
STATUTORY INSTRUMENTS

1996 No. 2967

The Copyright and Related Rights Regulations 1996

PART II

AMENDMENTS OF THE COPYRIGHT, DESIGNS AND PATENTS ACT 1988

Performers' rights

Extension of performers' rights

20.—(1) For section 182 (performers' rights: consent required for recording or live transmission of performance) substitute—

“182 Consent required for recording, &c. of live performance.

(1) A performer's rights are infringed by a person who, without his consent—

- (a) makes a recording of the whole or any substantial part of a qualifying performance directly from the live performance,
- (b) broadcasts live, or includes live in a cable programme service, the whole or any substantial part of a qualifying performance,
- (c) makes a recording of the whole or any substantial part of a qualifying performance directly from a broadcast of, or cable programme including, the live performance.

(2) A performer's rights are not infringed by the making of any such recording by a person for his private and domestic use.

(3) In an action for infringement of a performer's 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.”.

(2) After that section insert—

“Consent required for copying of recording.

182A.—(1) A performer's rights are infringed by a person who, without his consent, makes, otherwise than for his private and domestic use, a copy of a recording of the whole or any substantial part of a qualifying performance.

(2) It is immaterial whether the copy is made directly or indirectly.

(3) The right of a performer under this section to authorise or prohibit the making of such copies is referred to in this Part as “reproduction right”.

Consent required for issue of copies to public.

182B.—(1) A performer’s rights are infringed by a person who, without his consent, issues to the public copies of a recording of the whole or any substantial part of a qualifying performance.

- (2) References in this Part to the issue to the public of copies of a recording are to—
- (a) the act of putting into circulation in the EEA copies not previously put into circulation in the EEA by or with the consent of the performer, or
 - (b) the act of putting into circulation outside the EEA copies not previously put into circulation in the EEA or elsewhere.
- (3) References in this Part to the issue to the public of copies of a recording do not include—
- (a) any subsequent distribution, sale, hiring or loan of copies previously put into circulation (but see section 182C: consent required for rental or lending), or
 - (b) any subsequent importation of such copies into the United Kingdom or another EEA state,

except so far as paragraph (a) of subsection (2) applies to putting into circulation in the EEA copies previously put into circulation outside the EEA.

(4) References in this Part to the issue of copies of a recording of a performance include the issue of the original recording of the live performance.

(5) The right of a performer under this section to authorise or prohibit the issue of copies to the public is referred to in this Part as “distribution right”.

Consent required for rental or lending of copies to public.

182C.—(1) A performer’s rights are infringed by a person who, without his consent, rents or lends to the public copies of a recording of the whole or any substantial part of a qualifying performance.

- (2) In this Part, subject to the following provisions of this section—
- (a) “rental” means making a copy of a recording 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 a recording 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 recording of a performance include the rental or lending of the original recording of the live performance.

- (7) In this Part—

“rental right” means the right of a performer under this section to authorise or prohibit the rental of copies to the public, and

“lending right” means the right of a performer under this section to authorise or prohibit the lending of copies to the public.

Right to equitable remuneration for exploitation of sound recording.

182D.—(1) Where a commercially published sound recording of the whole or any substantial part of a qualifying performance—

- (a) is played in public, or
- (b) is included in a broadcast or cable programme service,

the performer is entitled to equitable remuneration from the owner of the copyright in the sound recording.

(2) The right to equitable remuneration under this section may not be assigned by the performer 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) 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 the following provisions.

(4) In default of agreement as to the amount payable by way of equitable remuneration, the person by or to whom it is payable may apply to the Copyright Tribunal to determine the amount payable.

(5) A person to or by whom equitable remuneration is payable 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.

(6) 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 performer to the sound recording.

(7) An agreement is of no effect in so far as it purports—

- (a) to exclude or restrict the right to equitable remuneration under this section, or
- (b) to prevent a person questioning the amount of equitable remuneration or to restrict the powers of the Copyright Tribunal under this section.”

(3) In Schedule 2 (rights in performances: permitted acts), after paragraph 6 insert—

“Lending of copies by educational establishments

6A.—(1) The rights conferred by Part II are not infringed by the lending of copies of a recording of a performance by an educational establishment.

(2) Expressions used in this paragraph have the same meaning as in section 36A; and any provision with respect to the application of that section made under section 174(2) (instruction given elsewhere than an educational establishment) applies also for the purposes of this paragraph.

Lending of copies by libraries or archives

6B.—(1) The rights conferred by Part II are not infringed by the lending of copies of a recording of a performance by a prescribed library or archive (other than a public library) which is not conducted for profit.

(2) Expressions used in this paragraph have the same meaning as in section 40A(2); and any provision under section 37 prescribing libraries or archives for the purposes of that section applies also for the purposes of this paragraph.”;

and after paragraph 14 insert—

“Lending of certain recordings

14A.—(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 films or sound recordings shall be treated as licensed by the performer 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 paragraph under paragraph 16 of Schedule 2A 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 184(1)(b) (secondary infringement: possessing or dealing with illicit recording) in respect of the lending of illicit recordings.

(6) Expressions used in this paragraph have the same meaning as in section 66.”.

(4) In section 212 (index of defined expressions: Part II), at the appropriate places insert—

“distribution right section 182B(5)”

“lending right section 182C(7)”

“rental right section 182C(7)”

“reproduction right section 182A(3)”.