
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

Performers' property rights

21.—(1) After section 191 insert—

“Performers' property rights

Performers' property rights.

191A.—(1) The following rights conferred by this Part on a performer—

- reproduction right (section 182A),
- distribution right (section 182B),
- rental right and lending right (section 182C),

are property rights (“a performer’s property rights”).

(2) References in this Part to the consent of the performer shall be construed in relation to a performer’s property rights as references to the consent of the rights owner.

(3) Where different persons are (whether in consequence of a partial assignment or otherwise) entitled to different aspects of a performer’s property rights in relation to a performance, the rights owner for any purpose of this Part is the person who is entitled to the aspect of those rights relevant for that purpose.

(4) Where a performer’s property rights (or any aspect of them) is owned by more than one person jointly, references in this Part to the rights owner are to all the owners, so that, in particular, any requirement of the licence of the rights owner requires the licence of all of them.

Assignment and licences.

191B.—(1) A performer’s property rights are transmissible by assignment, by testamentary disposition or by operation of law, as personal or moveable property.

(2) An assignment or other transmission of a performer’s property rights may be partial, that is, limited so as to apply—

- (a) to one or more, but not all, of the things requiring the consent of the rights owner;
- (b) to part, but not the whole, of the period for which the rights are to subsist.

(3) An assignment of a performer's property rights is not effective unless it is in writing signed by or on behalf of the assignor.

(4) A licence granted by the owner of a performer's property rights is binding on every successor in title to his interest in the rights, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser; and references in this Part to doing anything with, or without, the licence of the rights owner shall be construed accordingly.

Prospective ownership of a performer's property rights.

191C.—(1) This section applies where by an agreement made in relation to a future recording of a performance, and signed by or on behalf of the performer, the performer purports to assign his performer's property rights (wholly or partially) to another person.

(2) If on the rights coming into existence the assignee or another person claiming under him would be entitled as against all other persons to require the rights to be vested in him, they shall vest in the assignee or his successor in title by virtue of this subsection.

(3) A licence granted by a prospective owner of a performer's property rights is binding on every successor in title to his interest (or prospective interest) in the rights, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser.

References in this Part to doing anything with, or without, the licence of the rights owner shall be construed accordingly.

(4) In subsection (3) "prospective owner" in relation to a performer's property rights means a person who is prospectively entitled to those rights by virtue of such an agreement as is mentioned in subsection (1).

Exclusive licences.

191D.—(1) In this Part an "exclusive licence" means a licence in writing signed by or on behalf of the owner of a performer's property rights authorising the licensee to the exclusion of all other persons, including the person granting the licence, to do anything requiring the consent of the rights owner.

(2) The licensee under an exclusive licence has the same rights against a successor in title who is bound by the licence as he has against the person granting the licence.

Performer's property right to pass under will with unpublished original recording.

191E. Where under a bequest (whether general or specific) a person is entitled beneficially or otherwise to any material thing containing an original recording of a performance which was not published before the death of the testator, the bequest shall, unless a contrary intention is indicated in the testator's will or a codicil to it, be construed as including any performer's rights in relation to the recording to which the testator was entitled immediately before his death.

Presumption of transfer of rental right in case of film production agreement.

191F.—(1) Where an agreement concerning film production is concluded between a performer and a film producer, the performer 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 from the inclusion of a recording of his performance in the film.

(2) Where this section applies, the absence of signature by or on behalf of the performer does not exclude the operation of section 191C (effect of purported assignment of future rights).

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

(4) Section 191G (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.

Right to equitable remuneration where rental right transferred.

191G.—(1) Where a performer 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 reference above to the transfer of rental right by one person to another includes any arrangement having that effect, whether made by them directly or through intermediaries.

(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) 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 191H (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) 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 on behalf of more than one performer.

Equitable remuneration: reference of amount to Copyright Tribunal.

191H.—(1) In default of agreement as to the amount payable by way of equitable remuneration under section 191G, 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 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 performer 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.

Infringement actionable by rights owner.

191I.—(1) An infringement of a performer’s property rights is actionable by the rights owner.

(2) In an action for infringement of a performer’s property rights all such relief by way of damages, injunctions, accounts or otherwise is available to the plaintiff as is available in respect of the infringement of any other property right.

(3) This section has effect subject to the following provisions of this Part.

Provisions as to damages in infringement action.

191J.—(1) Where in an action for infringement of a performer’s property rights it is shown that at the time of the infringement the defendant did not know, and had no reason to believe, that the rights subsisted in the recording to which the action relates, the plaintiff is not entitled to damages against him, but without prejudice to any other remedy.

(2) The court may in an action for infringement of a performer’s property rights having regard to all the circumstances, and in particular to—

- (a) the flagrancy of the infringement, and
- (b) any benefit accruing to the defendant by reason of the infringement,

award such additional damages as the justice of the case may require.

Undertaking to take licence of right in infringement proceedings.

