



UNIVERSITAS INDONESIA

**ANALISIS YURIDIS MENGENAI PENGATURAN
HAK PELAKU MUSIK (*PERFORMER'S RIGHT*) DI
INDONESIA DAN PEBANDINGANNYA DENGAN
PENGATURAN DI INGGRIS**

SKRIPSI

PURI PASKATYA YAP

0706278475

FAKULTAS HUKUM UNIVERSITAS INDONESIA

PROGRAM STUDI REGULER

KEKHUSUSAN HUKUM TENTANG KEGIATAN EKONOMI

DEPOK

JUNI 2011



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**Diajukan sebagai salah satu syarat untuk memperoleh gelar
Sarjana Hukum**

PURI PASKATYA YAP

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**FAKULTAS HUKUM UNIVERSITAS INDONESIA
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DEPOK
JUNI 2011**

HALAMAN PERNYATAAN ORISINALITAS

Skripsi ini adalah hasil karya saya sendiri, dan semua sumber baik yang dikutip maupun dirujuk telah saya nyatakan dengan benar.

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NPM : 0706278475

Tandatangan :

Tanggal : 7 Juli 2011

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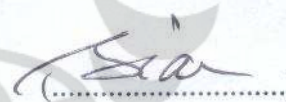
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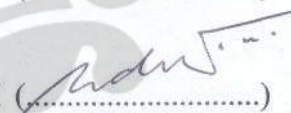
Telah berhasil dipertahankan di hadapan Dewan Penguji dan diterima sebagai persyaratan yang diperlukan untuk memperoleh gelar Sarjana Hukum pada Program Studi Hukum tentang Kegiatan Ekonomi, Fakultas Hukum, Universitas Indonesia.

DEWAN PENGUJI

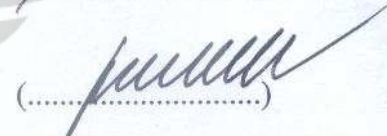
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Penguji 2 : Parulian Aritonang. S.H., LL.M


(.....)

Ditetapkan di : Depok

Tanggal : 7 Juli 2011

KATA PENGANTAR

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Jakarta, 7 Juli 2011

Penulis



**HALAMAN PENYATAAN PERSETUJUAN PUBLIKASI TUGAS
AKHIR UNTUK KEPENTINGAN AKADEMIS**

Sebagai civitas akademik Universitas Indonesia, saya yang bertanda tangan dibawah ini :

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Jenis Karya : Skripsi

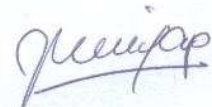
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Dibuat di : Jakarta
Pada tanggal : 7 Juli 2011
Yang menyatakan,



Puri Paskatya Yap

ABSTRAK

Nama : Puri Paskatya Yap
Program Studi : Ilmu Hukum (Sarjana Reguler)
Judul : Analisis Yuridis Mengenai Pengaturan Hak Menampilkan Pelaku Musik di Indonesia dan Perbandingannya dengan Pengaturan Hak Menampilkan di Inggris.

Penulisan ini membahas mengenai hak-hak pelaku musik (*performer's rights*) seperti penyanyi, grup band di Indonesia. Sebagai pihak yang juga berkontribusi dalam tersedianya karya cipta musik kepada publik, pelaku musik berhak untuk mendapatkan perlindungan atas eksploitasi akan karya cipta musik tersebut. Hal ini lah yang melatarbelakangi lahirnya perjanjian-perjanjian internasional yang memberikan perlindungan bagi pelaku musik dalam pengeksplotasian suatu karya musik. Indonesia sendiri dengan telah meratifikasi perjanjian tersebut, telah mencantumkan pengaturan-pengaturan bagi pelaku musik dalam Undang-undang Hak Cipta Indonesia dalam ketentuan mengenai hak terkait. Meskipun demikian, pengaturan tersebut dianggap belum memberikan perlindungan yang memadai, apabila dibandingkan dengan pengaturan hak pelaku dalam undang-undang hak cipta Inggris (Copyright Act 1988). Demi mendapatkan perlindungan yang lebih baik, maka dengan membandingkan UUHC dengan Copyright Act 1988 diharapkan dapat menyempurnakan perlindungan bagi pelaku musik Indonesia.

Kata Kunci:

Hak cipta, hak terkait (*neighboring right*), pelaku musik

ABSTRACT

Name : Puri Paskatya Yap
Program Study : Law (Bachelor Degree)
Title : Juridicial Analysis of Performer's Right in Indonesia and
Its Comparison to United Kingdom

The focus of this study is about music performer's right such as singer, band in Indonesia. As a contributing party for musical work to be available to public, performer shall grant protection for the exploitation of their musical works as their musical work. Based on the performer's interest, the international made the first move to create the protection in international conventions. Indonesia also participates by ratifying the conventions and give protections for performers in Indonesian Copyright Law 2002 under neighboring right provisions. However, compared to UK Copyright Act 1988, performer's protection have not fully protected by Indonesian Copyright Law 2002. Therefore, in order to have a better protection, Indonesia Copyright Law 2002 should be revised.

Keynote:

Copyrights, neighboring rights, music performers

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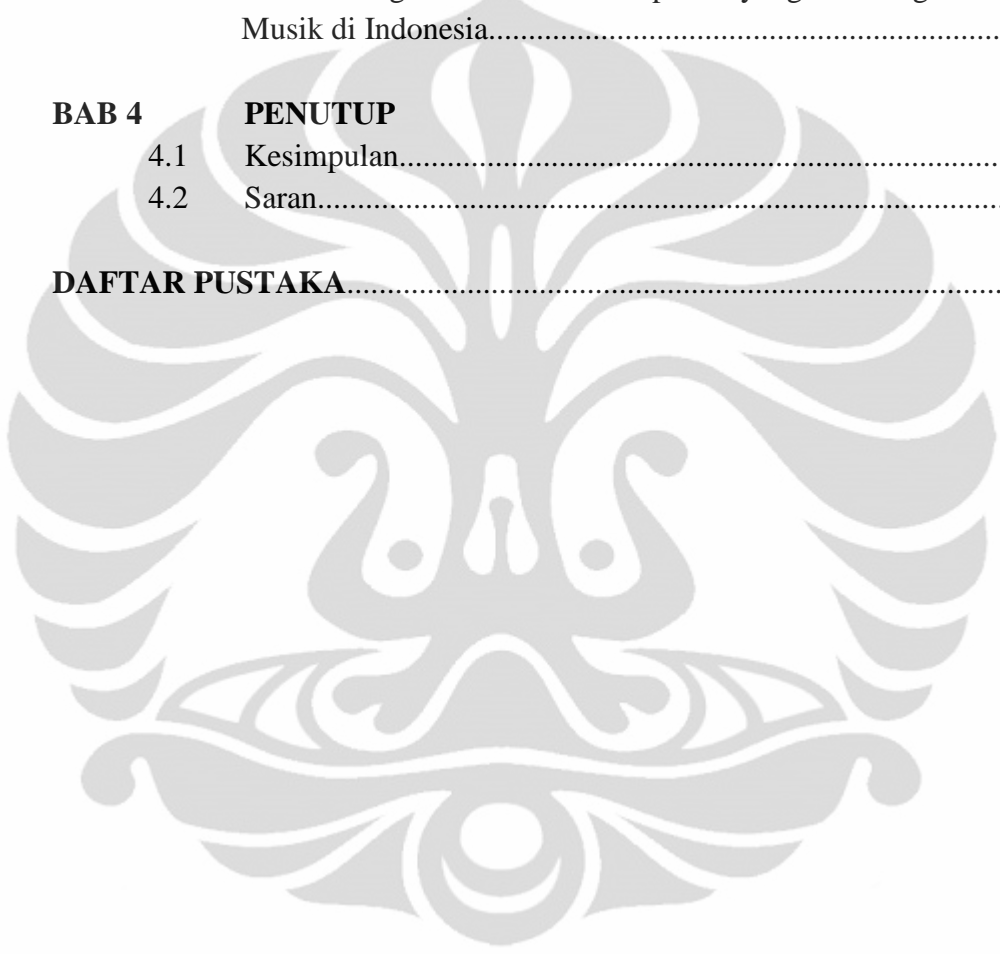
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BAB 1 PENDAHULUAN

1.1 Latar Belakang

Indonesia adalah negara yang memiliki keanekaragaman etnik/suku bangsa dan budaya serta kekayaan di bidang seni dan sastra dengan pengembangan-pengembangannya yang memerlukan perlindungan Hak Cipta terhadap kekayaan intelektual yang lahir dari keanekaragaman tersebut.¹

Perkembangan di bidang perdagangan, industri dan investasi yang berkaitan dengan bidang seni dan sastra telah sedemikian pesat sehingga memerlukan peningkatan perlindungan bagi Pencipta dan Pemilik Hak Terkait dengan tetap memperhatikan kepentingan masyarakat luas.²

Kegiatan industri musik di Indonesia terutama, telah menunjukkan pesatnya perkembangan tersebut dimana hal tersebut dilihat dari banyak musisi-musisi yang mengembangkan kreasinya melalui karya cipta musik untuk ditampilkan kepada masyarakat luas. Masyarakat pun dapat dengan mudah dapat menikmati kreasi tersebut baik melalui televisi, radio, compact disc maupun melalui media internet.

Karya musik tersebut tentunya perlu diberikan perlindungan untuk menghindari adanya tindakan yang merugikan bagi musisi, baik bagi pencipta maupun pelaku yang menciptakan dan menampilkan karya musik tersebut.

Perlindungan tersebut diberikan untuk menjamin hak ekonomi dan hak moral yang seharusnya didapatkan oleh pencipta dan pelaku. Hak ekonomi adalah hak untuk mendapatkan manfaat ekonomi atas suatu ciptaan serta produk Hak Terkait. Hak moral adalah hak yang melekat pada diri Pencipta atau Pelaku yang tidak dapat dihilangkan atau dihapus tanpa alasan apapun, walaupun Hak Cipta atau Hak Terkait telah dialihkan.³

¹ Indonesia. *Undang-undang No 19 tahun 2002 tentang Hak Cipta*. (Lembaran Negara Republik Indonesia Tahun 2002 nomor 85; Tambahan Lembaran Negara Republik Indonesia nomor 4220). Konsideran butir a

² Ibid., Konsideran butir c

³ Ibid., Penjelasan Umum alinea 5.

Seorang pencipta mendapat perlindungan dengan hak cipta yang melindungi karya musik yang diciptakannya, sedangkan pelaku mendapatkan perlindungan berupa hak terkait dari hak cipta⁴. Untuk itu perlu adanya penegasan dan pemilahan kedudukan Hak Cipta di satu pihak dan Hak Terkait di lain pihak dalam rangka memberikan perlindungan bagi karya cipta musik secara lebih jelas.⁵

Undang-undang Hak Cipta yang diterbitkan dalam rangka memberi perlindungan kepada pencipta dan pelaku terutama mengenai hak menampilkan (*performing right*) dalam pelaksanaannya belum mencapai perlindungan yang menjadi tujuan Undang-undang tersebut. Pencipta dan pelaku tidak memiliki mekanisme kontrol yang efektif untuk mengawasi pengumuman hasil ciptaannya. Hal ini berakibat pada hilangnya manfaat ekonomi yang seharusnya didapatkan oleh baik pencipta maupun pelaku yaitu royalti dari suatu karya musik.

Royalti sebagai penjamin hak-hak ekonomi dari pencipta dan pelaku karya cipta musik, adalah suatu kompensasi untuk menggunakan hak milik, pada materi atau benda yang hak ciptanya dilindungi, yang dinyatakan sebagai prosentase yang diterima atas pemakaian hak milik. Pembayaran yang diberikan kepada seorang pencipta yang dilakukan oleh seorang penerima pengalihan (*assignee*), penerima lisensi (*licensee*) atau pemegang hak cipta (*copyright holder*) yang dijual. Royalti adalah bagian dari produk atau laba yang diterima oleh pemilik hak cipta yang memiliki izin pihak untuk menggunakan hak ciptanya.⁶

Pemberian izin dari pemilik hak cipta dituangkan dalam bentuk lisensi dimana pemberian lisensi pengumuman karya cipta lagu kepada penerima lisensi ini memiliki konsekuensi hukum yaitu adanya kewajiban penerima lisensi untuk membayar sejumlah uang tertentu kepada pemberi lisensi (pemilik hak cipta) yang dikenal dengan royalti. Pemberian lisensi ini dilakukan bersamaan dengan dibayarnya royalti kepada pemberi lisensi, sehingga walaupun user yang

⁴ Hak terkait adalah hak yang berkaitan dengan Hak Cipta yaitu hak eksklusif bagu Pelaku untuk memperbanyak atau menampilkan pertunjukannya. Undang-undang Hak Cipta pasal 1 ayat 9.

⁵ Ibid., Penjelasan umum alinea 4

⁶ *Black's Law Dictionary*, Sixth Edition (West Publishing: 1990), hal 133

bersangkutan telah meminta izin kepada pemegang hak cipta, lisensi tetap akan diberikan setelah royalti dibayarkan kepada pemegang hak cipta.

Sayangnya dalam Undang-undang Hak Cipta tidak memberikan definisi mengenai royalti, walaupun dalam pasal 45 ayat 3 Undang-undang tersebut mengatur mengenai kewajiban pemberian royalti kepada pemegang hak cipta oleh penerima lisensi dan ayat 4 mengatur tentang besarnya royalti yang harus dibayarkan berpedoman pada kesepakatan organisasi profesi.⁷

Lemahnya perlindungan Undang-undang Hak Cipta terutama dalam karya cipta musik, menurut Otto Hasibuan, terutama karena dianggap tidak jelas mengatur hak ekonomi pencipta lagu dan pemegang hak terkait lainnya. Undang-undang ini tidak secara rinci mengupas persoalan tentang penggunaan lagu dan musik yang dilakukan masyarakat. Kepada siapa konsumen harus minta izin, bagaimana mekanisme perizinan dan pembayaran royalti jika karya cipta musik dipakai untuk tujuan komersial. Ditegaskan pula bahwa selain para pemegang hak (musisi/pencipta lagu) itu harus mendapat manfaat ekonomi dari karya ciptanya, juga membutuhkan lembaga *collecting society* yang resmi dan diakui oleh Undang-undang Hak Cipta yang pada nyatanya belum ada lembaga pemungut royalti yang resmi di negeri ini, disamping Undang-undang Hak Cipta sendiri memang belum mengatur untuk hal itu.⁸

Sebagai pelaku yang berpartisipasi dalam penciptaan karya musik, musisi atau penyanyi juga merupakan pihak yang harus mendapatkan royalti. Seperti yang diatur dalam pasal 49 ayat 1 Undang-undang Hak Cipta bahwa pelaku dilindungi oleh Hak Terkait dimana pelaku memiliki hak eksklusif untuk memberikan izin atau melarang pihak lain yang tanpa persetujuannya membuat, memperbanyak atau menampilkan rekaman suara dan/atau gambar pertunjukannya. Kegiatan penyiaran karya cipta musik kepada masyarakat luas dapat berupa menyewakan, melakukan pertunjukkan umum (*public performance*),

⁷ Indonesia, Op Cit., pasal 45 ayat 3 dan 4

⁸ S.Hadysusanto "Tiga Tahun untuk Menjadi Doktor HaKI"
<http://dir.groups.yahoo.com/group/AKHI/message/410> diunduh pada tanggal 7 Januari 2011

mengkomunikasikan pertunjukkan langsung (*live performance*) dan mengkomunikasikan secara interaktif suatu karya Pelaku.⁹

Mengenai kegiatan pengumuman secara langsung atau live, menurut Rooseno Hardjowidigdo¹⁰, merupakan salah satu cara untuk “mengumumkan” suatu karya cipta musik dimana kegiatan ini pada prakteknya berupa konser atau pertunjukkan musik live¹¹. Seperti yang telah dijelaskan sebelumnya bahwa kegiatan “mengumumkan” suatu karya cipta musik harus mendapat izin dari pencipta atau pemegang hak ciptanya yang sah, apabila kegiatan pengumuman itu dilakukan untuk suatu kegiatan komersil dan/atau kepentingan yang berkaitan dengan kegiatan komersil¹².

Misalnya, jika ada seseorang yang ingin mengadakan pertunjukkan dengan memperdengarkan suatu karya cipta musik untuk kegiatan komersil dan/atau kepentingan yang berkaitan dengan kegiatan usaha komersil di Taman Ismail Marzuki, maka ia harus mendapat izin terlebih dahulu dari penciptanya atau dari pemegang hak ciptanya yang sah. Jika malam pagelaran musik itu disiarkan langsung melalui sesuatu organisasi siaran televisi maka untuk siaran langsung tersebut harus ada izin terlebih dahulu dari pencipta musik atau pemegang hak cipta lainnya yang sah. Demikian pula apabila oleh organisasi siaran televisi itu diadakan perekaman untuk kemudian ditampilkan melalui televisi yang bersangkutan, maka untuk hal yang demikian pun harus ada izin dari pencipta atau pemegang hak cipta yang sah.¹³

Menurut Kris Biantoro, hak royalti yang selama ini dipungut lembaga pengumpul royalti (*collecting society*) di industri musik Tanah Air masih sebatas diberikan kepada para pencipta lagu. Sementara, musisi dan penyanyi yang seharusnya mendapatkan hak sama justru belum tersentuh. Padahal, keberadaan

⁹ Indonesia, Op Cit., Penjelasan pasal 49 ayat 1

¹⁰ Rooseno Hardjowidigdo, *Perjanjian Lisensi Hak Cipta Musik Dalam Pembuatan Rekaman*, (Perum Percetakan Negara RI: 2005), hal 56

¹¹ Hulman Panjaitan dan Wetmen Sinaga, *Performing Right, Hak Cipta atas Karya Musik dan Lagu*, (Jakarta: Ind Hill Co, 2011) hal 78

¹² Ibid., hal 49

¹³ Ibid., hal 92

mereka sudah jelas menjadi bagian yang tidak terpisahkan dari hadirnya sebuah karya. Kondisi inilah yang menjadi keprihatinan para pelaku industri musik di Tanah Air. Tidak adanya jaminan dan kepastian hukum terhadap para pelaku industri musik, terlebih penyanyi dan musisi membuat mereka justru kehilangan hak-haknya.¹⁴

Minimnya kesadaran akan urgensi perlindungan hak pelaku menjadi indikator kurangnya pemahaman para pihak yang berkecimpung dalam industri musik untuk menghargai hasil karya orang lain, terutama dalam kegiatan penampilan karya musik di depan publik, selain kegiatan memperbanyak karya melalui pembajakan. Seharusnya royalti yang didapatkan dari menampilkan karya cipta musik dapat lebih besar dari royalti atas perbanyakan karya cipta musik, sebab frekuensi menampilkan karya musik lebih banyak dibanding dengan memperbanyak karya tersebut. Misalnya saja penyiaran melalui televisi dan radio; memutar musik di restoran, kafe, pub, hotel, tempat karaoke, musik digital di internet; sampai konser-konser musik hidup. Begitu pula dengan kegiatan memperbanyak karya rekaman yang dilakukan tanpa adanya izin dari pelaku, yang jelas telah melanggar hak pelaku musik. Hal ini perlu mendapat perhatian pemerintah untuk mendorong terlaksananya perlindungan terhadap hak pelaku karya cipta musik dengan menegakkan peraturan perundang-undangan di bidang Hak Cipta.

Hal tersebut diataslah yang melatar belakangi peneliti untuk menelusuri kondisi perlindungan Hak Pelaku musik (*performer's rights*) yang mempengaruhi pelaksanaannya di Indonesia dengan kemudian membandingkannya dengan pelaksanaan perlindungan hak pelaku di Inggris sehingga dapat dikaji kelebihan-kelebihan sistem hukum di Inggris yang dapat diterapkan dalam hukum Hak Cipta khususnya mengenai perlindungan hak pelaku. Oleh karenanya, penulis tertarik untuk menganalisa dan mengkaji hal-hal tersebut lebih lanjut dalam penulisan ilmiah dengan judul **“ANALISIS YURIDIS MENGENAI PENGATURAN**

¹⁴ Kompas.com “Asyik.. Sedang Diusahakan agar Penyanyi dan Musisi Dapat Royalti” 4 Maret 2010
<http://entertainment.kompas.com/read/2010/03/04/13471493/asyik....sedang.diusahakan.agar.penyanyi.dan.musisi.dapat.royalti> diunduh pada tanggal 8 Januari 2011

HAK PELAKU MUSIK (*PERFORMER'S RIGHTS*) DI INDONESIA DAN PERBANDINGANNYA DENGAN PENGATURAN DI INGGRIS”

1.2 Pokok Permasalahan

1. Bagaimana sejarah pengaturan Hak Pelaku Musik dalam sistem hukum Hak Cipta?
2. Bagaimana perbedaan pengaturan Hak Pelaku Musik di Indonesia dan di Inggris ?
3. Bagaimana norma hukum yang sesuai untuk melaksanakan Hak Pelaku Musik di Indonesia?

1.3 Tujuan Penulisan

Tujuan Penulisan adalah sasaran yang hendak dicapai dalam melakukan penelitian. Berdasarkan permasalahan yang telah dijelaskan sebelumnya, maka penelitian ini bertujuan untuk:

1. Tujuan Umum

1.1 Sebagai sumber pemikiran dalam pengembangan pengetahuan hukum terutama tentang masalah yang dibahas dalam karya ilmiah yakni tinjauan yuridis mengenai pengaturan hak pelaku musik (*performer's rights*) karya cipta musik di Indonesia dan perbandingannya dengan pengaturan hak menampilkan karya cipta musik di Inggris.

1.2 Untuk membuka wawasan masyarakat terutama pihak-pihak yang terkait dan tertarik dalam kegiatan pengumuman musik sehingga dapat tercipta industri musik yang menjamin hak-hak yang wajib diterima oleh pelaku kegiatan karya cipta musik.

2. Tujuan Khusus

- a. Memahami lebih jelas mengenai latar belakang historis dan filosofis lahirnya perlindungan terhadap Hak pelaku musik dalam sistem hukum Hak Cipta

- b. Memahami lebih jelas mengenai kondisi perlindungan Hak pelaku musik di Indonesia dan perlindungan di Inggris serta membandingkan pengaturan Hak pelaku musik dalam kedua negara tersebut.
- c. Untuk memberikan masukan mengenai norma hukum yang dianggap paling tepat untuk diterapkan dalam melindungi Hak pelaku musik di Indonesia.

1.4 Definisi Operasional

Penulisan dalam penelitian ini menggunakan beberapa istilah yang merupakan kata kunci yang perlu dijabarkan secara khusus. Hal ini dimaksudkan agar terdapat persamaan pemahaman antara penulis dan pembaca terhadap beberapa hal tertentu. Hal-hal tersebut antara lain:

1. Hak Cipta adalah hak eksklusif bagi Pencipta atau penerima hak untuk mengumumkan atau memperbanyak Ciptaannya atau memberikan izin untuk itu dengan tidak mengurangi pembatasan-pembatasan menurut peraturan perundang-undangan yang berlaku.¹⁵
2. Pencipta adalah seorang atau beberapa orang secara bersama-sama yang atas inspirasinya melahirkan suatu Ciptaan berdasarkan kemampuan pikiran, imajinasi, kecekatan, keterampilan atau keahlian yang dituangkan ke dalam bentuk yang khas dan bersifat pribadi.¹⁶
3. Ciptaan adalah hasil setiap karya pencipta yang menunjukkan keasliannya dalam lapangan ilmu pengetahuan, seni atau sastra.¹⁷
4. Pemegang Hak Cipta adalah pencipta sebagai Pemilik Hak Cipta, atau pihak yang menerima hak tersebut dari Pencipta atau pihak lain yang menerima lebih lanjut hak dari pihak yang menerima hak tersebut.¹⁸

¹⁵ *Op Cit.*, Pasal 1 butir 1.

¹⁶ *Ibid.*, Pasal 1 butir 2

¹⁷ *Ibid.*, Pasal 1 butir 3

¹⁸ *Ibid.*, Pasal 1 butir 4

5. Pengumuman adalah pembacaan, penyiaran, pameran, penjualan, pengedaran, atau penyebaran suatu Ciptaan dengan menggunakan alat apa pun termasuk media internet, atau melakukan dengan cara apapun sehingga suatu Ciptaan dapat dibaca, didengar atau dilihat oleh orang lain.¹⁹
6. Perbanyak adalah penambahan jumlah sesuatu Ciptaan, baik secara keseluruhan maupun bagian yang sangat substansial dengan menggunakan bahan-bahan yang sama ataupun tidak sama, termasuk mengalihwujudkan secara permanen atau temporer.²⁰
7. Hak terkait adalah hak yang berkaitan dengan Hak Cipta, yaitu hak eksklusif bagi Pelaku untuk memperbanyak atau menampilkan pertunjukannya; bagi Produser Rekaman Suara untuk memperbanyak atau menyewakan karya rekaman suara atau rekaman bunyinya; dan bagi Lembaga Penyiaran untuk membuat, memperbanyak atau menampilkan karya siarannya.²¹
8. Pelaku adalah aktor, penyanyi, pemusi, penari, atau mereka yang menampilkan, memperagakan, memeragakan, mempertunjukkan, menyanyikan, menyampaikan, mendeklamasikan atau memainkan suatu karya musik, drama, tari, sastra, folklor atau karya seni lainnya.²²
9. Lisensi adalah izin yang diberikan oleh Pemegang Hak Cipta atau Pemegang Hak Terkait kepada pihak lain untuk mengumumkan dan/atau memperbanyak Ciptaannya atau produk Hak Terkaitnya dengan persyaratannya tertentu.²³

¹⁹ *Ibid.*, Pasal 1 butir 5

²⁰ *Ibid.*, Pasal 1 butir 6

²¹ *Ibid.*, Pasal 1 butir 9

²² *Ibid.*, Pasal 1 butir 10

²³ *Ibid.*, Pasal 1 butir 14

10. Menampilkan adalah membawa ke muka; mengemukakan; mempertontonkan; memajukan²⁴

1.5 Metode Penelitian

Bentuk metode penelitian yang digunakan dalam penelitian ini adalah metode penelitian yuridis normatif yaitu penelitian yang dilakukan dengan cara meneliti bahan pustaka atau yang disebut dengan penelitian kepustakaan. Penelitian ini bertujuan untuk mengetahui bagaimana kondisi perlindungan Hak pelaku musik di Indonesia yang tunduk dalam pengaturan Undang-undang no 19 tahun 2002 tentang Hak Cipta. Penelitian ini juga bertujuan untuk memberi masukan mengenai norma hukum yang dipandang paling tepat untuk diterapkan dalam melindungi Hak pelaku musik di Indonesia.

Tipe penelitian yang digunakan dalam penulisan ini, dilihat dari sifatnya adalah penelitian deksriptif yaitu penelitian yang bertujuan untuk menggambarkan atau menjelaskan mengenai latar belakang lahirnya Hak pelaku musik sebagai salah satu hak yang dilindungi dalam hukum Hak Cipta.²⁵ Selain itu dalam penelitian ini juga akan digambarkan kondisi perlindungan Hak pelaku musik di Indonesia dan memperbandingannya dengan perlindungan hak tersebut di Inggris. Lebih lanjut, penelitian ini juga akan menjelaskan norma hukum yang paling tepat dalam menerapkan Hak pelaku musik di Indonesia.

Jenis data yang digunakan dalam penelitian ini adalah data sekunder yang terdiri dari bahan hukum primer, sekunder dan tersier yaitu sebagai berikut:

- a. Bahan hukum primer, yaitu bahan hukum yang mempunyai kekuatan mengikat berupa peraturan perundang-undangan baik Indonesia maupun Amerika Serikat. Di dalam penelitian ini, peraturan perundang-undangan yang akan digunakan yaitu Undang-undang Hak Cipta, *Rome Convention, Agreement in Trade Related Aspects of Intellectual Property Rights*

²⁴ <http://kamusbahasaindonesia.org/> diunduh pada tanggal 15 Januari 2011

²⁵ Sri mamudji et al., *Metode Penelitian dan Penulisan Hukum* (Jakarta: Badan Penerbit Fakultas Hukum UI, 2005), hal 4

(TRIPS), *Copyright Act 1988*, *WIPO Performances and Phonograms Treaty (WPPT)*.

- b. Bahan hukum sekunder, yaitu bahan hukum yang erat kaitannya dengan bahan hukum primer dan dapat membantu menganalisa, memahami dan menjelaskan bahan hukum primer, yang antara lain adalah bukum penelusuran internet, artikel ilmiah, jurnal, tesis , surat kabar dan makalah. Di dalam penelitian ini, bahan hukum sekunder yang akan digunakan adalah buku, penelusuran internet, artikel ilmiah, jurnal, tesis dan makalah.
- c. Bahan hukum tersier, yaitu bahan hukum yang memberikan petunjuk maupun penjelasan atas bahan hukum primer dan sekunder, misalnya ensiklopedia atau kamus. Di dalam penelitian ini, bahan hukum tersier yang digunakan adalah kamus.²⁶

Kemudian, penelitian ini menggunakan 2 jenis alat pengumpulan data yaitu melalui

- a. Studi kepustakaan

Yaitu dengan studi dokumen yang merupakan suatu alat pengumpulan data yang dilakukan melalui data tertulis dengan mempergunakan “*content analysis*”²⁷ atau teknik untuk menganalisa tulisan/dokumen dengan cara mengidentifikasi secara sistematis ciri/karakter dan pesan/maksud yang terkandung dalam tulisan/dokumen.²⁸

- b. Studi lapangan

Yang merupakan salah satu alat pengumpulan data melalui wawancara yang menggali dengan pertanyaan, berdasarkan pedoman wawancara, kepada narasumber yang dianggap kompeten dalam hal-hal yang dibahas dalam penulisan ini.

Metode pengolahan dan analisis data yang digunakan dalam penelitian ini adalah metode analisis kualitatif, yaitu tata cara penelitan yang menghasilkan data deskriptif analitis, apa yang dinyatakan oleh sasaran

²⁶ Ibid., hal 30

²⁷ Soerjono Soekanto, *Pengantar Penelitian Hukum*, cet III, (Jakarta: UI-Press, 1986), hal

²⁸ Sri Mamudji et al ., *Op cit.*, hal 29

penelitian yang bersangkutan dinyatakan secara tertulis atau lisan dan perilaku nyata.²⁹

1.6 Sistematika Penulisan

Penulisan hukum ini dibagi atas empat bab yang menjelaskan dan menggambarkan permasalahan secara terpisah tetapi merupakan suatu kesatuan. Adapun sistematika penulisan skripsi ini adalah sebagai berikut:

BAB 1 Pendahuluan

Meliputi Latar Belakang, Pokok Permasalahan, Tujuan Penelitian, Kerangka Konseptual, Metode Penelitian, dan Sistematika Penulisan.

BAB 2 Tinjauan Tentang Hak Cipta

Meliputi Pengertian, Macam-macam Hak yang Dilindungi oleh Hak Cipta, Pemberian Lisensi dan Royalti serta Tinjauan tentang Pelaku Musik di Indonesia

BAB 3 Tinjauan Umum tentang Hak Pelaku Musik

Meliputi Latar Belakang Munculnya Pengaturan Hak Pelaku Musik dalam Hukum Hak Cipta, Pengaturan Hak Pelaku di Indonesia dan di Inggris serta perbandingannya, dan Bentuk Pengaturan Hak Pelaku yang Ideal dalam Penerapannya di Indonesia.

BAB 4 Penutup

Meliputi kesimpulan dan saran, yang menjelaskan tentang pokok permasalahan yang telah diuraikan.

²⁹ Ibid., hal 67

BAB 2

TINJAUAN TENTANG HAK CIPTA

2.1 Tinjauan Umum tentang Hak Cipta

2.1.1 Pengertian dan Ruang Lingkup Hak Cipta

Hak Cipta berdasarkan Undang-undang Hak Cipta no 19 tahun 2002 adalah hak eksklusif bagi pencipta atau penerima hak untuk mengumumkan atau memperbanyak Ciptaannya atau memberikan izin untuk itu dengan tidak mengurangi pembatasan-pembatasan menurut peraturan perundang-undangan yang berlaku.³⁰

Dari definisi hak cipta diatas dapat dilihat akan adanya beberapa unsur dalam hak cipta, yaitu hak eksklusif; pencipta atau pemegang hak cipta; ciptaan; mengumumkan, memperbanyak atau memberikan izin untuk itu; dan tidak mengurangi pembatasan-pembatasan menurut peraturan perundang-undangan yang berlaku.

Unsur pertama yaitu hak eksklusif, dimana dalam Undang-undang Hak Cipta no 19 Tahun 2002 merumuskan bahwa Hak Cipta merupakan hak eksklusif bagi pencipta atau pemegang hak cipta untuk mengumumkan atau memperbanyak ciptaannya yang timbul secara otomatis setelah suatu ciptaan dilahirkan tanpa mengurangi pembatasan menurut peraturan perundang-undangan yang berlaku. Dari rumusan tersebut, hak cipta memiliki sifat eksklusif yang hanya diperuntukkan bagi pemegangnya sehingga tidak ada pihak lain yang dapat memanfaatkan hak tersebut tanpa izin pencipta atau pemegang hak ciptanya.³¹

Hendra Tanu Admadja mengemukakan bahwa hak cipta terdiri atas sekumpulan hak eksklusif bagi pemilik hak cipta untuk mengizinkan pihak

³⁰ Indonesia. *Undang-undang no 19 tahun 2002 tentang Hak Cipta* (Lembaran Negara Republik Indonesia Tahun 2002 nomor 85, Tambahan Lembaran Negara Republik Indonesia Nomor 4220) Pasal 1 ayat 1

³¹ Ibid., Penjelasan pasal 2 ayat 1

lain menggunakan karya ciptanya, sebaliknya juga dapat melarang pihak lain untuk menggunakan karya ciptaannya tersebut.³²

Sebagai konsekuensi dari pengertian hak cipta sebagai suatu hak yang eksklusif sebagaimana diuraikan diatas, demikian halnya terhadap hak cipta karya cipta musik dan/atau lagu, maka setiap orang/badan usaha yang menggunakan karya cipta musik untuk suatu kegiatan komersial dan atau kepentingan yang berkaitan dengan kegiatan komersial seperti halnya hotel restoran, pub, karaoke, dan sebagainya harus terlebih dahulu meminta izin kepada penciptanya dan atau kepada pemegang hak ciptanya yang oleh pencipta diberi kuasa untuk itu.³³

CJT Simorangkir menambahkan pula bahwa pengertian hak khusus hak cipta tersebut berarti tidak ada orang atau badan lain yang dapat melakukan hak cipta itu misalnya untuk mengumumkan atau memperbanyaknya kecuali dengan izin pencipta yang dapat dialihkan melalui pewarisan, hibah, wasiat, dijadikan milik negara, perjanjian dengan akta.³⁴

Dalam kaitannya dengan karya cipta musik, hak eksklusif ini jika diaplikasikan dalam kerja sama bisnis antara artis dengan label rekaman berfungsi untuk melindungi kepentingan artis karena dengan begitu label rekaman harus mendapatkan izin terlebih dahulu jika ingin memperbanyak, mendistribusikan atau menjualbelikan karya cipta musik dari sang artis.³⁵

Dengan demikian, hak eksklusif yang dimiliki pencipta adalah hak untuk:

- (1) Mengumumkan dan memperbanyak ciptaan yang dilindungi;

³² Hendra Tanu Atmaja, *Hak Cipta Musik atau Lagu*, (Jakarta: Fakultas Hukum Pascasarjana Universitas Indonesia, 2003) hal 293

³³ Hulman Panjaitan dan Wetmen Sinaga, *Performing Right Hak Cipta atas Karya Musik dan Lagu serta Aspek Hukumnya*, (Jakarta: Ind Hill Co, 2011) hal 45

³⁴ *Ibid.* , hal 46-47

³⁵ Wendi Putranto, *Rolling Stones Music Biz Manual Cerdas Menguasai Bisnis Musik*, (Yogyakarta: PT Bentang Pustaka, 2009) hal 76

- (2) Mendistribusikan, ciptaan yang telah diperbanyak dengan cara menjualnya, menitipjalkan (konsinyasi), menyewakan atau cara-cara lain;
- (3) Pencipta pertama memberi izin kepada seorang yang menciptakan Hak Terkait dengan Hak Cipta dengan cara menderivasikan ciptaannya dan kemudian mengeksploitasi ciptaan pencipta pertama.³⁶

Unsur kedua adalah pencipta atau pemegang hak cipta. Pasal 1 ayat 2 Undang-undang Hak Cipta, yang dimaksud dengan Pencipta adalah seorang atau beberapa orang secara bersama-sama yang atas inspirasinya melahirkan suatu ciptaan berdasarkan kemampuan pikiran, imajinasi, kecekatan, keterampilan, atau keahlian yang dituangkan ke dalam bentuk yang khas dan bersifat pribadi³⁷. Tim Whitset merumuskan pencipta musik atau lagu adalah pemilik hak cipta musik atau lagu. Dalam istilah teknisnya, pemilik hak cipta di bidang musik disebut komposer yaitu seseorang yang menggubah sebuah karya musik³⁸.

Sedangkan yang dimaksud dengan Pemegang Hak Cipta yaitu Pencipta sebagai Pemilik Hak Cipta, atau pihak yang menerima hak tersebut dari Pencipta, atau pihak lain yang menerima lebih lanjut hak dari pihak yang menerima hak tersebut³⁹. Sehingga Pemegang Hak Cipta belum tentu sebagai pencipta karena dapat dimungkinkan pemegang hak cipta menerima pengalihan hak dari pencipta.⁴⁰

Dalam kaitannya dengan hak cipta di bidang musik atau lagu, pemegang hak cipta adalah termasuk:

³⁶ Eddy Damian, *Hukum Hak Cipta*, (Bandung: Alumni, 2004) hal 129

³⁷ Indonesia. *Undang-undang no 19 tahun 2002 tentang Hak Cipta*, *op cit.*, Pasal 1 ayat 2

³⁸ Tim Whitsett, *The Dictionary of Music Business Term*, (Primedia Intertec Publishing Corpo, 1998), hal 1

³⁹ Indonesia. *Undang-undang no 19 tahun 2002 tentang Hak Cipta.*, *op cit.*, Pasal 1 ayat 4

⁴⁰ Hulman, *ibid.*, hal 54

1. Pencipta melodi lagu (komposer), yaitu orang yang menciptakan melodi dari suatu lagu atau musik.
2. Pencipta lirik lagu (lirikus), yaitu orang yang menciptakan teks atau lirik dari suatu lagu atau musik
3. Penata musik (arranger), yaitu orang yang mengubah lagu atau musik ciptaan orang lain sampai ke tingkat tertentu atau menambah sedemikian rupa sehingga dengan kontribusi kreatifnya karya lagu atau musik tersebut diwarnai dimensi yang khas dan bersifat pribadi.
4. Pengadaptasi lirik (sub-lirikus), yaitu orang yang menciptakan teks atau lirik baru atau menterjemahkan lirik asli dari suatu karya musik yang diterbitkan kembali di wilayah Indonesia
5. Publisher dan sub publisher, badan hukum yang diberi kuasa oleh pencipta untuk menjadi pemegang hak cipta dan oleh sebab itu memiliki kepentingan terhadap seluruh karya lagu atau musik tersebut.⁴¹

Unsur ketiga, ciptaan. Undang-undang Hak Cipta merumuskan ciptaan sebagai hasil setiap karya pencipta yang menunjukkan keasliannya dalam lapangan ilmu pengetahuan, seni atau sastra⁴². Dalam pasal 12 ayat 1 Undang-undang Hak Cipta disebutkan ciptaan dalam bidang ilmu pengetahuan, seni dan sastra yang masuk dalam perlindungan Hak Cipta yaitu:

- a. Buku, program komputer, pamflet, perwajahan (*lay out*) karya tulis yang diterbitkan, dan semua hasil karya tulis lain;
- b. Ceramah, kuliah, pidato dan Ciptaan lain yang sejenis dengan itu;
- c. Alat peraga yang dibuat untuk kepentingan pendidikan dan ilmu pengetahuan;
- d. Lagu atau musik dengan atau tanpa teks;
- e. Drama atau drama musikal, tari, koreografi, pewayangan dan pantomim;

⁴¹ *Ibid.*, hal 58-59

⁴² Indonesia. *Undang-undang no 19 tahun 2002 tentang Hak Cipta.*, *op cit.*, Pasal 1 ayat 3

- f. Seni rupa dalam segala bentuk seperti seni lukis, gambar, seni ukir, seni kaligrafi, seni pahat, seni patung, kolase dan seni terapan;
- g. Arsitektur;
- h. Peta;
- i. Seni batik;
- j. Fotografi;
- k. Sinematografi;
- l. Terjemahan, tafsir, saduran, bunga rampai, database dan karya lain dari hasil pengalihwujudan.

Ciptaan yang disebutkan dalam huruf (a) sampai dengan (k) di atas dikategorikan sebagai ciptaan asli, sedangkan ciptaan yang dimaksud dalam huruf (l) merupakan pengolahan selanjutnya dari ciptaan-ciptaan asli yang disebut dengan ciptaan derivatif⁴³. Ciptaan derivatif ini juga dilindungi hak cipta dimana ayat 2 pasal di atas menyebutkan bahwa ciptaan derivatif dianggap sebagai ciptaan tersendiri dengan tidak mengurangi Hak Cipta atas ciptaan asli.

Pengelompokan jenis ciptaan atas sifat asli dan turunan itu dapat ditemui dalam Penjelasan pasal 1 angka 12 Undang-undang Hak Cipta tahun 1987 mengenai perbedaan jangka waktu perlindungan terhadap ciptaan asli yang diatur dalam pasal 26 ayat 1 dan ciptaan derivatif yang diatur dalam pasal 27 ayat 1. Ciptaan asli terdiri dari:

- a. Buku, pamflet dan semua hasil karya tulis lainnya;
- b. Seni tari (koreografi);
- c. Segala bentuk seni rupa seperti seni lukis, seni pahat, dan seni patung;
- d. Seni batik
- e. Ciptaan lagu atau musik dengan atau tanpa teks;
- f. Karya arsitektur

Sedangkan ciptaan derivatif terdiri dari:

⁴³ JCT Simorangkir, *Hak Cipta*, (Jakarta: Djambatan, 1982) hal 139

- a. Karya pertunjukkan seperti musik, karawitan, drama, tari, pewayangan, pantomim dan karya siaran antara lain untuk media radio, televisi, dan film, serta karya rekaman video;
- b. Ceramah, kuliah, pidato, dan sebagainya;
- c. Peta;
- d. Karya sinematografi;
- e. Karya rekaman suara atau bunyi;
- f. Terjemahan, tafsir, saduran, dan penyusunan bunga rampai
- g. Karya fotografi;
- h. Program komputer.

Menurut Miller dan Davis, pemberian hak cipta terhadap suatu ciptaan didasarkan kepada kriterium keaslian atau kemurnian dimana yang terpenting adalah bahwa ciptaan tersebut benar-benar berasal dari intelektualitas pencipta yang bersangkutan, bukan hasil jiplakan atau peniruan dari karya orang lain.

Menurut Suyud Margono, pada prinsipnya hak cipta ada atau lahir bersamaan dengan terwujudnya suatu karya cipta atau ciptaan. Dalam Undang-undang Hak Cipta juga ditentukan bahwa hak cipta melekat pada suatu ciptaan pada saat karya cipta tersebut pertama kali dibacakan, disiarkan, disuarakan atau disebar luaskan dengan alat apapun dan dengan cara apapun sehingga dapat dibaca, dilihat dan didengar orang lain.⁴⁴

Unsur keempat yaitu mengumumkan, memperbanyak atau memberikan izin untuk itu. Pengumuman adalah pembacaan, penyiaran, pameran, penjualan, pengedaran atau penyebara suatu Ciptaan dengan menggunakan alat apa pun, termasuk media internet atau melakukan dengan cara apapun sehingga suatu Ciptaan dapat dibaca, didengar atau dilihat orang lain. Perbanyak adalah penambahan jumlah sesuatu Ciptaan, baik secara keseluruhan maupun bagian yang sangat substansial dengan menggunakan bahan-bahan yang sama ataupun tidak sama, termasuk mengalihwujudkan secara permanen atau temporer.

⁴⁴ Suyud Margono, *Hukum dan Perlindungan Hak Cipta*, (Jakarta: CV Novindo Pustaka Mandiri, 2003) hal 29

Unsur kelima yaitu tidak mengurangi pembatasan-pembatasan menurut peraturan perundang-undangan yang berlaku. Adanya unsur eksklusif yang melekat pada hak cipta dimana hanya Pencipta atau Pemegang Hak Cipta yang memiliki hak untuk melakukan pengumuman dan/atau perbanyak suatu karya cipta, memberikan larangan bagi pihak-pihak yang tidak mendapatkan izin dari Pencipta dan/atau Pemegang Hak Cipta untuk mengumumkan dan/atau memperbanyak karya cipta. Namun dalam Undang-undang Hak Cipta terdapat pembatasan-pembatasan terhadap keberlakuan unsur eksklusif ini.

Pembatasan Hak Cipta yang tidak dianggap sebagai pelanggaran Hak Cipta yaitu:

1. Dengan syarat bahwa sumbernya harus disebutkan atau dicantumkan⁴⁵
 - a. Penggunaan Ciptaan pihak lain untuk kepentingan pendidikan, penelitian, penulisan karya ilmiah penyusunan laporan, penulisan kritik atau tinjauan suatu masalah dengan tidak merugikan kepentingan yang wajar dari Pencipta;
 - b. Pengambilan Ciptaan pihak lain, baik seluruhnya maupun sebagian, guna keperluan pembelaan di dalam atau di luar pengadilan;
 - c. Pengambilan Ciptaan pihak lain, baik seluruhnya maupun sebagian, guna keperluan ceramah yang semata-mata untuk tujuan pendidikan dan ilmu pengetahuan; atau pertunjukkan atau pementasan yang tidak dipungut bayaran dengan ketentuan tidak merugikan kepentingan yang wajar dari Pencipta;
 - d. Perbanyak suatu Ciptaan bidang ilmu pengetahuan, seni, dan sastra dalam huruf braille guna keperluan para tunanetra, kecuali jika Perbanyak itu bersifat komersial;

⁴⁵ Indonesia. *Undang-undang no 19 tahun 2002 tentang Hak Cipta., op cit.,* pasal

- e. Perbanyak suatu Ciptaan selain Program Komputer, secara terbatas dengan cara atau alat apapun atau proses yang serupa oleh perpustakaan umum, lembaga ilmu pengetahuan atau pendidikan dan pusat dokumentasi yang nonkomersial semata-mata untuk keperluan aktivitasnya;
 - f. Perubahan yang dilakukan berdasarkan pertimbangan pelaksanaan teknis atas karya arsitektur seperti Ciptaan bangunan
 - g. Pembuatan salinan cadangan suatu program komputer oleh pemilik program komputer yang dilakukan semata-mata untuk digunakan sendiri
2. Untuk kepentingan-kepentingan tertentu
 - a. Kepentingan pendidikan, ilmu pengetahuan serta kegiatan penelitian dan pengembangan terhadap kegiatan penerjemahan dan/atau memperbanyak Ciptaan dalam bidang ilmu pengetahuan dan sastra ke dalam bahasa Indonesia oleh Menteri setelah mendengar pertimbangan Dewan Hak Cipta, apabila Pemegang Hak Cipta setelah lewat jangka waktu 3 tahun sejak penerbitan Ciptaan tidak melakukan penerjemahan.⁴⁶
 - b. Kepentingan nasional terhadap pengumuman suatu Ciptaan melalui radio, televisi dan/atau sarana lain yang dilakukan oleh Pemerintah tanpa mendapat izin dari Pemegang Hak Cipta dengan ketentuan tidak merugikan kepentingan yang wajar dari Pemegang Hak Cipta.⁴⁷
 3. Dengan syarat-syarat khusus⁴⁸
 - a. Pengumuman dan/atau perbanyak lambang Negara dan lagu kebangsaan menurut sifatnya yang asli;

⁴⁶ *Ibid.*, pasal 16 ayat 1 jo. Ayat 2

⁴⁷ *Ibid.*, Pasal 18 ayat 1

⁴⁸ *Ibid.*, Pasal 14

- b. Pengumuman dan/atau perbanyakkan segala sesuatu yang diumumkan dan/atau diperbanyak oleh atau atas nama Pemerintah, kecuali apabila Hak Cipta itu dinyatakan dilindungi, baik dengan peraturan perundang-undangan maupun dengan pernyataan pada Ciptaan itu sendiri atau ketika Ciptaan itu diumumkan dan/atau diperbanyak;
- c. Pengambilan berita aktual baik seluruhnya maupun sebagian dari kantor berita, lembaga penyiaran dan surat kabar atau sumber sejenis lain, dengan ketentuan sumbernya harus disebutkan secara lengkap.

Selain itu unsur keeksklusifan Hak Cipta tidak melekat pada setiap karya cipta dimana terdapat Hak Cipta tidak berlaku atas:

- a. Hasil rapat terbuka lembaga-lembaga Negara;
- b. Peraturan perundang-undangan;
- c. Pidato kenegaraan atau pidato pejabat Pemerintah;
- d. Putusan pengadilan atau penetapan hakim;
- e. Keputusan badan arbitrase atau keputusan badan-badan sejenis lainnya.

Abdulkadir Muhammad mengemukakan bahwa sifat hukum hak cipta adalah sebagai berikut:

1. Benda bergerak immateril

Hak cipta dianggap sebagai benda bergerak oleh Undang-undang Hak cipta merupakan benda immateril dimana hak ini tidak memiliki bentuk nyata walaupun keberadaannya diakui. Otto Hasibuan⁴⁹ mengatakan bahwa hak cipta adalah sesuatu hak yang muncul sesudah adanya karya yang memiliki bentuk, nyata atau berwujud.

2. Hak Cipta dapat dibagi

⁴⁹ Hulman. Op cit hal 71, sebagaimana yang dikutip dari buku Otto Hasibuan, *Hak Cipta di Indonesia: Tinjauan Khusus Hak Cipta Lagu, Neighbouring Rights, dan Collecting Society*, (Bandung: Alumni, 2008), hal 56. Seperti yang dikatakan oleh Michael F Flint “*Copyright is a given to or derived from work, and is not a right on novelty of ideas*”

Hak Cipta untuk mengumumkan atau memperbanyak suatu karya cipta dapat beralih atau dialihkan kepada pihak ketiga dengan pemberian izin untuk melakukan pengumuman saja atau perbanyak saja ataupun pemberian izin untuk melakukan baik pengumuman dan perbanyak. Hal ini dapat dilihat dalam ketentuan pasal 3 ayat 2 UUHC yang menyatakan bahwa hak cipta dapat baik seluruhnya maupun sebagian beralih atau dialihkan, yang menunjukkan bahwa Hak Cipta dapat dibagi.

3. Tidak dapat disita

Walaupun hak cipta merupakan benda bergerak, dengan adanya sifat ciptaan yang menunggal dengan Penciptanya dan bersifat tidak berwujud maka Hak Cipta tidak dapat disita.

Apabila pencipta sebagai pemilik hak atau pemegang hak cipta sebagai yang berwenang menguasai hak cipta, dengan hak cipta itu melakukan pelanggaran hukum atau mengganggu ketertiban umum, maka yang dapat dilarang oleh hukum adalah perbuatan pemilik atau pemegang hak cipta yang menggunakan haknya itu. apabila larangan tersebut mengakibatkan penghukuman, maka penghukuman itu tidak mengenai hak ciptanya, artinya bahwa hak cipta itu tidak dapat disita, dirampas atau dilenyapkan. Yang dapat disita, dirampas atau dilenyapkan itu adalah ciptaannya.⁵⁰

Lebih lanjut mengenai sifat Hak Cipta, Otto Hasibuan⁵¹ mengemukakan bahwa dari segala keunikan dan kekhasannya itu, dikenallah beberapa sifat dasar yang melekat pada Hak Cipta (*The Nature of Copyright*) yaitu:

1. Hak Cipta adalah hak milik (*property right*)
2. Hak Cipta adalah hak yang terbatas waktunya (*limited duration*)
3. Hak Cipta adalah sebuah hak yang bersifat eksklusif (*exclusive right*)

⁵⁰ Ibid hal 71

⁵¹ Ibid., hal 71

4. Hak Cipta adalah sebuah kumpulan hak di dalam sebuah karya (*a multiple right, a bundle of rights in one work*)

2.1.2 Perlindungan Hak Cipta terhadap Karya Cipta Musik

2.1.2.1 Hak Moral

Hak moral dalam hak cipta disebut sebagai hak yang bersifat asasi sebagai *natural right* yang dimiliki manusia⁵². Dengan demikian sudah merupakan suatu kewajiban bahwa setiap pencipta harus mendapat pengakuan dan perlindungan terhadap hak moral yang terlekat dengan karya ciptanya.

Dalam hukum perdata, hak moral pencipta adalah hak pencipta untuk dihormati karya ciptanya.⁵³ Pencipta memiliki banyak hak yang kekal dan hak yang tidak dapat dicabut sehubungan dengan karya ciptanya termasuk hak untuk diberikan penghargaan, hak untuk mengubah karya ciptanya, dan hak untuk memaksa agar karya ciptanya dipelihara dengan keadaan baik, hak eksklusif untuk memberi ijin untuk mengumumkan dan hak untuk menarik dan merevisi atau memperbaiki ciptaannya⁵⁴.

Konvensi Bern yang ditandatangani di Roma tahun 1928 juga mendefinisikan hak moral pencipta sebagai hak pencipta untuk mencantumkan namanya dalam karya ciptanya dan keutuhan karya tersebut.⁵⁵ Definisi hak moral pencipta merujuk pada hak pencipta untuk melindungi reputasi dan integritas karya ciptanya dari penyalahgunaan dan penyelewengan.

Hak moral ini merupakan manifestasi dari adanya pengakuan manusia terhadap hasil karya orang lain yang sifatnya non ekonomi. Lazimnya penghargaan moral diberikan masyarakat kepada seseorang

⁵² Suyud, *op cit.*, hal 49

⁵³ Rooseno Harjowidigdo, *Perjanjian Lisensi Hak Cipta Musik dalam Pembuatan Rekaman*, (Jakarta: Percetakan Negara Republik Indonesia, 2005) hal 51

⁵⁴ *Ibid*

⁵⁵ Berne.. article 6 bis

karena orang tersebut telah menghasilkan suatu ciptaan atau karya tertentu yang bermanfaat bagi masyarakat, dimana penghargaan ini tidak dapat dinilai dengan uang, tetapi berwujud pemberian kekuasaan atau wewenang tertentu kepadanya untuk melakukan sesuatu apabila ada orang yang melanggarnya.

Konvensi Bern mencoba mengatur masalah hak moral pencipta dalam 2 hal, yaitu *paternity right*⁵⁶ dan *integrity right*⁵⁷. Hak moral menjamin bahwa pencipta berhak sedikitnya atas dua hal, pertama hak untuk dicantumkan namanya pada karya cipta bersangkutan atau *attribution right* dan kedua hak untuk dilindungi karya ciptanya dari penyimpangan, pemenggalan atau perubahan yang merusak integritas pencipta atau *integrity right*.

Pengaturan hak moral pencipta yang terdapat dalam Konvensi Bern pasal 6 bis, menentukan bahwa:

- (1) Dengan bebas hak-hak ekonomi pencipta, dan bahkan setelah pengalihan hak yang dimaksud, pencipta tersebut memiliki hak-hak untuk mengklaim keciptaan atas karya cipta tersebut dan berkeberatan atas perubahan, perusakan atau modifikasi lainnya, atau tindakan merugikan lainnya sehubungan dengan, karya cipta yang dimaksud yang akan merugikan kehormatan dan reputasinya
- (2) Hak hak sebagaimana diatur di dalam ayat terdahulu akan dijamin kepada pencipta setelah ia meninggal dunia, berlangsung terus, sampai pada berakhirnya hak ekonomi, dan kemungkinan akan dipergunakan oleh seseorang atau suatu badan yang diizinkan oleh peraturan perundang-undangan negara di mana perlindungan dituntut.

⁵⁶ Hak pencipta untuk mengklaim keciptaan atas karya ciptanya. *Berne Convention of the protection of Literary and Artistic Works. Article 6 bis 1 (moral right)*

⁵⁷ Hak pencipta untuk berkeberatan atas perubahan, perusakan, atau modifikasi lainnya, atau tindakan merugikan lainnya sehubungan dengan karya cipta yang dimaksud yang akan merugikan kehormatan dan reputasinya. *Berne Convention, ibid.*,

- (3) Tujuan dari ganti rugi untuk melindungi atau menjaga hak-hak yang dijamin oleh pasal ini akan diatur dengan peraturan perundang-undangan negara di mana perlindungan dituntut

Dalam makalah yang disampaikan pada “Seminar dan Workshop Nasional Peningkatan Kesadaran tentang Hak Cipta dan Penyusunan serta Penggunaan Buku Panduan Hak Cipta Asia versi Indonesia”⁵⁸ dijelaskan bahwa Hak moral terdiri atas :

a. paternity right

yaitu hak yang menjamin seorang pencipta mendapat pengakuan atas karya ciptanya melalui pencantuman nama pencipta atas karya ciptanya tersebut serta hak untuk menolak menggunakan namanya pada suatu karya cipta yang bukan merupakan hasil karyanya

b. integrity right

merupakan hak seorang pencipta untuk memberi izin atau melarang orang lain merubah atau mengaburkan konsep dasar ciptaannya

c. anomalous protection

merupakan hak seorang pencipta untuk menolak penggunaan karya ciptanya dalam hal yang berhubungan dengan penggunaan amoral, pornografi maupun SARA

Hak moral dalam pengaturan Undang-undang Hak Cipta tahun 2002, didefinisikan sebagai hak yang melekat pada diri pencipta atau pelaku yang tidak dapat dihilangkan atau dihapus tanpa alasan apa pun, walaupun Hak Cipta atau Hak terkait telah dialihkan.⁵⁹

Pengaturan Hak Moral dalam Undang-undang Hak Cipta diatur dalam pasal 24 yang menentukan bahwa:

- (1) Pencipta atau ahli warisnya berhak menuntut Pemegang Hak Cipta supaya nama Pencipta tetap dicantumkan dalam Ciptaannya

⁵⁸ Diambil dari skripsi “*Pembagian Royalti Album Suatu Grup Musik*” oleh Mahaesa Magokuro Rumondor, sebagaimana mengutip Tantowi yahya dalam “Seminar dan Workshop Nasional Peningkatan Kesadaran tentang Hak Cipta dan Penyusunan serta Penggunaan Buku Panduan Hak Cipta Asia versi Indonesia”

⁵⁹ Indonesia. *Undang-undang no 19 tahun 2002 tentang Hak Cipta., op cit.,* Penjelasan umum paragraf 5

- (2) Suatu Ciptaan tidak boleh diubah walaupun Hak Ciptanya telah diserahkan kepada pihak lain, kecuali dengan persetujuan Pencipta atau dengan persetujuan ahli warisnya dalam hal Pencipta telah meninggal dunia.
- (3) Ketentuan sebagaimana dimaksud pada ayat (2) berlaku juga terhadap perubahan judul dan anak judul Ciptaan, pencantuman dan perubahan nama atau nama samaran Pencipta.
- (4) Pencipta tetap berhak mengadakan perubahan pada Ciptaannya sesuai dengan kepatutan dalam masyarakat.

Dengan demikian, dengan adanya Hak moral ini, Pencipta akan mendapat perlindungan untuk:

- a. Dicantumkan nama atau nama samarannya di dalam Ciptaannya ataupun salinannya dalam hubungan dengan penggunaan secara umum.
- b. Mencegah bentuk-bentuk distorsi, mutilasi atau bentuk pemotongan, perusakan, penggantian yang berhubungan dengan karya cipta yang pada akhirnya akan merusak apresiasi dan reputasi pencipta.

Hak-hak diatas tidak dapat dipindahkan kepada pihak lain selama Pencipta masih hidup kecuali atas wasiat Pencipta berdasarkan peraturan perundang-undangan.

Dari definisi hak moral oleh Undang-undang Hak Cipta dapat dilihat adanya perlindungan tidak hanya bagi Pencipta untuk dicantumkan namanya dalam suatu karya cipta, namun perlindungan dan pengakuan tersebut berlaku pula terhadap Pelaku karya cipta musik. Hal ini dipertegas oleh Dr Otto Hasibuan⁶⁰ yang mengemukakan bahwa hak moral adalah hak yang melekat pada diri Pencipta (termasuk pelaku) yang tidak dapat dihilangkan atau dihapus tanpa alasan apa pun, sebab adanya sifat kemanunggalan atau hubungan integral antara Pencipta dengan Ciptaannya.

⁶⁰ Hulman., op cit hal 74

Sebagaimana dikutip Otto Hasibuan, Stewart mengkonstatir bahwa ada tiga basis hak moral:⁶¹

- a. *The right of publication, is the right to decide whether the work is to be made public;*

Inti dari hak ini, Pencipta yang berhak memutuskan apakah dan di manakah karyanya akan dipublikasikan. Hak ini tidak termasuk dalam bagian dari hak moral dalam Konvensi Bern walaupun menonjol dalam hukum Prancis.

- b. *The right of paternity, is the right to claim authorship of published works;*

Hak ini berkaitan dengan penerbitan sebuah karya, yang bisa dibagi menjadi tiga hak, yaitu:

- Hak menuntut pencantuman nama Pencipta pada semua hasil perbanyak karya untuk selamanya
- Hak mencegah orang lain menyebut dirinya sebagai Pencipta Karya
- Hak mencegah penggunaan atau pencantuman namanya pada sebuah karya orang lain

- c. *The right of integrity, is the right of the author to safeguard his reputation by preserving the integrity of the work;*

Hak ini berkaitan dengan hak Pencipta untuk mengubah karyanya atau melarang orang lain untuk memodifikasi karyanya.

Dengan demikian, hak moral yang melekat dan melindungi pribadi serta reputasi Pencipta, tidak memperkenankan orang lain melakukan perubahan terhadap suatu karya cipta baik judul, isi maupun Penciptanya.

2.1.2.2 Hak Ekonomi

Hak ekonomi merupakan hak eksklusif pencipta untuk dapat melakukan eksplorasi ekonomis atas karya ciptanya dalam pengertian

⁶¹ Ibid., hal 75

seorang pencipta dapat memanfaatkan karya ciptanya untuk kepentingan komersil bagi kepentingan dirinya.⁶²

Menurut Sanusi Bintang, hak ekonomi adalah hak yang berkaitan dengan pemanfaatan secara komersial suatu ciptaan.⁶³

Penjelasan umum Undang-undang Hak Cipta menyebutkan bahwa hak ekonomi adalah hak untuk mendapatkan manfaat ekonomi atas ciptaan serta produk terkait⁶⁴

Hak ekonomi dari hak cipta merupakan *transferable right* yaitu hak yang dapat diserahkan kepada pihak lain. Sebaliknya hak moral merupakan *non transferable right* karena hak moral tidak dapat dipisahkan dari penciptanya.⁶⁵

Hak ekonomi adalah hak yang berkaitan dengan pemanfaatan secara komersial suatu ciptaan dan berhubungan dengan perlindungan kebutuhan ekonomi pencipta misalnya hak untuk mendapatkan pembayaran royalti atas penggunaan (pengumuman dan perbanyakan) karya cipta yang dilindungi. Suatu ciptaan merupakan hasil karya intelektual yang diperoleh melalui pengorbanan waktu tenaga dan dana. Dilihat dari aspek ekonomi pengorbanan tersebut merupakan suatu investasi yang perlu dikelola secara komersial untuk mendapatkan pengembalian modal dan memperoleh keuntungan, semakin bermutu suatu ciptaan semakin tinggi pula potensi nilai komersialnya⁶⁶

Esensi Hak Cipta memang adalah hak untuk mendapatkan manfaat ekonomi secara eksklusif dari eksploitasi ciptaan yang bersangkutan. Cara untuk dapat memanfaatkan ekonomi suatu ciptaan adalah dengan memperbanyak (*copy*) dan kemudian mem-*publish* atau membuat ciptaan itu

⁶² Diambil dari skripsi “*Pembagian Royalti Album Suatu Grup Musik*”, *ibid.*,

⁶³ Sanusi Bintang, *Hukum Hak Cipta*, (Bandung: Citra Aditya Bakti, 1998) hal 4

⁶⁴ Indonesia *Undang-undang no 19 tahun 2002 tentang Hak Cipta.*, *op cit.*, Penjelasan Umum

⁶⁵ JCT Simorangkir, *Undang-undang Hak Cipta 1982*, hal 43

⁶⁶ Sanusi, *op cit.*, hal 4-5

dapat dinikmati oleh publik (*making available for public*). Seorang pencipta lagu tidak akan mendapatkan manfaat ekonomi dari lagu tersebut bila tidak memperdengarkan (*publish*) lagu tersebut kepada publik. Memperdengarkan lagu itu dapat dilakukan melalui *live performance* atau melalui pemutaran ulang rekaman suara lagu tersebut.⁶⁷

Otto Hasibuan⁶⁸ mengemukakan bahwa sesuai Undang-undang Hak Cipta pasal 2 ayat 1, Hak Ekonomi dibagi menjadi dua bagian besar, yaitu: hak untuk mengumumkan⁶⁹ dan hak untuk memperbanyak⁷⁰ Ciptaan.

Ruang Lingkup Hak Ekonomi Menurut Undang-undang Hak Cipta⁷¹

Hak Mengumumkan	Hak Memperbanyak
<ul style="list-style-type: none"> • Hak membacakan • Hak menyiarkan • Hak memamerkan • Hak menjual • Hak mengedarkan • Hak menyebarkan 	<ul style="list-style-type: none"> • Hak menambahkan jumlah (menggandakan) • Hak mengalihwujudkan

Di lain pihak, Rooseno Harjowidigdo⁷² mengemukakan bahwa hak ekonomi pencipta atas ciptaannya dapat dikelompokkan menjadi:

- a. Hak untuk mengumumkan

⁶⁷ Agus Sardjono, *Hak Cipta Bukan Hanya Copyright*, Jurnal Hukum dan Pembangunan Tahun ke-40 no 2 April-Juni 2010 hal 256-257

⁶⁸ Hulman, *Op cit.*, hal 76

⁶⁹ Pembacaan, penyiaran, pameran, penjualan, pengedaran, atau penyebaran suatu Ciptaan dengan menggunakan alat apa pun termasuk media internet, atau melakukan dengan cara apapun sehingga suatu Ciptaan dapat dibaca, didengar atau dilihat orang lain.

⁷⁰ Penambahan jumlah sesuatu Ciptaan, baik secara keseluruhan maupun bagian yang sangat substansial dengan menggunakan bahan-bahan yang sama atau pun tidak sama, termasuk mengalihwujudkan secara permanen atau temporer.

⁷¹ Hulman, *Op Cit.*, hal 77

⁷² Rooseno, *Ibid.*, hal 55-59

Terdapat perkembangan definisi pengumuman dalam Undang-undang Hak Cipta tahun 2002 yang sebelumnya diatur oleh UUHC tahun 1982, dimana perluasan itu, yaitu:

Undang-undang Hak Cipta tahun 1982 (pasal 1 huruf C)	Undang-undang Hak Cipta tahun 2002 (pasal 1 angka 5)
<ul style="list-style-type: none"> • Pembacaan • Penyuaran • Penyiaran • Penyebaran sesuatu ciptaan • Dengan alat dan cara apapun • Sehingga suatu ciptaan dapat dibaca, didengar, atau dilihat orang lain 	<ul style="list-style-type: none"> • Pembacaan • Penyiaran • Pameran • Penjualan • Pengedaran • Penyebaran sesuatu ciptaan • Menggunakan alat apapun atau cara apapun • Sehingga suatu ciptaan dapat dibaca, didengar atau dilihat oleh orang lain

Dalam prakteknya ada beberapa cara atau bentuk “pengumuman”, yaitu:

- i. Pengumuman yang dilakukan melalui siaran radio, yang biasa dilakukan oleh para user, seperti lembaga penyiaran radio, rumah makan, hotel dan sebagainya.
- ii. Pengumuman yang dilakukan melalui media penyiaran televisi, termasuk TV kabel, yang biasanya dilakukan oleh para user, TV, TV kabel, hotel dan sebagainya.
- iii. Pengumuman yang dilakukan melalui media cetak, seperti koran, majalah atau bahkan yang dilakukan melalui komputer atau internet.

iv. Pengumuman yang dilakukan secara langsung seperti konser atau petunjukkan, musik live.

b. Hak untuk memperbanyak

Hak ini dikenal dengan Hak perbanyakan⁷³ dimana dalam kaitannya dengan rekaman suara, hak demikian dikenal dengan istilah “*mechanical Rights*”, yaitu penggandaan karya rekaman suara atau gambar atau suara dan gambar.

Mechanical Right biasanya berurusan dengan *mechanical process* dalam konteks *copy* mengcopy. Bermula dari lagu (*works*) yang diciptakan oleh pencipta, kemudian ijin (*mechanical lisen*) diberikan kepada perusahaan rekaman untuk melakukan proses pembuatan master rekaman (*phonograms*).⁷⁴

Rooseno mengemukakan bahwa pengertian mengalihwujudkan adalah mentransformasikan suatu ciptaan yang sudah ada ke dalam bentuk karya cipta baru, misalnya musik yang pertama kali diwujudkan dengan irama Country kemudian dialihwujudkan dalam musik berirama Jazz.

c. Hak untuk menyewakan

Hak ini adalah konsekwensi dari hak eksklusif pencipta atas ciptaannya dengan mana pihak atau orang lain tidak dapat mempergunakan ciptaannya tanpa izin, sehingga pencipta atau pemegang hak cipta yang sah dapat menyewakan ciptaan tersebut untuk tujuan yang bersifat komersial.

d. Hak untuk menjual

Hak ini diatur dalam pasal 26 Undang-undang Hak Cipta yang memberikan hak kepada Pencipta untuk menjual Ciptaannya sebagian atau seluruhnya kepada pihak lain, yang hanya dapat dilakukan sekali saja. Hak Cipta yang dijual untuk seluruh atau sebagian tidak dapat dijual untuk kedua kalinya oleh penjual yang sama.

⁷³ Hulman, *op cit.*, hal 80

⁷⁴ Agus, *Hak Cipta Bukan...*, *op cit.*, hal 257-258

Dalam hal timbul sengketa antara beberapa pembeli hak cipta yang sama atas suatu ciptaan perlindungan diberikan kepada pembeli yang lebih dahulu memperoleh hak cipta tersebut.

Penjelasan pasal 26 menjelaskan bahwa pembelian hasil ciptaan tidak berarti bahwa status ciptaannya berpindah kepada pembeli, akan tetapi hak cipta atas suatu ciptaan tersebut tetap ada di tangan penciptanya.

e. Hak untuk memberikan lisensi

Pencipta atau pemegang hak cipta yang sah mempunyai hak untuk memberikan lisensi kepada pihak lain dalam kaitannya dengan penggunaan karya cipta sebagaimana dimaksud dalam pasal 2 Undang-undang Hak Cipta. Pemberian lisensi diberikan melalui suatu perjanjian liseni dalam jangka waktu tertentu, dimana hal ini merupakan konsekwensi dari hak cipta itu sendiri sebagai suatu hak eksklusif yang tidak memungkan orang untuk menggunakan dan/atau menerima manfaat ekonomi daripadanya tanpa izin dari pencipta dan/atau pemegang hak cipta yang sah.

Djumhana⁷⁵ mengklasifikasikan hak ekonomi itu lebih terinci lagi meliputi yaitu:

a. Hak reproduksi atau penggandaan (*reproduction right*)

Yaitu hak Pencipta untuk menggandakan ciptaannya. Dalam Undang-undang Hak Cipta 1987, hak reproduksi sama dengan perbanyakan yaitu menambah jumlah sesuatu ciptaan dengan pembuatan yang sama, hampir sama atau menyerupai ciptaan tersebut dengan mempergunakan bahan-bahan yang sama maupun tidak sama, termasuk mengalihwujudkan sesuatu ciptaan. Hak reproduksi ini juga mencakup perubahan bentuk ciptaan satu ke ciptaan lainnya, misalnya rekaman musik, pertunjukkan drama, juga pembuatan duplikat dalam rekaman suara dan film.

b. Hak adaptasi (*adaptation right*)

⁷⁵ Djumhana hal 67-73

Yaitu hak untuk menggandakan adaptasi, dapat berupa penerjemah dari bahasa satu ke bahasa lain, aransemen musik, dramatisasi dari non-dramatik, mengubah menjadi cerita fiksi dari karangan nonfiksi, atau sebaliknya.

Hak ini menimbulkan lahirnya hak baru yang disebut sebagai *synchronzation rights*, yaitu hak untuk memberi izin apabila sebuah lagu dipakai dalam sebuah karya cinematografi, iklan dan karya drama lainnya.⁷⁶

c. Hak distribusi (*distribution right*)

Yaitu hak untuk menyebarkan kepada masyarakat setiap hasil ciptaan dalam bentuk penjualan atau penyewaan atau bentuk lain yang maksudnya agar ciptaan tersebut dikenal oleh masyarakat. Dalam hak ini termasuk pula bentuk yang dalam Undang-undang Hak Cipta 1987 jo. Undang-undang Hak Cipta 1997 disebut dengan pengumuman, yaitu pembacaan penyuaran, penyiaran atau penyebaran sesuatu ciptaan, dengan menggunakan alat apapun dan dengan cara sedemikian rupa sehingga ciptaan dapat dibaca, didengar atau dilihat orang lain.

d. Hak pertunjukkan (*public performance right*)

Yaitu hak untuk mengungkapkan karya seni dalam bentuk pertunjukkan atau penampilan oleh pemusik, dramawan, maupun seniman lainnya.

e. Hak penyiaran (*broadcasting right*)

Yaitu hak untuk menyiarkan bentuknya berupa mentransmisikan suatu ciptaan oleh peralatan tanpa kabel. Hak penyiaran ini meliputi penyiaran ulang dan mentransmisikan ulang.

f. Hak program kabel (*cable casting right*)

Yaitu hak untuk menyiarkan ciptaan berupa program-program, misalnya siaran televisi pelanggan yang bersifat komersial, melalui kabel oleh badan penyiaran televisi kepada pesawat para pelanggan.

⁷⁶ Hulman, *op cit.*, hal 83-84

Hak ini hampir sama dengan hak penyiaran, tetapi tidak melalui transmisi melainkan kabel.

g. *Droit de suit*

Yaitu hak tambahan pencipta yang bersifat kebendaan

h. Hak pinjaman masyarakat (*public lending right*)

Yaitu hak pencipta atas pembayaran ciptaan yang tersimpan di perpustakaan umum karena karya ciptaannya tersebut dipinjam oleh masyarakat dari perpustakaan tersebut.⁷⁷

Lamanya perlindungan atas hak pinjam oleh masyarakat tersebut secara umum sama dengan lamanya perlindungan Hak Cipta, yaitu selama hidup si pengarang ditambah 50 tahun setelah meninggal.

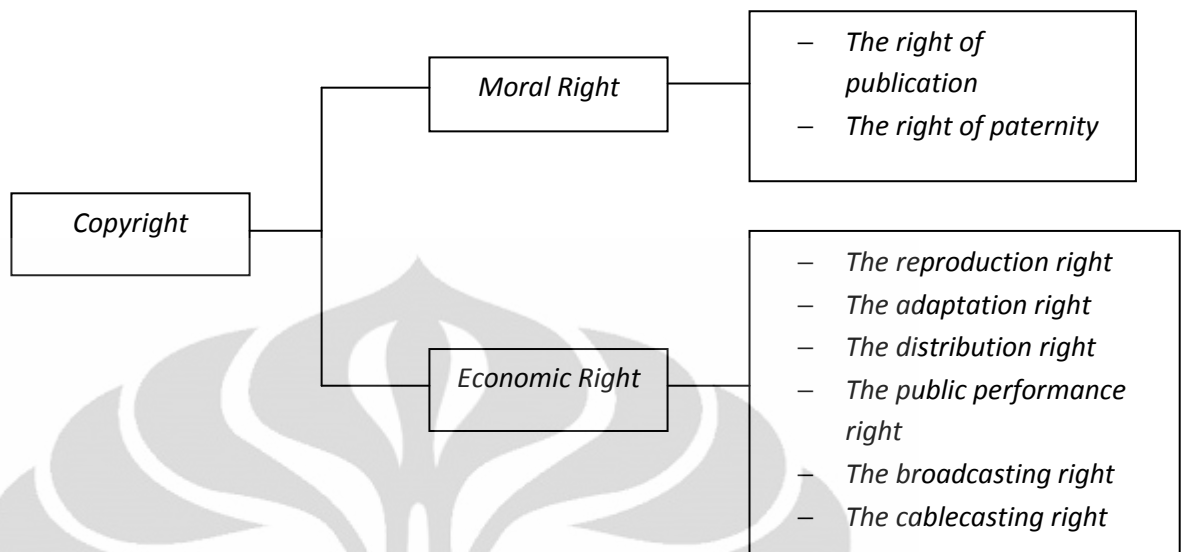
Pencipta yang memiliki hak pinjam oleh masyarakat harus memenuhi kualifikasi tertentu. pembayaran kepada pencipta tidaklah secara otomatis, hanya pencipta yang mendaftarkan pada suatu lembaga hak pinjam oleh masyarakatlah yang mendapat bayaran.

Hak pinjam oleh masyarakat ini telah banyak dianut oleh beberapa negara dengan berbagai variasinya seperti Australia, Denmark, Belanda, Jerman dan Amerika Serikat. Sistem pembayarannya kepada Pencipta, rata-rata ditanggung oleh pemerintah. Hak ini bisa dialihkan kepada pihak lain, baik perorangan maupun badan hukum.

Menyangkut karya cipta musik dan lagu, terdapat dua macam hak ekonomi yaitu hak mekanis (*mechanical right*) yang berhubungan dengan produksi ulang karya cipta musik dalam bentuk kaset *compact disc*, video *compact disc* dan lain-lain; dan hak mengumumkan (*performing right*) yang berkaitan dengan memperdengarkan sebuah musik atau lagu misalnya menyanyikan, memutar kaset atau *compact disc player* di tempat umum untuk kepentingan komersial⁷⁸

⁷⁷ Abdulkadir Muhammad, *Kajian Hukum Ekonomi Intelektual* (Bandung: Citra Aditya Bakti, 2001) hal 20-21

⁷⁸ Sanusi. *op cit.*, hal 98

Diagram pembagian Hak Moral dan Hak Ekonomi dalam Hak Cipta⁷⁹

2.1.2.3 Macam-macam Hak Terkait dalam Karya Cipta Musik

Hak terkait atau *neighboring right* adalah hak yang berkaitan dengan hak cipta. Berdasarkan ketentuan dalam WIPO, *neighbouring rights* yang merupakan ucapan singkat dari *Rights Neighbouring on Copy Rights*, dirumuskan sebagai hak yang ada kaitannya, yang ada hubungannya dengan atau “berdampingan dengan” hak cipta.⁸⁰

Seperti hak cipta, hak terkait juga mendapat perlindungan secara otomatis tanpa suatu prosedur tertentu. Perlindungan ini lahir pada saat suatu karya cipta musik pertama kali ditampilkan kepada masyarakat. Namun demikian, hak ini memiliki perbedaan dengan hak cipta dilihat dari subyek yang mendapatkan perlindungan, dimana para seniman (artis, aktor, penyanyi, penari dan sebagainya), produser rekaman dan organisasi penyiaran sebagai pihak pemegang hak terkait.

Berdasarkan Undang-undang Hak Cipta, terdapat 3 macam hak terkait yaitu:

- a. Hak pelaku pertunjukkan terhadap penampilannya

⁷⁹ Hulman, *op cit.*, hal 84

⁸⁰ WIPO, *Introduction to Intellectual Property: Theory and Practice*, (London: Kluwer Law International Ltd), 1997, hal 158

Pelaku memiliki hak khusus untuk memerikan izin atau melarang orang lain yang tanpa persetujuannya membuat, memperbanyak dan menyiarkan⁸¹ rekaman suara dan atau gambar dari pertunjukannya.⁸² hal ini diatur dalam pasal 49 ayat 1 Undang-undang Hak Cipta

b. Hak produser rekaman terhadap rekaman yang dihasilkan

Produser rekaman memiliki hak khusus untuk memberikan izin atau melarang orang lain yang tanpa persetujuannya membuat memperbanyak menyiarkan pula karya siarannya melalui transmisi atau tanpa kabel atau melalui sistem elektromagnetik lainnya.⁸³ Hal ini diatur dalam pasal 49 ayat 3 Undang-undang Hak Cipta

c. Hak lembaga penyiaran terhadap program radio dan televisi

Lembaga penyiaran memiliki hak eksklusif untuk memberi ijin atau melarang orang lain yang tanpa persetujuannya membuat, memperbanyak dan/atau menyiarkan ulang karya siarannya melalui transmisi dengan atau tanpa kabel atau melalui sistem elektromagnetik lain⁸⁴

Menurut Djumhana⁸⁵, perlindungan hak terkait ini secara khusus hanya tertuju pada orang-orang yang berkecimpung dalam pertunjukkan, perekaman dan badan penyiaran. Ketiga pihak tersebut mempunyai hak yang berbeda-beda, dimana:

Pihak yang berkecimpung dalam pertunjukan mempunyai hak yaitu:

⁸¹ Yang termasuk dengan menyiarkan adalah menyewakan, melakukan pertunjukkan umum (*public performance*), mengkomunikasikan pertunjukkan langsung (*live performance*), dan mengkomunikasikan secara interaktif suatu karya rekaman Pelaku. Tim Lindsey et all hal 102

⁸² Jangka waktu perlindungannya berlaku selama 50 tahun sejak karya tersebut dipertunjukkan

⁸³ Jangka waktu perlindungannya berlaku selama 50 tahun sejak karya tersebut selesai direkam

⁸⁴ Jangka waktu perlindungannya berlaku selama 20 tahun sejak karya siaran tersebut pertama kali direkam

⁸⁵ Djumhana, op cit., hal 76-77

- Mengawasi penampilan yang digelar
- Mengawasi badan penyiaran yang menyiarkan penampilan yang digelar
- Mengawasi reproduksi penampilan-penampilan yang berikutnya
- Mengawasi penyiaran rekaman pagelaran kepada umum

Pihak yang berkecimpung dalam usaha rekaman atau produser berhak untuk:

- Merekam ulang (*reproduction right*)
- Mempertunjukkan rekaman kepada umum (*the public performance right*)
- Menyiarkan rekaman (*broadcasting right*)

Badan penyiaran mempunyai hak antara lain:

- Menyiarkan dan mereproduksi suatu ciptaan
- Merekam suatu ciptaan (*recording right*)
- Menampilkan kepada umum (*public performance right*)

Ketiga subjek pemegang hak ini walaupun bukan sebagai pencipta yang menghasilkan karya musik yang dilindungi hak cipta, namun mereka adalah pihak yang mengkomunikasikan atau mendistribusikan Karya cipta musik sehingga dapat dinikmati oleh para pengguna (*users*). Dengan demikian mereka adalah perantara yang juga memiliki peran penting terhadap dikonsumsinya karya cipta musik oleh pengguna sehingga mereka juga layak mendapatkan perlindungan hukum sebagaimana yang didapat pencipta.

Hak Terkait yang memberikan keeksklusifan bagi ketiga pemegang hak diatas, tidak mengurangi kewajiban mereka untuk mendapat izin dari masing-masing pihak apabila akan memperbanyak suatu karya cipta. Misalnya lembaga penyiaran harus meminta izin kepada produser film dengan bentuk permohonan lisensi, sedangkan produser film dan videonya harus mendapat izin dari produser rekaman suara, karena rekaman suara diambil untuk dimasukkan ke dalam filmnya, begitu juga produser rekaman

suara harus meminta izin kepada Pelaku, Pencipta maupun Pemegang Hak Cipta Lagu.⁸⁶

Karya intelektualita mereka yang berupa penampilan dari para artis aktor dan musisi yang dapat diwujudkan dalam materi tertentu yang dapat disimpan dan digunakan berulang-ulang. Demikian juga melalui perekaman dan penyiaran radio dan televisi, suatu ciptaan yang dihasilkan pencipta dapat diproduksi dan disimpan dalam berbagai cara dan bentuk sebagai hasil kemajuan teknologi informasi dan komunikasi sehingga mereka yang terlibat dalam proses pembuatannya yang perlu mendapatkan perlindungan hukum, untuk mencegah terjadinya perbanyakan tanpa izin.⁸⁷

Selain itu hak-hak yang berkaitan dengan hak cipta juga dikenal maksudnya dengan penggunaan hasil ciptaan oleh pihak lain, yang harus dilakukan dengan persetujuan pemilik hak cipta, diantaranya hak-hak tersebut adalah:

1. Hak untuk membawa salinan atau membuat reproduksi hasil karya
2. Untuk mendistribusikan hasil karya hak untuk menyewa salinan hasil karya
3. Hak untuk membuat rekaman suara atau gambar
4. Hak untuk mempertunjukkan kepada publik
5. Hak untuk menerjemahkan hasil karya
6. Hak untuk menyadur
7. Hak untuk membuat kopi kedalam karya audio visual

Ketentuan Pasal 3 *Rome Convention* mengenai hak terkait bagi pelaku pertunjukkan, produser dan organisasi penyiaran, diadopsi sebagai dasar diberikannya perlindungan hak terkait, dimana berdasarkan konvensi ini:

1. *Performers* adalah aktor, penyanyi, musisi, penari dan orang lain yang beraksi, menyanyi, mempertunjukkan karya sastra atau artistik
2. *Phonogram* adalah fiksasi oral suara dari pertunjukkan

⁸⁶ Harahap, *Hak terkait (Neighboring Right)*, Jakarta 10-11 Februari 2004, hal 325

⁸⁷ Sanusi, *op cit.*, hal 56

3. *Phonogram producer* adalah orang-orang yang atau badan hukum yang pertama-tama membuat suara dari pertunjukkan atau suara lainnya
4. Publikasi berarti menyerahkan *copy* dari Phonogram kepada publik dalam jumlah yang layak
5. Reproduksi berarti pembuatan *copy-copy* dari fiksasi
6. Broadcasting berarti transmisi dengan wireless untuk penerimaan publik atas suara atau latar suara.
7. Re-broadcasting yang berarti penyiaran yang simultan oleh salah satu organisasi penyiaran dan penyiaran dari organisasi lainnya⁸⁸

Hak Terkait merupakan proses lanjutan dari penyebarluasan Hak Cipta, sehingga Hak ini merupakan karya derivatif dari kreasi intelektual Hak Cipta⁸⁹. Sehingga lahirnya Hak Terkait merupakan dipengaruhi oleh keeksistensian perlindungan Hak Cipta terhadap suatu karya cipta lagu. Sebagai contoh, dalam penciptaan sebuah karya cipta lagu, Hak Cipta melindungi musik yang dibuat oleh komposer dan lirik yang terdapat lagu yang dibuat oleh penulis. Hak Terkait dari karya cipta lagu tersebut, berlaku pada pertunjukkan oleh para penyanyi dan musisi yang melantunkan lagu, pada rekaman yang terdapat lagu oleh produser dan program siaran sebuah badan penyiaran yang menyiarkan program berisi lagu tersebut.

