consequential modification of provisions relating to licensing**

15.—(1) Chapter VII of Part I (copyright licensing) is amended as follows.

(2) For section 117 (licensing schemes about which references and applications may be made) substitute—

#### **“117 Licensing schemes to which following sections apply.**

117. Sections 118 to 123 (references and applications with respect to licensing schemes) apply to licensing schemes which are operated by licensing bodies and cover works of more than one author, so far as they relate to licences for—

- (a) copying the work,
- (b) rental or lending of copies of the work to the public,
- (c) performing, showing or playing the work in public, or
- (d) broadcasting the work or including it in a cable programme service;

and references in those sections to a licensing scheme shall be construed accordingly.”.

(3) For section 124 (licences about which references and applications may be made) substitute—

#### **“124 Licences to which following sections apply.**

124. Sections 125 to 128 (references and applications with respect to licensing by licensing bodies) apply to licences which are granted by a licensing body otherwise than in pursuance of a licensing scheme and cover works of more than one author, so far as they authorise—

- (a) copying the work,
- (b) rental or lending of copies of the work to the public,
- (c) performing, showing or playing the work in public, or
- (d) broadcasting the work or including it in a cable programme service;

and references in those sections to a licence shall be construed accordingly.”.