191K.—(1) If in proceedings for infringement of a performer’s property rights in respect of which a licence is available as of right under paragraph 17 of Schedule 2A (powers exercisable in consequence of competition report) the defendant undertakes to take a licence on such terms as may be agreed or, in default of agreement, settled by the Copyright Tribunal under that paragraph—

- (a) no injunction shall be granted against him,
- (b) no order for delivery up shall be made under section 195, and
- (c) the amount recoverable against him by way of damages or on an account of profits shall not exceed double the amount which would have been payable by him as licensee if such a licence on those terms had been granted before the earliest infringement.

(2) An undertaking may be given at any time before final order in the proceedings, without any admission of liability.

(3) Nothing in this section affects the remedies available in respect of an infringement committed before licences of right were available.

Rights and remedies for exclusive licensee.

191L.—(1) An exclusive licensee has, except against the owner of a performer’s property rights, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment.

(2) His rights and remedies are concurrent with those of the rights owner; and references in the relevant provisions of this Part to the rights owner shall be construed accordingly.

(3) In an action brought by an exclusive licensee by virtue of this section a defendant may avail himself of any defence which would have been available to him if the action had been brought by the rights owner.

Exercise of concurrent rights.

191M.—(1) Where an action for infringement of a performer’s property rights brought by the rights owner or an exclusive licensee relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action, the rights owner or, as the case may be, the exclusive licensee may not, without the leave of the court, proceed with the action unless the other is either joined as plaintiff or added as a defendant.

(2) A rights owner or exclusive licensee who is added as a defendant in pursuance of subsection (1) is not liable for any costs in the action unless he takes part in the proceedings.

(3) The above provisions do not affect the granting of interlocutory relief on an application by the rights owner or exclusive licensee alone.

(4) Where an action for infringement of a performer’s property rights is brought which relates (wholly or partly) to an infringement in respect of which the rights owner and an exclusive licensee have or had concurrent rights of action—

- (a) the court shall in assessing damages take into account—
 - (i) the terms of the licence, and
 - (ii) any pecuniary remedy already awarded or available to either of them in respect of the infringement;
- (b) no account of profits shall be directed if an award of damages has been made, or an account of profits has been directed, in favour of the other of them in respect of the infringement; and
- (c) the court shall if an account of profits is directed apportion the profits between them as the court considers just, subject to any agreement between them; and these provisions apply whether or not the rights owner and the exclusive licensee are both parties to the action.

(5) The owner of a performer’s property rights shall notify any exclusive licensee having concurrent rights before applying for an order under section 195 (order for delivery up) or exercising the right conferred by section 196 (right of seizure); and the court may on the application of the licensee make such order under section 195 or, as the case may be, prohibiting or permitting the exercise by the rights owner of the right conferred by section 196, as it thinks fit having regard to the terms of the licence.”

(2) For section 192 (transmission of rights) substitute—

“Non-property rights

192A Performers' non-property rights.

(1) the rights conferred on a performer by—

section 182 (consent required for recording, &c. of live performance),
 section 183 (infringement of performer's rights by use of recording made without consent), and
 section 184 (infringement of performer's rights importing, possessing or dealing with illicit recording),
 are not assignable or transmissible, except to the following extent.

They are referred to in this Part as "a performer's non-property rights".

- (2) On the death of a person entitled to any such right—
- (a) the right passes to such person as he may by testamentary disposition specifically direct, and
 - (b) if or to the extent that there is no such direction, the right is exercisable by his personal representatives.

(3) References in this Part to the performer, in the context of the person having any such right, shall be construed as references to the person for the time being entitled to exercise those rights.

(4) Where by virtue of subsection (2)(a) a right becomes exercisable by more than one person, it is exercisable by each of them independently of the other or others.

(5) Any damages recovered by personal representatives by virtue of this section in respect of an infringement after a person's death shall devolve as part of his estate as if the right of action had subsisted and been vested in him immediately before his death.

192B Transmissibility of rights of person having recording rights.

(1) The rights conferred by this Part on a person having recording rights are not assignable or transmissible.

(2) This does not affect section 185(2)(b) or (3)(b), so far as those provisions confer rights under this Part on a person to whom the benefit of a contract or licence is assigned."

- (3) In section 193 (consent)—
- (a) in subsection (1), after "Consent for the purposes of this Part" insert "by a person having a performer's non-property rights, or by a person having recording rights,"; and
 - (b) in subsection (3), for "a right conferred by this Part" substitute "a performer's non-property right".

(4) In section 194 (infringement actionable as breach of statutory duty), for "any of the rights conferred by this Part" substitute

- (a) "a performer's non-property rights, or
- (b) any right conferred by this Part on a person having recording rights,".

- (5) The headings in Part II falsified by the above amendments are amended as follows—
- (a) for the heading before section 191 substitute—

"Duration of rights";

- (b) omit the heading before section 194;
- (c) before section 195 insert the heading—

"Delivery up or seizure of illicit recordings".

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

“consent of performer (in relation to performer’s property rights) section 191A(2)”

“performer’s non-property rights section 192A(1)”

“`performer’s property rights section 191A(1)”

“rights owner (in relation to performer’s property rights) section 191A(3) and (4)”.