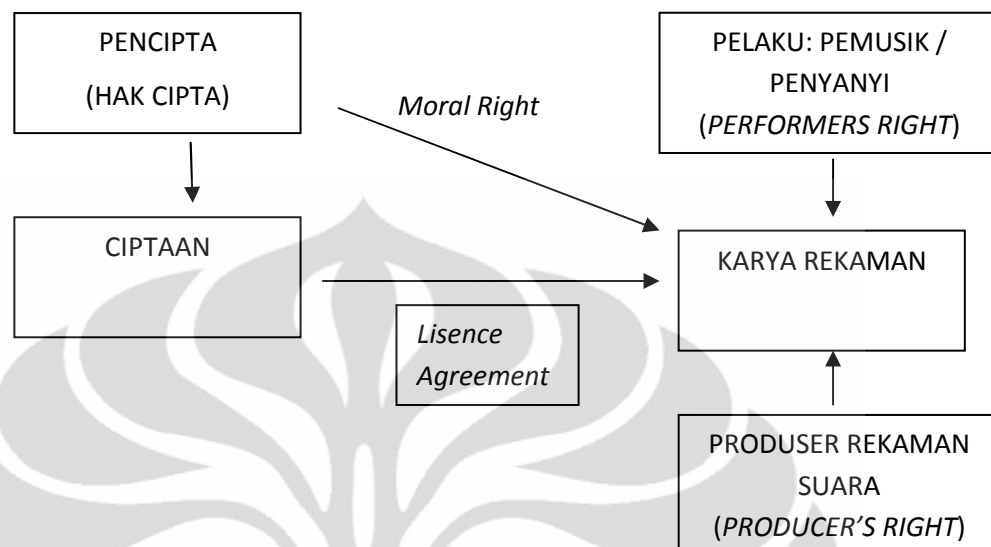
Menurut Prof Agus Sardjono⁹⁰, hak terkait adalah hak yang bersifat sekunder. dikatakan sekunder karena pada umumnya memang hak ini terkait dengan hak-hak Pencipta. Misalnya, hak cipta atas lagu dapat melahirkan hak terkait berupa *performer's rights* apabila Pencipta memberikan ijin kepada artis untuk menampilkan (to *perform*) lagu yang bersangkutan, baik dalam suatu *live show* maupun dalam bentuk karya rekaman.

⁸⁸ Suyud, *op cit.*, hal 52-53

⁸⁹ Rinto Harahap, *op cit.*, hal 323

⁹⁰ Agus, *Hak Cipta Bukan...*, *op cit.*, hal 261

Hak Terkait dari Pelaku dan Produser Rekaman Suara⁹¹



Dari ilustrasi diatas, dapat diketahui bahwa dalam sebuah karya rekaman bertumpuk tiga hak, yaitu *author's right* milik Pencipta, *performer's right* milik Pelaku, dan *producer's right* milik produser karya rekaman. Pencipta tetap memiliki hak mengumumkan dalam arti memperdengarkan karya ciptanya, pelaku juga mempunyai hak untuk memperdengarkan karya rekamannya, sedangkan produser tidak mempunyai hak memperdengarkan, melainkan hanya untuk memperbanyak (*copy*) karya rekaman yang bersangkutan serta *making available for public*, seperti mendistribusikan, menjual, menyewakan. Tindakan yang terakhir ini merupakan hak mem-publish dari seorang produser, namun bukanlah hak untuk memperdengarkan (*performing right*). *Performing right* tetap berada di tangan Pencipta untuk karya ciptanya dan Pelaku untuk karya rekamannya⁹²

Hak Cipta dan Hak Terkait hanya dilanggar jika benda berwujud dari Hak Terkait misalnya film, cakera optik dan pita kaset yang ada Hak Ciptanya diperbanyak atau digandakan langsung dalam bentuk yang sama

⁹¹ Agus Sardjono, *Hak Cipta Bukan...*, *op cit.*, hal 260

⁹² Agus Sardjono, *Hak cipta dalam Design Grafis*. hal 35

dnegan benda berwujud yang merupakan ciptaan asli tanpa izin dari Pemegang Hak Cipta.⁹³

2.2 Pemberian Lisensi dan Royalti

2.2.1 Lisensi

Lisensi menurut Undang-undang Hak Cipta adalah izin yang diberikan oleh Pemegang Hak Cipta atau Pemegang Hak Terkait kepada pihak lain untuk mengumumkan dan/atau memperbanyak Ciptaannya atau produk Hak Terkaitnya dengan persyaratan tertentu.⁹⁴

Gunawan Wijaya⁹⁵ mengemukakan bahwa lisensi merupakan suatu bentuk pemberian izin untuk memanfaatkan suatu hak atas kekayaan intelektual, yang dapat diberikan oleh pemberi lisensi kepada penerima lisensi agar penerima lisensi dapat melakukan suatu bentuk kegiatan usaha, baik dalam bentuk teknologi atau pengetahuan yang dapat dipergunakan untuk memproduksi, menghasilkan, menjual atau memasarkan barang berwujud tertentu, dengan menggunakan hak atas kekayaan intelektual yang dilisensikan tersebut. Untuk keperluan itu, penerima lisensi diwajibkan untuk memberikan kontra prestasi dalam bentuk pembayaran royalti yang dikenal dengan *lisence fee*.

Pemberian izin dari pemilik hak cipta dituangkan dalam bentuk lisensi dimana pemberian lisensi pengumuman karya cipta lagu kepada penerima lisensi ini memiliki konsekuensi hukum yaitu adanya kewajiban penerima lisensi untuk membayar sejumlah uang tertentu kepada pemberi lisensi (pemilik hak cipta) yang dikenal dengan royalti. Pemberian lisensi ini dilakukan bersamaan dengan dibayarnya royalti kepada pemberi lisensi, sehingga walaupun user yang bersangkutan telah meminta izin kepada

⁹³ Tim Lindsey hal 103

⁹⁴ Indonesia. *Undang-undang no 19 tahun 2002 tentang Hak Cipta., op cit.*, pasal 1 ayat 14

⁹⁵ Gunawan Widjaja, *Seri Hukum Bisnis Lisensi*, (Jakarta: PT Rajagrafindo Persada, 2003) hal 10-11

pemegang hak cipta, lisensi tetap akan diberikan setelah royalti dibayarkan kepada pemegang hak cipta.

Dalam kaitannya dengan perjanjian pemberian lisensi suatu karya cipta lagu, akan diperoleh keuntungan sebagai berikut:

1. Bagi pemberi lisensi, akan memungkinkan pemberi lisensi memperoleh manfaat dari keahlian, modal dan kemampuan penerima lisensi sebagai mitra usaha yang mengembangkan usaha yang dimiliki pemberi lisensi.
2. Penerima lisensi dapat memanfaatkan nama besar pemberi lisensi serta ciptaan musik dan lagunya.⁹⁶

Perjanjian lisensi dapat berupa beberapa jenis dilihat dari kriteria-kriteria tertentu:

- a. Keeksklusifan, yang diatur dalam pasal 46 Undang-undang Hak Cipta
 - Lisensi non eksklusif, yaitu dimana pencipta atau pemegang hak cipta masih dapat melaksanakan sendiri perbuatan memperbanyak atau mengumumkan suatu karya cipta lagu maupun mengalihkan hak ciptanya dengan memberikan lisensi yang sama kepada pihak ketiga. Lisensi jenis ini adalah lisensi yang lazim digunakan di Indonesia, dengan tujuan untuk menghindari monopoli pasar yang dapat merugikan Pencipta dan bahkan mengganggu pertumbuhan perekonomian Indonesia⁹⁷.
 - Lisensi eksklusif, yaitu dimana pemegang hak cipta tidak boleh memberi lisensi kepada pihak ketiga lainnya. Atau lisensor tidak dapat memberikan lisensi lebih kepada pihak lain. Dengan demikian, lisensi jenis ini memberi jaminan bagi pemberi lisensi bahwa selama jangka waktu perjanjian, lisensi tidak akan diberikan kepada pihak lain.

- b. Sukarela

⁹⁶ Hulman, *op cit.*, hal 102

⁹⁷ Eddy, *op cit.*, hal 190

- *Voluntary licensing*, yaitu perjanjian lisensi antara pencipta atau pemegang hak cipta dengan orang atau badan hukum yang akan menjadi penerima hak cipta, yang dilakukan secara sukarela
- *Compulsary licensing*, yaitu sekiranya negara memandang perlu atau menilai bahwa suatu ciptaan sangat penting bagi kehidupan masyarakat, negara dapat mewajibkan pemegang hak cipta yang bersangkutan untuk menerjemahkan atau memperbanyak ciptaannya atau memberikan lisensi kepada pihak lain untuk itu. Lisensi jenis ini diatur dalam pasal 16 Undang-undang Hak Cipta

Adapun yang merupakan hak dan kewajiban baik penerima dan pemberi lisensi karya cipta lagu adalah sebagai berikut:⁹⁸

1. Hak dan kewajiban Penerima Lisensi

- Membayar biaya lisensi kepada pemegang hak cipta
- Memberikan laporan secara benar setiap bulan kepada pemberi lisensi, nama pencipta/penulis lirik, durasi dan frekwensi pemutarannya
- Menerima izin untuk melakukan kegiatan mengumumkan dan memperbanyak karya cipta lagu

2. Hak dan kewajiban Pemberi Lisensi

- Menyerahkan sertifikat lisensi kepada penerima lisensi setelah penerima lisensi membayar lisensi (royalti) kepada pemberi lisensi
- Memberikan izin mengumumkan musik kepada penerima lisensi untuk seluruh *reportaire*⁹⁹ yang dimiliki pemberi lisensi

⁹⁸ Hulman, *op cit.*, hal 114-115

⁹⁹ *Reportaire* adalah seluruh ciptaan musik yang diserahkan oleh para pencipta/pemegang hak cipta baik dalam maupun luar negeri kepada pemegang hak cipta untuk dikelola hak ekonomi pengumuman musiknya.

- Menjamin dan membebaskan penerima lisensi dari segala gugatan pihak ketiga yang merupakan pemberian kuasa kepada pemegang hak cipta

Pemberian lisensi sekaligus berfungsi sebagai dan merupakan bukti pemberian izin dari pemberi lisensi kepada penerima lisensi untuk menggunakan hak cipta musik dan lagu tersebut disertai dengan imbalan dalam bentuk pembayaran royalti (*lisensi fee*) oleh penerima lisensi kepada pemberi lisensi.¹⁰⁰ Pemberian lisensi ini dituangkan dalam perjanjian yang disebut *License Agreement* dimana kepemilikan hak tetap berada pada pencipta walaupun hak penggunaannya telah dialihkan.

2.2.2 Royalti dan Hak Cipta

Royalti adalah bagian dari produk atau laba yang diterima oleh pemilik hak cipta yang memberi izin kepada pihak lain untuk menggunakan hak ciptanya. Sedangkan Hendra Tanu Atmadja mengemukakan bahwa royalti adalah bentuk pembayaran yang dilakukan kepada pemilik hak cipta atau pelaku (*performer*) karena tidak menggunakan kepemilikannya.¹⁰¹ Menurut Hendra Tanu pula, terminologi royalti dibidang musik atau lagu, adalah suatu pembayaran yang dilakukan oleh pengelola hak cipta, berbentuk uang kepada pemilik hak cipta atau pemegang hak cipta, atas izin yang telah diberikan untuk mengeksplotasi suatu karya cipta.¹⁰² Definisi royalti menurut Black's Law Dictionary adalah suatu kompensasi untuk menggunakan hak milik pada materi atau benda yang hak ciptanya dilindungi yang dibayarkan sebagai persentase yang diterima atas pemakaian hak milik.

Dibidang karya cipta musik, terminologi royalti adalah suatu pembayaran yang dilakukan oleh pengelola hak cipta, berbentuk uang kepada pemilik hak cipta atau pemegang hak cipta atas izin yang telah

¹⁰⁰ Hulman, *op cit.*, hal 102

¹⁰¹ Hendra, *op cit.*, hal 93

¹⁰² *ibid.*, hal 293

diberikan untuk mengeksploitasi suatu karya cipta. Dengan demikian pemegang hak cipta suatu karya cipta musik sebagai salah satu bentuk karya intelektual manusia yang mendapatkan perlindungan hukum, harus mendapat kenikmatan berupa pembayaran royalti sebagai konsekuensi dari penggunaan jasa/karya orang lain yang menurut undang-undang merupakan hak eksklusif.

Hendra Tanu Admadja mengemukakan bahwa hak ekonomi adalah hak yang dimiliki seorang pencipta untuk mendapatkan keuntungan dari eksploitasi ciptaannya, yang salah satunya terdiri dari

1. *Performing Right* (hak menampilkan) yang dimiliki oleh pemusik yang karyanya terungkap dalam bentuk pertunjukkan. Pengaturannya terdapat dalam Konvensi Berne dan UCC (*universal Copyright Convention*) bahkan yang diatur secara tersendiri dalam Konvensi Roma 1961. Untuk mengurus hak pertunjukkan dibentuk lembaga "*performing right society*", yang mengorganisasi musikus, komposer pencipta serta penerbit karya cipta lagu lainnya serta mengumpulkan dan mendistribusikan royalti kepada pencipta
2. *Broadcasting Right* (hak mengumumkan/hak penyiaran)
Hak menyiarkan dengan mentransmisikan suatu ciptaan oleh peralatan tanpa kabel. Hak penyiaran meliputi penyiaran ulang dan mentransmisikan ulang. Hak ini diatur dalam Konvensi Berne
3. *Reproduction Rights* (hak memproduksi/hak memperbanyak)
Hak reproduksi/hak memperbanyak juga mencakup perubahan bentuk ciptaan satu ke ciptaan lainnya. Hal ini diatur dalam Konvensi Berne, UCC. Akibatnya pada setiap negara yang memiliki undang-undang hak cipta selalu mencantumkan hak tersebut.
 - a) *Mechanical Right* (hak penggunaan lagu untuk kaset, CD dan sejenisnya)
 - b) *Printing Right* (hak mencetak lagu untuk buku, majalah dan sejenisnya)
 - c) *Synronization Right* (hak menggunakan lagu untuk video, film dan sejenisnya)

d) *Advetising Right* (hak memproduksi lagu untuk kepentingan iklan baik untuk radio maupun televisi komersial)

4. *Distribution Right* (hak penyebaran/hak distribusi)

Hak pencipta untuk menyebarkan kepada masyarakat setiap hasil ciptaannya. Penyebaran tersebut berupa penjualan, penyewaan agar ciptaannya dikenal masyarakat.

Pembayaran royalti ini merupakan perwujudan hak ekonomi yang terdapat dalam hak cipta dimana pemegangnya memiliki hak untuk mendapatkan manfaat ekonomis dari ciptaannya.

2.2.3 Macam-macam royalti

Menurut Hendra Tanu Atmadja¹⁰³, pembayaran terhadap pengalihan hak ekonomi Pencipta biasanya dilakukan dengan dua cara, yaitu sistem royalti dan sistem *flat pay*.

Sistem royalti

Sistem ini dibandingkan dengan cara Flat berbeda dalam hal besarnya uang yang diterima di muka dan memberikan kemungkinan pencipta mendapat imbalan yang lebih besar di kemudian hari, jika kaset tersebut laku dijual. Selain itu sistem ini tidak membedakan sebuah lagu menjadi andalan atau tidak, karena penilaian harga adalah berdasarkan pada seberapa banyak lagu yang diputar. Dampak paling penting dari diberlakukannya sistem ini adalah kesejahteraan pencipta lagu yang akan terjamin sepanjang akhir hayatnya, bahkan jika ia meninggal dunia sekalipun, dapat diturunkan kepada ahli warisnya.

Karena sistem ini baru dikenal dalam beberapa tahun terakhir di industri musik tanah air, masih banyak musisi, pencipta lagu atau penyanyi yang masih kurang paham bagaimana sebenarnya kinerja sistem ini. padahal dengan sistem royalti memungkinkan seorang Pencipta lagu dapat memperoleh penghasilan lebih baik.

¹⁰³ Hendra, *ibid.*, hal 320-321

Sistem *flat pay*

Selama ini Pencipta lagu mendapatkan honor yang dinilai secara *flat pay* tanpa memperhitungkan jumlah unit kaset, VCD dan CD yang dijual, yang diiringi dengan bonus, jika lagunya terpilih di urutan pertama sampul kaset dan mendapat honor tambahan, jika dijadikan seleksi, kompilasi dan lain-lain, walaupun uang muka yang diterima lebih besar dibandingkan sistem royalti.

Di Indonesia, pembayaran lagu kepada Pencipta, sering memberlakukan sistem ini sehingga pembayaran lagu hanya dilakukan satu kali saja yang besarnya berdasarkan kesepakatan. Harga sebuah lagu tentu tidak akan sama, tergantung dari kebesaran nama sang Pencipta. Kesepakatan yang dibuat sebenarnya hanyalah sebuah formalitas belaka, karena pada dasarnya, Pencipta lagu tunduk pada perjanjian standar yang telah ditetapkan oleh produser.

Sistem ini sebenarnya adalah pola lama yang telah lama ditinggalkan oleh industri-industri rekaman di luar negeri terutama di Amerika Serikat dan Eropa Barat, karena terbukti banyak merugikan pihak artis, khususnya pencipta lagu. Sering terjadi sebuah lagu meledak, sang Pencipta asli tidak dapat menikmati hasil dari keuntungan penjualan Ciptaannya tersebut, karena adanya kesepakatan yang berdasarkan *flat pay system*.

Pembayaran *flat pay* ini memang lebih disenangi oleh para pencipta lagu, dengan alasan Pencipta itu tidak bisa mengontrol pemasaran pihak produser. Perusahaan rekaman internasional yang sudah berada di Indonesia, biasanya melakukan kontrak dengan Pencipta lagu, Penyanyi dan Pemusik berdasarkan royalti dengan mengacu pada *mechanical rights*¹⁰⁴

¹⁰⁴ Buletin Karya Cipta Indonesia, no 3 edisi Maret 1998

Menurut David Naggar, gambaran royalti di Amerika dapat dilihat dalam The Big Picture Royalty Chart.¹⁰⁵

Pertama, royalti dari hasil penjualan rekaman. Pembayaran royalti dilakukan oleh perusahaan rekaman kepada artis sebagai imbalan diijinkannya perusahaan rekaman membuat rekaman dengan menampilkan artis yang bersangkutan. Jumlah yang dibayar dengan cara prosentase menurut daftar harga eceran yang direkomendasikan SRLP (*Suggested Retail List Price*) rekaman, dikurangi potongan lainnya.

Kedua, royalti yang diperoleh dari film/TV, iklan, internet, dan CD Rom/DVD, biaya lisensi master (*master license fee*). Pembayaran dilakukan oleh perusahaan film, perusahaan produksi televisi, perusahaan internet, dan banyak lainnya terhadap perusahaan rekaman untuk hak penggunaan master rekaman lagu versi artis. Perusahaan rekaman membayar artis yang menjadi porsi atau bagiannya dan *fee* yang disetujui dalam kontrak rekaman.

Ketiga, royalti perbanyakan (*mechanical royalty*) dari hasil penjualan rekaman. Pembayaran dilakukan oleh perusahaan rekaman kepada penerbit musik (*publisher*) untuk hak yang meliputi pencipta lagu atas sebuah rekaman. Publisher membayar porsi atau bagian hak pencipta lagu tersebut. publisher menerima 100% royalti, yang dibagi menjadi dua bagian yang sama, yaitu 50% porsi untuk pencipta dan 50% porsi untuk publisher.

Keempat, pembayaran *performing right* yang diperoleh dari penyiaran udara (*airplay*). Pembayaran dilakukan oleh lembaga penyiaran seperti stasiun radio, stasiun televisi, lembaga siaran web dan pemakaian lagu yang dilakukan oleh user dalam pertunjukkan umum. Royalti ini dibagi menjadi dua bagian yang sama, yaitu 50% porsi untuk pencipta dan 50% porsi untuk *publisher*.

Kelima, royalti lainnya. Royalti yang diperoleh dari hasil penjualan lembaran musik (*sheet music*), film/tv, iklan, internet dan biaya lisensi sinkronisasi CD-ROM/DVD. Pembayaran royalti dilakukan oleh perusahaan lembaran musik, perusahaan film, perusahaan produksi televisi, perusahaan internet dan banyak lainnya kepada publisher untuk hak menggunakan lagu.

¹⁰⁵ Hendra, *op cit.*, hal 323-324

2.3 Tinjauan Umum Tentang Pelaku dalam Industri Musik Indonesia

2.3.1 Musik

Musik, dalam istilah populer diartikan sebagai “cetusan ekspresi isi hati yang dikeluarkan secara teratur dalam bentuk bahasa bunyi (lagu). Apabila cetusan ekspresi isi hati dikeluarkan melalui mulut disebut vokal, dan apabila dikeluarkan lewat alat musik disebut instrumental”¹⁰⁶

Di dalam prektek musik vokal (oral) dan instrumental (alat) di atas dapat dibunyikan secara terpisah, dapat pula dibunyikan bersama-sama (campuran) misalnya penyanyi dengan memakai iringan gita atau band musik dapat dibunyikan sendirian (solo) atau beberapa orang bersama-sama (koor). Di dalam perkembangannya musik dapat dibedakan dalam musik tradisional seperti keroncong, gamelan, gambang kromong, dll; dan musik non tradisional seperti orkes-orkes simponi, konser, jazz dan lainnya.

Menurut Kamus Besar Bahasa Indonesia, yang dimaksud dengan musik adalah: 1) ilmu atau seni menyusun nada atau suara dalam urutan kombinasi dan hubungan temporal untuk menghasilkan komposisi (suara) yang mempunyai kesatuan dan kesinambungan; 2) nada atau suara yang disusun sedemikian rupa sehingga mengandung irama, lagu dan keharmonisan (terutama yang menggunakan alat-alat yang dapat dihasilkan bunyi-bunyian itu.)¹⁰⁷. Kamus besar bahasa Indonesia, membedakan pengertian antara musik dan lagu dimana lagu adalah: 1) ragam suara yang berirama; 2) nyanyian; 3) ragam nyanyi (musik, gamelan, dsb)

Musik yang didefinisikan sebagai cabang seni yang membahas dan menetapkan berbagai suara ke dalam pola-pola yang dapat dimengerti dan dipahami manusia, memiliki unsur-unsur melodi, ritme dan harmoni.¹⁰⁸

Musik adalah seni menyusun suara atau bunyi yang tidak dapat dibatasi dengan hanya menyusun bunyi atau suara indah semata-mata.

¹⁰⁶ Sanusi, *op cit.*, hal 96

¹⁰⁷ Hulman, *op cit.*, hal 87

¹⁰⁸ Pono Banoe, *Kamus Musik*, (Yogyakarta: Kanisius, 2003) hal 288

Sebagaimana dikutip Rooseno Hardjowidigdo, pada dasarnya semua musik berisi elemen-elemen dasar tertentu, yaitu:

1. *Rhythm*, meliputi jangka waktu atau panjang suara musik. Isi dari *rhythm* adalah getaran atau gerakan irama yang tetap (*steady beat*), ukuran (*meter*) dan tekanan (*accent*). Jika gerakan irama (*beat*) digabung dalam satu kumpulan dua, tiga atau lebih dalam satu ukuran, hasilnya disebut *meter*. Ukuran dari ketukan kuat atau lemahnya tekanan diulang terus menerus sebagai irama satu, dua, tiga...
2. *Melody*, terdiri dari pola titi nada (*pitch*) atau tinggi rendahnya nada (*tone*). Beberapa macam musik atau tipe musik hampir kesemuanya terdiri dari *melody*. Tipe yang lain mungkin juga berdasarkan pada suatu tema (*motif*) atau pengulangan rangkaian nada-nada (*notes*). Jika *melody* dalam komposisi yang panjang diulang pada bentuk yang berbeda, nada dasar ini disebut tema atau pokok.
3. *Harmony*, tertuju pada bentuk bunyi paduan nada (*chord*) yang dimainkan bersama dan diperoleh dari ukuran dasar musik. Hal itu juga meliputi perintah rangkaian bentuk bunyi paduan nada yang menyertai melodi. Awal melodi adalah lagu (*tone*) nada dasar yang sama (*monotone*) atau hampir dengan tiada suatu selingan (*viration*), tetapi perubahan harmoni ditambah warna, getaran dan pelepasan gubahan (*composition*).
4. *Form*, merupakan hasil dari *rhythm*, *melody* dan *harmony* yang disetel atau dipasang (*to put together*). Musik yang bagus memiliki kesatuan untuk memuaskan telinga pendengar dan selingan untuk memelihara minat. Bahkan sebuah aransemen dari suatu musik jika dengan mengikuti irama sebuah musik tertentu dapat dipakai sebagai terapi penyembuhan penderita narkoba.¹⁰⁹

Dalam Undang-undang Hak Cipta tidak ada pengaturan khusus tentang pengertian musik, namun musik merupakan salah satu karya yang dilindungi dalam Hak Cipta. Melalui pengaturan pasal 12 ayat 1 huruf d

¹⁰⁹ Hulman, *op cit.*, hal 88-89

Undang-undang Hak Cipta, disebutkan bahwa lagu atau musik dengan atau tanpa teks merupakan ciptaan yang dilindungi, dimana dalam penjelasan ketentuan ini, karya lagu atau musik dalam pengertian undang-undang diartikan sebagai karya yang bersifat utuh, sekalipun terdiri dari unsur melodi, syair, lirik dan aransementnya, termasuk notasi. Pengertian utuh yang dimaksud adalah bahwa lagu atau musik tersebut merupakan suatu kesatuan karya cipta. Dari pengaturan tersebut dapat dilihat bahwa UUHC tidak membedakan pengertian antara lagu dan musik seperti dalam kamus bahasa Indonesia.

Dalam pengaturan Undang-undang Hak Cipta, karya cipta musik terdiri dari 4 unsur macam ciptaan yaitu:

1. Melodi dasar
2. Lirik lagu
3. Aransemen
4. Notasi

2.3.2 Pelaku dalam Industri Musik di Indonesia

Memperbanyak dan mengumumkan adalah hak sepenuhnya dari seorang pencipta. Hanya saja, pada saat memperbanyak dalam format yang bagus, biasanya Pencipta melibatkan artis dan musisi serta perusahaan rekaman dengan memberikan lisensi kepada mereka untuk melakukannya. Kemudian perusahaan rekaman membuat master, yang untuk dijual harus melalui proses perbanyakan. Dalam hal ini, perusahaan rekaman mendapatkan *copyright* atas master rekaman tersebut. Sedangkan artis mendapatkan hak untuk menampilkan (*performing*) lagu tersebut, baik dalam bentuk rekaman itu sendiri maupun dalam bentuk *live performance* pada waktunya nanti. Inilah yang disebut *performing rights* dari pelaku (artis/musisi).¹¹⁰

¹¹⁰ Agus, *Hak Cipta Bukan...*, *op cit.*, hal 257

WPPT (*WIPO Performances and Phonograms Treaty*)¹¹¹ yang disahkan pada tanggal 20 Desember 1996, mengatakan, yang menyangkut hak-hak pelaku (*performer*) ini dibagi menjadi dua:¹¹²

1. Hak moral pelaku

- a) Pelaku memiliki hak moral atas pertunjukkan langsung yang dilakukannya atau pertunjukkan yang direkam dalam media fonogram, sekalipun hak ekonomi atas karya pertunjukkan tersebut telah dialihkan. Hak moral meliputi hak untuk disebut namanya atau dinyatakan sebagai pelaku atas karya pertunjukannya, kecuali bila sifat penggunaan karya pertunjukannya tidak memungkinkan untuk menyebut identitas pelaku yang bersangkutan. Hak moral juga mencakup hak untuk menyatakan keberatan terhadap tindakan perusakan, pemotongan atau perubahan karya pertunjukan bersifat merugikan nama baik atau reputasinya.
- b) Hak moral berlangsung sekurang-kurangnya sampai dengan berakhirnya hak ekonomi setelah pelaku meninggal, dan dilaksanakan oleh orang atau lembaga yang menurut ketentuan undang-undang memang ditunjuk untuk itu.

2. Hak ekonomi pelaku

Pelaku memiliki hak khusus untuk melarang atau memberi izin untuk:

- a) Menyiarkan dan menyampaikan kepada masyarakat (*communication to the public*) karya siaran yang belum selesai diwujudkan, kecuali bila karya tersebut memang sudah merupakan siaran pertunjukan.
- b) Mewujudkan atau merekam karya pertunjukan yang belum direkam.

Hak ekonomi pelaku ini, dibagi lagi menjadi 4 hak:

¹¹¹ *Wipo Performance and Phonogram Treaty* lahir dengan semakin kuatnya pengaruh teknologi dan komunikasi terhadap pembuatan karya pertunjukkan dan karya rekaman suara serta keinginan untuk menjaga keseimbangan antara pelaku, produser rekaman suara serta kepentingan umum seperti pendidikan. Meskipun sebelumnya telah ada perlindungan bagi pelaku, produser rekaman, serta lembaga penyiaran di dunia internasional, yaitu konvensi roma namun konvensi ini belum diratifikasi oleh pemerintah Indonesia. Abdul Bari Azed, *Kompilasi Konvensi Internasional HKI yang Diratifikasi Indonesia* cet 1 (Jakarta: Dirjen HKI Departemen Hukum dan Hak Asasi Manusia bekerjasama dengan badan penerbit Fakultas Hukum Universitas Indonesia, 2006) 535-536

¹¹² Hendra, *op cit.*, hal 299

a. Hak reproduksi (*The Right of Reproduction*)

Pelaku memiliki hak khusus untuk melarang atau memberi ijin penggandaan dalam segala bentuk dan cara, baik langsung maupun tidak langsung, karya pertunjukan yang telah diwujudkan dalam rekaman.

b. Hak distribusi (*The Right of Distribution*)

- Pelaku berhak melarang atau memberi ijin untuk menyediakan rekaman pertunjukan asli atau salinannya kepada masyarakat baik melalui penjualan atau melalui cara-cara pengalihan kepemilikan lainnya.
- Traktat ini tidak menghapuskan kebebasan Negara peserta untuk menetapkan kondisi, jika ada, apakah akan menerapkan prinsip *exhaustion atas rights of distribution*, baik yang dikaitkan dengan saat pertama kali dilakukan penjualan atau pengalihan kepemilikan rekaman asli atau salinannya dengan persetujuan pelaku.

c. Hak sewa (*The Right of Rental*)

- Pelaku berhak melarang atau memberi ijin penyewaan secara komersial rekaman asli karya pertunjukan atau salinannya sesuai dengan ketentuan sebagaimana ditetapkan dalam peraturan perundang-undangan nasional. Hak serupa itu berlaku sekalipun rekaman karya pertunjukkan telah diedarkan dengan persetujuan pelaku.
- Negara-negara peserta traktat yang pada tanggal 15 April 1994 memiliki dan masih menerapkan sistem remunerasi (pembagian hasil) untuk penyewaan salinan rekaman pertunjukan, tetap dapat melanjutkan sistem tersebut sepanjang penyewaan tersebut tidak mengganggu hak pelaku untuk menggandakan rekaman karya pertunjukannya.

d. Hak memberi kuasa untuk disajikan kepada publik (*Right of Making Available of Fixed Performances*)

- Pelaku berhak melarang atau memberi ijin untuk menyediakan rekaman pertunjukan, baik dengan menggunakan peralatan dengan kabel maupun non kabel dengan cara sedemikian rupa, sehingga setiap orang dapat menikmatinya dari tempat dan waktu yang dipilihnya sendiri.

Dalam hal penyanyi bukan pencipta dan bukan musisi maka penyanyi berhak mendapatkan perlindungan *Neighboring rights* demikian pula halnya dengan produser rekaman suara.¹¹³ Namun itidak pula berarti penyanyi yang juga berperan juga sebagai pencipta dan musisi tidak mendapatkan perlindungan *neighboring rights*, perlindungan yang sama tetap diberikan.¹¹⁴

Di Indonesia untuk hak-hak pencipta, musisi dan penyanyi mestinya juga produser rekaman suara untuk menerima pembayaran royalti dipegang oleh lembaga pemungut royalti. Royalti itu berasal dari pemutaran lagu-lagu di berbagai tempat hiburan yang bersifat komersial.¹¹⁵

Persoalan yang dihadapi oleh para seniman, pencipta, penyanyi dan musisi sangat konvensional yakni sikap dan pandangan para pengusaha hiburan yang menganggap bahwa memutar atau menyanyikan lagu-lagu (yang dilindungi dengan hak cipta atau juga *neighboring rights*) orang lain tidak diwajibkan membayar royalti. Agaknya kesadaran terhadap pentingnya penghargaan karya cipta orang lain perlu ditumbuhkan dan dirangsang sejak dini, dnegan pengenalan awal penegakan hukum yang ketat terhadap pelanggaran hak cipta atau *neighboring rights*¹¹⁶

Yang dimiliki oleh penyanyi sebagai pelaku hanyalah sebatas sebagai yang menyanyikan lagu yang diperoleh izin untuk dinyanyikan dari Pencipta lagu. Penyanyi hanya terbatas mempunyai hak atas lagu yang

¹¹³ *Ibid* hal 138

¹¹⁴ *Ibid*

¹¹⁵ *Ibid*

¹¹⁶ *Ibid*

dinyanyikan dan hak inilah yang dinamakan sebagai Hak Terkait, yang dinamakan *Performing Right* penyanyi. Hak-hak lainnya yang termasuk sebagai Hak Cipta seperti *Mechanical Right* yaitu hak untuk perbanyak dalam jumlah besar tidak dimiliki oleh Pelaku. Dalam karya cipta musik, pelaku memiliki kontribusi besar dalam mendistribusikan sarana hiburan sehingga dapat dinikmati oleh pengguna, oleh sebab itu sudah sepantasnya mereka mendapatkan perlindungan hukum sebagaimana yang didapatkan oleh pencipta¹¹⁷

Pelaku karya cipta musik memiliki hak moral¹¹⁸ yang merupakan hak dasar untuk disebutkan namanya saat sebuah lagu ditampilkan di radio atau di televisi.

Saat hukum hak cipta dikenal dan berkembang di awal abad 19 dan 19, timbul pemikiran mengenai kepentingan artis dan penulis untuk memperoleh perlindungan atas sumber pendapatan mereka sehingga mereka dapat mempertahankan sumber pendapatan tersebut untuk diri mereka dan keluarga mereka. Rekaman suara, siaran radio serta televisi belum ditemukan sehingga belum muncul dalam pemikiran tersebut. Kemudian dengan berkembangnya teknologi, lahirlah proses rekaman suara, siaran radio serta televisi yang diiringi oleh kesadaran mengenai pentingnya perlindungan terhadap teknologi tersebut. Peraturan perundang-undangan tertentu (konvensi Roma tahun 1961) juga memberikan jenis hak lain yang dikenal dengan hak berhampiran, yaitu hak khusus yang berdekatan/berkaitan dengan hak cipta. Jadi bukan merupakan hak cipta, namun merupakan hak untuk mengkomunikasikan suatu ciptaan pada masyarakat. Setelah konvensi Roma, selanjutnya terdapat perlindungan terhadap hak terkait yang diatur dalam traktat WPPT (*WIPO Performances and Phonograms Treaty*) yang mengatur tentang perlindungan atas hak-hak

¹¹⁷ H. Ok Saidin, *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Rights)*, (Jakarta: PT Rajagrafindo Persada, 2006) hal 136

¹¹⁸ Hak moral atau *moral rights* milik pelaku adalah untuk disebutkan namanya dalam kaitannya dengan pertunjukkan mereka dan hak untuk menolak kerugian yang ditimbulkan akibat dari pertunjukkan mereka. Ok Saidin, *ibid.*, hal 144

pelaku dan produser rekaman suara yang akhirnya diratifikasi oleh Pemerintah Indonesia melalui Keputusan Presiden no 74 tahun 2004.

Hak terkait adalah hak kedua dalam hak cipta. Dikatakan demikian karena hak terkait merupakan hak turunan atau hak yang berhubungan dengan hak cipta (*author's right*). Hak terkait timbul apabila hak cipta dalam sebuah lagu di lisensikan kepada pihak lain menjadi rekaman lagu maupun pertunjukkan langsung.¹¹⁹

Secara konsep, dalam penampilan langsung (*live*) apabila seorang penyanyi (*performer*) A akan menampilkan lagu milik penyanyi lain, A harus meminta izin baik dari pencipta maupun penyanyi lagu tersebut atas dasar hak ekonomi dari lagu yang akan ditampilkan. Hal ini diatur dalam pasal 49 ayat 1 mengenai Hak Terkait Pelaku untuk memberikan izin atau melarang pihak lain dalam menyiarkan¹²⁰ rekaman suara Pelaku. Sehingga apabila A menampilkan lagu milik penyanyi B tanpa seizinnya, hal tersebut dapat dikategorikan sebagai pelanggaran hak cipta.¹²¹

Sebagai contoh yang sering terjadi, yaitu penyanyi/band di café-café di Jakarta kerap kali menampilkan lagu milik penyanyi/band yang sudah terkenal di masyarakat dimana pada umumnya penyanyi/band café tersebut tidak memiliki izin untuk menampilkan lagu. Atas dasar pasal 48 Undang-undang Hak Cipta maka penyanyi dapat menuntut penyanyi/band café untuk membayar royalti, misalnya 3% dari honor penyanyi/café.¹²²

Namun dalam prakteknya, biarpun penyanyi tersebut mengetahui bahwa lagunya telah ditampilkan oleh penyanyi/band café dimana berarti penyanyi tersebut berhak untuk meminta pembayaran royalti, namun

¹¹⁹ Agus, *Hak Cipta Bukan...*, *op cit.*, hal 207-208

¹²⁰ Yang dimaksud menyiarkan termasuk mengkomunikasikan pertunjukkan langsung (*live performance*) suatu karya Pelaku. Indonesia. *Undang-undang no 19 tahun 2002 tentang Hak Cipta.*, *op cit.*, Penjelasan pasal 49 ayat 1

¹²¹ Berdasarkan wawancara yang dilakukan kepada Satria Moersid dan Andhika Prabu Aprianto, personel grup band Alexa pada tanggal 28 April 2011

¹²² *ibid*

penyanyi asli tidak melaksanakan (*enforce*) haknya tersebut dengan alasan bahwa

1. Dengan dinyanyikannya lagunya oleh penyanyi lain, promosi akan lagu tersebut akan lebih merambah pada segmen-segmen masyarakat yang lebih luas. Sehingga walaupun penyanyi asli tidak mendapatkan royalti namun lagu tersebut akan lebih dikenal oleh masyarakat sehingga diharapkan penjualan rekaman penyanyi asli akan meningkat.
2. Pendapatan/honor penyanyi/band café dalam “memanggung” hanyalah berkisar pada 1-3 juta, sehingga royalti yang didapatkan pun tidak lah seberapa.
3. Dalam industry music, tercipta rasa kepedulian yang berkembang diantara sesama pelaku (*performers*) sehingga hubungan antar para pelaku bersifat kekeluargaan. Sebagai contoh apabila penyanyi lain, yang telah mengenal dengan baik penyanyi asli, meminta izin untuk menyanyikan lagu penyanyi asli, maka dengan alasan pertemanan, penyanyi asli dengan senang hati memberikan izin dan hampir tidak pernah untuk meminta pembayaran royalti.

Selain itu, sebagian besar pelaku peduli terhadap pendapatan yang diterima oleh pelaku lain walaupun hanya sebagai penyanyi/band café yang belum tentu saling mengenal dimana dari pendapatan manggung yang tidak seberapa, lagu-lagu yang dinyanyikan oleh penyanyi/band cafe tidaklah hanya berasal dari 1 penyanyi saja, sehingga pendapatan mereka akan semakin berkurang dengan dipotongnya honor tersebut untuk membayar royalti. Atas dasar pemikiran tersebut, pelaku lain memberikan toleransi kepada penyanyi/band café untuk menampilkan lagu-lagunya dengan cuma-cuma.¹²³

Dalam industri musik, pihak yang memiliki kekuasaan lah yang menentukan sendiri sistem yang akan berlaku dalam industri musik. Pihak ini pada umumnya adalah Perusahaan Rekaman/Label sebagai pihak yang

¹²³ *ibid*

berkuasa karena memiliki uang. Sistem yang dianggap sebagai “hukum rimba industri bisnis” merupakan sistem yang berbeda dari pengaturan Undang-undang Hak Cipta, dimana sistem ini muncul akibat sistem hukum Undang-undang Hak Cipta yang dianggap tidak bisa mengakomodir industri musik.¹²⁴

Sistem ini memaksa semua pihak dalam industri musik untuk tunduk pada semua aturan yang ditetapkan oleh perusahaan rekaman/Label, terutama pelaku. Aturan-aturan tersebut tertuang dalam kontrak antara Perusahaan rekaman dengan Pelaku, dimana aturan tersebut seperti misalnya,

1. Pengaturan pemberian royalti kepada pelaku yang diatur secara baku oleh Perusahaan rekaman/Label dimana dari hasil penjualan CD secara keseluruhan, artis hanya akan mendapatkan royalti sebesar 7% dan 93% sisanya akan menjadi hak Perusahaan Rekaman/Label.
2. Perusahaan rekaman/Label berhak untuk mengubah lagu-lagu yang telah direkam dalam satu rekaman kedalam bentuk apapun tanpa persetujuan dari Pelaku.¹²⁵

Pelaku sebagai pihak yang membutuhkan Perusahaan rekaman/Label untuk dapat memasuki sebuah industri musik, tidak memiliki kemampuan bernegosiasi (*bargaining power*) selain untuk tunduk pada aturan dalam kontrak tersebut. Ketidakmampuan itu bersumber pada faktor akan banyaknya pelaku-pelaku baru yang terus lahir dalam industri musik. Banyaknya saingan pelaku lain berakibat pada apabila pelaku tersebut tidak mau tunduk pada sistem yang diterapkan Perusahaan rekaman/Label maka Pelaku tidak akan bisa terjun ke dalam industri musik dan tidak akan mendapatkan penghasilan apa-apa, sedangkan Perusahaan rekaman/Label akan dengan mudah pencari pelaku-pelaku lain yang bersedia untuk tunduk pada aturannya tersebut.¹²⁶ Itulah sebabnya Pelaku berada dalam level yang

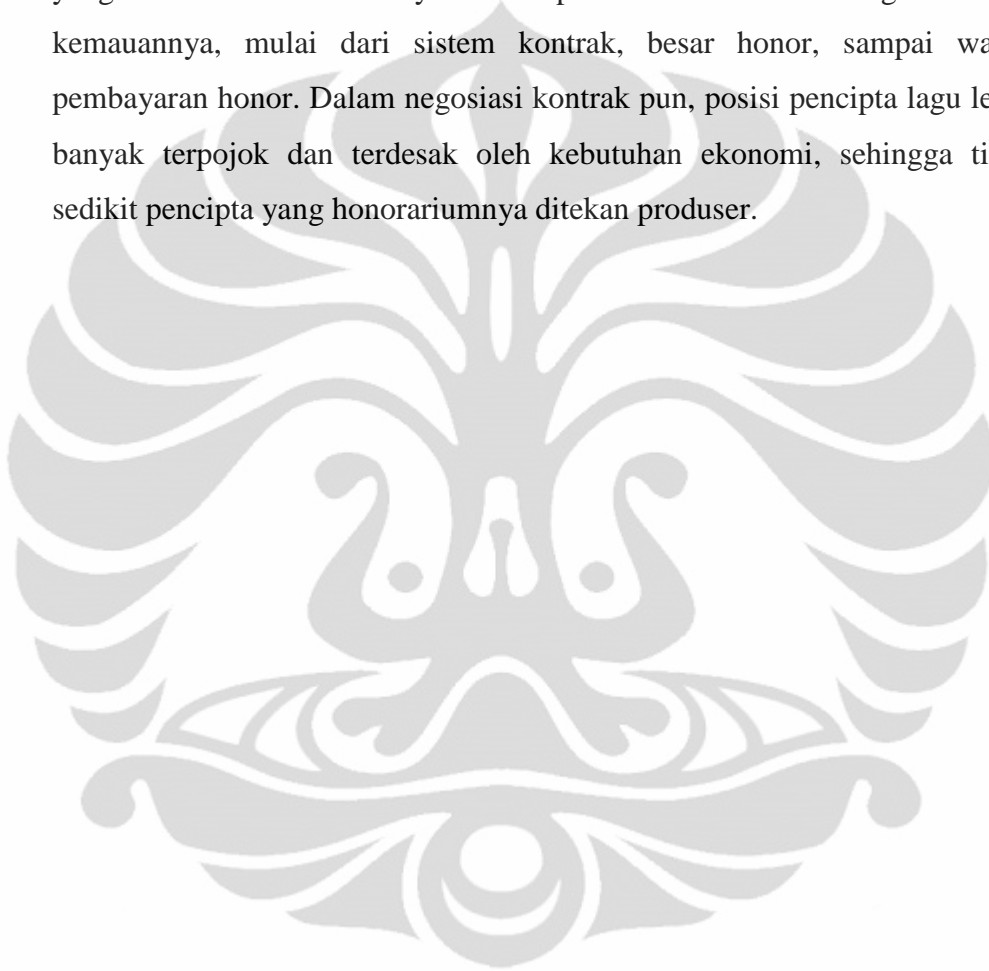
¹²⁴ *Ibid*

¹²⁵ *Ibid*

¹²⁶ *Ibid*

lebih rendah dari Perusahaan rekaman/Label sebagai pihak yang berkuasa dalam industri musik Indonesia.¹²⁷

Mengenai berkuasanya posisi perusahaan rekaman juga didukung oleh pendapat Hendra Tanu Atmaja¹²⁸, yang menyatakan bahwa *bargaining position* produser rekaman lebih dominan dibandingkan posisi pencipta lagu yang lemah. Hal ini menyebabkan produser rekaman sering mendikte kemauannya, mulai dari sistem kontrak, besar honor, sampai waktu pembayaran honor. Dalam negosiasi kontrak pun, posisi pencipta lagu lebih banyak terpojok dan terdesak oleh kebutuhan ekonomi, sehingga tidak sedikit pencipta yang honorariumnya ditekan produser.



¹²⁷ *Ibid*

¹²⁸ Hendra, op cit., hal 17

BAB 3

TINJAUAN UMUM TENTANG HAK PELAKU MUSIK

3.1 Sejarah Pengaturan Hak Pelaku Musik dalam Hukum Hak Cipta

Lahirnya hak Pelaku terhadap suatu lagu, berkaitan dengan izin yang diberikan oleh Pencipta yang memegang Hak Cipta atas lagu yang bersangkutan dimana hak Pelaku (*performer's right*) merupakan Hak Terkait yang bersifat sekunder karena berkaitan dengan hak-hak Pencipta.¹²⁹

Hak-hak yang berkaitan dengan hak cipta (*neighboring rights/related right*) mengacu pada hak-hak artis-artis pentas, produser rekaman dan produser siaran radio serta televisi. Perlindungan yang diberikan oleh *neighboring rights* umumnya sangat terbatas dibanding kategori hak-hak cipta lainnya seperti bidang sastra atau karya-karya artistik.¹³⁰

Konsep Hak Terkait (*neighboring right/related right*) muncul sebagai reaksi atas perkembangan teknologi yang memungkinkan penyebaran yang lebih luas dari karya-karya seni, dan menunjukkan dengan jelas kegagalan UUHC dalam melindungi hak-hak pelaku, produser rekaman suara dan penyebar lainnya atas karya-karya. Kelompok ini bertanggung jawab atas eksposur yang sangat besar, tetap hanya para pemilik hak cipta atas karya-karya yang bisa menikmati hasilnya. Menurut WIPO, hak terkait adalah cara untuk melindungi “mereka yang membantu pencipta intelektual untuk mengkomunikasikan pesan mereka dan menyebarkan karya-karyanya kepada masyarakat secara keseluruhan”¹³¹

Hak Terkait adalah cabang dari perkembangan teknologi. Pada tingkat nasional, industri rekaman membutuhkan perlindungan terhadap duplikasi tanpa izin akan suatu rekaman suara dari penampilan musik. Begitu pula pada tingkat

¹²⁹ Ibid. hal 261

¹³⁰ *Intellectual Property Rights Elementary Hak-hak Kekayaan Intelektual Tingkat Dasar*. Indonesia Australia Specialised Training Project oleh Asian Law Group. hal 126

¹³¹ Cita Citrawinda Priapantja, *Hak Kekayaan Intelektual Tantangan Masa Depan*, (Jakarta: Fakultas Hukum Universitas Indonesia, 2003), hal 84

internasional, dimana perkembangan industri rekaman mendukung dibentuknya suatu perlindungan khusus untuk Hak Terkait.¹³²

Saat hukum mengenai hak cipta berkembang di awal abad 18 dan 19, timbul pemikiran mengenai kepentingan artis dan penulis untuk memperoleh perlindungan atas sumber pendapatan mereka sehingga mereka dapat mempertahankan sumber pendapatan tersebut untuk diri mereka dan keluarga mereka. Rekaman dan siaran radio serta televisi belum ditemukan dan karenanya, belum muncul pemikiran tersebut. Maka kemudian pentingnya rekaman dan siaran radio serta televisi untuk memperoleh perlindungan hak cipta mulai dipikirkan walupun karya-karya tadi tidak selalu bersifat kreatif. Konsensus yang ada dalam Konvensi Roma (*Rome Convention*) menyatakan bahwa hak-hak ini, yang pada dasarnya bersifat komersial, seharusnya tidak memperoleh skala perlindungan yang sama seperti karya-karya umum yang memperoleh perlindungan hak cipta.¹³³

Tujuan perlindungan Hak Terkait adalah untuk melindungi kepentingan hukum beberapa pihak dan badan hukum yang berkontribusi dalam tersedianya ciptaan kepada publik; atau yang memproduksi karya yang membutuhkan kreatifitas atau teknik tertentu sehingga karya tersebut diakui sebagai karya yang mirip dengan karya cipta yang mendapat perlindungan hak cipta. Hukum mengenai Hak Terkait menyatakan bahwa hasil karya yang dari pihak maupun badan tersebut berhak atas perlindungan hukum, karena mereka terkait dengan perlindungan karya cipta.¹³⁴

Hak Terkait baru mendapat perhatian internasional pada tahun 1928, yaitu ketika revisi Konvensi Berne di Roma dan diakui melalui perlindungan hak *performers*. Hak-hak tersebut didiskusikan dalam *Berne Union for the Protection*

¹³² WIPO *Intellectual Property Handbook: Policy, Law and Use*, hal 314 <http://www.wipo.int/export/sites/www/about-ip/en/iprm/pdf/ch5.pdf#rome> diunduh pada tanggal 1 Juni 2011

¹³³ *Intellectual Property Rights Elementary*, op cit.,

¹³⁴ *Understanding Copyright and Related Right* hal 18-19, World Intellectual Property Organization, http://www.wipo.int/freepublications/en/intproperty/909/wipo_pub_909.pdf diunduh pada tanggal 1 Juni 2011

*of Literary and Artistic Works (Berne Union)*¹³⁵ dalam konferensi Roma, dimana dalam konferensi ini diusulkan bahwa “ketika karya cipta musik telah diadaptasi menjadi instrument mekanik dengan kontribusi dari artis, adaptasi ini kemudian juga harus diberikan perlindungan.” Menanggapi hal ini, dibentuklah suatu resolusi kepada pemerintah-pemerintah untuk mempertimbangkan kemungkinan untuk mengadaptasi perlindungan bagi kepentingan Pelaku.¹³⁶

Baru pada tahun 1961 di Roma dibentuk suatu konvensi khusus yang mengatur mengenai Hak Terkait ini yaitu *International Convention Protection for Performers, Producers of Phonograms and Broadcasting Organizations*, yang dikenal dengan Konvensi Roma.¹³⁷

Seiring dengan perkembangan jaman, perlindungan Konvensi Roma dianggap kurang memadai sehingga diperlukannya norma-norma baru dalam Hak Terkait walaupun konvensi ini merupakan norma dasar bagi ketentuan pengaturan hak Pelaku, Produser Rekaman dan Lembaga Penyiaran dalam TRIPs (*Trade Related Aspects of Intellectual Property Rights*)¹³⁸. Untuk itu disusunlah perlindungan baru pada tahun 1996 yaitu *WIPO Performances and Phonograms Treaty* (WPPT)¹³⁹ dimana WPPT bertujuan untuk memberikan perlindungan hak kepada Pelaku dan Produser rekaman seefektif dan seseragam mungkin dan Treaty ini dirancang untuk memperkenalkan ketentuan-ketentuan internasional baru dan menjelaskan tentang interpretasi terhadap peraturan-peraturan yang berlaku dari aspek perkembangan ekonomi, sosial, kultural dan teknologi baru.¹⁴⁰

¹³⁵ Konverensi yang dilakukan oleh negara-negara yang menandatangani Konverensi Bern, <http://www.wipo.int/treaties/en/ip/berne/> diunduh pada tanggal 1 Juni 2011

¹³⁶ *WIPO Intellectual Property Handbook*, Op cit., hal 315

¹³⁷ Muhamad Djumhana dan R Djubaedillah, *Hak Milik Intelektual (Sejarah, Teori dan Prakteknya di Indonesia)*, (Bandung: PT Citra Aditya Bakti, 2003) hal 77

¹³⁸ TRIPs memuat norma-norma dan standar perlindungan bagi karya intelektual dan menempatkan perjanjian internasional di bidang Hak Kekayaan Intelektual sebagai dasar. Di samping itu, persetujuan tersebut mengatur pula pelaksanaan penegakan hukum dibidang Hak Kekayaan Intelektual. Hendra Tanu, Op Cit., hal 69

¹³⁹ *Understanding Copyright and Related Right*, op cit hal 19

¹⁴⁰ Hendra tanu Op cit., hal 80

Di Indonesia secara resmi baru pada Undang-undang Hak Cipta 1997 diatur mengenai hak-hak yang berkaitan dengan Hak Cipta. Pengaturannya meliputi pelaku yang menghasilkan karya pertunjukkan, produser rekaman suara yang menghasilkan karya rekaman suara, dan lembaga penyiaran yang menghasilkan karya siaran. Hak yang dimiliki mereka merupakan hak khusus artinya bagi pelaku yang menghasilkan karya pertunjukkan adalah hak untuk melarang orang lain yang tanpa persetujuannya membuat, memperbanyak dan menyuarakan rekaman suara dan atau gambar dari pertunjukannya. Adapun hak khusus yang dimiliki produser rekaman berupa untuk memberi izin atau melarang orang lain yang tanpa persetujuannya memperbanyak karya rekaman suara atau bunyi. Sedangkan hak khusus yang dimiliki lembaga penyiaran yaitu untuk memberi izin atau melarang orang lain yang tanpa persetujuannya membuat, memperbanyak dan menyiarkan ulang karya siarannya melalui transmisi dengan atau tanpa kabel, atau melalui sistem elektomagnetik lainnya.¹⁴¹

Diaturinya mengenai hak-hak yang berkaitan dengan Hak Cipta pada Undang-undang Hak Cipta 1997, merupakan penyempurnaan Undang-undang Hak Cipta 1987 sehubungan dengan perkembangan kehidupan yang berlangsung cepas, terutama di bidang perekonomian tingkat nasional maupun internasional yang menuntut pemberian perlindungan yang lebih efektif. Selain itu, juga karena penerimaan dan keikutsertaan Indonesia dalam Persetujuan TRIP's yang merupakan bagian dari *Agreement Establishing the World Trade Organization* (WTO).¹⁴² Perlindungan terhadap Pelaku (*performer*), produser rekaman dan lembaga-lembaga siaran diatur dalam pasal 14 TRIPs.

Perubahan pada UUHC tahun 1997 menjadi 2002 ditujukan untuk mejamin perlindungan yang lebih memadai dan penegakan hak cipta yang efektif di Indonesia¹⁴³, dimana diatur mengenai perlindungan untuk rekaman suara,

¹⁴¹ Ibid., hal 78

¹⁴² Sanusi Bintang, *Hukum Hak Cipta*, (Bandung:PT Citra Aditya Bakti, 1998) hal 17-19

¹⁴³ Cita., op cit.,

pertunjukkan dan penyiaran yang diterjemahkan sebagai Hak Terkait, sebagai karya yang merupakan *derivative rights* (hak-hak pengalihwujudan)¹⁴⁴.

Selain itu, penyempurnaan Undang-undang Hak Cipta didasarkan pada berbagai pertimbangan yang pada intinya dimaksudkan untuk lebih memberi perlindungan kepada pencipta dan pemegang hak terkait dengan keseimbangan untuk kepentingan masyarakat pada umumnya. Meskipun Indonesia sampai saat ini, belum meratifikasi Konvensi Roma tetapi pasal-pasal dalam undang-undang ini sudah terakomodasi dalam ketentuan-ketentuan dalam traktat tersebut.¹⁴⁵

Pada tahun 2004, Indonesia sebagai salah satu anggota WIPO¹⁴⁶, telah meratifikasi WPPT sehingga Indonesia terikat terhadap ketentuan-ketentuan yang terdapat dalam WPPT terutama mengenai perlindungan terhadap Pelaku musik di Indonesia. Dengan diratifikasinya WPPT ini, terdapat kemungkinan penyempurnaan kembali Undang-undang Hak Cipta 2002 sehingga tersedianya perlindungan yang lebih menyeluruh bagi hak menampilkan Pelaku.

Dengan terus berkembangnya pengaturan mengenai perlindungan terhadap hak Pelaku, baik dalam dunia internasional maupun nasional maka dapat disimpulkan bahwa Pelaku memiliki peranan penting dalam kegiatan penciptaan lagu, dimana peranan tersebut dianggap perlu untuk mendapat perlindungan layaknya karya-karya (*works*) dalam konteks hak cipta.

Dengan demikian dapat disimpulkan bahwa latar belakang lahirnya perlindungan hak Pelaku di dunia internasional dan nasional adalah untuk memperjuangkan kepentingan Pelaku selain itu juga sebagai intensif bagi Pelaku

¹⁴⁴ Ibid hal 86

¹⁴⁵ Hendra Tanu, op cit hal 82-83

¹⁴⁶ WIPO adalah salah satu agen (*specialized agency*) PBB. WIPO dibentuk untuk mengembangkan system internasional hak kekayaan intelektual (HKI) yang seimbang dan dapat diakses dalam rangka pemberian reward atas kreativitas, stimulasi kepada inovasi dan kontribusi atas pembangunan ekonomi serta secara bersamaan memberikan perlindungan bagi kepentingan publik secara umum. Dengan Indonesia meratifikasi WIPO Convention 1967 pada tahun 1979, maka Indonesia berkewajiban untuk meratifikasi sejumlah traktat major di WIPO dan menyesuaikannya dengan undang-undang nasional. Traktat-traktat tersebut antara lain *Berne Convention*, *Rome Convention*, *WIPO Copyright Treaty (WCT)* serta *WIPO Phonograms and Performances Treaty (WPPT)*, *Sekilas tentang WIPO*, <http://www.kemlu.go.id/jenewa-un/Lists/Statement/DispForm.aspx?ID=35> diunduh pada tanggal 1 Juni 2011

sehingga terdorongnya kreatifitas untuk terus menghasilkan karya-karya baru dimana dengan terus menghasilkan karya-karya tersebut, hal ini juga akan berdampak positif terhadap kesejahteraan perekonomian masyarakat.

3.2 Pengaturan Hak Pelaku Musik di Indonesia dan di Inggris

3.2.1 Hak Pelaku Musik di Indonesia

Hak pelaku diatur dalam pasal 49 Undang-undang Hak Cipta 2002 yang menyatakan bahwa,

“Pelaku memiliki hak eksklusif untuk memberikan izin atau melarang pihak lain yang tanpa persetujuannya membuat, memperbanyak, atau menyiarkan rekaman suara dan/atau gambar pertunjukannya”

Dari pasal tersebut dapat disimpulkan bahwa Pelaku dalam kaitannya dengan suatu rekaman dan/atau gambar pertunjukannya, memiliki hak untuk memberikan izin atau melarang, dalam

- a. Membuat
- b. Memperbanyak
- c. Menyiarkan dimana terbagi lagi
 - Menyewakan
 - Pertunjukkan umum (*public performance*)
 - Mengkomunikasikan secara langsung (*live performance*)
 - Mengkomunikasikan secara interaktif

Dengan demikian, apabila penampilan seorang pelaku, hendak direkam, maka dibutuhkan izin dari pelaku tersebut sebelum perekaman. Begitu pula diperlukannya izin pelaku apabila rekaman yang berisi penampilan pelaku hendak diperbanyak atau disiarkan. Dimana yang termasuk kegiatan penyiaran suatu rekaman pertunjukkan menurut Undang-undang Hak Cipta 2002 antara lain tindakan menyewakan, melakukan pertunjukkan umum, melakukan komunikasi secara langsung serta melakukan komunikasi secara interaktif.

Lagu yang berjudul Pelangi di Matamu, ciptaan Aziz MS, yang dipopulerkan oleh grup penyanyi Jamrud, pemakaian atau pengeksploitasinya dapat digambarkan sebagai berikut:

1. Lagu tersebut telah direkam dan rekamannya (kaset dan CD) diperbanyak oleh Logiss Record dengan artis penyanyi Jamrud
2. Kaset dan CD lagu tersebut dijual, diedarkan dan disebarakan kepada masyarakat
3. Kaset dan CD lagu tersebut sering diputar (diperdengarkan) di radio, televisi, karaoke, diskotik, restoran, hotel, mall, angkutan umum dan lain-lain.

Bentuk pengeksploitasian ke-1 berdasarkan perjanjian antara produser rekaman dengan pelaku untuk melakukan proses rekaman dan perbanyak rekaman dimana pelaku akan mendapatkan honor dari kegiatan rekaman.

Bentuk pengeksploitasian ke-2 merupakan proses yang berkelanjutan dari pengeksploitasian ke-1 dimana pelaku juga akan mendapatkan bagian dari hasil penjualan kaset dan CD.

Bentuk pengeksploitasian ke-3 tersebut membutuhkan adanya pemberian izin dari pelaku, oleh sebab itu pelaku berhak mendapatkan pembagian royalti bersama-sama dengan pihak pencipta dan produser rekaman atas pemakaian produk rekaman tersebut.

Seperti yang telah diuraikan sebelumnya bahwa dalam karya cipta lagu terdapat dua macam hak ekonomi yaitu hak perbanyak yang berhubungan erat dengan produksi ulang lagu dalam kaset, compact disk, laser disk dan lainnya yang dikenal dengan *mechanical right*; dan hak mengumumkan yang berkaitan dengan kegiatan memperdengarkan sebuah lagu misalnya menyanyikan, memutar kaset di tempat umum untuk kepentingan komersial, yang juga dikenal dengan *performing right*.

Dalam Undang-undang Hak Cipta no 19 tahun 2002, dirumuskan bahwa yang dimaksudkan dengan “pengumuman” adalah pembacaan, penyiaran, pameran, penjualan, pengedaran atau penyebaran suatu ciptaan dengan menggunakan alat apapun, termasuk media internet atau melakukan dengan cara apapun sehingga suatu ciptaan dapat dibaca, didengar atau dilihat orang lain. Kemudian dalam Penjelasannya ditegaskan bahwa dalam pengertian “mengumumkan” dan “memperbanyak”, termasuk kegiatan menerjemahkan, mengadaptasi, mengaransemen, mengalihwujudkan, menjual, menyewakan, meminjamkan,

mengimpor, memamerkan, mempertunjukkan kepada publik, menyiarkan, merekam dan mengkomunikasikan ciptaan kepada publik melalui sarana apapun. Hak untuk mengumumkan di ataslah yang dikenal dengan istilah *performing right* oleh Undang-undang Hak Cipta Indonesia.

Namun dalam pelaksanaan hak mengumumkan di Indonesia belum berjalan dengan baik dimana banyak hal yang sering terlupakan dan seolah-olah tidak mendapat perhatian yang serius dari pemerintah dan aparat penegak hukum, karena ternyata banyak tempat atau perusahaan yang melakukan pelanggaran hukum dalam bentuk memutar, memperdengarkan dan mempertunjukkan dalam musik yang dilindungi hak cipta tanpa meminta izin pemilik atau pemegang hak ciptanya.

Jika ada seseorang yang ingin mengadakan pertunjukkan dengan memperdengarkan suatu karya cipta musik untuk kegiatan komersil dan/atau kepentingan yang berkaitan dengan kegiatan usaha komersil di Taman Ismail Marzuki, maka ia harus mendapat izin terlebih dahulu dari penciptanya atau dari pemegang hak ciptanya yang sah. Jika malam pagelaran musik itu disiarkan langsung melalui sesuatu organisasi siaran televisi maka untuk siaran langsung tersebut harus ada izin terlebih dahulu dari pencipta musik atau pemegang hak cipta lainnya yang sah. Demikian pula apabila oleh organisasi siaran televisi itu diadakan perekaman untuk kemudian ditampilkan melalui televisi yang bersangkutan, maka untuk hal yang demikian pun harus ada izin dari pencipta atau pemegang hak cipta yang sah.¹⁴⁷

Dengan demikian, dipertegas bahwa pihak-pihak yang mempergunakan lagu untuk kegiatan komersil atau untuk kepentingan yang berkaitan dengan kegiatan komersil atau untuk kepentingan yang berkaitan dengan kegiatan komersil yang sering disebut dengan pengguna (*user*), harus meminta izin terlebih dahulu dari pencipta lagu yang bersangkutan dan atau dari pemegang hak cipta yang sah.

¹⁴⁷ Ibid., hal 92

Menurut Hulman Panjaitan dan Wetmen Sinaga¹⁴⁸, apabila suatu pertunjukkan langsung musik direkam dan dibuat kaset, maka ada beberapa kemungkinan bisa terjadi:

- a. Rekaman kaset itu dibuat untuk kemudian disiarkan kepada khalayak ramai melalui televisi atau radio
- b. Rekaman dan kaset itu dibuat untuk kemudian dipakai sendiri
- c. Rekaman dan kaset itu dibuat untuk kemudian diperjual belikan, jadi ada maksud dan tujuan komersil
- d. Rekaman dan kaset itu dibuat untuk kemudian diputar/diperdengarkan dihadapan umum (bukan melalui televisi atau radio) di tempat-tempat tertentu yang dalam usahanya yang berkaitan dengan kegiatan usaha komersil dengan atau tanpa pungutan pembayaran secara khusus.

Dalam uraian diatas, kecuali untuk bentuk yang kedua, maka selebihnya harus mendapat izin terlebih dahulu dari pencipta dan atau pemegang hak ciptanya yang sah.

Otto Hasibuan¹⁴⁹ mengemukakan bahwa yang menjadi masalah bagi pencipta lagu dan juga bagi penyanyi, pemusik dan produser rekaman suara adalah berkaitan dengan kegiatan mengumumkan ciptaan lagu, baik melalui penampilan atau penyuaran secara langsung maupun melalui pemutaran produk rekaman suara. Perumusan “hak mengumumkan” dalam undang-undang yang cenderung rancu atau kurang jelas sehingga besar kemungkinan menimbulkan masalah dalam pelaksanaannya.

Masalah lain tentang hak mengumumkan lagu ini adalah menyangkut cara pemberian lisensi oleh pencipta kepada pemakai (*user*), pembayaran dan penerimaan royalti, pengawasan terhadap pelaksanaan lisensi dan pengawasan terhadap pemakaian lagu yang tanpa lisensi. Kalau diidentifikasi kegiatan pengumuman lagu atau pemakaian lagu untuk disiarkan, dipertunjukkan atau diputar untuk konsumsi umum, kegiatannya adalah:

¹⁴⁸ Hulman hal 93

¹⁴⁹ Hulman, Op cit., hal 96

- a. Menyiarkan lagu yang dinyanyikan oleh penyanyi secara langsung maupun melalui kaset, CD atau VCD oleh lembaga penyiaran seperti radio dan televisi, baik yang menggunakan kabel atau tanpa kabel
- b. Mempertunjukkan atau memperdengarkan lagu melalui konser-konser musik dan acara pertunjukkan musik yang buka konser, seperti pesta, pertunjukkan di tempat-tempat hiburan malam
- c. Memperdengarkan lagu melalui pemutaran kaset atau CD lagu diberbagai tempat diskotik, karaoke, kafe, bar, hotel, restoran, mall, plaza, super market, toko-toko, angkutan umum, rumah sakit, sekolah/univesitas, perpustakaan, stasiun angkutan umum dan sebagainya.
- d. Menggunakan lagu sebagai nada dering dan nada sambung telepon seluler.¹⁵⁰

Dalam prakteknya ada beberapa cara atau bentuk “pengumuman”, yaitu:

- i. Pengumuman yang dilakukan melalui siaran radio, yang biasa dilakukan oleh para user, seperti lembaga penyiaran radio, rumah makan, hotel dan sebagainya.
- ii. Pengumuman yang dilakukan melalui media penyiaran televisi, termasuk TV kabel, yang biasanya dilakukan oleh para user, TV, TV kabel, hotel dan sebagainya.
- iii. Pengumuman yang dilakukan melalui media cetak, seperti koran, majalah atau bahkan yang dilakukan melalui komputer atau internet.
- iv. Pengumuman yang dilakukan secara langsung seperti konser atau petunjukkan, musik live.

Hak untuk mengumumkan, walaupun *copyright* telah diserahkan kepada perusahaan rekaman, selamanya akan tetap berada di tangan Pencipta. Sehingga ketika suatu yang terdapat dalam karya rekaman diputar atau diperdengarkan di tempat-tempat publik, seperti hotel, restoran, karaoke dan lainnya, Pencipta akan tetap berhak untuk mendapatkan royalti atas pemutaran lagu tersebut. di samping itu, pelaku juga mempunyai hak atas kegiatan memperdengarkan karya rekaman tersebut di tempat publik (*Right of Communication to Public*). Oleh karenanya,

¹⁵⁰ Otto hal 99

baik artis/musisi maupun Pencipta, keduanya berhak atas pembayaran royalti atas pemutaran lagu tersebut di tempat-tempat umum, khususnya yang terkait dengan kegiatan komersial.¹⁵¹

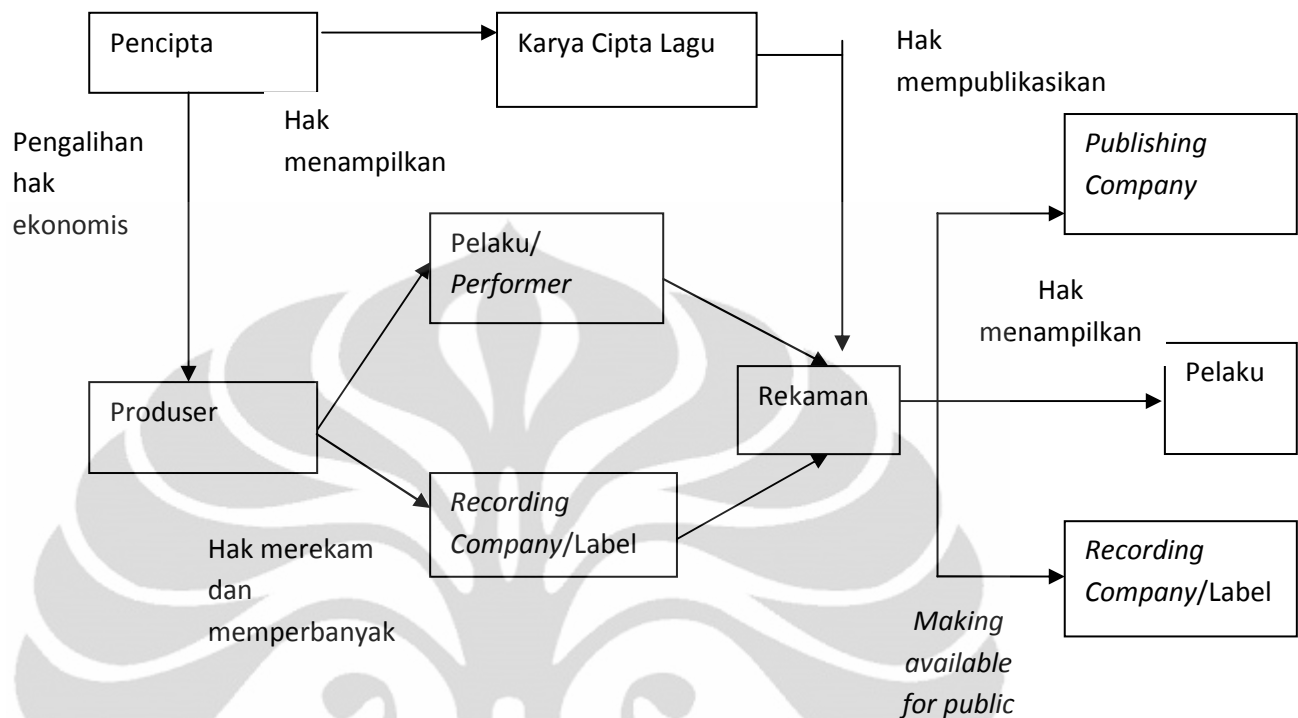
Dengan demikian, kegiatan pengumuman karya cipta musik dalam prakteknya dapat terbagi dua:

1. Menampilkan lagu secara langsung (*live performance*) yang dilakukan oleh pelaku (*performers*). Kegiatan ini melahirkan hak terkait pelaku music untuk menampilkan karya cipta music (*performers' right*)
2. Menampilkan lagu secara tidak langsung (*publishing*) melalui media rekaman seperti CD, video dan rekaman lainnya, yang dilakukan oleh *Music Publisher*¹⁵². Kegiatan ini melahirkan hak terkait publishing company untuk menyalurkan karya cipta music kepada lembaga-lembaga penyiaran (*publishing right*)

¹⁵¹ Agus Sarjono, Op Cit., hal 258

¹⁵² *Music publisher* adalah lembaga yang mengelola hak cipta atas suatu music atau lagu dari para pencipta yang bertujuan untuk memasarkannya di pasaran nasional maupun internasional

Skema kegiatan Pelaku dalam proses Rekaman



Mekanisme kegiatan Pelaku dalam proses rekaman berdasarkan bagan

Dimulai sejak seorang pencipta menciptakan suatu lagu atau karya musik. Pencipta lalu menuangkan lagu ciptaannya itu ke dalam kaset rekaman untuk didengarkan oleh produser rekaman. Jika produser rekaman tertarik terhadap lagu ciptaannya tersebut, maka dibuatlah perjanjian kerjasama antara pencipta dengan produser rekaman yang memuat pernyataan bahwa si pencipta memberikan sebagian hak cipta atas lagu tersebut kepada produser dengan imbalan pembayaran yang disepakati bersama. Pada tahap ini terjadi pengalihan sebagian hak ekonomis Hak Cipta Pencipta ke Produser.

Sejak adanya perjanjian kerjasama antara pencipta dan produser, produser berhak untuk melakukan kegiatan mengolah lagu tersebut untuk menjadi suatu album. Kegiatan mengolah lagu itu antara lain mencari penyanyi yang cocok dengan tipe lagu, memilih *arranger*¹⁵³, musisi pendukung, menyediakan studio

¹⁵³ Arranger adalah orang yang mengubah lagu atau musik ciptaan orang lain sampai ke tingkat tertentu atau menambah sedemikian rupa sehingga dengan kontribusi kreatifnya karya lagu

rekaman dan sarana lain untuk menghasilkan suatu “master rekaman”. Dengan demikian hak produser rekaman adalah hak atas karya rekaman suara (*sound recording*).

Produser kemudian mengalihkan hak menampilkan kepada penyanyi dan hak merekam dan memperbanyak kepada Perusahaan Rekaman (*Recording Company/Label*) untuk merekam lagu sehingga terciptalah suatu karya rekaman (master rekaman).

Untuk karya rekaman dapat dijual, harus melalui proses perbanyakan (*copying*), dimana Perusahaan Rekaman mendapatkan *copyright* atas karya rekaman tersebut dan berhak untuk mendistribusikan, menjual dan menyewakan karya rekaman (*making available for public*).

Penyanyi sebagai pelaku juga mendapatkan hak untuk menampilkan lagu tersebut secara *live (live performance)* kepada publik dan *Publisher* juga mendapatkan hak untuk mempublikasikan lagu-lagu tersebut dengan memasarkan lagu-lagu tersebut kepada lembaga penyiaran seperti radio dan televisi .

3.2.2 Hak Pelaku di Inggris

Hukum hak cipta Inggris diatur dalam *Copyright, Designs and Patent Act* 1988 (“UU Hak Cipta Inggris”) yang mencabut ketentuan *Performers Protection Acts* 1958 sampai 1972 yang ditetapkan untuk menerapkan ketentuan dalam Konvensi Roma 1961 tentang perlindungan kepada pelaku, produser rekaman dan lembaga penyiaran.

Undang-undang Hak Cipta Inggris ini lebih mengatur mengenai hak-hak menampilkan (*performance*) dari pada hak-hak pelaku (*performers*) karena bukan hanya pelaku yang mendapatkan perlindungan dalam ketentuan-ketentuan undang tersebut. Selain itu, Undang-undang ini juga telah memperbaiki keganjilan pada konvensi Roma yang tidak memberikan hak kepada pelaku untuk menggugat pihak-pihak yang merekam dan menyiarkan serta mengeksploitasi penampilan mereka secara terlarang, dengan memberikan ganti rugi sesuai dengan pelanggaran terhadap hak cipta tersebut.

atau musik tersebut diwarnai dimensi yang khas dan bersifat pribadi. Dengan kata lain arranger adalah penata musik

Menurut Leslie Cotterell,¹⁵⁴ hak-hak yang diberikan oleh UU Hak Cipta Inggris kepada pelaku adalah:

- a) Membuat rekaman dari suatu pertunjukkan yang bukan untuk kepentingan pribadi
- b) Menyiarkan sebuah pertunjukkan langsung
- c) Memainkan atau menyiarkan suatu rekaman pertunjukkan dimana seseorang tahu atau dianggap tahu bahwa rekaman tersebut telah dibuat tanpa seizin pelaku
- d) Mengimport ke Inggris dengan tujuan bukan untuk kepentingan pribadi dimana kegiatan-kegiatan diatas dianggap sebagai pelanggaran terhadap hak pelaku apabila dilakukan tanpa izinnnya.

Pengaturan lebih lanjut dalam UU Hak Cipta Inggris, dimana hak pelaku terdiri dari hak ekonomi (*economic rights*) dan hak moral (*moral rights*). Hak ekonomi pelaku sendiri dijabarkan lebih lanjut yaitu hak milik pelaku dan hak non milik pelaku dimana perlindungan atas hak ini berakhir pada¹⁵⁵

- Akhir periode setelah 50 tahun dimulai pada akhir tahun saat ditampilkannya sebuah pertunjukkan
- 50 tahun setelah tahun dirilisnya rekaman music dari pertunjukkan tersebut

Mengenai hak milik pelaku (*performer's property rights*)¹⁵⁶ dimana hak ini dapat dialihkan melalui penyerahan, melalui wasiat atau pengalihan secara

¹⁵⁴ Leslie E Cotterell *Performance The Business and Law of Entertainment*, Third Edition, London: Sweet and Maxwell hal 313

¹⁵⁵ Pasal 191 ayat 2:

The rights conferred by this chapter in relation to a performance expire:

- a. *At the end of the period of 50 years from the end of the calendar year in which the performance takes place*
- b. *If during that period a recording of the performance is released, 50 years from the end of the calendar year in which is released*

¹⁵⁶ Pasal 191a ayat 1:

The following rights conferred by this chapter on a performer: reproduction right, distribution right, rental and lending right, making available right, are property rights (performer's property rights)

hukum sebagai suatu *movable property*¹⁵⁷ yang pengalihannya tersebut dapat dilakukan secara parsial dengan ketentuan:

- a. Satu atau lebih, namun tidak semua, hak milik pelaku
- b. Sebagian, namun tidak seluruhnya, periode berlakunya hak tersebut.¹⁵⁸

Yang termasuk ke dalam hak milik dari seorang pelaku adalah:

- a. Hak reproduksi (*reproduction right*)¹⁵⁹, dimana apabila seseorang, tanpa seizin pelaku, mengkopi sebuah rekaman akan seluruh maupun sebagian suatu pertunjukkan, maka orang tersebut dianggap telah melanggar hak pelaku¹⁶⁰
- b. Hak distribusi (*Distribution right*)¹⁶¹, dimana apabila seseorang, tanpa seizin pelaku membagikan kepada publik kopi rekaman akan seluruh maupun sebagian sebuah pertunjukkan, maka orang tersebut dianggap telah melanggar hak pelaku¹⁶²

¹⁵⁷ Benda bergerak, <http://www.indolaw.com.au/glossary.html> diunduh pada tanggal 1 Juni 2011

¹⁵⁸ Pasal 191b ayat 1 jo. ayat 2:

A performer's property rights are transmissible by assignment, by testamentary disposition or by operation of law as personal or moveable property.

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 of which the rights are to subsist*

¹⁵⁹ Pasal 182 a ayat 3:

The right of a performer under this section to authorize or prohibit the making of such copies is referred to in this chapter as "reproduction right"

¹⁶⁰ Pasal 182 a ayat 1:

A performer's rights are infringed by a person who, without his consent, makes a copy of a recording of the whole or any substantial part of a qualifying performance

¹⁶¹ Pasal 182b ayat 5:

The right of a performer under this section to authorize or prohibit the issue of copies to the public is referred to in this chapter as "distribution right"

¹⁶² Pasal 182 b ayat 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.

- c. Hak menyewakan dan meminjamkan (*Rental right and lending right*)¹⁶³, dimana apabila seseorang, tanpa izin pelaku menyewa atau meminjamkan kepada publik kopi rekaman akan seluruh atau sebagian sebuah pertunjukkan, maka orang tersebut dianggap telah melanggar hak pelaku¹⁶⁴

Yang dimaksud dengan “sewa”, yaitu membuat suatu kopi rekaman untuk dapat digunakan secara komersial dimana kopi tersebut akan atau mungkin dikembalikan

Sedangkan “meminjamkan”, yaitu membuat suatu kopi rekaman untuk dapat digunakan dan akan atau mungkin dikembalikan selain untuk kegiatan komersial.¹⁶⁵

- d. Hak menyediakan kepada publik (*Making available right*)¹⁶⁶, dimana apabila seseorang, tanpa izin pelaku menyediakan kepada public suatu rekaman baik seluruh atau sebagian sebuah pertunjukkan, dengan transmisi elektronik sehingga dapat mengakses rekaman dari tempat dan waktu sesuai keinginan mereka, maka orang tersebut dianggap telah melanggar hak pelaku¹⁶⁷

¹⁶³ Pasal 182 c ayat 7:

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

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

¹⁶⁴ Pasal 182 c ayat 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.

¹⁶⁵ Pasal 182 c ayat 2:

In this chapter, 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*
- b) *“lending” means making a copy of a recording available for use, on terms that it will or may be returned, otherwise than direct or indirect economic or commercial advantage, through an establishment which is accessible to the public*

¹⁶⁶ Pasal 182 c ayat 2:

The right of a performer under this section to authorise or prohibit the making available to the public of a recording is referred to in this chapter as “making available right”

¹⁶⁷ Pasal 182 c ayat 1:

Sedangkan mengenai hak non-milik pelaku (*non-property rights*)¹⁶⁸, terdiri dari:

- a. Pemberian izin untuk merekam dan kegiatan lainnya akan sebuah pertunjukan (*consent required for recording, &c. of live performance*)¹⁶⁹
Berdasarkan ketentuan ini, seseorang dianggap melanggar hak pelaku apabila tanpa izin pelaku:
 - Merekam seluruh atau sebagian sebuah pertunjukan baik secara langsung maupun tidak langsung
 - Menyiarkan secara langsung, seluruh atau sebagian sebuah pertunjukan
 - Merekam seluruh atau sebagian sebuah pertunjukan, langsung dari penyiaran pertunjukan tersebut.
- b. Pelanggaran hak pelaku dengan menggunakan rekaman yang dibuat tanpa izin pelaku (*infringement of performer's rights by use of recording made without consent*)¹⁷⁰

A performer's right are infringed by a person who, without his consent, makes available to the public a recording of the whole or any substantial part of a qualifying performance by electronic transmission in such way that members of the public may access the recording from a place and at a time individually chosen by them.

¹⁶⁸ Pasal 192 a ayat 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)
Section 184 (infringement of performer's rights importing, possessing or dealing with illicit recording)
are not assignable or transmissible, except the following extent.
They are referred to in this chapter as "performer's non-property rights"*

¹⁶⁹ Pasal 182 ayat 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 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 the live performance*

¹⁷⁰ Pasal 183:

A performer's rights are infringed by a person who, without his consent

- a) *Shows or plays in public the whole or any substantial part of a qualifying performance*
- b) *Communicates to the public the whole or any substantial part of a qualifying performance*

Berdasarkan ketentuan ini, seseorang dianggap melanggar hak pelaku apabila tanpa izin pelaku:

- Menunjukkan atau memainkan di depan publik, seluruh atau sebagian sebuah pertunjukkan
- Mengkomunikasikan kepada publik seluruh atau sebagian sebuah pertunjukkan

melalui sebuah rekaman dimana orang tersebut tahu atau dianggap tahu bahwa rekaman tersebut dibuat tanpa izin pelaku.

- c. Pelanggaran hak pelaku dengan mengimpor, memiliki atau rekaman terlarang (*infringement of performer's rights by importing, possessing or dealing with illicit recording*)¹⁷¹

Berdasarkan ketentuan ini, seseorang dianggap melanggar hak pelaku apabila tanpa izin pelaku:

- Mengimpor dengan tujuan bukan untuk kepentingan pribadi ke dalam Inggris
- Memiliki, menjual atau menyewakan, menawarkan atau memamerkan untuk menjual atau menyewakan, atau mendistribusikan

sebuah rekaman akan suatu pertunjukkan dimana orang tersebut tahu atau dianggap tahu bahwa rekaman tersebut adalah terlarang.

Berbeda dengan hak milik pelaku (*performer's property right*) yang dapat dialihkan¹⁷², hak non-milik pelaku (*performer's non-property rights*) tidak dapat

by means of a recording which was, and which that person knows or has reason to believe was, made without the performer's consent

¹⁷¹ Pasal 184 ayat 1:

A performer's rights are infringed by a person who, without his consent

a) Import into the United Kingdom otherwise than for his private and domestic use

b) In the course of a business possesses, sells or lets for hire, offers or exposes for sale or hire, or distributes

a recording of a qualifying performance which is, and which that person knows or has reason to believe is, an illicit recording

¹⁷² Pasal 191b ayat 1 jo. ayat 2., op cit

dialihkan¹⁷³, kecuali dengan pembatasan apabila orang yang memiliki hak tersebut telah meninggal dimana hak tersebut diserahkan kepada seseorang yang disebutkan langsung dalam surat wasiat, atau apabila tidak ada pengaturan seperti itu, maka hak tersebut dapat dilaksanakan oleh wakil orang tersebut.¹⁷⁴

Selain itu, hak non-milik berkaitan dengan hak kontrol yang dimiliki oleh Pelaku dalam perekaman dan penyiaran penampilannya yang dilakukan secara live. Sedangkan hak property berkaitan dengan penampilan Pelaku yang berada dalam suatu rekaman.¹⁷⁵

Kemudian, UUHC Inggris juga mengatur mengenai Hak Moral yang dimiliki oleh pelaku yaitu hak untuk diidentifikasi sebagai pelaku (*right to be identified as a performer*) dan hak untuk menolak perlakuan yang merugikan pertunjukkan (*right to object to derogatory treatment of performance*) dimana perlindungan hak moral ini berlaku selama hak ekonomi pelaku masih terkait dengan pertunjukannya.¹⁷⁶

Yang pertama, hak untuk diidentifikasi sebagai pelaku (*right to be identified as a performer*) diberikan kepada setiap orang yang memproduksi atau yang berada dalam pertunjukkan yang diberikan kepada publik, menyiarkan langsung sebuah pertunjukkan, mengkomunikasikan dan mengedarkan kepada publik kopi rekaman musik suatu pertunjukkan.¹⁷⁷

¹⁷³ Pasal 192 a ayat 1, op. cit.,

¹⁷⁴ Pasal 192 a ayat 2:

On the death of a person entitled to any such right

- a) *The right passes to such person as he may be testamentary disposition specifically direct*
- b) *If or to the extent that there is no such direction, the right is exercisable by his personal representatives*

¹⁷⁵ Performers' Right <http://webcache.googleusercontent.com/search?q=cache:-S4epQn1P4MJ:www.ipo.gov.uk/types/copy/c-otherprotect/c-performer.htm+property+rights+non+property+rights+uk&cd=1&hl=en&ct=clnk&gl=id&source=www.google.co.id> diunduh pada tanggal 1 Juni 2011

¹⁷⁶ Pasal 205 i ayat 1:

A performer's rights under this chapter in relation to a performance subsist so long as that performer's rights under chapter 2 subsist in relation to the performance

¹⁷⁷ Pasal 205 c ayat 1:

Whenever a person

- a) *Produces or puts on a qualifying performance that is given in public*

Seorang pelaku, dalam hak ini diatur bahwa:

- a) Dalam kaitannya pertunjukkan diberikan kepada publik, berhak untuk diidentifikasi atau dengan cara lain dalam menyebutkan identitasnya kepada orang yang menyaksikan atau mendengar pertunjukkan tersebut.
- b) Dalam kaitannya pertunjukkan disiarkan, berhak untuk diidentifikasi dengan menyebutkan identitasnya kepada orang yang menyaksikan atau mendengar siaran tersebut.
- c) Dalam kaitannya rekaman musik dikomunikasikan kepada publik, berhak untuk diidentifikasi dengan menyebutkan identitasnya kepada orang yang mendengar komunikasi tersebut.
- d) Dalam kaitannya rekaman musik penganjuran kepada publik, berhak untuk diidentifikasi pada setiap kopi atau dengan cara lain dalam menyebutkan identitasnya kepada orang yang memperoleh kopi rekaman.¹⁷⁸

Yang kedua dalam hak moral adalah hak untuk menolak perlakuan yang merugikan pertunjukkan (*right to object to derogatory treatment of performance*) dimana diatur bahwa hak pelaku dilanggar apabila pertunjukkan yang disiarkan secara langsung atau rekaman music suatu pertunjukkan yang dimainkan atau dikomunikasikan kepada publik terdapat distorsi, mutilasi atau modifikasi lain yang merugikan pelaku.¹⁷⁹

-
- b) *Broadcasts live a qualifying performance*
 - c) *Communicates to the public a sound recording of a qualifying performance*
 - d) *Issues to the public copies of such a recording*

¹⁷⁸ Pasal 205 c ayat 2:

The right of the performer under this section is

- a) *In the case of a performance that is given in public, to be identified in any programme accompanying the performance or in some other manner likely to bring his identity to the notice of a person seeing or hearing the performance*
- b) *In the case of a performance that is broadcast, to be identified in a manner likely to bring his identity to the notice of a person seeing or hearing the broadcast*
- c) *In the case of a sound recording that is communicated to the public, to be identified in a manner likely to bring his identity to the notice of a person hearing the communication*
- d) *In the case of a sound recording that is issued to the public, to be identified in or on each copy or, if that is not appropriate, in some other manner likely to bring his identity to the notice of a person acquiring a copy*

¹⁷⁹ Pasal 205 f ayat 1:

“Rekaman”¹⁸⁰ yang berkaitan dengan penampilan berarti film maupun rekaman suara yang:

- a. dibuat langsung dari sebuah pertunjukan langsung
- b. dibuat dari siaran sebuah pertunjukan
- c. dibuat secara langsung atau tidak langsung, dari rekaman lain akan suatu pertunjukan

“Penampilan”¹⁸¹ memiliki arti

- a. pertunjukan dramatisasi
- b. pertunjukan musik
- c. pembacaan karya tulisan
- d. pertunjukan akan kegiatan lainnya

yang merupakan pertunjukan langsung oleh seseorang atau beberapa orang

Leslie Cotterell¹⁸² berpendapat bahwa,

“There is no definition of performer. There is no requirement concerning the quality of a performance or standing of the performer –professional or amateur- or that any payment be made by any audience or persons viewing a

The performer of a qualifying performance has a right which is infringed if

- a) *The performance is broadcast live*
 - b) *By means of a sound recording the performance is played in public or communicated to the public*
- with any distortion, mutilation or other modification that is prejudicial to their reputation of the performer.*

¹⁸⁰ 180 ayat 2 UU HC Inggris:

“Performance” means

- a. *A dramatic performance*
- b. *A musical performance*
- c. *A reading or recitation of a literary work*
- d. *A performance of a variety act or any similar presentation*

which is a live performance given by one or more individuals;

“recording”, in relation to a performance, means a film or sound recording

- a. *Made directly from the live performance*
- b. *Made from a broadcast of the performance*
- c. *Made, directly or indirectly, from another recording of the performance*

¹⁸¹ Ibid

¹⁸² Leslie E Cotterell, op cit., hal 314

performance, or for a performer to receive any payment..... However, the Act does lay down certain pre-conditions for the rights and protection given by the Act to be enforceable”

Pendapat diatas apabila diterjemahkan secara bebas menjadi, undang-undang ini tidak didefinisikan mengenai “pelaku” (*performers*), tidak dijabarkan mengenai persyaratan akan kualitas dari seorang pelaku -baik profesional maupun amatir- atau jumlah biaya yang harus dibayarkan penonton yang menyaksikan suatu penampilan, atau besar pembayaran yang harus diterima pelaku. Namun Undang-undang ini menetapkan beberapa kondisi-kondisi tertentu sehingga hak dan perlindungan dalam Undang-undang ini dapat dilaksanakan.

Kondisi-kondisi tersebut seperti suatu penampilan harus merupakan penampilan yang memenuhi syarat yang berarti bahwa harus ditampilkan oleh individual yang memenuhi syarat atau di negara yang memenuhi syarat.¹⁸³ Individual yang memenuhi syarat merupakan subjek hukum Inggris atau subjek hukum yang bertempat tinggal di negara yang memenuhi syarat yaitu Inggris maupun negara lain yang merupakan anggota Eropa.¹⁸⁴

Hak menampilkan adalah hak untuk melakukan pertunjukkan music langsung (*live performance*) dalam hak cipta, dan pembayaran yang berkaitan dengan penampilan yang dikenal dengan royalti hak menampilkan¹⁸⁵

¹⁸³ Pasal 181 UUHC Inggris:

A performance is a qualifying performance for the purposes of the provisions of this Part relating to performers’ right if it is given by a qualifying individual (as defined in section 206) or takes place in a qualifying country (as so defined)

¹⁸⁴ Pasal 206 ayat 1 UUHC Inggris:

“qualifying country” means—

(a) the United Kingdom,

(b) another member State of the European Economic Community, or

(c) to the extent that an Order under section 208 so provides, a country designated under that section as enjoying reciprocal protection;

“qualifying individual” means a citizen or subject of, or an individual resident in, a qualifying country

¹⁸⁵ *“performing rights refer to the right to give a live performance of music in copyright, and the corresponding fees that are due on such performance are known as performing rights royalties”* <http://www.makingmusic.org.uk/our-services/performing-rights/performing-rights-faqs/what-are-performing-rights>, diunduh pada 3 mei 2011

Royalti hak menampilkan tersebut dikenal dengan hak untuk mendapatkan upah yang layak (*right to equitable remuneration*)¹⁸⁶ dimana ketika sebuah rekaman dipublikasikan secara komersial yang dimainkan didepan publik dan dikomunikasikan kepada publik selain yang diatur dalam pasal 182 CA¹⁸⁷

Hak untuk mendapatkan upah yang layak ini, tidak dapat dialihkan selain kepada lembaga kolektif (*collecting Society*) dengan tujuan untuk melaksanakan hak tersebut atas nama pelaku.¹⁸⁸ Yang dimaksud dengan lembaga kolektif adalah organisasi yang memiliki tujuan utama atau salah satu tujuannya adalah untuk memanfaatkan hak mendapatkan upah layak atas nama lebih dari satu pelaku.¹⁸⁹ Besar hak untuk mendapatkan upah layak ini tergantung pada kesepakatan para pihak yaitu antara kepada siapa dan oleh siapa upah tersebut dibayar.¹⁹⁰

¹⁸⁶ Pasal 182D ayat 1:

Right to equitable remuneration for exploitation of sound recording, where a commercially published sound recording of the whole or any substantial part of a qualifying performance
a. Is played in public
b. Is communicated to the public otherwise than by its being made available to the public in the way mentioned in section 182 CA(1)

¹⁸⁷ Isi 182 CA ayat 1:

A performer's right are infringed by a person who, without his consent, makes available to the public a recording of the whole or any substantial part of a qualifying performance by electronic transmission in such a way that members of the public may access the recording from a place and at a time individually chosen by them

¹⁸⁸ Pasal 182 d ayat 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

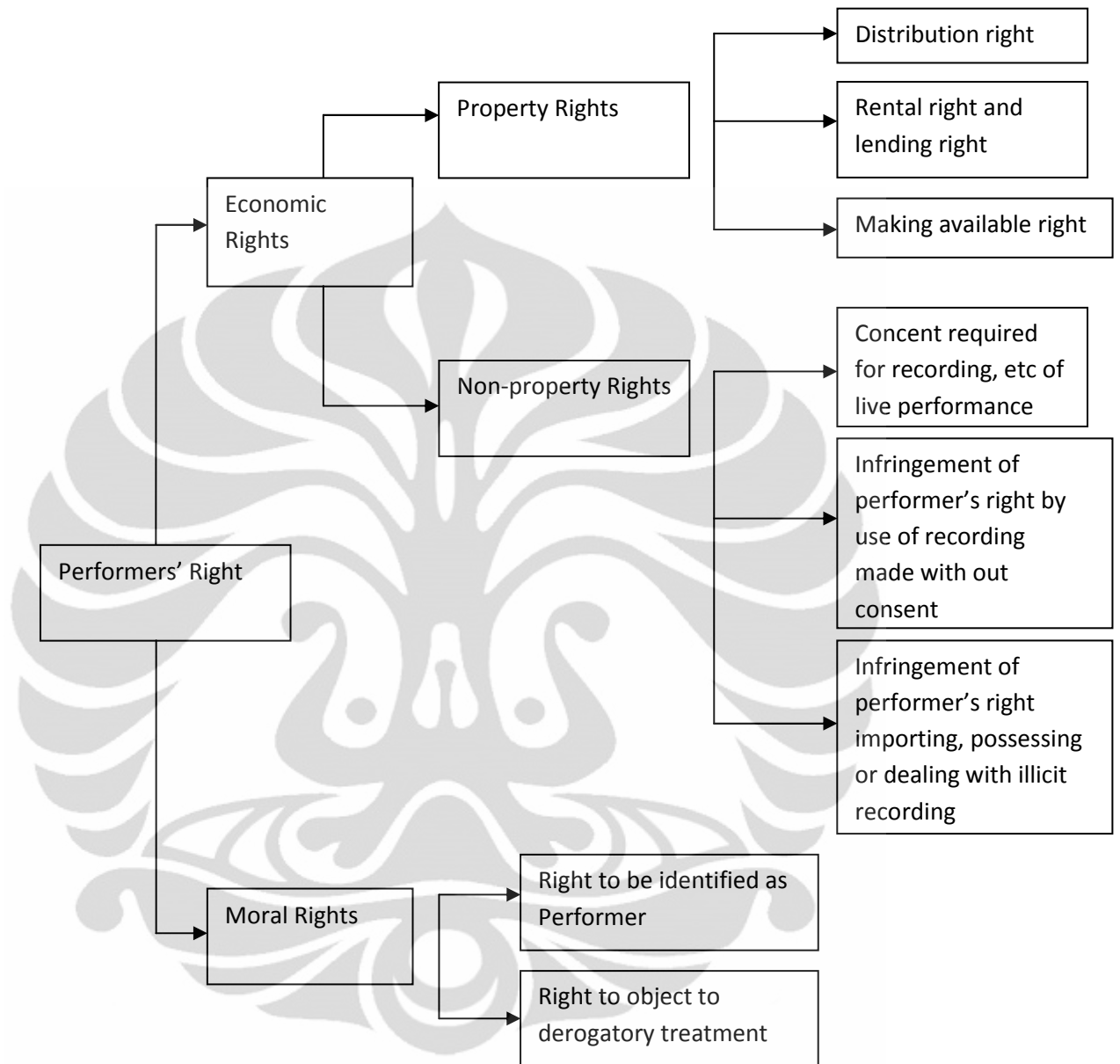
¹⁸⁹ Pasal 182 d ayat 8

In this section "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

¹⁹⁰ Pasal 182 d ayat 3

The amount payable by way of equitable remuneration under this section may not be assigned by the performer except to a collecting society for the purpose to the following provisions

Skema Performers' Right berdasarkan Undang-undang Hak Cipta Inggris



3.2.3 Perbandingan Pengaturan Hak Pelaku Musik di Indonesia dan di Inggris

Dari pembahasan mengenai pengaturan Hak Menampilkan di Indonesia dan di Inggris pada sub-bab sebelumnya, dapat disimpulkan bahwa pengaturan di Indonesia dan Inggris terdapat beberapa perbedaan, dimana perbedaan tersebut antara lain:

Copyright Act 1988	Undang-undang hak cipta 2002
<p>1. Hak ekonomi pelaku</p> <p>Pemberian izin untuk mengeksploitasi penampilannya yang terdiri dari:</p> <ul style="list-style-type: none"> • Hak reproduksi • Hak distribusi • Hak menyewakan dan meminjamkan • Hak menyediakan kepada publik • Pemberian izin untuk merekam dan kegiatan lainnya akan sebuah pertunjukkan • Pelanggaran hak pelaku dengan menggunakan rekaman yang dibuat tanpa izin pelaku • Pelanggaran hak pelaku dengan mengimpor, memiliki rekaman terlarang 	<p>1. Hak ekonomi pelaku:</p> <p>Pemberian izin atau melarang akan suatu rekaman suara atau gambar pertunjukkannya untuk</p> <ul style="list-style-type: none"> • dibuat • direkam • disiarkan
<p>2. Hak moral pelaku</p> <ul style="list-style-type: none"> • hak untuk diidentifikasi sebagai pelaku <ul style="list-style-type: none"> ▪ penampilan langsung ▪ penyiaran penampilan ▪ rekaman yang dikomunikasikan ▪ rekaman yang diedarkan 	<p>2. Hak moral pelaku, tidak diatur dalam pasal tersendiri.</p> <p>Namun ketentuan mengenai hak moral pencipta berlaku mutatis mutandis terhadap Pelaku dimana</p> <ul style="list-style-type: none"> • Pelaku berhak untuk dicantumkan namanya dalam karya cipta musik

<ul style="list-style-type: none"> • hak untuk menolak perlakuan yang merugikan akan pertunjukkan 	<ul style="list-style-type: none"> • Pelaku berhak untuk mencegah bentuk distorsi, mutilasi atau perubahan karya cipta yang dapat merusak apresiasi dan reputasi Pelaku
<p>3. Hak Remunerasi</p> <p>Hak untuk mendapatkan remunerasi didapat saat rekaman pertunjukkan dipublikasikan secara komersial, dengan:</p> <ul style="list-style-type: none"> • dimainkan pada publik • dikomunikasikan kepada publik 	<p>3. Hak royalti pelaku tidak diatur dalam pasal tersendiri.</p> <p>Namun ketentuan mengenai royalti pemegang hak cipta berlaku mutatis mutandis terhadap pelaku</p>
<p>4. Pengaturan collecting society</p> <p>Lembaga kolektif adalah organisasi yang memiliki tujuan utama atau salah satu tujuannya adalah untuk memanfaatkan hak mendapatkan upah layak atas nama lebih dari satu pelaku.</p>	<p>4. Tidak ada ketentuan yang mengatur mengenai keeksistensian lembaga kolektif</p>
<p>5. Durasi perlindungan yang berhubungan dengan suatu penampilan yaitu</p> <ul style="list-style-type: none"> • 50 tahun sejak penampilan tersebut ditampilkan • Apabila penampilan tersebut di rekam, maka 50 tahun sejak rekaman tersebut pertama kali di publikasikan, dimainkan, diperlihatkan, atau disediakan pada publik 	<p>5. Durasi perlindungan hak pelaku 50 tahun sejak suatu karya di pertunjukkan atau dimasukan kedalam media audio atau audio visual</p>

Dari perbandingan diatas, dapat disimpulkan bahwa terdapat perbedaan ruang lingkup perlindungan terhadap hak Pelaku dimana dalam UUHC Inggris

diatur mengenai perlindungan hak Pelaku yang berkaitan dengan penampilan langsung (*live performance*) dan juga penampilan yang sudah dimasukkan dalam rekaman (*recording*), sedangkan dalam Undang-undang Hak Cipta, tidak menyebutkan secara tegas mengenai perlindungan terhadap *live performance* dari pelaku.

Perbedaan tersebut dapat dilihat dari pengaturan UUHC Inggris dimana yang pertama, seperti yang sudah dijelaskan pada bab sebelumnya bahwa hak ekonomi pelaku dalam UUHC Inggris terbagi antara *non-property rights* berkaitan dengan hak kontrol yang dimiliki oleh Pelaku dalam perekaman dan penyiaran penampilannya yang dilakukan secara live, dan *property rights* berkaitan dengan penampilan Pelaku yang berada dalam suatu rekaman. Berbeda dengan pengaturan hak Pelaku di Undang-undang Hak Cipta yang tidak membedakan antara penampilan langsung dan rekaman penampilan.

Yang kedua, dari hak moral Pelaku untuk diidentifikasi sebagai Pelaku dimana hak untuk diidentifikasikan identitas pelaku wajib diberikan baik saat Pelaku menampilkan *live performance*-nya serta saat rekaman penampilan Pelaku disiarkan maupun didistribusikan. Berbeda dengan pengaturan di Indonesia yang secara umum hanya menyebutkan pengidentifikasian identitas pelaku dalam setiap karya musik.

Yang terakhir dari durasi perlindungan Hak Pelaku dimana baik *live performance* dan rekaman akan penampilan Pelaku, masing-masing mendapatkan perlindungan selama 50 tahun. Berbeda dengan pengaturan di Indonesia yang tidak membedakan pemberian durasi perlindungan baik bagi pertunjukan langsung ataupun bagi rekaman pertunjukan.

3.3 Bentuk Pengaturan Hak Pelaku Musik yang Ideal dalam Penerapannya di Indonesia

Berdasarkan perbandingan yang telah dilakukan antara Undang-undang Hak Cipta dengan UUHC Inggris maka dapat dilihat bahwa Undang-undang Hak Cipta memiliki beberapa kekurangan yang sebaiknya dilakukan perubahan terhadapnya. Dari perbandingan dengan UUHC Inggris maka ada beberapa masukan yg apabila ditambahkan dalam Undang-undang Hak Cipta maka mungkin bisa memberikan perlindungan yang komprehensif

Beberapa masukan untuk membentuk suatu Undang-undang Hak Cipta yang dianggap dapat memberikan perlindungan yang komprehensif terhadap kegiatan menampilkan di Indonesia.

1. Menambahkan pasal yang mengatur tentang hak-hak pelaku musik
 - a. Menghapuskan penggunaan istilah “mengumumkan” dan menggunakan istilah yang lebih spesifik seperti:
 - “menampilkan” untuk mengumumkan suatu penampilan secara langsung.
 - istilah “publikasi”, “pengkomunikasian kepada publik” untuk mengumumkan suatu penampilan yang sudah dalam bentuk rekaman.
 - b. Membedakan hak ekonomi dan hak moral yang milik pelaku musik
 - c. Hak ekonomi pelaku musik adalah yaitu
 - Melaksanakan sendiri kegiatan menampilkan penampilannya secara langsung kepada publik
 - Memberi izin atau melarang pihak lain yang tanpa persetujuannya untuk melakukan:
 - Perekaman penampilannya tersebut ke dalam rekaman audio atau rekaman audio visual
 - Perbanyakkan rekaman penampilan pelaku baik secara langsung maupun tidak langsung
 - Pendistribusian kepada publik atas rekaman penampilan pelaku
 - Penyewaan kepada publik atas rekaman penampilan pelaku
 - Pengkomunikasian kepada publik atas rekaman penampilan pelaku

- d. Hak moral pelaku adalah yaitu untuk dicantumkan namanya dan mengajukan gugatan atas distorsi, mutilasi atau modifikasi lain yang merugikan reputasinya
- e. Pelaku berhak untuk mendapatkan imbalan atas penggunaan produk Hak Terkait untuk kepentingan yang bersifat komersial. Pengelolaan hak ini dapat dialihkan kepada lembaga manajemen kolektif
- f. Menambahkan pasal yang mengatur tentang fungsi lembaga kolektif
 - a. Lembaga manajemen kolektif adalah organisasi non pemerintah yang berbentuk badan hukum yang diberi kuasa oleh Pencipta, Pemegang Hak Cipta atau Pemilik Hak Terkait guna mengelola sebagian hak ekonominya untuk menghimpun dan mendistribusikan royalti
 - b. Pemegang Hak Cipta dan/atau Pemegang Hak Terkait memberikan kuasa kepada Lembaga manajemen kolektif untuk mengelola hak untuk mendapatkan imbalan yang dimiliki Pemegang Hak Cipta dan/atau Pemegang Hak Terkait.
 - c. Pengguna Ciptaan wajib menyerahkan sebagian hasil penggunaan Ciptaan atau produk Hak Terkait yang digunakan untuk keperluan komersial kepada Pemegang Hak Cipta dan/atau Pemegang Hak Terkait baik secara langsung maupun melalui Lembaga manajemen kolektif.

BAB 4 PENUTUP

4.1 Kesimpulan

1. Diaturnya Hak Pelaku Musik dalam sistem hukum Hak Cipta, sebagai salah satu Hak Terkait, dilatar belakangi oleh adanya untuk melindungi kepentingan hukum beberapa pihak dan badan hukum yang berkontribusi dalam tersedianya ciptaan kepada publik; atau yang memproduksi karya yang membutuhkan kreatifitas atau teknik tertentu sehingga karya tersebut diakui sebagai karya yang mirip dengan karya cipta yang mendapat perlindungan hak cipta. Hukum mengenai Hak Terkait menyatakan bahwa hasil karya yang dari pihak maupun badan tersebut yaitu Pelaku (penyanyi) sebagai pihak yang menampilkan karya musik, Produser Rekaman yang merekam karya musik tersebut sehingga terciptanya suatu karya rekaman dan Lembaga Penyiaran yang menyiarkan karya musik tersebut.berhak atas perlindungan hukum, karena mereka terkait dengan perlindungan karya cipta.

Pemikiran ini lah yang kemudian mendapat perhatian internasional sehingga kemudian pada tahun 1960 dibentuk suatu konvensi yang secara khusus mengatur mengenai Hak Terkait yaitu *International Convention Protection for Performers, Producers of Phonograms and Broadcasting Organizations*, yang dikenal dengan Konvensi Roma.

36 tahun kemudian, dibentuklah suatu perlindungan baru bagi Pelaku dan produser rekaman yaitu *WIPO Performances and Phonograms Treaty* (WPPT) karena Konvensi Roma dianggap kurang bisa melindungi para pihak dalam Hak Terkait dalam kondisi jaman yang terus berkembang baik dalam segi ekonomi, sosial, kultural dan teknologi.

Di Indonesia sendiri, hak bagi Pelaku juga mendapat perlindungan dengan diaturnya mengenai Hak yang Berkaitan dengan Hak Cipta, yang pertama kali diatur dalam Undang-undang Hak Cipta 1997. Selain untuk penyempurnaan Undang-undang Hak Cipta 1987, pengaturan ini merupakan pelaksanaan keikutsertaan Indonesia dalam Persetujuan TRIPs

sebagai salah satu anggota WTO, dimana dalam TRIPs diatur mengenai perlindungan terhadap Pelaku, Produser rekaman dan Lembaga siaran.

Pada tahun 2002, dilakukan kembali penyempurnaan Undang-undang Hak Cipta 1997 agar tersedianya perlindungan yang lebih memadai dan penegakan hak cipta yang efektif di Indonesia, dimana diatur mengenai perlindungan untuk rekaman suara, pertunjukkan dan penyiaran yang diterjemahkan sebagai Hak Terkait, sebagai karya yang merupakan hak-hak pengalihwujudan.

Dengan demikian dapat disimpulkan bahwa latar belakang lahirnya perlindungan hak Pelaku di dunia internasional dan nasional adalah untuk memperjuangkan kepentingan Pelaku selain itu juga sebagai intensif bagi Pelaku sehingga terdorongnya kreatifitas untuk terus menghasilkan karya-karya baru dimana dengan terus menghasilkan karya-karya tersebut, hal ini juga akan berdampak positif terhadap kesejahteraan perekonomian masyarakat.

2. Perbedaan pengaturan Hak Pelaku di Indonesia dan di Inggris dimana berbeda dengan UUHC Inggris melindungi baik *live performance* dan rekaman penampilan Pelaku, tidak diatur secara tegas *live performance* oleh Undang-undang Hak Cipta Indonesia, yang terdiri dari 5 hal yaitu antara lain:

- A. Hak ekonomi Pelaku

Copyright Act 1988 mengatur bahwa Pelaku berhak untuk memberikan izin untuk mengeksploitasi penampilannya dalam suatu rekaman untuk dilakukan reproduksi, distribusi, disewakan dan dipinjamkan yang termasuk dalam *property rights* Pelaku; memberikan izin untuk merekam penampilannya tersebut, pelanggaran terhadap hak Pelaku apabila menggunakan rekaman penampilannya yang dibuat tanpa izin (rekaman terlarang), pelanggaran terhadap hak Pelaku apabila mengimpor, memiliki rekaman terlarang yang termasuk dalam *non-property rights* Pelaku.

Undang-undang Hak Cipta 2002 mengatur bawah Pelaku berhak untuk memberikan izin atau melarang akan suatu rekaman suara atau gambar pertunjukannya untuk dibuat, diperbanyak dan disiarkan.

B. Hak moral pelaku

Copyright Act 1988 mengatur bahwa Pelaku memiliki hak moral untuk diidentifikasi sebagai Pelaku baik saat menampilkan *live performance*-nya serta saat rekaman penampilan Pelaku disiarkan maupun didistribusikan dan untuk menolak perlakuan yang merugikan akan pertunjukkan.

Undang-undang Hak Cipta 2002 tidak ada pengaturan yang secara spesifik mengatur mengenai hak moral Pelaku.

C. Hak Remunerasi

Copyright Act 1988 mengatur bahwa Pelaku berhak mendapatkan remunerasi saat rekaman pertunjukkan dipublikasikan secara komersial dengan dimainkan pada publik maupun dikomunikasikan kepada publik.

Undang-undang Hak Cipta 2002 tidak ada pengaturan secara spesifik mengenai hak royalti bagi Pelaku.

D. Pengaturan lembaga kolektif

Copyright Act 1988 mengatur bahwa lembaga kolektif adalah organisasi yang memiliki tujuan untuk memanfaatkan hak mendapatkan upah layak atas nama lebih dari satu Pelaku.

Undang-undang Hak Cipta 2002 tidak ada pengaturan yang secara spesifik mengatur mengenai lembaga kolektif.

E. Durasi perlindungan

Copyright Act 1988 mengatur bahwa durasi perlindungan yang berhubungan dengan suatu penampilan yaitu 50 tahun sejak

penampilan tersebut ditampilkan atau 50 tahun sejak rekaman penampilan tersebut pertama kali dipublikasikan kepada publik.

Undang-undang Hak Cipta 2002 mengatur bahwa durasi perlindungan hak Pelaku 50 tahun sejak dipertunjukkan atau dimaksudkan kedalam media.

3. Norma hukum yang sesuai untuk melaksanakan Hak Pelaku Musik di Indonesia

A. Menambahkan pasal yang mengatur tentang hak-hak pelaku musik

g. Menghapuskan penggunaan istilah “mengumumkan” dan menggunakan istilah yang lebih spesifik seperti:

- “menampilkan” untuk mengumumkan suatu penampilan secara langsung.
- istilah “penyiaran kepada publik” untuk mengumumkan suatu penampilan yang sudah dalam bentuk rekaman.

h. Membedakan hak ekonomi dan hak moral yang milik pelaku musik

i. Hak ekonomi pelaku musik adalah yaitu

- Melaksanakan sendiri kegiatan menampilkan penampilannya secara langsung kepada publik
- Memberi izin atau melarang pihak lain yang tanpa persetujuannya untuk melakukan:
 - Perekaman penampilannya tersebut ke dalam rekaman audio atau rekaman audio visual
 - Perbanyakkan rekaman penampilan pelaku baik secara langsung maupun tidak langsung
 - Pendistribusian kepada publik atas rekaman penampilan pelaku
 - Penyewaan kepada publik atas rekaman penampilan pelaku
 - Penyiaran kepada publik atas rekaman penampilan pelaku

- j. Hak moral pelaku adalah yaitu untuk dicantumkan namanya dan mengajukan gugatan atas distorsi, mutilasi atau modifikasi lain yang yang merugikan reputasinya
 - k. Pelaku berhak untuk mendapatkan imbalan atas penggunaan produk Hak Terkait untuk kepentingan yang bersifat komersial. Pengelolaan hak ini dapat dialihkan kepada lembaga manajemen kolektif
- B. Menambahkan pasal yang mengatur tentang fungsi lembaga kolektif
- d. Lembaga manajemen kolektif adalah organisasi non pemerintah yang berbentuk badan hukum yang diberi kuasa oleh Pencipta, Pemegang Hak Cipta atau Pemilik Hak Terkait guna mengelola sebagian hak ekonominya untuk menghimpun dan mendistribusikan royalti
 - e. Pemegang Hak Cipta dan/atau Pemegang Hak Terkait memberikan kuasa kepada Lembaga manajemen kolektif untuk mengelola hak untuk mendapatkan imbalan yang dimiliki Pemegang Hak Cipta dan/atau Pemegang Hak Terkait.
 - f. Pengguna Ciptaan wajib menyerahkan sebagian hasil penggunaan Ciptaan atau produk Hak Terkait yang digunakan untuk keperluan komersial kepada Pemegang Hak Cipta dan/atau Pemegang Hak Terkait baik secara langsung maupun melalui Lembaga manajemen kolektif

4.2 Saran

1. Bahwa Pemerintah dianggap perlu untuk melakukan revisi terhadap Undang-undang Hak Cipta tahun 2002, terutama mengenai Hak terkait secara umum dan hak pelaku secara khusus, dimana harus dimasukkan beberapa norma-norma baru seperti
 - perincian hak ekonomi dari pelaku dan hak moral pelaku,
 - pemberian royalti kepada pelaku atas eksploitasi penampilan pelaku yang dibuat kedalam karya rekaman serta

- pengaturan mengenai lembaga kolektif sebagai badan yang membantu baik pencipta maupun pemilik hak terkait dalam menarik royalti.
2. Bahwa Pelaku musik dianggap perlu untuk secara aktif memperjuangkan hak-haknya sebagai salah satu pihak yang berkontribusi dalam industri musik dimana langkah yang pertama yaitu
 - Pelaku musik sendiri juga harus mempelajari mengenai hak-hak yang seharusnya mereka dapatkan
 - Pelaku musik harus menerapkan hak-hak yang tersebut dalam setiap kontrak dengan pihak industri musik lainnya
 3. Bahwa *collectic society* terutama yang bergerak khusus dalam penarikan royalti bagi Pelaku musik dianggap perlu untuk membantu Pelaku musik terutama yang memiliki pengetahuan minim untuk memahami hak-hak yang seharusnya dimiliki oleh Pelaku seperti misalnya bersama-sama mengadakan seminar mengenai hak Pelaku musik.

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Copyright

Rights in Performances

Publication Right Database Right

UNOFFICIAL CONSOLIDATED TEXT
OF UK LEGISLATION TO
8 April 2010

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Preface

Status of this document

This document is an unofficial consolidated text of the main UK legislation on copyright and related rights as amended up to 8 April 2010. (It does not include Statutory Instruments made under the Copyright, Designs and Patents Act 1988.) It has been produced by the United Kingdom Intellectual Property Office but we cannot guarantee its accuracy and it has no legal authority. Only the Copyright, Designs and Patents Act 1988 as enacted and the other Acts of Parliament and Statutory Instruments amending it, or making provision on copyright and related rights separately from the Act, are authoritative. These can be found on the OPSI website at <http://www.opsi.gov.uk/>. It would be helpful if anyone identifying errors or omissions in this unofficial consolidation could report them to copyrightenquiries@ipo.gov.uk so that we can make corrections where appropriate.

Background to changes to the law

A considerable number of changes have been made to the law in this area since the enactment of the Copyright, Designs & Patents Act 1988. Most of these have resulted from secondary legislation amending the 1988 Act in order to implement EC Directives in the field, namely:

Directive 91/250/EEC on the legal protection of computer programs;

Directive 92/100/EEC on rental right and lending right and on certain rights related to copyright in the field of intellectual property;

Directive 93/83/EEC on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission;

Directive 93/98/EEC harmonizing the term of protection of copyright and certain related rights;

Directive 96/9/EC on the legal protection of databases;

Directive 98/84/EC on the legal protection of services based on, or consisting of, conditional access; and

Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society.

Other changes have arisen from the 2002 Copyright (Visually Impaired Persons) Act and Copyright, etc. and Trade Marks (Offences and Enforcement) Act, and from various legislation since 1988 in areas outside copyright. EC legislation has also led to the introduction of 'publication right' and 'database right' in UK law.

Note on SI 2003/2498 and SI 2006/18

Footnotes in the text seek to indicate the source and nature of amendments to the law, and some other matters. It should be noted, however, that the footnotes do not cover all of the changes made by SI 2003/2498, implementing Directive 2001/29/EC and SI 2006/18 (The Performances (Moral Rights etc) Regulations 2006. SI 2003/2468 redefined the terms 'broadcast' and 'broadcasting' to embrace not only wireless transmissions to the public at large (as originally), but also wire

transmissions of a similar kind. It also removed the concept of a 'cable programme' as a separate kind of copyright work, and replaced the restricted act of 'broadcasting or inclusion in a cable programme service' by one of 'communication to the public' by electronic transmission.

These changes necessitated a considerable number of consequential amendments throughout the legislation, too numerous all to be indicated by footnotes. In many cases, previous references to 'broadcasts or cable programmes' as species of copyright works have become references simply to 'broadcasts' (as redefined), and references to the act of 'broadcasting or inclusion in a cable programme service' have become references to 'communication to the public'. However, this is not always so, and readers are advised to consult the legislation prior to SI 2003/2498 if they need to determine the precise position previously on provisions now referring to 'broadcasts', 'broadcasting' or 'communication to the public'.



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Copyright, Designs and Patents Act 1988

As amended by the legislation indicated overleaf

This text reproduces the provisions of Part I (Copyright), Part II (Rights in Performances) and Part VII (Miscellaneous and General) of the 1988 Act, and relevant Schedules to the Act, as amended or introduced by the following legislation : -

National Health Service and Community Care Act 1990
 Broadcasting Act 1990
 Courts and Legal Services Act 1990
 Health and Personal Social Services (Northern Ireland) Order 1991, SI 1991/194 (N.I.1)
 High Court and County Courts Jurisdiction Order 1991, SI 1991/724 (L.5)
 Copyright (Computer Programs) Regulations 1992, SI 1992/3233
 Judicial Pensions and Retirement Act 1993
 Charities Act 1993
 Trade Marks Act 1994
 Criminal Justice (Northern Ireland) Order 1994, SI 1994/2795 (N.I.15)
 Criminal Justice and Public Order Act 1994
 Copyright (EC Measures Relating to Pirated Goods and Abolition of Restrictions on the Import of Goods) Regulations 1995, SI 1995/1445
 Merchant Shipping Act 1995
 Criminal Procedure (Consequential Provisions) (Scotland) Act 1995
 Duration of Copyright and Rights in Performances Regulations 1995, SI 1995/3297
 Arbitration Act 1996
 Broadcasting Act 1996
 Education Act 1996
 Copyright and Related Rights Regulations 1996, SI 1996/2967
 Copyright and Rights in Databases Regulations 1997, SI 1997/3032
 Government of Wales Act 1998
 Competition Act 1998
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 Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999, SI 1999/506
 Health Act 1999 (Supplementary and Consequential Provisions) Order 1999, SI 1999/2795
 Health Act 1999 (Supplementary, Consequential etc. Provisions) Order 2000, SI 2000/90
 Powers of Criminal Courts (Sentencing Act) 2000
 Conditional Access (Unauthorised Decoders) Regulations 2000, SI 2000/1175
 Registered Designs Regulations 2001, SI 2001/3949
 Copyright, etc. and Trade Marks (Offences and Enforcement) Act 2002
 Copyright (Visually Impaired Persons) Act 2002
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 Communications Act 2003
 Copyright and Related Rights Regulations 2003, SI 2003/2498
 Legal Deposit Libraries Act 2003
 Health and Social Care (Community Health and Standards Act) 2003
 Serious Organised Crime and Police Act 2005
 The Performances (Moral Rights etc) Regulations 2006
 The Intellectual Property (Enforcement, etc.) Regulations 2006
 Government of Wales Act 2006
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An Act to restate the law of copyright, with amendments; to make fresh provision as to the rights of performers and others in performances; to confer a design right in original designs; to amend the Registered Designs Act 1949; to make provision with respect to patent agents and trade mark agents; to confer patents and designs jurisdiction on certain county courts; to amend the law of patents; to make provision with respect to devices designed to circumvent copy-protection of works in electronic form; to make fresh provision penalising the fraudulent reception of transmissions; to make the fraudulent application or use of a trade mark an offence; to make provision for the benefit of the Hospital for Sick Children, Great Ormond Street, London; to enable financial assistance to be given to certain international bodies; and for connected purposes. [15th November 1988]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: –

PART I COPYRIGHT

CHAPTER I

SUBSISTENCE, OWNERSHIP AND DURATION OF COPYRIGHT

Introductory

1 Copyright and copyright works

- (1) Copyright is a property right which subsists in accordance with this Part in the following descriptions of work –
 - (a) original literary, dramatic, musical or artistic works,
 - (b) sound recordings, films or broadcasts [---]¹, and
 - (c) the typographical arrangement of published editions.
- (2) In this Part "copyright work" means a work of any of those descriptions in which copyright subsists.
- (3) Copyright does not subsist in a work unless the requirements of this Part with respect to qualification for copyright protection are met (see section 153 and the provisions referred to there).

2 Rights subsisting in copyright works

- (1) The owner of the copyright in a work of any description has the exclusive right to do the acts specified in Chapter II as the acts restricted by the copyright in a work of that description.
- (2) In relation to certain descriptions of copyright work the following rights conferred by Chapter IV (moral rights) subsist in favour of the author, director or commissioner of the work, whether or not he is the owner of the copyright –
 - (a) section 77 (right to be identified as author or director),
 - (b) section 80 (right to object to derogatory treatment of work), and
 - (c) section 85 (right to privacy of certain photographs and films).

¹ Original reference to "cable programmes" as a further form of copyright works deleted by SI 2003/2498.

*Descriptions of work and related provisions***3 Literary, dramatic and musical works**

(1) ² In this Part –

"literary work" means any work, other than a dramatic or musical work, which is written, spoken or sung, and accordingly includes –

- (a) a table or compilation other than a database,
- (b) a computer program,
- (c) preparatory design material for a computer program, and
- (d) a database;

"dramatic work" includes a work of dance or mime; and

"musical work" means a work consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music.

(2) Copyright does not subsist in a literary, dramatic or musical work unless and until it is recorded, in writing or otherwise; and references in this Part to the time at which such a work is made are to the time at which it is so recorded.

(3) It is immaterial for the purposes of subsection (2) whether the work is recorded by or with the permission of the author; and where it is not recorded by the author, nothing in that subsection affects the question whether copyright subsists in the record as distinct from the work recorded.

3A³ Databases

(1) In this Part "database" means a collection of independent works, data or other materials which –

- (a) are arranged in a systematic or methodical way, and
- (b) are individually accessible by electronic or other means.

(2) For the purposes of this Part a literary work consisting of a database is original if, and only if, by reason of the selection or arrangement of the contents of the database the database constitutes the author's own intellectual creation.

4 Artistic works

(1) In this Part "artistic work" means –

- (a) a graphic work, photograph, sculpture or collage, irrespective of artistic quality,
- (b) a work of architecture being a building or a model for a building, or

² s3(1)(c) inserted by SI 1992/3233. s.3(1)(d), and words "other than a database" in s.3(1)(a), added by SI 1997/3032.

³ Inserted by SI 1997/3032.

(c) a work of artistic craftsmanship.

(2) In this Part –

"building" includes any fixed structure, and a part of a building or fixed structure;

"graphic work" includes –

- (a) any painting, drawing, diagram, map, chart or plan, and
- (b) any engraving, etching, lithograph, woodcut or similar work;

"photograph" means a recording of light or other radiation on any medium on which an image is produced or from which an image may by any means be produced, and which is not part of a film;

"sculpture" includes a cast or model made for purposes of sculpture.

5A⁴ Sound recordings

(1) In this Part "sound recording" means –

- (a) a recording of sounds, from which the sounds may be reproduced, or
- (b) a recording of the whole or any part of a literary, dramatic or musical work, from which sounds reproducing the work or part may be produced,

regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced.

(2) Copyright does not subsist in a sound recording which is, or to the extent that it is, a copy taken from a previous sound recording.

5B Films

(1) In this Part "film" means a recording on any medium from which a moving image may by any means be produced.

(2) The sound track accompanying a film shall be treated as part of the film for the purposes of this Part.

(3) Without prejudice to the generality of subsection (2), where that subsection applies –

- (a) references in this Part to showing a film include playing the film sound track to accompany the film,
- (b) references in this Part to playing a sound recording, or to communicating a sound recording to the public, do not include playing or communicating the film sound track to accompany the film,

⁴ Original s.5 replaced by ss.5A & 5B, SI 1995/3297.

- (c) references in this Part to copying a work, so far as they apply to a sound recording, do not include copying the film sound track to accompany the film, and
- (d) references in this Part to the issuing, rental or lending of copies of a work, so far as they apply to a sound recording, do not include the issuing, rental or lending of copies of the sound track to accompany the film.
- (4) Copyright does not subsist in a film which is, or to the extent that it is, a copy taken from a previous film.
- (5) Nothing in this section affects any copyright subsisting in a film sound track as a sound recording.

6⁵ **Broadcasts**

- (1) In this Part a "broadcast" means an electronic transmission of visual images, sounds or other information which –
 - (a) is transmitted for simultaneous reception by members of the public and is capable of being lawfully received by them, or
 - (b) is transmitted at a time determined solely by the person making the transmission for presentation to members of the public,
 and which is not excepted by subsection (1A); and references to broadcasting shall be construed accordingly.
- (1A) Excepted from the definition of "broadcast" is any internet transmission unless it is –
 - (a) a transmission taking place simultaneously on the internet and by other means,
 - (b) a concurrent transmission of a live event, or
 - (c) a transmission of recorded moving images or sounds forming part of a programme service offered by the person responsible for making the transmission, being a service in which programmes are transmitted at scheduled times determined by that person.
- (2) An encrypted transmission shall be regarded as capable of being lawfully received by members of the public only if decoding equipment has been made available to members of the public by or with the authority of the person making the transmission or the person providing the contents of the transmission.
- (3) References in this Part to the person making a broadcast or a transmission which is a broadcast are –

5 Revised s.6(1) substituted, and s.6(1A) added, by SI 2003/2498. Words "or a transmission which is a broadcast" substituted in s.6(3) by SI 2003/2498 (replacing original wording ", broadcasting a work or including a work in a broadcast"). Revised s.6(4) substituted, and s.6(4A) inserted, by SI 1996/2967, and word "wireless" added in s.6(4) by SI 2003/2498. s.6(5A) added, and words "or in a cable programme" deleted from s.6(6), by SI 2003/2498.

- (a) to the person transmitting the programme, if he has responsibility to any extent for its contents, and
- (b) to any person providing the programme who makes with the person transmitting it the arrangements necessary for its transmission;

and references in this Part to a programme, in the context of broadcasting, are to any item included in a broadcast.

- (4) For the purposes of this Part, the place from which a wireless broadcast is made is the place where, under the control and responsibility of the person making the broadcast, the programme-carrying signals are introduced into an uninterrupted chain of communication (including, in the case of a satellite transmission, the chain leading to the satellite and down towards the earth).
- (4A) Subsections (3) and (4) have effect subject to section 6A (safeguards in case of certain satellite broadcasts).
- (5) References in this Part to the reception of a broadcast include reception of a broadcast relayed by means of a telecommunications system.
- (5A) The relaying of a broadcast by reception and immediate re-transmission shall be regarded for the purposes of this Part as a separate act of broadcasting from the making of the broadcast which is so re-transmitted.
- (6) Copyright does not subsist in a broadcast which infringes, or to the extent that it infringes, the copyright in another broadcast [---].

6A⁶ Safeguards in case of certain satellite broadcasts

- (1) This section applies where the place from which a broadcast by way of satellite transmission is made is located in a country other than an EEA State and the law of that country fails to provide at least the following level of protection –
 - (a) exclusive rights in relation to wireless broadcasting equivalent to those conferred by section 20 (infringement by communication to the public) on the authors of literary, dramatic, musical and artistic works, films and broadcasts;
 - (b) a right in relation to live wireless broadcasting equivalent to that conferred on a performer by section 182(1)(b) (consent required for live broadcast of performance); and
 - (c) a right for authors of sound recordings and performers to share in a single equitable remuneration in respect of the wireless broadcasting of sound recordings.
- (2) Where the place from which the programme-carrying signals are transmitted to the satellite (“the uplink station”) is located in an EEA State –

⁶ Inserted by SI 1996/2967, and word “wireless” added to ss.6A(1)(a), (b) & (c) by SI 2003/2498.

- (a) that place shall be treated as the place from which the broadcast is made, and
 - (b) the person operating the uplink station shall be treated as the person making the broadcast.
- (3) Where the uplink station is not located in an EEA State but a person who is established in an EEA State has commissioned the making of the broadcast
- (a) that person shall be treated as the person making the broadcast, and
 - (b) the place in which he has his principal establishment in the European Economic Area shall be treated as the place from which the broadcast is made.

[7]⁷

8 Published editions

- (1) In this Part "published edition", in the context of copyright in the typographical arrangement of a published edition, means a published edition of the whole or any part of one or more literary, dramatic or musical works.
- (2) Copyright does not subsist in the typographical arrangement of a published edition if, or to the extent that, it reproduces the typographical arrangement of a previous edition.

Authorship and ownership of copyright

9 Authorship of work

- (1) In this Part "author", in relation to a work, means the person who creates it.
 - (2) ⁸That person shall be taken to be –
 - (aa) in the case of a sound recording, the producer;
 - (ab) in the case of a film, the producer and the principal director;
 - (b) in the case of a broadcast, the person making the broadcast (see section 6(3)) or, in the case of a broadcast which relays another broadcast by reception and immediate re-transmission, the person making that other broadcast;
- [(c)]

⁷ s.7 (cable programmes) deleted by SI 2003/2498.

⁸ Original s.9(2)(a) replaced by ss.9(2)(aa) & (ab), SI 1996/2967. s.9(2)(c) (authorship of cable programmes) deleted by SI 2003/2498.

- (d) in the case of the typographical arrangement of a published edition, the publisher.
- (3) In the case of a literary, dramatic, musical or artistic work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken.
- (4) For the purposes of this Part a work is of "unknown authorship" if the identity of the author is unknown or, in the case of a work of joint authorship, if the identity of none of the authors is known.
- (5) For the purposes of this Part the identity of an author shall be regarded as unknown if it is not possible for a person to ascertain his identity by reasonable inquiry; but if his identity is once known it shall not subsequently be regarded as unknown.

10 Works of joint authorship

- (1) In this Part a "work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of each author is not distinct from that of the other author or authors.
- (1A)⁹ A film shall be treated as a work of joint authorship unless the producer and the principal director are the same person.
- (2) A broadcast shall be treated as a work of joint authorship in any case where more than one person is to be taken as making the broadcast (see section 6(3)).
- (3) References in this Part to the author of a work shall, except as otherwise provided, be construed in relation to a work of joint authorship as references to all the authors of the work.

11 First ownership of copyright

- (1) The author of a work is the first owner of any copyright in it, subject to the following provisions.
- (2) Where a literary, dramatic, musical or artistic work, or a film¹⁰, is made by an employee in the course of his employment, his employer is the first owner of any copyright in the work subject to any agreement to the contrary.
- (3) This section does not apply to Crown copyright or Parliamentary copyright (see section 163 and 165) or to copyright which subsists by virtue of section 168 (copyright of certain international organisations).

⁹ Added by SI 1996/2967.

¹⁰ Words " , or a film," added by SI 1996/2967.

Duration of copyright

12¹¹ Duration of copyright in literary, dramatic, musical or artistic works

- (1) The following provisions have effect with respect to the duration of copyright in a literary, dramatic, musical or artistic work.
- (2) Copyright expires at the end of the period of 70 years from the end of the calendar year in which the author dies, subject as follows.
- (3) If the work is of unknown authorship, copyright expires -
 - (a) at the end of the period of 70 years from the end of the calendar year in which the work was made, or
 - (b) if during that period the work is made available to the public, at the end of the period of 70 years from the end of the calendar year in which it is first so made available,
 subject as follows.
- (4) Subsection (2) applies if the identity of the author becomes known before the end of the period specified in paragraph (a) or (b) of subsection (3).
- (5) For the purposes of subsection (3) making available to the public includes -
 - (a) in the case of a literary, dramatic or musical work -
 - (i) performance in public, or
 - (ii) communication to the public;
 - (b) in the case of an artistic work -
 - (i) exhibition in public,
 - (ii) a film including the work being shown in public, or
 - (iii) communication to the public;
 but in determining generally for the purposes of that subsection whether a work has been made available to the public no account shall be taken of any unauthorised act.
- (6) Where the country of origin of the work is not an EEA state and the author of the work is not a national of an EEA state, the duration of copyright is that to which the work is entitled in the country of origin, provided that does not exceed the period which would apply under subsections (2) to (5).
- (7) If the work is computer-generated the above provisions do not apply and copyright expires at the end of the period of 50 years from the end of the calendar year in which the work was made.

¹¹ Revised s.12 substituted by SI 1995/3297.

- (8) The provisions of this section are adapted as follows in relation to a work of joint authorship -
- (a) the reference in subsection (2) to the death of the author shall be construed -
 - (i) if the identity of all the authors is known, as a reference to the death of the last of them to die, and
 - (ii) if the identity of one or more of the authors is known and the identity of one or more others is not, as a reference to the death of the last whose identity is known;
 - (b) the reference in subsection (4) to the identity of the author becoming known shall be construed as a reference to the identity of any of the authors becoming known;
 - (c) the reference in subsection (6) to the author not being a national of an EEA state shall be construed as a reference to none of the authors being a national of an EEA state.
- (9) This section does not apply to Crown copyright or Parliamentary copyright (see sections 163 to 166D¹²) or to copyright which subsists by virtue of section 168 (copyright of certain international organisations).

13A¹³ Duration of copyright in sound recordings

- (1) The following provisions have effect with respect to the duration of copyright in a sound recording.
- (2) Subject to subsections (4) and (5), copyright expires -
 - (a) at the end of the period of 50 years from the end of the calendar year in which the recording is made, or
 - (b) if during that period the recording is published, 50 years from the end of the calendar year in which it is first published, or
 - (c) if during that period the recording is not published but is made available to the public by being played in public or communicated to the public, 50 years from the end of the calendar year in which it is first so made available,

but in determining whether a sound recording has been published, played in public or communicated to the public, no account shall be taken of any unauthorised act.

[(3)]

- (4) Where the author of a sound recording is not a national of an EEA state, the duration of copyright is that to which the sound recording is entitled in the country of which the author is a national, provided that does not exceed the period which would apply under subsection (2).

¹² Reference to s.166D inserted by Government of Wales Act 2006 (replacing reference to s.166B).

¹³ Original s.13 replaced by ss.13A & 13B, SI 1995/3297. Revised s.13A(2) substituted, and s.13A(3) deleted, by SI 2003/2498.

- (5) If or to the extent that the application of subsection (4) would be at variance with an international obligation to which the United Kingdom became subject prior to 29th October 1993, the duration of copyright shall be as specified in subsection (2).

13B Duration of copyright in films

- (1) The following provisions have effect with respect to the duration of copyright in a film.
- (2) Copyright expires at the end of the period of 70 years from the end of the calendar year in which the death occurs of the last to die of the following persons -
- (a) the principal director,
 - (b) the author of the screenplay,
 - (c) the author of the dialogue, or
 - (d) the composer of music specially created for and used in the film;
- subject as follows.
- (3) If the identity of one or more of the persons referred to in subsection (2)(a) to (d) is known and the identity of one or more others is not, the reference in that subsection to the death of the last of them to die shall be construed as a reference to the death of the last whose identity is known.
- (4) If the identity of the persons referred to in subsection (2)(a) to (d) is unknown, copyright expires at -
- (a) the end of the period of 70 years from the end of the calendar year in which the film was made, or
 - (b) if during that period the film is made available to the public, at the end of the period of 70 years from the end of the calendar year in which it is first so made available.
- (5) Subsections (2) and (3) apply if the identity of any of those persons becomes known before the end of the period specified in paragraph (a) or (b) of subsection (4).
- (6) For the purposes of subsection (4) making available to the public includes -
- (a) showing in public, or
 - (b) communicating to the public;
 - (c) but in determining generally for the purposes of that subsection whether a film has been made available to the public no account shall be taken of any unauthorised act.
- (7) Where the country of origin is not an EEA state and the author of the film is not a national of an EEA state, the duration of copyright is that to which the work is entitled in the country of origin, provided that does not exceed the period which would apply under subsections (2) to (6).

- (8) In relation to a film of which there are joint authors, the reference in subsection (7) to the author not being a national of an EEA state shall be construed as a reference to none of the authors being a national of an EEA state.
- (9) If in any case there is no person falling within paragraphs (a) to (d) of subsection (2), the above provisions do not apply and copyright expires at the end of the period of 50 years from the end of the calendar year in which the film was made.
- (10) For the purposes of this section the identity of any of the persons referred to in subsection 2(a) to (d) shall be regarded as unknown if it is not possible for a person to ascertain his identity by reasonable inquiry; but if the identity of any such person is once known it shall not subsequently be regarded as unknown.

14¹⁴ Duration of copyright in broadcasts

- (1) The following provisions have effect with respect to the duration of copyright in a broadcast.
- (2) Copyright in a broadcast expires at the end of the period of 50 years from the end of the calendar year in which the broadcast was made, subject as follows.
- (3) Where the author of the broadcast is not a national of an EEA state, the duration of copyright in the broadcast is that to which it is entitled in the country of which the author is a national, provided that does not exceed the period which would apply under subsection (2).
- (4) If or the extent that the application of subsection (3) would be at variance with an international obligation to which the United Kingdom became subject prior to 29th October 1993, the duration of copyright shall be as specified in subsection (2).
- (5) Copyright in a repeat broadcast expires at the same time as the copyright in the original broadcast; and accordingly no copyright arises in respect of a repeat broadcast which is broadcast after the expiry of the copyright in the original broadcast.
- (6) A repeat broadcast means one which is a repeat of a broadcast previously made.

15 Duration of copyright in typographical arrangement of published editions

Copyright in the typographical arrangement of a published edition expires at the end of the period of 25 years from the end of the calendar year in which the edition was first published.

¹⁴ Revised s.14 substituted by SI 1995/3297, and amended by SI 2003/2498 to refer throughout only to a "broadcast" (rather than also to a "cable programme").

15A¹⁵ Meaning of country of origin

- (1) For the purposes of the provisions of this Part relating to the duration of copyright the country of origin of a work shall be determined as follows.
- (2) If the work is first published in a Berne Convention country and is not simultaneously published elsewhere, the country of origin is that country.
- (3) If the work is first published simultaneously in two or more countries only one of which is a Berne Convention country, the country of origin is that country.
- (4) If the work is first published simultaneously in two or more countries of which two or more are Berne Convention countries, then
 - (a) if any of those countries is an EEA state, the country of origin is that country; and
 - (b) if none of those countries is an EEA state, the country of origin is the Berne Convention country which grants the shorter or shortest period of copyright protection.
- (5) If the work is unpublished or is first published in a country which is not a Berne Convention country (and is not simultaneously published in a Berne Convention country), the country of origin is
 - (a) if the work is a film and the maker of the film has his headquarters in, or is domiciled or resident in a Berne Convention country, that country;
 - (b) if the work is
 - (i) a work of architecture constructed in a Berne Convention country, or
 - (ii) an artistic work incorporated in a building or other structure situated in a Berne Convention country,that country;
 - (c) in any other case, the country of which the author of the work is a national.
- (6) In this section
 - (a) a “Berne Convention country” means a country which is party to any Act of the International Convention for the Protection of Literary and Artistic Works signed at Berne on 9th September 1886; and
 - (b) references to simultaneous publication are to publication within 30 days of first publication.

15 Added by SI 1995/3297.

CHAPTER II
RIGHTS OF COPYRIGHT OWNER

The acts restricted by copyright

16 The acts restricted by copyright in a work

- (1) ¹⁶ The owner of the copyright in a work has, in accordance with the following provisions of this Chapter, the exclusive right to do the following acts in the United Kingdom
- (a) to copy the work (see section 17);
 - (b) to issue copies of the work to the public (see section 18);
 - (ba) to rent or lend the work to the public (see section 18A);
 - (c) to perform, show or play the work in public (see section 19);
 - (d) to communicate the work to the public (see section 20);
 - (e) to make an adaptation of the work or do any of the above in relation to an adaptation (see section 21);
- and those acts are referred to in this Part as the "acts restricted by the copyright".
- (2) Copyright in a work is infringed by a person who without the licence of the copyright owner does, or authorises another to do, any of the acts restricted by the copyright.
- (3) References in this Part to the doing of an act restricted by the copyright in a work are to the doing of it
- (a) in relation to the work as a whole or any substantial part of it, and
 - (b) either directly or indirectly;
- and it is immaterial whether any intervening acts themselves infringe copyright.
- (4) This Chapter has effect subject to
- (a) the provisions of Chapter III (acts permitted in relation to copyright works), and
 - (b) the provisions of Chapter VII (provisions with respect to copyright licensing).

¹⁶ s.16(1)(ba) added by SI 1996/2967. Revised s.16(1)(d) substituted by SI 2003/2498 (replacing original wording "to broadcast the work or include it in a cable programme service (see section 20)").

17 Infringement of copyright by copying

- (1) The copying of the work is an act restricted by the copyright in every description of copyright work; and references in this Part to copying and copies shall be construed as follows.
- (2) Copying in relation to a literary, dramatic, musical or artistic work means reproducing the work in any material form.

This includes storing the work in any medium by electronic means.

- (3) In relation to an artistic work copying includes the making of a copy in three dimensions of a two-dimensional work and the making of a copy in two dimensions of a three-dimensional work.
- (4) Copying in relation to a film or broadcast includes making a photograph of the whole or any substantial part of any image forming part of the film or broadcast.
- (5) Copying in relation to the typographical arrangement of a published edition means making a facsimile copy of the arrangement.
- (6) Copying in relation to any description of work includes the making of copies which are transient or are incidental to some other use of the work.

18¹⁷ Infringement by issue of copies to the public

- (1) The issue to the public of copies of the work is an act restricted by the copyright in every description of copyright work.
- (2) References in this Part to the issue to the public of copies of a work 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 copyright owner, 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 work do not include-
 - (a) any subsequent distribution, sale, hiring or loan of copies previously put into circulation (but see section 18A: infringement by 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.

17 Revised ss.18(2) &(3) substituted, and s.18(4) added, by SI 1996/2967.

- (4) References in this Part to the issue of copies of a work include the issue of the original.

18A¹⁸ Infringement by rental or lending of work to the public

- (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 or communication to the public;
 - (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.

19 Infringement by performance, showing or playing of work in public

- (1) The performance of the work in public is an act restricted by the copyright in a literary, dramatic or musical work.
- (2) In this Part "performance", in relation to a work -

¹⁸ Added by SI 1996/2967.

- (a) includes delivery in the case of lectures, addresses, speeches and sermons, and
 - (b) in general, includes any mode of visual or acoustic presentation, including presentation by means of a sound recording, film or broadcast of the work.
- (3) The playing or showing of the work in public is an act restricted by the copyright in a sound recording, film or broadcast.
- (4) Where copyright in a work is infringed by its being performed, played or shown in public by means of apparatus for receiving visual images or sounds conveyed by electronic means, the person by whom the visual images or sounds are sent, and in the case of a performance the performers, shall not be regarded as responsible for the infringement.

20¹⁹ Infringement by communication to the public

- (1) The communication to the public of the work is an act restricted by the copyright in -
- (a) a literary, dramatic, musical or artistic work,
 - (b) a sound recording or film, or
 - (c) a broadcast.
- (2) References in this Part to communication to the public are to communication to the public by electronic transmission, and in relation to a work include -
- (a) the broadcasting of the work;
 - (b) the making available to the public of the work by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them.

21²⁰ Infringement by making adaptation or act done in relation to adaptation

- (1) The making of an adaptation of the work is an act restricted by the copyright in a literary, dramatic or musical work.

For this purpose an adaptation is made when it is recorded, in writing or otherwise.

- (2) The doing of any of the acts specified in sections 17 to 20, or subsection (1) above, in relation to an adaptation of the work is also an act restricted by the copyright in a literary, dramatic or musical work.

For this purpose it is immaterial whether the adaptation has been recorded, in writing or otherwise, at the time the act is done.

¹⁹ Revised s.20 substituted by SI 2003/2498.

²⁰ s.21(3)(ab), and words "work, other than a computer program" in s.21(3)(a), added by SI 1992/3233. Words "or a database, or in relation to a" in s.21(3)(a), and s.21(3)(ac), added by SI 1997/3032. Words "otherwise than incidentally in the course of running the program" deleted in s.21(4) by SI 1992/3233.

- (3) In this Part "adaptation" -
- (a) in relation to a literary work, other than a computer program or a database, or in relation to a dramatic work, means -
- (i) a translation of the work;
 - (ii) a version of a dramatic work in which it is converted into a non-dramatic work or, as the case may be, of a non-dramatic work in which it is converted into a dramatic work;
 - (iii) a version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical;
- (ab) in relation to a computer program, means an arrangement or altered version of the program or a translation of it;
- (ac) in relation to a database, means an arrangement or altered version of the database or a translation of it;
- (b) in relation to a musical work, means an arrangement or transcription of the work.
- (4) In relation to a computer program a "translation" includes a version of the program in which it is converted into or out of a computer language or code or into a different computer language or code [---].
- (5) No inference shall be drawn from this section as to what does or does not amount to copying a work.

Secondary infringement of copyright

22 Secondary infringement: importing infringing copy

The copyright in a work is infringed by a person who, without the licence of the copyright owner, imports into the United Kingdom, otherwise than for his private and domestic use, an article which is, and which he knows or has reason to believe is, an infringing copy of the work.

23 Secondary infringement: possessing or dealing with infringing copy

The copyright in a work is infringed by a person who, without the licence of the copyright owner -

- (a) possesses in the course of a business,
- (b) sells or lets for hire, or offers or exposes for sale or hire,
- (c) in the course of a business exhibits in public or distributes, or
- (d) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright,

an article which is, and which he knows or has reason to believe is, an infringing copy of the work.

24 Secondary infringement: providing means for making infringing copies

(1) Copyright in a work is infringed by a person who, without the licence of the copyright owner -

- (a) makes,
- (b) imports into the United Kingdom,
- (c) possesses in the course of a business, or
- (d) sells or lets for hire, or offers or exposes for sale or hire,

an article specifically designed or adapted for making copies of that work, knowing or having reason to believe that it is to be used to make infringing copies.

(2) Copyright in a work is infringed by a person who without the licence of the copyright owner transmits the work by means of a telecommunications system (otherwise than by communication to the public), knowing or having reason to believe that infringing copies of the work will be made by means of the reception of the transmission in the United Kingdom or elsewhere.

25 Secondary infringement: permitting use of premises for infringing performance

(1) Where the copyright in a literary, dramatic or musical work is infringed by a performance at a place of public entertainment, any person who gave permission for that place to be used for the performance is also liable for the infringement unless when he gave permission he believed on reasonable grounds that the performance would not infringe copyright.

(2) In this section "place of public entertainment" includes premises which are occupied mainly for other purposes but are from time to time made available for hire for the purposes of public entertainment.

26 Secondary infringement: provision of apparatus for infringing performance, &c

(1) Where copyright in a work is infringed by a public performance of the work, or by the playing or showing of the work in public, by means of apparatus for -

- (a) playing sound recordings,
- (b) showing films, or
- (c) receiving visual images or sounds conveyed by electronic means,

the following persons are also liable for the infringement.

(2) A person who supplied the apparatus, or any substantial part of it, is liable for the infringement if when he supplied the apparatus or part -

- (a) he knew or had reason to believe that the apparatus was likely to be so used as to infringe copyright, or

- (b) in the case of apparatus whose normal use involves a public performance, playing or showing, he did not believe on reasonable grounds that it would not be so used as to infringe copyright.
- (3) An occupier of premises who gave permission for the apparatus to be brought onto the premises is liable for the infringement if when he gave permission he knew or had reason to believe that the apparatus was likely to be so used as to infringe copyright.
- (4) A person who supplied a copy of a sound recording or film used to infringe copyright is liable for the infringement if when he supplied it he knew or had reason to believe that what he supplied, or a copy made directly or indirectly from it, was likely to be so used as to infringe copyright.

Infringing copies

27²¹ Meaning of "infringing copy"

- (1) In this Part "infringing copy", in relation to a copyright work, shall be construed in accordance with this section.
- (2) An article is an infringing copy if its making constituted an infringement of the copyright in the work in question.
- (3) An article is also an infringing copy if -
 - (a) it has been or is proposed to be imported into the United Kingdom, and
 - (b) its making in the United Kingdom would have constituted an infringement of the copyright in the work in question, or a breach of an exclusive licence agreement relating to that work.
- (4) Where in any proceedings the question arises whether an article is an infringing copy and it is shown -
 - (a) that the article is a copy of the work, and
 - (b) that copyright subsists in the work or has subsisted at any time,

it shall be presumed until the contrary is proved that the article was made at a time when copyright subsisted in the work.
- (5) Nothing in subsection (3) shall be construed as applying to an article which may lawfully be imported into the United Kingdom by virtue of any enforceable Community right within the meaning of section 2(1) of the European Communities Act 1972.
- (6) In this Part "infringing copy" includes a copy falling to be treated as an infringing copy by virtue of any of the following provisions -

21 SI 1992/3233 inserted a further subsection (3A) which was subsequently deleted by SI 1996/2967. References in s.27(6) to ss.31A(6) &(9), 31B(9) & (10) and 31C(2) added by the Copyright (Visually Impaired Persons) Act 2002, and to ss.70(2) & 71(2) added by SI 2003/2498.

section 31A(6) and (9) (making a single accessible copy for personal use),
 section 31B(9) and (10) (multiple copies for visually impaired persons),
 section 31C(2) (intermediate copies held by approved bodies),
 section 32(5) (copies made for purposes of instruction or examination),
 section 35(3) (recordings made by educational establishments for educational purposes),
 section 36(5) (reprographic copying by educational establishments for purposes of instruction),
 section 37(3)(b) (copies made by librarian or archivist in reliance on false declaration),
 section 56(2) (further copies, adaptations, &c. of work in electronic form retained on transfer of principal copy),
 section 63(2) (copies made for purpose of advertising artistic work for sale),
 section 68(4) (copies made for purpose of broadcast),
 section 70(2) (recording for the purposes of time-shifting),
 section 71(2) (photographs of broadcasts), or
 any provision of an order under section 141 (statutory licence for certain reprographic copying by educational establishments).

CHAPTER III

ACTS PERMITTED IN RELATION TO COPYRIGHT WORKS ²²

Introductory

28 Introductory provisions

- (1) The provisions of this Chapter specify acts which may be done in relation to copyright works notwithstanding the subsistence of copyright; they relate only to the question of infringement of copyright and do not affect any other right or obligation restricting the doing of any of the specified acts.²³

²² See also s.176 and Sch. 17 of the Broadcasting Act 1990 (Annex 1) which provide for compulsory licensing of radio and television programme listings information.

²³ But see also ss. 296A & 296B, and s.137 of the Broadcasting Act 1996 (Annex II), which make void contractual agreements purporting to prohibit or restrict certain of the acts permitted by Chapter III.

- (2) Where it is provided by this Chapter that an act does not infringe copyright, or may be done without infringing copyright, and no particular description of copyright work is mentioned, the act in question does not infringe the copyright in a work of any description.
- (3) No inference shall be drawn from the description of any act which may by virtue of this Chapter be done without infringing copyright as to the scope of the acts restricted by the copyright in any description of work.
- (4) The provisions of this Chapter are to be construed independently of each other, so that the fact that an act does not fall within one provision does not mean that it is not covered by another provision.

General

28A²⁴ Making of temporary copies

Copyright in a literary work, other than a computer program or a database, or in a dramatic, musical or artistic work, the typographical arrangement of a published edition, a sound recording or a film, is not infringed by the making of a temporary copy which is transient or incidental, which is an integral and essential part of a technological process and the sole purpose of which is to enable -

- (a) a transmission of the work in a network between third parties by an intermediary; or
- (b) a lawful use of the work;

and which has no independent economic significance.

29²⁵ Research and private study

- (1) Fair dealing with a literary, dramatic, musical or artistic work for the purposes of research for a non-commercial purpose does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement.

[(1A)]

- (1B) No acknowledgement is required in connection with fair dealing for the purposes mentioned in subsection (1) where this would be impossible for reasons of practicality or otherwise.

- (1C) Fair dealing with a literary, dramatic, musical or artistic work for the purposes of private study does not infringe any copyright in the work.

²⁴ Added by SI 2003/2498. See also Annex IV as regards the liability of intermediaries.

²⁵ Revised s.29(1) substituted, and ss.29(1B) & (1C) added, by SI 2003/2498. s.29(1A) (and a further subsection 21(5)) added by SI 1997/3032 and deleted by SI 2003/2498. Words "of research or private study" substituted in s.29(2) by SI 2003/2498 (in place of original words "mentioned in subsection (1)"). s.29(4) added by SI 1992/3233, and s.29(4A) by SI 2003/2498.

- (2) Fair dealing with the typographical arrangement of a published edition for the purposes of research or private study does not infringe any copyright in the arrangement.
- (3) Copying by a person other than the researcher or student himself is not fair dealing if -
 - (a) in the case of a librarian, or a person acting on behalf of a librarian, he does anything which regulations under section 40 would not permit to be done under section 38 or 39 (articles or parts of published works: restriction on multiple copies of same material), or
 - (b) in any other case, the person doing the copying knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time and for substantially the same purpose.
- (4) It is not fair dealing -
 - (a) to convert a computer program expressed in a low level language into a version expressed in a higher level language, or
 - (b) incidentally in the course of so converting the program, to copy it,
 (these acts being permitted if done in accordance with section 50B (decompilation)).
- (4A) It is not fair dealing to observe, study or test the functioning of a computer program in order to determine the ideas and principles which underlie any element of the program (these acts being permitted if done in accordance with section 50BA (observing, studying and testing)).

30²⁶ Criticism, review and news reporting

- (1) Fair dealing with a work for the purpose of criticism or review, of that or another work or of a performance of a work, does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement and provided that the work has been made available to the public.
- (1A) For the purposes of subsection (1) a work has been made available to the public if it has been made available by any means, including -
 - (a) the issue of copies to the public;
 - (b) making the work available by means of an electronic retrieval system;
 - (c) the rental or lending of copies of the work to the public;
 - (d) the performance, exhibition, playing or showing of the work in public;
 - (e) the communication to the public of the work,

²⁶ Words after "acknowledgement" in s.30(1), and s.30 (1A), added by SI 2003/2498. See also s.137 of the Broadcasting Act 1996 (Annex II) as regards s.30(2). Words "or broadcast ---- otherwise" substituted in s.30(3) by SI 2003/2498 (replacing original words ", broadcast or cable programme").

but in determining generally for the purposes of that subsection whether a work has been made available to the public no account shall be taken of any unauthorised act.

- (2) Fair dealing with a work (other than a photograph) for the purpose of reporting current events does not infringe any copyright in the work provided that (subject to subsection (3)) it is accompanied by a sufficient acknowledgement.
- (3) No acknowledgement is required in connection with the reporting of current events by means of a sound recording, film or broadcast where this would be impossible for reasons of practicality or otherwise.

31 Incidental inclusion of copyright material

- (1) Copyright in a work is not infringed by its incidental inclusion in an artistic work, sound recording, film or broadcast.
- (2) Nor is the copyright infringed by the issue to the public of copies, or the playing, showing or communication to the public, of anything whose making was, by virtue of subsection (1), not an infringement of the copyright.
- (3) A musical work, words spoken or sung with music, or so much of a sound recording or broadcast as includes a musical work or such words, shall not be regarded as incidentally included in another work if it is deliberately included.

*Visual impairment*²⁷

31A Making a single accessible copy for personal use

- (1) If a visually impaired person has lawful possession or lawful use of a copy ("the master copy") of the whole or part of -
 - (a) a literary, dramatic, musical or artistic work; or
 - (b) a published edition,

which is not accessible to him because of the impairment, it is not an infringement of copyright in the work, or in the typographical arrangement of the published edition, for an accessible copy of the master copy to be made for his personal use.

- (2) Subsection (1) does not apply -
 - (a) if the master copy is of a musical work, or part of a musical work, and the making of an accessible copy would involve recording a performance of the work or part of it; or
 - (b) if the master copy is of a database, or part of a database, and the making of an accessible copy would infringe copyright in the database.

²⁷ ss.31A-31F added by the Copyright (Visually Impaired Persons) Act 2002.

- (3) Subsection (1) does not apply in relation to the making of an accessible copy for a particular visually impaired person if, or to the extent that, copies of the copyright work are commercially available, by or with the authority of the copyright owner, in a form that is accessible to that person.
- (4) An accessible copy made under this section must be accompanied by -
 - (a) a statement that it is made under this section; and
 - (b) a sufficient acknowledgement.
- (5) If a person makes an accessible copy on behalf of a visually impaired person under this section and charges for it, the sum charged must not exceed the cost of making and supplying the copy.
- (6) If a person holds an accessible copy made under subsection (1) when he is not entitled to have it made under that subsection, the copy is to be treated as an infringing copy, unless he is a person falling within subsection (7)(b).
- (7) A person who holds an accessible copy made under subsection (1) may transfer it to -
 - (a) a visually impaired person entitled to have the accessible copy made under subsection (1); or
 - (b) a person who has lawful possession of the master copy and intends to transfer the accessible copy to a person falling within paragraph (a).
- (8) The transfer by a person ("V") of an accessible copy made under subsection (1) to another person ("T") is an infringement of copyright by V unless V has reasonable grounds for believing that T is a person falling within subsection (7)(a) or (b).
- (9) If an accessible copy which would be an infringing copy but for this section is subsequently dealt with -
 - (a) it is to be treated as an infringing copy for the purposes of that dealing; and
 - (b) if that dealing infringes copyright, is to be treated as an infringing copy for all subsequent purposes.
- (10) In subsection (9), "dealt with" means sold or let for hire or offered or exposed for sale or hire or communicated to the public.

31B Multiple copies for visually impaired persons

- (1) If an approved body has lawful possession of a copy ("the master copy") of the whole or part of -
 - (a) a commercially published literary, dramatic, musical or artistic work;
or
 - (b) a commercially published edition,

it is not an infringement of copyright in the work, or in the typographical arrangement of the published edition, for the body to make, or supply, accessible copies for the personal use of visually impaired persons to whom the master copy is not accessible because of their impairment.

- (2) Subsection (1) does not apply -
 - (a) if the master copy is of a musical work, or part of a musical work, and the making of an accessible copy would involve recording a performance of the work or part of it; or
 - (b) if the master copy is of a database, or part of a database, and the making of an accessible copy would infringe copyright in the database.
- (3) Subsection (1) does not apply in relation to the making of an accessible copy if, or to the extent that, copies of the copyright work are commercially available, by or with the authority of the copyright owner, in a form that is accessible to the same or substantially the same degree.
- (4) Subsection (1) does not apply in relation to the supply of an accessible copy to a particular visually impaired person if, or to the extent that, copies of the copyright work are commercially available, by or with the authority of the copyright owner, in a form that is accessible to that person.
- (5) An accessible copy made under this section must be accompanied by -
 - (a) a statement that it is made under this section; and
 - (b) a sufficient acknowledgement.
- (6) If an approved body charges for supplying a copy made under this section, the sum charged must not exceed the cost of making and supplying the copy.
- (7) An approved body making copies under this section must, if it is an educational establishment, ensure that the copies will be used only for its educational purposes.
- (8) If the master copy is in copy-protected electronic form, any accessible copy made of it under this section must, so far as it is reasonably practicable to do so, incorporate the same, or equally effective, copy protection (unless the copyright owner agrees otherwise).
- (9) If an approved body continues to hold an accessible copy made under subsection (1) when it would no longer be entitled to make or supply such a copy under that subsection, the copy is to be treated as an infringing copy.
- (10) If an accessible copy which would be an infringing copy but for this section is subsequently dealt with -
 - (a) it is to be treated as an infringing copy for the purposes of that dealing; and
 - (b) if that dealing infringes copyright, is to be treated as an infringing copy for all subsequent purposes.

- (11) In subsection (10), "dealt with" means sold or let for hire or offered or exposed for sale or hire or communicated to the public.
- (12) "Approved body" means an educational establishment or a body that is not conducted for profit.
- (13) "Supplying" includes lending.

31C Intermediate copies and records

- (1) An approved body entitled to make accessible copies under section 31B may hold an intermediate copy of the master copy which is necessarily created during the production of the accessible copies, but only -
 - (a) if and so long as the approved body continues to be entitled to make accessible copies of that master copy; and
 - (b) for the purposes of the production of further accessible copies.
- (2) An intermediate copy which is held in breach of subsection (1) is to be treated as an infringing copy.
- (3) An approved body may lend or transfer the intermediate copy to another approved body which is entitled to make accessible copies of the work or published edition under section 31B.
- (4) The loan or transfer by an approved body ("A") of an intermediate copy to another person ("B") is an infringement of copyright by A unless A has reasonable grounds for believing that B -
 - (a) is another approved body which is entitled to make accessible copies of the work or published edition under section 31B; and
 - (b) will use the intermediate copy only for the purposes of the production of further accessible copies.
- (5) If an approved body charges for lending or transferring the intermediate copy, the sum charged must not exceed the cost of the loan or transfer.
- (6) An approved body must -
 - (a) keep records of accessible copies made under section 31B and of the persons to whom they are supplied;
 - (b) keep records of any intermediate copy lent or transferred under this section and of the persons to whom it is lent or transferred; and
 - (c) allow the copyright owner or a person acting for him, on giving reasonable notice, to inspect the records at any reasonable time.
- (7) Within a reasonable time of making an accessible copy under section 31B, or lending or transferring an intermediate copy under this section, the approved body must -
 - (a) notify each relevant representative body; or
 - (b) if there is no such body, notify the copyright owner.

- (8) A relevant representative body is a body which -
- (a) represents particular copyright owners, or owners of copyright in the type of copyright work concerned; and
 - (b) has given notice to the Secretary of State of the copyright owners, or the classes of copyright owner, represented by it.
- (9) The requirement to notify the copyright owner under subsection (7)(b) does not apply if it is not reasonably possible for the approved body to ascertain the name and address of the copyright owner.

31D Licensing schemes

- (1) Section 31B does not apply to the making of an accessible copy in a particular form if -
- (a) a licensing scheme operated by a licensing body is in force under which licences may be granted by the licensing body permitting the making and supply of copies of the copyright work in that form;
 - (b) the scheme is not unreasonably restrictive; and
 - (c) the scheme and any modification made to it have been notified to the Secretary of State by the licensing body.
- (2) A scheme is unreasonably restrictive if it includes a term or condition which -
- (a) purports to prevent or limit the steps that may be taken under section 31B or 31C; or
 - (b) has that effect.
- (3) But subsection (2) does not apply if -
- (a) the copyright work is no longer published by or with the authority of the copyright owner; and
 - (b) there are reasonable grounds for preventing or restricting the making of accessible copies of the work.
- (4) If section 31B or 31C is displaced by a licensing scheme, sections 119 to 122 apply in relation to the scheme as if it were one to which those sections applied as a result of section 117.

31E Limitations, etc. following infringement of copyright

- (1) The Secretary of State may make an order under this section if it appears to him that the making of copies -
- (a) under section 31B; or
 - (b) under a licence granted under a licensing scheme that has been notified under section 31D,
- has led to infringement of copyright on a scale which, in the Secretary of State's opinion, would not have occurred if section 31B had not been in force, or the licence had not been granted.

- (2) The order may prohibit one or more named approved bodies, or one or more specified categories of approved body, from -
 - (a) acting under section 31B; or
 - (b) acting under a licence of a description specified in the order.
- (3) The order may disapply -
 - (a) the provisions of section 31B; or
 - (b) the provisions of a licence, or a licensing scheme, of a description specified in the order,

in respect of the making of copies of a description so specified.
- (4) If the Secretary of State proposes to make an order he must, before making it, consult -
 - (a) such bodies representing copyright owners as he thinks fit; and
 - (b) such bodies representing visually impaired persons as he thinks fit.
- (5) If the Secretary of State proposes to make an order which includes a prohibition he must, before making it, consult -
 - (a) if the proposed order is to apply to one or more named approved bodies, that body or those bodies;
 - (b) if it is to apply to one or more specified categories of approved body, to such bodies representing approved bodies of that category or those categories as he thinks fit.
- (6) An approved body which is prohibited by an order from acting under a licence may not apply to the Copyright Tribunal under section 121(1) in respect of a refusal or failure by a licensing body to grant such a licence.

31F Definitions and other supplementary provision for sections 31A to 31E

- (1) This section supplements sections 31A to 31E and includes definitions.
- (2) A copy of a copyright work (other than an accessible copy made under section 31A or 31B) is to be taken to be accessible to a visually impaired person only if it is as accessible to him as it would be if he were not visually impaired.
- (3) "Accessible copy", in relation to a copyright work, means a version which provides for a visually impaired person improved access to the work.
- (4) An accessible copy may include facilities for navigating around the version of the copyright work but may not include -
 - (a) changes that are not necessary to overcome problems caused by visual impairment; or
 - (b) changes which infringe the right (provided by section 80) not to have the work subjected to derogatory treatment.

- (5) "Approved body" has the meaning given in section 31B(12).
- (6) "Lending", in relation to a copy, means making it available for use, otherwise than for direct or indirect economic or commercial advantage, on terms that it will or may be returned.
- (7) For the purposes of subsection (6), a loan is not to be treated as being for direct or indirect economic or commercial advantage if a charge is made for the loan which does not exceed the cost of making and supplying the copy.
- (8) The definition of "lending" in section 18A does not apply for the purposes of sections 31B and 31C.
- (9) "Visually impaired person" means a person -
- (a) who is blind;
 - (b) who has an impairment of visual function which cannot be improved, by the use of corrective lenses, to a level that would normally be acceptable for reading without a special level or kind of light;
- who is unable, through physical disability, to hold or manipulate a book; or
- (c) who is unable, through physical disability, to focus or move his eyes to the extent that would normally be acceptable for reading.
- (10) The Secretary of State may by regulations prescribe -
- (a) the form in which; or
 - (b) the procedure in accordance with which,
- any notice required under section 31C(7) or (8), or 31D(1), must be given.
- (11) Any power to make regulations or orders is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

Education

32²⁸ Things done for purposes of instruction or examination

- (1) Copyright in a literary, dramatic, musical or artistic work is not infringed by its being copied in the course of instruction or of preparation for instruction, provided the copying -
- (a) is done by a person giving or receiving instruction,
 - (b) is not done by means of a reprographic process, and
 - (c) is accompanied by a sufficient acknowledgement,

28 Revised ss.32(1) & (2) substituted, ss.31(2A), (2B) & (3A) and words in s.32(3) after "answering the questions" added, and revised definition of "dealt with" in s.32(5) substituted, by SI 2003/2498.

and provided that the instruction is for a non-commercial purpose.

(2) Copyright in a sound recording, film or broadcast is not infringed by its being copied by making a film or film sound-track in the course of instruction, or of preparation for instruction, in the making of films or film sound-tracks, provided the copying -

- (a) is done by a person giving or receiving instruction, and
- (b) is accompanied by a sufficient acknowledgement,

and provided that the instruction is for a non-commercial purpose.

(2A) Copyright in a literary, dramatic, musical or artistic work which has been made available to the public is not infringed by its being copied in the course of instruction or of preparation for instruction, provided the copying-

- (a) is fair dealing with the work,
- (b) is done by a person giving or receiving instruction,
- (c) is not done by means of a reprographic process, and
- (d) is accompanied by a sufficient acknowledgement.

(2B) The provisions of section 30(1A) (works made available to the public) apply for the purposes of subsection (2A) as they apply for the purposes of section 30(1).

(3) Copyright is not infringed by anything done for the purposes of an examination by way of setting the questions, communicating the questions to the candidates or answering the questions, provided that the questions are accompanied by a sufficient acknowledgement.

(3A) No acknowledgement is required in connection with copying as mentioned in subsection (1), (2) or (2A), or in connection with anything done for the purposes mentioned in subsection (3), where this would be impossible for reasons of practicality or otherwise.

(4) Subsection (3) does not extend to the making of a reprographic copy of a musical work for use by an examination candidate in performing the work.

(5) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, it shall be treated as an infringing copy for the purpose of that dealing, and if that dealing infringes copyright for all subsequent purposes.

For this purpose "dealt with" means -

- (a) sold or let for hire, offered or exposed for sale or hire; or
- (b) communicated to the public, unless that communication, by virtue of subsection (3), is not an infringement of copyright.

33 Anthologies for educational use

- (1) The inclusion of a short passage from a published literary or dramatic work in a collection which—
 - (a) is intended for use in educational establishments and is so described in its title, and in any advertisements issued by or on behalf of the publisher, and
 - (b) consists mainly of material in which no copyright subsists,

does not infringe the copyright in the work if the work itself is not intended for use in such establishments and the inclusion is accompanied by a sufficient acknowledgement.
- (2) Subsection (1) does not authorise the inclusion of more than two excerpts from copyright works by the same author in collections published by the same publisher over any period of five years.
- (3) In relation to any given passage the reference in subsection (2) to excerpts from works by the same author -
 - (a) shall be taken to include excerpts from works by him in collaboration with another, and
 - (b) if the passage in question is from such a work, shall be taken to include excerpts from works by any of the authors, whether alone or in collaboration with another.
- (4) References in this section to the use of a work in an educational establishment are to any use for the educational purposes of such an establishment.

34 Performing, playing or showing work in course of activities of educational establishment

- (1) The performance of a literary, dramatic or musical work before an audience consisting of teachers and pupils at an educational establishment and other persons directly connected with the activities of the establishment -
 - (a) by a teacher or pupil in the course of the activities of the establishment, or
 - (b) at the establishment by any person for the purposes of instruction,

is not a public performance for the purposes of infringement of copyright.
- (2) The playing or showing of a sound recording, film or broadcast before such an audience at an educational establishment for the purposes of instruction is not a playing or showing of the work in public for the purposes of infringement of copyright.
- (3) A person is not for this purpose directly connected with the activities of the educational establishment simply because he is the parent of a pupil at the establishment.

35²⁹ Recording by educational establishments of broadcasts

- (1) A recording of a broadcast, or a copy of such a recording, may be made by or on behalf of an educational establishment for the educational purposes of that establishment without thereby infringing the copyright in the broadcast, or in any work included in it, provided that it is accompanied by a sufficient acknowledgement of the broadcast and that the educational purposes are non-commercial.
- (1A) Copyright is not infringed where a recording of a broadcast or a copy of such a recording, whose making was by virtue of subsection (1) not an infringement of copyright, is communicated to the public by a person situated within the premises of an educational establishment provided that the communication cannot be received by any person situated outside the premises of that establishment.
- (2) This section does not apply if or to the extent that there is licensing scheme certified for the purposes of this section under section 143 providing for the grant of licences.
- (3) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, it shall be treated as an infringing copy for the purposes of that dealing, and if that dealing infringes copyright for all subsequent purposes.

For this purpose "dealt with" means sold or let for hire, offered or exposed for sale or hire, or communicated from within the premises of an educational establishment to any person situated outside those premises.

36³⁰ Reprographic copying by educational establishments of passages from published works

- (1) Reprographic copies of passages from published literary, dramatic or musical works may, to the extent permitted by this section, be made by or on behalf of an educational establishment for the purposes of instruction without infringing any copyright in the work, provided that they are accompanied by a sufficient acknowledgement and the instruction is for a non-commercial purpose.
- (1A) No acknowledgement is required in connection with the making of copies as mentioned in subsection (1) where this would be impossible for reasons of practicality or otherwise.
- (1B) Reprographic copies of passages from published editions may, to the extent permitted by this section, be made by or on behalf of an educational

29 Words in s.35(1) after "included in it", and s.35(1A) added by SI 2003/2498. Revised definition of "dealt with" in s.35(3) substituted by that SI.

30 Words in s.36(1) after "copyright in the work" added by SI 2003/2498 (replacing original words "or in the typographical arrangement"). ss.36(1A) & (1B) added, words "literary, dramatic or musical" before "works" in s.36(4) deleted, and revised definition of "dealt with" in s.36(5) substituted, by that SI.

establishment for the purposes of instruction without infringing any copyright in the typographical arrangement of the edition.

- (2) Not more than one per cent. of any work may be copied by or on behalf of an establishment by virtue of this section in any quarter, that is, in any period 1st January to 31st March, 1st April to 30th June, 1st July to 30th September or 1st October to 31st December.
- (3) Copying is not authorised by this section if, or to the extent that, licences are available authorising the copying in question and the person making the copies knew or ought to have been aware of that fact.
- (4) The terms of a licence granted to an educational establishment authorising the reprographic copying for the purposes of instruction of passages from published [---] works are of no effect so far as they purport to restrict the proportion of a work which may be copied (whether on payment or free of charge) to less than that which would be permitted under this section.
- (5) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, it shall be treated as an infringing copy for the purposes of that dealing, and if that dealing infringes copyright for all subsequent purposes.

For this purpose "dealt with" means sold or let for hire, offered or exposed for sale or hire or communicated to the public.

36A³¹ Lending of copies by educational establishments

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

Libraries and archives

37 Libraries and archives: introductory

- (1) In sections 38 to 43 (copying by librarians and archivists) -
 - (a) references in any provision to a prescribed library or archive are to a library or archive of a description prescribed for the purposes of that provision by regulations made by the Secretary of State; and
 - (b) references in any provision to the prescribed conditions are to the conditions so prescribed.
- (2) The regulations may provide that, where a librarian or archivist is required to be satisfied as to any matter before making or supplying a copy of a work -
 - (a) he may rely on a signed declaration as to that matter by the person requesting the copy, unless he is aware that it is false in a material particular, and

³¹ Added by SI 1996/2967.

- (b) in such cases as may be prescribed, he shall not make or supply a copy in the absence of a signed declaration in such form as may be prescribed.
- (3) Where a person requesting a copy makes a declaration which is false in a material particular and is supplied with a copy which would have been an infringing copy if made by him -
 - (a) he is liable for infringement of copyright as if he had made the copy himself, and
 - (b) the copy shall be treated as an infringing copy.
- (4) The regulations may make different provision for different descriptions of libraries or archives and for different purposes.
- (5) Regulations shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) References in this section, and in sections 38 to 43, to the librarian or archivist include a person acting on his behalf.

38 Copying by librarians: articles in periodicals

- (1) The librarian of a prescribed library may, if the prescribed conditions are complied with, make and supply a copy of an article in a periodical without infringing any copyright in the text, in any illustrations accompanying the text or in the typographical arrangement.
- (2) The prescribed conditions shall include the following -
 - (a) ³² that copies are supplied only to persons satisfying the librarian that they require them for the purposes of -
 - (i) research for a non-commercial purpose, or
 - (ii) private study,
 and will not use them for any other purpose;
 - (b) that no person is furnished with more than one copy of the same article or with copies of more than one article contained in the same issue of a periodical; and
 - (c) that persons to whom copies are supplied are required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library) attributable to their production.

39 Copying by librarians: parts of published works

- (1) The librarian of a prescribed library may, if the prescribed conditions are complied with, make and supply from a published edition a copy of part of a literary, dramatic or musical work (other than an article in a periodical)

³² Revised s.38(2)(a) substituted by SI 2003/2498.

without infringing any copyright in the work, in any illustrations accompanying the work or in the typographical arrangement.

- (2) The prescribed conditions shall include the following -
- (a) ³³ that copies are supplied only to persons satisfying the librarian that they require them for the purposes of -
- (i) research for a non-commercial purpose, or
 - (ii) private study,
- and will not use them for any other purpose;
- (b) that no person is furnished with more than one copy of the same material or with a copy of more than a reasonable proportion of any work; and
- (c) that persons to whom copies are supplied are required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library) attributable to their production.

40 Restriction on production of multiple copies of the same material

- (1) Regulations for the purposes of section 38 and section 39 (copying by librarian of article or part of published work) shall contain provision to the effect that a copy shall be supplied only to a person satisfying the librarian that his requirement is not related to any similar requirement of another person.
- (2) The regulations may provide -
- (a) that requirements shall be regarded as similar if the requirements are for copies of substantially the same material at substantially the same time and for substantially the same purpose; and
 - (b) that requirements of persons shall be regarded as related if those persons receive instruction to which the material is relevant at the same time and place.

40A³⁴ Lending of copies by libraries or archives

- (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

³³ Revised s.39(2)(a) substituted by SI 2003/2498.

³⁴ Added by SI 1996/2967.

- (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.

41 Copying by librarians: supply of copies to other libraries

- (1) The librarian of a prescribed library may, if the prescribed conditions are complied with, make and supply to another prescribed library a copy of -
 - (a) an article in a periodical, or
 - (b) the whole or part of a published edition of a literary, dramatic or musical work,

without infringing any copyright in the text of the article or, as the case may be, in the work, in any illustrations accompanying it or in the typographical arrangement.
- (2) Subsection (1)(b) does not apply if at the time the copy is made the librarian making it knows, or could by reasonable inquiry ascertain, the name and address of a person entitled to authorise the making of the copy.

42 Copying by librarians or archivists: replacement copies of works

- (1) The librarian or archivist of a prescribed library or archive may, if the prescribed conditions are complied with, make a copy from any item in the permanent collection of the library or archive -
 - (a) in order to preserve or replace that item by placing the copy in its permanent collection in addition to or in place of it, or
 - (b) in order to replace in the permanent collection of another prescribed library or archive an item which has been lost, destroyed or damaged,

without infringing the copyright in any literary, dramatic or musical work, in any illustrations accompanying such a work or, in the case of a published edition, in the typographical arrangement.
- (2) The prescribed conditions shall include provision for restricting the making of copies to cases where it is not reasonably practicable to purchase a copy of the item in question to fulfil that purpose.

43 Copying by librarians or archivists: certain unpublished works

- (1) The librarian or archivist of a prescribed library or archive may, if the prescribed conditions are complied with, make and supply a copy of the whole or part of a literary, dramatic or musical work from a document in the library or archive without infringing any copyright in the work or any illustrations accompanying it.
- (2) This section does not apply if -

(a) the work had been published before the document was deposited in the library or archive, or

(b) the copyright owner has prohibited copying of the work,

and at the time the copy is made the librarian or archivist making it is, or ought to be, aware of that fact.

(3) The prescribed conditions shall include the following -

(a) ³⁵ that copies are supplied only to persons satisfying the librarian or archivist that they require them for the purposes of -

(i) research for a non-commercial purpose, or

(ii) private study, and will not use them for any other purpose;

(b) that no person is furnished with more than one copy of the same material; and

(c) that persons to whom copies are supplied are required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library or archive) attributable to their production.

44 Copy of work required to be made as condition of export

If an article of cultural or historical importance or interest cannot lawfully be exported from the United Kingdom unless a copy of it is made and deposited in an appropriate library or archive, it is not an infringement of copyright to make that copy.

44A³⁶ Legal deposit libraries

(1) Copyright is not infringed by the copying of a work from the internet by a deposit library or person acting on its behalf if -

(a) the work is of a description prescribed by regulations under section 10(5) of the 2003 Act,

(b) its publication on the internet, or a person publishing it there, is connected with the United Kingdom in a manner so prescribed, and

(c) the copying is done in accordance with any conditions so prescribed.

(2) Copyright is not infringed by the doing of anything in relation to relevant material permitted to be done under regulations under section 7 of the 2003 Act.

(3) The Secretary of State may by regulations make provision excluding, in relation to prescribed activities done in relation to relevant material, the application of such of the provisions of this Chapter as are prescribed.

(4) Regulations under subsection (3) may in particular make provision prescribing activities -

35 Revised s.43(3)(a) substituted by SI 2003/2498.

36 Added by the Legal Deposit Libraries Act 2003 - see also Annex III.

- (a) done for a prescribed purpose,
 - (b) one by prescribed descriptions of reader,
 - (c) done in relation to prescribed descriptions of relevant material,
 - (d) done other than in accordance with prescribed conditions.
- (5) Regulations under this section may make different provision for different purposes.
- (6) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section -
- (a) "the 2003 Act" means the Legal Deposit Libraries Act 2003;
 - (b) "deposit library", "reader" and "relevant material" have the same meaning as in section 7 of the 2003 Act;
 - (c) "prescribed" means prescribed by regulations made by the Secretary of State.

Public administration

45 Parliamentary and judicial proceedings

- (1) Copyright is not infringed by anything done for the purposes of parliamentary or judicial proceedings.
- (2) Copyright is not infringed by anything done for the purposes of reporting such proceedings; but this shall not be construed as authorising the copying of a work which is itself a published report of the proceedings.

46 Royal Commissions and statutory inquiries

- (1) Copyright is not infringed by anything done for the purposes of the proceedings of a Royal Commission or statutory inquiry.
- (2) Copyright is not infringed by anything done for the purpose of reporting any such proceedings held in public; but this shall not be construed as authorising the copying of a work which is itself a published report of the proceedings.
- (3) Copyright in a work is not infringed by the issue to the public of copies of the report of a Royal Commission or statutory inquiry containing the work or material from it.
- (4) In this section -

"Royal Commission" includes a Commission appointed for Northern Ireland by the Secretary of State in pursuance of the prerogative powers of Her Majesty delegated to him under section 7(2) of the Northern Ireland Constitution Act 1973; and "statutory inquiry" means an inquiry held or

investigation conducted in pursuance of a duty imposed or power conferred by or under an enactment.

47 Material open to public inspection or on official register

- (1) Where material is open to public inspection pursuant to a statutory requirement, or is on a statutory register, any copyright in the material as a literary work is not infringed by the copying of so much of the material as contains factual information of any description, by or with the authority of the appropriate person, for a purpose which does not involve the issuing of copies to the public.
- (2) Where material is open to public inspection pursuant to a statutory requirement, copyright is not infringed by the copying or issuing to the public of copies of the material, by or with the authority of the appropriate person, for the purpose of enabling the material to be inspected at a more convenient time or place or otherwise facilitating the exercise of any right for the purpose of which the requirement is imposed.
- (3) Where material which is open to public inspection pursuant to a statutory requirement, or which is on a statutory register, contains information about matters of general scientific, technical, commercial or economic interest, copyright is not infringed by the copying or issuing to the public of copies of the material, by or with the authority of the appropriate person, for the purpose of disseminating that information.
- (4) The Secretary of State may by order provide that subsection (1), (2) or (3) shall, in such cases as may be specified in the order, apply only to copies marked in such manner as may be so specified.
- (5) The Secretary of State may by order provide that subsections (1) to (3) apply, to such extent and with such modifications as may be specified in the order -
 - (a) to material made open to public inspection by -
 - (i) an international organisation specified in the order, or
 - (ii) a person so specified who has functions in the United Kingdom under an international agreement to which the United Kingdom is party, or
 - (b) to a register maintained by an international organisation specified in the order, as they apply in relation to material open to public inspection pursuant to a statutory requirement or to a statutory register.
- (6) In this section -

"appropriate person" means the person required to make the material open to public inspection or, as the case may be, the person maintaining the register;

"statutory register" means a register maintained in pursuance of a statutory requirement; and

"statutory requirement" means a requirement imposed by provision made by or under an enactment.

- (7) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

48 Material communicated to the Crown in the course of public business

- (1) This section applies where a literary, dramatic, musical or artistic work has in the course of public business been communicated to the Crown for any purpose, by or with the licence of the copyright owner and a document or other material thing recording or embodying the work is owned by or in the custody or control of the Crown.
- (2) The Crown may, for the purpose for which the work was communicated to it, or any related purpose which could reasonably have been anticipated by the copyright owner, copy the work and issue copies of the work to the public without infringing any copyright in the work.
- (3) The Crown may not copy a work, or issue copies of a work to the public, by virtue of this section if the work has previously been published otherwise than by virtue of this section.
- (4) In subsection (1) "public business" includes any activity carried on by the Crown.
- (5) This section has effect subject to any agreement to the contrary between the Crown and the copyright owner.
- (6) ³⁷ In this section "the Crown" includes a health service body, as defined in section 60(7) of the National Health Service and Community Care Act 1990, a Primary Care Trust established under section 16A of the National Health Service Act 1977, the Commission for Health Improvement and a National Health Service trust established under Part I of that Act or the National Health Service (Scotland) Act 1978 and an NHS foundation trust and also includes a health and social services body as defined in Article 7(6) of the Health and Personal Social Services (Northern Ireland) Order 1991, and a Health and Social Services trust established under that Order; and the reference in subsection (1) above to public business shall be construed accordingly.

49 Public records

Material which is comprised in public records within the meaning of the Public Records Act 1958, the Public Records (Scotland) Act 1937 or the Public Records Act (Northern Ireland) 1923, or in Welsh public records (as

³⁷ Inserted by the National Health Service and Community Care Act 1990. Words "a Primary ----- Act 1977," added by SI 2000/90. Words "the Commission for Health Improvement" added by SI 1999/2795. Words "and an NHS foundation trust" added by the Health and Social Care (Community Health and Standards) Act 2003. Words "and also includes ----- under that Order", added by SI 1991/194.

defined in the Government of Wales Act 2006)³⁸, which are open to public inspection in pursuance of that Act, may be copied, and a copy may be supplied to any person, by or with the authority of any officer appointed under that Act, without infringement of copyright.

50 Acts done under statutory authority

- (1) Where the doing of a particular act is specifically authorised by an Act of Parliament, whenever passed, then, unless the Act provides otherwise, the doing of that act does not infringe copyright.
- (2) Subsection (1) applies in relation to an enactment contained in Northern Ireland legislation as it applies in relation to an Act of Parliament.
- (3) Nothing in this section shall be construed as excluding any defence of statutory authority otherwise available under or by virtue of any enactment.

*Computer programs: lawful users*³⁹

50A Back up copies

- (1) It is not an infringement of copyright for a lawful user of a copy of a computer program to make any back up copy of it which it is necessary for him to have for the purposes of his lawful use.
- (2) For the purposes of this section and sections 50B, 50BA and 50C a person is a lawful user of a computer program if (whether under a licence to do any acts restricted by the copyright in the program or otherwise), he has a right to use the program.
- (3) Where an act is permitted under this section, it is irrelevant whether or not there exists any term or condition in an agreement which purports to prohibit or restrict the act (such terms being, by virtue of section 296A, void).

50B Decompilation

- (1) It is not an infringement of copyright for a lawful user of a copy of a computer program expressed in a low level language -
 - (a) to convert it into a version expressed in a higher level language, or
 - (b) incidentally in the course of so converting the program, to copy it,

(that is, to “decompile it”), provided that the conditions in subsection (2) are met.
- (2) The conditions are that -

³⁸ Words “, or in Welsh ----- Act 2006),” added by the Government of Wales Act 2006.
³⁹ ss.50A, 50B & 50C added by SI 1992/3233.

- (a) it is necessary to decompile the program to obtain the information necessary to create an independent program which can be operated with the program decompiled or with another program (“the permitted objective”); and
 - (b) the information so obtained is not used for any purpose other than the permitted objective.
- (3) In particular, the conditions in subsection (2) are not met if the lawful user -
- (a) has readily available to him the information necessary to achieve the permitted objective;
 - (b) does not confine the decompiling to such acts as are necessary to achieve the permitted objective;
 - (c) supplies the information obtained by the decompiling to any person to whom it is not necessary to supply it in order to achieve the permitted objective; or
 - (d) uses the information to create a program which is substantially similar in its expression to the program decompiled or to do any act restricted by copyright.
- (4) Where an act is permitted under this section, it is irrelevant whether or not there exists any term or condition in an agreement which purports to prohibit or restrict the act (such terms being, by virtue of section 296A, void).

50BA⁴⁰ Observing, studying and testing of computer programs

- (1) It is not an infringement of copyright for a lawful user of a copy of a computer program to observe, study or test the functioning of the program in order to determine the ideas and principles which underlie any element of the program if he does so while performing any of the acts of loading, displaying, running, transmitting or storing the program which he is entitled to do.
- (2) Where an act is permitted under this section, it is irrelevant whether or not there exists any term or condition in an agreement which purports to prohibit or restrict the act (such terms being, by virtue of section 296A, void).

50C Other acts permitted to lawful users

- (1) It is not an infringement of copyright for a lawful user of a copy of a computer program to copy or adapt it, provided that the copying or adapting -
 - (a) is necessary for his lawful use; and
 - (b) is not prohibited under any term or condition of an agreement regulating the circumstances in which his use is lawful.

⁴⁰ s50BA, and references thereto in ss50A(2) & 50C(3), added by SI 2003/2498.

- (2) It may, in particular, be necessary for the lawful use of a computer program to copy it or adapt it for the purpose of correcting errors in it.
- (3) This section does not apply to any copying or adapting permitted under section 50A, 50B or 50BA.

Databases: permitted acts

50D⁴¹ Acts permitted in relation to databases

- (1) It is not an infringement of copyright in a database for a person who has a right to use the database or any part of the database, (whether under a licence to do any of the acts restricted by the copyright in the database or otherwise) to do, in the exercise of that right, anything which is necessary for the purposes of access to and use of the contents of the database or of that part of the database.
- (2) Where an act which would otherwise infringe copyright in a database is permitted under this section, it is irrelevant whether or not there exists any term or condition in any agreement which purports to prohibit or restrict the act (such terms being, by virtue of section 296B, void).

Designs

51 Design documents and models

- (1) It is not an infringement of any copyright in a design document or model recording or embodying a design for anything other than an artistic work or a typeface to make an article to the design or to copy an article made to the design.
- (2) Nor is it an infringement of the copyright to issue to the public, or include in a film or communicate to the public, anything the making of which was, by virtue of subsection (1), not an infringement of that copyright.
- (3) In this section -

"design" means the design of any aspect of the shape or configuration (whether internal or external) of the whole or part of an article, other than surface decoration;

and

"design document" means any record of a design, whether in the form of a drawing, a written description, a photograph, data stored in a computer or otherwise.

41 Added by SI 1997/3032.

52 Effect of exploitation of design derived from artistic work

- (1) This section applies where an artistic work has been exploited, by or with the licence of the copyright owner, by -
 - (a) making by an industrial process articles falling to be treated for the purposes of this Part as copies of the work, and
 - (b) marketing such articles, in the United Kingdom or elsewhere.
- (2) After the end of the period of 25 years from the end of the calendar year in which such articles are first marketed, the work may be copied by making articles of any description, or doing anything for the purpose of making articles of any description, and anything may be done in relation to articles so made, without infringing copyright in the work.
- (3) Where only part of an artistic work is exploited as mentioned in subsection (1), subsection (2) applies only in relation to that part.
- (4) The Secretary of State may by order make provision -
 - (a) as to the circumstances in which an article, or any description of article, is to be regarded for the purposes of this section as made by an industrial process;
 - (b) excluding from the operation of this section such articles of a primarily literary or artistic character as he thinks fit.
- (5) An order shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) In this section -
 - (a) references to articles do not include films; and
 - (b) references to the marketing of an article are to its being sold or let for hire or offered or exposed for sale or hire.

53 Things done in reliance on registration of design

- (1) The copyright in an artistic work is not infringed by anything done -
 - (a) in pursuance of an assignment or licence made or granted by a person registered under the Registered Designs Act 1949 as the proprietor of a corresponding design, and
 - (b) in good faith in reliance on the registration and without notice of any proceedings for the cancellation or invalidation⁴² of the registration or for rectifying the relevant entry in the register of designs;

and this is so notwithstanding that the person registered as the proprietor was not the proprietor of the design for the purposes of the 1949 Act.

⁴² Words "or invalidation" added by SI 2001/3949.

- (2) In subsection (1) a "corresponding design", in relation to an artistic work, means a design within the meaning of the 1949 Act which if applied to an article would produce something which would be treated for the purposes of this Part as a copy of the artistic work.

Typefaces

54 Use of typeface in ordinary course of printing

- (1) It is not an infringement of copyright in an artistic work consisting of the design of a typeface -
- (a) to use the typeface in the ordinary course of typing, composing text, typesetting or printing,
 - (b) to possess an article for the purpose of such use, or
 - (c) to do anything in relation to material produced by such use;
- and this is so notwithstanding that an article is used which is an infringing copy of the work.
- (2) However, the following provisions of this Part apply in relation to persons making, importing or dealing with articles specifically designed or adapted for producing material in a particular typeface, or possessing such articles for the purpose of dealing with them, as if the production of material as mentioned in subsection (1) did infringe copyright in the artistic work consisting of the design of the typeface -
- section 24 (secondary infringement: making, importing, possessing or dealing with article for making infringing copy),
- sections 99 and 100 (order for delivery up and right of seizure),
- section 107(2) (offence of making or possessing such an article), and
- section 108 (order for delivery up in criminal proceedings).
- (3) The references in subsection (2) to "dealing with" an article are to selling, letting for hire, or offering or exposing for sale or hire, exhibiting in public, or distributing.

55 Articles for producing material in particular typeface

- (1) This section applies to the copyright in an artistic work consisting of the design of a typeface where articles specifically designed or adapted for producing material in that typeface have been marketed by or with the licence of the copyright owner.
- (2) After the period of 25 years from the end of the calendar year in which the first such articles are marketed, the work may be copied by making further such articles, or doing anything for the purpose of making such articles, and anything may be done in relation to articles so made, without infringing copyright in the work.

- (3) In subsection (1) "marketed" means sold, let for hire or offered or exposed for sale or hire, in the United Kingdom or elsewhere.

Works in electronic form

56 Transfers of copies of works in electronic form

- (1) This section applies where a copy of a work in electronic form has been purchased on terms which, expressly or impliedly or by virtue of any rule of law, allow the purchaser to copy the work, or to adapt it or make copies of an adaptation, in connection with his use of it.
- (2) If there are no express terms -
- (a) prohibiting the transfer of the copy by the purchaser, imposing obligations which continue after a transfer, prohibiting the assignment of any licence or terminating any licence on a transfer, or
- (b) providing for the terms on which a transferee may do the things which the purchaser was permitted to do,
- anything which the purchaser was allowed to do may also be done without infringement of copyright by a transferee; but any copy, adaptation or copy of an adaptation made by the purchaser which is not also transferred shall be treated as an infringing copy for all purposes after the transfer.
- (3) The same applies where the original purchased copy is no longer usable and what is transferred is a further copy used in its place.
- (4) The above provisions also apply on a subsequent transfer, with the substitution for references in subsection (2) to the purchaser of references to the subsequent transferor.

Miscellaneous: literary, dramatic, musical and artistic works

57 Anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author

- (1) Copyright in a literary, dramatic, musical or artistic work is not infringed by an act done at a time when, or in pursuance of arrangements made at a time when -
- (a) it is not possible by reasonable inquiry to ascertain the identity of the author, and
- (b) it is reasonable to assume -
- (i) that copyright has expired, or
- (ii) that the author died 70⁴³ years or more before the beginning

⁴³ References to 70 years in ss.57(1)(b)(ii)& (2)(b) substituted by SI 1995/3297 (in place of original references to 50 years).

of the calendar year in which the act is done or the arrangements are made.

- (2) Subsection (1)(b)(ii) does not apply in relation to -
 - (a) a work in which Crown copyright subsists, or
 - (b) a work in which copyright originally vested in an international organisation by virtue of section 168 and in respect of which an Order under that section specifies a copyright period longer than 70 years.
- (3) In relation to a work of joint authorship -
 - (a) the reference in subsection (1) to its being possible to ascertain the identity of the author shall be construed as a reference to its being possible to ascertain the identity of any of the authors, and
 - (b) the reference in subsection (1)(b)(ii) to the author having died shall be construed as a reference to all the authors having died.

58 Use of notes or recordings of spoken words in certain cases

- (1) Where a record of spoken words is made, in writing or otherwise, for the purpose -
 - (a) of reporting current events, or
 - (b) of communicating to the public the whole or part of the work,

it is not an infringement of any copyright in the words as a literary work to use the record or material taken from it (or to copy the record, or any such material, and use the copy) for that purpose, provided the following conditions are met.
- (2) The conditions are that -
 - (a) the record is a direct record of the spoken words and is not taken from a previous record or from a broadcast;
 - (b) the making of the record was not prohibited by the speaker and, where copyright already subsisted in the work, did not infringe copyright;
 - (c) the use made of the record or material taken from it is not of a kind prohibited by or on behalf of the speaker or copyright owner before the record was made; and
 - (d) the use is by or with the authority of a person who is lawfully in possession of the record.

59 Public reading or recitation

- (1) The reading or recitation in public by one person of a reasonable extract from a published literary or dramatic work does not infringe any copyright in the work if it is accompanied by a sufficient acknowledgement.
- (2) Copyright in a work is not infringed by the making of a sound recording, or the communication to the public, of a reading or recitation which by virtue of subsection (1) does not infringe copyright in the work, provided that the

recording or communication to the public consists mainly of material in relation to which it is not necessary to rely on that subsection.

60 Abstracts of scientific or technical articles

- (1) Where an article on a scientific or technical subject is published in a periodical accompanied by an abstract indicating the contents of the article, it is not an infringement of copyright in the abstract, or in the article, to copy the abstract or issue copies of it to the public.
- (2) This section does not 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.

61 Recordings of folksongs

- (1) A sound recording of a performance of a song may be made for the purpose of including it in an archive maintained by a designated body without infringing any copyright in the words as a literary work or in the accompanying musical work, provided the conditions in subsection (2) below are met.
- (2) The conditions are that -
 - (a) the words are unpublished and of unknown authorship at the time the recording is made,
 - (b) the making of the recording does not infringe any other copyright, and
 - (c) its making is not prohibited by any performer.
- (3) Copies of a sound recording made in reliance on subsection (1) and included in an archive maintained by a designated body may, if the prescribed conditions are met, be made and supplied by the archivist without infringing copyright in the recording or the works included in it.
- (4) The prescribed conditions shall include the following -
 - (a) ⁴⁴ that copies are only supplied to persons satisfying the archivist that they require them for the purposes of -
 - (i) research for a non-commercial purpose, or
 - (ii) private study,and will not use them for any other purpose, and
 - (b) that no person is furnished with more than one copy of the same recording.
- (5) In this section -

44 Revised s61(4)(a) substituted by SI 2003/2498.

- (a) "designated" means designated for the purposes of this section by order of the Secretary of State, who shall not designate a body unless satisfied that it is not established or conducted for profit,
 - (b) "prescribed" means prescribed for the purposes of this section by order of the Secretary of State, and
 - (c) references to the archivist include a person acting on his behalf.
- (6) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

62 Representation of certain artistic works on public display

- (1) This section applies to -
 - (a) buildings, and
 - (b) sculptures, models for buildings and works of artistic craftsmanship, if permanently situated in a public place or in premises open to the public.
- (2) The copyright in such a work is not infringed by -
 - (a) making a graphic work representing it,
 - (b) making a photograph or film of it, or
 - (c) making a broadcast of a visual image of it.
- (3) Nor is the copyright infringed by the issue to the public of copies, or the communication to the public, of anything whose making was, by virtue of this section, not an infringement of the copyright.

63 Advertisement of sale of artistic work

- (1) It is not an infringement of copyright in an artistic work to copy it, or to issue copies to the public, for the purpose of advertising the sale of the work.
- (2) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with for any other purpose, it shall be treated as an infringing copy for the purposes of that dealing, and if that dealing infringes copyright for all subsequent purposes.

For this purpose "dealt with" means sold or let for hire, offered or exposed for sale or hire, exhibited in public, distributed or communicated to the public⁴⁵.

64 Making of subsequent works by same artist

Where the author of an artistic work is not the copyright owner, he does not infringe the copyright by copying the work in making another artistic work, provided he does not repeat or imitate the main design of the earlier work.

⁴⁵ Words " , distributed or communicated to the public" substituted by SI 2003/2498 (replacing original words "or distributed").

65 Reconstruction of buildings

Anything done for the purposes of reconstructing a building does not infringe any copyright -

- (a) in the building, or
- (b) in any drawings or plans in accordance with which the building was, by or with the licence of the copyright owner, constructed.

*Miscellaneous: lending of works***66⁴⁶ Lending to public of copies of certain works**

- (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.

*Miscellaneous: films and sound recordings***66A⁴⁷ Films: acts permitted on assumptions as to expiry of copyright, &c**

- (1) Copyright in a film is not infringed by an act done at a time when, or in pursuance of arrangements made at a time when -
 - (a) it is not possible by reasonable inquiry to ascertain the identity of any of the persons referred to in section 13B(2)(a) to (d) (persons by reference to whose life the copyright period is ascertained), and
 - (b) it is reasonable to assume -

⁴⁶ Revised s.66 substituted by SI 1996/2967.

⁴⁷ Added by SI 1995/3297.

- (i) that copyright has expired, or
 - (ii) that the last to die of those persons died 70 years or more before the beginning of the calendar year in which the act is done or the arrangements are made.
- (2) Subsection (1)(b)(ii) does not apply in relation to -
- (a) a film in which Crown copyright subsists, or
 - (b) a film in which copyright originally vested in an international organisation by virtue of section 168 and in respect of which an Order under that section specifies a copyright period longer than 70 years.

67 Playing of sound recordings for purposes of club, society, &c

- (1) It is not an infringement of the copyright in a sound recording to play it as part of the activities of, or for the benefit of, a club, society or other organisation if the following conditions are met.
- (2) The conditions are -
- (a) that the organisation is not established or conducted for profit and its main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare,
 - (b) ⁴⁸ that the sound recording is played by a person who is acting primarily and directly for the benefit of the organisation and who is not acting with a view to gain,
 - (c) that the proceeds of any charge for admission to the place where the recording is to be heard are applied solely for the purposes of the organisation, and
 - (d) that the proceeds from any goods or services sold by, or on behalf of, the organisation -
 - (i) in the place where the sound recording is heard, and
 - (ii) on the occasion when the sound recording is played,
 are applied solely for the purposes of the organisation.

Miscellaneous: broadcasts

68 Incidental recording for purposes of broadcast

- (1) This section applies where by virtue of a licence or assignment of copyright a person is authorised to broadcast -
- (a) a literary, dramatic or musical work, or an adaptation of such a work,
 - (b) an artistic work, or
 - (c) a sound recording or film.

⁴⁸ New ss.67(2)(b) & (d) added, and original s.67(2)(b) restated as s.67(2)(c), by SI 2003/2498.

- (2) He shall by virtue of this section be treated as licensed by the owner of the copyright in the work to do or authorise any of the following for the purposes of the broadcast -
- (a) in the case of a literary, dramatic or musical work, or an adaptation of such a work, to make a sound recording or film of the work or adaptation;
 - (b) in the case of an artistic work, to take a photograph or make a film of the work;
 - (c) in the case of a sound recording or film, to make a copy of it.
- (3) That licence is subject to the condition that the recording, film, photograph or copy in question -
- (a) shall not be used for any other purpose, and
 - (b) shall be destroyed within 28 days of being first used for broadcasting the work.
- (4) A recording, film, photograph or copy made in accordance with this section shall be treated as an infringing copy -
- (a) for the purposes of any use in breach of the condition mentioned in subsection (3)(a), and
 - (b) for all purposes after that condition or the condition mentioned in subsection (3)(b) is broken.

69 Recording for purposes of supervision and control of broadcasts and other services

- (1) Copyright is not infringed by the making or use by the British Broadcasting Corporation, for the purpose of maintaining supervision and control over programmes broadcast by them, of recordings of those programmes.
- (2) ⁴⁹ Copyright is not infringed by anything done in pursuance of -
- (a) section 167(1) of the Broadcasting Act 1990, section 115(4) or (6) or 117 of the Broadcasting Act 1996 or paragraph 20 of Schedule 12 to the Communications Act 2003;
 - (b) a condition which, by virtue of section 334(1) of the Communications Act 2003, is included in a licence granted under Part I or III of that Act or Part I or II of the Broadcasting Act 1996;
 - (c) a direction given under section 109(2) of the Broadcasting Act 1990 (power of OFCOM to require production of recordings etc);
 - (d) section 334(3) of the Communications Act 2003.
- (3) Copyright is not infringed by the use by OFCOM in connection with the performance of any of their functions under the Broadcasting Act 1990, the Broadcasting Act 1996 or the Communications Act 2003 of -

⁴⁹ ss.69(2)(a)-(c) & (3) last amended, and ss.69(2)(d) & (4) added, by the Communications Act 2003.

- (a) any recording, script or transcript which is provided to them under or by virtue of any provision of those Acts; or
 - (b) any existing material which is transferred to them by a scheme made under section 30 of the Communications Act 2003.
- (4) In subsection (3), 'existing material means -
- (a) any recording, script or transcript which was provided to the Independent Television Commission or the Radio Authority under or by virtue of any provision of the Broadcasting Act 1990 or the Broadcasting Act 1996; and
 - (b) any recording or transcript which was provided to the Broadcasting Standards Commission under section 115(4) or (6) or 116(5) of the Broadcasting Act 1996.

70⁵⁰ Recording for purposes of time-shifting

- (1) The making in domestic premises for private and domestic use of a recording of a broadcast solely for the purpose of enabling it to be viewed or listened to at a more convenient time does not infringe any copyright in the broadcast or in any work included in it.
- (2) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with -
 - (a) it shall be treated as an infringing copy for the purposes of that dealing; and
 - (b) if that dealing infringes copyright, it shall be treated as an infringing copy for all subsequent purposes.
- (3) In subsection (2), "dealt with" means sold or let for hire, offered or exposed for sale or hire or communicated to the public.

71⁵¹ Photographs of broadcasts

- (1) The making in domestic premises for private and domestic use of a photograph of the whole or any part of an image forming part of a broadcast, or a copy of such a photograph, does not infringe any copyright in the broadcast or in any film included in it.
- (2) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with -
 - (a) it shall be treated as an infringing copy for the purposes of that dealing; and
 - (b) if that dealing infringes copyright, it shall be treated as an infringing copy for all subsequent purposes.

50 Words "in domestic premises" added to s.70(1), and ss.70(2) & (3) inserted, by SI 2003/2498.
51 Revised s71 substituted by SI 2003/2498.

- (3) In subsection (2), "dealt with" means sold or let for hire, offered or exposed for sale or hire or communicated to the public.

72⁵² Free public showing or playing of broadcast

- (1) The showing or playing in public of a broadcast to an audience who have not paid for admission to the place where the broadcast is to be seen or heard does not infringe any copyright in -
- (a) the broadcast;
 - (b) any sound recording (except so far as it is an excepted sound recording) included in it; or
 - (c) any film included in it.
- (1A) For the purposes of this Part an "excepted sound recording" is a sound recording -
- (a) whose author is not the author of the broadcast in which it is included; and
 - (b) which is a recording of music with or without words spoken or sung.
- (1B) Where by virtue of subsection (1) the copyright in a broadcast shown or played in public is not infringed, copyright in any excepted sound recording included in it is not infringed if the playing or showing of that broadcast in public -
- (a) forms part of the activities of an organisation that is not established or conducted for profit; or
 - (b) is necessary for the purposes of -
 - (i) repairing equipment for the reception of broadcasts;
 - (ii) demonstrating that a repair to such equipment has been carried out; or
 - (iii) demonstrating such equipment which is being sold or let for hire or offered or exposed for sale or hire.
- (2) The audience shall be treated as having paid for admission to a place -
- (a) if they have paid for admission to a place of which that place forms part; or
 - (b) if goods or services are supplied at that place (or a place of which it forms part) -
 - (i) at prices which are substantially attributable to the facilities afforded for seeing or hearing the broadcast, or
 - (ii) at prices exceeding those usually charged there and which are partly attributable to those facilities.
- (3) The following shall not be regarded as having paid for admission to a place -

⁵² Revised ss72(1)(a)-(c) substituted (for original (1)(a) & (b)), and ss.72(1A) & (1B) added, by SI 2003/2498.

- (a) persons admitted as residents or inmates of the place;
 - (b) persons admitted as members of a club or society where the payment is only for membership of the club or society and the provision of facilities for seeing or hearing broadcasts is only incidental to the main purposes of the club or society.
- (4) Where the making of the broadcast was an infringement of the copyright in a sound recording or film, the fact that it was heard or seen in public by the reception of the broadcast shall be taken into account in assessing the damages for that infringement.

73⁵³ Reception and re-transmission of wireless broadcast by cable

- (1) This section applies where a wireless broadcast made from a place in the United Kingdom is received and immediately re-transmitted by cable.
- (2) The copyright in the broadcast is not infringed -
 - (a) if the re-transmission by cable is in pursuance of a relevant requirement, or
 - (b) if and to the extent that the broadcast is made for reception in the area in which it is re-transmitted by cable and forms part of a qualifying service.
- (3) The copyright in any work included in the broadcast is not infringed if and to the extent that the broadcast is made for reception in the area in which it is re-transmitted by cable; but where the making of the broadcast was an infringement of the copyright in the work, the fact that the broadcast was re-transmitted by cable shall be taken into account in assessing the damages for that infringement.
- (4) Where -
 - (a) the re-transmission by cable is in pursuance of a relevant requirement, but
 - (b) to any extent, the area in which the re-transmission by cable takes place ("the cable area") falls outside the area for reception in which the broadcast is made ("the broadcast area"),

the re-transmission by cable (to the extent that it is provided for so much of the cable area as falls outside the broadcast area) of any work included in the broadcast shall, subject to subsection (5), be treated as licensed by the owner of the copyright in the work, subject only to the payment to him by the person making the broadcast of such reasonable royalty or other payment in respect of the re-transmission by cable of the broadcast as may be agreed or determined in default of agreement by the Copyright Tribunal.

⁵³ Revised s73 substituted by the Broadcasting Act 1996, and reworded by SI 2003/2498 in view of the revision of s6 and deletion of s7 by that SI.

- (5) Subsection (4) does not apply, if or to the extent that, the re-transmission of the work by cable is (apart from that subsection) licensed by the owner of the copyright in the work.
- (6) ⁵⁴ In this section “qualifying service” means, subject to subsection (8), any of the following services -
- (a) a regional or national Channel 3 service,
 - (b) Channel 4, Channel 5 and S4C,
 - (c) the public teletext service,
 - (d) S4C digital, and
 - (e) the television broadcasting services and teletext service of the British Broadcasting Corporation;
- and expressions used in this subsection have the same meaning as in Part 3 of the Communications Act 2003.
- (7) In this section “relevant requirement” means a requirement imposed by a general condition (within the meaning of Chapter 1 of Part 2 of the Communications Act 2003) the setting of which is authorised under section 64 of that Act (must-carry obligations).
- (8) The Secretary of State may by order amend subsection (6) so as to add any service to, or remove any service from, the definition of “qualifying service”.
- (9) The Secretary of State may also by order -
- (a) provide that in specified cases subsection (3) is to apply in relation to broadcasts of a specified description which are not made as mentioned in that subsection, or
 - (b) exclude the application of that subsection in relation to broadcasts of a specified description made as mentioned in that subsection.
- (10) Where the Secretary of State exercises the power conferred by subsection (9)(b) in relation to broadcasts of any description, the order may also provide for subsection (4) to apply, subject to such modifications as may be specified in the order, in relation to broadcasts of that description.
- (11) An order under this section may contain such transitional provision as appears to the Secretary of State to be appropriate.
- (12) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (13) ⁵⁵ In this section references to re-transmission by cable include the transmission of microwave energy between terrestrial fixed points.

⁵⁴ ss73(6)(c) & (d) amended, and revised wording after s.73(6)(e) and revised s.73(7) substituted, by the Communications Act 2003.

73A⁵⁶ Royalty or other sum payable in pursuance of section 73(4)

- (1) An application to settle the royalty or other sum payable in pursuance of subsection (4) of section 73 (reception and re-transmission of wireless broadcast by cable) may be made to the Copyright Tribunal by the copyright owner or the person making the broadcast.
- (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.

74 Provision of sub-titled copies of broadcast

- (1) A designated body may, for the purpose of providing people who are deaf or hard of hearing, or physically or mentally handicapped in other ways, with copies which are sub-titled or otherwise modified for their special needs, make copies of broadcasts and issue or lend⁵⁷ copies to the public, without infringing any copyright in the broadcasts or works included in them.
- (2) A "designated body" means a body designated for the purposes of this section by order of the Secretary of State, who shall not designate a body unless he is satisfied that it is not established or conducted for profit.
- (3) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) This section does not 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.

75 Recording for archival purposes

- (1) A recording of a broadcast of a designated class, or a copy of such a recording, may be made for the purpose of being placed in an archive

55 Added by SI 2003/2498.

56 Added by the Broadcasting Act 1996, and s.73A(1) amended by SI 2003/2498 in view of the revision of s.6 and deletion of s.7 by that SI.

57 Words "or lend" added by SI 2003/2498.

maintained by a designated body without thereby infringing any copyright in the broadcast or in any work included in it.

- (2) In subsection (1) "designated" means designated for the purposes of this section by order of the Secretary of State, who shall not designate a body unless he is satisfied that it is not established or conducted for profit.
- (3) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Adaptations

76 Adaptations

An act which by virtue of this Chapter may be done without infringing copyright in a literary, dramatic or musical work does not, where that work is an adaptation, infringe any copyright in the work from which the adaptation was made.

CHAPTER IV

MORAL RIGHTS

Right to be identified as author or director

77 Right to be identified as author or director

- (1) The author of a copyright literary, dramatic, musical or artistic work, and the director of a copyright film, has the right to be identified as the author or director of the work in the circumstances mentioned in this section; but the right is not infringed unless it has been asserted in accordance with section 78.
- (2) The author of a literary work (other than words intended to be sung or spoken with music) or a dramatic work has the right to be identified whenever -
 - (a) the work is published commercially, performed in public or communicated to the public; or
 - (b) copies of a film or sound recording including the work are issued to the public;

and that right includes the right to be identified whenever any of those events occur in relation to an adaptation of the work as the author of the work from which the adaptation was made.

- (3) The author of a musical work, or a literary work consisting of words intended to be sung or spoken with music, has the right to be identified whenever -
 - (a) the work is published commercially;

- (b) copies of a sound recording of the work are issued to the public; or
- (c) a film of which the sound-track includes the work is shown in public or copies of such a film are issued to the public;

and that right includes the right to be identified whenever any of those events occur in relation to an adaptation of the work as the author of the work from which the adaptation was made.

- (4) The author of an artistic work has the right to be identified whenever -
 - (a) the work is published commercially or exhibited in public, or a visual image of it is communicated to the public;
 - (b) a film including a visual image of the work is shown in public or copies of such a film are issued to the public; or
 - (c) in the case of a work of architecture in the form of a building or a model for a building, a sculpture or a work of artistic craftsmanship, copies of a graphic work representing it, or of a photograph of it, are issued to the public.
- (5) The author of a work of architecture in the form of a building also has the right to be identified on the building as constructed or, where more than one building is constructed to the design, on the first to be constructed.
- (6) The director of a film has the right to be identified whenever the film is shown in public or communicated to the public or copies of the film are issued to the public.
- (7) The right of the author or director under this section is -
 - (a) in the case of commercial publication or the issue to the public of copies of a film or sound recording, to be identified in or on each copy or, if that is not appropriate, in some other manner likely to bring his identity to the notice of a person acquiring a copy,
 - (b) in the case of identification on a building, to be identified by appropriate means visible to persons entering or approaching the building, and
 - (c) in any other case, to be identified in a manner likely to bring his identity to the attention of a person seeing or hearing the performance, exhibition, showing or communication to the public in question;

and the identification must in each case be clear and reasonably prominent.

- (8) If the author or director in asserting his right to be identified specifies a pseudonym, initials or some other particular form of identification, that form shall be used; otherwise any reasonable form of identification may be used.
- (9) This section has effect subject to section 79 (exceptions to right).

78 Requirement that right be asserted

- (1) A person does not infringe the right conferred by section 77 (right to be identified as author or director) by doing any of the acts mentioned in that section unless the right has been asserted in accordance with the following provisions so as to bind him in relation to that act.
- (2) The right may be asserted generally, or in relation to any specified act or description of acts -
 - (a) on an assignment of copyright in the work, by including in the instrument effecting the assignment a statement that the author or director asserts in relation to that work his right to be identified, or
 - (b) by instrument in writing signed by the author or director.
- (3) The right may also be asserted in relation to the public exhibition of an artistic work -
 - (a) by securing that when the author or other first owner of copyright parts with possession of the original, or of a copy made by him or under his direction or control, the author is identified on the original or copy, or on a frame, mount or other thing to which it is attached, or
 - (b) by including in a licence by which the author or other first owner of copyright authorises the making of copies of the work a statement signed by or on behalf of the person granting the licence that the author asserts his right to be identified in the event of the public exhibition of a copy made in pursuance of the licence.
- (4) The persons bound by an assertion of the right under subsection (2) or (3) are -
 - (a) in the case of an assertion under subsection (2)(a), the assignee and anyone claiming through him, whether or not he has notice of the assertion;
 - (b) in the case of an assertion under subsection (2)(b), anyone to whose notice the assertion is brought;
 - (c) in the case of an assertion under subsection (3)(a), anyone into whose hands that original or copy comes, whether or not the identification is still present or visible;
 - (d) in the case of an assertion under subsection (3)(b), the licensee and anyone into whose hands a copy made in pursuance of the licence comes, whether or not he has notice of the assertion.
- (5) In an action for infringement of the right the court shall, in considering remedies, take into account any delay in asserting the right.

79 Exceptions to right

- (1) The right conferred by section 77 (right to be identified as author or director) is subject to the following exceptions.
- (2) The right does not apply in relation to the following descriptions of work -

- (a) a computer program;
 - (b) the design of a typeface;
 - (c) any computer-generated work.
- (3) The right does not apply to anything done by or with the authority of the copyright owner where copyright in the work originally vested in the author's or director's employer by virtue of section 11(2) (works produced in the course of employment)⁵⁸.
- (4) The right is not infringed by an act which by virtue of any of the following provisions would not infringe copyright in the work -
- (a) section 30 (fair dealing for certain purposes), so far as it relates to the reporting of current events by means of a sound recording, film or broadcast;
 - (b) section 31 (incidental inclusion of work in an artistic work, sound recording, film or broadcast);
 - (c) section 32(3) (examination questions);
 - (d) section 45 (parliamentary and judicial proceedings);
 - (e) section 46(1) or (2) (Royal Commissions and statutory inquiries);
 - (f) section 51 (use of design documents and models);
 - (g) section 52 (effect of exploitation of design derived from artistic work);
 - (h) ⁵⁹section 57 or 66A (acts permitted on assumptions as to expiry of copyright, &c.).
- (5) The right does not apply in relation to any work made for the purpose of reporting current events.
- (6) The right does not apply in relation to the publication in -
- (a) a newspaper, magazine or similar periodical, or
 - (b) an encyclopaedia, dictionary, yearbook or other collective work of reference,
- of a literary, dramatic, musical or artistic work made for the purposes of such publication or made available with the consent of the author for the purposes of such publication.
- (7) The right does not apply in relation to -
- (a) a work in which Crown copyright or Parliamentary copyright subsists, or
 - (b) a work in which copyright originally vested in an international organisation by virtue of section 168,

⁵⁸ Revised wording from "vested" to the end of s.79(3) substituted by SI 2003/2498.

⁵⁹ Revised s.79(4)(h) substituted by SI 1995/3297 (referring to ss. 57 & 66A, rather than s.57 only).

unless the author or director has previously been identified as such in or on published copies of the work.

Right to object to derogatory treatment of work

80 Right to object to derogatory treatment of work

- (1) The author of a copyright literary, dramatic, musical or artistic work, and the director of a copyright film, has the right in the circumstances mentioned in this section not to have his work subjected to derogatory treatment.
- (2) For the purposes of this section -
 - (a) "treatment" of a work means any addition to, deletion from or alteration to or adaptation of the work, other than -
 - (i) a translation of a literary or dramatic work, or
 - (ii) an arrangement or transcription of a musical work involving no more than a change of key or register; and
 - (b) the treatment of a work is derogatory if it amounts to distortion or mutilation of the work or is otherwise prejudicial to the honour or reputation of the author or director;

and in the following provisions of this section references to a derogatory treatment of a work shall be construed accordingly.
- (3) In the case of a literary, dramatic or musical work the right is infringed by a person who -
 - (a) publishes commercially, performs in public or communicates to the public a derogatory treatment of the work; or
 - (b) issues to the public copies of a film or sound recording of, or including, a derogatory treatment of the work.
- (4) In the case of an artistic work the right is infringed by a person who -
 - (a) publishes commercially or exhibits in public a derogatory treatment of the work, or communicates to the public a visual image of a derogatory treatment of the work,
 - (b) shows in public a film including a visual image of a derogatory treatment of the work or issues to the public copies of such a film, or
 - (c) in the case of -
 - (i) a work of architecture in the form of a model for a building,
 - (ii) a sculpture, or
 - (iii) a work of artistic craftsmanship,

issues to the public copies of a graphic work representing, or of a photograph of, a derogatory treatment of the work.

81

- (5) Subsection (4) does not apply to a work of architecture in the form of a building; but where the author of such a work is identified on the building and it is the subject of derogatory treatment he has the right to require the identification to be removed.
- (6) In the case of a film, the right is infringed by a person who -
 - (a) shows in public or communicates to the public a derogatory treatment of the film; or
 - (b) issues to the public copies of a derogatory treatment of the film.⁶⁰
- (7) The right conferred by this section extends to the treatment of parts of a work resulting from a previous treatment by a person other than the author or director, if those parts are attributed to, or are likely to be regarded as the work of, the author or director.
- (8) This section has effect subject to sections 81 and 82 (exceptions to and qualifications of right).

81 Exceptions to right

- (1) The right conferred by section 80 (right to object to derogatory treatment of work) is subject to the following exceptions.
- (2) The right does not apply to a computer program or to any computer-generated work.
- (3) The right does not apply in relation to any work made for the purpose of reporting current events.
- (4) The right does not apply in relation to the publication in -
 - (a) a newspaper, magazine or similar periodical, or
 - (b) an encyclopaedia, dictionary, yearbook or other collective work of reference,of a literary, dramatic, musical or artistic work made for the purposes of such publication or made available with the consent of the author for the purposes of such publication.

Nor does the right apply in relation to any subsequent exploitation elsewhere of such a work without any modification of the published version.
- (5) The right is not infringed by an act which by virtue of section 57 or 66A (acts permitted on assumptions as to expiry of copyright, &c.) would not infringe copyright.⁶¹

60 Words “, or who, along with the film, plays in public, broadcasts or includes in a cable programme service, or issues to the public copies of, a derogatory treatment of the film sound-track”, originally appearing in s.80(5) after paragraph (b) deleted by SI 1995/3297.

61 Reference to ss.57 & 66A inserted by SI 1995/3297 (replacing original reference to s.57 only)

- (6) The right is not infringed by anything done for the purpose of -
- (a) avoiding the commission of an offence,
 - (b) complying with a duty imposed by or under an enactment, or
 - (c) in the case of the British Broadcasting Corporation, avoiding the inclusion in a programme broadcast by them of anything which offends against good taste or decency or which is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling,

provided, where the author or director is identified at the time of the relevant act or has previously been identified in or on published copies of the work, that there is a sufficient disclaimer.

82 Qualification of right in certain cases

- (1) This section applies to -
- (a) works in which copyright originally vested in the author's or director's employer by virtue of section 11(2) (works produced in course of employment)⁶²,
 - (b) works in which Crown copyright or Parliamentary copyright subsists, and
 - (c) works in which copyright originally vested in an international organisation by virtue of section 168.
- (2) The right conferred by section 80 (right to object to derogatory treatment of work) does not apply to anything done in relation to such a work by or with the authority of the copyright owner unless the author or director -
- (a) is identified at the time of the relevant act, or
 - (b) has previously been identified in or on published copies of the work;

and where in such a case the right does apply, it is not infringed if there is a sufficient disclaimer.

83 Infringement of right by possessing or dealing with infringing article

- (1) The right conferred by section 80 (right to object to derogatory treatment of work) is also infringed by a person who -
- (a) possesses in the course of a business, or
 - (b) sells or lets for hire, or offers or exposes for sale or hire, or
 - (c) in the course of a business exhibits in public or distributes, or
 - (d) distributes otherwise than in the course of a business so as to affect prejudicially the honour or reputation of the author or director,

an article which is, and which he knows or has reason to believe is, an infringing article.

⁶² Original reference also to s.9(2)(a) (in relation to employed directors) deleted by SI 2003/2498.

- (2) An "infringing article" means a work or a copy of a work which -
- (a) has been subjected to derogatory treatment within the meaning of section 80, and
 - (b) has been or is likely to be the subject of any of the acts mentioned in that section in circumstances infringing that right.

False attribution of work

84 False attribution of work

- (1) A person has the right in the circumstances mentioned in this section -
- (a) not to have a literary, dramatic, musical or artistic work falsely attributed to him as author, and
 - (b) not to have a film falsely attributed to him as director;
- and in this section an "attribution", in relation to such a work, means a statement (express or implied) as to who is the author or director.
- (2) The right is infringed by a person who -
- (a) issues to the public copies of a work of any of those descriptions in or on which there is a false attribution, or
 - (b) exhibits in public an artistic work, or a copy of an artistic work, in or on which there is a false attribution.
- (3) The right is also infringed by a person who -
- (a) in the case of a literary, dramatic or musical work, performs the work in public or communicates it to the public as being the work of a person, or
 - (b) in the case of a film, shows it in public or communicates it to the public as being directed by a person,
- knowing or having reason to believe that the attribution is false.
- (4) The right is also infringed by the issue to the public or public display of material containing a false attribution in connection with any of the acts mentioned in subsection (2) or (3).
- (5) The right is also infringed by a person who in the course of a business -
- (a) possesses or deals with a copy of a work of any of the descriptions mentioned in subsection (1) in or on which there is a false attribution, or
 - (b) in the case of an artistic work, possesses or deals with the work itself when there is a false attribution in or on it,
- knowing or having reason to believe that there is such an attribution and that it is false.

- (6) In the case of an artistic work the right is also infringed by a person who in the course of a business -
- (a) deals with a work which has been altered after the author parted with possession of it as being the unaltered work of the author, or
 - (b) deals with a copy of such a work as being a copy of the unaltered work of the author,
- knowing or having reason to believe that that is not the case.
- (7) References in this section to dealing are to selling or letting for hire, offering or exposing for sale or hire, exhibiting in public, or distributing.
- (8) This section applies where, contrary to the fact -
- (a) a literary, dramatic or musical work is falsely represented as being an adaptation of the work of a person, or
 - (b) a copy of an artistic work is falsely represented as being a copy made by the author of the artistic work,
- as it applies where the work is falsely attributed to a person as author.

Right to privacy of certain photographs and films

85 Right to privacy of certain photographs and films

- (1) A person who for private and domestic purposes commissions the taking of a photograph or the making of a film has, where copyright subsists in the resulting work, the right not to have -
- (a) copies of the work issued to the public,
 - (b) the work exhibited or shown in public, or
 - (c) the work communicated to the public;
- and, except as mentioned in subsection (2), a person who does or authorises the doing of any of those acts infringes that right.
- (2) The right is not infringed by an act which by virtue of any of the following provisions would not infringe copyright in the work -
- (a) section 31 (incidental inclusion of work in an artistic work, film or broadcast);
 - (b) section 45 (parliamentary and judicial proceedings);
 - (c) section 46 (Royal Commissions and statutory inquiries);
 - (d) section 50 (acts done under statutory authority);

- (e) ⁶³section 57 or 66A (acts permitted on assumptions as to expiry of copyright, &c.).

Supplementary

86 Duration of rights

- (1) The rights conferred by section 77 (right to be identified as author or director), section 80 (right to object to derogatory treatment of work) and section 85 (right to privacy of certain photographs and films) continue to subsist so long as copyright subsists in the work.
- (2) The right conferred by section 84 (false attribution) continues to subsist until 20 years after a person's death.

87 Consent and waiver of rights

- (1) It is not an infringement of any of the rights conferred by this Chapter to do any act to which the person entitled to the right has consented.
- (2) Any of those rights may be waived by instrument in writing signed by the person giving up the right.
- (3) A waiver -
 - (a) may relate to a specific work, to works of a specified description or to works generally, and may relate to existing or future works, and
 - (b) may be conditional or unconditional and may be expressed to be subject to revocation;

and if made in favour of the owner or prospective owner of the copyright in the work or works to which it relates, it shall be presumed to extend to his licensees and successors in title unless a contrary intention is expressed.
- (4) Nothing in this Chapter shall be construed as excluding the operation of the general law of contract or estoppel in relation to an informal waiver or other transaction in relation to any of the rights mentioned in subsection (1).

88 Application of provisions to joint works

- (1) The right conferred by section 77 (right to be identified as author or director) is, in the case of a work of joint authorship, a right of each joint author to be identified as a joint author and must be asserted in accordance with section 78 by each joint author in relation to himself.
- (2) The right conferred by section 80 (right to object to derogatory treatment of work) is, in the case of a work of joint authorship, a right of each joint author and his right is satisfied if he consents to the treatment in question.

⁶³ Revised s85(2)(e), substituted by SI 1995/3297 (referring to ss57 & 66A, rather than s57 only).

- (3) A waiver under section 87 of those rights by one joint author does not affect the rights of the other joint authors.
- (4) The right conferred by section 84 (false attribution) is infringed, in the circumstances mentioned in that section -
- (a) by any false statement as to the authorship of a work of joint authorship, and
 - (b) by the false attribution of joint authorship in relation to a work of sole authorship;
- and such a false attribution infringes the right of every person to whom authorship of any description is, whether rightly or wrongly, attributed.
- (5) The above provisions also apply (with any necessary adaptations) in relation to a film which was, or is alleged to have been, jointly directed, as they apply to a work which is, or is alleged to be, a work of joint authorship.
- A film is "jointly directed" if it is made by the collaboration of two or more directors and the contribution of each director is not distinct from that of the other director or directors.
- (6) The right conferred by section 85 (right to privacy of certain photographs and films) is, in the case of a work made in pursuance of a joint commission, a right of each person who commissioned the making of the work, so that -
- (a) the right of each is satisfied if he consents to the act in question, and
 - (b) a waiver under section 87 by one of them does not affect the rights of the others.

89 Application of provisions to parts of works

- (1) The rights conferred by section 77 (right to be identified as author or director) and section 85 (right to privacy of certain photographs and films) apply in relation to the whole or any substantial part of a work.
- (2) The rights conferred by section 80 (right to object to derogatory treatment of work) and section 84 (false attribution) apply in relation to the whole or any part of a work.

CHAPTER V

DEALINGS WITH RIGHTS IN COPYRIGHT WORKS

Copyright

90 Assignment and licences

- (1) Copyright is transmissible by assignment, by testamentary disposition or by operation of law, as personal or moveable property.

- (2) An assignment or other transmission of copyright may be partial, that is, limited so as to apply -
 - (a) to one or more, but not all, of the things the copyright owner has the exclusive right to do;
 - (b) to part, but not the whole, of the period for which the copyright is to subsist.
- (3) An assignment of copyright is not effective unless it is in writing signed by or on behalf of the assignor.
- (4) A licence granted by a copyright owner is binding on every successor in title to his interest in the copyright, 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 copyright owner shall be construed accordingly.

91 Prospective ownership of copyright

- (1) Where by an agreement made in relation to future copyright, and signed by or on behalf of the prospective owner of the copyright, the prospective owner purports to assign the future copyright (wholly or partially) to another person, then if, on the copyright coming into existence, the assignee or another person claiming under him would be entitled as against all other persons to require the copyright to be vested in him, the copyright shall vest in the assignee or his successor in title by virtue of this subsection.
- (2) In this Part -

"future copyright" means copyright which will or may come into existence in respect of a future work or class of works or on the occurrence of a future event; and

"prospective owner" shall be construed accordingly, and includes a person who is prospectively entitled to copyright by virtue of such an agreement as is mentioned in subsection (1).
- (3) A licence granted by a prospective owner of copyright is binding on every successor in title to his interest (or prospective interest) in the right, 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 copyright owner shall be construed accordingly.

92 Exclusive licences

- (1) In this Part an "exclusive licence" means a licence in writing signed by or on behalf of the copyright owner authorising the licensee to the exclusion of all other persons, including the person granting the licence, to exercise a right which would otherwise be exercisable exclusively by the copyright 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.

93 Copyright to pass under will with unpublished work

Where under a bequest (whether specific or general) a person is entitled, beneficially or otherwise, to -

- (a) an original document or other material thing recording or embodying a literary, dramatic, musical or artistic work which was not published before the death of the testator, or
- (b) an original material thing containing a sound recording or film 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 the copyright in the work in so far as the testator was the owner of the copyright immediately before his death.

93A⁶⁴ Presumption of transfer of rental right in case of film production agreement

- (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.
- (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.

64 ss93A-93C added by SI 1996/2967.

*Right to equitable remuneration where rental right transferred***93B Right to equitable remuneration where rental right transferred**

- (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.

93C Equitable remuneration: reference of amount to Copyright Tribunal

- (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 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.

Moral rights

94 Moral rights not assignable

The rights conferred by Chapter IV (moral rights) are not assignable.

95 Transmission of moral rights on death

- (1) On the death of a person entitled to the right conferred by section 77 (right to identification of author or director), section 80 (right to object to derogatory treatment of work) or section 85 (right to privacy of certain photographs and films) -
 - (a) the right passes to such person as he may by testamentary disposition specifically direct,
 - (b) if there is no such direction but the copyright in the work in question forms part of his estate, the right passes to the person to whom the copyright passes, and
 - (c) if or to the extent that the right does not pass under paragraph (a) or paragraph (b) it is exercisable by his personal representatives.
- (2) Where copyright forming part of a person's estate passes in part to one person and in part to another, as for example where a bequest is limited so as to apply -
 - (a) to one or more, but not all, of the things the copyright owner has the exclusive right to do or authorise, or
 - (b) to part, but not the whole, of the period for which the copyright is to subsist,

any right which passes with the copyright by virtue of subsection (1) is correspondingly divided.

- (3) Where by virtue of subsection (1)(a) or (1)(b) a right becomes exercisable by more than one person -
- (a) it may, in the case of the right conferred by section 77 (right to identification of author or director), be asserted by any of them;
 - (b) it is, in the case of the right conferred by section 80 (right to object to derogatory treatment of work) or section 85 (right to privacy of certain photographs and films), a right exercisable by each of them and is satisfied in relation to any of them if he consents to the treatment or act in question; and
 - (c) any waiver of the right in accordance with section 87 by one of them does not affect the rights of the others.
- (4) A consent or waiver previously given or made binds any person to whom a right passes by virtue of subsection (1).
- (5) Any infringement after a person's death of the right conferred by section 84 (false attribution) is actionable by his personal representatives.
- (6) 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.

CHAPTER VI

REMEDIES FOR INFRINGEMENT

Rights and remedies of copyright owner

96 Infringement actionable by copyright owner

- (1) An infringement of copyright is actionable by the copyright owner.
- (2) In an action for infringement of copyright 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 Chapter.

97 Provisions as to damages in infringement action

- (1) Where in an action for infringement of copyright it is shown that at the time of the infringement the defendant did not know, and had no reason to believe, that copyright subsisted in the work 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 copyright 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.

97A⁶⁵ Injunctions against service providers

- (1) The High Court (in Scotland, the Court of Session) shall have power to grant an injunction against a service provider, where that service provider has actual knowledge of another person using their service to infringe copyright.
- (2) In determining whether a service provider has actual knowledge for the purpose of this section, a court shall take into account all matters which appear to it in the particular circumstances to be relevant and, amongst other things, shall have regard to –
- (a) whether a service provider has received a notice through a means of contact made available in accordance with regulation 6(1)(c) of the Electronic Commerce (EC Directive) Regulations 2002 (SI 2002/2013); and
- (b) the extent to which any notice includes –
- (i) the full name and address of the sender of the notice;
- (ii) details of the infringement in question.
- (3) In this section "service provider" has the meaning given to it by regulation 2 of the Electronic Commerce (EC Directive) Regulations 2002.

98 Undertaking to take licence of right in infringement proceedings

- (1) If in proceedings for infringement of copyright in respect of which a licence is available as of right under section 144 (powers exercisable in consequence of report of Competition Commission⁶⁶) 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 section –
- (a) no injunction shall be granted against him,
- (b) no order for delivery up shall be made under section 99, 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.

⁶⁵ Added by SI 2003/2498.

⁶⁶ Reference to Competition Commission inserted by SI 1999/506 (replacing original reference to Monopolies and Mergers Commission).

99 Order for delivery up

- (1) Where a person -
- (a) has an infringing copy of a work in his possession, custody or control in the course of a business, or
 - (b) has in his possession, custody or control an article specifically designed or adapted for making copies of a particular copyright work, knowing or having reason to believe that it has been or is to be used to make infringing copies,

the owner of the copyright in the work may apply to the court for an order that the infringing copy or article be delivered up to him or to such other person as the court may direct.

- (2) An application shall not be made after the end of the period specified in section 113 (period after which remedy of delivery up not available); and no order shall be made unless the court also makes, or it appears to the court that there are grounds for making, an order under section 114 (order as to disposal of infringing copy or other article).
- (3) A person to whom an infringing copy or other article is delivered up in pursuance of an order under this section shall, if an order under section 114 is not made, retain it pending the making of an order, or the decision not to make an order, under that section.
- (4) Nothing in this section affects any other power of the court.

100 Right to seize infringing copies and other articles

- (1) An infringing copy of a work which is found exposed or otherwise immediately available for sale or hire, and in respect of which the copyright owner would be entitled to apply for an order under section 99, may be seized and detained by him or a person authorised by him.

The right to seize and detain is exercisable subject to the following conditions and is subject to any decision of the court under section 114.

- (2) Before anything is seized under this section notice of the time and place of the proposed seizure must be given to a local police station.
- (3) A person may for the purpose of exercising the right conferred by this section enter premises to which the public have access but may not seize anything in the possession, custody or control of a person at a permanent or regular place of business of his, and may not use any force.
- (4) At the time when anything is seized under this section there shall be left at the place where it was seized a notice in the prescribed form containing the prescribed particulars as to the person by whom or on whose authority the seizure is made and the grounds on which it is made.
- (5) In this section -

"premises" includes land, buildings, moveable structures, vehicles, vessels, aircraft and hovercraft; and

"prescribed" means prescribed by order of the Secretary of State.

- (6) An order of the Secretary of State under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Rights and remedies of exclusive licensee

101 Rights and remedies of exclusive licensee

- (1) An exclusive licensee has, except against the copyright owner, 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 copyright owner; and references in the relevant provisions of this Part to the copyright 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 copyright owner.

101A⁶⁷ Certain infringements actionable by a non-exclusive licensee

- (1) A non-exclusive licensee may bring an action for infringement of copyright if -
- (a) the infringing act was directly connected to a prior licensed act of the licensee; and
- (b) the licence -
- (i) is in writing and is signed by or on behalf of the copyright owner; and
- (ii) expressly grants the non-exclusive licensee a right of action under this section.
- (2) In an action brought under this section, the non-exclusive licensee shall have the same rights and remedies available to him as the copyright owner would have had if he had brought the action.
- (3) The rights granted under this section are concurrent with those of the copyright owner and references in the relevant provisions of this Part to the copyright owner shall be construed accordingly.
- (4) In an action brought by a non-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 copyright owner.

⁶⁷ Added by SI 2003/2498.

- (5) Subsections (1) to (4) of section 102 shall apply to a non-exclusive licensee who has a right of action by virtue of this section as it applies to an exclusive licensee.
- (6) In this section a "non-exclusive licensee" means the holder of a licence authorising the licensee to exercise a right which remains exercisable by the copyright owner.

102 Exercise of concurrent rights

- (1) Where an action for infringement of copyright brought by the copyright owner or an exclusive licensee relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action, the copyright 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 a plaintiff or added as a defendant.
- (2) A copyright 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 a copyright owner or exclusive licensee alone.
- (4) Where an action for infringement of copyright is brought which relates (wholly or partly) to an infringement in respect of which the copyright 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 copyright owner and the exclusive licensee are both parties to the action.

- (5) The copyright owner shall notify any exclusive licensee having concurrent rights before applying for an order under section 99 (order for delivery up) or exercising the right conferred by section 100 (right of seizure); and the court may on the application of the licensee make such order under section 99 or, as the case may be, prohibiting or permitting the exercise by the copyright owner of the right conferred by section 100, as it thinks fit having regard to the terms of the licence.

*Remedies for infringement of moral rights***103 Remedies for infringement of moral rights**

- (1) An infringement of a right conferred by Chapter IV (moral rights) is actionable as a breach of statutory duty owed to the person entitled to the right.
- (2) In proceedings for infringement of the right conferred by section 80 (right to object to derogatory treatment of work) the court may, if it thinks it is an adequate remedy in the circumstances, grant an injunction on terms prohibiting the doing of any act unless a disclaimer is made, in such terms and in such manner as may be approved by the court, dissociating the author or director from the treatment of the work.

*Presumptions***104 Presumptions relevant to literary, dramatic, musical and artistic works**

- (1) The following presumptions apply in proceedings brought by virtue of this Chapter with respect to a literary, dramatic, musical or artistic work.
- (2) Where a name purporting to be that of the author appeared on copies of the work as published or on the work when it was made, the person whose name appeared shall be presumed, until the contrary is proved -
 - (a) to be the author of the work;
 - (b) to have made it in circumstances not falling within section 11(2), 163, 165 or 168 (works produced in course of employment, Crown copyright, Parliamentary copyright or copyright of certain international organisations).
- (3) In the case of a work alleged to be a work of joint authorship, subsection (2) applies in relation to each person alleged to be one of the authors.
- (4) Where no name purporting to be that of the author appeared as mentioned in subsection (2) but -
 - (a) the work qualifies for copyright protection by virtue of section 155 (qualification by reference to country of first publication), and
 - (b) a name purporting to be that of the publisher appeared on copies of the work as first published,

the person whose name appeared shall be presumed, until the contrary is proved, to have been the owner of the copyright at the time of publication.
- (5) If the author of the work is dead or the identity of the author cannot be ascertained by reasonable inquiry, it shall be presumed, in the absence of evidence to the contrary -
 - (a) that the work is an original work, and

- (b) that the plaintiff's allegations as to what was the first publication of the work and as to the country of first publication are correct.

105⁶⁸ Presumptions relevant to sound recordings and films

- (1) In proceedings brought by virtue of this Chapter with respect to a sound recording, where copies of the recording as issued to the public bear a label or other mark stating -

- (a) that a named person was the owner of copyright in the recording at the date of issue of the copies, or
 (b) that the recording was first published in a specified year or in a specified country,

the label or mark shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

- (2) In proceedings brought by virtue of this Chapter with respect to a film, where copies of the film as issued to the public bear a statement -

- (a) that a named person was the director or producer of the film,
 (aa) that a named person was the principal director, the author of the screenplay, the author of the dialogue or the composer of music specifically created for and used in the film,
 (b) that a named person was the owner of copyright in the film at the date of issue of the copies, or
 (c) that the film was first published in a specified year or in a specified country,

the statement shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

- (3) In proceedings brought by virtue of this Chapter with respect to a computer program, where copies of the program are issued to the public in electronic form bearing a statement -

- (a) that a named person was the owner of copyright in the program at the date of issue of the copies, or
 (b) that the program was first published in a specified country or that copies of it were first issued to the public in electronic form in a specified year,

the statement shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

68 References to "director or producer" in ss105(2)(a) & (5)(a) inserted by SI 1996/2967 (replacing original references to "author or director"). ss105(2)(aa) added by SI 1995/3297, and ss.105(5)(aa) & (6) inserted by SI 1996/2967.

- (4) The above presumptions apply equally in proceedings relating to an infringement alleged to have occurred before the date on which the copies were issued to the public.
- (5) In proceedings brought by virtue of this Chapter with respect to a film, where the film as shown in public or communicated to the public bears a statement -
- (a) that a named person was the director or producer of the film, or
 - (aa) that a named person was the principal director of the film, the author of the screenplay, the author of the dialogue or the composer of music specifically created for and used in the film, or
 - (b) that a named person was the owner of copyright in the film immediately after it was made,
- the statement shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.
- This presumption applies equally in proceedings relating to an infringement alleged to have occurred before the date on which the film was shown in public or communicated to the public.
- (6) For the purposes of this section, a statement that a person was the director of a film shall be taken, unless a contrary indication appears, as meaning that he was the principal director of the film.

106 Presumptions relevant to works subject to Crown copyright

In proceedings brought by virtue of this Chapter with respect to a literary, dramatic or musical work in which Crown copyright subsists, where there appears on printed copies of the work a statement of the year in which the work was first published commercially, that statement shall be admissible as evidence of the fact stated and shall be presumed to be correct in the absence of evidence to the contrary.

Offences

107⁶⁹ Criminal liability for making or dealing with infringing articles &c

- (1) A person commits an offence who, without the licence of the copyright owner -
- (a) makes for sale or hire, or
 - (b) imports into the United Kingdom otherwise than for his private and domestic use, or

⁶⁹ ss.107(2A) & (4A) added by SI 2003/2498. Maximum sentence set by s107(4)(b) increased from the original two years to ten by the Copyright, etc. and Trade Marks (Offences and Enforcement) Act 2002.

- (c) possesses in the course of a business with a view to committing any act infringing the copyright, 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) exhibits in public, or
 - (iv) distributes, or
- (e) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright,

an article which is, and which he knows or has reason to believe is, an infringing copy of a copyright work.

- (2) A person commits an offence who -
 - (a) makes an article specifically designed or adapted for making copies of a particular copyright work, or
 - (b) has such an article in his possession,

knowing or having reason to believe that it is to be used to make infringing copies for sale or hire or for use in the course of a business.

- (2A) A person who infringes copyright in a work by communicating the work to the public -
 - (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 copyright,

commits an offence if he knows or has reason to believe that, by doing so, he is infringing copyright in that work.

- (3) Where copyright is infringed (otherwise than by reception of a communication to the public) -
 - (a) by the public performance of a literary, dramatic or musical work, or
 - (b) by the playing or showing in public of a sound recording or film,

any person who caused the work to be so performed, played or shown is guilty of an offence if he knew or had reason to believe that copyright would be infringed.

- (4) A person guilty of an offence under subsection (1)(a), (b),(d)(iv) or (e) is liable -
 - (a) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding £50,000⁷⁰, or both;

⁷⁰ "the statutory maximum" substituted by " £50,000" by the Digital Economy Act 2010 s42(2)

- (b) on conviction on indictment to a fine or imprisonment for a term not exceeding ten years, or both.
- (4A) A person guilty of an offence under subsection (2A) is liable -
 - (a) on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding £50,000⁷¹, or both;
 - (b) on conviction on indictment to a fine or imprisonment for a term not exceeding two years, or both.
- (5) A person guilty of any other offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both.
- (6) Sections 104 to 106 (presumptions as to various matters connected with copyright) do not apply to proceedings for an offence under this section; but without prejudice to their application in proceedings for an order under section 108 below.

107A⁷² Enforcement by local weights and measures authority

- (1) It is the duty of every local weights and measures authority to enforce within their area the provisions of section 107.
- (2) The following provisions of the Trade Descriptions Act 1968 apply in relation to the enforcement of that section by such an authority as in relation to the enforcement of that Act -
 - section 27 (power to make test purchases),
 - section 28 (power to enter premises and inspect and seize goods and documents),
 - section 29 (obstruction of authorised officers), and
 - section 33 (compensation for loss, &c. of goods seized).
- (3) Subsection (1) above does not apply in relation to the enforcement of section 107 in Northern Ireland, but it is the duty of the Department of Economic Development to enforce that section in Northern Ireland.

For that purpose the provisions of the Trade Descriptions Act 1968 specified in subsection (2) apply as if for the references to a local weights and measures authority and any officer of such an authority there were substituted references to that Department and any of its officers.

- (4) Any enactment which authorises the disclosure of information for the purpose of facilitating the enforcement of the Trade Descriptions Act 1968 shall apply as if section 107 were contained in that Act and as if the

⁷¹ "the statutory maximum" substituted by " £50,000" by the Digital Economy Act 2010 s42(2)

⁷² s.107A added by the Criminal Justice and Public Order Act 1994. (Commencement. No. 14) Order 2007 which came into force on 6 April 2007.

functions of any person in relation to the enforcement of that section were functions under that Act.

- (5) Nothing in this section shall be construed as authorising a local weights and measures authority to bring proceedings in Scotland for an offence.

108 Order for delivery up in criminal proceedings

- (1) The court before which proceedings are brought against a person for an offence under section 107 may, if satisfied that at the time of his arrest or charge -

- (a) he had in his possession, custody or control in the course of a business an infringing copy of a copyright work, or
- (b) he had in his possession, custody or control an article specifically designed or adapted for making copies of a particular copyright work, knowing or having reason to believe that it had been or was to be used to make infringing copies,

order that the infringing copy or article be delivered up to the copyright owner or to such other person as the court may direct.

- (2) For this purpose a person shall be treated as charged with an offence -

- (a) in England, Wales and Northern Ireland, when he is orally charged or is served with a summons or indictment;
- (b) in Scotland, when he is cautioned, charged or served with a complaint or indictment.

- (3) An order may be made by the court of its own motion or on the application of the prosecutor (or, in Scotland, the Lord Advocate or procurator-fiscal), and may be made whether or not the person is convicted of the offence, but shall not be made -

- (a) after the end of the period specified in section 113 (period after which remedy of delivery up not available), or
- (b) if it appears to the court unlikely that any order will be made under section 114 (order as to disposal of infringing copy or other article).

- (4) An appeal lies from an order made under this section by a magistrates' court -

- (a) in England and Wales, to the Crown Court, and
- (b) in Northern Ireland, to the county court;

and in Scotland, where an order has been made under this section, the person from whose possession, custody or control the infringing copy or article has been removed may, without prejudice to any other form of appeal under any rule of law, appeal against that order in the same manner as against sentence.

- (5) A person to whom an infringing copy or other article is delivered up in pursuance of an order under this section shall retain it pending the making of an order, or the decision not to make an order, under section 114.
- (6) ⁷³ Nothing in this section affects the powers of the court under section 143 of the Powers of Criminal Courts (Sentencing) Act 2000, Part II of the Proceeds of Crime (Scotland) Act 1995 or Article 11 of the Criminal Justice (Northern Ireland) Order 1994 (general provisions as to forfeiture in criminal proceedings).

109⁷⁴ Search warrants

- (1) Where a justice of the peace (in Scotland, a sheriff or justice of the peace) is satisfied by information on oath given by a constable (in Scotland, by evidence on oath) that there are reasonable grounds for believing -
- (a) that an offence under section 107(1), (2) or (2A) has been or is about to be committed in any premises, and
- (b) that evidence that such an offence has been or is about to be committed is in those premises,
- he may issue a warrant authorising a constable to enter and search the premises, using such reasonable force as is necessary.
- (2) The power conferred by subsection (1) does not, in England and Wales, extend to authorising a search for material of the kinds mentioned in section 9(2) of the Police and Criminal Evidence Act 1984 (certain classes of personal or confidential material).
- (3) A warrant under this section -
- (a) may authorise persons to accompany any constable executing the warrant, and
- (b) remains in force for three months from the date of its issue.
- (4) In executing a warrant issued under this section a constable may seize an article if he reasonably believes that it is evidence that any offence under section 107(1), (2) or (2A) has been or is about to be committed.
- (5) In this section "premises" includes land, buildings, fixed or moveable structures, vehicles, vessels, aircraft and hovercraft.

73 References to the Powers of Criminal Courts (Sentencing) Act 2000 and Criminal Justice (Northern Ireland) Order 1994 inserted by those enactments, and reference to the Proceeds of Crime (Scotland) Act 1995 inserted by the Criminal Procedure (Consequential Provisions) (Scotland Act) 1995, in place of original references to earlier legislation.

74 Reference in s.109(1)(a) to ss.107(1) or (2) substituted by the Copyright etc. and Trade Marks (Offences and Enforcement) Act 2002 (replacing original reference to ss. 107(1)(a), (b), (d)(iv) or (e)). That Act also added the reference to s.107(2) in s.109(4), and the words "fixed or" before "moveable" in s.109(5). References to s.107(2A) in ss.109(1)(a) & (4) inserted by SI 2003/2498. s.109(3)(b) "28 days" replaced by "three months" under the Serious Organised Crime and Police Act 2005

110 Offence by body corporate: liability of officers

- (1) Where an offence under section 107 committed by a body corporate is proved to have been committed with the consent or connivance of a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) In relation to a body corporate whose affairs are managed by its members "director" means a member of the body corporate.

*Provision for preventing importation of infringing copies***111 Infringing copies may be treated as prohibited goods**

- (1) The owner of the copyright in a published literary, dramatic or musical work may give notice in writing to the Commissioners of Customs and Excise -
 - (a) that he is the owner of the copyright in the work, and
 - (b) that he requests the Commissioners, for a period specified in the notice, to treat as prohibited goods printed copies of the work which are infringing copies.
- (2) The period specified in a notice under subsection (1) shall not exceed five years and shall not extend beyond the period for which copyright is to subsist.
- (3) The owner of the copyright in a sound recording or film may give notice in writing to the Commissioners of Customs and Excise -
 - (a) that he is the owner of the copyright in the work,
 - (b) that infringing copies of the work are expected to arrive in the United Kingdom at a time and a place specified in the notice, and
 - (c) that he requests the Commissioners to treat the copies as prohibited goods.
- (3A)⁷⁵ The Commissioners may treat as prohibited goods only infringing copies of works which arrive in the United Kingdom -
 - (a) from outside the European Economic Area, or
 - (b) from within that Area but not having been entered for free circulation.
- (3B) This section does not apply to goods entered, or expected to be entered, for free circulation, export, re-export or for a suspensive procedure in respect of which an application may be made under Article 3(1) of Council Regulation (EC) No. 3295/94 laying down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods.

⁷⁵ ss111(3A) & (3B), and reference thereto in s.111(4), added by SI 1995/1445.

- (4) When a notice is in force under this section the importation of goods to which the notice relates, otherwise than by a person for his private and domestic use, subject to subsections (3A) and (3B), is prohibited; but a person is not by reason of the prohibition liable to any penalty other than forfeiture of the goods.

112 Power of Commissioners of Customs and Excise to make regulations

- (1) The Commissioners of Customs and Excise may make regulations prescribing the form in which notice is to be given under section 111 and requiring a person giving notice -
- (a) to furnish the Commissioners with such evidence as may be specified in the regulations, either on giving notice or when the goods are imported, or at both those times, and
 - (b) to comply with such other conditions as may be specified in the regulations.
- (2) The regulations may, in particular, require a person giving such a notice -
- (a) to pay such fees in respect of the notice as may be specified by the regulations;
 - (b) to give such security as may be so specified in respect of any liability or expense which the Commissioners may incur in consequence of the notice by reason of the detention of any article or anything done to an article detained;
 - (c) to indemnify the Commissioners against any such liability or expense, whether security has been given or not.
- (3) The regulations may make different provision as respects different classes of case to which they apply and may include such incidental and supplementary provisions as the Commissioners consider expedient.
- (4) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Section 17 of the Customs and Excise Management Act 1979 (general provisions as to Commissioners' receipts) applies to fees paid in pursuance of regulations under this section as to receipts under the enactments relating to customs and excise.

Supplementary

113 Period after which remedy of delivery up not available

- (1) An application for an order under section 99 (order for delivery up in civil proceedings) may not be made after the end of the period of six years from the date on which the infringing copy or article in question was made, subject to the following provisions.
- (2) If during the whole or any part of that period the copyright owner -

- (a) is under a disability, or
- (b) is prevented by fraud or concealment from discovering the facts entitling him to apply for an order,

an application may be made at any time before the end of the period of six years from the date on which he ceased to be under a disability or, as the case may be, could with reasonable diligence have discovered those facts.

- (3) In subsection (2) "disability" -
 - (a) in England and Wales, has the same meaning as in the Limitation Act 1980;
 - (b) in Scotland, means legal disability within the meaning of the Prescription and Limitation (Scotland) Act 1973;
 - (c) in Northern Ireland, has the same meaning as in the Statute of Limitations (Northern Ireland) 1958.
- (4) An order under section 108 (order for delivery up in criminal proceedings) shall not, in any case, be made after the end of the period of six years from the date on which the infringing copy or article in question was made.

114 Order as to disposal of infringing copy or other article

- (1) An application may be made to the court for an order that an infringing copy or other article delivered up in pursuance of an order under section 99 or 108, or seized and detained in pursuance of the right conferred by section 100, shall be -
 - (a) forfeited to the copyright owner, or
 - (b) destroyed or otherwise dealt with as the court may think fit,
 or for a decision that no such order should be made.
- (2) In considering what order (if any) should be made, the court shall consider whether other remedies available in an action for infringement of copyright would be adequate to compensate the copyright owner and to protect his interests.
- (3) Provision shall be made by rules of court as to the service of notice on persons having an interest in the copy or other articles, and any such person is entitled -
 - (a) to appear in proceedings for an order under this section, whether or not he was served with notice, and
 - (b) to appeal against any order made, whether or not he appeared;

and an order shall not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

- (4) Where there is more than one person interested in a copy or other article, the court shall make such order as it thinks just and may (in particular) direct that the article be sold, or otherwise dealt with, and the proceeds divided.
- (5) If the court decides that no order should be made under this section, the person in whose possession, custody or control the copy or other article was before being delivered up or seized is entitled to its return.
- (6) References in this section to a person having an interest in a copy or other article include any person in whose favour an order could be made in respect of it
 - (a) under this section or under section 204 or 231 of this Act;
 - (b) under section 24D of the Registered Designs Act 1949;
 - (c) under section 19 of Trade Marks Act 1994 (including that section as applied by regulation 4 of the Community Trade Mark Regulations 2006 (SI 2006/1027)); or
 - (d) under regulation 1C of the Community Design Regulations 2005 (SI 2005/2339).⁷⁶

114A⁷⁷ Forfeiture of infringing copies, etc.: England and Wales or Northern Ireland

- (1) In England and Wales or Northern Ireland where there have come into the possession of any person in connection with the investigation or prosecution of a relevant offence -
 - (a) infringing copies of a copyright work, or
 - (b) articles specifically designed or adapted for making copies of a particular copyright work,

that person may apply under this section for an order for the forfeiture of the infringing copies or articles.
- (2) For the purposes of this section "relevant offence" means -
 - (a) an offence under section 107(1), (2) or (2A) (criminal liability for making or dealing with infringing articles, etc.),
 - (b) an offence under the Trade Descriptions Act 1968 (c. 29), or
 - (c) an offence involving dishonesty or deception.
- (3) An application under this section may be made -

⁷⁶ s114(6)(a)-(d) inserted by the Intellectual Property (Enforcement, etc.) Regulations 2006 SI 2006/1028, which came into force 29 April 2006

⁷⁷ ss.114A & B inserted by the Copyright, etc. and Trade Marks (Offences and Enforcement) Act 2002, and references to s.107(2A) added in s.114A(2)(a) & 114B(15) by SI 2003/2498.

- (a) where proceedings have been brought in any court for a relevant offence relating to some or all of the infringing copies or articles, to that court, or
 - (b) where no application for the forfeiture of the infringing copies or articles has been made under paragraph (a), by way of complaint to a magistrates' court.
- (4) On an application under this section, the court shall make an order for the forfeiture of any infringing copies or articles only if it is satisfied that a relevant offence has been committed in relation to the infringing copies or articles.
- (5) A court may infer for the purposes of this section that such an offence has been committed in relation to any infringing copies or articles if it is satisfied that such an offence has been committed in relation to infringing copies or articles which are representative of the infringing copies or articles in question (whether by reason of being of the same design or part of the same consignment or batch or otherwise).
- (6) Any person aggrieved by an order made under this section by a magistrates' court, or by a decision of such a court not to make such an order, may appeal against that order or decision -
- (a) in England and Wales, to the Crown Court, or
 - (b) in Northern Ireland, to the county court.
- (7) An order under this section may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under section 111 of the Magistrates' Courts Act 1980 (c. 43) or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (statement of case)).
- (8) Subject to subsection (9), where any infringing copies or articles are forfeited under this section they shall be destroyed in accordance with such directions as the court may give.
- (9) On making an order under this section the court may direct that the infringing copies or articles to which the order relates shall (instead of being destroyed) be forfeited to the owner of the copyright in question or dealt with in such other way as the court considers appropriate.

114B Forfeiture of infringing copies, etc.: Scotland

- (1) In Scotland the court may make an order under this section for the forfeiture of any -
- (a) infringing copies of a copyright work, or
 - (b) articles specifically designed or adapted for making copies of a particular copyright work.
- (2) An order under this section may be made -

- (a) on an application by the procurator-fiscal made in the manner specified in section 134 of the Criminal Procedure (Scotland) Act 1995 (c. 46), or
 - (b) where a person is convicted of a relevant offence, in addition to any other penalty which the court may impose.
- (3) On an application under subsection (2)(a), the court shall make an order for the forfeiture of any infringing copies or articles only if it is satisfied that a relevant offence has been committed in relation to the infringing copies or articles.
- (4) The court may infer for the purposes of this section that such an offence has been committed in relation to any infringing copies or articles if it is satisfied that such an offence has been committed in relation to infringing copies or articles which are representative of the infringing copies or articles in question (whether by reason of being of the same design or part of the same consignment or batch or otherwise).
- (5) The procurator-fiscal making the application under subsection (2)(a) shall serve on any person appearing to him to be the owner of, or otherwise to have an interest in, the infringing copies or articles to which the application relates a copy of the application, together with a notice giving him the opportunity to appear at the hearing of the application to show cause why the infringing copies or articles should not be forfeited.
- (6) Service under subsection (5) shall be carried out, and such service may be proved, in the manner specified for citation of an accused in summary proceedings under the Criminal Procedure (Scotland) Act 1995.
- (7) Any person upon whom notice is served under subsection (5) and any other person claiming to be the owner of, or otherwise to have an interest in, infringing copies or articles to which an application under this section relates shall be entitled to appear at the hearing of the application to show cause why the infringing copies or articles should not be forfeited.
- (8) The court shall not make an order following an application under subsection (2)(a) –
 - (a) if any person on whom notice is served under subsection (5) does not appear, unless service of the notice on that person is proved, or
 - (b) if no notice under subsection (5) has been served, unless the court is satisfied that in the circumstances it was reasonable not to serve such notice.
- (9) Where an order for the forfeiture of any infringing copies or articles is made following an application under subsection (2)(a), any person who appeared, or was entitled to appear, to show cause why infringing copies or articles should not be forfeited may, within 21 days of the making of the order, appeal to the High Court by Bill of Suspension.
- (10) Section 182(5)(a) to (e) of the Criminal Procedure (Scotland) Act 1995 (c. 46) shall apply to an appeal under subsection (9) as it applies to a stated case under Part 2 of that Act.

- (11) An order following an application under subsection (2)(a) shall not take effect -
- (a) until the end of the period of 21 days beginning with the day after the day on which the order is made, or
 - (b) if an appeal is made under subsection (9) above within that period, until the appeal is determined or abandoned.
- (12) An order under subsection (2)(b) shall not take effect -
- (a) until the end of the period within which an appeal against the order could be brought under the Criminal Procedure (Scotland) Act 1995, or
 - (b) if an appeal is made within that period, until the appeal is determined or abandoned.
- (13) Subject to subsection (14), infringing copies or articles forfeited under this section shall be destroyed in accordance with such directions as the court may give.
- (14) On making an order under this section the court may direct that the infringing copies or articles to which the order relates shall (instead of being destroyed) be forfeited to the owner of the copyright in question or dealt with in such other way as the court considers appropriate.
- (15) For the purposes of this section -
- "relevant offence" means an offence under section 107(1), (2) or (2A) (criminal liability for making or dealing with infringing articles, etc.), or under the Trade Descriptions Act 1968 (c. 29) or any offence involving dishonesty or deception; "the court" means -
- (a) in relation to an order made on an application under subsection (2)(a), the sheriff, and
 - (b) in relation to an order made under subsection (2)(b), the court which imposed the penalty.

115 Jurisdiction of county court and sheriff court

- (1) In England, Wales and Northern Ireland a county court may entertain proceedings under -
- section 99 (order for delivery up of infringing copy or other article),
 - section 102(5) (order as to exercise of rights by copyright owner where exclusive licensee has concurrent rights), or
 - section 114 (order as to disposal of infringing copy or other article),
- save that, in Northern Ireland, a county court may entertain such proceedings only⁷⁸ where the value of the infringing copies and other

⁷⁸ Words "save that -----only" added by SI 1991/724.

articles in question does not exceed the county court limit for actions in tort.

- (2) In Scotland proceedings for an order under any of those provisions may be brought in the sheriff court.
- (3) Nothing in this section shall be construed as affecting the jurisdiction of the High Court or, in Scotland, the Court of Session.

CHAPTER VII

COPYRIGHT LICENSING

Licensing schemes and licensing bodies

116 Licensing schemes and licensing bodies

- (1) In this Part a "licensing scheme" means a scheme setting out -
 - (a) the classes of case in which the operator of the scheme, or the person on whose behalf he acts, is willing to grant copyright licences, and
 - (b) the terms on which licences would be granted in those classes of case;

and for this purpose a "scheme" includes anything in the nature of a scheme, whether described as a scheme or as a tariff or by any other name.
- (2) In this Chapter a "licensing body" means a society or other organisation which has as its main object, or one of its main objects, the negotiation or granting, either as owner or prospective owner of copyright or as agent for him, of copyright licences, and whose objects include the granting of licences covering works of more than one author.
- (3) In this section "copyright licences" means licences to do, or authorise the doing of, any of the acts restricted by copyright.
- (4) References in this Chapter to licences or licensing schemes covering works of more than one author do not include licences or schemes covering only -
 - (a) a single collective work or collective works of which the authors are the same, or
 - (b) works made by, or by employees of or commissioned by, a single individual, firm, company or group of companies.

For this purpose a group of companies means a holding company and its subsidiaries, within the meaning of section 736 of the Companies Act 1985.

117⁷⁹ Licensing schemes to which following sections apply

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) communicating the work to the public;

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

118 Reference of proposed licensing scheme to tribunal

- (1) The terms of a licensing scheme proposed to be operated by a licensing body may be referred to the Copyright Tribunal by an organisation claiming to be representative of persons claiming that they require licences in cases of a description to which the scheme would apply, either generally or in relation to any description of case.
- (2) The Tribunal shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.
- (3) If the Tribunal decides to entertain the reference it shall consider the matter referred and make such order, either confirming or varying the proposed scheme, either generally or so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.
- (4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

119 Reference of licensing scheme to tribunal

- (1) If while a licensing scheme is in operation a dispute arises between the operator of the scheme and -
 - (a) a person claiming that he requires a licence in a case of a description to which the scheme applies, or
 - (b) an organisation claiming to be representative of such persons,that person or organisation may refer the scheme to the Copyright Tribunal in so far as it relates to cases of that description.

79 Revised s.117 substituted by SI 1996/2967.

- (2) A scheme which has been referred to the Tribunal under this section shall remain in operation until proceedings on the reference are concluded.
- (3) The Tribunal shall consider the matter in dispute and make such order, either confirming or varying the scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.
- (4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

120 Further reference of scheme to tribunal

- (1) Where the Copyright Tribunal has on a previous reference of a licensing scheme under section 118, 119 or 128A⁸⁰, or under this section, made an order with respect to the scheme, then, while the order remains in force -
 - (a) the operator of the scheme,
 - (b) a person claiming that he requires a licence in a case of the description to which the order applies, or
 - (c) an organisation claiming to be representative of such persons, may refer the scheme again to the Tribunal so far as it relates to cases of that description.
- (2) A licensing scheme shall not, except with the special leave of the Tribunal, be referred again to the Tribunal in respect of the same description of cases -
 - (a) within twelve months from the date of the order on the previous reference, or
 - (b) if the order was made so as to be in force for 15 months or less, until the last three months before the expiry of the order.
- (3) A scheme which has been referred to the Tribunal under this section shall remain in operation until proceedings on the reference are concluded.
- (4) The Tribunal shall consider the matter in dispute and make such order, either confirming, varying or further varying the scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.
- (5) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

121 Application for grant of licence in connection with licensing scheme

- (1) A person who claims, in a case covered by a licensing scheme, that the operator of the scheme has refused to grant him or procure the grant to him of a licence in accordance with the scheme, or has failed to do so

⁸⁰ Reference to s.128A inserted by SI 2003/2498.

within a reasonable time after being asked, may apply to the Copyright Tribunal.

- (2) A person who claims, in a case excluded from a licensing scheme, that the operator of the scheme either -
 - (a) has refused to grant him a licence or procure the grant to him of a licence, or has failed to do so within a reasonable time of being asked, and that in the circumstances it is unreasonable that a licence should not be granted, or
 - (b) proposes terms for a licence which are unreasonable, may apply to the Copyright Tribunal.
- (3) A case shall be regarded as excluded from a licensing scheme for the purposes of subsection (2) if -
 - (a) the scheme provides for the grant of licences subject to terms excepting matters from the licence and the case falls within such an exception, or
 - (b) the case is so similar to those in which licences are granted under the scheme that it is unreasonable that it should not be dealt with in the same way.
- (4) If the Tribunal is satisfied that the claim is well-founded, it shall make an order declaring that, in respect of the matters specified in the order, the applicant is entitled to a licence on such terms as the Tribunal may determine to be applicable in accordance with the scheme or, as the case may be, to be reasonable in the circumstances.
- (5) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

122 Application for review of order as to entitlement to licence

- (1) Where the Copyright Tribunal has made an order under section 121 that a person is entitled to a licence under a licensing scheme, the operator of the scheme or the original applicant may apply to the Tribunal to review its order.
- (2) An application shall not be made, except with the special leave of the Tribunal -
 - (a) within twelve months from the date of the order, or of the decision on a previous application under this section, or
 - (b) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this section is due to expire within 15 months of that decision, until the last three months before the expiry date.
- (3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal may determine to be reasonable having regard to the terms applicable in accordance with the licensing scheme or, as the case may be, the circumstances of the case.

123 Effect of order of tribunal as to licensing scheme

- (1) A licensing scheme which has been confirmed or varied by the Copyright Tribunal -
- (a) under section 118 (reference of terms of proposed scheme), or
 - (b) under section 119 or 120 (reference of existing scheme to Tribunal),

shall be in force or, as the case may be, remain in operation, so far as it relates to the description of case in respect of which the order was made, so long as the order remains in force.

- (2) While the order is in force a person who in a case of a class to which the order applies -
- (a) pays to the operator of the scheme any charges payable under the scheme in respect of a licence covering the case in question or, if the amount cannot be ascertained, gives an undertaking to the operator to pay them when ascertained, and
 - (b) complies with the other terms applicable to such a licence under the scheme,

shall be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question in accordance with the scheme.

- (3) The Tribunal may direct that the order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference was made or, if later, on which the scheme came into operation.

If such a direction is made -

- (a) any necessary repayments, or further payments, shall be made in respect of charges already paid, and
- (b) the reference in subsection (2)(a) to the charges payable under the scheme shall be construed as a reference to the charges so payable by virtue of the order.

No such direction may be made where subsection (4) below applies.

- (4) An order of the Tribunal under section 119 or 120 made with respect to a scheme which is certified for any purpose under section 143 has effect, so far as it varies the scheme by reducing the charges payable for licences, from the date on which the reference was made to the Tribunal.
- (5) Where the Tribunal has made an order under section 121 (order as to entitlement to licence under licensing scheme) and the order remains in force, the person in whose favour the order is made shall if he -

- (a) pays to the operator of the scheme any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained, and
- (b) complies with the other terms specified in the order,

be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question on the terms specified in the order.

References and applications with respect to licensing by licensing bodies

124⁸¹ Licences to which following sections apply

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) communicating the work to the public;

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

125 Reference to tribunal of proposed licence

- (1) The terms on which a licensing body proposes to grant a licence may be referred to the Copyright Tribunal by the prospective licensee.
- (2) The Tribunal shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.
- (3) If the Tribunal decides to entertain the reference it shall consider the terms of the proposed licence and make such order, either confirming or varying the terms, as it may determine to be reasonable in the circumstances.
- (4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

126 Reference to tribunal of expiring licence

- (1) A licensee under a licence which is due to expire, by effluxion of time or as a result of notice given by the licensing body, may apply to the Copyright Tribunal on the ground that it is unreasonable in the circumstances that the licence should cease to be in force.
- (2) Such an application may not be made until the last three months before the licence is due to expire.

⁸¹ Revised s.124 substituted by SI 1996/2967.

- (3) A licence in respect of which a reference has been made to the Tribunal shall remain in operation until proceedings on the reference are concluded.
- (4) If the Tribunal finds the application well-founded, it shall make an order declaring that the licensee shall continue to be entitled to the benefit of the licence on such terms as the Tribunal may determine to be reasonable in the circumstances.
- (5) An order of the Tribunal under this section may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

127 Application for review of order as to licence

- (1) Where the Copyright Tribunal has made an order under section 125, 126 or 128B (where that order did not relate to a licensing scheme)⁸², the licensing body or the person entitled to the benefit of the order may apply to the Tribunal to review its order.
- (2) An application shall not be made, except with the special leave of the Tribunal -
 - (a) within twelve months from the date of the order or of the decision on a previous application under this section, or
 - (b) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this section is due to expire within 15 months of that decision, until the last three months before the expiry date.
- (3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal may determine to be reasonable in the circumstances.

128 Effect of order of tribunal as to licence

- (1) Where the Copyright Tribunal has made an order under section 125 or 126 and the order remains in force, the person entitled to the benefit of the order shall if he -
 - (a) pays to the licensing body any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained, and
 - (b) complies with the other terms specified in the order,

be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question on the terms specified in the order.
- (2) The benefit of the order may be assigned -

⁸² Reference to s.128B and subsequent words in brackets added by SI 2003/2498.

- (a) in the case of an order under section 125, if assignment is not prohibited under the terms of the Tribunal's order; and
 - (b) in the case of an order under section 126, if assignment was not prohibited under the terms of the original licence.
- (3) The Tribunal may direct that an order under section 125 or 126, or an order under section 127 varying such an order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference or application was made or, if later, on which the licence was granted or, as the case may be, was due to expire.

If such a direction is made—

- (a) any necessary repayments, or further payments, shall be made in respect of charges already paid, and
- (b) the reference in subsection (1)(a) to the charges payable in accordance with the order shall be construed, where the order is varied by a later order, as a reference to the charges so payable by virtue of the later order.

128A⁸³ Notification of licence or licensing scheme for excepted sound recordings

- (1) This section only applies to a proposed licence or licensing scheme that will authorise the playing in public of excepted sound recordings included in broadcasts, in circumstances where by reason of the exclusion of excepted sound recordings from section 72(1), the playing in public of such recordings would otherwise infringe the copyright in them.
- (2) A licensing body must notify the Secretary of State of the details of any proposed licence or licensing scheme for excepted sound recordings before it comes into operation.
- (3) A licence or licensing scheme, which has been notified under subsection (2), may not be operated by the licensing body until 28 days have elapsed since that notification.
- (4) Subject to subsection (5), the Secretary of State shall take into account the matters set out in subsection (6) and then either -
 - (a) refer the licence or licensing scheme to the Copyright Tribunal for a determination of whether the licence or licensing scheme is reasonable in the circumstances, or
 - (b) notify the licensing body that he does not intend to refer the licence or licensing scheme to the Tribunal.
- (5) If the Secretary of State becomes aware -

⁸³ ss.128A and 128B inserted by SI 2003/2498.

- (a) that a licensing body has failed to notify him of a licence or licensing scheme under subsection (2) before it comes into operation; or
- (b) that a licence or licensing scheme has been operated within 28 days of a notification under subsection (2),

subsection (4) does not apply, but the Secretary of State may at any time refer the licence or licensing scheme to the Tribunal for a determination of whether the licence or licensing scheme is reasonable in the circumstances, or may notify the licensing body that he does not intend to refer it to the Tribunal.

- (6) The matters referred to in subsection (4) are -
 - (a) whether the terms and conditions of the proposed licence or licensing scheme have taken into account the factors set out in subsection (7);
 - (b) any written representations received by the Secretary of State;
 - (c) previous determinations of the Tribunal;
 - (d) the availability of other schemes, or the granting of other licences, to other persons in similar circumstances, and the terms of those schemes or licences; and
 - (e) the extent to which the licensing body has consulted any person who would be affected by the proposed licence or licensing scheme, or organisations representing such persons, and the steps, if any, it has taken as a result.
- (7) The factors referred to in subsection (6) are -
 - (a) the extent to which the broadcasts to be shown or played by a potential licensee in circumstances mentioned in subsection (1) are likely to include excepted sound recordings;
 - (b) the size and the nature of the audience that a licence or licensing scheme would permit to hear the excepted sound recordings;
 - (c) what commercial benefit a potential licensee is likely to obtain from playing the excepted sound recordings; and
 - (d) the extent to which the owners of copyright in the excepted sound recordings will receive equitable remuneration, from sources other than the proposed licence or licensing scheme, for the inclusion of their recordings in the broadcasts to be shown or played in public by a potential licensee.
- (8) A proposed licence or licensing scheme that must be notified to the Secretary of State under subsection (2) may only be referred to the Tribunal under section 118 or 125 before such notification takes place.
- (9) A proposed licensing scheme that has been notified to the Secretary of State under subsection (2) may only be referred to the Tribunal under section 119 after the Secretary of State has notified the licensing body that he does not intend to refer the licensing scheme to the Tribunal.

- (10) If a reference made to the Tribunal under section 118 or 125 is permitted under subsection (8) then -
- (a) the reference shall not be considered premature only because the licence or licensing scheme has not been notified to the Secretary of State under subsection (2); and
 - (b) where the Tribunal decides to entertain the reference, subsection (2) to (5) shall not apply.
- (11) Nothing in this section shall be taken to prejudice any right to make a reference or application to the Tribunal under sections 120 to 122, 126 or 127.
- (12) This section applies to modifications to an existing licence or licensing scheme as it applies to a proposed licence or licensing scheme.
- (13) In this section and in section 128B, any reference to a "licence" means a licence granted by a licensing body otherwise than in pursuance of a licensing scheme and which covers works of more than one author.

128B References to the Tribunal by the Secretary of State under section 128A

- (1) The Copyright Tribunal may make appropriate enquiries to establish whether a licence or licensing scheme referred to it by the Secretary of State under section 128A(4)(a) or (5) is reasonable in the circumstances.
- (2) When considering the matter referred, and after concluding any such enquiries, the Tribunal shall take into account -
- (a) whether the terms and conditions of the proposed licence or licensing scheme have taken into account the factors set out in section 128A(7); and
 - (b) any other factors it considers relevant,
- and shall then make an order under subsection (3).
- (3) The Tribunal shall make such order -
- (a) in the case of a licensing scheme, either confirming or varying the proposed scheme, either generally or so far as it relates to cases of any description; or
 - (b) in the case of a licence, either confirming or varying the proposed licence,
- as the Tribunal may determine to be reasonable in the circumstances.
- (4) The Tribunal may direct that the order, so far as it reduces the amount of charges payable, has effect from a date before that on which it is made.

If such a direction is made, any necessary repayments to a licensee shall be made in respect of charges already paid.

- (5) The Tribunal may award simple interest on repayments, at such rate and for such period, ending not later than the date of the order, as it thinks fit.

Factors to be taken into account in certain classes of case

129 General considerations: unreasonable discrimination

In determining what is reasonable on a reference or application under this Chapter relating to a licensing scheme or licence, the Copyright Tribunal shall have regard to -

- (a) the availability of other schemes, or the granting of other licences, to other persons in similar circumstances, and
- (b) the terms of those schemes or licences,

and shall exercise its powers so as to secure that there is no unreasonable discrimination between licensees, or prospective licensees, under the scheme or licence to which the reference or application relates and licensees under other schemes operated by, or other licences granted by, the same person.

130 Licences for reprographic copying

Where a reference or application is made to the Copyright Tribunal under this Chapter relating to the licensing of reprographic copying of published literary, dramatic, musical or artistic works, or the typographical arrangement of published editions, the Tribunal shall have regard to -

- (a) the extent to which published editions of the works in question are otherwise available,
- (b) the proportion of the work to be copied, and
- (c) the nature of the use to which the copies are likely to be put.

131 Licences for educational establishments in respect of works included in broadcasts

- (1) This section applies to references or applications under this Chapter relating to licences for the recording by or on behalf of educational establishments of broadcasts which include copyright works, or the making of copies of such recordings, for educational purposes.
- (2) The Copyright Tribunal shall, in considering what charges (if any) should be paid for a licence, have regard to the extent to which the owners of copyright in the works included in the broadcast have already received, or are entitled to receive, payment in respect of their inclusion.

132 Licences to reflect conditions imposed by promoters of events

- (1) This section applies to references or applications under this Chapter in respect of licences relating to sound recordings, films or broadcasts which include, or are to include, any entertainment or other event.
- (2) The Copyright Tribunal shall have regard to any conditions imposed by the promoters of the entertainment or other event; and, in particular, the

Tribunal shall not hold a refusal or failure to grant a licence to be unreasonable if it could not have been granted consistently with those conditions.

- (3) Nothing in this section shall require the Tribunal to have regard to any such conditions in so far as they -
- (a) purport to regulate the charges to be imposed in respect of the grant of licences, or
 - (b) relate to payments to be made to the promoters of any event in consideration of the grant of facilities for making the recording, film or broadcast.

133 Licences to reflect payments in respect of underlying rights

- (1) ⁸⁴ 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) On any reference or application under this Chapter relating to licensing in respect of the copyright in sound recordings, films or broadcasts, the Copyright Tribunal shall take into account, in considering what charges should be paid for a licence, any reasonable payments which the copyright owner is liable to make in consequence of the granting of the licence, or of the acts authorised by the licence, in respect of any performance included in the recording, film or broadcast.

134⁸⁵ Licences in respect of works included in re-transmissions

- (1) Subject to subsection (3A) this section applies to references or applications under this Chapter relating to licences to include in a broadcast -
- (a) literary, dramatic, musical or artistic works, or,
 - (b) sound recordings or films,

where one broadcast ("the first transmission") is, by reception and immediate re-transmission, to be further broadcast ("the further transmission").

84 Revised s.133(1) substituted by SI 1996/2967.

85 s.134(3A), and reference thereto in s.134(1), added by the Broadcasting Act 1996. Original s.134(4) deleted by the Broadcasting Act 1990, and reference thereto in s.134(3) deleted by SI 2003/2498.

- (2) So far as the further transmission is to the same area as the first transmission, the Copyright Tribunal shall, in considering what charges (if any) should be paid for licences for either transmission, have regard to the extent to which the copyright owner has already received, or is entitled to receive, payment for the other transmission which adequately remunerates him in respect of transmissions to that area.
- (3) So far as the further transmission is to an area outside that to which the first transmission was made, the Tribunal shall leave the further transmission out of account in considering what charges (if any) should be paid for licences for the first transmission.
- (3A) This section does not apply in relation to any application under section 73A (royalty or other sum payable in pursuance of section 73(4)).

135 Mention of specific matters not to exclude other relevant considerations

The mention in sections 129 to 134 of specific matters to which the Copyright Tribunal is to have regard in certain classes of case does not affect the Tribunal's general obligation in any case to have regard to all relevant considerations.

*Use as of right of sound recordings in broadcasts*⁸⁶

135A Circumstances in which right available

- (1) Section 135C applies to the inclusion in a broadcast of any sound recordings if -
 - (a) a licence to include those recordings in the broadcast could be granted by a licensing body or such a body could procure the grant of a licence to do so,
 - (b) the condition in subsection (2) or (3) applies, and
 - (c) the person including those recordings in the broadcast has complied with section 135B.
- (2) Where the person including the recordings in the broadcast does not hold a licence to do so, the condition is that the licensing body refuses to grant, or procure the grant of, such a licence, being a licence -
 - (a) whose terms as to payment for including the recordings in the broadcast would be acceptable to him or comply with an order of the Copyright Tribunal under section 135D relating to such a licence or any scheme under which it would be granted, and
 - (b) allowing unlimited needletime or such needletime as he has demanded.

⁸⁶ ss. 135A-135G added by the Broadcasting Act 1990, and s.135H by the Broadcasting Act 1996.

- (3) Where he holds a licence to include the recordings in the broadcast, the condition is that the terms of the licence limit needletime and the licensing body refuses to substitute or procure the substitution of terms allowing unlimited needletime or such needletime as he has demanded, or refuses to do so on terms that fall within subsection (2)(a).
- (4) The references in subsection (2) to refusing to grant, or procure the grant of, a licence, and in subsection (3) to refusing to substitute or procure the substitution of terms, include failing to do so within a reasonable time of being asked.
- (5) In the group of sections from this section to section 135G -
- “broadcast” does not include any broadcast which is a transmission of the kind specified in section 6(1A)(b) or (c);⁸⁷
- “needletime” means the time in any period (whether determined as a number of hours in the period or a proportion of the period, or otherwise) in which any recordings may be included in a broadcast;
- “sound recording” does not include a film sound track when accompanying a film.
- (6) In sections 135B to 135G, “terms of payment” means terms as to payment for including sound recordings in a broadcast.

135B Notice of intention to exercise right

- (1) A person intending to avail himself of the right conferred by section 135C must -
- (a) give notice to the licensing body of his intention to exercise the right, asking the body to propose terms of payment, and
 - (b) after receiving the proposal or the expiry of a reasonable period, give reasonable notice to the licensing body of the date on which he proposes to begin exercising that right, and the terms of payment in accordance with which he intends to do so.
- (2) Where he has a licence to include the recordings in a broadcast, the date specified in a notice under subsection (1)(b) must not be sooner than the date of expiry of that licence except in a case falling within section 135A(3).
- (3) Before the person intending to avail himself of the right begins to exercise it, he must -
- (a) give reasonable notice to the Copyright Tribunal of his intention to exercise the right, and of the date on which he proposes to begin to do so, and

⁸⁷ Inserted by SI 2003/2498, which also ceased the original application of ss.135A-H to “cable programme services” as well as broadcasts.

- (b) apply to the Tribunal under section 135D to settle the terms of payment.

135C Conditions for exercise of right

- (1) A person who, on or after the date specified in a notice under section 135B(1)(b), includes in a broadcast any sound recordings in circumstances in which this section applies, and who -
 - (a) complies with any reasonable condition, notice of which has been given to him by the licensing body, as to inclusion in the broadcast of those recordings,
 - (b) provides that body with such information about their inclusion in the broadcast as it may reasonably require, and
 - (c) makes the payments to the licensing body that are required by this section,

shall be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question.
- (2) Payments are to be made at not less than quarterly intervals in arrears.
- (3) The amount of any payment is that determined in accordance with any order of the Copyright Tribunal under section 135D or, if no such order has been made -
 - (a) in accordance with any proposal for terms of payment made by the licensing body pursuant to a request under section 135B, or
 - (b) where no proposal has been so made or the amount determined in accordance with the proposal so made is unreasonably high, in accordance with the terms of payment notified to the licensing body under section 135B(1)(b).
- (4) Where this section applies to the inclusion in a broadcast of any sound recordings, it does so in place of any licence.

135D Applications to settle payments

- (1) On an application to settle the terms of payment, the Copyright Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.
- (2) An order under subsection (1) has effect from the date the applicant begins to exercise the right conferred by section 135C and any necessary repayments, or further payments, shall be made in respect of amounts that have fallen due.

135E References etc. about conditions, information and other terms

- (1) A person exercising the right conferred by section 135C, or who has given notice to the Copyright Tribunal of his intention to do so, may refer to the Tribunal -

- (a) any question whether any condition as to the inclusion in a broadcast of sound recordings, notice of which has been given to him by the licensing body in question, is a reasonable condition, or
 - (b) any question whether any information is information which the licensing body can reasonably require him to provide.
- (2) On a reference under this section, the Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.

135F Application for review of order

- (1) A person exercising the right conferred by section 135C or the licensing body may apply to the Copyright Tribunal to review any order under section 135D or 135E.
- (2) An application shall not be made, except with the special leave of the Tribunal -
 - (a) within twelve months from the date of the order, or of the decision on a previous application under this section, or
 - (b) if the order was made so as to be in force for fifteen months or less, or as a result of a decision on a previous application is due to expire within fifteen months of that decision, until the last three months before the expiry date.
- (3) On the application 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 order under this section has effect from the date on which it is made or such later date as may be specified by the Tribunal.

135G Factors to be taken into account

- (1) In determining what is reasonable on an application or reference under section 135D or 135E, or on reviewing any order under section 135F, the Copyright Tribunal shall -
 - (a) have regard to the terms of any orders which it has made in the case of persons in similar circumstances exercising the right conferred by section 135C, and
 - (b) exercise its powers so as to secure that there is no unreasonable discrimination between persons exercising that right against the same licensing body.
- (2) In settling the terms of payment under section 135D, the Tribunal shall not be guided by any order it has made under any enactment other than that section.
- (3) Section 134 (factors to be taken into account: retransmissions) applies on an application or reference under sections 135D to 135F as it applies on an application or reference relating to a licence.

135H Power to amend sections 135A to 135G

- (1) The Secretary of State may by order, subject to such transitional provision as appears to him to be appropriate, amend sections 135A to 135G so as -
 - (a) to include in any reference to sound recordings any works of a description specified in the order; or
 - (b) to exclude from any reference to a broadcast any broadcast of a description so specified.
- (2) 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 resolution of each House of Parliament.

*Implied indemnity in schemes or licences for reprographic copying***136 Implied indemnity in certain schemes and licences for reprographic copying**

- (1) This section applies to -
 - (a) schemes for licensing reprographic copying of published literary, dramatic, musical or artistic works, or the typographical arrangement of published editions, and
 - (b) licences granted by licensing bodies for such copying,

where the scheme or licence does not specify the works to which it applies with such particularity as to enable licensees to determine whether a work falls within the scheme or licence by inspection of the scheme or licence and the work.
- (2) There is implied -
 - (a) in every scheme to which this section applies an undertaking by the operator of the scheme to indemnify a person granted a licence under the scheme, and
 - (b) in every licence to which this section applies an undertaking by the licensing body to indemnify the licensee,

against any liability incurred by him by reason of his having infringed copyright by making or authorising the making of reprographic copies of a work in circumstances within the apparent scope of his licence.
- (3) The circumstances of a case are within the apparent scope of a licence if -
 - (a) it is not apparent from inspection of the licence and the work that it does not fall within the description of works to which the licence applies; and
 - (b) the licence does not expressly provide that it does not extend to copyright of the description infringed.

- (4) In this section "liability" includes liability to pay costs; and this section applies in relation to costs reasonably incurred by a licensee in connection with actual or contemplated proceedings against him for infringement of copyright as it applies to sums which he is liable to pay in respect of such infringement.
- (5) A scheme or licence to which this section applies may contain reasonable provision -
 - (a) with respect to the manner in which, and time within which, claims under the undertaking implied by this section are to be made;
 - (b) enabling the operator of the scheme or, as the case may be, the licensing body to take over the conduct of any proceedings affecting the amount of his liability to indemnify.

Reprographic copying by educational establishments

137 Power to extend coverage of scheme or licence

- (1) This section applies to -
 - (a) a licensing scheme to which sections 118 to 123 apply (see section 117) and which is operated by a licensing body, or
 - (b) a licence to which sections 125 to 128 apply (see section 124),
 so far as it provides for the grant of licences, or is a licence, authorising the making by or on behalf of educational establishments for the purposes of instruction of reprographic copies of published literary, dramatic, musical or artistic works, or of the typographical arrangement of published editions.
- (2) If it appears to the Secretary of State with respect to a scheme or licence to which this section applies that -
 - (a) works of a description similar to those covered by the scheme or licence are unreasonably excluded from it, and
 - (b) making them subject to the scheme or licence would not conflict with the normal exploitation of the works or unreasonably prejudice the legitimate interests of the copyright owners,
 he may by order provide that the scheme or licence shall extend to those works.
- (3) Where he proposes to make such an order, the Secretary of State shall give notice of the proposal to -
 - (a) the copyright owners,
 - (b) the licensing body in question, and
 - (c) such persons or organisations representative of educational establishments, and such other persons or organisations, as the Secretary of State thinks fit.

- (4) The notice shall inform those persons of their right to make written or oral representations to the Secretary of State about the proposal within six months from the date of the notice; and if any of them wishes to make oral representations, the Secretary of State shall appoint a person to hear the representations and report to him.
- (5) In considering whether to make an order the Secretary of State shall take into account any representations made to him in accordance with subsection (4), and such other matters as appear to him to be relevant.

138 Variation or discharge of order extending scheme or licence

- (1) The owner of the copyright in a work in respect of which an order is in force under section 137 may apply to the Secretary of State for the variation or discharge of the order, stating his reasons for making the application.
- (2) The Secretary of State shall not entertain an application made within two years of the making of the original order, or of the making of an order on a previous application under this section, unless it appears to him that the circumstances are exceptional.
- (3) On considering the reasons for the application the Secretary of State may confirm the order forthwith; if he does not do so, he shall give notice of the application to -
 - (a) the licensing body in question, and
 - (b) such persons or organisations representative of educational establishments, and such other persons or organisations, as he thinks fit.
- (4) The notice shall inform those persons of their right to make written or oral representations to the Secretary of State about the application within the period of two months from the date of the notice; and if any of them wishes to make oral representations, the Secretary of State shall appoint a person to hear the representations and report to him.
- (5) In considering the application the Secretary of State shall take into account the reasons for the application, any representations made to him in accordance with subsection (4), and such other matters as appear to him to be relevant.
- (6) The Secretary of State may make such order as he thinks fit confirming or discharging the order (or, as the case may be, the order as previously varied), or varying (or further varying) it so as to exclude works from it.

139 Appeals against orders

- (1) The owner of the copyright in a work which is the subject of an order under section 137 (order extending coverage of scheme or licence) may appeal to the Copyright Tribunal which may confirm or discharge the order, or vary it so as to exclude works from it, as it thinks fit having regard to the considerations mentioned in subsection (2) of that section.

- (2) Where the Secretary of State has made an order under section 138 (order confirming, varying or discharging order extending coverage of scheme or licence) -
- (a) the person who applied for the order, or
 - (b) any person or organisation representative of educational establishments who was given notice of the application for the order and made representations in accordance with subsection (4) of that section,
- may appeal to the Tribunal which may confirm or discharge the order or make any other order which the Secretary of State might have made.
- (3) An appeal under this section shall be brought within six weeks of the making of the order or such further period as the Tribunal may allow.
- (4) An order under section 137 or 138 shall not come into effect until the end of the period of six weeks from the making of the order or, if an appeal is brought before the end of that period, until the appeal proceedings are disposed of or withdrawn.
- (5) If an appeal is brought after the end of that period, any decision of the Tribunal on the appeal does not affect the validity of anything done in reliance on the order appealed against before that decision takes effect.

140 Inquiry whether new scheme or general licence required

- (1) The Secretary of State may appoint a person to inquire into the question whether new provision is required (whether by way of a licensing scheme or general licence) to authorise the making by or on behalf of educational establishments for the purposes of instruction of reprographic copies of -
- (a) published literary, dramatic, musical or artistic works, or
 - (b) the typographical arrangement of published editions,
- of a description which appears to the Secretary of State not to be covered by an existing licensing scheme or general licence and not to fall within the power conferred by section 137 (power to extend existing schemes and licences to similar works).
- (2) The procedure to be followed in relation to an inquiry shall be such as may be prescribed by regulations made by the Secretary of State.
- (3) The regulations shall, in particular, provide for notice to be given to -
- (a) persons or organisations appearing to the Secretary of State to represent the owners of copyright in works of that description, and
 - (b) persons or organisations appearing to the Secretary of State to represent educational establishments,
- and for the making of written or oral representations by such persons; but without prejudice to the giving of notice to, and the making of representations by, other persons and organisations.

- (4) The person appointed to hold the inquiry shall not recommend the making of new provision unless he is satisfied -
- (a) that it would be of advantage to educational establishments to be authorised to make reprographic copies of the works in question, and
 - (b) that making those works subject to a licensing scheme or general licence would not conflict with the normal exploitation of the works or unreasonably prejudice the legitimate interests of the copyright owners.
- (5) If he does recommend the making of new provision he shall specify any terms, other than terms as to charges payable, on which authorisation under the new provision should be available.
- (6) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section (and section 141) a "general licence" means a licence granted by a licensing body which covers all works of the description to which it applies.

141 Statutory licence where recommendation not implemented

- (1) The Secretary of State may, within one year of the making of a recommendation under section 140 by order provide that if, or to the extent that, provision has not been made in accordance with the recommendation, the making by or on behalf of an educational establishment, for the purposes of instruction, of reprographic copies of the works to which the recommendation relates shall be treated as licensed by the owners of the copyright in the works.
- (2) For that purpose provision shall be regarded as having been made in accordance with the recommendation if -
- (a) a certified licensing scheme has been established under which a licence is available to the establishment in question, or
 - (b) a general licence has been -
 - (i) granted to or for the benefit of that establishment, or
 - (ii) referred by or on behalf of that establishment to the Copyright Tribunal under section 125 (reference of terms of proposed licence), or
 - (iii) offered to or for the benefit of that establishment and refused without such a reference,

and the terms of the scheme or licence accord with the recommendation.

- (3) The order shall also provide that any existing licence authorising the making of such copies (not being a licence granted under a certified licensing scheme or a general licence) shall cease to have effect to the extent that it is more restricted or more onerous than the licence provided for by the order.

- (4) The order shall provide for the licence to be free of royalty but, as respects other matters, subject to any terms specified in the recommendation and to such other terms as the Secretary of State may think fit.
- (5) The order may provide that where a copy which would otherwise be an infringing copy is made in accordance with the licence provided by the order but is subsequently dealt with, it shall be treated as an infringing copy for the purposes of that dealing, and if that dealing infringes copyright for all subsequent purposes.

In this subsection "dealt with" means sold or let for hire, offered or exposed for sale or hire, or exhibited in public.
- (6) The order shall not come into force until at least six months after it is made.
- (7) An order may be varied from time to time, but not so as to include works other than those to which the recommendation relates or remove any terms specified in the recommendation, and may be revoked.
- (8) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) In this section a "certified licensing scheme" means a licensing scheme certified for the purposes of this section under section 143.

Royalty or other sum payable for lending of certain works

142⁸⁸ 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.

⁸⁸ Revised s.142 substituted by SI 1996/2967.

*Certification of licensing schemes***143 Certification of licensing schemes**

- (1) A person operating or proposing to operate a licensing scheme may apply to the Secretary of State to certify the scheme for the purposes of -
 - (a) section 35 (educational recording of broadcasts),
 - (b) section 60 (abstracts of scientific or technical articles),
 - (c) ⁸⁹ section 66 (lending to public of copies of certain works),
 - (d) section 74 (sub-titled copies of broadcasts for people who are deaf or hard of hearing), or
 - (e) section 141 (reprographic copying of published works by educational establishments).
- (2) The Secretary of State shall by order made by statutory instrument certify the scheme if he is satisfied that it -
 - (a) enables the works to which it relates to be identified with sufficient certainty by persons likely to require licences, and
 - (b) sets out clearly the charges (if any) payable and the other terms on which licences will be granted.
- (3) The scheme shall be scheduled to the order and the certification shall come into operation for the purposes of section 35, 60, 66, 74 or 141, as the case may be -
 - (a) on such date, not less than eight weeks after the order is made, as may be specified in the order, or
 - (b) if the scheme is the subject of a reference under section 118 (reference of proposed scheme), any later date on which the order of the Copyright Tribunal under that section comes into force or the reference is withdrawn.
- (4) A variation of the scheme is not effective unless a corresponding amendment of the order is made; and the Secretary of State shall make such an amendment in the case of a variation ordered by the Copyright Tribunal on a reference under section 118, 119 or 120, and may do so in any other case if he thinks fit.
- (5) The order shall be revoked if the scheme ceases to be operated and may be revoked if it appears to the Secretary of State that it is no longer being operated according to its terms.

89 Revised s.143(1)(c) substituted by SI 1996/2967 (referring to 'lending', rather than 'rental' as originally).

*Powers exercisable in consequence of competition report***144 Powers exercisable in consequence of report of Competition Commission**

- (1) ⁹⁰ Subsection (1A) applies where whatever needs to be remedied, mitigated or prevented by the Secretary of State, the Office of Fair Trading or as (the case may be) the Competition Commission under section 12(5) of the Competition Act 1980 or section 41(2), 55(2), 66(6), 75(2), 83(2), 138(2) 147(2) or 160(2) of, or paragraph 5(2) or 10(2) of Schedule 7 to, the Enterprise Act 2002 (powers to take remedial action following references to the Commission in connection with public bodies and certain other persons, mergers or market investigations) consists of or includes -
- (a) conditions in licences granted by the owner of copyright in a work restricting the use of the work by the licensee or the right of the copyright owner to grant other licences, or
 - (b) a refusal of a copyright owner to grant licences on reasonable terms.
- (1A) The powers conferred by Schedule 8 to the Enterprise Act 2002 include power to cancel or modify those conditions and, instead or in addition, to provide that licences in respect of the copyright shall be available as of right.
- (2) The references to anything permitted by Schedule 8 to the Enterprise Act 2002 in section 12(5A) of the Competition Act 1980 and in sections 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a) and (164(1) of, and paragraphs, 5, 10 and 11 of Schedule 7 to, the Act of 2002 shall be construed accordingly.
- (3) The Secretary of State, the Office of Fair Trading or (as the case may be) the Competition Commission shall only exercise the powers available by virtue of this section if he or it is satisfied that to do so does not contravene any Convention relating to copyright to which the United Kingdom is a party.
- (4) The terms of a licence available by virtue of this section shall, in default of agreement, be settled by the Copyright Tribunal on an application by the person requiring the licence; and terms so settled shall authorise the licensee to do everything in respect of which a licence is so available.
- (5) Where the terms of a licence are settled by the Tribunal, the licence has effect from the date on which the application to the Tribunal was made.

⁹⁰ Reference to "Competition Commission" in section title substituted by the Competition Act 1998 (replacing original reference to the Monopolies and Mergers Commission). Revised ss.144(1)-(2) substituted, and s.144(3) amended, by the Enterprise Act 2002. See also Annex V.

144A⁹¹ Collective exercise of certain rights in relation to cable re-transmission

- (1) This section applies to the right of the owner of copyright in a literary, dramatic, musical or artistic work, sound recording or film to grant or refuse authorisation for cable re-transmission of a wireless broadcast from another EEA⁹² state in which the work is included.

That right is referred to below as “cable re-transmission right”.

- (2) Cable re-transmission right may be exercised against a cable operator only through a licensing body.
- (3) Where a copyright owner has not transferred management of his cable re-transmission right to a licensing body, the licensing body which manages rights of the same category shall be deemed to be mandated to manage his right.

Where more than one licensing body manages rights of that category, he may choose which of them is deemed to be mandated to manage his right.

- (4) A copyright owner to whom subsection (3) applies has the same rights and obligations resulting from any relevant agreement between the cable operator and the licensing body as have copyright owners who have transferred management of their cable re-transmission right to that licensing body.
- (5) Any rights to which a copyright owner may be entitled by virtue of subsection (4) must be claimed within the period of three years beginning with the date of the cable re-transmission concerned.
- (6) This section does not affect any rights exercisable by the maker of the broadcast, whether in relation to the broadcast or a work included in it.
- (7) In this section -

“cable operator” means a person responsible for cable re-transmission of a wireless broadcast; and

“cable re-transmission” means the reception and immediate re-transmission by cable, including the transmission of microwave energy between terrestrial fixed points, of a wireless broadcast.

91 s.144A added by SI 1996/2967. Word “wireless” inserted in s.144A(1), and revised s.144A(7) substituted, by SI 2003/2498.

92 The word “member” repealed by SI 2006/1028

CHAPTER VIII
THE COPYRIGHT TRIBUNAL

The Tribunal

145 The Copyright Tribunal.

- (1) The Tribunal established under section 23 of the Copyright Act 1956 is renamed the Copyright Tribunal.
- (2) The Tribunal shall consist of a chairman and two deputy chairmen appointed by the Lord Chancellor, after consultation with the Lord Advocate⁹³, and not less than two or more than eight ordinary members appointed by the Secretary of State.
- (3) ⁹⁴ A person is not eligible for appointment as chairman or deputy chairman unless -
 - (a) he has a 7-year general qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990;
 - (b) he is an advocate or solicitor in Scotland of at least 7 years' standing;
 - (c) he is a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least 7 years' standing; or
 - (d) he has held judicial office.

146 Membership of Tribunal

- (1) The members of the Copyright Tribunal shall hold and vacate office in accordance with their terms of appointment, subject to the following provisions.
- (2) A member of the Tribunal may resign his office by notice in writing to the Secretary of State or, in the case of the chairman or a deputy chairman, to the Lord Chancellor.
- (3) The Secretary of State or, in the case of the chairman or a deputy chairman, the Lord Chancellor may by notice in writing to the member concerned remove him from office if -
 - (a) he has become bankrupt or made an arrangement with his creditors or, in Scotland, his estate has been sequestrated or he has executed a trust deed for his creditors or entered into a composition contract, or
 - (b) he is incapacitated by physical or mental illness,

93 See Annex V.

94 Revised s.145(3) substituted by the Courts and Legal Services Act 1990.

or if he is in the opinion of the Secretary of State or, as the case may be, the Lord Chancellor otherwise unable or unfit to perform his duties as member.

- (3A)⁹⁵ A person who is the chairman or a deputy chairman of the Tribunal shall vacate his office on the day on which he attains the age of 70 years; but this subsection is subject to section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 (power to authorise continuance in office up to the age of 75 years).
- (4) If a member of the Tribunal is by reason of illness, absence or other reasonable cause for the time being unable to perform the duties of his office, either generally or in relation to particular proceedings, a person may be appointed to discharge his duties for a period not exceeding six months at one time or, as the case may be, in relation to those proceedings.
- (5) The appointment shall be made -
- (a) in the case of the chairman or deputy chairman, by the Lord Chancellor, who shall appoint a person who would be eligible for appointment to that office, and
 - (b) in the case of an ordinary member, by the Secretary of State;
- and a person so appointed shall have during the period of his appointment, or in relation to the proceedings in question, the same powers as the person in whose place he is appointed.
- (6) The Lord Chancellor shall consult the Lord Advocate before exercising his powers under this section.

147 Financial provisions

- (1) There shall be paid to the members of the Copyright Tribunal such remuneration (whether by way of salaries or fees), and such allowances, as the Secretary of State with the approval of the Treasury may determine.
- (2) The Secretary of State may appoint such staff for the Tribunal as, with the approval of the Treasury as to numbers and remuneration, he may determine.
- (3) The remuneration and allowances of members of the Tribunal, the remuneration of any staff and such other expenses of the Tribunal as the Secretary of State with the approval of the Treasury may determine shall be paid out of money provided by Parliament.

148 Constitution for purposes of proceedings

- (1) For the purposes of any proceedings the Copyright Tribunal shall consist of -

⁹⁵ s.146(3A) added by the Judicial Pensions and Retirement Act 1993.

- (a) a chairman, who shall be either the chairman or a deputy chairman of the Tribunal, and
 - (b) two or more ordinary members.
- (2) If the members of the Tribunal dealing with any matter are not unanimous, the decision shall be taken by majority vote; and if, in such a case, the votes are equal the chairman shall have a further, casting vote.
- (3) Where part of any proceedings before the Tribunal has been heard and one or more members of the Tribunal are unable to continue, the Tribunal shall remain duly constituted for the purpose of those proceedings so long as the number of members is not reduced to less than three.
- (4) If the chairman is unable to continue, the chairman of the Tribunal shall -
- (a) appoint one of the remaining members to act as chairman, and
 - (b) appoint a suitably qualified person to attend the proceedings and advise the members on any questions of law arising.
- (5) A person is "suitably qualified" for the purposes of subsection (4)(b) if he is, or is eligible for appointment as, a deputy chairman of the Tribunal.

Jurisdiction and procedure

149⁹⁶ Jurisdiction of the Tribunal

The Copyright Tribunal has jurisdiction under this Part to hear and determine proceedings under -

- (za) section 73(determination of royalty or other remuneration to be paid with respect to re-transmission of broadcast including work);
- (zb) section 93C (application to determine amount of equitable remuneration under section 93B);
 - (a) section 118, 119, or 120 (reference of licensing scheme);
 - (b) section 121 or 122 (application with respect to entitlement to licence under licensing scheme);
 - (c) section 125, 126 or 127 (reference or application with respect to licensing by licensing body);
- (ca) section 128B (reference by the Secretary of State under section 128A);
- (cc) section 135D or 135E (application or reference with respect to use as of right of sound recordings in broadcasts);

⁹⁶ Words "The Copyright Tribunal has jurisdiction under this Part" inserted by SI 1996/2967 (replacing original wording "The function of the Copyright Tribunal is"). Paragraphs (za) & (zb) added by the Broadcasting Act 1996 and SI 1996/2967 respectively. Paragraphs (ca) and (cc) added by SI 2003/2498 and the Broadcasting Act 1990 respectively. Words "lending of certain works" inserted in paragraph (e) by SI 1996/2967 (replacing original wording "rental of sound recording, film or computer program"). Original paragraphs (g) and (h) deleted by SI 1996/2967.

- (d) section 139 (appeal against order as to coverage of licensing scheme or licence);
- (e) section 142 (application to settle royalty or other sum payable for lending of certain works);
- (f) section 144(4) (application to settle terms of copyright licence available as of right);

150 General power to make rules

- (1) The Lord Chancellor may, after consultation with the Lord Advocate⁹⁷, make rules for regulating proceedings before the Copyright Tribunal and, subject to the approval of the Treasury, as to the fees chargeable in respect of such proceedings.
- (2) ⁹⁸ The rules may apply in relation to the Tribunal, as respects proceedings in England and Wales or Northern Ireland, any of the provisions of Part I of the Arbitration Act 1996.
- (3) Provision shall be made by the rules -
 - (a) prohibiting the Tribunal from entertaining a reference under section 118, 119 or 120 by a representative organisation unless the Tribunal is satisfied that the organisation is reasonably representative of the class of persons which it claims to represent;
 - (b) specifying the parties to any proceedings and enabling the Tribunal to make a party to the proceedings any person or organisation satisfying the Tribunal that they have a substantial interest in the matter; and
 - (c) requiring the Tribunal to give the parties to proceedings an opportunity to state their case, in writing or orally as the rules may provide.
- (4) The rules may make provision for regulating or prescribing any matters incidental to or consequential upon any appeal from the Tribunal under section 152 (appeal to the court on point of law).
- (5) Rules under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

151 Costs, proof of orders, &c

- (1) The Copyright Tribunal may order that the costs of a party to proceedings before it shall be paid by such other party as the Tribunal may direct; and the Tribunal may tax or settle the amount of the costs, or direct in what manner they are to be taxed.

⁹⁷ See Annex V.

⁹⁸ Revised s.150(2) substituted by the Arbitration Act 1996.

- (2) A document purporting to be a copy of an order of the Tribunal and to be certified by the chairman to be a true copy shall, in any proceedings, be sufficient evidence of the order unless the contrary is proved.
- (3) As respect proceedings in Scotland, the Tribunal has the like powers for securing the attendance of witnesses and the production of documents, and with regard to the examination of witnesses on oath, as an arbiter under a submission.

151A⁹⁹ Award of interest

- (1) Any of the following, namely -
 - (a) a direction under section 123(3) so far as relating to a licence for communicating a work to the public;
 - (b) a direction under section 128(3) so far as so relating;
 - (c) an order under section 135D(1); and
 - (d) an order under section 135F confirming or varying an order under section 135D(1),

may award simple interest at such rate and for such period, beginning not earlier than the relevant date and ending not later than the date of the order, as the Copyright Tribunal thinks reasonable in the circumstances.
- (2) In this section "the relevant date" means -
 - (a) in relation to a direction under section 123(3), the date on which the reference was made;
 - (b) in relation to a direction under section 128(3), the date on which the reference or application was made;
 - (c) in relation to an order under section 135D(1), the date on which the first payment under section 135C(2) became due; and
 - (d) in relation to an order under section 135F, the date on which the application was made.

Appeals

152 Appeal to the court on point of law

- (1) An appeal lies on any point of law arising from a decision of the Copyright Tribunal to the High Court or, in the case of proceedings of the Tribunal in Scotland, to the Court of Session.
- (2) Provision shall be made by rules under section 150 limiting the time within which an appeal may be brought.
- (3) Provision may be made by rules under that section -

⁹⁹ s.151A added by the Broadcasting Act 1996.

- (a) for suspending, or authorising or requiring the Tribunal to suspend, the operation of orders of the Tribunal in cases where its decision is appealed against;
- (b) for modifying in relation to an order of the Tribunal whose operation is suspended the operation of any provision of this Act as to the effect of the order;
- (c) for the publication of notices or the taking of other steps for securing that persons affected by the suspension of an order of the Tribunal will be informed of its suspension.

CHAPTER IX

QUALIFICATION FOR AND EXTENT OF COPYRIGHT PROTECTION

Qualification for copyright protection

153 Qualification for copyright protection

- (1) Copyright does not subsist in a work unless the qualification requirements of this Chapter are satisfied as regards -
 - (a) the author (see section 154), or
 - (b) the country in which the work was first published (see section 155), or
 - (c) in the case of a broadcast, the country from which the broadcast was made (see section 156).
- (2) Subsection (1) does not apply in relation to Crown copyright or Parliamentary copyright (see sections 163 to 166D¹⁰⁰) or to copyright subsisting by virtue of section 168 (copyright of certain international organisations).
- (3) If the qualification requirements of this Chapter, or section 163, 165 or 168, are once satisfied in respect of a work, copyright does not cease to subsist by reason of any subsequent event.

154¹⁰¹ Qualification by reference to author

- (1) A work qualifies for copyright protection if the author was at the material time a qualifying person, that is -
 - (a) a British citizen, a British Dependent Territories citizen, a British National (Overseas), a British Overseas citizen, a British subject or a British protected person within the meaning of the British Nationality Act 1981, or

¹⁰⁰ Reference to section 166D inserted by Government of Wales Act 2006 (replacing reference to section 166B).

¹⁰¹ Entry in s.154(3) relating to s.12 revised by SI 1995/3297. s.154(5)(c) (cable programmes) deleted by SI 2003/2408.

- (b) an individual domiciled or resident in the United Kingdom or another country to which the relevant provisions of this Part extend, or
 - (c) a body incorporated under the law of a part of the United Kingdom or of another country to which the relevant provisions of this Part extend.
- (2) Where, or so far as, provision is made by Order under section 159 (application of this Part to countries to which it does not extend), a work also qualifies for copyright protection if at the material time the author was a citizen or subject of, an individual domiciled or resident in, or a body incorporated under the law of, a country to which the Order relates.
- (3) A work of joint authorship qualifies for copyright protection if at the material time any of the authors satisfies the requirements of subsection (1) or (2); but where a work qualifies for copyright protection only under this section, only those authors who satisfy those requirements shall be taken into account for the purposes of -
- section 11(1) and (2) (first ownership of copyright; entitlement of author or author's employer),
 - section 12 (duration of copyright), and section 9(4) (meaning of "unknown authorship" so far as it applies for the purposes of section 12, and
 - section 57 (anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author).
- (4) The material time in relation to a literary, dramatic, musical or artistic work is -
- (a) in the case of an unpublished work, when the work was made or, if the making of the work extended over a period, a substantial part of that period;
 - (b) in the case of a published work, when the work was first published or, if the author had died before that time, immediately before his death.
- (5) The material time in relation to other descriptions of work is as follows -
- (a) in the case of a sound recording or film, when it was made;
 - (b) in the case of a broadcast, when the broadcast was made;
 - (c) [(c)]
 - (d) in the case of the typographical arrangement of a published edition, when the edition was first published.

155 Qualification by reference to country of first publication

- (1) A literary, dramatic, musical or artistic work, a sound recording or film, or the typographical arrangement of a published edition, qualifies for copyright protection if it is first published -
- (a) in the United Kingdom, or
 - (b) in another country to which the relevant provisions of this Part extend.

- (2) Where, or so far as, provision is made by Order under section 159 (application of this Part to countries to which it does not extend), such a work also qualifies for copyright protection if it is first published in a country to which the Order relates.

For the purposes of this section, publication in one country shall not be regarded as other than the first publication by reason of simultaneous publication elsewhere, and for this purpose publication elsewhere within the previous 30 days shall be treated as simultaneous.

156 Qualification by reference to place of transmission

- (1) A broadcast qualifies for copyright protection if it is made from a place in -
- (a) the United Kingdom, or
 - (b) another country to which the relevant provisions of this Part extend.
- (2) Where, or so far as, provision is made by Order under section 159 (application of this Part to countries to which it does not extend), a broadcast also qualifies for copyright protection if it is made from a place in a country to which the Order relates.

Extent and application of this Part

157 Countries to which this Part extends

- (1) This Part extends to England and Wales, Scotland and Northern Ireland.
- (2) Her Majesty may by Order in Council direct that this Part shall extend, subject to such exceptions and modifications as may be specified in the Order, to -
- (a) any of the Channel Islands,
 - (b) the Isle of Man, or
 - (c) any colony.
- (3) That power includes power to extend, subject to such exceptions and modifications as may be specified in the Order, any Order in Council made under the following provisions of this Chapter.
- (4) The legislature of a country to which this Part has been extended may modify or add to the provisions of this Part, in their operation as part of the law of that country, as the legislature may consider necessary to adapt the provisions to the circumstances of that country -
- (a) as regards procedure and remedies, or
 - (b) as regards works qualifying for copyright protection by virtue of a connection with that country.
- (5) Nothing in this section shall be construed as restricting the extent of paragraph 36 of Schedule 1 (transitional provisions: dependent territories where the Copyright Act 1956 or the Copyright Act 1911 remains in force)

in relation to the law of a dependent territory to which this Part does not extend.

158 Countries ceasing to be colonies

- (1) The following provisions apply where a country to which this Part has been extended ceases to be a colony of the United Kingdom.
- (2) As from the date on which it ceases to be a colony it shall cease to be regarded as a country to which this Part extends for the purposes of -
 - (a) section 160(2)(a) (denial of copyright protection to citizens of countries not giving adequate protection to British works), and
 - (b) sections 163 and 165 (Crown and Parliamentary copyright).
- (3) But it shall continue to be treated as a country to which this Part extends for the purposes of sections 154 to 156 (qualification for copyright protection) until -
 - (a) an Order in Council is made in respect of that country under section 159 (application of this Part to countries to which it does not extend), or
 - (b) an Order in Council is made declaring that it shall cease to be so treated by reason of the fact that the provisions of this Part as part of the law of that country have been repealed or amended.
- (4) A statutory instrument containing an Order in Council under subsection (3)(b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

159 Application of this Part to countries to which it does not extend

- (1) Her Majesty may by Order in Council make provision for applying in relation to a country to which this Part does not extend any of the provisions of this Part specified in the Order, so as to secure that those provisions -
 - (a) apply in relation to persons who are citizens or subjects of that country or are domiciled or resident there, as they apply to persons who are British citizens or are domiciled or resident in the United Kingdom, or
 - (b) apply in relation to bodies incorporated under the law of that country as they apply in relation to bodies incorporated under the law of a part of the United Kingdom, or
 - (c) apply in relation to works first published in that country as they apply in relation to works first published in the United Kingdom, or
 - (d) apply in relation to broadcasts made from that country as they apply in relation to broadcasts made from the United Kingdom.
- (2) An Order may make provision for all or any of the matters mentioned in subsection (1) and may -
 - (a) apply any provisions of this Part subject to such exceptions and modifications as are specified in the Order; and

- (b) direct that any provisions of this Part apply either generally or in relation to such classes of works, or other classes of case, as are specified in the Order.
- (3) Except in the case of a Convention country or another member State of the European Economic Community, Her Majesty shall not make an Order in Council under this section in relation to a country unless satisfied that provision has been or will be made under the law of that country, in respect of the class of works to which the Order relates, giving adequate protection to the owners of copyright under this Part.
- (4) In subsection (3) "Convention country" means a country which is a party to a Convention relating to copyright to which the United Kingdom is also a party.
- (5) A statutory instrument containing an Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

160 Denial of copyright protection to citizens of countries not giving adequate protection to British works

- (1) If it appears to Her Majesty that the law of a country fails to give adequate protection to British works to which this section applies, or to one or more classes of such works, Her Majesty may make provision by Order in Council in accordance with this section restricting the rights conferred by this Part in relation to works of authors connected with that country.
- (2) An Order in Council under this section shall designate the country concerned and provide that, for the purposes specified in the Order, works first published after a date specified in the Order shall not be treated as qualifying for copyright protection by virtue of such publication if at that time the authors are -
 - (a) citizens or subjects of that country (not domiciled or resident in the United Kingdom or another country to which the relevant provisions of this Part extend), or
 - (b) bodies incorporated under the law of that country;

and the Order may make such provision for all the purposes of this Part or for such purposes as are specified in the Order, and either generally or in relation to such class of cases as are specified in the Order, having regard to the nature and extent of that failure referred to in subsection (1).

- (3) This section applies to literary, dramatic, musical and artistic works, sound recordings and films; and "British works" means works of which the author was a qualifying person at the material time within the meaning of section 154.
- (4) A statutory instrument containing an Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

*Supplementary***161 Territorial waters and the continental shelf**

- (1) For the purposes of this Part the territorial waters of the United Kingdom shall be treated as part of the United Kingdom.
- (2) This Part applies to things done in the United Kingdom sector of the continental shelf on a structure or vessel which is present there for purposes directly connected with the exploration of the sea bed or subsoil or the exploitation of their natural resources as it applies to things done in the United Kingdom.
- (3) The United Kingdom sector of the continental shelf means the areas designated by order under section 1(7) of the Continental Shelf Act 1964.

162 British ships, aircraft and hovercraft

- (1) This Part applies to things done on a British ship, aircraft or hovercraft as it applies to things done in the United Kingdom.

- (2) In this section -

"British ship" means a ship which is a British ship for the purposes of the Merchant Shipping Act 1995¹⁰² otherwise than by virtue of registration in a country outside the United Kingdom; and

"British aircraft" and "British hovercraft" mean an aircraft or hovercraft registered in the United Kingdom.

CHAPTER X

MISCELLANEOUS AND GENERAL

*Crown and Parliamentary copyright***163¹⁰³ Crown copyright**

- (1) Where a work is made by Her Majesty or by an officer or servant of the Crown in the course of his duties -
 - (a) the work qualifies for copyright protection notwithstanding section 153(1) (ordinary requirement as to qualification for copyright protection), and

102 Reference to Merchant Shipping Act 1995 inserted by that Act (replacing original wording "Merchant Shipping Acts (see section 2 of the Merchant Shipping Act 1988)").

103 s.163(1A) removed by Govt of Wales Act 2006. In s.163(6), word "to" after "section 165" inserted by the Scotland Act 1998 (replacing original word "and"), and reference to section 166B inserted by the Northern Ireland Act 1998 (replacing original reference to section 166).

(b) Her Majesty is the first owner of any copyright in the work.

[(1A)]

- (2) Copyright in such a work is referred to in this Part as "Crown copyright", notwithstanding that it may be, or have been, assigned to another person.
- (3) Crown copyright in a literary, dramatic, musical or artistic work continues to subsist -
- (a) until the end of the period of 125 years from the end of the calendar year in which the work was made, or
- (b) if the work is published commercially before the end of the period of 75 years from the end of the calendar year in which it was made, until the end of the period of 50 years from the end of the calendar year in which it was first so published.
- (4) In the case of a work of joint authorship where one or more but not all of the authors are persons falling within subsection (1), this section applies only in relation to those authors and the copyright subsisting by virtue of their contribution to the work.
- (5) Except as mentioned above, and subject to any express exclusion elsewhere in this Part, the provisions of this Part apply in relation to Crown copyright as to other copyright.
- (6) This section does not apply to a work if, or to the extent that, Parliamentary copyright subsists in the work (see sections 165 to 166D¹⁰⁴).

164 Copyright in Acts and Measures

- (1) ¹⁰⁵ Her Majesty is entitled to copyright in every Act of Parliament, Act of the Scottish Parliament, Measure of the National Assembly for Wales, Act of the National Assembly for Wales, Act of the Northern Ireland Assembly or Measure of the General Synod of the Church of England.
- (2) The copyright subsists
- (a) in the case of an Act or a Measure of the General Synod of the Church of England, until the end of the period of 50 years from the end of the calendar year in which Royal Assent was given, and
- (b) in the case of a Measure of the National Assembly for Wales, until the end of the period of 50 years from the end of the calendar year in which the Measure was approved by Her Majesty in Council from Royal Assent.¹⁰⁶
- (3) References in this Part to Crown copyright (except in section 163) include copyright under this section; and, except as mentioned above, the

104 Reference to s.166D inserted by Government of Wales Act 2006 (replacing reference to s.166B).

105 "Measure of...for Wales" added by the Government of Wales Act 2006

106 s164 (2)(b) modified by the Government of Wales Act 2006

provisions of this Part apply in relation to copyright under this section as to other Crown copyright.

- (4) No other copyright, or right in the nature of copyright, subsists in an Act or Measure.

165¹⁰⁷ Parliamentary copyright

- (1) Where a work is made by or under the direction or control of the House of Commons or the House of Lords -
- (a) the work qualifies for copyright protection notwithstanding section 153(1) (ordinary requirement as to qualification for copyright protection), and
 - (b) the House by whom, or under whose direction or control, the work is made is the first owner of any copyright in the work, and if the work is made by or under the direction or control of both Houses, the two Houses are joint first owners of copyright.
- (2) Copyright in such a work is referred to in this Part as "Parliamentary copyright", notwithstanding that it may be, or have been, assigned to another person.
- (3) Parliamentary copyright in a literary, dramatic, musical or artistic work continues to subsist until the end of the period of 50 years from the end of the calendar year in which the work was made.
- (4) For the purposes of this section, works made by or under the direction or control of the House of Commons or the House of Lords include -
- (a) any work made by an officer or employee of that House in the course of his duties, and
 - (b) any sound recording, film or live broadcast of the proceedings of that House;
- but a work shall not be regarded as made by or under the direction or control of either House by reason only of its being commissioned by or on behalf of that House.
- (5) In the case of a work of joint authorship where one or more but not all of the authors are acting on behalf of, or under the direction or control of, the House of Commons or the House of Lords, this section applies only in relation to those authors and the copyright subsisting by virtue of their contribution to the work.
- (6) Except as mentioned above, and subject to any express exclusion elsewhere in this Part, the provisions of this Part apply in relation to Parliamentary copyright as to other copyright.

¹⁰⁷ See also Annex V and Annex VII.

- (7) The provisions of this section also apply, subject to any exceptions or modifications specified by Order in Council, to works made by or under the direction or control of any other legislative body of a country to which this Part extends; and references in this Part to "Parliamentary copyright" shall be construed accordingly.
- (8) A statutory instrument containing an Order in Council under subsection (7) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

166 Copyright in Parliamentary Bills

- (1) Copyright in every Bill introduced into Parliament belongs, in accordance with the following provisions, to one or both of the Houses of Parliament.
- (2) Copyright in a public Bill belongs in the first instance to the House into which the Bill is introduced, and after the Bill has been carried to the second House to both Houses jointly, and subsists from the time when the text of the Bill is handed in to the House in which it is introduced.
- (3) Copyright in a private Bill belongs to both Houses jointly and subsists from the time when a copy of the Bill is first deposited in either House.
- (4) Copyright in a personal Bill belongs in the first instance to the House of Lords, and after the Bill has been carried to the House of Commons to both Houses jointly, and subsists from the time when it is given a First Reading in the House of Lords.
- (5) Copyright under this section ceases -
 - (a) on Royal Assent, or
 - (b) if the Bill does not receive Royal Assent, on the withdrawal or rejection of the Bill or the end of the Session:

provided that, copyright in a Bill continues to subsist notwithstanding its rejection in any Session by the House of Lords if, by virtue of the Parliament Acts 1911 and 1949, it remains possible for it to be presented for Royal Assent in that Session.

- (6) References in this Part to Parliamentary copyright (except in section 165) include copyright under this section; and, except as mentioned above, the provisions of this Part apply in relation to copyright under this section as to other Parliamentary copyright.
- (7) No other copyright, or right in the nature of copyright, subsists in a Bill after copyright has once subsisted under this section; but without prejudice to the subsequent operation of this section in relation to a Bill which, not having passed in one Session, is reintroduced in a subsequent Session.

166A¹⁰⁸ Copyright in Bills of the Scottish Parliament

- (1) Copyright in every Bill introduced into the Scottish Parliament belongs to the Scottish Parliamentary Corporate Body.
- (2) Copyright under this section subsists from the time when the text of the Bill is handed in to the Parliament for introduction -
 - (a) until the Bill receives Royal Assent, or
 - (b) if the Bill does not receive Royal Assent, until it is withdrawn or rejected or no further parliamentary proceedings may be taken in respect of it.
- (3) References in this Part to Parliamentary copyright (except in section 165) include copyright under this section; and, except as mentioned above, the provisions of this Part apply in relation to copyright under this section as to other Parliamentary copyright.
- (4) No other copyright, or right in the nature of copyright, subsists in a Bill after copyright has once subsisted under this section; but without prejudice to the subsequent operation of this section in relation to a Bill which, not having received Royal Assent, is later reintroduced into the Parliament.

166B Copyright in Bills of the Northern Ireland Assembly

- (1) Copyright in every Bill introduced into the Northern Ireland Assembly belongs to the Northern Ireland Assembly Commission.
- (2) Copyright under this section subsists from the time when the text of the Bill is handed in to the Assembly for introduction -
 - (a) until the Bill receives Royal Assent, or
 - (b) if the Bill does not receive Royal Assent, until it is withdrawn or rejected or no further proceedings of the Assembly may be taken in respect of it.
- (3) References in this Part to Parliamentary copyright (except in section 165) include copyright under this section; and, except as mentioned above, the provisions of this Part apply in relation to copyright under this section as to other Parliamentary copyright.
- (4) No other copyright, or right in the nature of copyright, subsists in a Bill after copyright has once subsisted under this section; but without prejudice to the subsequent operation of this section in relation to a Bill which, not having received Royal Assent, is later reintroduced into the Assembly.

108 ss.166A & 166B added by the Scotland Act 1998 and Northern Ireland Act 1998 respectively.

166C¹⁰⁹ Copyright in proposed Measures of the National Assembly for Wales

- (1) Copyright in every proposed Assembly Measure introduced into the National Assembly for Wales belongs to the National Assembly for Wales Commission.
- (2) Copyright under this section subsists from the time when the text of the proposed Assembly Measure is handed in to the Assembly for introduction-
 - (a) until the proposed Assembly Measure is approved by Her Majesty in Council, or
 - (b) if the proposed Assembly Measure is not approved by Her Majesty in Council, until it is withdrawn or rejected or no further proceedings of the Assembly may be taken in respect of it.
- (3) References in this Part to Parliamentary copyright (except in section 165) include copyright under this section; and, except as mentioned above, the provisions of this Part apply in relation to copyright under this section as to other Parliamentary copyright.
- (4) No other copyright, or right in the nature of copyright, subsists in a proposed Assembly Measure after copyright has once subsisted under this section; but without prejudice to the subsequent operation of this section in relation to a proposed Assembly Measure which, not having been approved by Her Majesty in Council, is later reintroduced into the Assembly.

166D¹¹⁰ Copyright in Bills of the National Assembly for Wales

- (1) Copyright in every Bill introduced into the National Assembly for Wales belongs to the National Assembly for Wales Commission.
- (2) Copyright under this section subsists from the time when the text of the Bill is handed in to the Assembly for introduction-
 - (a) until the Bill receives Royal Assent, or
 - (b) if the Bill does not receive Royal Assent, until it is withdrawn or rejected or no further proceedings of the Assembly may be taken in respect of it.
- (3) References in this Part to Parliamentary copyright (except in section 165) include copyright under this section; and, except as mentioned above, the provisions of this Part apply in relation to copyright under this section as to other Parliamentary copyright.
- (4) No other copyright, or right in the nature of copyright, subsists in a Bill after copyright has once subsisted under this section; but without prejudice to the subsequent operation of this section in relation to a Bill which, not having received Royal Assent, is later reintroduced into the Assembly.

109 s166C added by the Government of Wales Act 2006

110 s166D added by the Government of Wales Act 2006

167 Houses of Parliament: supplementary provisions with respect to copyright

- (1) For the purposes of holding, dealing with and enforcing copyright, and in connection with all legal proceedings relating to copyright, each House of Parliament shall be treated as having the legal capacities of a body corporate, which shall not be affected by a prorogation or dissolution.
- (2) The functions of the House of Commons as owner of copyright shall be exercised by the Speaker on behalf of the House; and if so authorised by the Speaker, or in case of a vacancy in the office of Speaker, those functions may be discharged by the Chairman of Ways and Means or a Deputy Chairman.
- (3) For this purpose a person who on the dissolution of Parliament was Speaker of the House of Commons, Chairman of Ways and Means or a Deputy Chairman may continue to act until the corresponding appointment is made in the next Session of Parliament.
- (4) The functions of the House of Lords as owner of copyright shall be exercised by the Clerk of the Parliaments on behalf of the House; and if so authorised by him, or in case of a vacancy in the office of Clerk of the Parliaments, those functions may be discharged by the Clerk Assistant or the Reading Clerk.
- (5) Legal proceedings relating to copyright -
 - (a) shall be brought by or against the House of Commons in the name of "The Speaker of the House of Commons"; and
 - (b) shall be brought by or against the House of Lords in the name of "The Clerk of the Parliaments".

Other miscellaneous provisions

168 Copyright vesting in certain international organisations

- (1) Where an original literary, dramatic, musical or artistic work -
 - (a) is made by an officer or employee of, or is published by, an international organisation to which this section applies, and
 - (b) does not qualify for copyright protection under section 154 (qualification by reference to author) or section 155 (qualification by reference to country of first publication),

copyright nevertheless subsists in the work by virtue of this section and the organisation is first owner of that copyright.
- (2) The international organisations to which this section applies are those as to which Her Majesty has by Order in Council declared that it is expedient that this section should apply.

- (3) Copyright of which an international organisation is first owner by virtue of this section continues to subsist until the end of the period of 50 years from the end of the calendar year in which the work was made or such longer period as may be specified by Her Majesty by Order in Council for the purpose of complying with the international obligations of the United Kingdom.
- (4) An international organisation to which this section applies shall be deemed to have, and to have had at all material times, the legal capacities of a body corporate for the purpose of holding, dealing with and enforcing copyright and in connection with all legal proceedings relating to copyright.
- (5) A statutory instrument containing an Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

169 Folklore, &c.: anonymous unpublished works

- (1) Where in the case of an unpublished literary, dramatic, musical or artistic work of unknown authorship there is evidence that the author (or, in the case of a joint work, any of the authors) was a qualifying individual by connection with a country outside the United Kingdom, it shall be presumed until the contrary is proved that he was such a qualifying individual and that copyright accordingly subsists in the work, subject to the provisions of this Part.
- (2) If under the law of that country a body is appointed to protect and enforce copyright in such works, Her Majesty may by Order in Council designate that body for the purposes of this section.
- (3) A body so designated shall be recognised in the United Kingdom as having authority to do in place of the copyright owner anything, other than assign copyright, which it is empowered to do under the law of that country; and it may, in particular, bring proceedings in its own name.
- (4) A statutory instrument containing an Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) In subsection (1) a "qualifying individual" means an individual who at the material time (within the meaning of section 154) was a person whose works qualified under that section for copyright protection.
- (6) This section does not apply if there has been an assignment of copyright in the work by the author of which notice has been given to the designated body; and nothing in this section affects the validity of an assignment of copyright made, or licence granted, by the author or a person lawfully claiming under him.

*Transitional provisions and savings***170 Transitional provisions and savings**

Schedule 1 contains transitional provisions and savings relating to works made, and acts or events occurring, before the commencement of this Part, and otherwise with respect to the operation of the provisions of this Part.

171 Rights and privileges under other enactments or the common law

- (1) Nothing in this Part affects -
 - (a) any right or privilege of any person under any enactment (except where the enactment is expressly repealed, amended or modified by this Act);
 - (b) any right or privilege of the Crown subsisting otherwise than under an enactment;
 - (c) any right or privilege of either House of Parliament;
 - (d) the right of the Crown or any person deriving title from the Crown to sell, use or otherwise deal with articles forfeited under the laws relating to customs and excise;
 - (e) the operation of any rule of equity relating to breaches of trust or confidence.
- (2) Subject to those savings, no copyright or right in the nature of copyright shall subsist otherwise than by virtue of this Part or some other enactment in that behalf.
- (3) Nothing in this Part affects any rule of law preventing or restricting the enforcement of copyright, on grounds of public interest or otherwise.
- (4) Nothing in this Part affects any right of action or other remedy, whether civil or criminal, available otherwise than under this Part in respect of acts infringing any of the rights conferred by Chapter IV (moral rights).
- (5) The savings in subsection (1) have effect subject to section 164(4) and section 166(7) (copyright in Acts, Measures and Bills: exclusion of other rights in the nature of copyright).

*Interpretation***172 General provisions as to construction**

- (1) This Part restates and amends the law of copyright, that is, the provisions of the Copyright Act 1956, as amended.
- (2) A provision of this Part which corresponds to a provision of the previous law shall not be construed as departing from the previous law merely because of a change of expression.

- (3) Decisions under the previous law may be referred to for the purpose of establishing whether a provision of this Part departs from the previous law, or otherwise for establishing the true construction of this Part.

172A¹¹¹ Meaning of EEA and related expressions

- (1) In this Part—

"the EEA" means the European Economic Area; and

"EEA state" means a member State, Iceland, Liechtenstein or Norway.¹¹²

- (2) References in this Part to a person being a national of an EEA state shall be construed in relation to a body corporate as references to its being incorporated under the law of an EEA state.¹¹³

[(3)]¹¹⁴

173 Construction of references to copyright owner

- (1) Where different persons are (whether in consequence of a partial assignment or otherwise) entitled to different aspects of copyright in a work, the copyright owner for any purpose of this Part is the person who is entitled to the aspect of copyright relevant for that purpose.
- (2) Where copyright (or any aspect of copyright) is owned by more than one person jointly, references in this Part to the copyright owner are to all the owners, so that, in particular, any requirement of the licence of the copyright owner requires the licence of all of them.

174 Meaning of "educational establishment" and related expressions

- (1) The expression "educational establishment" in a provision of this Part means -
- (a) any school, and
 - (b) any other description of educational establishment specified for the purposes of this Part, or that provision, by order of the Secretary of State.
- (2) The Secretary of State may by order provide that the provisions of this Part relating to educational establishments shall apply, with such modifications and adaptations as may be specified in the order, in relation to teachers who are employed by a local education authority to give instruction elsewhere to pupils who are unable to attend an educational establishment.
- (3) In subsection (1)(a) "school" -

111 s172A added by SI 1995/3297. Revised title and revised s.172A(1) substituted by SI 1996/2967.

112 s172A(1) further amended by SI 2006/1028

113 The words "an EEA national" substituted by "a national of an EEA State" under SI 2006/1028

114 s172A(3) repealed by SI 2006/1028

- (a) in relation to England and Wales, has the same meaning as in the Education Act 1996¹¹⁵;
 - (b) in relation to Scotland, has the same meaning as in the Education (Scotland) Act 1962, except that it includes an approved school within the meaning of the Social Work (Scotland) Act 1968; and
 - (c) in relation to Northern Ireland, has the same meaning as in the Education and Libraries (Northern Ireland) Order 1986.
- (4) An order under subsection (1)(b) may specify a description of educational establishment by reference to the instruments from time to time in force under any enactment specified in the order.
 - (5) In relation to an educational establishment the expressions "teacher" and "pupil" in this Part include, respectively, any person who gives and any person who receives instruction.
 - (6) References in this Part to anything being done "on behalf of" an educational establishment are to its being done for the purposes of that establishment by any person.
 - (7) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

175 Meaning of publication and commercial publication

- (1) In this Part "publication", in relation to a work -
 - (a) means the issue of copies to the public, and
 - (b) includes, in the case of a literary, dramatic, musical or artistic work, making it available to the public by means of an electronic retrieval system;
 and related expressions shall be construed accordingly.
- (2) In this Part "commercial publication", in relation to a literary, dramatic, musical or artistic work means -
 - (a) issuing copies of the work to the public at a time when copies made in advance of the receipt of orders are generally available to the public, or
 - (b) making the work available to the public by means of an electronic retrieval system;
 and related expressions shall be construed accordingly.

¹¹⁵ Reference to Education Act 1996 inserted by that Act (replacing original reference to Education Act 1944).

- (3) In the case of a work of architecture in the form of a building, or an artistic work incorporated in a building, construction of the building shall be treated as equivalent to publication of the work.
- (4) The following do not constitute publication for the purposes of this Part and references to commercial publication shall be construed accordingly -
- (a) in the case of a literary, dramatic or musical work -
 - (i) the performance of the work, or
 - (ii) the communication to the public of the work (otherwise than for the purposes of an electronic retrieval system);
 - (b) in the case of an artistic work -
 - (i) the exhibition of the work,
 - (ii) the issue to the public of copies of a graphic work representing, or of photographs of, a work of architecture in the form of a building or a model for a building, a sculpture or a work of artistic craftsmanship,
 - (iii) the issue to the public of copies of a film including the work, or
 - (iv) the communication to the public of the work (otherwise than for the purposes of an electronic retrieval system);
 - (c) in the case of a sound recording or film -
 - (i) the work being played or shown in public, or
 - (ii) the communication to the public of the work.
- (5) References in this Part to publication or commercial publication do not include publication which is merely colourable and not intended to satisfy the reasonable requirements of the public.
- (6) No account shall be taken for the purposes of this section of any unauthorised act.

176 Requirement of signature: application in relation to body corporate

- (1) The requirement in the following provisions that an instrument be signed by or on behalf of a person is also satisfied in the case of a body corporate by the affixing of its seal -
- section 78(3)(b) (assertion by licensor of right to identification of author in case of public exhibition of copy made in pursuance of the licence),
 - section 90(3) (assignment of copyright),
 - section 91(1) (assignment of future copyright),
 - section 92(1) (grant of exclusive licence).
- (2) The requirement in the following provisions that an instrument be signed by a person is satisfied in the case of a body corporate by signature on behalf of the body or by the affixing of its seal -

section 78(2)(b) (assertion by instrument in writing of right to have author identified),

section 87(2) (waiver of moral rights).

177 Adaptation of expressions for Scotland

In the application of this Part to Scotland -

"account of profits" means accounting and payment of profits;

"accounts" means count, reckoning and payment;

"assignment" means assignation;

"costs" means expenses;

"defendant" means defender;

"delivery up" means delivery;

"estoppel" means personal bar;

"injunction" means interdict;

"interlocutory relief" means interim remedy; and

"plaintiff" means pursuer.

178¹¹⁶ Minor definitions

In this Part -

"article", in the context of an article in a periodical, includes an item of any description;

"business" includes a trade or profession;

"collective work" means -

- (a) a work of joint authorship, or
- (b) a work in which there are distinct contributions by different authors or in which works or parts of works of different authors are incorporated;

"computer-generated", in relation to a work, means that the work is generated by computer in circumstances such that there is no human author of the work;

116 Words "the Scottish Administration or of" in the definition of "Crown", and words "of the Scottish Parliament" in the definition of "parliamentary proceedings", inserted by the Scotland Act 1998. Definitions of "producer", "public library" and "rental right" added by SI 1996/2967, and definitions of "private study" and "wireless broadcast" inserted by SI 2003/2498. Words ", but does not ----- fixed points" in the definition of "wireless telegraphy" added by SI 1996/2967.

"country" includes any territory;

"the Crown" includes the Crown in right of the Scottish Administration, of the Welsh Assembly Government¹¹⁷, or of Her Majesty's Government in Northern Ireland or in any country outside the United Kingdom to which this Part extends;

"electronic" means actuated by electric, magnetic, electromagnetic, electro-chemical or electromechanical energy, and "in electronic form" means in a form usable only by electronic means;

"employed", "employee", "employer" and "employment" refer to employment under a contract of service or of apprenticeship;

"facsimile copy" includes a copy which is reduced or enlarged in scale;

"international organisation" means an organisation the members of which include one or more states;

"judicial proceedings" includes proceedings before any court, tribunal or person having authority to decide any matter affecting a person's legal rights or liabilities;

"parliamentary proceedings" includes proceedings of the Northern Ireland Assembly, of the Scottish Parliament or of the European Parliament; and Assembly proceedings within the meaning of section 1(5) of the Government of Wales Act 2006¹¹⁸

"private study" does not include any study which is directly or indirectly for a commercial purpose;

"producer", in relation to a sound recording or a film, means the person by whom the arrangements necessary for the making of the sound recording or film are undertaken;

"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, and Education and Library Board within the meaning of the Education and Libraries (Northern Ireland) Order 1986;

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

117 "of the Welsh Assembly Government" inserted by the Government of Wales Act 2006

118 "and Assembly proceedings within the meaning of section 1(5) of the Government of Wales Act 2006" inserted by the Government of Wales Act

"reprographic copy" and "reprographic copying" refer to copying by means of a reprographic process;

"reprographic process" means a process -

- (a) for making facsimile copies, or
- (b) involving the use of an appliance for making multiple copies,

and includes, in relation to a work held in electronic form, any copying by electronic means, but does not include the making of a film or sound recording;

"sufficient acknowledgement" means an acknowledgement identifying the work in question by its title or other description, and identifying the author unless -

- (a) in the case of a published work, it is published anonymously;
- (b) in the case of an unpublished work, it is not possible for a person to ascertain the identity of the author by reasonable inquiry;

"sufficient disclaimer", in relation to an act capable of infringing the right conferred by section 80 (right to object to derogatory treatment of work), means a clear and reasonably prominent indication -

- (a) given at the time of the act, and
- (b) if the author or director is then identified, appearing along with the identification,

that the work has been subjected to treatment to which the author or director has not consented;

"telecommunications system" means a system for conveying visual images, sounds or other information by electronic means;

"typeface" includes an ornamental motif used in printing;

"unauthorised", as regards anything done in relation to a work, means done otherwise than -

- (a) by or with the licence of the copyright owner, or
- (b) if copyright does not subsist in the work, by or with the licence of the author or, in a case where section 11(2) would have applied, the author's employer or, in either case, persons lawfully claiming under him, or
- (c) in pursuance of section 48 (copying, &c. of certain material by the Crown);

"wireless broadcast" means a broadcast by means of wireless telegraphy;

"wireless telegraphy" means the sending of electromagnetic energy over paths not provided by a material substance constructed or arranged for

that purpose, but does not include the transmission of microwave energy between terrestrial fixed points;

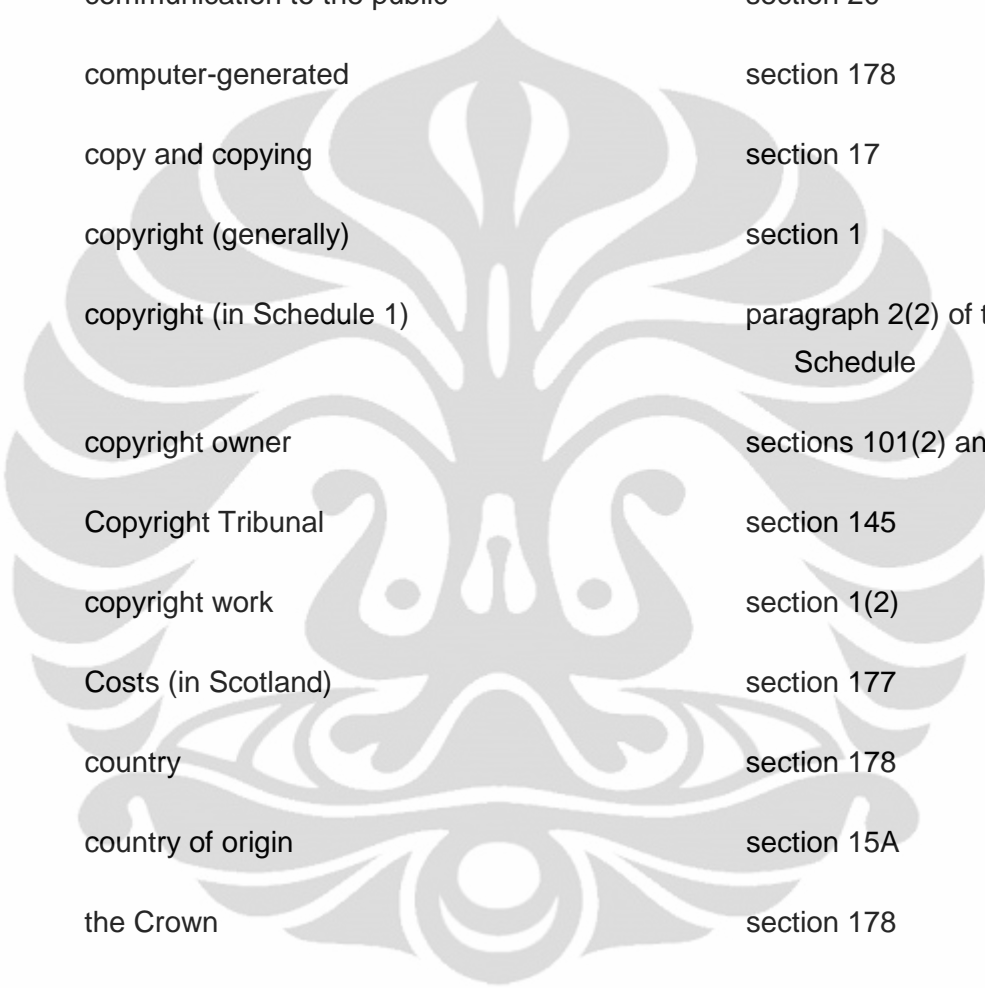
"writing" includes any form of notation or code, whether by hand or otherwise and regardless of the method by which, or medium in or on which, it is recorded, and "written" shall be construed accordingly.

179¹¹⁹ Index of defined expressions

The following Table shows provisions defining or otherwise explaining expressions used in this Part (other than provisions defining or explaining an expression used only in the same section) -

accessible copy	section 31F(3)
account of profits and accounts (in Scotland)	section 177
acts restricted by copyright	section 16(1)
adaptation	section 21(3)
approved body	section 31B(12)
archivist (in sections 37 to 43)	section 37(6)
Article (in a periodical)	section 178
Artistic work	section 4(1)
assignment (in Scotland)	section 177
Author	sections 9 and 10(3)
broadcast (and related expressions)	section 6
building	section 4(2)
business	section 178
collective work	section 178

¹¹⁹ s.179 has been amended in consequence of the Broadcasting Act 1990, SI 1992/3233, SI 1995/3297, SI 1996/2967, SI 1997/3032, the Scotland Act 1998, the Northern Ireland Act 1998, the Copyright (Visually Impaired Persons) Act 2002, and SI 2003/2498.



commencement (in Schedule 1)	paragraph 1(2) of that Schedule
commercial publication	section 175
communication to the public	section 20
computer-generated	section 178
copy and copying	section 17
copyright (generally)	section 1
copyright (in Schedule 1)	paragraph 2(2) of that Schedule
copyright owner	sections 101(2) and 173
Copyright Tribunal	section 145
copyright work	section 1(2)
Costs (in Scotland)	section 177
country	section 178
country of origin	section 15A
the Crown	section 178
Crown copyright	sections 163(2) and 164(3)
database	section 3A(1)
defendant (in Scotland)	section 177
delivery up (in Scotland)	section 177
dramatic work	section 3(1)

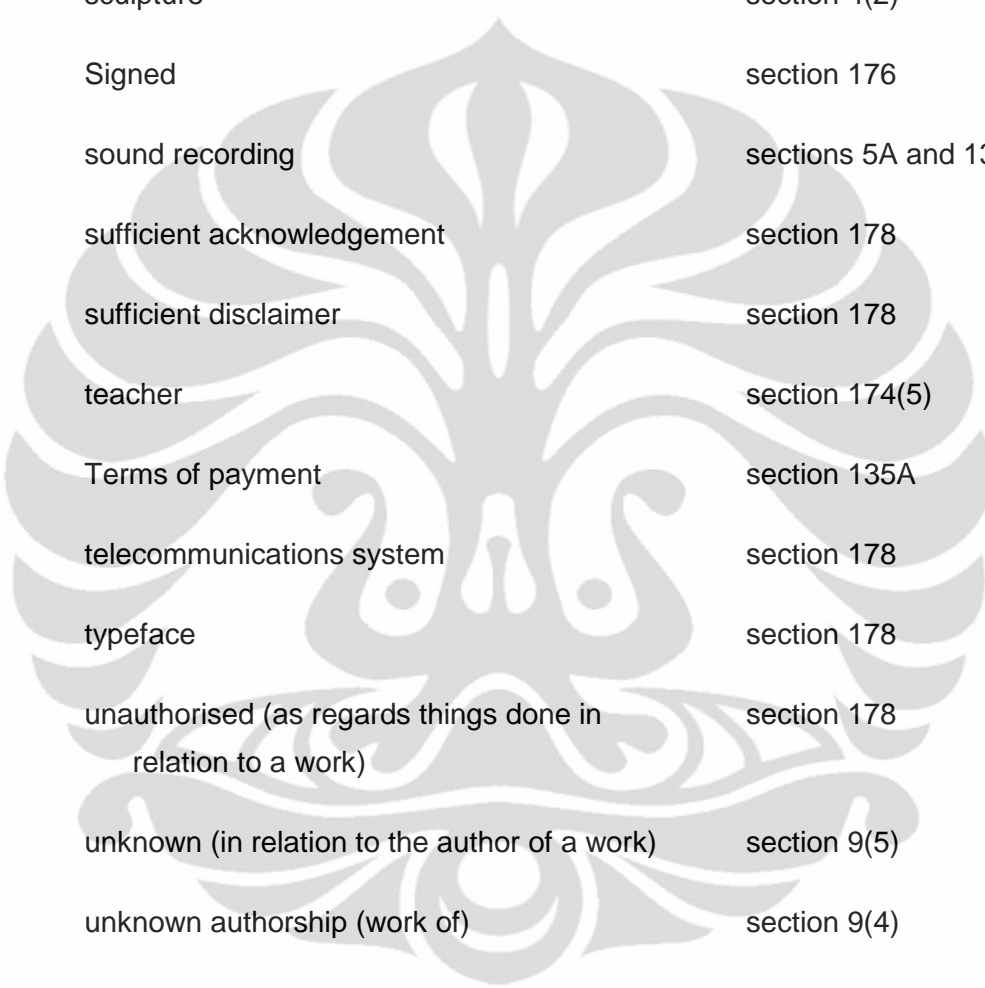
EEA, EEA state and national of an EEA state 120	section 172A
educational establishment	sections 174(1) to 174(4)
electronic and electronic form	section 178
employed, employee, employer and employment	section 178
excepted sound recording	section 72(1A)
exclusive licence	section 92(1)
existing works (in Schedule 1)	paragraph 1(3) of that Schedule
facsimile copy	section 178
Film	section 5B
Future copyright	section 91(2)
general licence (in sections 140 and 141)	section 140(7)
graphic work	section 4(2)
infringing copy	section 27
injunction (in Scotland)	section 177
interlocutory relief (in Scotland)	section 177
international organisation	section 178
Issue of copies to the public	section 18
joint authorship (work of)	sections 10(1) and 10(2)
judicial proceedings	section 178

120 Wording amended by SI 2006/1028

lawful user (in section 50A to 50C)	section 50A(2)
Lending	section 18A(2) to (6)
librarian (in sections 37 to 43)	section 37(6)
Licence (in sections 125 to 128)	section 124
Licence of copyright owner	sections 90(4), 91(3) and 173
licensing body (in Chapter VII)	section 116(2)
licensing scheme (generally)	section 116(1)
licensing scheme (in sections 118 to 121)	section 117
Literary work	section 3(1)
made (in relation to a literary, dramatic or musical work)	section 3(2)
musical work	section 3(1)
needletime	section 135A
the new copyright provisions (in Schedule 1)	paragraph 1(1) of that Schedule
the 1911 Act (in Schedule 1)	paragraph 1(1) of that Schedule
the 1956 Act (in Schedule 1)	paragraph 1(1) of that Schedule
on behalf of (in relation to an educational establishment)	section 174(5)
original (in relation to a database)	section 3A(2)

Parliamentary copyright	sections 165(2) and 165(7), 166(6), 166A(3), 166B(3) 166C(3) and 166D(3) ¹²¹
parliamentary proceedings	section 178
performance	section 19(2)
photograph	section 4(2)
plaintiff (in Scotland)	section 177
prescribed conditions (in sections 38 to 43)	section 37(1)(b)
prescribed library or archive (in sections 38 to 43)	section 37(1)(a)
Private study	section 178
producer (in relation to a sound recording or film)	section 178
programme (in the context of broadcasting)	section 6(3)
prospective owner (of copyright)	section 91(2)
publication and related expressions	section 175
Public library	section 178
published edition (in the context of copyright in the typographical arrangement)	section 8
Pupil	section 174(5)
Rental	section 18A(2) to (6)
Rental right	section 178

121 "166C(3) and 166D(3)" inserted by the Government of Wales Act 2006



reprographic copies and reprographic copying	section 178
reprographic process	section 178
sculpture	section 4(2)
Signed	section 176
sound recording	sections 5A and 135A
sufficient acknowledgement	section 178
sufficient disclaimer	section 178
teacher	section 174(5)
Terms of payment	section 135A
telecommunications system	section 178
typeface	section 178
unauthorised (as regards things done in relation to a work)	section 178
unknown (in relation to the author of a work)	section 9(5)
unknown authorship (work of)	section 9(4)
visually impaired person	section 31F(9)
wireless broadcast	section 178
wireless telegraphy	section 178
work (in Schedule 1)	paragraph 2(1) of that Schedule
work of more than one author (in Chapter VII)	section 116(4)
Writing and written	section 178

PART II RIGHTS IN PERFORMANCES

CHAPTER 1

Introductory

180 Rights conferred on performers and persons having recording rights

- (1) Chapter 2 of this part (economic rights) confers rights –
- (a) on a performer, by requiring his consent to the exploitation of his performances (see sections 181 to 184), and
 - (b) on a person having recording rights in relation to a performance, in relation to recordings made without his consent or that of the performer (see sections 185 to 188),

and creates offences in relation to dealing with or using illicit recordings and certain other related acts (see sections 198 and 201).

- (1A) Rights are also conferred on a performer by the following provisions of Chapter 3 of this Part (moral rights)-

- (a) section 205C (right to be identified);
- (b) section 205F (right to object to derogatory treatment of performance).

- (2) In this Chapter –

"performance" means –

- (a) a dramatic performance (which includes dance and mime),
- (b) a musical performance,
- (c) a reading or recitation of a literary work, or
- (d) a performance of a variety act or any similar presentation,

which is, or so far as it is, a live performance given by one or more individuals; and

"recording", in relation to a performance, means a film or sound recording –

- (a) made directly from the live performance,
- (b) made from a broadcast of the performance, or
- (c) made, directly or indirectly, from another recording of the performance.

- (3) The rights conferred by this Chapter apply in relation to performances taking place before the commencement of this Chapter; but no act done before commencement, or in pursuance of arrangements made before commencement, shall be regarded as infringing those rights.
- (4) The rights conferred by this Part are independent of –
- (a) any copyright in, or moral rights relating to, any work performed or any film or sound recording of, or broadcast including, the performance, and
 - (b) any other right or obligation arising otherwise than under this Part.

181 Qualifying performances

A performance is a qualifying performance for the purposes of the provisions of this Part relating to performers' rights if it is given by a qualifying individual (as defined in section 206) or takes place in a qualifying country (as so defined).

CHAPTER II

ECONOMIC RIGHTS

Performers' Rights

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 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 the live performance.
- (2) [(2)]
- (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.

182A¹²² Consent required for copying of recording

- (1) A performer's rights are infringed by a person who, without his consent, makes [---] a copy of a recording of the whole or any substantial part of a qualifying performance.

¹²² ss.182A-D added by SI 1996/2967. Words “, otherwise than for his private and domestic use,” in s.182A(1) deleted, and s.182A(1A) added, by SI 2003/2498.

- (1A) In subsection (1), making a copy of a recording includes making a copy which is transient or is incidental to some other use of the original recording.
- (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 Chapter as “reproduction right”.

182B Consent required for issue of copies to public

- (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 Chapter as “distribution right”.

182C Consent required for rental or lending of copies to public

- (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 Chapter, 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 or communication to the public;
 - (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 Chapter 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 Chapter –
- "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.

182CA¹²³ Consent required for making available to the public

- (1) A performer's rights are infringed by a person who, without his consent, makes available to the public a recording of the whole or any substantial part of a qualifying performance by electronic transmission in such a way that members of the public may access the recording from a place and at a time individually chosen by them.
- (2) The right of a performer under this section to authorise or prohibit the making available to the public of a recording is referred to in this Chapter as "making available right."

182D Right to equitable remuneration for exploitation of sound recording

- (1) Where a commercially published sound recording of the whole or any substantial part of a qualifying performance –
- (a) is played in public, or

¹²³ Added by SI 2003/2498.

- (b) ¹²⁴ is communicated to the public otherwise than by its being made available to the public in the way mentioned in section 182CA(1),

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

- (1A)¹²⁵ In subsection (1), the reference to publication of a sound recording includes making it available to the public by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them.

- (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

124 Revised s.182D(1)(b) substituted by SI 2003/2498.

125 s182D (1A) added by SI 2006 No. 18

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

- (8) ¹²⁶In this section "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.

183 Infringement of performer's rights by use of recording made without consent

A performer's rights are infringed by a person who, without his consent –

- (a) shows or plays in public the whole or any substantial part of a qualifying performance, or
- (b) communicates to the public the whole or any substantial part of a qualifying performance, by means of a recording which was, and which that person knows or has reason to believe was, made without the performer's consent.

184 Infringement of performer's rights by importing, possessing or dealing with illicit recording

- (1) A performer's rights are infringed by a person who, without his consent –
- (a) imports into the United Kingdom otherwise than for his private and domestic use, or
- (b) in the course of a business possesses, sells or lets for hire, offers or exposes for sale or hire, or distributes, a recording of a qualifying performance which is, and which that person knows or has reason to believe is, an illicit recording.
- (2) Where in an action for infringement of a performer's rights brought by virtue of this section a defendant shows that the illicit recording was innocently acquired by him or a predecessor in title of his, the only remedy available against him in respect of the infringement is damages not exceeding a reasonable payment in respect of the act complained of.
- (3) In subsection (2) "innocently acquired" means that the person acquiring the recording did not know and had no reason to believe that it was an illicit recording.

Rights of person having recording rights

185 Exclusive recording contracts and persons having recording rights

- (1) In this Chapter an "exclusive recording contract" means a contract between a performer and another person under which that person is

¹²⁶ s182D(8) added by SI 2006/18

entitled to the exclusion of all other persons (including the performer) to make recordings of one or more of his performances with a view to their commercial exploitation.

- (2) References in this Chapter to a "person having recording rights", in relation to a performance, are (subject to subsection (3)) to a person –
 - (a) who is party to and has the benefit of an exclusive recording contract to which the performance is subject, or
 - (b) to whom the benefit of such a contract has been assigned, and who is a qualifying person.
- (3) If a performance is subject to an exclusive recording contract but the person mentioned in subsection (2) is not a qualifying person, references in this Chapter to a "person having recording rights" in relation to the performance are to any person –
 - (a) who is licensed by such a person to make recordings of the performance with a view to their commercial exploitation, or
 - (b) to whom the benefit of such a licence has been assigned, and who is a qualifying person.
- (4) In this section "with a view to commercial exploitation" means with a view to the recordings being sold or let for hire, or shown or played in public.

186 Consent required for recording of performance subject to exclusive contract

- (1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent or that of the performer, makes a recording of the whole or any substantial part of the performance [---]^{127.}
- (2) In an action for infringement of those 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.

187 Infringement of recording rights by use of recording made without consent

- (1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent or, in the case of a qualifying performance, that of the performer –
 - (a) shows or plays in public the whole or any substantial part of the performance, or
 - (b) communicates to the public the whole or any substantial part of the performance,

¹²⁷ Words “, otherwise than for his private and domestic use” deleted by SI 2003/2498.

by means of a recording which was, and which that person knows or has reason to believe was, made without the appropriate consent.

- (2) The reference in subsection (1) to "the appropriate consent" is to the consent of –
- (a) the performer, or
 - (b) the person who at the time the consent was given had recording rights in relation to the performance (or, if there was more than one such person, of all of them).

188 Infringement of recording rights by importing, possessing or dealing with illicit recording

- (1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent or, in the case of a qualifying performance, that of the performer –
- (a) imports into the United Kingdom otherwise than for his private and domestic use, or
 - (b) in the course of a business possesses, sells or lets for hire, offers or exposes for sale or hire, or distributes, a recording of the performance which is, and which that person knows or has reason to believe is, an illicit recording.
- (2) Where in an action for infringement of those rights brought by virtue of this section a defendant shows that the illicit recording was innocently acquired by him or a predecessor in title of his, the only remedy available against him in respect of the infringement is damages not exceeding a reasonable payment in respect of the act complained of.
- (3) In subsection (2) "innocently acquired" means that the person acquiring the recording did not know and had no reason to believe that it was an illicit recording.

Exceptions to rights conferred

189 Acts permitted notwithstanding rights conferred by this Chapter

The provisions of Schedule 2 specify acts which may be done notwithstanding the rights conferred by this Chapter, being acts which correspond broadly to certain of those specified in Chapter III of Part I (acts permitted notwithstanding copyright).

190¹²⁸ Power of tribunal to give consent on behalf of performer in certain cases

- (1) The Copyright Tribunal may, on the application of a person wishing to make a copy of a recording of a performance, give consent in a case

128 Revised s.190(1) substituted, references in s.190(2) & 6 to "the person entitled to the reproduction right" inserted (replacing original words "the performer"), and s.190(4) deleted, by SI 1996/2967.

where the identity or whereabouts of the person entitled to the reproduction right cannot be ascertained by reasonable inquiry.

- (2) Consent given by the Tribunal has effect as consent of the person entitled to the reproduction right for the purposes of –
 - (a) the provisions of this Chapter relating to performers' rights, and
 - (b) section 198(3)(a) (criminal liability: sufficient consent in relation to qualifying performances), and may be given subject to any conditions specified in the Tribunal's order.
- (3) The Tribunal shall not give consent under subsection (1)(a) except after the service or publication of such notices as may be required by rules made under section 150 (general procedural rules) or as the Tribunal may in any particular case direct.
- (4) [(4)]
- (5) In any case the Tribunal shall take into account the following factors –
 - (a) whether the original recording was made with the performer's consent and is lawfully in the possession or control of the person proposing to make the further recording;
 - (b) whether the making of the further recording is consistent with the obligations of the parties to the arrangements under which, or is otherwise consistent with the purposes for which, the original recording was made.
- (6) Where the Tribunal gives consent under this section it shall, in default of agreement between the applicant and the person entitled to the reproduction right, make such order as it thinks fit as to the payment to be made to that person in consideration of consent being given.

Duration of rights

191¹²⁹ Duration of rights

- (1) The following provisions have effect with respect to the duration of the rights conferred by this Chapter.
- (2) The rights conferred by this Chapter in relation to a performance expire –
 - (a) at the end of the period of 50 years from the end of the calendar year in which the performance takes place, or
 - (b) if during that period a recording of the performance is released, 50 years from the end of the calendar year in which it is released, subject as follows.
- (3) For the purposes of subsection (2) a recording is “released” when it is first published, played or shown in public or communicated to the public; but in

¹²⁹ Revised s.191, substituted by SI 1995/3297.

determining whether a recording has been released no account shall be taken of any unauthorised act.

- (4) Where a performer is not a national of an EEA state, the duration of rights conferred by this Chapter in relation to his performance is that to which the performance is entitled in the country of which he is a national, provided that does not exceed the period which would apply under subsections (2) and (3).
- (5) If or to the extent that the application of subsection (4) would be at variance with an international obligation to which the United Kingdom became subject prior to 29th October 1993, the duration of the rights conferred by this ¹³⁰Chapter shall be as specified in subsections (2) and (3).

Performers' property rights ¹³¹

191A Performers' property rights

- (1) The following rights conferred by this Chapter on a performer –
reproduction right (section 182A),
distribution right (section 182B),
rental right and lending right (section 182C),
making available right (section 182CA),
are property rights (“performer’s property rights”).
- (2) References in this Chapter to the consent of the performer shall be construed in relation to 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 Chapter 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 Chapter 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.

¹³⁰ Word ‘Chapter’ replaced ‘part’ by SI 2006 No. 18

¹³¹ ss.191A-J & 191K-M added by SI 1996/2967. Reference to “making available right” in s.191A(1) added by SI 2003/2498.

191B Assignment and licences

- (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 Chapter to doing anything with, or without, the licence of the rights owner shall be construed accordingly.

191C Prospective ownership of a performer's property rights

- (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 Chapter 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).

191D Exclusive licences

- (1) In this Chapter 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.

191E Performer's property right to pass under will with unpublished original recording

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.

191F Presumption of transfer of rental right in case of film production agreement

- (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.

191G Right to equitable remuneration where rental right transferred

- (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.

191H Equitable remuneration: reference of amount to Copyright Tribunal

- (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.

191I Infringement actionable by rights owner

- (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 Chapter.

191J Provisions as to damages in infringement action

- (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.

191JA¹³² Injunctions against service providers

- (1) The High Court (in Scotland, the Court of Session) shall have power to grant an injunction against a service provider, where that service provider has actual knowledge of another person using their service to infringe a performer's property right.
- (2) In determining whether a service provider has actual knowledge for the purpose of this section, a court shall take into account all matters which appear to it in the particular circumstances to be relevant and, amongst other things, shall have regard to –
- (a) whether a service provider has received a notice through a means of contact made available in accordance with regulation 6(1)(c) of the Electronic Commerce (EC Directive) Regulations 2002 (SI 2002/2013); and
 - (b) the extent to which any notice includes –
 - (i) the full name and address of the sender of the notice;
 - (ii) details of the infringement in question.
- (3) In this section "service provider" has the meaning given to it by regulation 2 of the Electronic Commerce (EC Directive) Regulations 2002.
- (4) Section 177 applies in respect of this section as it applies in respect of Part 1.

191K Undertaking to take licence of right in infringement proceedings

- (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

132 Added by SI 2003/2498.

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.

191L Rights and remedies for exclusive licensee

- (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 Chapter 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.

191M Exercise of concurrent rights

- (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.

Non-property rights

192A¹³³ 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 by importing, possessing or dealing with illicit recording),
 are not assignable or transmissible, except to the following extent. They are referred to in this Chapter as "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 Chapter 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.

¹³³ s.192 replaced by ss.192A & 192B, SI 1996/2967.

- (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 Chapter 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 Chapter on a person to whom the benefit of a contract or licence is assigned.

193¹³⁴ Consent

- (1) Consent for the purposes of this Chapter by a person having a performer's non-property rights, or by a person having recording rights, may be given in relation to a specific performance, a specified description of performances or performances generally, and may relate to past or future performances.
- (2) A person having recording rights in a performance is bound by any consent given by a person through whom he derives his rights under the exclusive recording contract or licence in question, in the same way as if the consent had been given by him.
- (3) Where a performer's non-property right passes to another person, any consent binding on the person previously entitled binds the person to whom the right passes in the same way as if the consent had been given by him.

194¹³⁵ Infringement actionable as breach of statutory duty

An infringement of –

- (a) a performer's non-property rights, or
- (b) any right conferred by this Chapter on a person having recording rights, is actionable by the person entitled to the right as a breach of statutory duty.

134 Words "by a person ----- recording rights," in s.193(1) added by SI 1996/2967, and reference in s.191(3) to "a performer's non-property right" substituted by that SI (replacing original reference to "a right conferred by this Part").

135 Paragraphs (a) & (b) substituted by SI 1996/2967 (in place of original reference to "any of the rights conferred by this Part").

*Delivery up or seizure of illicit recordings***195 Order for delivery up**

- (1) Where a person has in his possession, custody or control in the course of a business an illicit recording of a performance, a person having performer's rights or recording rights in relation to the performance under this Chapter may apply to the court for an order that the recording be delivered up to him or to such other person as the court may direct.
- (2) An application shall not be made after the end of the period specified in section 203; and no order shall be made unless the court also makes, or it appears to the court that there are grounds for making, an order under section 204 (order as to disposal of illicit recording).
- (3) A person to whom a recording is delivered up in pursuance of an order under this section shall, if an order under section 204 is not made, retain it pending the making of an order, or the decision not to make an order, under that section.
- (4) Nothing in this section affects any other power of the court.

196 Right to seize illicit recordings

- (1) An illicit recording of a performance which is found exposed or otherwise immediately available for sale or hire, and in respect of which a person would be entitled to apply for an order under section 195, may be seized and detained by him or a person authorised by him.

The right to seize and detain is exercisable subject to the following conditions and is subject to any decision of the court under section 204 (order as to disposal of illicit recording).

- (2) Before anything is seized under this section notice of the time and place of the proposed seizure must be given to a local police station.
- (3) A person may for the purpose of exercising the right conferred by this section enter premises to which the public have access but may not seize anything in the possession, custody or control of a person at a permanent or regular place of business of his and may not use any force.
- (4) At the time when anything is seized under this section there shall be left at the place where it was seized a notice in the prescribed form containing the prescribed particulars as to the person by whom or on whose authority the seizure is made and the grounds on which it is made.
- (5) In this section –

"premises" includes land, buildings, fixed or moveable structures, vehicles, vessels, aircraft and hovercraft; and

"prescribed" means prescribed by order of the Secretary of State.

- (6) An order of the Secretary of State under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

197 Meaning of “illicit recording”

- (1) In 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) ¹³⁶ In 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 –
- paragraph 4(3) (recordings made for purposes of instruction or examination),
 - paragraph 6(2) (recordings made by educational establishments for educational purposes),
 - paragraph 12(2) (recordings of performance in electronic form retained on transfer of principal recording),
 - paragraph 16(3) (recordings made for purposes of broadcast),
 - 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.

¹³⁶ References to paragraphs 17A & 17B of Sch. 2 added by SI 2003/2498.

197A¹³⁷ Presumptions relevant to recordings of performances

- (1) In proceedings brought by virtue of this Part with respect to the rights in a performance, where copies of a recording of the performance as issued to the public bear a statement that a named person was the performer, the statement shall be admissible as evidence of the fact stated and shall be presumed to be correct until the contrary is proved.
- (2) Subsection (1) does not apply to proceedings for an offence under section 198 (criminal liability for making etc. illicit recordings); but without prejudice to its application in proceedings for an order under section 199 (order for delivery up in criminal proceedings).

*Offences***198¹³⁸ 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 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.
- (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, 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
 - (b) communicated to the public, thereby infringing any of the rights conferred by this Chapter, if he knows or has reason to believe that those rights are thereby infringed.

137 s197A inserted by SI 2006/1028

138 ss.198(1A) & (5A) added by SI 2003/2498. Maximum sentence set by s.198(5)(b) increased from the original two years to ten by the Copyright, etc. and Trade Marks (Offences and Enforcement) Act 2002.

- (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 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 £50,000¹³⁹, or both;
 - (b) on conviction on indictment to a fine or imprisonment for a term not exceeding ten years, or both.
- (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 £50,000¹⁴⁰, 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.

198A¹⁴¹ Enforcement by local weights and measures authority

- (1) It is the duty of every local weights and measures authority to enforce within their area the provisions of section 198.

139 "the statutory maximum" substituted by " £50,000" by the Digital Economy Act 2010 s42(3)

140 "the statutory maximum" substituted by " £50,000" by the Digital Economy Act 2010 s42(3)

141 s198A added by Criminal Justice and Public Order Act 1994 (Commencement No. 14) Order 2007 which came into force on 6 April 2007.

- (2) The following provisions of the Trade Descriptions Act 1968 apply in relation to the enforcement of that section by such an authority as in relation to enforcement of that Act –

section 27 (power to make test purchases),

section 28 (power to enter premises and inspect and seize goods and documents),

section 29 (obstruction of authorised officers), and

section 33 (compensation for loss, &c. of goods seized).

- (3) Subsection (1) above does not apply in relation to the enforcement of section 198 in Northern Ireland, but it is the duty of the Department of Economic Development to enforce that section in Northern Ireland.

For that purpose the provisions of the Trade Descriptions Act 1968 specified in subsection (2) apply as if for references to a local weights and measures authority and any officer of such an authority there were substituted references to that Department and any of its officers.

- (4) Any enactment which authorises the disclosure of information for the purpose of facilitating the enforcement of the Trade Descriptions Act 1968 shall apply as if section 198 were contained in that Act and as if the functions of any person in relation to the enforcement of that section were functions under that Act.
- (5) Nothing in this section shall be construed as authorising a local weights and measures authority to bring proceedings in Scotland for an offence.

199 Order for delivery up in criminal proceedings

- (1) The court before which proceedings are brought against a person for an offence under section 198 may, if satisfied that at the time of his arrest or charge he had in his possession, custody or control in the course of a business an illicit recording of a performance, order that it be delivered up to a person having performers' rights or recording rights in relation to the performance or to such other person as the court may direct.
- (2) For this purpose a person shall be treated as charged with an offence –
- (a) in England, Wales and Northern Ireland, when he is orally charged or is served with a summons or indictment;
 - (b) in Scotland, when he is cautioned, charged or served with a complaint or indictment.
- (3) An order may be made by the court of its own motion or on the application of the prosecutor (or, in Scotland, the Lord Advocate or procurator-fiscal), and may be made whether or not the person is convicted of the offence, but shall not be made –
- (a) after the end of the period specified in section 203 (period after which remedy of delivery up not available), or

- (b) if it appears to the court unlikely that any order will be made under section 204 (order as to disposal of illicit recording).
- (4) An appeal lies from an order made under this section by a magistrates' court –
 - (a) in England and Wales, to the Crown Court, and
 - (b) in Northern Ireland, to the county court;

and in Scotland, where an order has been made under this section, the person from whose possession, custody or control the illicit recording has been removed may, without prejudice to any other form of appeal under any rule of law, appeal against that order in the same manner as against sentence.
- (5) A person to whom an illicit recording is delivered up in pursuance of an order under this section shall retain it pending the making of an order, or the decision not to make an order, under section 204.
- (6) ¹⁴² Nothing in this section affects the powers of the court under section 143 of the Powers of Criminal Courts (Sentencing) Act 2000, Part II of the Proceeds of Crime (Scotland) Act 1995 or Article 11 of the Criminal Justice (Northern Ireland) Order 1994 (general provisions as to forfeiture in criminal proceedings).

200¹⁴³ Search warrants

- (1) Where a justice of the peace (in Scotland, a sheriff or justice of the peace) is satisfied by information on oath given by a constable (in Scotland, by evidence on oath) that there are reasonable grounds for believing –
 - (a) that an offence under section 198(1) or (1A) (offences of making, importing, possessing, selling etc. or distributing illicit recordings) has been or is about to be committed in any premises, and
 - (b) that evidence that such an offence has been or is about to be committed is in those premises,

he may issue a warrant authorising a constable to enter and search the premises, using such reasonable force as is necessary.
- (2) The power conferred by subsection (1) does not, in England and Wales, extend to authorising a search for material of the kinds mentioned in

¹⁴² References to the Powers of Criminal Courts (Sentencing) Act 2000 and Criminal Justice (Northern Ireland) Order 1994 inserted by those enactments, and reference to the Proceeds of Crime (Scotland) Act 1995 inserted by the Criminal Procedure (Consequential Provisions) (Scotland) Act, in place of original references to earlier legislation.

¹⁴³ Reference in s.200(1)(a) to s.198(1) substituted by the Copyright etc. and Trade Marks (Offences and Enforcement) Act 2002 (replacing original reference to ss. 198(1)(a), (b) or (d)(iii)). Words "possessing, selling etc." in s.200(1)(a), and s.200(3A), added by that Act. References to s.198(1A) in ss.200(1)(a) & (3A) added by SI 2003/2498. s200(3)(b) "28 days" replaced by "three months" under the Serious Organised Crime and Police Act 2005

section 9(2) of the Police and Criminal Evidence Act 1984 (certain classes of personal or confidential material).

- (3) A warrant under subsection (1) –
 - (a) may authorise persons to accompany any constable executing the warrant, and
 - (b) remains in force for three months from the date of its issue.
- (3A) In executing a warrant issued under subsection (1) a constable may seize an article if he reasonably believes that it is evidence that any offence under section 198(1) or (1A) has been or is about to be committed.
- (4) In this section "premises" includes land, buildings, fixed or moveable structures, vehicles, vessels, aircraft and hovercraft.

201 False representation of authority to give consent

- (1) It is an offence for a person to represent falsely that he is authorised by any person to give consent for the purposes of this Chapter in relation to a performance, unless he believes on reasonable grounds that he is so authorised.
- (2) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both.

202 Offence by body corporate: liability of officers

- (1) Where an offence under this Chapter committed by a body corporate is proved to have been committed with the consent or connivance of a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) In relation to a body corporate whose affairs are managed by its members "director" means a member of the body corporate.

Supplementary provisions with respect to delivery up and seizure

203 Period after which remedy of delivery up not available

- (1) An application for an order under section 195 (order for delivery up in civil proceedings) may not be made after the end of the period of six years from the date on which the illicit recording in question was made, subject to the following provisions.
- (2) If during the whole or any part of that period a person entitled to apply for an order –
 - (a) is under a disability, or

- (b) is prevented by fraud or concealment from discovering the facts entitling him to apply, an application may be made by him at any time before the end of the period of six years from the date on which he ceased to be under a disability or, as the case may be, could with reasonable diligence have discovered those facts.
- (3) In subsection (2) "disability" –
 - (a) in England and Wales, has the same meaning as in the Limitation Act 1980;
 - (b) in Scotland, means legal disability within the meaning of the Prescription and Limitations (Scotland) Act 1973;
 - (c) in Northern Ireland, has the same meaning as in the Statute of Limitation (Northern Ireland) 1958.
- (4) An order under section 199 (order for delivery up in criminal proceedings) shall not, in any case, be made after the end of the period of six years from the date on which the illicit recording in question was made.

204 Order as to disposal of illicit recording

- (1) An application may be made to the court for an order that an illicit recording of a performance delivered up in pursuance of an order under section 195 or 199, or seized and detained in pursuance of the right conferred by section 196, shall be –
 - (a) forfeited to such person having performer's rights or recording rights in relation to the performance as the court may direct, or
 - (b) destroyed or otherwise dealt with as the court may think fit,
 or for a decision that no such order should be made.
- (2) In considering what order (if any) should be made, the court shall consider whether other remedies available in an action for infringement of the rights conferred by this Chapter would be adequate to compensate the person or persons entitled to the rights and to protect their interests.
- (3) Provision shall be made by rules of court as to the service of notice on persons having an interest in the recording, and any such person is entitled –
 - (a) to appear in proceedings for an order under this section, whether or not he was served with notice, and
 - (b) to appeal against any order made, whether or not he appeared; and an order shall not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

- (4) Where there is more than one person interested in a recording, the court shall make such order as it thinks just and may (in particular) direct that the recording be sold, or otherwise dealt with, and the proceeds divided.
- (5) If the court decides that no order should be made under this section, the person in whose possession, custody or control the recording was before being delivered up or seized is entitled to its return.
- (6) References in this section to a person having an interest in a recording include any person in whose favour an order could be made in respect of the recording
 - (a) under this section or under section 114 or 231 of this Act;
 - (b) under section 24D of the Registered Designs Act 1949;
 - (c) under section 19 of Trade Marks Act 1994 (including that section as applied by regulation 4 of the Community Trade Mark Regulations 2006 (SI 2006/1027)); or
 - (d) under regulation 1C of the Community Design Regulations 2005 (SI 2005/2339).¹⁴⁴

204A¹⁴⁵ Forfeiture of illicit recordings: England and Wales or Northern Ireland

- (1) In England and Wales or Northern Ireland where illicit recordings of a performance have come into the possession of any person in connection with the investigation or prosecution of a relevant offence, that person may apply under this section for an order for the forfeiture of the illicit recordings.
- (2) For the purposes of this section "relevant offence" means –
 - (a) an offence under section 198(1) or (1A) (criminal liability for making or dealing with illicit recordings),
 - (b) an offence under the Trade Descriptions Act 1968 (c. 29), or
 - (c) an offence involving dishonesty or deception.
- (3) An application under this section may be made –
 - (a) where proceedings have been brought in any court for a relevant offence relating to some or all of the illicit recordings, to that court, or
 - (b) where no application for the forfeiture of the illicit recordings has been made under paragraph (a), by way of complaint to a magistrates' court.
- (4) On an application under this section, the court shall make an order for the forfeiture of any illicit recordings only if it is satisfied that a relevant offence has been committed in relation to the illicit recordings.

¹⁴⁴ s204(6)(a)-(d) added by 2006/1028

¹⁴⁵ ss204A & 204B added by the Copyright, etc. and Trade Marks (Offences and Enforcement) Act 2002. References to s.198(1A) in ss. 204A(2)(a) & 204B(15) added by SI 2003/2498.

- (5) A court may infer for the purposes of this section that such an offence has been committed in relation to any illicit recordings if it is satisfied that such an offence has been committed in relation to illicit recordings which are representative of the illicit recordings in question (whether by reason of being part of the same consignment or batch or otherwise).
- (6) Any person aggrieved by an order made under this section by a magistrates' court, or by a decision of such a court not to make such an order, may appeal against that order or decision –
 - (a) in England and Wales, to the Crown Court, or
 - (b) in Northern Ireland, to the county court.
- (7) An order under this section may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under section 111 of the Magistrates' Courts Act 1980 (c. 43) or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1987/1675 (N.I. 26)) (statement of case)).
- (8) Subject to subsection (9), where any illicit recordings are forfeited under this section they shall be destroyed in accordance with such directions as the court may give.
- (9) On making an order under this section the court may direct that the illicit recordings to which the order relates shall (instead of being destroyed) be forfeited to the person having the performers' rights or recording rights in question or dealt with in such other way as the court considers appropriate.

204B Forfeiture: Scotland

- (1) In Scotland the court may make an order under this section for the forfeiture of any illicit recordings.
- (2) An order under this section may be made –
 - (a) on an application by the procurator-fiscal made in the manner specified in section 134 of the Criminal Procedure (Scotland) Act 1995 (c. 46), or
 - (b) where a person is convicted of a relevant offence, in addition to any other penalty which the court may impose.
- (3) On an application under subsection (2)(a), the court shall make an order for the forfeiture of any illicit recordings only if it is satisfied that a relevant offence has been committed in relation to the illicit recordings.
- (4) The court may infer for the purposes of this section that such an offence has been committed in relation to any illicit recordings if it is satisfied that such an offence has been committed in relation to illicit recordings which are representative of the illicit recordings in question (whether by reason of being part of the same consignment or batch or otherwise).
- (5) The procurator-fiscal making the application under subsection (2)(a) shall serve on any person appearing to him to be the owner of, or otherwise to

have an interest in, the illicit recordings to which the application relates a copy of the application, together with a notice giving him the opportunity to appear at the hearing of the application to show cause why the illicit recordings should not be forfeited.

- (6) Service under subsection (5) shall be carried out, and such service may be proved, in the manner specified for citation of an accused in summary proceedings under the Criminal Procedure (Scotland) Act 1995.
- (7) Any person upon whom notice is served under subsection (5) and any other person claiming to be the owner of, or otherwise to have an interest in, illicit recordings to which an application under this section relates shall be entitled to appear at the hearing of the application to show cause why the illicit recordings should not be forfeited.
- (8) The court shall not make an order following an application under subsection (2)(a) –
 - (a) if any person on whom notice is served under subsection (5) does not appear, unless service of the notice on that person is proved, or
 - (b) if no notice under subsection (5) has been served, unless the court is satisfied that in the circumstances it was reasonable not to serve such notice.
- (9) Where an order for the forfeiture of any illicit recordings is made following an application under subsection (2)(a), any person who appeared, or was entitled to appear, to show cause why the illicit recordings should not be forfeited may, within 21 days of the making of the order, appeal to the High Court by Bill of Suspension.
- (10) Section 182(5)(a) to (e) of the Criminal Procedure (Scotland) Act 1995 shall apply to an appeal under subsection (9) as it applies to a stated case under Part 2 of that Act.
- (11) An order following an application under subsection (2)(a) shall not take effect –
 - (a) until the end of the period of 21 days beginning with the day after the day on which the order is made, or
 - (b) if an appeal is made under subsection (9) above within that period, until the appeal is determined or abandoned.
- (12) An order under subsection (2)(b) shall not take effect –
 - (a) until the end of the period within which an appeal against the order could be brought under the Criminal Procedure (Scotland) Act 1995 (c. 46), or
 - (b) if an appeal is made within that period, until the appeal is determined or abandoned.
- (13) Subject to subsection (14), illicit recordings forfeited under this section shall be destroyed in accordance with such directions as the court may give.

(14) On making an order under this section the court may direct that the illicit recordings to which the order relates shall (instead of being destroyed) be forfeited to the person having the performers' rights or recording rights in question or dealt with in such other way as the court considers appropriate.

(15) For the purposes of this section –

"relevant offence" means an offence under section 198(1) or (1A) (criminal liability for making or dealing with illicit recordings), or under the Trade Descriptions Act 1968 (c. 29) or any offence involving dishonesty or deception;

"the court" means –

- (a) in relation to an order made on an application under subsection (2)(a), the sheriff, and
- (b) in relation to an order made under subsection (2)(b), the court which imposed the penalty.

205 Jurisdiction of county court and sheriff court

(1) In England, Wales and Northern Ireland a county court may entertain proceedings under –

section 195 (order for delivery up of illicit recording), or

section 204 (order as to disposal of illicit recording),

save that, in Northern Ireland, a county court may entertain such proceedings only¹⁴⁶ where the value of the illicit recordings in question does not exceed the county court limit for actions in tort.

(2) In Scotland proceedings for an order under either of those provisions may be brought in the sheriff court.

(3) Nothing in this section shall be construed as affecting the jurisdiction of the High Court or, in Scotland, the Court of Session.

Licensing of performers' property rights

205A¹⁴⁷ Licensing of performers' property rights

The provisions of Schedule 2A have effect with respect to the licensing of performers' property rights.

Jurisdiction of Copyright Tribunal

205B Jurisdiction of Copyright Tribunal

¹⁴⁶ Words "save that ---- only" added by SI 1991/724.

¹⁴⁷ ss205A & 205B added by SI 1996/2967. s.205B(1)(cc) added by the Broadcasting Act 1996.

- (1) The Copyright Tribunal has jurisdiction under this Chapter to hear and determine proceedings under –
 - (a) section 182D (amount of equitable remuneration for exploitation of commercial sound recording);
 - (b) section 190 (application to give consent on behalf of owner of reproduction right);
 - (c) section 191H (amount of equitable remuneration on transfer of rental right);
 - (cc) paragraph 19 of Schedule 2 (determination of royalty or other remuneration to be paid with respect to re-transmission of broadcast including performance or recording);
 - (d) paragraph 3, 4 or 5 of Schedule 2A (reference of licensing scheme);
 - (e) paragraph 6 or 7 of that Schedule (application with respect to licence under licensing scheme);
 - (f) paragraph 10, 11 or 12 of that Schedule (reference or application with respect to licensing by licensing body);
 - (g) paragraph 15 of that Schedule (application to settle royalty for certain lending);
 - (h) paragraph 17 of that Schedule (application to settle terms of licence available as of right).
- (2) The provisions of Chapter VIII of Part I (general provisions relating to the Copyright Tribunal) apply in relation to the Tribunal when exercising any jurisdiction under this Chapter.
- (3) Provision shall be made by rules under section 150 prohibiting the Tribunal from entertaining a reference under paragraph 3, 4 or 5 of Schedule 2A (reference of licensing scheme) by a representative organisation unless the Tribunal is satisfied that the organisation is reasonably representative of the class of persons which it claims to represent.

CHAPTER III

MORAL RIGHTS

Right to be identified as performer

205C Right to be identified as performer

- (1) Whenever a person—
 - (a) produces or puts on a qualifying performance that is given in public,
 - (b) broadcasts live a qualifying performance,
 - (c) communicates to the public a sound recording of a qualifying performance, or
 - (d) issues to the public copies of such a recording, the performer has the right to be identified as such.

- (2) The right of the performer under this section is—
- (a) in the case of a performance that is given in public, to be identified in any programme accompanying the performance or in some other manner likely to bring his identity to the notice of a person seeing or hearing the performance,
 - (b) in the case of a performance that is broadcast, to be identified in a manner likely to bring his identity to the notice of a person seeing or hearing the broadcast,
 - (c) in the case of a sound recording that is communicated to the public, to be identified in a manner likely to bring his identity to the notice of a person hearing the communication,
 - (d) in the case of a sound recording that is issued to the public, to be identified in or on each copy or, if that is not appropriate, in some other manner likely to bring his identity to the notice of a person acquiring a copy,
- or (in any of the above cases) to be identified in such other manner as may be agreed between the performer and the person mentioned in subsection (1).
- (3) The right conferred by this section in relation to a performance given by a group (or so much of a performance as is given by a group) is not infringed—
- (a) in a case falling within paragraph (a), (b) or (c) of subsection (2), or
 - (b) in a case falling within paragraph (d) of that subsection in which it is not reasonably practicable for each member of the group to be identified, if the group itself is identified as specified in subsection (2).
- (4) In this section "group" means two or more performers who have a particular name by which they may be identified collectively.
- (5) If the assertion under section 205D specifies a pseudonym, initials or some other particular form of identification, that form shall be used; otherwise any reasonable form of identification may be used.
- (6) This section has effect subject to section 205E (exceptions to right).

205D Requirement that right be asserted

- (1) A person does not infringe the right conferred by section 205C (right to be identified as performer) by doing any of the acts mentioned in that section unless the right has been asserted in accordance with the following provisions so as to bind him in relation to that act.
- (2) The right may be asserted generally, or in relation to any specified act or description of acts—
 - (a) by instrument in writing signed by or on behalf of the performer, or

- (b) on an assignment of a performer's property rights, by including in the instrument effecting the assignment a statement that the performer asserts in relation to the performance his right to be identified.
- (3) The persons bound by an assertion of the right under subsection (2) are—
 - (a) in the case of an assertion under subsection (2)(a), anyone to whose notice the assertion is brought;
 - (b) in the case of an assertion under subsection (2)(b), the assignee and anyone claiming through him, whether or not he has notice of the assertion.
- (4) In an action for infringement of the right the court shall, in considering remedies, take into account any delay in asserting the right.

205E Exceptions to right

- (1) The right conferred by section 205C (right to be identified as performer) is subject to the following exceptions.
- (2) The right does not apply where it is not reasonably practicable to identify the performer (or, where identification of a group is permitted by virtue of section 205C(3), the group).
- (3) The right does not apply in relation to any performance given for the purposes of reporting current events.
- (4) The right does not apply in relation to any performance given for the purposes of advertising any goods or services.
- (5) The right is not infringed by an act which by virtue of any of the following provisions of Schedule 2 would not infringe any of the rights conferred by Chapter 2—
 - (a) paragraph 2(1A) (news reporting);
 - (b) paragraph 3 (incidental inclusion of a performance or recording);
 - (c) paragraph 4(2) (things done for the purposes of examination);
 - (d) paragraph 8 (parliamentary and judicial proceedings);
 - (e) paragraph 9 (Royal Commissions and statutory inquiries).

Right to object to derogatory treatment

205F Right to object to derogatory treatment of performance

- (1) The performer of a qualifying performance has a right which is infringed if—
 - (a) the performance is broadcast live, or
 - (b) by means of a sound recording the performance is played in public or communicated to the public, with any distortion, mutilation or other modification that is prejudicial to the reputation of the performer.

- (2) This section has effect subject to section 205G (exceptions to right).

205G Exceptions to right

- (1) The right conferred by section 205F (right to object to derogatory treatment of performance) is subject to the following exceptions.
- (2) The right does not apply in relation to any performance given for the purposes of reporting current events.
- (3) The right is not infringed by modifications made to a performance which are consistent with normal editorial or production practice.
- (4) Subject to subsection (5), the right is not infringed by anything done for the purpose of—
- (a) avoiding the commission of an offence,
 - (b) complying with a duty imposed by or under an enactment, or
 - (c) in the case of the British Broadcasting Corporation, avoiding the inclusion in a programme broadcast by them of anything which offends against good taste or decency or which is likely to encourage or incite crime or lead to disorder or to be offensive to public feeling.
- (5) Where—
- (a) the performer is identified in a manner likely to bring his identity to the notice of a person seeing or hearing the performance as modified by the act in question; or
 - (b) he has previously been identified in or on copies of a sound recording issued to the public,
- subsection (4) applies only if there is sufficient disclaimer.
- (6) In subsection (5) "sufficient disclaimer", in relation to an act capable of infringing the right, means a clear and reasonably prominent indication—
- (a) given in a manner likely to bring it to the notice of a person seeing or hearing the performance as modified by the act in question, and
 - (b) if the performer is identified at the time of the act, appearing along with the identification, that the modifications were made without the performer's consent.

205H Infringement of right by possessing or dealing with infringing article

- (1) The right conferred by section 205F (right to object to derogatory treatment of performance) is also infringed by a person who—
- (a) possesses in the course of business, or
 - (b) sells or lets for hire, or offers or exposes for sale or hire, or
 - (c) distributes,

an article which is, and which he knows or has reason to believe is, an infringing article.

- (2) An "infringing article" means a sound recording of a qualifying performance with any distortion, mutilation or other modification that is prejudicial to the reputation of the performer.

Supplementary

205I Duration of rights

- (1) A performer's rights under this Chapter in relation to a performance subsist so long as that performer's rights under Chapter 2 subsist in relation to the performance.
- (2) In subsection (1) "performer's rights" includes rights of a performer that are vested in a successor of his.

205J Consent and waiver of rights

- (1) It is not an infringement of the rights conferred by this Chapter to do any act to which consent has been given by or on behalf of the person entitled to the right.
- (2) Any of those rights may be waived by instrument in writing signed by or on behalf of the person giving up the right.
- (3) A waiver—
- (a) may relate to a specific performance, to performances of a specified description or to performances generally, and may relate to existing or future performances, and
 - (b) may be conditional or unconditional and may be expressed to be subject to revocation,

and if made in favour of the owner or prospective owner of a performer's property rights in the performance or performances to which it relates, it shall be presumed to extend to his licensees and successors in title unless a contrary intention is expressed.

- (4) Nothing in this Chapter shall be construed as excluding the operation of the general law of contract or estoppel in relation to an informal waiver or other transaction in relation to either of the rights conferred by this Chapter.

205K Application of provisions to parts of performances

- (1) The right conferred by section 205C (right to be identified as performer) applies in relation to the whole or any substantial part of a performance.

- (2) The right conferred by section 205F (right to object to derogatory treatment of performance) applies in relation to the whole or any part of a performance.

205L Moral rights not assignable

The rights conferred by this Chapter are not assignable.

205M Transmission of moral rights on death

- (1) On the death of a person entitled to a right conferred by this Chapter—
- (a) the right passes to such person as he may by testamentary disposition specifically direct,
 - (b) if there is no such direction but the performer's property rights in respect of the performance in question form part of his estate, the right passes to the person to whom the property rights pass,
 - (c) if or to the extent that the right does not pass under paragraph (a) or (b) it is exercisable by his personal representatives.
- (2) Where a performer's property rights pass in part to one person and in part to another, as for example where a bequest is limited so as to apply—
- (a) to one or more, but not all, of the things to which the owner has the right to consent, or
 - (b) to part, but not the whole, of the period for which the rights subsist,
- any right which by virtue of subsection (1) passes with the performer's property rights is correspondingly divided.
- (3) Where by virtue of subsection (1)(a) or (1)(b) a right becomes exercisable by more than one person—
- (a) it is, in the case of the right conferred by section 205F (right to object to derogatory treatment of performance), a right exercisable by each of them and is satisfied in relation to any of them if he consents to the treatment or act in question, and
 - (b) any waiver of the right in accordance with section 205J by one of them does not affect the rights of the others.
- (4) A consent or waiver previously given or made binds any person to whom a right passes by virtue of subsection (1).
- (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.

205N Remedies for infringement of moral rights

- (1) An infringement of a right conferred by this Chapter is actionable as a breach of statutory duty owed to the person entitled to the right.
- (2) Where—
 - (a) there is an infringement of a right conferred by this Chapter,
 - (b) a person falsely claiming to act on behalf of a performer consented to the relevant conduct or purported to waive the right, and
 - (c) there would have been no infringement if he had been so acting,
 that person shall be liable, jointly and severally with any person liable in respect of the infringement by virtue of subsection (1), as if he himself had infringed the right.
- (3) Where proceedings for infringement of the right conferred on a performer by this Chapter, it shall be a defence to prove—
 - (a) that a person claiming to act on behalf of the performer consented to the defendant's conduct or purported to waive the right, and
 - (b) that the defendant reasonably believed that the person was acting on behalf of the performer.
- (4) In proceedings for infringement of the right conferred by section 205F the court may, if it thinks it an adequate remedy in the circumstances, grant an injunction on terms prohibiting the doing of any act unless a disclaimer is made, in such terms and in such manner as may be approved by the court, dissociating the performer from the broadcast or sound recording of the performance.

CHAPTER IV

QUALIFICATION FOR PROTECTION EXTENT AND INTERPRETATION

206 Qualifying countries, individuals and persons

- (1) In this Part –

"qualifying country" means –

 - (a) the United Kingdom,
 - (b) another member State of the European Economic Community, or
 - (c) to the extent that an Order under section 208 so provides, a country designated under that section as enjoying reciprocal protection;

"qualifying individual" means a citizen or subject of, or an individual resident in, a qualifying country; and

"qualifying person" means a qualifying individual or a body corporate or other body having legal personality which –

- (a) is formed under the law of a part of the United Kingdom or another qualifying country, and
 - (b) has in any qualifying country a place of business at which substantial business activity is carried on.
- (2) The reference in the definition of "qualifying individual" to a person's being a citizen or subject of a qualifying country shall be construed –
- (a) in relation to the United Kingdom, as a reference to his being a British citizen, and
 - (b) in relation to a colony of the United Kingdom, as a reference to his being a British Dependent Territories' citizen by connection with that colony.
- (3) In determining for the purpose of the definition of "qualifying person" whether substantial business activity is carried on at a place of business in any country, no account shall be taken of dealings in goods which are at all material times outside that country.

207 Countries to which this Part extends

This Part extends to England and Wales, Scotland and Northern Ireland.

208 Countries enjoying reciprocal protection

- (1) Her Majesty may by Order in Council designate as enjoying reciprocal protection under this Part –
- (a) a Convention country, or
 - (b) a country as to which Her Majesty is satisfied that provision has been or will be made under its law giving adequate protection for British performances.
- (2) A "Convention country" means a country which is a party to a Convention relating to performers' rights to which the United Kingdom is also a party.
- (3) A "British performance" means a performance –
- (a) given by an individual who is a British citizen or resident in the United Kingdom, or
 - (b) taking place in the United Kingdom.
- (4) If the law of that country provides adequate protection only for certain descriptions of performance, an Order under subsection (1)(b) designating that country shall contain provision limiting to a corresponding extent the protection afforded by this Part in relation to performances connected with that country.
- (5) The power conferred by subsection (1)(b) is exercisable in relation to any of the Channel Islands, the Isle of Man or any colony of the United Kingdom, as in relation to a foreign country.

- (6) A statutory instrument containing an Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

209 Territorial waters and the Continental shelf

- (1) For the purposes of this Part the territorial waters of the United Kingdom shall be treated as part of the United Kingdom.
- (2) This Part applies to things done in the United Kingdom sector of the continental shelf on a structure or vessel which is present there for purposes directly connected with the exploration of the sea bed or subsoil or the exploitation of their natural resources as it applies to things done in the United Kingdom.
- (3) The United Kingdom sector of the continental shelf means the areas designated by order under section 1(7) of the Continental Shelf Act 1964.

210 British ships, aircraft and hovercraft

- (1) This Part applies to things done on a British ship, aircraft or hovercraft as it applies to things done in the United Kingdom.

- (2) In this section –

"British ship" means a ship which is a British ship for the purposes of the Merchant Shipping Act 1995¹⁴⁸ otherwise than by virtue of registration in a country outside the United Kingdom; and

"British aircraft" and "British hovercraft" mean an aircraft or hovercraft registered in the United Kingdom.

210A¹⁴⁹ Requirement of signature: application in relation to body corporate

- (1) The requirement in the following provisions that an instrument be signed by or on behalf of a person is also satisfied in the case of a body corporate by the affixing of its seal—

section 191B(3) (assignment of performer's property rights);
section 191C(1) (assignment of future performer's property rights);
section 191D(1) (grant of exclusive licence).

- (2) The requirement in the following provisions that an instrument be signed by a person is also satisfied in the case of a body corporate by signature on behalf of the body or by the affixing of its seal—

section 205D(2)(a) (assertion of performer's moral rights);
section 205J(2) (waiver of performer's moral rights).

¹⁴⁸ Reference to Merchant Shipping Act 1995 inserted by that Act (replacing original wording "Merchant Shipping Acts (see section 2 of the Merchant Shipping Act 1988)").

¹⁴⁹ s210A added by SI 2006 No.18

*Interpretation***211¹⁵⁰ Expressions having same meaning as in copyright provisions**

- (1) The following expressions have the same meaning in this Part as in Part I (copyright) –

assignment (in Scotland)

broadcast,

business,

communication to the public,

country,

defendant (in Scotland),

delivery up (in Scotland),

EEA state

film,

injunction (in Scotland),

literary work,

published,

signed

sound recording,

the EEA¹⁵¹ and

wireless broadcast.

- (2) The provisions of:

- (a) section 5B(2) and (3) (supplementary provisions relating to films),
and
- (b) section 6(3) to (5A) and section 19(4) (supplementary provisions relating to broadcasting),

150 Reference in s.211(1) to “EEA national” added by SI 1995/3297, and references to “communication to the public”, “injunction (in Scotland)” and “wireless broadcast” added by SI 2003/2498. Need to add in refs to additional words here, or alternatively follow the less precise wording of footnote 78.

151 Inserted by SI 2006/1028

apply for the purposes of this Part, and in relation to an infringement of the rights conferred by this Part, as they apply for the purposes of Part 1 and in relation to an infringement of copyright.

212¹⁵² Index of defined expressions

The following Table shows provisions defining or otherwise explaining expressions used in this Chapter (other than provisions defining or explaining an expression used only in the same section) –

¹⁵³ assignment (in Scotland)	section 211(1) (and section 177)
broadcast (and related expressions)	section 211 (and section 6)
Business	section 211(1) (and section 178)
communication to the public	section 211(1) (and section 20)
Consent of performer (in relation to performer's property rights)	section 191A(2)
Country	section 211(1) (and section 178)
defendant (in Scotland)	section 211(1) (and section 177)
Delivery up (in Scotland)	section 211(1) (and section 177)
distribution right	section 182B(5)
the EEA and EEA state ¹⁵⁴	section 211(1) (and section 172A)
Exclusive recording contract	section 185(1)
Film	section 211(1) (and section 5B)
¹⁵⁵ Group	section 205C(4)
illicit recording	section 197
Injunction (in Scotland)	section 211(1) (and section 177)
¹⁵⁶ⁱ issue to the public	section 182B
Lending right	section 182C(7)
literary work	section 211(1) (and section 3(1))
Making available right	section 182CA

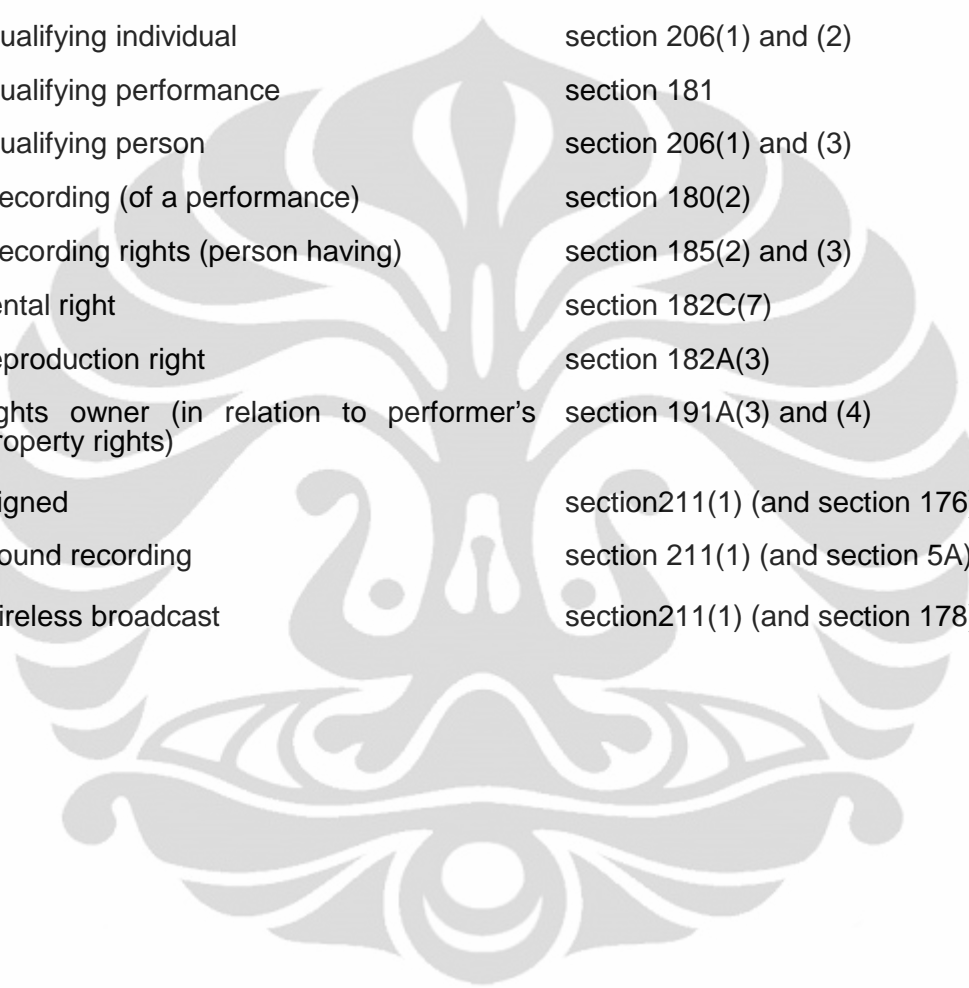
152 s.212 has been amended in consequence of SI 1995/3297, SI 1996/2967 and SI 2003/2498. (Instead of including separate footnotes for assignment, group, issue to the public, signed and wireless broadcast (the latter two which were missed anyway) it would be better to simply amend this footnote, by adding an appropriate reference to SI 2006, etc.

153 Assignment (in Scotland) section 211(1) (and section 177) added by SI 2006 No. 18

154 amended by SI 2006/1028

155 group section 205C(4) inserted by SI 2006/18

156 issue to the public section 182B by inserted SI 2006/18



performance	section 180(2)
performer's non-property rights	section 192A(1)
performer's property rights	section 191A(1)
Published	section 211(1) (and section 175)
Qualifying country	section 206(1)
Qualifying individual	section 206(1) and (2)
Qualifying performance	section 181
Qualifying person	section 206(1) and (3)
Recording (of a performance)	section 180(2)
Recording rights (person having)	section 185(2) and (3)
rental right	section 182C(7)
reproduction right	section 182A(3)
rights owner (in relation to performer's property rights)	section 191A(3) and (4)
Signed	section 211(1) (and section 176)
Sound recording	section 211(1) (and section 5A)
wireless broadcast	section 211(1) (and section 178)

PART VII MISCELLANEOUS AND GENERAL

*Circumvention of protection measures*¹⁵⁷

296 Circumvention of technical devices applied to computer programs

- (1) This section applies where –
- (a) a technical device has been applied to a computer program; and
 - (b) a person (A) knowing or having reason to believe that it will be used to make infringing copies -
 - (i) manufactures for sale or hire, imports, distributes, sells or lets for hire, offers or exposes for sale or hire, advertises for sale or hire or has in his possession for commercial purposes any means the sole intended purpose of which is to facilitate the unauthorised removal or circumvention of the technical device; or
 - (ii) publishes information intended to enable or assist persons to remove or circumvent the technical device.
- (2) The following persons have the same rights against A as a copyright owner has in respect of an infringement of copyright –
- (a) a person –
 - (i) issuing to the public copies of, or
 - (ii) communicating to the public,
 the computer program to which the technical device has been applied;
 - (b) the copyright owner or his exclusive licensee, if he is not the person specified in paragraph (a);
 - (c) the owner or exclusive licensee of any intellectual property right in the technical device applied to the computer program.
- (3) The rights conferred by subsection (2) are concurrent, and sections 101(3) and 102(1) to (4) apply, in proceedings under this section, in relation to persons with concurrent rights as they apply, in proceedings mentioned in those provisions, in relation to a copyright owner and exclusive licensee with concurrent rights.
- (4) Further, the persons in subsection (2) have the same rights under section 99 or 100 (delivery up or seizure of certain articles) in relation to any such means as is referred to in subsection (1) which a person has in his possession, custody or control with the intention that it should be used to facilitate the unauthorised removal or circumvention of any technical device

¹⁵⁷ Revised s.296 substituted, and ss.296A-G added, by SI 2003/2498.

which has been applied to a computer program, as a copyright owner has in relation to an infringing copy.

- (5) The rights conferred by subsection (4) are concurrent, and section 102(5) shall apply, as respects anything done under section 99 or 100 by virtue of subsection (4), in relation to persons with concurrent rights as it applies, as respects anything done under section 99 or 100, in relation to a copyright owner and exclusive licensee with concurrent rights.
- (6) In this section references to a technical device in relation to a computer program are to any device intended to prevent or restrict acts that are not authorised by the copyright owner of that computer program and are restricted by copyright.
- (7) The following provisions apply in relation to proceedings under this section as in relation to proceedings under Part 1 (copyright) -
 - (a) sections 104 to 106 of this Act (presumptions as to certain matters relating to copyright); and
 - (b) section 72 of the Supreme Court Act 1981, section 15 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 and section 94A of the Judicature (Northern Ireland) Act 1978 (withdrawal of privilege against self-incrimination in certain proceedings relating to intellectual property); and section 114 of this Act applies, with the necessary modifications, in relation to the disposal of anything delivered up or seized by virtue of subsection (4).
- (8) Expressions used in this section which are defined for the purposes of Part 1 of this Act (copyright) have the same meaning as in that Part.

296ZA Circumvention of technological measures

- (1) This section applies where –
 - (a) effective technological measures have been applied to a copyright work other than a computer program; and
 - (b) a person (B) does anything which circumvents those measures knowing, or with reasonable grounds to know, that he is pursuing that objective.
- (2) This section does not apply where a person, for the purposes of research into cryptography, does anything which circumvents effective technological measures unless in so doing, or in issuing information derived from that research, he affects prejudicially the rights of the copyright owner.
- (3) The following persons have the same rights against B as a copyright owner has in respect of an infringement of copyright –
 - (a) a person –
 - (i) issuing to the public copies of, or
 - (ii) communicating to the public,

the work to which effective technological measures have been applied; and

- (b) the copyright owner or his exclusive licensee, if he is not the person specified in paragraph (a).
- (4) The rights conferred by subsection (3) are concurrent, and sections 101(3) and 102(1) to (4) apply, in proceedings under this section, in relation to persons with concurrent rights as they apply, in proceedings mentioned in those provisions, in relation to a copyright owner and exclusive licensee with concurrent rights.
- (5) The following provisions apply in relation to proceedings under this section as in relation to proceedings under Part 1 (copyright) –
 - (a) sections 104 to 106 of this Act (presumptions as to certain matters relating to copyright); and
 - (b) section 72 of the Supreme Court Act 1981, section 15 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 and section 94A of the Judicature (Northern Ireland) Act 1978 (withdrawal of privilege against self-incrimination in certain proceedings relating to intellectual property).
- (6) Subsections (1) to (4) and (5)(b) and any other provision of this Act as it has effect for the purposes of those subsections apply, with any necessary adaptations, to rights in performances, publication right and database right.
- (7) The provisions of regulation 22 (presumptions relevant to database right) of the Copyright and Rights in Databases Regulations 1997 (SI 1997/3032) apply in proceedings brought by virtue of this section in relation to database right.

296ZB Devices and services designed to circumvent technological measures

- (1) A person commits an offence if he –
 - (a) manufactures for sale or hire, or
 - (b) imports otherwise than for his private and domestic use, or
 - (c) in the course of a business –
 - (i) sells or lets for hire, or
 - (ii) offers or exposes for sale or hire, or
 - (iii) advertises for sale or hire, or
 - (iv) possesses, or
 - (v) distributes, or
 - (d) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the copyright owner,

any device, product or component which is primarily designed, produced, or adapted for the purpose of enabling or facilitating the circumvention of effective technological measures.
- (2) A person commits an offence if he provides, promotes, advertises or markets –
 - (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 copyright owner,

a service the purpose of which is to enable or facilitate the circumvention of effective technological measures.

- (3) Subsections (1) and (2) do not make unlawful anything done by, or on behalf of, law enforcement agencies or any of the intelligence services –

- (a) in the interests of national security; or

- (b) for the purpose of the prevention or detection of crime, the investigation of an offence, or the conduct of a prosecution,

and in this subsection "intelligence services" has the meaning given in section 81 of the Regulation of Investigatory Powers Act 2000.

- (4) A person guilty of an offence under subsection (1) or (2) is liable –

- (a) on summary conviction, to imprisonment for a term not exceeding three months, or to a fine not exceeding the statutory maximum, or both;

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

- (5) It is a defence to any prosecution for an offence under this section for the defendant to prove that he did not know, and had no reasonable ground for believing, that –

- (a) the device, product or component; or

- (b) the service,

enabled or facilitated the circumvention of effective technological measures.

296ZC Devices and services designed to circumvent technological measures: search warrants and forfeiture

- (1) The provisions of sections 297B (search warrants), 297C (forfeiture of unauthorised decoders: England and Wales or Northern Ireland) and 297D (forfeiture of unauthorised decoders: Scotland) apply to offences under section 296ZB with the following modifications.

- (2) In section 297B the reference to an offence under section 297A(1) shall be construed as a reference to an offence under section 296ZB(1) or (2).

- (3) In sections 297C(2)(a) and 297D(15) the references to an offence under section 297A(1) shall be construed as a reference to an offence under section 296ZB(1).

- (4) In sections 297C and 297D references to unauthorised decoders shall be construed as references to devices, products or components for the purpose of circumventing effective technological measures.

296ZD Rights and remedies in respect of devices and services designed to circumvent technological measures

- (1) This section applies where –
 - (a) effective technological measures have been applied to a copyright work other than a computer program; and
 - (b) a person (C) manufactures, imports, distributes, sells or lets for hire, offers or exposes for sale or hire, advertises for sale or hire, or has in his possession for commercial purposes any device, product or component, or provides services which –
 - (i) are promoted, advertised or marketed for the purpose of the circumvention of, or
 - (ii) have only a limited commercially significant purpose or use other than to circumvent, or
 - (iii) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of, those measures.
- (2) The following persons have the same rights against C as a copyright owner has in respect of an infringement of copyright –
 - (a) a person –
 - (i) issuing to the public copies of, or
 - (ii) communicating to the public,the work to which effective technological measures have been applied;
 - (b) the copyright owner or his exclusive licensee, if he is not the person specified in paragraph (a); and
 - (c) the owner or exclusive licensee of any intellectual property right in the effective technological measures applied to the work.
- (3) The rights conferred by subsection (2) are concurrent, and sections 101(3) and 102(1) to (4) apply, in proceedings under this section, in relation to persons with concurrent rights as they apply, in proceedings mentioned in those provisions, in relation to a copyright owner and exclusive licensee with concurrent rights.
- (4) Further, the persons in subsection (2) have the same rights under section 99 or 100 (delivery up or seizure of certain articles) in relation to any such device, product or component which a person has in his possession, custody or control with the intention that it should be used to circumvent effective technological measures, as a copyright owner has in relation to any infringing copy.
- (5) The rights conferred by subsection (4) are concurrent, and section 102(5) shall apply, as respects anything done under section 99 or 100 by virtue of subsection (4), in relation to persons with concurrent rights as it applies, as

respects anything done under section 99 or 100, in relation to a copyright owner and exclusive licensee with concurrent rights.

- (6) The following provisions apply in relation to proceedings under this section as in relation to proceedings under Part 1 (copyright) -
- (a) sections 104 to 106 of this Act (presumptions as to certain matters relating to copyright); and
- (b) section 72 of the Supreme Court Act 1981, section 15 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 and section 94A of the Judicature (Northern Ireland) Act 1978 (withdrawal of privilege against self-incrimination in certain proceedings relating to intellectual property);
- and section 114 of this Act applies, with the necessary modifications, in relation to the disposal of anything delivered up or seized by virtue of subsection (4).
- (7) In section 97(1) (innocent infringement of copyright) as it applies to proceedings for infringement of the rights conferred by this section, the reference to the defendant not knowing or having reason to believe that copyright subsisted in the work shall be construed as a reference to his not knowing or having reason to believe that his acts enabled or facilitated an infringement of copyright.
- (8) Subsections (1) to (5), (6)(b) and (7) and any other provision of this Act as it has effect for the purposes of those subsections apply, with any necessary adaptations, to rights in performances, publication right and database right.
- (9) The provisions of regulation 22 (presumptions relevant to database right) of the Copyright and Rights in Databases Regulations 1997 (SI 1997/3032) apply in proceedings brought by virtue of this section in relation to database right.

296ZE Remedy where effective technological measures prevent permitted acts

- (1) In this section –

"permitted act" means an act which may be done in relation to copyright works, notwithstanding the subsistence of copyright, by virtue of a provision of this Act listed in Part 1 of Schedule 5A;

"voluntary measure or agreement" means –

- (a) any measure taken voluntarily by a copyright owner, his exclusive licensee or a person issuing copies of, or communicating to the public, a work other than a computer program, or
- (b) any agreement between a copyright owner, his exclusive licensee or a person issuing copies of, or communicating to the public, a work other than a computer program and another party,

the effect of which is to enable a person to carry out a permitted act.

- (2) Where the application of any effective technological measure to a copyright work other than a computer program prevents a person from carrying out a permitted act in relation to that work then that person or a person being a representative of a class of persons prevented from carrying out a permitted act may issue a notice of complaint to the Secretary of State.
- (3) Following receipt of a notice of complaint, the Secretary of State may give to the owner of that copyright work or an exclusive licensee such directions as appear to the Secretary of State to be requisite or expedient for the purpose of –
 - (a) establishing whether any voluntary measure or agreement relevant to the copyright work the subject of the complaint subsists; or
 - (b) (where it is established there is no subsisting voluntary measure or agreement) ensuring that the owner or exclusive licensee of that copyright work makes available to the complainant the means of carrying out the permitted act the subject of the complaint to the extent necessary to so benefit from that permitted act.
- (4) The Secretary of State may also give directions –
 - (a) as to the form and manner in which a notice of complaint in subsection (2) may be delivered to him;
 - (b) as to the form and manner in which evidence of any voluntary measure or agreement may be delivered to him; and
 - (c) generally as to the procedure to be followed in relation to a complaint made under this section;and shall publish directions given under this subsection in such manner as in his opinion will secure adequate publicity for them.
- (5) It shall be the duty of any person to whom a direction is given under subsection (3)(a) or (b) to give effect to that direction.
- (6) The obligation to comply with a direction given under subsection (3)(b) is a duty owed to the complainant or, where the complaint is made by a representative of a class of persons, to that representative and to each person in the class represented; and a breach of the duty is actionable accordingly (subject to the defences and other incidents applying to actions for breach of statutory duty).
- (7) Any direction under this section may be varied or revoked by a subsequent direction under this section.
- (8) Any direction given under this section shall be in writing.
- (9) This section does not apply to copyright works made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them.
- (10) This section applies only where a complainant has lawful access to the protected copyright work, or where the complainant is a representative of a

class of persons, where the class of persons have lawful access to the work.

- (11) Subsections (1) to (10) apply with any necessary adaptations to –
- (a) rights in performances, and in this context the expression "permitted act" refers to an act that may be done by virtue of a provision of this Act listed in Part 2 of Schedule 5A;
 - (b) database right, and in this context the expression "permitted act" refers to an act that may be done by virtue of a provision of this Act listed in Part 3 of Schedule 5A; and
 - (c) publication right.

296ZF Interpretation of sections 296ZA to 296ZE

- (1) In sections 296ZA to 296ZE, "technological measures" are any technology, device or component which is designed, in the normal course of its operation, to protect a copyright work other than a computer program.
- (2) Such measures are "effective" if the use of the work is controlled by the copyright owner through –
 - (a) an access control or protection process such as encryption, scrambling or other transformation of the work, or
 - (b) a copy control mechanism,
 which achieves the intended protection.
- (3) In this section, the reference to –
 - (a) protection of a work is to the prevention or restriction of acts that are not authorised by the copyright owner of that work and are restricted by copyright; and
 - (b) use of a work does not extend to any use of the work that is outside the scope of the acts restricted by copyright.
- (4) Expressions used in sections 296ZA to 296ZE which are defined for the purposes of Part 1 of this Act (copyright) have the same meaning as in that Part.

Rights management information

296ZG Electronic rights management information

- (1) This section applies where a person (D), knowingly and without authority, removes or alters electronic rights management information which –
 - (a) is associated with a copy of a copyright work, or
 - (b) appears in connection with the communication to the public of a copyright work, and

where D knows, or has reason to believe, that by so doing he is inducing, enabling, facilitating or concealing an infringement of copyright.

- (2) This section also applies where a person (E), knowingly and without authority, distributes, imports for distribution or communicates to the public copies of a copyright work from which electronic rights management information –
- (a) associated with the copies, or
 - (b) appearing in connection with the communication to the public of the work,
- has been removed or altered without authority and where E knows, or has reason to believe, that by so doing he is inducing, enabling, facilitating or concealing an infringement of copyright.
- (3) A person issuing to the public copies of, or communicating, the work to the public, has the same rights against D and E as a copyright owner has in respect of an infringement of copyright.
- (4) The copyright owner or his exclusive licensee, if he is not the person issuing to the public copies of, or communicating, the work to the public, also has the same rights against D and E as he has in respect of an infringement of copyright.
- (5) The rights conferred by subsections (3) and (4) are concurrent, and sections 101(3) and 102(1) to (4) apply, in proceedings under this section, in relation to persons with concurrent rights as they apply, in proceedings mentioned in those provisions, in relation to a copyright owner and exclusive licensee with concurrent rights.
- (6) The following provisions apply in relation to proceedings under this section as in relation to proceedings under Part 1 (copyright) –
- (a) sections 104 to 106 of this Act (presumptions as to certain matters relating to copyright); and
 - (b) section 72 of the Supreme Court Act 1981, section 15 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 and section 94A of the Judicature (Northern Ireland) Act 1978 (withdrawal of privilege against self-incrimination in certain proceedings relating to intellectual property).
- (7) In this section –
- (a) expressions which are defined for the purposes of Part 1 of this Act (copyright) have the same meaning as in that Part; and
 - (b) "rights management information" means any information provided by the copyright owner or the holder of any right under copyright which identifies the work, the author, the copyright owner or the holder of any intellectual property rights, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information.

- (8) Subsections (1) to (5) and (6)(b), and any other provision of this Act as it has effect for the purposes of those subsections, apply, with any necessary adaptations, to rights in performances, publication right and database right.
- (9) The provisions of regulation 22 (presumptions relevant to database right) of the Copyright and Rights in Databases Regulations 1997 (SI 1997/3032) apply in proceedings brought by virtue of this section in relation to database right.

Computer programs

296A¹⁵⁸ Avoidance of certain terms

- (1) Where a person has the use of a computer program under an agreement, any term or condition in the agreement shall be void in so far as it purports to prohibit or restrict –
 - (a) the making of any back up copy of the program which it is necessary for him to have for the purposes of the agreed use;
 - (b) where the conditions in section 50B(2) are met, the decompiling of the program; or
 - (c) the observing, studying or testing of the functioning of the program in accordance with section 50BA.
- (2) In this section, decompile, in relation to a computer program, has the same meaning as in section 50B.

Databases

296B¹⁵⁹ Avoidance of certain terms relating to databases

Where under an agreement a person has a right to use a database or part of a database, any term or condition in the agreement shall be void in so far as it purports to prohibit or restrict the performance of any act which would but for section 50D infringe the copyright in the database.

Fraudulent reception of transmissions

297 Offence of fraudulently receiving programmes

- (1) A person who dishonestly receives a programme included in a broadcasting service provided from a place in the United Kingdom with intent to avoid payment of any charge applicable to the reception of the programme commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

158 s.296A added by SI 1992/3233, and revised s.296A(1)(c) substituted by SI 2003/2498.

159 s.296B added by SI 1997/3032.

- (2) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

In relation to a body corporate whose affairs are managed by its members "director" means a member of the body corporate.

297A¹⁶⁰ Unauthorised decoders

- (1) A person commits an offence if he –
- (a) makes, imports, distributes, sells or lets for hire or offers or exposes for sale or hire any unauthorised decoder;
 - (b) has in his possession for commercial purposes any unauthorised decoder;
 - (c) instals, maintains or replaces for commercial purposes any unauthorised decoder; or
 - (d) advertises any unauthorised decoder for sale or hire or otherwise promotes any unauthorised decoder by means of commercial communications.
- (2) A person guilty of an offence under subsection (1) is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum, or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding ten years, or to a fine, or to both.
- (3) It is a defence to any prosecution for an offence under this section for the defendant to prove that he did not know, and had no reasonable ground for believing, that the decoder was an unauthorised decoder.
- (4) In this section –

"apparatus" includes any device, component or electronic data (including software);

"conditional access technology" means any technical measure or arrangement whereby access to encrypted transmissions in an intelligible form is made conditional on prior individual authorisation;

"decoder" means any apparatus which is designed or adapted to enable (whether on its own or with any other apparatus) an encrypted transmission to be decoded;

¹⁶⁰ Revised s.297A substituted by SI 2000/1175 (replacing that originally added by the Broadcasting Act 1990 and amended by the Broadcasting Act 1996). Revised s.297A(2)(a) substituted, and penalty in s.297A(2)(b) increased from two years to ten, by the Copyright etc. and Trade Marks (Offences and Enforcement) Act 2002.

"encrypted" includes subjected to scrambling or the operation of cryptographic envelopes, electronic locks, passwords or any other analogous application;

"transmission" means –

- (a) any programme included in a broadcasting service which is provided from a place in the United Kingdom or any other member State; or
- (b) an information society service (within the meaning of Directive 98/34/EC of the European Parliament and of the Council of 22nd June 1998, as amended by Directive 98/48/EC of the European Parliament and of the Council of 20th July 1998) which is provided from a place in the United Kingdom or any other member State; and

"unauthorised", in relation to a decoder, means that the decoder is designed or adapted to enable an encrypted transmission, or any service of which it forms part, to be accessed in an intelligible form without payment of the fee (however imposed) which the person making the transmission, or on whose behalf it is made, charges for accessing the transmission or service (whether by the circumvention of any conditional access technology related to the transmission or service or by any other means).

297B¹⁶¹ Search warrants

- (1) Where a justice of the peace (in Scotland, a sheriff or justice of the peace) is satisfied by information on oath given by a constable (in Scotland, by evidence on oath) that there are reasonable grounds for believing –
 - (a) that an offence under section 297A(1) has been or is about to be committed in any premises, and
 - (b) that evidence that such an offence has been or is about to be committed is in those premises,

he may issue a warrant authorising a constable to enter and search the premises, using such reasonable force as is necessary.
- (2) The power conferred by subsection (1) does not, in England and Wales, extend to authorising a search for material of the kinds mentioned in section 9(2) of the Police and Criminal Evidence Act 1984 (c. 60) (certain classes of personal or confidential material).
- (3) A warrant under subsection (1) –
 - (a) may authorise persons to accompany any constable executing the warrant, and
 - (b) remains in force for three months from the date of its issue.

¹⁶¹ ss.297B-D added by the Copyright etc. and Trade Marks (Offences and Enforcement) Act 2002. s.297B(3)(b) "28 days" replaced by "three months" under the Serious Organised Crime and Police Act 2005

- (4) In executing a warrant issued under subsection (1) a constable may seize an article if he reasonably believes that it is evidence that any offence under section 297A(1) has been or is about to be committed.
- (5) In this section "premises" includes land, buildings, fixed or moveable structures, vehicles, vessels, aircraft and hovercraft.

297C Forfeiture of unauthorised decoders: England and Wales or Northern Ireland

- (1) In England and Wales or Northern Ireland where unauthorised decoders have come into the possession of any person in connection with the investigation or prosecution of a relevant offence, that person may apply under this section for an order for the forfeiture of the unauthorised decoders.
- (2) For the purposes of this section "relevant offence" means –
 - (a) an offence under section 297A(1) (criminal liability for making, importing, etc. unauthorised decoders),
 - (b) an offence under the Trade Descriptions Act 1968, or
 - (c) an offence involving dishonesty or deception.
- (3) An application under this section may be made –
 - (a) where proceedings have been brought in any court for a relevant offence relating to some or all of the unauthorised decoders, to that court, or
 - (b) where no application for the forfeiture of the unauthorised decoders has been made under paragraph (a), by way of complaint to a magistrates' court.
- (4) On an application under this section, the court shall make an order for the forfeiture of any unauthorised decoders only if it is satisfied that a relevant offence has been committed in relation to the unauthorised decoders.
- (5) A court may infer for the purposes of this section that such an offence has been committed in relation to any unauthorised decoders if it is satisfied that such an offence has been committed in relation to unauthorised decoders which are representative of the unauthorised decoders in question (whether by reason of being of the same design or part of the same consignment or batch or otherwise).
- (6) Any person aggrieved by an order made under this section by a magistrates' court, or by a decision of such a court not to make such an order, may appeal against that order or decision –
 - (a) in England and Wales, to the Crown Court, or
 - (b) in Northern Ireland, to the county court.
- (7) An order under this section may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any

application under section 111 of the Magistrates' Courts Act 1980 (c. 43) or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) (statement of case)).

- (8) Subject to subsection (9), where any unauthorised decoders are forfeited under this section they shall be destroyed in accordance with such directions as the court may give.
- (9) On making an order under this section the court may direct that the unauthorised decoders to which the order relates shall (instead of being destroyed) be forfeited to a person who has rights or remedies under section 298 in relation to the unauthorised decoders in question, or dealt with in such other way as the court considers appropriate.

297D Forfeiture of unauthorised decoders: Scotland

- (1) In Scotland the court may make an order under this section for the forfeiture of unauthorised decoders.
- (2) An order under this section may be made –
 - (a) on an application by the procurator-fiscal made in the manner specified in section 134 of the Criminal Procedure (Scotland) Act 1995 (c. 46), or
 - (b) where a person is convicted of a relevant offence, in addition to any other penalty which the court may impose.
- (3) On an application under subsection (2)(a), the court shall make an order for the forfeiture of any unauthorised decoders only if it is satisfied that a relevant offence has been committed in relation to the unauthorised decoders.
- (4) The court may infer for the purposes of this section that such an offence has been committed in relation to any unauthorised decoders if it is satisfied that such an offence has been committed in relation to unauthorised decoders which are representative of the unauthorised decoders in question (whether by reason of being of the same design or part of the same consignment or batch or otherwise).
- (5) The procurator-fiscal making the application under subsection (2)(a) shall serve on any person appearing to him to be the owner of, or otherwise to have an interest in, the unauthorised decoders to which the application relates a copy of the application, together with a notice giving him the opportunity to appear at the hearing of the application to show cause why the unauthorised decoders should not be forfeited.
- (6) Service under subsection (5) shall be carried out, and such service may be proved, in the manner specified for citation of an accused in summary proceedings under the Criminal Procedure (Scotland) Act 1995 (c. 46).
- (7) Any person upon whom notice is served under subsection (5) and any other person claiming to be the owner of, or otherwise to have an interest in, unauthorised decoders to which an application under this section

relates shall be entitled to appear at the hearing of the application to show cause why the unauthorised decoders should not be forfeited.

- (8) The court shall not make an order following an application under subsection (2)(a) –
 - (a) if any person on whom notice is served under subsection (5) does not appear, unless service of the notice on that person is proved, or
 - (b) if no notice under subsection (5) has been served, unless the court is satisfied that in the circumstances it was reasonable not to serve such notice.
- (9) Where an order for the forfeiture of any unauthorised decoders is made following an application under subsection (2)(a), any person who appeared, or was entitled to appear, to show cause why the unauthorised decoders should not be forfeited may, within 21 days of the making of the order, appeal to the High Court by Bill of Suspension.
- (10) Section 182(5)(a) to (e) of the Criminal Procedure (Scotland) Act 1995 shall apply to an appeal under subsection (9) as it applies to a stated case under Part 2 of that Act.
- (11) An order following an application under subsection (2)(a) shall not take effect –
 - (a) until the end of the period of 21 days beginning with the day after the day on which the order is made, or
 - (b) if an appeal is made under subsection (9) above within that period, until the appeal is determined or abandoned.
- (12) An order under subsection (2)(b) shall not take effect –
 - (a) until the end of the period within which an appeal against the order could be brought under the Criminal Procedure (Scotland) Act 1995 (c. 46), or
 - (b) if an appeal is made within that period, until the appeal is determined or abandoned.
- (13) Subject to subsection (14), where any unauthorised decoders are forfeited under this section they shall be destroyed in accordance with such directions as the court may give.
- (14) On making an order under this section the court may direct that the unauthorised decoders to which the order relates shall (instead of being destroyed) be forfeited to a person who has rights or remedies under section 298 in relation to the unauthorised decoders in question, or dealt with in such other way as the court considers appropriate.
- (15) For the purposes of this section –

“relevant offence” means an offence under section 297A(1) (criminal liability for making, importing, etc. unauthorised decoders), or under the

Trade Descriptions Act 1968 (c. 29) or any offence involving dishonesty or deception;

"the court" means –

- (a) in relation to an order made on an application under subsection (2)(a), the sheriff, and
- (b) in relation to an order made under subsection (2)(b), the court which imposed the penalty.

298¹⁶² Rights and remedies in respect of apparatus, &c. for unauthorised reception of transmissions

- (1) A person who –
 - (a) makes charges for the reception of programmes included in a broadcasting service provided from a place in the United Kingdom or any other member State,
 - (b) sends encrypted transmissions of any other description from a place in the United Kingdom or any other member State, or
 - (c) provides conditional access services from a place in the United Kingdom or any other member State,
 is entitled to the following rights and remedies.
- (2) He has the same rights and remedies against a person –
 - (a) who –
 - (i) makes, imports, distributes, sells or lets for hire, offers or exposes for sale or hire, or advertises for sale or hire,
 - (ii) has in his possession for commercial purposes, or
 - (iii) instals, maintains or replaces for commercial purposes,

any apparatus designed or adapted to enable or assist persons to access the programmes or other transmissions or circumvent conditional access technology related to the programmes or other transmissions when they are not entitled to do so, or

- (b) who publishes or otherwise promotes by means of commercial communications any information which is calculated to enable or assist persons to access the programmes or other transmissions or circumvent conditional access technology related to the programmes or other transmissions when they are not entitled to do so,

as a copyright owner has in respect of an infringement of copyright.

162 Revised s.298 substituted by SI 2000/1175.

- (3) Further, he has the same rights under section 99 or 100 (delivery up or seizure of certain articles) in relation to any such apparatus as a copyright owner has in relation to an infringing copy.
- (4) Section 72 of the Supreme Court Act 1981, section 15 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 and section 94A of the Judicature (Northern Ireland) Act 1978 (withdrawal of privilege against self-incrimination in certain proceedings relating to intellectual property) apply to proceedings under this section as to proceedings under Part I of this Act (copyright).
- (5) In section 97(1) (innocent infringement of copyright) as it applies to proceedings for infringement of the rights conferred by this section, the reference to the defendant not knowing or having reason to believe that copyright subsisted in the work shall be construed as a reference to his not knowing or having reason to believe that his acts infringed the rights conferred by this section.
- (6) Section 114 applies, with the necessary modifications, in relation to the disposal of anything delivered up or seized by virtue of subsection (3) above.
- (7) In this section "apparatus", "conditional access technology" and "encrypted" have the same meanings as in section 297A, "transmission" includes transmissions as defined in that section and "conditional access services" means services comprising the provision of conditional access technology.

299¹⁶³ Supplementary provisions as to fraudulent reception

- (1) Her Majesty may by Order in Council –
 - (a) provide that section 297 applies in relation to programmes included in services provided from a country or territory outside the United Kingdom, and
 - (b) provide that section 298 applies in relation to such programmes and to encrypted transmissions sent from such a country or territory.
- (2) [(2)]
- (3) A statutory instrument containing an Order in Council under subsection (1) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Where sections 297 and 298 apply in relation to a broadcasting service, they also apply to any service run for the person providing that service, or a person providing programmes for that service, which consists wholly or mainly in the sending by means of a telecommunications system of sounds or visual images, or both.

¹⁶³ s.299(2) deleted, and reference in s.299(5) to s.297A added, by the Broadcasting Act 1990.

- (5) In sections 297, 297A and 298, and this section, "programme" and "broadcasting", and related expressions, have the same meaning as in Part I (copyright).

[300 - relates to trade marks]

Provisions for the benefit of the Hospital for Sick Children

301 Provisions for the benefit of the Hospital for Sick Children

The provisions of Schedule 6 have effect for conferring on trustees for the benefit of the Hospital for Sick Children, Great Ormond Street, London, a right to a royalty in respect of the public performance, commercial publication or communication to the public of the play "Peter Pan" by Sir James Matthew Barrie, or of any adaptation of that work, notwithstanding that copyright in the work expired on 31st December 1987.

Financial assistance for certain international bodies

302 Financial assistance for certain international bodies

- (1) The Secretary of State may give financial assistance, in the form of grants, loans or guarantees to –
- (a) any international organisation having functions relating to trade marks or other intellectual property, or
 - (b) any Community institution or other body established under any of the Community Treaties having any such functions,
- with a view to the establishment or maintenance by that organisation, institution or body of premises in the United Kingdom.
- (2) Any expenditure of the Secretary of State under this section shall be defrayed out of money provided by Parliament; and any sums received by the Secretary of State in consequence of this section shall be paid into the Consolidated Fund.

General

303 Consequential amendments and repeals

- (1) The enactments specified in Schedule 7 are amended in accordance with that Schedule, the amendments being consequential on the provisions of this Act.
- (2) The enactments specified in Schedule 8 are repealed to the extent specified.

304 Extent

- (1) Provision as to the extent of Part I (copyright), Part II (rights in performances) and Part III (design right) is to be found in sections 157, 207 and 255 respectively; the extent of the other provisions of this Act is as follows.
- (2) Part IV to Part VII extend to England and Wales, Scotland and Northern Ireland, except that –
 - (a) sections 287 to 292 (patents county courts) extend to England and Wales only,
 - (b) the proper law of the trust created by Schedule 6 (provisions for the benefit of the Hospital for Sick Children) is the law of England and Wales, and
 - (c) the amendments and repeals in Schedules 7 and 8 have the same extent as the enactments amended or repealed.
- (3) The following provisions extend to the Isle of Man subject to any modifications contained in an Order made by Her Majesty in Council –
 - (a) sections 293 and 294 (patents: licences of right), and
 - (b) paragraphs 24 and 29 of Schedule 5 (patents: effect of filing international application for patent and power to extend time limits).
- (4) Her Majesty may by Order in Council direct that the following provisions extend to the Isle of Man, with such exceptions and modifications as may be specified in the Order –
 - (a) Part IV (registered designs),
 - (b) Part V (patent agents),
 - (c) the provisions of Schedule 5 (patents: miscellaneous amendments) not mentioned in subsection (3) above,
 - (d) sections 297 to 299 (fraudulent reception of transmissions), and
 - (e) section 300 (fraudulent application or use of trade mark).
- (5) Her Majesty may by Order in Council direct that sections 297 to 299 (fraudulent reception of transmissions) extend to any of the Channel Islands, with such exceptions and modifications as may be specified in the Order.
- (6) Any power conferred by this Act to make provision by Order in Council for or in connection with the extent of provisions of this Act to a country outside the United Kingdom includes power to extend to that country, subject to any modifications specified in the Order, any provision of this Act which amends or repeals an enactment extending to that country.

305 Commencement

- (1) The following provisions of this Act come into force on Royal Assent –

paragraphs 24 and 29 of Schedule 5 (patents: effect of filing international application for patent and power to extend time limits);

section 301 and Schedule 6 (provisions for the benefit of the Hospital for Sick Children).
- (2) Sections 293 and 294 (licences of right) come into force at the end of the period of two months beginning with the passing of this Act.
- (3) The other provisions of this Act come into force on such day as the Secretary of State may appoint by order made by statutory instrument, and different days may be appointed for different provisions and different purposes.

306 Short title

This Act may be cited as the Copyright, Designs and Patents Act 1988.

*Copyright, Designs and Patents Act 1988***SCHEDULES**

Section 170

SCHEDULE 1

COPYRIGHT: TRANSITIONAL PROVISIONS AND SAVINGS 164

Introductory

- 1 (1) In this Schedule -
 "the 1911 Act" means the Copyright Act 1911,
 "the 1956 Act" means the Copyright Act 1956, and
 "the new copyright provisions" means the provisions of this Act relating to copyright, that is, Part I (including this Schedule) and Schedules 3, 7 and 8 so far as they make amendments or repeals consequential on the provisions of Part I.
- (2) References in this Schedule to "commencement", without more, are to the date on which the new copyright provisions come into force.
- (3) References in this Schedule to "existing works" are to works made before commencement; and for this purpose a work of which the making extended over a period shall be taken to have been made when its making was completed.
- 2 (1) In relation to the 1956 Act, references in this Schedule to a work include any work or other subject-matter within the meaning of that Act.
- (2) In relation to the 1911 Act -
- (a) references in this Schedule to copyright include the right conferred by section 24 of that Act in substitution for a right subsisting immediately before the commencement of that Act;
- (b) references in this Schedule to copyright in a sound recording are to the copyright under that Act in records embodying the recording; and
- (c) references in this Schedule to copyright in a film are to any copyright under that Act in the film (so far as it constituted a dramatic work for the purposes of that Act) or in photographs forming part of the film.

General principles: continuity of the law

- 3 The new copyright provisions apply in relation to things existing at commencement as they apply in relation to things coming into existence after commencement, subject to any express provision to the contrary.
- 4 (1) The provisions of this paragraph have effect for securing the continuity of the law so far as the new copyright provisions re-enact (with or without modification) earlier provisions.
- (2) A reference in an enactment, instrument or other document to copyright, or to a work or other subject-matter in which copyright subsists, which apart from this Act would be construed as referring to copyright under the 1956 Act shall be construed, so far as may

164 See also transitional provisions and savings in subsequent legislation, pages 179-194.

be required for continuing its effect, as being, or as the case may require, including, a reference to copyright under this Act or to works in which copyright subsists under this Act.

(3) Anything done (including subordinate legislation made), or having effect as done, under or for the purposes of a provision repealed by this Act has effect as if done under or for the purposes of the corresponding provision of the new copyright provisions.

(4) References (expressed or implied) in this Act or any other enactment, instrument or document to any of the new copyright provisions shall, so far as the context permits, be construed as including, in relation to times, circumstances and purposes before commencement, a reference to corresponding earlier provisions.

(5) A reference (express or implied) in an enactment, instrument or other document to a provision repealed by this Act shall be construed, so far as may be required for continuing its effect, as a reference to the corresponding provision of this Act.

(6) The provisions of this paragraph have effect subject to any specific transitional provision or saving and to any express amendment made by this Act.

subsistence of copyright

5 (1) Copyright subsists in an existing work after commencement only if copyright subsisted in it immediately before commencement.

(2) Sub-paragraph (1) does not prevent an existing work qualifying for copyright protection after commencement -

(a) under section 155 (qualification by virtue of first publication), or

(b) by virtue of an Order under section 159 (application of Part I to countries to which it does not extend).

6 (1) Copyright shall not subsist by virtue of this Act in an artistic work made before 1st June 1957 which at the time when the work was made constituted a design capable of registration under the Registered Designs Act 1949 or under the enactments repealed by that Act, and was used, or intended to be used, as a model or pattern to be multiplied by an industrial process.

(2) For this purpose a design shall be deemed to be used as a model or pattern to be multiplied by any industrial process -

(a) when the design is reproduced or is intended to be reproduced on more than 50 single articles, unless all the articles in which the design is reproduced or is intended to be reproduced together form only a single set of articles as defined in section 44(1) of the Registered Designs Act 1949, or

(b) when the design is to be applied to -

(i) printed paper hangings,

(ii) carpets, floor cloths or oil cloths, manufactured or sold in lengths or pieces,

(iii) textile piece goods, or textile goods manufactured or sold in lengths or pieces, or

(iv) lace, not made by hand.

7 (1) No copyright subsists in a film, as such, made before 1st June 1957.

(2) Where a film made before that date was an original dramatic work within the meaning of the 1911 Act, the new copyright provisions have effect in relation to the film as if it was an original dramatic work within the meaning of Part I.

(3) The new copyright provisions have effect in relation to photographs forming part of a film made before 1st June 1957 as they have effect in relation to photographs not forming part of a film.

8 (1) A film sound-track to which section 13(9) of the 1956 Act applied before commencement (film to be taken to include sounds in associated soundtrack) shall be

treated for the purposes of the new copyright provisions not as part of the film, but as a sound recording.

(2) However -

- (a) copyright subsists in the sound recording only if copyright subsisted in the film immediately before commencement, and it continues to subsist until copyright in the film expires;
- (b) the author and first owner of copyright in the film shall be treated as having been author and first owner of the copyright in the sound recording; and
- (c) anything done before commencement under or in relation to the copyright in the film continues to have effect in relation to the sound recording as in relation to the film.

9¹⁶⁵ No copyright subsists in -

- (a) a wireless broadcast made before 1st June 1957, or
- (b) a broadcast by cable made before 1st January 1985;

and any such broadcast shall be disregarded for the purposes of section 14(5) (duration of copyright in repeats).

Authorship of work

10 The question who was the author of an existing work shall be determined in accordance with the new copyright provisions for the purposes of the rights conferred by Chapter IV of Part I (moral rights), and for all other purposes shall be determined in accordance with the law in force at the time the work was made.

First ownership of copyright

11 (1) The question who was first owner of copyright in an existing work shall be determined in accordance with the law in force at the time the work was made.

(2) Where before commencement a person commissioned the making of a work in circumstances falling within -

- (a) section 4(3) of the 1956 Act or paragraph (a) of the proviso to section 5(1) of the 1911 Act (photographs, portraits and engravings), or
- (b) the proviso to section 12(4) of the 1956 Act (sound recordings),

those provisions apply to determine first ownership of copyright in any work made in pursuance of the commission after commencement.

Duration of copyright in existing works

12 (1) The following provisions have effect with respect to the duration of copyright in existing works.

The question which provision applies to a work shall be determined by reference to the facts immediately before commencement; and expressions used in this paragraph which were defined for the purposes of the 1956 Act have the same meaning as in that Act.

(2) Copyright in the following descriptions of work continues to subsist until the date on which it would have expired under the 1956 Act -

- (a) literary, dramatic or musical works in relation to which the period of 50 years mentioned in the proviso to section 2(3) of the 1956 Act (duration of copyright in works made available to the public after the death of the author) has begun to run;
- (b) engravings in relation to which the period of 50 years mentioned in the proviso to

165 Revised para. 9 substituted by SI 2003/2498.

section 3(4) of the 1956 Act (duration of copyright in works published after the death of the author) has begun to run;

(c) published photographs and photographs taken before 1st June 1957;

(d) published sound recordings and sound recordings made before 1st June 1957;

(e) published films and films falling within section 13(3)(a) of the 1956 Act (films registered under former enactments relating to registration of films).

(3) Copyright in anonymous or pseudonymous literary, dramatic, musical or artistic works (other than photographs) continues to subsist -

(a) if the work is published, until the date on which it would have expired in accordance with the 1956 Act, and

(b)¹⁶⁶ if the work is unpublished, until the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force or, if during that period the work is first made available to the public within the meaning of section 12(3) (duration of copyright in works of unknown authorship), the date on which copyright expires in accordance with that provision;

unless, in any case, the identity of the author becomes known before that date, in which case section 12(2) applies (general rule: life of the author plus 70 years).

(4) Copyright in the following descriptions of work continues to subsist until the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into

force -

(a) literary, dramatic and musical works of which the author has died and in relation to which none of the acts mentioned in paragraphs (a) to (e) of the proviso to section 2(3) of the 1956 Act has been done;

(b) unpublished engravings of which the author has died;

(c) unpublished photographs taken on or after 1st June 1957.

(5) Copyright in the following descriptions of work continues to subsist until the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into

force -

(a) unpublished sound recordings made on or after 1st June 1957;

(b) films not falling within sub-paragraph (2)(e) above,

unless the recording or film is published before the end of that period in which case copyright in it shall continue until the end of the period of 50 years from the end of the calendar year in which the

recording or film is published.

(6) Copyright in any other description of existing work continues to subsist until the date on which copyright in that description of work expires in accordance with sections 12 to 15 of this Act.

(7) The above provisions do not apply to works subject to Crown or Parliamentary copyright (see paragraphs 41 to 43 below).

Perpetual copyright under the Copyright Act 1775

13 (1) The rights conferred on universities and colleges by the Copyright Act 1775 shall continue to subsist until the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force and shall then expire.

(2) The provisions of the following Chapters of Part I -

166 Amended by SI 2003/2498 for consistency with s.12 as revised by SI 1995/3297.

Chapter III (acts permitted in relation to copyright works),
 Chapter VI (remedies for infringement),
 Chapter VII (provisions with respect to copyright licensing), and
 Chapter VIII (the Copyright Tribunal),
 apply in relation to those rights as they apply in relation to copyright under this Act.

Acts infringing copyright

- 14 (1) The provisions of Chapter II and III of Part I as to the acts constituting an infringement of copyright apply only in relation to acts done after commencement; the provisions of the 1956 Act continue to apply in relation to acts done before commencement.
- (2) So much of section 18(2) as extends the restricted act of issuing copies to the public to include the rental to the public of copies of sound recordings, films or computer programs does not apply in relation to a copy of a sound recording, film or computer program acquired by any person before commencement for the purpose of renting it to the public.
- (3) For the purposes of section 27 (meaning of "infringing copy") the question whether the making of an article constituted an infringement of copyright, or would have done if the article had been made in the United Kingdom, shall be determined -
- (a) in relation to an article made on or after 1st June 1957 and before commencement, by reference to the 1956 Act, and
- (b) in relation to an article made before 1st June 1957, by reference to the 1911 Act.
- (4) For the purposes of the application of sections 31(2), 51(2) and 62(3) (subsequent exploitation of things whose making was, by virtue of an earlier provision of the section, not an infringement of copyright) to things made before commencement, it shall be assumed that the new copyright provisions were in force at all material times.
- (5) Section 55 (articles for producing material in a particular typeface) applies where articles have been marketed as mentioned in subsection 55(1) before commencement with the substitution for the period mentioned in subsection 55(3) of the period of 25 years from the end of the calendar year in which the new copyright provisions come into force.
- (6) Section 56 (transfer of copies, adaptations, &c. of work in electronic form) does not apply in relation to a copy purchased before commencement.
- (7) In Section 65 (reconstruction of buildings) the reference to the owner of the copyright in the drawings or plans is, in relation to buildings constructed before commencement, to the person who at the time of the construction was the owner of the copyright in the drawings or plans under the 1956 Act, the 1911 Act or any enactment repealed by the 1911 Act.
- 15 (1) Section 57 (anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author) has effect in relation to existing works subject to the following provisions.
- (2) Subsection 57(1)(b)(i) (assumption as to expiry of copyright) does not apply in relation to -
- (a) photographs, or
- (b) the rights mentioned in paragraph 13 above (rights conferred by the Copyright Act 1775).
- [(3)]¹⁶⁷
- 16 The following provisions of section 7 of the 1956 Act continue to apply in relation to

167 Deleted by SI 2003/2498.

existing

works -

(a) subsection (6) (copying of unpublished works from manuscript or copy in library, museum or other institution);

(b) subsection (7) (publication of work containing material to which subsection (6) applies), except paragraph (a) (duty to give notice of intended publication);

(c) subsection (8) (subsequent broadcasting, performance, &c. of material published in accordance with subsection (7));

and subsection (9)(d) (illustrations) continues to apply for the purposes of those provisions.

17 Where in the case of a dramatic or musical work made before 1st July 1912, the right conferred by the 1911 Act did not include the sole right to perform the work in public, the acts restricted by the copyright shall be treated as not including -

(a) performing the work in public,

(b) communicating the work to the public, or

(c) doing any of the above in relation to an adaptation of the work;

and where the right conferred by the 1911 Act consisted only of the sole right to perform the work in public, the acts restricted by the copyright shall be treated as consisting only of those acts.

18 Where a work made before 1st July 1912 consists of an essay, article or portion forming part of and first published in a review, magazine or other periodical or work of a like nature, the copyright is subject to any right of publishing the essay, article, or portion in a separate form to which the author was entitled at the commencement of the 1911 Act, or would if that Act had not been passed, have become entitled under section 18 of the Copyright Act 1842.

Designs

19 (1) Section 51 (exclusion of copyright protection in relation to works recorded or embodied in design document or models) does not apply for ten years after commencement in relation to a design recorded or embodied in a design document or model before commencement.

(2) During those ten years the following provisions of Part III (design right) apply to any relevant copyright as in relation to design right -

(a) sections 237 to 239 (availability of licences of right), and

(b) section 247 and 248 (application to comptroller to settle terms of licence of right).

(3) In section 237 as it applies by virtue of this paragraph, for the reference in subsection (1) to the last five years of the design right term there shall be substituted a reference to the last five years of the period of ten years referred to in sub-paragraph (1) above, or to so much of those last five years during which copyright subsists.

(4) In section 239 as it applies by virtue of this paragraph, for the reference in subsection (1)(b) to section 230 there shall be substituted a reference to section 99.

(5) Where a licence of right is available by virtue of this paragraph, a person to whom a licence was granted before commencement may apply to the comptroller for an order adjusting the terms of that licence.

(6) The provisions of sections 249 and 250 (appeals and rules) apply in relation to proceedings brought under or by virtue of this paragraph as to proceedings under Part III.

(7) A licence granted by virtue of this paragraph shall relate only to acts which would be permitted by section 51 if the design document or model had been made after

commencement.

(8) Section 100 (right to seize infringing copies, &c.) does not apply during the period of ten years referred to in sub-paragraph (1) in relation to anything to which it would not apply if the design in question had been first recorded or embodied in a design document or model after commencement.

(9) Nothing in this paragraph affects the operation of any rule of law preventing or restricting the enforcement of copyright in relation to a design.

20 (1) Where section 10 of the 1956 Act (effect of industrial application of design corresponding to artistic work) applied in relation to an artistic work at any time before commencement, section 52(2) of this Act applies with the substitution for the period of 25 years mentioned there of the relevant period of 15 years as defined in section 10(3) of the 1956 Act.

(2) Except as provided in sub-paragraph (1), section 52 applies only where articles are marketed as mentioned in subsection 52(1)(b) after commencement.

Abolition of statutory recording licence

21 Section 8 of the 1956 Act (statutory licence to copy records sold by retail), continues to apply where notice under subsection (1)(b) of that section was given before the repeal of that section by this Act, but only in respect of the making of records -

- (a) within one year of the repeal coming into force, and
- (b) up to the number stated in the notice as intended to be sold.

Moral rights

22 (1) No act done before commencement is actionable by virtue of any provision of Chapter IV of Part I (moral rights).

(2) Section 43 of the 1956 Act (false attribution of authorship) continues to apply in relation to acts done before commencement.

23 (1) The following provisions have effect with respect to the rights conferred by -

- (a) section 77 (right to be identified as author or director), and
- (b) section 80 (right to object to derogatory treatment of work).

(2) The rights do not apply -

- (a) in relation to a literary, dramatic, musical and artistic work of which the author died before commencement; or
- (b) in relation to a film made before commencement.

(3) The rights in relation to an existing literary, dramatic, musical or artistic work do not apply -

- (a) where copyright first vested in the author, to anything which by virtue of an assignment of copyright made or licence granted before commencement may be done without infringing copyright;
- (b) where copyright first vested in a person other than the author, to anything done by or with the licence of the copyright owner.

(4) The rights do not apply to anything done in relation to a record made in pursuance of section 8 of the 1956 Act (statutory recording licence).

24 The right conferred by section 85 (right to privacy of certain photographs and films) does not apply to photographs taken or films made before commencement.

Assignments and licences

- 25 (1) Any document made or event occurring before commencement which had any operation -
- (a) affecting the ownership of the copyright in an existing work, or
 - (b) creating, transferring or terminating an interest, right or licence in respect of the copyright in an existing work,
- has the corresponding operation in relation to copyright in the work under this Act.
- (2) Expressions used in such a document shall be construed in accordance with their effect immediately before commencement.
- 26 (1) Section 91(1) of this Act (assignment of future copyright: statutory vesting of legal interest on copyright coming into existence) does not apply in relation to an agreement made before 1st June 1957.
- (2) The repeal by this Act of section 37(2) of the 1956 Act (assignment of future copyright: devolution of right where assignee dies before copyright comes into existence) does not affect the operation of that provision in relation to an agreement made before commencement.
- 27 (1) Where the author of a literary, dramatic, musical or artistic work was the first owner of the copyright in it, no assignment of the copyright and no grant of any interest in it, made by him (otherwise than by will) after the passing of the 1911 Act and before 1st June 1957, shall be operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of 25 years from the death of the author.
- (2) The reversionary interest in the copyright expectant on the termination of that period may after commencement be assigned by the author during his life but in the absence of any assignment shall, on his death, devolve on his legal personal representatives as part of his estate.
- (3) Nothing in this paragraph affects -
- (a) an assignment of the reversionary interest by a person to whom it has been assigned,
 - (b) an assignment of the reversionary interest after the death of the author by his personal representatives or any person becoming entitled to it, or
 - (c) any assignment of the copyright after the reversionary interest has fallen in.
- (4) Nothing in this paragraph applies to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work.
- (5) In sub-paragraph (4) "collective work" means -
- (a) any encyclopaedia, dictionary, yearbook, or similar work;
 - (b) a newspaper, review, magazine, or similar periodical; and
 - (c) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated.
- 28 (1) This paragraph applies where copyright subsists in a literary, dramatic, musical or artistic work made before 1st July 1912 in relation to which the author, before the commencement of the 1911 Act, made such an assignment or grant as was mentioned in paragraph (a) of the proviso to section 24(1) of that Act (assignment or grant of copyright or performing right for full term of the right under the previous law).
- (2) If before commencement any event has occurred or notice has been given which by virtue of paragraph 38 of Schedule 7 to the 1956 Act had any operation in relation to copyright in the work under that Act, the event or notice has the corresponding operation

in relation to copyright under this Act.

(3) Any right which immediately before commencement would by virtue of paragraph 38(3) of that Schedule have been exercisable in relation to the work, or copyright in it, is exercisable in relation to the work or copyright in it under this Act.

(4) If in accordance with paragraph 38(4) of that Schedule copyright would, on a date after the commencement of the 1956 Act, have reverted to the author or his personal representatives and that date falls after the commencement of the new copyright provisions -

(a) the copyright in the work shall revert to the author or his personal representatives, as the case may be, and

(b) any interest of any other person in the copyright which subsists on that date by virtue of any document made before the commencement of the 1911 Act shall thereupon determine.

- 29 Section 92(2) of this Act (rights of exclusive licensee against successors in title of person granting licence) does not apply in relation to an exclusive licence granted before commencement.

Bequests

- 30 (1) Section 93 of this Act (copyright to pass under will with original document or other material thing embodying unpublished work) -

(a) does not apply where the testator died before 1st June 1957, and

(b) where the testator died on or after that date and before commencement, applies only in relation to an original document embodying a work.

(2) In the case of an author who died before 1st June 1957, the ownership after his death of a manuscript of his, where such ownership has been acquired under a testamentary disposition made by him and the manuscript is of a work which has not been published or performed in public, is prima facie proof of the copyright being with the owner of the manuscript.

Remedies for infringement

- 31 (1) Section 96 and 97 of this Act (remedies for infringement) apply only in relation to an infringement of copyright committed after commencement; section 17 of the 1956 Act continues to apply in relation to infringements committed before commencement.

(2) Sections 99 and 100 of this Act (delivery up or seizure of infringing copies, &c.) apply to infringing copies and other articles made before or after commencement; section 18 of the 1956 Act, and section 7 of the 1911 Act, (conversion damages, &c.), do not apply after commencement except for the purposes of proceedings begun before commencement.

(3) Sections 101 to 102 of this Act (rights and remedies of exclusive licensee) apply where sections 96 to 100 of this Act apply; section 19 of the 1956 Act continues to apply where section 17 or section 18 of that Act applies.

(4) Sections 104 to 106 of this Act (presumptions) apply only in proceedings brought by virtue of this Act; section 20 of the 1956 Act continues to apply in proceedings brought by virtue of that Act.

- 32 Sections 101 and 102 of this Act (rights and remedies of exclusive licensee) do not apply to a licence granted before 1st June 1957.

- 33 (1) The provisions of section 107 of this Act (criminal liability for making or dealing with infringing articles, &c.) apply only in relation to acts done after commencement; section 21 of the 1956 Act (penalties and summary proceedings in respect of dealings which

infringe copyright) continues to apply in relation to acts done before commencement.

(2) Section 109 of this Act (search warrants) applies in relation to offences committed before commencement in relation to which section 21A or section 21B of the 1956 Act applied; sections 21A and 21B continue to apply in relation to warrants issued before commencement.

Copyright Tribunal: proceedings pending on commencement

34 (1) The Lord Chancellor may, after consultation with the Lord Advocate, by rules make such provision as he considers necessary or expedient with respect to proceedings pending under Part IV of the 1956 Act immediately before commencement.

(2) Rules under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Qualification for copyright protection

35 Every work in which copyright subsisted under the 1956 Act immediately before commencement shall be deemed to satisfy the requirements of Part I of this Act as to qualification for copyright protection.

Dependent territories

36 (1) The 1911 Act shall remain in force as part of the law of any dependent territory in which it was in force immediately before commencement until -

(a) the new copyright provisions come into force in that territory by virtue of an Order under section 157 of this Act (power to extend new copyright provisions), or

(b) in the case of any of the Channel Islands, the Act is repealed by Order under sub-paragraph (3) below.

(2) An Order in Council in force immediately before commencement which extends to any dependent territory any provisions of the 1956 Act shall remain in force as part of the law of that territory until -

(a) the new copyright provisions come into force in that territory by virtue of an Order under section 157 of this Act (power to extend new copyright provisions), or

(b) in the case of the Isle of Man, the Order is revoked by Order under sub-paragraph (3) below;

and while it remains in force such an Order may be varied under the provisions of the 1956 Act under which it was made.

(3) If it appears to Her Majesty that provision with respect to copyright has been made in the law of any of the Channel Islands or the Isle of Man otherwise than by extending the provisions of Part I of this Act, Her Majesty may by Order in Council repeal the 1911 Act as it has effect as part of the law of that territory or, as the case may be, revoke the Order extending the 1956 Act there.

(4) A dependent territory in which the 1911 or 1956 Act remains in force shall be treated, in the law of the countries to which Part I extends, as a country to which that Part extends; and those countries shall be treated in the law of such a territory as countries to which the 1911 Act or, as the case may be, the 1956 Act extends.

(5) If a country in which the 1911 or 1956 Act is in force ceases to be a colony of the United Kingdom, section 158 of this Act (consequences of country ceasing to be colony) applies with the substitution for the reference in subsection 158(3)(b) to the provisions of Part I of this Act of a reference to the provisions of the 1911 or 1956 Act, as the case may be.

(6) In this paragraph "dependent territory" means any of the Channel Islands, the Isle of Man or any colony.

37 (1) This paragraph applies to a country which immediately before commencement was not a dependent territory within the meaning of paragraph 36 above but -

- (a) was a country to which the 1956 Act extended, or
- (b) was treated as such a country by virtue of paragraph 39(2) of Schedule 7 to that Act (countries to which the 1911 Act extended or was treated as extending);

and Her Majesty may by Order in Council conclusively declare for the purposes of this paragraph whether a country was such a country or was so treated.

(2) A country to which this paragraph applies shall be treated as a country to which Part I extends for the purposes of sections 154 to 156 (qualification for copyright protection) until -

- (a) an Order in Council is made in respect of that country under section 159 (application of Part I to countries to which it does not extend), or
 - (b) an Order in Council is made declaring that it shall cease to be so treated by reason of the fact that the provisions of the 1956 Act or, as the case may be, the 1911 Act, which extended there as part of the law of that country have been repealed or amended.
- (3) A statutory instrument containing an Order in Council under this paragraph shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Territorial waters and the continental shelf

- 38 Section 161 of this Act (application of Part I to things done in territorial waters or the United Kingdom sector of the continental shelf) does not apply in relation to anything done before commencement.

British ships, aircraft and hovercraft

- 39 Section 162 (British ships, aircraft and hovercraft) does not apply in relation to anything done before commencement.

Crown copyright

- 40 (1) Section 163 of this Act (general provisions as to Crown copyright) applies to an existing work

if -

- (a) section 39 of the 1956 Act applied to the work immediately before commencement, and
- (b) the work is not one to which section 164, 165 or 166 applies (copyright in Acts, Measures and Bills and Parliamentary copyright: see paragraphs 42 and 43 below).

(2) Section 163(1)(b) (first ownership of copyright) has effect subject to any agreement entered into before commencement under section 39(6) of the 1956 Act.

- 41 (1) The following provisions have effect with respect to the duration of copyright in existing works to which section 163 (Crown copyright) applies.

The question which provision applies to a work shall be determined by reference to the facts immediately before commencement; and expressions used in this paragraph which were defined for the purposes of the 1956 Act have the same meaning as in that Act.

(2) Copyright in the following descriptions of work continues to subsist until the date on which it would have expired in accordance with the 1956 Act -

- (a) published literary, dramatic or musical works;
- (b) artistic works other than engravings or photographs;
- (c) published engravings;
- (d) published photographs and photographs taken before 1st June 1957;
- (e) published sound recordings and sound recordings made before 1st June 1957,

(f) published films and films falling within section 13(3)(a) of the 1956 Act (films registered under former enactments relating to registration of films).

(3) Copyright in unpublished literary, dramatic or musical works continues to subsist until

(a) the date on which copyright expires in accordance with section 163(3), or

(b) the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force,

whichever is the later.

(4) Copyright in the following descriptions of work continues to subsist until the end of the period

of 50 years from the end of the calendar year in which the new copyright provisions come into

force -

(a) unpublished engravings;

(b) unpublished photographs taken on or after 1st June 1957.

(5) Copyright in a film or sound recording not falling within sub-paragraph (2) above continues to subsist until the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force, unless the film or recording is published before the end of that period, in which case copyright expires 50 years from the end of the calendar year in which it is published.

42 (1) Section 164 (copyright in Acts and Measures) applies to existing Acts of Parliament and Measures of the General Synod of the Church of England.

(2) References in that section to Measures of the General Synod of the Church of England include Church Assembly Measures.

Parliamentary copyright

43 (1) Section 165 of this Act (general provisions as to Parliamentary copyright) applies to existing unpublished literary, dramatic, musical or artistic works, but does not otherwise apply to existing works.

(2) Section 166 (copyright in Parliamentary Bills) does not apply -

(a) to a public Bill which was introduced into Parliament and published before commencement,

(b) to a private Bill of which a copy was deposited in either House before commencement, or

(c) to a personal Bill which was given a First Reading in the House of Lords before commencement.

Copyright vesting in certain international organisations

44 (1) Any work in which immediately before commencement copyright subsisted by virtue of section 33 of the 1956 Act shall be deemed to satisfy the requirements of section 168(1); but otherwise section 168 does not apply to works made or, as the case may be, published before commencement.

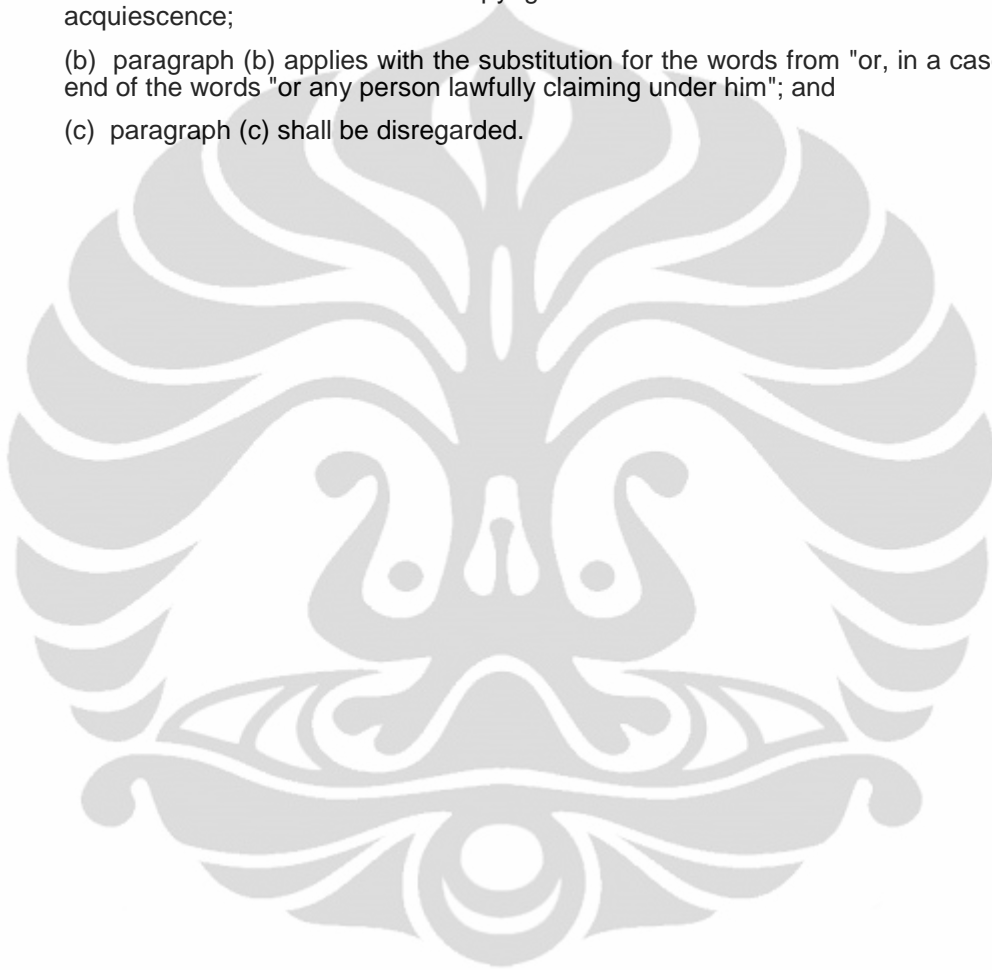
(2) Copyright in any such work which is unpublished continues to subsist until the date on which it would have expired in accordance with the 1956 Act, or the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force, whichever is the earlier.

Meaning of "publication"

- 45 Section 175(3) (construction of building treated as equivalent to publication) applies only where the construction of the building began after commencement.

Meaning of "unauthorised"

- 46 For the purposes of the application of the definition in section 178 (minor definitions) of the expression "unauthorised" in relation to things done before commencement -
- (a) paragraph (a) applies in relation to things done before 1st June 1957 as if the reference to the licence of the copyright owner were a reference to his consent or acquiescence;
 - (b) paragraph (b) applies with the substitution for the words from "or, in a case" to the end of the words "or any person lawfully claiming under him"; and
 - (c) paragraph (c) shall be disregarded.



SCHEDULE 2

RIGHTS IN PERFORMANCES: PERMITTED ACTS

Introductory

- 1 (1) The provisions of this Schedule specify acts which may be done in relation to a performance or recording notwithstanding the rights conferred by Part II; they relate only to the question of infringement of those rights and do not affect any other right or obligation restricting the doing of any of the specified acts.
- (2) No inference shall be drawn from the description of any act which may by virtue of this Schedule be done without infringing the rights conferred by Part II as to the scope of those rights.
- (3) The provisions of this Schedule are to be construed independently of each other, so that the fact that an act does not fall within one provision does not mean that it is not covered by another provision.

Making of temporary copies 168

- 1A The rights conferred by Part 2 are not infringed by the making of a temporary copy of a recording of a performance which is transient or incidental, which is an integral and essential part of a technological process and the sole purpose of which is to enable -
- (a) a transmission of the recording in a network between third parties by an intermediary; or
 - (b) a lawful use of the recording;
- and which has no independent economic significance.

Criticism, reviews and news reporting

- 2¹⁶⁹(1) Fair dealing with a performance or recording for the purpose of criticism or review, of that or another performance or recording, or of a work, does not infringe any of the rights conferred by Part II provided that the performance or recording has been made available to the public.
- (1A) Fair dealing with a performance or recording for the purpose of reporting current events does not infringe any of the rights conferred by Part II.
- (2) Expressions used in this paragraph have the same meaning as in section 30.

Incidental inclusion of performance or recording

- 3 (1) The rights conferred by Part II are not infringed by the incidental inclusion of a performance or recording in a sound recording, film or broadcast.
- (2) Nor are those rights infringed by anything done in relation to copies of, or the playing, showing or communication to the public of, anything whose making was, by virtue of sub-paragraph (1), not an infringement of those rights.
- (3) A performance or recording so far as it consists of music, or words spoken or sung with music, shall not be regarded as incidentally included in a sound recording or broadcast if it is deliberately included.
- (4) Expressions used in this paragraph have the same meaning as in section 31.

Things done for purposes of instruction or examination

168 Para. 1A added by SI 2003/2498. See also Annex IV as regards the liability of intermediaries.

169 Revised paras. 2(1) & (1A), substituted by SI 2003/2498.

4¹⁷⁰(1) The rights conferred by Part II are not infringed by the copying of a recording of a performance in the course of instruction, or of preparation for instruction, in the making of films or film sound-tracks, provided the copying is done by a person giving or receiving instruction and the instruction is for a non-commercial purpose.

(2) The rights conferred by Part II are not infringed -

(a) by the copying of a recording of a performance for the purposes of setting or answering the questions in an examination, or

(b) by anything done for the purposes of an examination by way of communicating the questions to the candidates.

(3) Where a recording which would otherwise be an illicit recording is made in accordance with this paragraph but is subsequently dealt with, it shall be treated as an illicit recording for the purposes of that dealing, and if that dealing infringes any right conferred by Part II for all subsequent purposes.

For this purpose "dealt with" means -

(a) sold or let for hire, offered or exposed for sale or hire; or

(b) communicated to the public, unless that communication, by virtue of sub-paragraph (2)(b), is not an infringement of the rights conferred by Part II.

(4) Expressions used in this paragraph have the same meaning as in section 32.

Playing or showing sound recording, film or broadcast at educational establishment

5 (1) The playing or showing of a sound recording, film or broadcast at an educational establishment for the purposes of instruction before an audience consisting of teachers and pupils at the establishment and other persons directly connected with the activities of the establishment is not a playing or showing of a performance in public for the purposes of infringement of the rights conferred by Part II.

(2) A person is not for this purpose directly connected with the activities of the educational establishment simply because he is the parent of a pupil at the establishment.

(3) Expressions used in this paragraph have the same meaning as in section 34 and any provision made under section 174(2) with respect to the application of that section also applies for the purposes of this paragraph.

Recording of broadcasts by educational establishments 171

6 (1) A recording of a broadcast, or a copy of such a recording, may be made by or on behalf of an educational establishment for the educational purposes of that establishment without thereby infringing any of the rights conferred by Part II in relation to any performance or recording included in it, provided that the educational purposes are non-commercial.

(1A) The rights conferred by Part II are not infringed where a recording of a broadcast or a copy of such a recording, whose making was by virtue of sub-paragraph (1) not an infringement of such rights, is communicated to the public by a person situated within the premises of an educational establishment provided that the communication cannot be received by any person situated outside the premises of that establishment.

(1B) This paragraph does not 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.

(2) Where a recording which would otherwise be an illicit recording is made in

170 Words after "receiving instruction" in para. 4(1) added, and revised definition of "dealt with" in para. 4(3) substituted, by SI 2003/2498.

171 Words in para. 6(1) after "included in it", paras. 6(1A) & (1B), and words in para. 6(2) after "exposed for sale or hire", added by SI 2003/2498.

accordance with this paragraph but is subsequently dealt with, it shall be treated as an illicit recording for the purposes of that dealing, and if that dealing infringes any right conferred by Part II for all subsequent purposes.

For this purpose "dealt with" means sold or let for hire, offered or exposed for sale or hire, or communicated from within the premises of an educational establishment to any person situated outside those premises.

(3) Expressions used in this paragraph have the same meaning as in section 35 and any provision made under section 174(2) with respect to the application of that section also applies for the purposes of this paragraph.

Lending of copies by educational establishments 172

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.

Copy of work required to be made as condition of export

7 (1) If an article of cultural or historical importance or interest cannot lawfully be exported from the United Kingdom unless a copy of it is made and deposited in an appropriate library or archive, it is not an infringement of any right conferred by Part II to make that copy.

(2) Expressions used in this paragraph have the same meaning as in section 44.

Parliamentary and judicial proceedings

8 (1) The rights conferred by Part II are not infringed by anything done for the purposes of parliamentary or judicial proceedings or for the purpose of reporting such proceedings.

(2) Expressions used in this paragraph have the same meaning as in section 45.

Royal Commissions and statutory inquiries

9 (1) The rights conferred by Part II are not infringed by anything done for the purposes of the proceedings of a Royal Commission or statutory inquiry or for the purpose of reporting any such proceedings held in public.

(2) Expressions used in this paragraph have the same meaning as in section 46.

Public records

10 (1) Material which is comprised in public records within the meaning of the Public Records Act 1958, the Public Records (Scotland) Act 1937 or the Public Records Act

172 Paras. 6A & 6B added by SI 1996/2967.

(Northern Ireland) 1923, or in Welsh public records (as defined in the Government of Wales Act 2006),¹⁷³ which are open to public inspection in pursuance of that Act, may be copied, and a copy may be supplied to any person, by or with the authority of any officer appointed under that Act, without infringing any right conferred by Part II.

(2) Expressions used in this paragraph have the same meaning as in section 49.

Acts done under statutory authority

11 (1) Where the doing of a particular act is specifically authorised by an Act of Parliament, whenever passed, then, unless the Act provides otherwise, the doing of that act does not infringe the rights conferred by Part II.

(2) Sub-paragraph (1) applies in relation to an enactment contained in Northern Ireland legislation as it applies to an Act of Parliament.

(3) Nothing in this paragraph shall be construed as excluding any defence of statutory authority otherwise available under or by virtue of any enactment.

(4) Expressions used in this paragraph have the same meaning as in section 50.

Transfer of copies of works in electronic form

12 (1) This paragraph applies where a recording of a performance in electronic form has been purchased on terms which, expressly or impliedly or by virtue of any rule of law, allow the purchaser to make further recordings in connection with his use of the recording.

(2) If there are no express terms -

(a) prohibiting the transfer of the recording by the purchaser, imposing obligations which continue after a transfer, prohibiting the assignment of any consent or terminating any consent on a transfer, or

(b) providing for the terms on which a transferee may do the things which the purchaser was permitted to do,

anything which the purchaser was allowed to do may also be done by a transferee without infringement of the rights conferred by this Part, but any recording made by the purchaser which is not also transferred shall be treated as an illicit recording for all purposes after the transfer.

(3) The same applies where the original purchased recording is no longer usable and what is transferred is a further copy used in its place.

(4) The above provisions also apply on a subsequent transfer, with the substitution for references in sub-paragraph (2) to the purchaser of references to the subsequent transferor.

(5) This paragraph does not apply in relation to a recording purchased before the commencement of Part II.

(6) Expressions used in this paragraph have the same meaning as in section 56.

Use of recordings of spoken works in certain cases

13 (1) Where a recording of the reading or recitation of a literary work is made for the purpose -

(a) of reporting current events, or

(b) of communicating to the public the whole or part of the reading or recitation,

it is not an infringement of the rights conferred by Part II to use the recording (or to copy the recording and use the copy) for that purpose, provided the following conditions are

173 Words “, or in Welsh ---- Act 2006),” added by the Government of Wales Act 2006.

met.

(2) The conditions are that -

- (a) the recording is a direct recording of the reading or recitation and is not taken from a previous recording or from a broadcast;
- (b) the making of the recording was not prohibited by or on behalf of the person giving the reading or recitation;
- (c) the use made of the recording is not of a kind prohibited by or on behalf of that person before the recording was made; and
- (d) the use is by or with the authority of a person who is lawfully in possession of the recording.

(3) Expressions used in this paragraph have the same meaning as in section 58.

Recordings of folksongs

14 (1) A recording of a performance of a song may be made for the purpose of including it in an archive maintained by a designated body without infringing any of the rights conferred by Part II, provided the conditions in sub-paragraph (2) below are met.

(2) The conditions are that -

- (a) the words are unpublished and of unknown authorship at the time the recording is made,
- (b) the making of the recording does not infringe any copyright, and
- (c) its making is not prohibited by any performer.

(3) Copies of a recording made in reliance on sub-paragraph (1) and included in an archive maintained by a designated body may, if the prescribed conditions are met, be made and supplied by the archivist without infringing any of the rights conferred by Part II.

(4) In this paragraph -

"designated body" means a body designated for the purposes of section 61, and

"the prescribed conditions" means the conditions prescribed for the purposes of subsection (3) of that section;

and other expressions used in this paragraph have the same meaning as in that section.

*Lending of certain recordings*¹⁷⁴

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.

¹⁷⁴ Para. 14A added by SI 1996/2967.

(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.

Playing of sound recordings for purposes of club, society, &c

15 (1) It is not an infringement of any right conferred by Part II to play a sound recording as part of the activities of, or for the benefit of, a club, society or other organisation if the following conditions are met.

(2)¹⁷⁵ The conditions are -

(a) that the organisation is not established or conducted for profit and its main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare,

(b) that the sound recording is played by a person who is acting primarily and directly for the benefit of the organisation and who is not acting with a view to gain,

(c) that the proceeds of any charge for admission to the place where the recording is to be heard are applied solely for the purposes of the organisation, and

(d) that the proceeds from any goods or services sold by, or on behalf of, the organisation -

(i) in the place where the sound recording is heard, and

(ii) on the occasion when the sound recording is played,

are applied solely for the purposes of the organisation.

(3) Expressions used in this paragraph have the same meaning as in section 67.

Incidental recording for purposes of broadcast

16 (1) A person who proposes to broadcast a recording of a performance in circumstances not infringing the rights conferred by Part II shall be treated as having consent for the purposes of that Part for the making of a further recording for the purposes of the broadcast.

(2) That consent is subject to the condition that the further recording -

(a) shall not be used for any other purpose, and

(b) shall be destroyed within 28 days of being first used for broadcasting the performance.

(3) A recording made in accordance with this paragraph shall be treated as an illicit recording -

(a) for the purposes of any use in breach of the condition mentioned in sub-paragraph (2)(a), and

(b) for all purposes after that condition or the condition mentioned in sub-paragraph (2)(b) is broken.

(4) Expressions used in this paragraph have the same meaning as in section 68.

Recordings for purposes of supervision and control of broadcasts and other services

17 (1) The rights conferred by Part II are not infringed by the making or use by the British Broadcasting Corporation, for the purpose of maintaining supervision and control over programmes broadcast by them, of recordings of those programmes.

175 New paras. 15(2)(b) & (d) added, and original para. 15(2)(b) restated as para. 15(2)(c), by SI 2003/2498.

- (2)¹⁷⁶ The rights conferred by Part II are not infringed by anything done in pursuance of -
- (a) section 167(1) of the Broadcasting Act 1990, section 115(4) or (6) or 117 of the Broadcasting Act 1996 or paragraph 20 of Schedule 12 to the Communications Act 2003;
 - (b) a condition which, by virtue of section 334(1) of the Communications Act 2003, is included in a licence granted under Part I or III of that Act or Part I or II of the Broadcasting Act 1996;
 - (c) a direction given under section 109(2) of the Broadcasting Act 1990 (power of OFCOM to require production of recordings etc);
 - (d) section 334(3) of the Communications Act 2003.
- (3) The rights conferred by Part II are not infringed by the use by OFCOM in connection with the performance of any of their functions under the Broadcasting Act 1990, the Broadcasting Act 1996 or the Communications Act 2003 of -
- (a) any recording, script or transcript which is provided to them under or by virtue of any provision of those Acts; or
 - (b) any existing material which is transferred to them by a scheme made under section 30 of the Communications Act 2003.
- (4) In subsection (3), 'existing material' means -
- (a) any recording, script or transcript which was provided to the Independent Television Commission or the Radio Authority under or by virtue of any provision of the Broadcasting Act 1990 or the Broadcasting Act 1996; and
 - (b) any recording or transcript which was provided to the Broadcasting Standards Commission under section 115(4) or (6) or 116(5) of the Broadcasting Act 1996.

Recording for the purposes of time-shifting 177

17A (1) The making in domestic premises for private and domestic use of a recording of a broadcast

solely for the purpose of enabling it to be viewed or listened to at a more convenient time does not infringe any right conferred by Part II in relation to a performance or recording included in the broadcast.

(2) Where a recording which would otherwise be an illicit recording is made in accordance with this paragraph but is subsequently dealt with -

- (a) it shall be treated as an illicit recording for the purposes of that dealing; and
- (b) if that dealing infringes any right conferred by Part II, it shall be treated as an illicit recording for all subsequent purposes.

(3) In sub-paragraph (2), "dealt with" means sold or let for hire, offered or exposed for sale or hire or communicated to the public.

(4) Expressions used in this paragraph have the same meaning as in section 70.

Photographs of broadcasts

17B (1) The making in domestic premises for private and domestic use of a photograph of the whole or

any part of an image forming part of a broadcast, or a copy of such a photograph, does not infringe any right conferred by Part II in relation to a performance or recording included in the broadcast.

176 Paras. 17(2)(a)-(c) & (3) amended, and paras. 17(2)(d) & (4) added, by the Communications Act 2003.

177 Paras. 17A & 17B added by SI 2003/2498.

(2) Where a recording which would otherwise be an illicit recording is made in accordance with this paragraph but is subsequently dealt with -

- (a) it shall be treated as an illicit recording for the purposes of that dealing; and
- (b) if that dealing infringes any right conferred by Part II, it shall be treated as an illicit recording for all subsequent purposes.

(3) In sub-paragraph (2), "dealt with" means sold or let for hire, offered or exposed for sale or hire or communicated to the public.

(4) Expressions used in this paragraph have the same meaning as in section 71.

Free public showing or playing of broadcast 178

18 (1) The showing or playing in public of a broadcast to an audience who have not paid for admission to the place where the broadcast is to be seen or heard does not infringe any right conferred by Part II in relation to a performance or recording included in -

- (a) the broadcast, or
- (b) any sound recording (except so far as it is an excepted sound recording) or film which is played or shown in public by reception of the broadcast.

(1A) The showing or playing in public of a broadcast to an audience who have not paid for admission to the place where the broadcast is to be seen or heard does not infringe any right conferred by Part II in relation to a performance or recording included in any excepted sound recording which is played in public by reception of the broadcast, if the playing or showing of that broadcast in public -

- (a) forms part of the activities of an organisation that is not established or conducted for profit; or
- (b) is necessary for the purposes of -
 - (i) repairing equipment for the reception of broadcasts;
 - (ii) demonstrating that a repair to such equipment has been carried out; or
 - (iii) demonstrating such equipment which is being sold or let for hire or offered or exposed for sale or hire.

(2) The audience shall be treated as having paid for admission to a place -

- (a) if they have paid for admission to a place of which that place forms part; or
- (b) if goods or services are supplied at that place (or a place of which it forms part) -
 - (i) at prices which are substantially attributable to the facilities afforded for seeing or hearing the broadcast, or
 - (ii) at prices exceeding those usually charged there and which are partly attributable to those facilities.

(3) The following shall not be regarded as having paid for admission to a place -

- (a) persons admitted as residents or inmates of the place;
- (b) persons admitted as members of a club or society where the payment is only for membership of the club or society and the provision of facilities for seeing or hearing broadcasts is only incidental to the main purposes of the club or society.

(4) Where the making of the broadcast was an infringement of the rights conferred by Part II in relation to a performance or recording, the fact that it was heard or seen in public by the reception of the broadcast shall be taken into account in assessing the damages for that infringement.

(5) Expressions used in this paragraph have the same meaning as in section 72.

178 Words in brackets after "sound recording" in para. 18(1)(b), and para. 18(1A), added by SI 2003/2498

Reception and re-transmission of wireless broadcast by cable 179

19 (1) This paragraph applies where a wireless broadcast made from a place in the United Kingdom is received and immediately re-transmitted by cable.

(2) The rights conferred by Part II in relation to a performance or recording included in the broadcast are not infringed if and to the extent that the broadcast is made for reception in the area in which it is re-transmitted by cable; but where the making of the broadcast was an infringement of those rights, the fact that the broadcast was re-transmitted by cable shall be taken into account in assessing the damages for that infringement.

(3) Where -

- (a) the re-transmission by cable is in pursuance of a relevant requirement, but
- (b) to any extent, the area in which the re-transmission by cable takes place ("the cable area") falls outside the area for reception in which the broadcast is made ("the broadcast area"),

the re-transmission by cable (to the extent that it is provided for so much of the cable area as falls outside the broadcast area) of any performance or recording included in the broadcast shall, subject to sub-paragraph (4), be treated as licensed by the owner of the rights conferred by Part II in relation to the performance or recording, subject only to the payment to him by the person making the broadcast of such reasonable royalty or other payment in respect of the re-transmission by cable of the broadcast as may be agreed or determined in default of agreement by the Copyright Tribunal.

(4) Sub-paragraph (3) does not apply if, or to the extent that, the re-transmission of the performance or recording by cable is (apart from that sub-paragraph) licensed by the owner of the rights conferred by Part II in relation to the performance or recording.

(5) The Secretary of State may by order -

- (a) provide that in specified cases sub-paragraph (2) is to apply in relation to broadcasts of a specified description which are not made as mentioned in that sub-paragraph, or
- (b) exclude the application of that sub-paragraph in relation to broadcasts of a specified description made as mentioned in that sub-paragraph.

(6) Where the Secretary of State exercises the power conferred by sub-paragraph (5)(b) in relation to broadcasts of any description, the order may also provide for sub-paragraph (3) to apply, subject to such modifications as may be specified in the order, in relation to broadcasts of that description.

(7) An order under this paragraph may contain such transitional provision as appears to the Secretary of State to be appropriate.

(8) An order under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(9) Expressions used in this paragraph have the same meaning as in section 73.

19A (1) An application to settle the royalty or other sum payable in pursuance of sub-paragraph (3) of

paragraph 19 may be made to the Copyright Tribunal by the owner of the rights conferred by Part II or the person making the broadcast.

(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

179 Revised para. 19 substituted, and para. 19A added by the Broadcasting Act 1996. Paras. 19(1)-(4) further amended by SI 2003/2498.

order as it may determine to be reasonable in the circumstances.

(4) An application under sub-paragraph (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 sub-paragraph.

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

Provision of sub-titled copies of broadcast 180

20 (1) A designated body may, for the purpose of providing people who are deaf or hard of hearing, or physically or mentally handicapped in other ways, with copies which are sub-titled or otherwise modified for their special needs, make recordings of broadcasts and copies of such recordings, and issue or lend copies to the public, without infringing any right conferred by Part II in relation to a performance or recording included in the broadcast.

(1A) This paragraph does not 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.

(2) In this paragraph "designated body" means a body designated for the purposes of section 74 and other expressions used in this paragraph have the same meaning as in that section.

Recording of broadcast for archival purposes

21 (1) A recording of a broadcast of a designated class, or a copy of such a recording, may be made for the purpose of being placed in an archive maintained by a designated body without thereby infringing any right conferred by Part II in relation to a performance or recording included in the broadcast.

(2) In this paragraph "designated class" and "designated body" means a class or body designated for the purposes of section 75 and other expressions used in this paragraph have the same meaning as in that section.

180 Words "and copies ---- public" in para. 20(1), and para. 20(1A), added by SI 2003/2498.

LICENSING OF PERFORMERS' PROPERTY RIGHTS

Licensing schemes and licensing bodies

- 1 (1) In Part II a "licensing scheme" means a scheme setting out -
- (a) the classes of case in which the operator of the scheme, or the person on whose behalf he acts, is willing to grant performers' property right licences, and
 - (b) the terms on which licences would be granted in those classes of case;
- and for this purpose a "scheme" includes anything in the nature of a scheme, whether described as a scheme or as a tariff or by any other name.
- (2) In Part II a "licensing body" means a society or other organisation which has as its main object, or one of its main objects, the negotiation or granting, whether as owner or prospective owner of a performer's property rights or as agent for him, of performers' property right licences, and whose objects include the granting of licences covering the performances of more than one performer.
- (3) In this paragraph "performers' property right licences" means licences to do, or authorise the doing of, any of the things for which consent is required under section 182A, 182B, 182C or 182CA¹⁸².
- (4) References in this Part to licences or licensing schemes covering the performances of more than one performer do not include licences or schemes covering only -
- (a) performances recorded in a single recording,
 - (b) performances recorded in more than one recording where -
 - (i) the performers giving the performances are the same, or
 - (ii) the recordings are made by, or by employees of or commissioned by, a single individual, firm, company or group of companies.
- For this purpose a group of companies means a holding company and its subsidiaries within the meaning of section 736 of the Companies Act 1985.

References and applications with respect to licensing schemes

- 2 Paragraphs 3 to 8 (references and applications with respect to licensing schemes) apply to licensing schemes operated by licensing bodies in relation to a performer's property rights which cover the performances of more than one performer, so far as they relate to licences for -
- (a) copying a recording of the whole or any substantial part of a qualifying performance,
 - (aa) making such a recording available to the public in the way mentioned in section 182CA(1), or
 - (b) renting or lending copies of a recording to the public;

and in those paragraphs "licensing scheme" means a licensing scheme of any of those descriptions.

Reference of proposed licensing scheme to tribunal

- 3 (1) The terms of a licensing scheme proposed to be operated by a licensing body may

181 Schedule 2A added by SI 1996/2967.

182 Reference to s.182CA in para. 1(3), and para. 2(aa), added by SI 2003/2498.

be referred to the Copyright Tribunal by an organisation claiming to be representative of persons claiming that they require licences in cases of a description to which the scheme would apply, either generally or in relation to any description of case.

(2) The Tribunal shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.

(3) If the Tribunal decides to entertain the reference it shall consider the matter referred and make such order, either confirming or varying the proposed scheme, either generally or so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.

(4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

Reference of licensing scheme to tribunal

4 (1) If while a licensing scheme is in operation a dispute arises between the operator of the scheme and -

(a) a person claiming that he requires a licence in a case of a description to which the scheme applies, or

(b) an organisation claiming to be representative of such persons,

that person or organisation may refer the scheme to the Copyright Tribunal in so far as it relates to cases of that description.

(2) A scheme which has been referred to the Tribunal under this paragraph shall remain in operation until proceedings on the reference are concluded.

(3) The Tribunal shall consider the matter in dispute and make such order, either confirming or varying the scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.

(4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

Further reference of scheme to tribunal

5 (1) Where the Copyright Tribunal has on a previous reference of a licensing scheme under paragraph 3 or 4, or under this paragraph, made an order with respect to the scheme, then, while the order remains in force -

(a) the operator of the scheme,

(b) a person claiming that he requires a licence in a case of the description to which the order applies, or

(c) an organisation claiming to be representative of such persons,

may refer the scheme again to the Tribunal so far as it relates to cases of that description.

(2) A licensing scheme shall not, except with the special leave of the Tribunal, be referred again to the Tribunal in respect of the same description of cases -

(a) within twelve months from the date of the order on the previous reference, or

(b) if the order was made so as to be in force for 15 months or less, until the last three months before the expiry of the order.

(3) A scheme which has been referred to the Tribunal under this paragraph shall remain in operation until proceedings on the reference are concluded.

(4) The Tribunal shall consider the matter in dispute and make such order, either confirming, varying or further varying the scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.

(5) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

Application for grant of licence in connection with licensing scheme

- 6 (1) A person who claims, in a case covered by a licensing scheme, that the operator of the scheme has refused to grant him or procure the grant to him of a licence in accordance with the scheme, or has failed to do so within a reasonable time after being asked, may apply to the Copyright Tribunal.
- (2) A person who claims, in a case excluded from a licensing scheme, that the operator of the scheme either -
- (a) has refused to grant him a licence or procure the grant to him of a licence, or has failed to do so within a reasonable time of being asked, and that in the circumstances it is unreasonable that a licence should not be granted, or
 - (b) proposes terms for a licence which are unreasonable,
- may apply to the Copyright Tribunal.
- (3) A case shall be regarded as excluded from a licensing scheme for the purposes of sub-paragraph (2) if -
- (a) the scheme provides for the grant of licences subject to terms excepting matters from the licence and the case falls within such an exception, or
 - (b) the case is so similar to those in which licences are granted under the scheme that it is unreasonable that it should not be dealt with in the same way.
- (4) If the Tribunal is satisfied that the claim is well-founded, it shall make an order declaring that, in respect of the matters specified in the order, the applicant is entitled to a licence on such terms as the Tribunal may determine to be applicable in accordance with the scheme or, as the case may be, to be reasonable in the circumstances.
- (5) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

Application for review of order as to entitlement to licence

- 7 (1) Where the Copyright Tribunal has made an order under paragraph 6 that a person is entitled to a licence under a licensing scheme, the operator of the scheme or the original applicant may apply to the Tribunal to review its order.
- (2) An application shall not be made, except with the special leave of the Tribunal -
- (a) within twelve months from the date of the order, or of the decision on a previous application under this paragraph, or
 - (b) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this paragraph is due to expire within 15 months of that decision, until the last three months before the expiry date.
- (3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal may determine to be reasonable having regard to the terms applicable in accordance with the licensing scheme or, as the case may be, the circumstances of the case.

Effect of order of tribunal as to licensing scheme

- 8 (1) A licensing scheme which has been confirmed or varied by the Copyright Tribunal -
- (a) under paragraph 3 (reference of terms of proposed scheme), or
 - (b) under paragraph 4 or 5 (reference of existing scheme to Tribunal),
- shall be in force or, as the case may be, remain in operation, so far as it relates to the description of case in respect of which the order was made, so long as the order remains in force.
- (2) While the order is in force a person who in a case of a class to which the order applies -

(a) pays to the operator of the scheme any charges payable under the scheme in respect of a licence covering the case in question or, if the amount cannot be ascertained, gives an undertaking to the operator to pay them when ascertained, and

(b) complies with the other terms applicable to such a licence under the scheme,

shall be in the same position as regards infringement of performers' property rights as if he had at all material times been the holder of a licence granted by the rights owner in question in accordance with the scheme.

(3) The Tribunal may direct that the order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference was made or, if later, on which the scheme came into operation.

If such a direction is made -

(a) any necessary repayments, or further payments, shall be made in respect of charges already paid, and

(b) the reference in sub-paragraph (2)(a) to the charges payable under the scheme shall be construed as a reference to the charges so payable by virtue of the order.

No such direction may be made where sub-paragraph (4) below applies.

(4) An order of the Tribunal under paragraph 4 or 5 made with respect to a scheme which is certified for any purpose under paragraph 16 has effect, so far as it varies the scheme by reducing the charges payable for licences, from the date on which the reference was made to the Tribunal.

(5) Where the Tribunal has made an order under paragraph 6 (order as to entitlement to licence under licensing scheme) and the order remains in force, the person in whose favour the order is made shall if he -

(a) pays to the operator of the scheme any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained, and

(b) complies with the other terms specified in the order,

be in the same position as regards infringement of performers' property rights as if he had at all material times been the holder of a licence granted by the rights owner in question on the terms specified in the order.

References and applications with respect to licensing by licensing bodies

9 Paragraphs 10 to 13 (references and applications with respect to licensing by licensing bodies) apply to licences relating to a performer's property rights which cover the performance of more than one performer granted by a licensing body otherwise than in pursuance of a licensing scheme, so far as the licences authorise -

(a) copying a recording of the whole or any substantial part of a qualifying performance,

(aa)¹⁸³ making such a recording available to the public in the way mentioned in section 182CA(1), or

(b) renting or lending copies of a recording to the public,

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

Reference to tribunal of proposed licence

10 (1) The terms on which a licensing body proposes to grant a licence may be referred to the Copyright Tribunal by the prospective licensee.

(2) The Tribunal shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.

183 Added by SI 2003/2498.

(3) If the Tribunal decides to entertain the reference it shall consider the terms of the proposed licence and make such order, either confirming or varying the terms, as it may determine to be reasonable in the circumstances.

(4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

Reference to tribunal of expiring licence

11 (1) A licensee under a licence which is due to expire, by effluxion of time or as a result of notice given by the licensing body, may apply to the Copyright Tribunal on the ground that it is unreasonable in the circumstances that the licence should cease to be in force.

(2) Such an application may not be made until the last three months before the licence is due to expire.

(3) A licence in respect of which a reference has been made to the Tribunal shall remain in operation until proceedings on the reference are concluded.

(4) If the Tribunal finds the application well-founded, it shall make an order declaring that the licensee shall continue to be entitled to the benefit of the licence on such terms as the Tribunal may determine to be reasonable in the circumstances.

(5) An order of the Tribunal under this section may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

Application for review of order as to licence

12 (1) Where the Copyright Tribunal has made an order under paragraph 10 or 11, the licensing body or the person entitled to the benefit of the order may apply to the Tribunal to review its order.

(2) An application shall not be made, except with the special leave of the Tribunal -

(a) within twelve months from the date of the order or of the decision on a previous application under this paragraph, or

(b) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this paragraph is due to expire within 15 months of that decision, until the last three months before the expiry date.

(3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal may determine to be reasonable in the circumstances.

Effect of order of tribunal as to licence

13 (1) Where the Copyright Tribunal has made an order under paragraph 10 or 11 and the order remains in force, the person entitled to the benefit of the order shall if he -

(a) pays to the licensing body any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained, and

(b) complies with the other terms specified in the order,

be in the same position as regards infringement of performers' property rights as if he had at all material times been the holder of a licence granted by the rights owner in question on the terms specified in the order.

(2) The benefit of the order may be assigned -

(a) in the case of an order under paragraph 10, if assignment is not prohibited under the terms of the Tribunal's order; and

(b) in the case of an order under paragraph 11, if assignment was not prohibited under the terms of the original licence.

(3) The Tribunal may direct that an order under paragraph 10 or 11, or an order under paragraph 12 varying such an order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on

which the reference or application was made or, if later, on which the licence was granted or, as the case may be, was due to expire.

If such a direction is made -

- (a) any necessary repayments, or further payments, shall be made in respect of charges already paid, and
- (b) the reference in sub-paragraph (1)(a) to the charges payable in accordance with the order shall be construed, where the order is varied by a later order, as a reference to the charges so payable by virtue of the later order.

General considerations: unreasonable discrimination

14 (1) In determining what is reasonable on a reference or application under this Schedule relating to a licensing scheme or licence, the Copyright Tribunal shall have regard to -

- (a) the availability of other schemes, or the granting of other licences, to other persons in similar circumstances, and
- (b) the terms of those schemes or licences,

and shall exercise its powers so as to secure that there is no unreasonable discrimination between licensees, or prospective licensees, under the scheme or licence to which the reference or application relates and licensees under other schemes operated by, or other licences granted by, the same person.

(2) This does not affect the Tribunal's general obligation in any case to have regard to all relevant circumstances.

Application to settle royalty or other sum payable for lending

15 (1) An application to settle the royalty or other sum payable in pursuance of paragraph 14A of Schedule 2 (lending of certain recordings) may be made to the Copyright Tribunal by the owner of a performer's property rights 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 sub-paragraph (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 sub-paragraph.

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

Certification of licensing schemes

16 (1) A person operating or proposing to operate a licensing scheme may apply to the Secretary of State to certify the scheme for the purposes of paragraph 6, 14A or 20 of Schedule 2 (recording of broadcasts by educational establishments, lending of certain recordings, provision of sub-titled copies of broadcast).¹⁸⁴

(2) The Secretary of State shall by order made by statutory instrument certify the scheme if he is satisfied that it -

- (a) enables the works to which it relates to be identified with sufficient certainty by persons likely to require licences, and
- (b) sets out clearly the charges (if any) payable and the other terms on which licences

¹⁸⁴ References to paras. 6 & 20 of Sch. 2 added by SI 2003/2498.

will be granted.

(3) The scheme shall be scheduled to the order and the certification shall come into operation for the purposes of the relevant paragraph of Schedule 2 -

(a) on such date, not less than eight weeks after the order is made, as may be specified in the order, or

(b) if the scheme is the subject of a reference under paragraph 3 (reference of proposed scheme), any later date on which the order of the Copyright Tribunal under that section comes into force or the reference is withdrawn.

(4) A variation of the scheme is not effective unless a corresponding amendment of the order is made; and the Secretary of State shall make such an amendment in the case of a variation ordered by the Copyright Tribunal on a reference under paragraph 3, 4 or 5, and may do so in any other case if he thinks fit.

(5) The order shall be revoked if the scheme ceases to be operated and may be revoked if it appears to the Secretary of State that it is no longer being operated according to its terms.

Powers exercisable in consequence of competition report

17 (1)¹⁸⁵ Sub-paragraph (1A) applies where whatever needs to be remedied, mitigated or prevented by the Secretary of State, the Competition Commission or (as the case may be) the Office of Fair Trading under section 12(5) of the Competition Act 1980 or section 41(2), 55(2), 66(6), 75(2), 83(2), 138(2), 147(2) or 160(2) of, or paragraph 5(2) or 10(2) of Schedule 7 to, the Enterprise Act 2002 (powers to take remedial action following references to the Commission in connection with public bodies and certain other persons, mergers or market investigations etc.) consists of or includes -

(a) conditions in licences granted by the owner of a performer's property rights restricting the use to which a recording may be put by the licensee or the right of the owner to grant other licenses, or

(b) a refusal of an owner of a performer's property rights to grant licences on reasonable terms.

(1A) The powers conferred by Schedule 8 to the Enterprise Act 2002 include power to cancel or modify those conditions and, instead or in addition, to provide that licences in respect of the performer's property rights shall be available as of right.

(2) The references to anything permitted by Schedule 8 to the Enterprise Act 2002 in section 12(5A) of the Competition Act 1980 and in sections 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a) and 164(1) of, and paragraphs 5, 10 and 11 of Schedule 7 to, the Act of 2002 shall be construed accordingly.

(3) The Secretary of State, the Competition Commission or (as the case may be) the Office of Fair Trading shall only exercise the powers available by virtue of this paragraph if he or it is satisfied that to do so does not contravene any Convention relating to performers' rights to which the United Kingdom is a party.

(4) The terms of a licence available by virtue of this paragraph shall, in default of agreement, be settled by the Copyright Tribunal on an application by a person requiring the licence; and terms so settled shall authorise the licensee to do everything in respect of which a licence is so available.

(5) Where the terms of a licence are settled by the Tribunal, the licence has effect from the date on which the application to the Tribunal was made.

185 Revised paras. 17 (1)-(2) substituted, and para. 17(3) amended, by the Enterprise Act 2002. See also Annex V.

PART 1

Copyright exceptions

- section 29 (research and private study)
- section 31A (making a single accessible copy for personal use)
- section 31B (multiple copies for visually impaired persons)
- section 31C (intermediate copies and records)
- section 32(1), (2) and (3) (things done for purposes of instruction or examination)
- section 35 (recording by educational establishments of broadcasts)
- section 36 (reprographic copying by educational establishments of passages from published works)
- section 38 (copying by librarians: articles in periodicals)
- section 39 (copying by librarians: parts of published works)
- section 41 (copying by librarians: supply of copies to other libraries)
- section 42 (copying by librarians or archivists: replacement copies of works)
- section 43 (copying by librarians or archivists: certain unpublished works)
- section 44 (copy of work required to be made as condition of export)
- section 45 (Parliamentary and judicial proceedings)
- section 46 (Royal Commissions and statutory inquiries)
- section 47 (material open to public inspection or on official register)
- section 48 (material communicated to the Crown in the course of public business)
- section 49 (public records)
- section 50 (acts done under statutory authority)
- section 61 (recordings of folksongs)
- section 68 (incidental recording for purposes of broadcast)
- section 69 (recording for purposes of supervision and control of broadcasts)
- section 70 (recording for purposes of time-shifting)
- section 71 (photographs of broadcasts)
- section 74 (provision of sub-titled copies of broadcast)
- section 75 (recording for archival purposes)

PART 2

Rights in performances exceptions

- paragraph 4 of Schedule 2 (things done for purposes of instruction or examination)
- paragraph 6 of Schedule 2 (recording of broadcasts by educational establishments)
- paragraph 7 of Schedule 2 (copy of work required to be made as condition of export)

186 Inserted by SI 2003/2498.

- paragraph 8 of Schedule 2 (Parliamentary and judicial proceedings)
- paragraph 9 of Schedule 2 (Royal Commissions and statutory inquiries)
- paragraph 10 of Schedule 2 (public records)
- paragraph 11 of Schedule 2 (acts done under statutory authority)
- paragraph 14 of Schedule 2 (recordings of folksongs)
- paragraph 16 of Schedule 2 (incidental recording for purposes of broadcast)
- paragraph 17 of Schedule 2 (recordings for purposes of supervision and control of broadcasts)
- paragraph 17A of Schedule 2 (recording for the purposes of time-shifting)
- paragraph 17B of Schedule 2 (photographs of broadcasts)
- paragraph 20 of Schedule 2 (provision of sub-titled copies of broadcast)
- paragraph 21 of Schedule 2 (recording of broadcast for archival purposes)

PART 3

Database right exceptions

regulation 20 of and Schedule 1 to the Copyright and Rights in Databases Regulations 1997 (S.I. 1997/3032)

PROVISIONS FOR THE BENEFIT OF THE HOSPITAL FOR SICK CHILDREN

Interpretation

1 (1) In this Schedule -

"the Hospital" means The Hospital for Sick Children, Great Ormond Street, London,

"the trustees" means the special trustees appointed for the Hospital under the National Health Service Act 1977; and

"the work" means the play "Peter Pan" by Sir James Matthew Barrie.

(2) Expressions used in this Schedule which are defined for the purposes of Part I of this Act (copyright) have the same meaning as in that Part.

Entitlement to royalty

2 (1) The trustees are entitled, subject to the following provisions of this Schedule, to a royalty in respect of any public performance, commercial publication or communication to the public of the whole or any substantial part of the work or an adaptation of it.

(2) Where the trustees are or would be entitled to a royalty, another form of remuneration may be agreed.

Exceptions

3 No royalty is payable in respect of -

(a) anything which immediately before copyright in the work expired on 31st December 1987 could lawfully have been done without the licence, or further licence, of the trustees as copyright owners; or

(b) anything which if copyright still subsisted in the work could, by virtue of any provision of Chapter III of Part I of this Act (acts permitted notwithstanding copyright), be done without infringing copyright.

Saving

4 No royalty is payable in respect of anything done in pursuance of arrangements made before the passing of this Act.

Procedure for determining amount payable

5 (1) In default of agreement application may be made to the Copyright Tribunal which shall consider the matter and make such order regarding the royalty or other remuneration to be paid as it may determine to be reasonable in the circumstances.

(2) Application may subsequently be made to the Tribunal to vary its 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.

(3) An application for variation 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 for variation.

(4) A variation order has effect from the date on which it is made or such later date as may be specified by the Tribunal.

(5)¹⁸⁷ The provisions of Chapter VIII of Part I (general provisions relating to the Copyright Tribunal) apply in relation to the Tribunal when exercising any jurisdiction under this paragraph.

Sums received to be held on trust

- 6 The sums received by the trustees by virtue of this Schedule, after deduction of any relevant expenses, shall be held by them on trust for the purposes of the Hospital.

Right only for the benefit of the Hospital

- 7 (1) The right of the trustees under this Schedule may not be assigned and shall cease if the trustees purport to assign or charge it.
- (2) The right may not be the subject of an order under section 92 of the National Health Service Act 1977 (transfers of trust property by order of the Secretary of State) and shall cease if the Hospital ceases to have a separate identity or ceases to have purposes which include the care of sick children.
- (3) Any power of Her Majesty, the court (within the meaning of the Charities Act 1993¹⁸⁸) or any other person to alter the trusts of a charity is not exercisable in relation to the trust created by this Schedule.

187 Para. 5(5) added by SI 1996/2967.

188 Reference to Charities Act 1993 inserted by that Act (replacing original reference to Charities Act 1960).

CONSEQUENTIAL AMENDMENTS: GENERAL

Public Libraries (Scotland) Act 1955 (c. 27)

6. In section 4 of the Public Libraries (Scotland) Act 1955 (extension of lending power of public libraries), make the existing provision subsection (1) and after it add—

~~"(2) The provisions of Part I of the Copyright, Designs and Patents Act 1988 (copyright) relating to the rental of copies of sound recordings, films and computer programs apply to any lending by a statutory library authority of copies of such works, whether or not a charge is made for that facility."~~

London County, Council (General Powers) Act 1958 (c. xxi)

7. In section 36 of the London County Council (General Powers) Act 1958 (power as to libraries: provision and repair of things other than books) for subsection (5) substitute—

"(5) Nothing in this section shall be construed as authorising an infringement of copyright."

Public Libraries and Museums Act 1964 (c. 75)

8. In section 8 of the Public Libraries and Museums Act 1964 (restrictions on charges for library facilities), after subsection (5) add—

~~"(6) The provisions of Part I of the Copyright, Designs and Patents Act 1988 (copyright) relating to the rental of copies of sound recordings, films and computer programs apply to any lending by a library authority of copies of such works, whether or not a charge is made for that facility."~~

House of Commons Disqualification Act 1975 (c. 24)

16. In Part II of Schedule I to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified), at the appropriate place insert "The Copyright Tribunal".

Northern Ireland Assembly Disqualification Act 1975 (c. 25)

17. In Part 11 of Schedule I to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified), at the appropriate place insert "The Copyright Tribunal".

Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I.3))

34. In Article 77 of the Education and Libraries (Northern Ireland) Order 1986 (charges for library services), after paragraph (2) add—

~~"(3) The provisions of Part I of the Copyright, Designs and Patents Act 1988~~

189 Selected provisions only reproduced. Paras. 6, 8 & 34 were repealed by SI 1996/2967. Other provisions in Sch. 7 have also been repealed, eg the following (by the legislation indicated): para. 14 (Tribunals and Inquiries Act 1992), para. 26 (Taxation of Chargeable Gains Act 1992), para. 27 (Communications Act 2003) paras. 29 & 30 (Broadcasting Act 1990), para. 31 (Companies Act 1989) and para. 35 (Companies (No. 2) (Northern Ireland) Order 1990, SI 1990/1504).

(copyright) relating to the rental of copies of sound recordings, films and computer programs apply to any lending by a board of copies of such works, whether or not a charge is made for that facility."



REPEALS

Chapter	Short title	Extent of repeal
1956 c. 74.	Copyright Act 1956.	The whole Act.
1958 c. 44.	Dramatic and Musical Performers' Protection Act 1958.	The whole Act.
1963 c. 53.	Performers' Protection Act 1963.	The whole Act.
1968 c. 68.	Design Copyright Act 1968.	The whole Act.
1971 c. 4.	Copyright (Amendment) Act 1971.	The whole Act.
1972 c. 32.	Performers' Protection Act 1972.	The whole Act.
1982 c. 35.	Copyright Act 1956 (Amendment) Act 1982.	The whole Act.
1983 c. 42.	Copyright (Amendment) Act 1983.	The whole Act.
1985 c. 41.	Copyright (Computer Software) Amendment Act 1985.	The whole Act.

190 Selected provisions only reproduced, for other provisions see 1988 Act as enacted.

THE COPYRIGHT (COMPUTER PROGRAMS) REGULATIONS 1992 (SI 1992 No. 3233)¹⁹¹

TRANSITIONAL PROVISIONS AND SAVINGS

(Regulation 12)

Computer programs created before 1st January 1993

12.-(1) Subject to paragraph (2), the amendments of the Copyright, Designs and Patents Act 1988 made by these Regulations apply in relation to computer programs created before 1st January 1993 as they apply to computer programs created on or after that date.

(2) Nothing in these Regulations affects any agreement or any term or condition of an agreement where the agreement, term or condition is entered into before 1st January 1993.

¹⁹¹ Commencement date 1st January 1993.

THE DURATION OF COPYRIGHT AND RIGHTS IN PERFORMANCES REGULATIONS 1995 (SI 1995 No. 3297)¹⁹²

PART III

SAVINGS AND TRANSITIONAL PROVISIONS¹⁹³

(Regulations 12 to 36)

Introductory

Introductory

12.—(1) References in this Part to “commencement”, without more, are to the date on which these Regulations come into force.

(2) In this Part—

“the 1988 Act” means the Copyright, Designs and Patents Act 1988;

“the 1988 provisions” means the provisions of that Act as they stood immediately before commencement (including the provisions of Schedule 1 to that Act continuing the effect of earlier enactments); and

“the new provisions” means the provisions of that Act as amended by these Regulations.

(3) Expressions used in this Part which are defined for the purposes of Part I or II of the 1988 Act, in particular references to the copyright owner, have the same meaning as in that Part.

Films not protected as such

13. In relation to a film in which copyright does not or did not subsist as such but which is or was protected—

(a) as an original dramatic work, or

(b) by virtue of the protection of the photographs forming part of the film,

references in the new provisions, and in this Part, to copyright in a film are to any copyright in the film as an original dramatic work or, as the case may be, in photographs forming part of the film.

Copyright

Copyright: interpretation

14.—(1) In the provisions of this Part relating to copyright—

(a) “existing, in relation to a work, means made before commencement; and

(b) “existing copyright work” means a work in which copyright subsisted immediately before commencement.

(2) For the purposes of those provisions a work of which the making extended over a period shall be taken to have been made when its making was completed.

¹⁹² Commencement date 1st January 1996

¹⁹³ See also Regulation 19 of SI 1996/2967, page 187.

(3) References in those provisions to “moral rights” are to the rights conferred by Chapter IV of Part I of the 1988 Act.

Duration of copyright: general saving

15.—(1) Copyright in an existing copyright work shall continue to subsist until the date on which it would have expired under the 1988 provisions if that date is later than the date on which copyright would expire under the new provisions.

(2) Where paragraph (1) has effect, section 57 of the 1988 Act (anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author) applies as it applied immediately before commencement (that is, without the amendments made by Regulation 5(2)¹⁹⁴).

Duration of copyright: application of new provisions

16. The new provisions relating to duration of copyright apply—

- (a) to copyright works made after commencement;
- (b) to existing works which first qualify for copyright protection after commencement;
- (c) to existing copyright works, subject to Regulation 15 (general saving for any longer period applicable under 1988 provisions); and
- (d) to existing works in which copyright expired before 31st December 1995 but which were on 1st July 1995 protected in another EEA state under legislation relating to copyright or related rights.

Extended and revived copyright

17.— In the following provisions of this Part—

“extended copyright” means any copyright which subsists by virtue of the new provisions after the date on which it would have expired under the 1988 provisions; and

“revived copyright” means any copyright which subsists by virtue of the new provisions after having expired under the 1988 provisions or any earlier enactment relating to copyright.

Ownership of extended copyright

18.—(1) The person who is the owner of the copyright in a work immediately before commencement is as from commencement the owner of any extended copyright in the work, subject as follows.

(2) If he is entitled to copyright for a period less than the whole of the copyright period under the 1988 provisions, any extended copyright is part of the reversionary interest expectant on the termination of that period.

Ownership of revived copyright

19.—(1) The person who was the owner of the copyright in a work immediately before it expired (the “former copyright owner”) is as from commencement the owner of any revived copyright in the work, subject as follows.

(2) If the former copyright owner has died before commencement, or in the case of a legal person has ceased to exist before commencement, the revived copyright shall vest—

- (a) in the case of a film, in the principal director of the film or his personal representatives,

¹⁹⁴ See footnote 43.

(b) in any other case, in the author of the work or his personal representatives.

(3) Where revived copyright vests in personal representatives by virtue of paragraph (2), it shall be held by them for the benefit of the person who would have been entitled to it had it been vested in the principal director or author immediately before his death and had devolved as part of his estate.

Prospective ownership of extended or revived copyright

20.—(1) Where by an agreement made before commencement in relation to extended or revived copyright, and signed by or on behalf of the prospective owner of the copyright, the prospective owner purports to assign the extended or revived copyright (wholly or partially) to another person, then if, on commencement the assignee or another person claiming under him would be entitled as against all other persons to require the copyright to be vested in him, the copyright shall vest in the assignee or his successor in title by virtue of this paragraph.

(2) A licence granted by a prospective owner of extended or revived copyright is binding on every successor in title to his interest (or prospective interest) in the right, 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 Part I of the 1988 Act to doing anything with, or without, the licence of the copyright owner shall be construed accordingly.

(3) In paragraph (2) “prospective owner” includes a person who is prospectively entitled to extended or revived copyright by virtue of such an agreement as is mentioned in paragraph (1).

Extended copyright: existing licences, agreement, &c.

21.—(1) Any copyright licence, any term or condition of an agreement relating to the exploitation of a copyright work, or any waiver or assertion of moral rights, which—

(a) subsists immediately before commencement in relation to an existing copyright work, and

(b) is not to expire before the end of the copyright period under the 1998 provisions, shall continue to have effect during the period of any extended copyright, subject to any agreement to the contrary.

(2) Any copyright licence, or term or condition relating to the exploitation of a copyright work, imposed by order of the Copyright Tribunal which—

(a) subsists immediately before commencement in relation to an existing copyright work, and

(b) is not to expire before the end of the copyright period under the 1988 provisions, shall continue to have effect during the period of any extended copyright, subject to any further order of the Tribunal.

Revived copyright: exercise of moral rights

22.—(1) The following provisions have effect with respect to the exercise of moral rights in relation to a work in which there is revived copyright.

(2) Any waiver or assertion of moral rights which subsisted immediately before the expiry of copyright shall continue to have effect during the period of revived copyright.

(3) Moral rights are exercisable after commencement by the author of a work or, as the case may be, the director of a film in which revived copyright subsists, as with any other copyright work.

(4) Where the author or director died before commencement—

(a) the rights conferred by—

section 77 (right to identification as author or director),

section 80 (right to object to derogatory treatment of work), or
 section 85 (right to privacy of certain photographs and films),
 are exercisable after commencement by his personal representatives, and

(b) any infringement after commencement of the right conferred by section 84 (false attribution) is actionable by his personal representatives.

(5) Any damages recovered by personal representatives by virtue of this Regulation 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.

(6) Nothing in these Regulations shall be construed as causing a moral right to be exercisable if, or to the extent that, the right was excluded by virtue of paragraph 23 or 24 of Schedule 1 on the commencement of the 1988 Act or would have been so excluded if copyright had not previously expired.

Revived copyright: saving for acts of exploitation when work in public domain, &c.

23.—(1) No act done before commencement shall be regarded as infringing revived copyright in a work.

(2) It is not an infringement of revived copyright in a work—

(a) to do anything after commencement in pursuance of arrangements made before 1st January 1995 at a time when copyright did not subsist in the work,

(b) to issue to the public after commencement copies of the work made before 1st July 1995 at a time when copyright did not subsist in the work.

(3) It is not an infringement of revived copyright in a work to do anything after commencement in relation to a literary, dramatic, musical or artistic work or a film made before commencement, or made in pursuance of arrangements made before commencement, which contains a copy of that work or is an adaptation of that work if—

(a) the copy or adaptation was made before 1st July 1995 at a time when copyright did not subsist in the work in which revived copyright subsists, or

(b) the copy or adaptation was made in pursuance of arrangements made before 1st July 1995 at a time when copyright did not subsist in the work in which revived copyright subsists.

(4) It is not an infringement of revived copyright in a work to do after commencement anything which is a restricted act in relation to the work if the act is done at a time when, or is done in pursuance of arrangements made at a time when, the name and address of a person entitled to authorise the act cannot by reasonable inquiry be ascertained.

(5) In this Regulation "arrangements" means arrangements for the exploitation of the work in question.

(6) It is not an infringement of any moral right to do anything which by virtue of this Regulation is not an infringement of copyright.

Revived copyright: use as of right subject to reasonable royalty

24.—(1) In the case of a work in which revived copyright subsists any acts restricted by the copyright shall be treated as licensed by the copyright owner, subject only to the payment of such reasonable royalty or other remuneration as may be agreed or determined in default of agreement by the Copyright Tribunal.

(2) A person intending to avail himself of the right conferred by this Regulation must give reasonable notice of his intention to the copyright owner, stating when he intends to begin to do the acts.

(3) If he does not give such notice, his acts shall not be treated as licensed.

(4) If he does give such notice, his acts shall be treated as licensed and a reasonable royalty or other remuneration shall be payable in respect of them despite the fact that its amount is not agreed or determined until later.

(5) This Regulation does not apply if or to the extent that a licence to do the acts could be granted by a licensing body (within the meaning of section 116(2) of the 1988 Act), whether or not under a licensing scheme.

(6) No royalty or other remuneration is payable by virtue of this Regulation in respect of anything for which a royalty or other remuneration is payable under Schedule 6 to the 1988 Act.

Revived copyright: application to Copyright Tribunal

25.—(1) An application to settle the royalty other remuneration payable in pursuance of Regulation 24 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 paragraph (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 paragraph.

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

Film sound tracks: application of new provisions

26.—(1) The new provisions relating to the treatment of film sound tracks¹⁹⁵ apply to existing sound tracks as from commencement.

(2) The owner of any copyright in a film has as from commencement corresponding rights as copyright owner in any existing sound track treated as part of the film; but without prejudice to any rights of the owner of the copyright in the sound track as a sound recording.

(3) Anything done before commencement under or in relation to the copyright in the sound recording continues to have effect and shall have effect, so far as concerns the sound track, in relation to the film as in relation to the sound recording.

(4) It is not an infringement of the copyright in the film (or of any moral right in the film) to do anything after commencement in pursuance of arrangements for the exploitation of the sound recording made before commencement.

Rights in performances

Rights in performances: interpretation

27.—(1) In the provisions of this Part relating to rights in performances—

- (a) “existing, in relation to a performance, means given before commencement; and
- (b) “existing protected performance” means a performance in relation to which rights under Part II of the 1988 Act (rights in performances) subsisted immediately before commencement.

(2) References in this Part to performers' rights are to the rights given by section 180(1)(a) of the 1988 Act and reference to recording rights are to the rights given by section 180(1)(b) of that Act.

Duration of rights in performances: general saving

¹⁹⁵ See new section 5B inserted by SI 1995/3297.

28. Any rights under Part II of the 1988 Act in an existing protected performance shall continue to subsist until the date on which they would have expired under the 1988 provisions if that date is later than

the date on which the rights would expire under the new provisions.

Duration of rights in performances: application of new provisions

29. The new provisions relating to the duration of rights under Part II of the 1988 Act apply—

- (a) to performances taking place after commencement;
- (b) to existing performances which first qualify for protection under Part II of the 1988 Act after commencement;
- (c) to existing protected performances, subject to Regulation 28 (general saving for any longer period applicable under 1988 provisions); and
- (d) to existing performances—
 - (i) in which rights under Part II of the 1988 Act expired after the commencement of that Part and before 31st December 1995, or
 - (ii) which were protected by earlier enactments relating to the protection of performers and in which rights under that Part did not arise by reason only that the performance was given at a date such that the rights would have ceased to subsist before the commencement of that Part,
 but which were on 1st July 1995 protected in another EEA state under legislation relating to copyright or related rights.

Extended and revived performance rights

30. In the following provisions of this Part—

“extended performance rights” means rights under Part II of the 1988 Act which subsist by virtue of the new provisions after the date on which they would have expired under the 1988 provisions; and

“revived performance rights” means rights which under Part II of the 1988 Act subsist by virtue of the new provisions—

- (a) after having expired under the 1988 provisions, or
- (b) in relation to a performance which was protected by earlier enactments relating to the protection of performers and in which rights under that Part did not arise by reason only that the performance was given at a date such that the rights would have ceased to subsist before the commencement of that Part.

References in the following provisions of this Part to “revived pre-1988 rights” are to revived performance rights within paragraph (b) of the above definition.

Entitlement to extended or revived performance rights

31.—(1) Any extended performance rights are exercisable as from commencement by the person who was entitled to exercise those rights immediately before commencement, that is—

- (a) in the case of performer's rights, the performer or (if he has died) the person entitled to by virtue of section 192(2) of the 1988 Act to exercise those rights;
- (b) in the case of recording rights, the person who was within the meaning of section 185 of the 1988 Act the person having those rights.

(2) Any revived performance rights are exercisable as from commencement—

- (a) in the case of rights which expired after commencement of the 1988 Act, by the person who was entitled to exercise those rights immediately before they expired;

(b) in the case of revived pre-1988 performers' rights, by the performer or his personal representatives;

(c) in the case of revived pre-1988 recording rights, by the person who would have been the person having those rights immediately before the commencement of the 1988 Act or, if earlier, immediately before the death of the performer, applying the provisions of section 185 of that Act to the circumstances then obtaining.

(3) Any remuneration or damages received by a person's personal representatives by virtue of a right conferred on them by paragraph (1) or (2) shall devolve as part of that person's estate as if the right had subsisted and been vested in him immediately before his death.

Extended performance rights: existing consents, agreement, &c.

32. Any consent, or any term or condition of an agreement, relating to the exploitation of an existing protected performance which—

(a) subsists immediately before commencement, and

(b) is not to expire before the end of the period for which rights under Part II of the 1998 Act subsist in relation to that performance,

shall continue to subsist during the period of any extended performance rights, subject to any agreement to the contrary.

Revived performance rights: savings for acts of exploitation when performance in public domain, &c.

33.—(1) No act done before commencement shall be regarded as infringing revived performance rights in a performance.

(2) It is not an infringement of revived performance rights in a performance—

(a) to do anything after commencement in pursuance of arrangements made before 1st January 1995 at a time when the performance was not protected, or

(b) to issue to the public after commencement a recording of a performance made before 1st July 1995 at a time when the performance was not protected.

(3) It is not an infringement of revived performance rights in a performance to do anything after commencement in relation to a sound recording or film made before commencement, or made in pursuance of arrangements made before commencement, which contains a recording of the performance if—

(a) the recording of the performance was made before 1st July 1995 at a time when the performance was not protected, or

(b) the recording of the performance was made in pursuance of arrangements made before 1st July 1995 at a time when the performance was not protected.

(4) It is not an infringement of revived performance rights in a performance to do after commencement anything at a time when, or in pursuance of arrangements made at a time when, the name and address of a person entitled to authorise the act cannot by reasonable inquiry be ascertained.

(5) In this Regulation "arrangements" means arrangements for the exploitation of the performance in question.

(6) References in this Regulation to a performance being protected are—

(a) in relation to the period after commencement of the 1988 Act, to rights under Part II of that Act subsisting in relation to the performance, and

(b) in relation to earlier periods, to the consent of the performer being required under earlier enactments relating to the protection of performers.

Revived performance rights: use as of right subject to reasonable remuneration

34.—(1) In the case of a performance in which revived performance rights subsist any

acts which require the consent of any person under Part II of the 1988 Act (the “rights owner”) shall be treated as having that consent, subject only to the payment of such reasonable remuneration as may be agreed or determined in default of agreement by the Copyright Tribunal.

(2) A person intending to avail himself of the right conferred by this Regulation must give reasonable notice of his intention to the rights owner, stating when he intends to begin to do the acts.

(3) If he does not give such notice, his acts shall not be treated as having consent.

(4) If he does give such notice, his acts shall be treated as having consent and reasonable remuneration shall be payable in respect of them despite the fact that its amount is not agreed or determined until later.

Revived performance rights: application to Copyright Tribunal

35.—(1) An application to settle the remuneration payable in pursuance of Regulation 34 may be made to the Copyright Tribunal by the rights owner or the person claiming to be treated as having his consent.

(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 paragraph (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 paragraph.

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

Supplementary

Construction of references to EEA states

36.—(1) For the purpose of the new provisions relating to the term of copyright protection applicable to a work of which the country of origin is not an EEA state and of which the author is not a national of an EEA state—

(a) a work first published before 1st July 1995 shall be treated as published in an EEA state if it was on that date regarded under the law of the United Kingdom or another EEA state as having been published in that state;

(b) an unpublished film made before 1st July 1995 shall be treated as originating in an EEA state if it was on that date regarded under the law of the United Kingdom or another EEA state as a film whose maker had his headquarters in, or was domiciled or resident in, that state; and

(c) the author of a work made before 1st July 1995 shall be treated as an EEA national if he was on that date regarded under the law of the United Kingdom or another EEA state as a national of that state.

The references above to the law of another EEA state are to the law of that state having effect for the purposes of rights corresponding to those provided for in Part I of the 1988 Act.

(2) For the purposes of the new provisions relating to the term of protection applicable to a performance where the performer is not a national of an EEA state, the performer of a performance given before 1st July 1995 shall be treated as an EEA national if he was on that date regarded under the law of the United Kingdom or another EEA state as a national of that state.

The reference above to the law of another EEA state is to the law of that state having effect for the purposes of rights corresponding to those provided for in Part II of the 1988 Act.

(3) In this Regulation “another EEA state” means an EEA state other than the United Kingdom.



THE COPYRIGHT AND RELATED RIGHTS REGULATIONS 1996 (SI 1996 No. 2967)¹⁹⁶

CLARIFICATION OF TRANSITIONAL PROVISIONS RELATING TO PRE-1989 PHOTOGRAPHS (Regulation 19)

19. Any question arising, in relation to photographs which were existing works within the meaning of Schedule 1, as to who is to be regarded as the author for the purposes of—

(a) regulations 15 and 16 of the Duration of Copyright and Rights in Performances Regulations 1995 (duration of copyright: application of new provisions subject to general saving), or

(b) regulation 19(2)(b) of those regulations (ownership of revived copyright),

is to be determined in accordance with section 9 as in force on the commencement of those regulations (and not, by virtue of paragraph 10 of Schedule 1, in accordance with the law in force at the time when the work was made).

PART III TRANSITIONAL PROVISIONS AND SAVINGS (Regulations 25 to 36)

General provisions

Introductory

25.—(1) In this Part—

“commencement” means the commencement of these Regulations; and

“existing”, in relation to a work or performance, means made or given before commencement.

(2) For the purposes of this Part a work of which the making extended over a period shall be taken to have been made when its making was completed.

(3) In this Part a “new right” means a right arising by virtue of these Regulations, in relation to a copyright work or a qualifying performance, to authorise or prohibit an act.

The expression does not include—

(a) a right corresponding to a right which existed immediately before commencement, or

(b) a right to remuneration arising by virtue of these Regulations.

(4) Expressions used in this Part have the same meaning in relation to copyright as they have in Part I of the Copyright, Designs and Patents Act 1988, and in relation to performances as in Part II of that Act.

¹⁹⁶ Commencement date 1st December 1996.

General rules

26.—(1) Subject to anything in regulations 28 to 36 (special transitional provisions and savings), these Regulations apply to copyright works made, and to performances given, before or after commencement.

(2) No act done before commencement shall be regarded as an infringement of any new right, or as giving rise to any right to remuneration arising by virtue of these Regulations.

Saving for certain existing agreements

27.—(1) Except as otherwise expressly provided, nothing in these Regulations affects an agreement made before 19th November 1992.

(2) No act done in pursuance of any such agreement after commencement shall be regarded as an infringement of any new right.

*Special provisions***Broadcasts**

28. The provisions of—
 regulation 5 (place where broadcast treated as made) and
 regulation 6 (safeguards in relation to certain satellite broadcasts),
 have effect in relation to broadcasts made after commencement.

Satellite broadcasting: international co-production agreements

29.—(1) This regulation applies to an agreement concluded before 1st January 1995—

- (a) between two or more co-producers of a film, one of whom is a national of an EEA state, and
- (b) the provisions of which grant to the parties exclusive rights to exploit all communication to the public of the film in separate geographical areas.

(2) Where such an agreement giving such exclusive exploitation rights in relation to the United Kingdom does not expressly or by implication address satellite broadcasting from the United Kingdom, the person to whom those exclusive rights have been granted shall not make any such broadcast without the consent of any other party to the agreement whose language-related exploitation rights would be adversely affected by that broadcast.

New rights: exercise of rights in relation to performances

30.—(1) Any new right conferred by these Regulations in relation to a qualifying performance is exercisable as from commencement by the performer or (if he has died) by the person who immediately before commencement was entitled by virtue of section 192(2) to exercise the rights conferred on the performer by Part II in relation to that performance.

(2) Any remuneration or damages received by a person's personal representatives by virtue of a right conferred on them by paragraph (1) shall devolve as part of that person's estate as if the right had subsisted and been vested in him immediately before his death.

New rights: effect of pre-commencement authorisation of copying

31. Where before commencement—

- (a) the owner or prospective owner of copyright in a literary, dramatic, musical or artistic work has authorised a person to make a copy of the work, or
- (b) the owner or prospective owner of performer's rights in a performance has authorised a person to make a copy of a recording of the performance,

any new right in relation to that copy shall vest on commencement in the person so

authorised, subject to any agreement to the contrary.

New rights: effect of pre-commencement film production agreement

32.—(1) Sections 93A and 191F (presumption of transfer of rental right in case of production agreement) apply in relation to an agreement concluded before commencement.

As section 93A so applies, the restriction in subsection (3) of that section shall be omitted (exclusion of presumption in relation to screenplay, dialogue or music specifically created for the film).

(2) Sections 93B and 191G (right to equitable remuneration where rental right transferred) have effect accordingly, but subject to regulation 33 (right to equitable remuneration applicable to rental after 1st April 1997).

Right to equitable remuneration applicable to rental after 1st April 1997

33. No right to equitable remuneration under section 93B or 191G (right to equitable remuneration where rental right transferred) arises—

- (a) in respect of any rental of a sound recording or film before 1st April 1997, or
- (b) in respect of any rental after that date of a sound recording or film made in pursuance of an agreement entered into before 1st July 1994, unless the author or performer (or a successor in title of his) has before 1st January 1997 notified the person by whom the remuneration would be payable that he intends to exercise that right.

Savings for existing stocks

34.—(1) Any new right in relation to a copyright work does not apply to a copy of the work acquired by a person before commencement for the purpose of renting or lending it to the public.

(2) Any new right in relation to a qualifying performance does not apply to a copy of a recording of the performance acquired by a person before commencement for the purpose of renting or lending it to the public.

Lending of copies by libraries or archives

35. Until the making of regulations under section 37 of the Copyright, Designs and Patents Act 1988 for the purposes of section 40A(2) of that Act (lending of copies by libraries or archives), the reference in section 40A(2) (and in paragraph 6B of Schedule 2) to a prescribed library or archive shall be construed as a reference to any library or archive in the United Kingdom prescribed by paragraphs 2 to 6 of Part A of Schedule 1 to the Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989.

Authorship of films

36.—(1) Regulation 18 (authorship of films) applies as from commencement in relation to films made on or after 1st July 1994.

(2) It is not an infringement of any right which the principal director has by virtue of these Regulations to do anything after commencement in pursuance of arrangements for the exploitation of the film made before 19th November 1992.

This does not affect any right of his to equitable remuneration under section 93B.

See page 302 for the savings and transitional provisions of the Copyright and Rights in Databases Regulations 1997 (SI 1997 No. 3032).



THE COPYRIGHT AND RELATED RIGHTS REGULATIONS 2003 (SI 2003 No. 2498) ¹⁹⁷

PART 3

SAVINGS AND TRANSITIONAL PROVISIONS

(Regulations 30 to 40)

General provisions

Introductory

30.—(1) In this Part -

"commencement" means the date upon which these regulations come into force;

"extended copyright" means any copyright in sound recordings which subsists by virtue of section 13A of the 1988 Act (as amended by regulation 29) after the date on which it would have expired under the 1988 provisions;

"prospective owner" includes a person who is prospectively entitled to extended copyright in a sound recording by virtue of such an agreement as is mentioned in regulation 37(1);

"the 1988 Act" means the Copyright, Designs and Patents Act 1988; and

"the 1988 provisions" means the provisions of the 1988 Act as they stood immediately before commencement (including the provisions of Schedule 1 to that Act continuing the effect of earlier enactments).

(2) Expressions used in this Part which are defined for the purposes of Part 1 or 2 of the 1988 Act have the same meaning as in that Part.

General rules

31.—(1) Subject to regulation 32, these Regulations apply to—

- (a) copyright works made,
- (b) performances given,
- (c) databases, in which database right vests, made, and
- (d) works, in which publication right vests, first published,

before or after commencement.

(2) No act done before commencement shall be regarded as an infringement of any new or extended right arising by virtue of these Regulations.

Savings for certain existing agreements

32.—(1) Nothing in these Regulations affects any agreement made before 22nd December 2002.

(2) No act done after commencement, in pursuance of an agreement made before 22nd December 2002, shall be regarded as an infringement of any new or extended right arising by virtue of these Regulations.

¹⁹⁷ Commencement date 31st October 2003.

*Special provisions***Permitted acts**

33. The provisions of Chapter 3 of Part 1 (acts permitted in relation to copyright works) and Schedule 2 (rights in performances: permitted acts) in the 1988 provisions shall continue to apply to anything done after commencement in completion of an act begun before commencement which was permitted by those provisions.

Performers' rights: making available to the public

34.—(1) Those parts of section 182D in the 1988 provisions which confer a right to equitable remuneration in relation to the making available to the public in the way mentioned in section 182CA(1) (regulation 7) of a commercially published sound recording shall cease to apply on commencement.

(2) Any assignment made before commencement under the provisions of section 182D(2) shall, on commencement, cease to apply insofar as it relates to the new making available to the public right conferred by section 182CA (regulation 7).

Exercise of rights in relation to performances

35.— (1) The new right conferred by section 182CA (consent required for making available to the public) (in regulation 7) is exercisable as from commencement by the performer or (if he has died) by the person who immediately before commencement was entitled by virtue of section 192A(2) to exercise the rights conferred on the performer by Part 2 in relation to that performance.

(2) Any damages received by a person's personal representatives by virtue of the right conferred by paragraph (1) shall devolve as part of that person's estate as if the right had subsisted and been vested in him immediately before his death.

Ownership of extended copyright in sound recordings

36. The person who is the owner of the copyright in a sound recording immediately before commencement is as from commencement the owner of any extended copyright in that sound recording.

Prospective ownership of extended copyright in sound recordings

37.—(1) Where by an agreement made before commencement in relation to extended copyright in a sound recording, and signed by or on behalf of the prospective owner of the copyright, the prospective owner purports to assign the extended copyright (wholly or partially) to another person, then, if on commencement the assignee or another person claiming under him would be entitled as against all other persons to require the copyright to be vested in him, the copyright shall vest in the assignee or his successor in title by virtue of this paragraph.

(2) A licence granted by a prospective owner of extended copyright in a sound recording is binding on every successor in title to his interest (or prospective interest) in the right, 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 Part 1 of the 1988 Act to doing anything with, or without, the licence of the copyright owner shall be construed accordingly.

Extended copyright in sound recordings: existing licences, agreements, etc.

38.—(1) Any copyright licence or any term or condition of an agreement relating to the exploitation of a sound recording which—

- (a) subsists immediately before commencement in relation to an existing sound recording, and

(b) is not to expire before the end of the copyright period under the 1988 provisions, shall continue to have effect during the period of any extended copyright in that sound recording, subject to any agreement to the contrary.

(2) Any copyright licence, or term or condition relating to the exploitation of a sound recording, imposed by order of the Copyright Tribunal which —

(a) subsists immediately before commencement in relation to an existing sound recording, and

(b) is not to expire before the end of the copyright period under the 1988 provisions, shall continue to have effect during the period of any extended copyright, subject to any further order of the Tribunal.

Duration of copyright in sound recordings: general saving

39. Copyright in an existing sound recording shall continue to subsist until the date it would have expired under Regulation 15 of the Duration of Copyright and Rights in Performances Regulations 1995 (SI 1995/3297) if that date is later than the date on which copyright would expire under the provisions of section 13A of the 1988 Act as amended by regulation 29.

Sanctions and remedies

40.—(1) Section 296 in the 1988 provisions (devices designed to circumvent copy-protection) shall continue to apply to acts done in relation to computer programs or other works prior to commencement.

(2) Section 296 as substituted by regulation 24(1) (circumvention of technical devices applied to computer programs), and sections 296ZA (circumvention of technological measures) and 296ZD (rights and remedies in respect of devices designed to circumvent technological measures), introduced by regulation 24(1), shall apply to acts done in relation to computer programs or other works on or after commencement.

(3) Sections 107(2A), 198(1A) and 296ZB(1) and (2) (offences) do not have effect in relation to any act committed before commencement.

COPYRIGHT, ETC. AND TRADE MARKS (OFFENCES AND ENFORCEMENT) ACT 2002

1 Penalties for criminal offences

[Subsections (1)-(4), which are not reproduced, increased the maximum term of imprisonment possible under ss.107(4)(b), 198(5)(b) & 297A(2)(b) from two years to ten, and added a possible six month term of imprisonment to s.297A(2)(a).]

(5) This section does not have effect in relation to any offence committed before the commencement of this section.

7 Short title, commencement and extent ¹⁹⁸

- (1) This Act may be cited as the Copyright, etc. and Trade Marks (Offences and Enforcement) Act 2002.
- (2) This Act (apart from this section) shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be appointed for different purposes.
- (3) An order under subsection (2) may contain transitional provisions and savings relating to the provisions being brought into force by the order.
- (4) This Act extends to Northern Ireland.
- (5) Section 6 and this section also extend to the Isle of Man.

198 The Act as a whole was brought into force on 20th November 2002 by SI 2002/2749, which made no further transitional provisions or savings.

COPYRIGHT (VISUALLY IMPAIRED PERSONS) ACT 2002

8 Short title, commencement and extent ¹⁹⁹

- (1) This Act may be cited as the Copyright (Visually Impaired Persons) Act 2002.
- (2) This Act (apart from this section) comes into force on such day as the Secretary of State may appoint by order made by statutory instrument, and different days may be appointed for different provisions or for different purposes.
- (3) An order under subsection (2) may contain transitional provisions and savings relating to the provisions being brought into force by the order.
- (4) This Act extends to Northern Ireland.

¹⁹⁹ The Act as a whole was brought into force on 31st October 2003 by SI 2003/2499, immediately after the commencement on the same day of the Copyright and Related Rights Regulations 2003, SI 2003/2498. (There were no transitional provisions or savings in SI 2003/2499.)

Publication Right



Introduced by Regulations 16 & 17 of the Copyright and Related Rights Regulations 1996, SI 1996/2967, as free-standing legislation not incorporated into the Copyright, Designs and Patents Act 1988.

PUBLICATION RIGHT (SI 1996/2967)

16 Publication right

- (1) A person who after the expiry of copyright protection, publishes for the first time a previously unpublished work has, in accordance with the following provisions, a property right ("publication right") equivalent to copyright.
- (2) For this purpose publication includes any making available²⁰⁰ to the public, in particular -
 - (a) the issue of copies to the public;
 - (b) making the work available by means of an electronic retrieval system;
 - (c) the rental or lending of copies of the work to the public;
 - (d) the performance, exhibition or showing of the work in public; or
 - (e) ²⁰¹communicating the work to the public.
- (3) No account shall be taken for this purpose of any unauthorised act.

In relation to a time when there is no copyright in the work, an unauthorised act means an act done without the consent of the owner of the physical medium in which the work is embodied or on which it is recorded.

- (4) A work qualifies for publication right protection only if -
 - (a) first publication is in the European Economic Area, and
 - (b) the publisher of the work is at the time of first publication a national of an EEA state.

Where two or more persons jointly publish the work, it is sufficient for the purposes of paragraph (b) if any of them is a national of an EEA state.

- (5) No publication right arises from the publication of a work in which Crown copyright or Parliamentary copyright subsisted.
- (6) Publication right expires at the end of the period of 25 years from the end of the calendar year in which the work was first published.
- (7) In this regulation a "work" means a literary, dramatic, musical or artistic work or a film.
- (8) Expressions used in this regulation (other than "publication") have the same meaning as in Part I.

200 Words "making available" substituted by the Copyright and Related Rights Regulations 2003, SI 2003/2498, in place of original word "communication".

201 Revised 16(2)(e) substituted by SI 2003/2498 (replacing original "broadcasting the work or including it in a cable programme service").

17 Application of copyright provisions to publication right

- (1) The substantive provisions of Part I relating to copyright (but not moral rights in copyright works), that is, the relevant provisions of -
- Chapter II (rights of copyright owner),
 - Chapter III (acts permitted in relation to copyright works),
 - Chapter V (dealings with rights in copyright works),
 - Chapter VI (remedies for infringement), and
 - Chapter VII (copyright licensing),
- apply in relation to publication right as in relation to copyright, subject to the following exceptions and modifications.
- (2) The following provisions do not apply -
- (a) in Chapter III (acts permitted in relation to copyright works), sections 57, 64, 66A and 67;
 - (b) in Chapter VI (remedies for infringement), sections 104 to 106;
 - (c) in Chapter VII (copyright licensing), section 116(4).
- (3) The following provisions have effect with the modifications indicated -
- (a) in section 107(4) and (5) (offences of making or dealing in infringing articles, &c.), the maximum punishment on summary conviction is imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale, or both;
 - (b) in sections 116(2), 117 and 124 for “works of more than one author” substitute “works of more than one publisher”.
- (4) The other relevant provisions of Part I, that is -
- in Chapter I, provisions defining expressions used generally in Part I,
 - Chapter VIII (the Copyright Tribunal),
 - in Chapter IX -
 - section 161 (territorial waters and the continental shelf), and
 - section 162 (British ships, aircraft and hovercraft), and
 - in Chapter X -
 - section 171(1) and (3) (savings for other rules of law, &c.), and
 - section 172 to 179 (general interpretation provisions),
- apply, with any necessary adaptations, for the purposes of supplementing the substantive provisions of that Part as applied by this regulation.

- (5) Except where the context otherwise requires, any other enactment relating to copyright (whether passed or made before or after these regulations) applies in relation to publication right as in relation to copyright.

In this paragraph “enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978.





Introduced by Part III (Regulations 12-25) of the Copyright and Rights in Databases Regulations 1997, SI 1997/3032, as free-standing legislation not incorporated into the Copyright, Designs and Patents Act 1988. Subsequently amended by the : -

Scotland Act (Consequential Modifications) (No. 1) Order 1999, SI 1999/1042

Enterprise Act 2002 (Consequential and Supplemental Provisions) Order, SI 2003/1398

Legal Deposit Libraries Act 2003

Copyright and Rights in Databases (Amendment) Regulations 2003, SI 2003/2501

(SI 2003/2501 extended database right protection to Isle of Man databases.)

DATABASE RIGHT (SI 1997/3032, PART III)

12 Interpretation

(1) In this Part²⁰² -

"database" has the meaning given by section 3A(1) of the 1988 Act;

"extraction", in relation to any contents of a database, means the permanent or temporary transfer of those contents to another medium by any means or in any form;

"insubstantial", in relation to part of the contents of a database, shall be construed subject to Regulation 16(2);

"investment" includes any investment, whether of financial, human or technical resources;

"jointly", in relation to the making of a database, shall be construed in accordance with Regulation 14(6);

"lawful user", in relation to a database, means any person who (whether under a licence to do any of the acts restricted by any database right in the database or otherwise) has a right to use the database;

"maker", in relation to a database, shall be construed in accordance with Regulation 14;

"re-utilisation", in relation to any contents of a database, means making those contents available to the public by any means;

"substantial", in relation to any investment, extraction or re-utilisation, means substantial in terms of quantity or quality or a combination of both.

- (2) The making of a copy of a database 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 shall not be taken for the purposes of this Part to constitute extraction or re-utilisation of the contents of the database.
- (3) Where the making of a copy of a database available through an establishment which is accessible to the public gives rise to a payment the amount of which does not go beyond what is necessary to cover the costs of the establishment, there is no direct or indirect economic or commercial advantage for the purposes of paragraph (2).
- (4) Paragraph (2) does not apply to the making of a copy of a database available for on-the-spot reference use.

²⁰² "part" here and elsewhere in the regulations means Part III of the 1997 Regulations.

- (5) ²⁰³ Where a copy of a database has been sold within the EEA or the Isle of Man by, or with the consent of, the owner of the database right in the database, the further sale within the EEA or the Isle of Man of that copy shall not be taken for the purposes of this Part to constitute extraction or re-utilisation of the contents of the database.

13 Database right

- (1) A property right ("database right") subsists, in accordance with this Part, in a database if there has been a substantial investment in obtaining, verifying or presenting the contents of the database.
- (2) For the purposes of paragraph (1) it is immaterial whether or not the database or any of its contents is a copyright work, within the meaning of Part I of the 1988 Act.
- (3) This Regulation has effect subject to Regulation 18.

14 The maker of a database

- (1) Subject to paragraphs (2) to (4), the person who takes the initiative in obtaining, verifying or presenting the contents of a database and assumes the risk of investing in that obtaining, verification or presentation shall be regarded as the maker of, and as having made, the database.
- (2) Where a database is made by an employee in the course of his employment, his employer shall be regarded as the maker of the database, subject to any agreement to the contrary.
- (3) Subject to paragraph (4), where a database is made by Her Majesty or by an officer or servant of the Crown in the course of his duties, Her Majesty shall be regarded as the maker of the database.
- (4) Where a database is made by or under the direction or control of the House of Commons or the House of Lords -
- (a) the House by whom, or under whose direction or control, the database is made shall be regarded as the maker of the database, and
 - (b) if the database is made by or under the direction or control of both Houses, the two Houses shall be regarded as the joint makers of the database.

(4A)²⁰⁴ Where a database is made by or under the direction or control of the Scottish Parliament, the Scottish Parliamentary Corporate Body shall be regarded as the maker of the database.

- (5) For the purposes of this Part a database is made jointly if two or more persons acting together in collaboration take the initiative in obtaining, verifying or presenting the contents of the database and assume the risk of investing in that obtaining, verification or presentation.

203 References to the Isle of Man added by SI 2003/2501.

204 Added by SI 1999/1042.

- (6) References in this Part to the maker of a database shall, except as otherwise provided, be construed, in relation to a database which is made jointly, as references to all the makers of the database.

15 First ownership of database right

The maker of a database is the first owner of database right in it.

16 Acts infringing database right

- (1) Subject to the provisions of this Part, a person infringes database right in a database if, without the consent of the owner of the right, he extracts or re-utilises all or a substantial part of the contents of the database.
- (2) For the purposes of this Part, the repeated and systematic extraction or re-utilisation of insubstantial parts of the contents of a database may amount to the extraction or re-utilisation of a substantial part of those contents.

17 Term of protection

- (1) Database right in a database expires at the end of the period of fifteen years from the end of the calendar year in which the making of the database was completed.
- (2) Where a database is made available to the public before the end of the period referred to in paragraph (1), database right in the database shall expire fifteen years from the end of the calendar year in which the database was first made available to the public.
- (3) Any substantial change to the contents of a database, including a substantial change resulting from the accumulation of successive additions, deletions or alterations, which would result in the database being considered to be a substantial new investment shall qualify the database resulting from that investment for its own term of protection.
- (4) This Regulation has effect subject to Regulation 30.²⁰⁵

18²⁰⁶ Qualification for database right

- (1) Database right does not subsist in a database unless, at the material time, its maker, or if it was made jointly, one or more of its makers, was -
- (a) an individual who was a national of an EEA state or habitually resident within the EEA,
- (b) a body which was incorporated under the law of an EEA state and which, at that time, satisfied one of the conditions in paragraph (2),
- (c) a partnership or other unincorporated body which was formed under the law of an EEA state and which, at that time, satisfied the condition in paragraph (2)(a),

²⁰⁵ See page 206.

²⁰⁶ 18(1)(d)-(f) and 18(2A) added by SI 2003/2501.

- (d) an individual who was habitually resident within the Isle of Man,
 - (e) a body which was incorporated under the law of the Isle of Man and which, at that time, satisfied one of the conditions in paragraph (2A), or
 - (f) a partnership or other unincorporated body which was formed under the law of the Isle of Man and which, at that time, satisfied the condition in paragraph (2A)(a).
- (2) The conditions mentioned in paragraphs (1)(b) and (c) are -
- (a) that the body has its central administration or principal place of business within the EEA, or
 - (b) that the body has its registered office within the EEA and the body's operations are linked on an ongoing basis with the economy of an EEA state.
- (2A) The conditions mentioned in paragraphs (1)(e) and (f) are -
- (a) that the body has its central administration or principal place of business within the Isle of Man, or
 - (b) that the body has its registered office within the Isle of Man and the body's operations are linked on an ongoing basis with the economy of the Isle of Man.
- (3) Paragraph (1) does not apply in any case falling within Regulation 14(4).
- (4) In this Regulation -
- (a) "EEA" and "EEA state" have the meaning given by section 172A of the 1988 Act;
 - (b) "the material time" means the time when the database was made, or if the making extended over a period, a substantial part of that period.

19 Avoidance of certain terms affecting lawful users

- (1) A lawful user of a database which has been made available to the public in any manner shall be entitled to extract or re-utilise insubstantial parts of the contents of the database for any purpose.
- (2) Where under an agreement a person has a right to use a database, or part of a database, which has been made available to the public in any manner, any term or condition in the agreement shall be void in so far as it purports to prevent that person from extracting or re-utilising insubstantial parts of the contents of the database, or of that part of the database, for any purpose.

20 Exceptions to database right

- (1) Database right in a database which has been made available to the public in any manner is not infringed by fair dealing with a substantial part of its contents if -
 - (a) that part is extracted from the database by a person who is apart from this paragraph a lawful user of the database,

- (b) it is extracted for the purpose of illustration for teaching or research and not for any commercial purpose, and
 - (c) the source is indicated.
- (2) The provisions of Schedule 1 specify other acts which may be done in relation to a database notwithstanding the existence of database right.

20A²⁰⁷ Exceptions to database right: deposit libraries

- (1) Database right in a database is not infringed by the copying of a work from the internet by a deposit library or person acting on its behalf if –
- (a) the work is of a description prescribed by regulations under section 10(5) of the 2003 Act,
 - (b) its publication on the internet, or a person publishing it there, is connected with the United Kingdom in a manner so prescribed, and
 - (c) the copying is done in accordance with any conditions so prescribed.
- (2) Database right in a database is not infringed by the doing of anything in relation to relevant material permitted to be done under regulations under section 7 of the 2003 Act.
- (3) Regulations under section 44A(3) of the 1988 Act exclude the application of paragraph (2) in relation to prescribed activities in relation to relevant material as (and to the extent that) they exclude the application of section 44A(2) of that Act in relation to those activities.
- (4) In this Regulation –
- (a) "the 2003 Act" means the Legal Deposit Libraries Act 2003;
 - (b) "deposit library" and "relevant material" have the same meaning as in section 7 of the 2003 Act.

21 Acts permitted on assumption as to expiry of database right

- (1) Database right in a database is not infringed by the extraction or re-utilisation of a substantial part of the contents of the database at a time when, or in pursuance of arrangements made at a time when –
- (a) it is not possible by reasonable inquiry to ascertain the identity of the maker, and
 - (b) it is reasonable to assume that database right has expired.
- (2) In the case of a database alleged to have been made jointly, paragraph (1) applies in relation to each person alleged to be one of the makers.

22 Presumptions relevant to database right

- (1) The following presumptions apply in proceedings brought by virtue of this Part of these Regulations with respect to a database.

²⁰⁷ Added by the Legal Deposit Libraries Act 2003. See also Annex III.

- (2) Where a name purporting to be that of the maker appeared on copies of the database as published, or on the database when it was made, the person whose name appeared shall be presumed, until the contrary is proved -
- (a) to be the maker of the database, and
 - (b) to have made it in circumstances not falling within Regulation 14(2) to (4).
- (3) Where copies of the database as published bear a label or a mark stating -
- (a) that a named person was the maker of the database, or
 - (b) that the database was first published in a specified year,
- the label or mark shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.
- (4) In the case of a database alleged to have been made jointly, paragraphs (2) and (3), so far as is applicable, apply in relation to each person alleged to be one of the makers.

23 Application of copyright provisions to database right

The following provisions of the 1988 Act apply in relation to database right and databases in which that right subsists as they apply in relation to copyright and copyright works—

sections 90 to 93 (dealing with rights in copyright works)

sections 96 to 102 (rights and remedies of copyright owner and exclusive licensee)

sections 113 and 114 (supplementary provisions relating to delivery up)

section 115 (jurisdiction of county court and sheriff court)²⁰⁸.

24 Licensing of database right

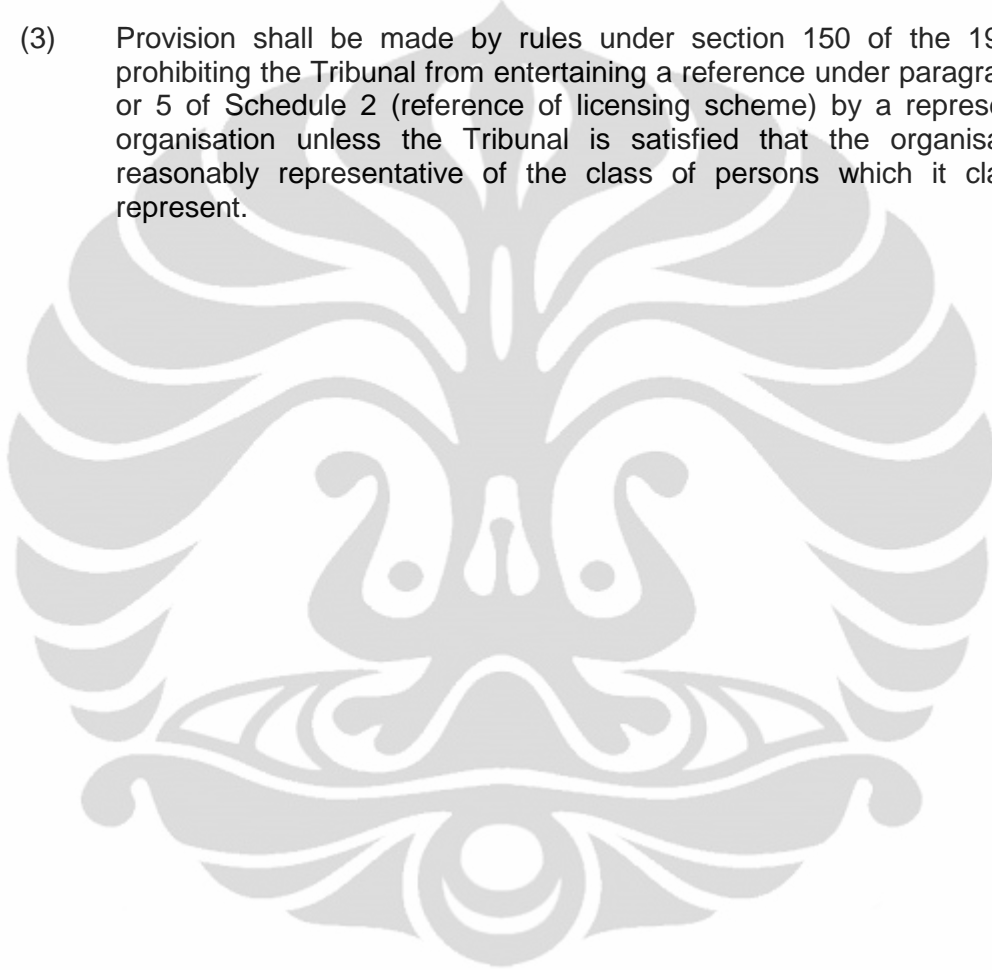
The provisions of Schedule 2 have effect with respect to the licensing of database right.

25 Database right: jurisdiction of Copyright Tribunal

- (1) The Copyright Tribunal has jurisdiction under this Part to hear and determine proceedings under the following provisions of Schedule 2 -
- (a) paragraph 3, 4 or 5 (reference of licensing scheme);

²⁰⁸ Reg 23 amended by SI 2006/1028

- (b) paragraph 6 or 7 (application with respect to licence under licensing scheme);
 - (c) paragraph 10, 11 or 12 (reference or application with respect to licence by licensing body).
- (2) The provisions of Chapter VIII of Part I of the 1988 Act (general provisions relating to the Copyright Tribunal) apply in relation to the Tribunal when exercising any jurisdiction under this Part.
- (3) Provision shall be made by rules under section 150 of the 1988 Act prohibiting the Tribunal from entertaining a reference under paragraph 3, 4 or 5 of Schedule 2 (reference of licensing scheme) by a representative organisation unless the Tribunal is satisfied that the organisation is reasonably representative of the class of persons which it claims to represent.



SCHEDULE 1 Regulation 20(2)
EXCEPTIONS TO DATABASE RIGHT FOR PUBLIC ADMINISTRATION

Parliamentary and judicial proceedings

- 1 Database right in a database is not infringed by anything done for the purposes of parliamentary or judicial proceedings or for the purposes of reporting such proceedings.

Royal Commissions and statutory inquiries

- 2 (1) Database right in a database is not infringed by anything done for -
- (a) the purposes of the proceedings of a Royal Commission or statutory inquiry, or
 - (b) the purpose of reporting any such proceedings held in public.
- (2) Database right in a database is not infringed by the issue to the public of copies of the report of a Royal Commission or statutory inquiry containing the contents of the database.
- (3) In this paragraph "Royal Commission" and "statutory inquiry" have the same meaning as in section 46 of the 1988 Act.

Material open to public inspection or on official register

- 3 (1) Where the contents of a database are open to public inspection pursuant to a statutory requirement, or are on a statutory register, database right in the database is not infringed by the extraction of all or a substantial part of the contents containing factual information of any description, by or with the authority of the appropriate person, for a purpose which does not involve re-utilisation of all or a substantial part of the contents.
- (2) Where the contents of a database are open to public inspection pursuant to a statutory requirement, database right in the database is not infringed by the extraction or re-utilisation of all or a substantial part of the contents, by or with the authority of the appropriate person, for the purpose of enabling the contents to be inspected at a more convenient time or place or otherwise facilitating the exercise of any right for the purpose of which the requirement is imposed.
- (3) Where the contents of a database which is open to public inspection pursuant to a statutory requirement, or which is on a statutory register, contain information about matters of general scientific, technical, commercial or economic interest, database right in the database is not infringed by the extraction or re-utilisation of all or a substantial part of the contents, by or with the authority of the appropriate person, for the purpose of disseminating that information.
- (4) In this paragraph -
- "appropriate person" means the person required to make the contents of the database open to public inspection or, as the case may be, the person maintaining the register;
 - "statutory register" means a register maintained in pursuance of a statutory requirement; and
 - "statutory requirement" means a requirement imposed by provision made by or under an enactment.

Material communicated to the Crown in the course of public business

- 4 (1) This paragraph applies where the contents of a database have in the course of public business been communicated to the Crown for any purpose, by or with the licence of the owner of the database right and a document or other material thing recording or embodying the contents of the database is owned by or in the custody or control of the Crown.
- (2) The Crown may, for the purpose for which the contents of the database were communicated to it, or any related purpose which could reasonably have been

anticipated by the owner of the database right in the database, extract or re-utilise all or a substantial part of the contents without infringing database right in the database.

(3) The Crown may not re-utilise the contents of a database by virtue of this paragraph if the contents have previously been published otherwise than by virtue of this paragraph.

(4) In sub-paragraph (1) "public business" includes any activity carried on by the Crown.

(5) This paragraph has effect subject to any agreement to the contrary between the Crown and the owner of the database right in the database.

Public records

5 The contents of a database which are comprised in public records within the meaning of the Public Records Act 1958, the Public Records (Scotland) Act 1937 or the Public Records Act (Northern Ireland) 1923 which are open to public inspection in pursuance of that Act, may be re-utilised by or with the authority of any officer appointed under that Act, without infringement of database right in the database.

Acts done under statutory authority

6 (1) Where the doing of a particular act is specifically authorised by an Act of Parliament, whenever passed, then, unless the Act provides otherwise, the doing of that act does not infringe database right in a database.

(2) Sub-paragraph (1) applies in relation to an enactment contained in Northern Ireland legislation as it applies in relation to an Act of Parliament.

(3) Nothing in this paragraph shall be construed as excluding any defence of statutory authority otherwise available under or by virtue of any enactment.

SCHEDULE 2

Regulation 24.

LICENSING OF DATABASE RIGHT

Licensing scheme and licensing bodies

1 (1) In this Schedule a "licensing scheme" means a scheme setting out -

(a) the classes of case in which the operator of the scheme, or the person on whose behalf he acts, is willing to grant database right licences, and

(b) the terms on which licences would be granted in those classes of case;

and for this purpose a "scheme" includes anything in the nature of a scheme, whether described as a scheme or as a tariff or by any other name.

(2) In this Schedule a "licensing body" means a society or other organisation which has as its main object, or one of its main objects, the negotiating or granting, whether as owner or prospective owner of a database right or as agent for him, of database right licences, and whose objects include the granting of licences covering the databases of more than one maker.

(3) In this paragraph "database right licences" means licences to do, or authorise the doing of, any of the things for which consent is required under Regulation 16.

2 Paragraphs 3 to 8 apply to licensing schemes which are operated by licensing bodies and cover databases of more than one maker so far as they relate to licences for extracting or re-utilising all or a substantial part of the contents of a database; and references in those paragraphs to a licensing scheme shall be construed accordingly.

Reference of proposed licensing scheme to tribunal

3 (1) The terms of a licensing scheme proposed to be operated by a licensing body may be referred to the Copyright Tribunal by an organisation claiming to be representative of persons claiming that they require licences in cases of a description to which the scheme would apply, either generally or in relation to any description of case.

(2) The Tribunal shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.

(3) If the Tribunal decides to entertain the reference it shall consider the matter referred and make such order, either confirming or varying the proposed scheme, either generally or so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.

(4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

Reference of licensing scheme to tribunal

4 (1) If while a licensing scheme is in operation a dispute arises between the operator of the scheme and -

(a) a person claiming that he requires a licence in a case of a description to which the scheme applies, or

(b) an organisation claiming to be representative of such persons,

that person or organisation may refer the scheme to the Copyright Tribunal in so far as it relates to cases of that description.

(2) A scheme which has been referred to the Tribunal under this paragraph shall remain in operation until proceedings on the reference are concluded.

(3) The Tribunal shall consider the matter in dispute and make such order, either confirming or varying the scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the

circumstances.

(4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

Further reference of scheme to tribunal

5 (1) Where the Copyright Tribunal has on a previous reference of a licensing scheme under paragraph 3 or 4, or under this paragraph, made an order with respect to the scheme, then, while the order remains in force -

- (a) the operator of the scheme,
- (b) a person claiming that he requires a licence in a case of the description to which the order applies, or
- (c) an organisation claiming to be representative of such persons,

may refer the scheme again to the Tribunal so far as it relates to cases of that description.

(2) A licensing scheme shall not, except with the special leave of the Tribunal, be referred again to the Tribunal in respect of the same description of cases -

- (a) within twelve months from the date of the order on the previous reference, or
- (b) if the order was made so as to be in force for 15 months or less, until the last three months before the expiry of the order.

(3) A scheme which has been referred to the Tribunal under this section shall remain in operation until proceedings on the reference are concluded.

(4) The Tribunal shall consider the matter in dispute and make such order, either confirming, varying or further varying the scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.

(5) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

Application for grant of licence in connection with licensing scheme

6 (1) A person who claims, in a case covered by a licensing scheme, that the operator of the scheme has refused to grant him or procure the grant to him of a licence in accordance with the scheme, or has failed to do so within a reasonable time after being asked, may apply to the Copyright Tribunal.

(2) A person who claims, in a case excluded from a licensing scheme, that the operator of the scheme either -

- (a) has refused to grant him a licence or procure the grant to him of a licence, or has failed to do so within a reasonable time of being asked, and that in the circumstances it is unreasonable that a licence should not be granted, or
- (b) proposes terms for a licence which are unreasonable,

may apply to the Copyright Tribunal.

(3) A case shall be regarded as excluded from a licensing scheme for the purposes of sub-paragraph (2) if -

- (a) the scheme provides for the grant of licences subject to terms excepting matters from the licence and the case falls within such an exception, or
- (b) the case is so similar to those in which licences are granted under the scheme that it is unreasonable that it should not be dealt with in the same way.

(4) If the Tribunal is satisfied that the claim is well-founded, it shall make an order declaring that, in respect of the matters specified in the order, the applicant is entitled to a licence on such terms as the Tribunal may determine to be applicable in accordance with the scheme or, as the case may be, to be reasonable in the circumstances.

(5) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

Application for review of order as to entitlement to licence

7(1) Where the Copyright Tribunal has made an order under paragraph 6 that a person is entitled to a licence under a licensing scheme, the operator of the scheme or the original applicant may apply to the Tribunal to review its order.

(2) An application shall not be made, except with the special leave of the Tribunal -

(a) within twelve months from the date of the order, or of the decision on a previous application under this section, or

(b) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this section is due to expire within 15 months of that decision, until the last three months before the expiry date.

(3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal may determine to be reasonable having regard to the terms applicable in accordance with the licensing scheme or, as the case may be, the circumstances of the case.

Effect of order of tribunal as to licensing scheme

8(1) A licensing scheme which has been confirmed or varied by the Copyright Tribunal -

(a) under paragraph 3 (reference of terms of proposed scheme), or

(b) under paragraph 4 or 5 (reference of existing scheme to Tribunal),

shall be in force or, as the case may be, remain in operation, so far as it relates to the description of case in respect of which the order was made, so long as the order remains in force.

(2) While the order is in force a person who in a case of a class to which the order applies -

(a) pays to the operator of the scheme any charges payable under the scheme in respect of a licence covering the case in question or, if the amount cannot be ascertained, gives an undertaking to the operator to pay them when ascertained, and

(b) complies with the other terms applicable to such a licence under the scheme,

shall be in the same position as regards infringement of database right as if he had at all material times been the holder of a licence granted by the owner of the database right in question in accordance with the scheme.

(3) The Tribunal may direct that the order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference was made or, if later, on which the scheme came into operation.

If such a direction is made -

(a) any necessary repayments, or further payments, shall be made in respect of charges already paid, and

(b) the reference in sub-paragraph (2)(a) to the charges payable under the scheme shall be construed as a reference to the charges so payable by virtue of the order.

No such direction may be made where sub-paragraph (4) below applies.

(4) Where the Tribunal has made an order under paragraph 6 (order as to entitlement to licence under licensing scheme) and the order remains in force, the person in whose favour the order is made shall if he -

(a) pays to the operator of the scheme any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained, and

(b) complies with the other terms specified in the order,

be in the same position as regards infringement of database right as if he had at all

material times been the holder of a licence granted by the owner of the database right in question on the terms specified in the order.

References and applications with respect to licences by licensing bodies

9 Paragraphs 10 to 13 (references and applications with respect to licensing by licensing bodies) apply to licences relating to database right which cover databases of more than one maker granted by a licensing body otherwise than in pursuance of a licensing scheme, so far as the licences authorise extracting or re-utilising all or a substantial part of the contents of a database; and references in those paragraphs to a licence shall be construed accordingly.

Reference to tribunal of proposed licence

- 10 (1) The terms on which a licensing body proposes to grant a licence may be referred to the Copyright Tribunal by the prospective licensee.
- (2) The Tribunal shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.
- (3) If the Tribunal decides to entertain the reference it shall consider the terms of the proposed licence and make such order, either confirming or varying the terms, as it may determine to be reasonable in the circumstances.
- (4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

Reference to tribunal of expiring licence

- 11 (1) A licensee under a licence which is due to expire, by effluxion of time or as a result of notice given by the licensing body, may apply to the Copyright Tribunal on the ground that it is unreasonable in the circumstances that the licence should cease to be in force.
- (2) Such an application may not be made until the last three months before the licence is due to expire.
- (3) A licence in respect of which a reference has been made to the Tribunal shall remain in operation until proceedings on the reference are concluded.
- (4) If the Tribunal finds the application well-founded, it shall make an order declaring that the licensee shall continue to be entitled to the benefit of the licence on such terms as the Tribunal may determine to be reasonable in the circumstances.
- (5) An order of the Tribunal under this section may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

Application for review of order as to licence

- 12 (1) Where the Copyright Tribunal has made an order under paragraph 10 or 11, the licensing body or the person entitled to the benefit of the order may apply to the Tribunal to review its order.
- (2) An application shall not be made, except with the special leave of the Tribunal -
- (a) within twelve months from the date of the order or of the decision on a previous application under this paragraph, or
- (b) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this section is due to expire within 15 months of that decision, until the last three months before the expiry date.
- (3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal may determine to be reasonable in the circumstances.

Effect of order of tribunal as to licence

13 (1) Where the Copyright Tribunal has made an order under paragraph 10 or 11 and the order remains in force, the person entitled to the benefit of the order shall if he—

(a) pays to the licensing body any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained, and

(b) complies with the other terms specified in the order,

be in the same position as regards infringement of database right as if he had at all material times been the holder of a licence granted by the owner of the database right in question on the terms specified in the order.

(2) The benefit of the order may be assigned -

(a) in the case of an order under paragraph 10, if assignment is not prohibited under the terms of the Tribunal's order; and

(b) in the case of an order under paragraph 11, if assignment was not prohibited under the terms of the original licence.

(3) The Tribunal may direct that an order under paragraph 10 or 11, or an order under paragraph 12 varying such an order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference or application was made or, if later, on which the licence was granted or, as the case may be, was due to expire.

If such a direction is made -

(a) any necessary repayments, or further payments, shall be made in respect of charges already paid, and

(b) the reference in sub-paragraph (1)(a) to the charges payable in accordance with the order shall be construed, where the order is varied by a later order, as a reference to the charges so payable by virtue of the later order.

General considerations: unreasonable discrimination

14 In determining what is reasonable on a reference or application under this Schedule relating to a licensing scheme or licence, the Copyright Tribunal shall have regard to -

(a) the availability of other schemes, or the granting of other licences, to other persons in similar circumstances, and

(b) the terms of those schemes or licences,

and shall exercise its powers so as to secure that there is no unreasonable discrimination between licensees, or prospective licensees, under the scheme or licence to which the reference or application relates and licensees under other schemes operated by, or other licences granted by, the same person.

Powers exercisable in consequence of competition report

¹⁵²⁰⁹ (1) Sub-paragraph (1A) applies where whatever needs to be remedied, mitigated or prevented by

the Secretary of State, the Office of Fair Trading or (as the case may be) the Competition Commission under section 12(5) of the Competition Act 1980 or section 41(2), 55(2), 66(6), 75(2), 83(2), 138(2), 147(2) or 160(2) of, or paragraph 5(2) or 10(2) of Schedule 7 to, the Enterprise Act 2002 (powers to take remedial action following references to the Commission in connection with public bodies and certain other persons, mergers or market investigations) or article 12(7) of, or paragraph 5(2) or 10(2) of Schedule 2 to, the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (power to take remedial action following references to the Commission in connection with European mergers) consists of or includes -

209 Revised paras. 15(1) & (2) substituted, and para. 15(1A) added, by SI 2003/1398.

(a) conditions in licences granted by the owner of database right in a database restricting the use of the database by the licensee or the right of the owner of the database right to grant other licences; or

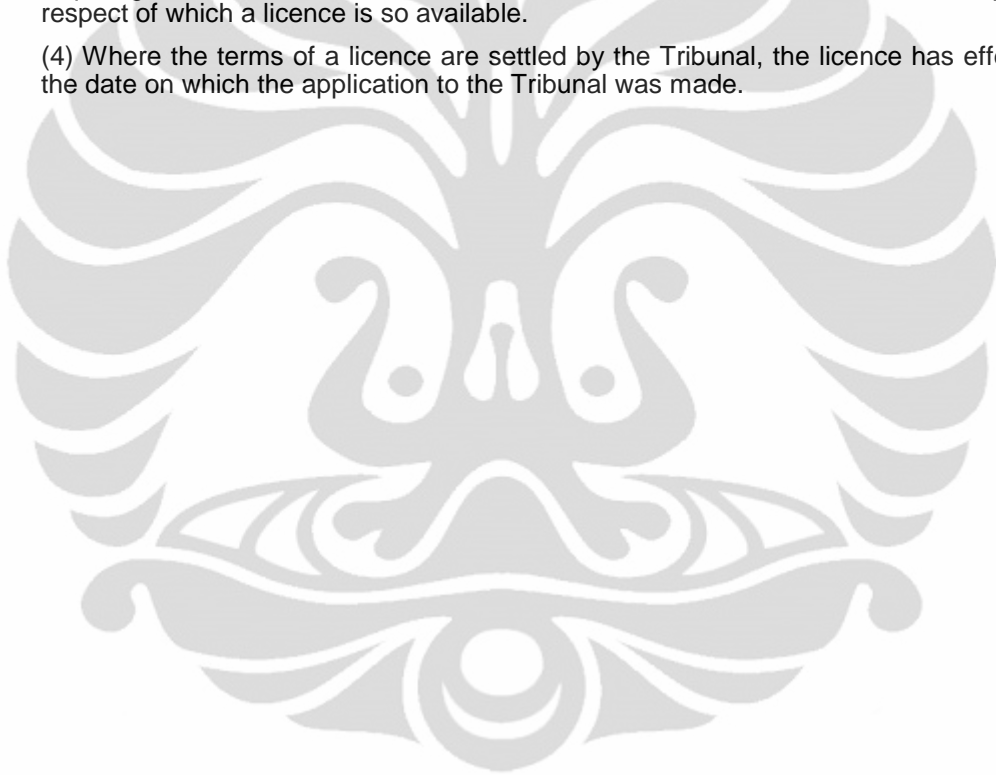
(b) a refusal of an owner of database right to grant licences on reasonable terms.

(1A) The powers conferred by Schedule 8 to the Enterprise Act 2002 include power to cancel or modify those conditions and, instead or in addition, to provide that licences in respect of the database right shall be available as of right.

(2) The references to anything permitted by Schedule 8 to the Enterprise Act 2002 in section 12(5A) of the Competition Act 1980 and in sections 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a) and 164(1) of, and paragraphs 5, 10 and 11 of Schedule 7 to, the Act of 2002 and paragraphs 5, 10 and 11 of Schedule 2 to the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 shall be construed accordingly.

(3) The terms of a licence available by virtue of this paragraph shall, in default of agreement, be settled by the Copyright Tribunal on an application by the person requiring the licence; and terms so settled shall authorise the licensee to do everything in respect of which a licence is so available.

(4) Where the terms of a licence are settled by the Tribunal, the licence has effect from the date on which the application to the Tribunal was made.



THE COPYRIGHT AND RIGHTS IN DATABASES REGULATIONS 1997 (SI 1997/3032)²¹⁰

PART IV

SAVINGS AND TRANSITIONAL PROVISIONS²¹¹

(Regulations 26 to 30)

Introductory

26. Expressions used in this Part which are defined for the purposes of Part I of the 1988 Act have the same meaning as in that Part.

General rule

27. Subject to Regulations 28 and 29, these Regulations apply to databases made before or after 1st January 1998.

General savings

28.—(1) Nothing in these Regulations affects any agreement made before 1st January 1998.

(2) Nothing in these Regulations affects any agreement made after 31st December 1997 and before 1st November 2003 in so far as the effect would only arise as a result of the amendment of these Regulations by the Copyright and Rights in Databases (Amendment) Regulations 2003.

(3) No act done in respect of any database, in which database right subsists by virtue of the maker of the database (or one or more of its makers) falling within one of the provisions contained in Regulations 14(4) and 18(1)(a), (b) and (c),—

(a) before 1st January 1998, or

(b) after 31st December 1997, in pursuance of an agreement made before 1st January 1998,

shall be regarded as an infringement of database right in the database.

(4) No act done in respect of any database, in which database right subsists by virtue of its maker (or one or more of its makers) falling within one of the provisions contained in Regulation 18(1)(d), (e) and (f),—

(a) before 1st November 2003, or

(b) after 31st October 2003, in pursuance of an agreement made before 1st November 2003,

shall be regarded as an infringement of database right in the database.

Saving for copyright in certain existing databases

²¹⁰ Commencement date 1st January 1998.

²¹¹ As amended by SI 2003/2501 (commencement date 1st November 2003).

29.—(1) Where a database—

- (a) was created on or before 27th March 1996, and
- (b) is a copyright work immediately before 1st January 1998,

copyright shall continue to subsist in the database for the remainder of its copyright term.

(2) In this Regulation "copyright term" means the period of the duration of copyright under section 12 of the 1988 Act (duration of copyright in literary, dramatic, musical or artistic works).

Database right: term applicable to certain existing databases

30. Where—

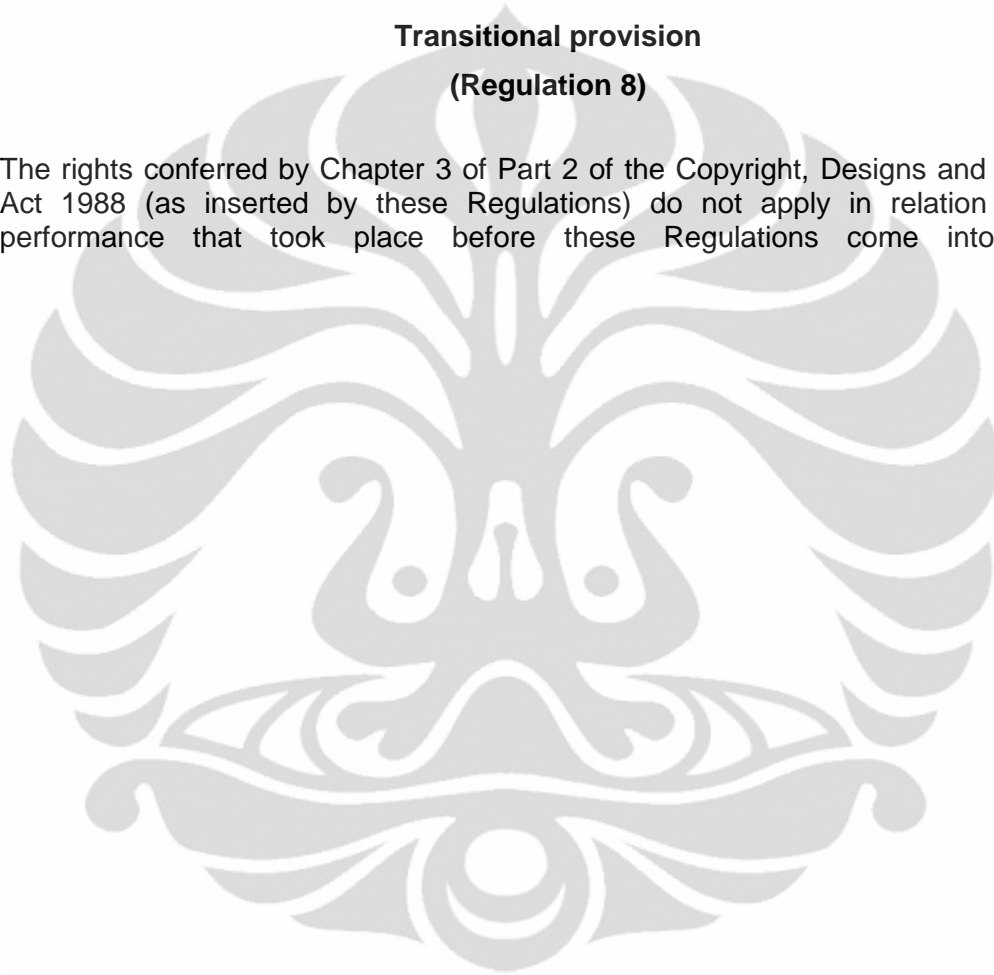
- (a) the making of any database is completed on or after 1st January 1983, and before 1st January 1998, and
- (b) either -
 - (i) the database is a database in which database right subsists by virtue of the maker of the database (or one or more of its makers) falling within one of the provisions contained in Regulations 14(4) and 18(1)(a), (b) and (c) and database right begins to subsist in the database on 1st January 1998, or
 - (ii) the database is a database in which database right subsists by virtue of its maker (or one or more of its makers) falling within one of the provisions contained in Regulation 18(1)(d), (e) and (f) and database right begins to subsist in the database on 1st November 2003,

then database right shall subsist in the database for a period of fifteen years beginning with 1st

THE COPYRIGHT (THE PERFORMERS, MORAL RIGHTS ETC.) REGULATIONS 2006 (SI 2006 No.18)²¹²

**Transitional provision
(Regulation 8)**

The rights conferred by Chapter 3 of Part 2 of the Copyright, Designs and Patents Act 1988 (as inserted by these Regulations) do not apply in relation to any performance that took place before these Regulations come into force.



²¹² Commencement date 1st February 2007

ANNEXES



ANNEX I BROADCASTING ACT 1990

SECTION 176 AND SCHEDULE 17

176 Duty to provide advance information about programmes

- (1) A person providing a programme service to which this section applies must make available in accordance with this section information relating to the programmes to be included in the service to any person (referred to in this section and Schedule 17 to this Act as “the publisher”) wishing to publish in the United Kingdom any such information.
- (2) The duty imposed by subsection (1) is to make available information as to the titles of the programmes which are to be, or may be, included in the service on any date, and the time of their inclusion, to any publisher who has asked the person providing the programme service to make such information available to him and reasonably requires it.
- (3) Information to be made available to a publisher under this section is to be made available as soon after it has been prepared as is reasonably practicable but, in any event -
 - (a) not later than when it is made available to any other publisher, and
 - (b) in the case of information in respect of all the programmes to be included in the service in any period of seven days, not later than the beginning of the preceding period of fourteen days, or such other number of days as may be prescribed by the Secretary of State by order.
- (4) An order under subsection (3) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) The duty imposed by subsection (1) is not satisfied by providing the information on terms, other than terms as to copyright, prohibiting or restricting publication in the United Kingdom by the publisher.
- (6) Schedule 17 applies to any information or future information which the person providing a programme service to which this section applies is or may be required to make available under this section.
- (7) For the purposes of this section and that Schedule, the following table shows the programme services to which the section and Schedule apply and the persons who provide them or are to be treated as providing them.

Programme service	Provider of service
<i>Services other than services under the Act</i>	
Television and national radio services provided by the BBC for reception in the United Kingdom	The BBC
<i>Services under the Act</i> ²¹³	
Television programme services subject to regulation by OFCOM	The person licensed to provide the service
The public television services of the Welsh Authority (within the meaning of Part 2 of Schedule 12 to the Communications Act 2003)	The Authority
Any national service (see section 126(1)) subject to regulation by OFCOM, any simulcast radio service (within the meaning of Part II of the Broadcasting Act 1996), and any national digital sound programme service (within the meaning of that Part of that Act) subject to regulation by OFCOM	The person licensed to provide the service
<i>Services provided during interim period only</i>	
Television broadcasting services provided by the Independent Television Commission in accordance with Schedule 11, other than Channel 4	The programme contractor
Channel 4, as so provided	The body corporate referred to in section 12(2) of the Broadcasting Act 1981

(8) This section does not require any information to be given about any advertisement.

²¹³ As amended by the Broadcasting Act 1996 and subsequently by the Communications Act 2003.

SCHEDULE 17

INFORMATION ABOUT PROGRAMMES: COPYRIGHT

PART I

COPYRIGHT LICENSING

- 1 (1) This paragraph applies where the person providing a programme service has assigned to another the copyright in works containing information to which this Schedule applies.
- (2) The person providing the programme service, not the assignee, is to be treated as the owner of the copyright for the purposes of licensing any act restricted by the copyright done on or after the day on which this paragraph comes into force.
- (3) Where the assignment by the person providing the programme service occurred before 29th September 1989 then, in relation to any act restricted by the copyright so assigned -
- (a) sub-paragraph (2) does not have effect, and
 - (b) references below in this Schedule to the person providing the programme service are to the assignee.

PART II

USE OF INFORMATION AS OF RIGHT

Circumstances in which right available

- 2 (1) Paragraph 4 applies to any act restricted by the copyright in works containing information to which this Schedule applies done by the publisher if -
- (a) a licence to do the act could be granted by the person providing the programme service but no such licence is held by the publisher,
 - (b) the person providing the programme service refuses to grant to the publisher a licence to do the act, being a licence of such duration, and of which the terms as to payment for doing the act are such, as would be acceptable to the publisher, and
 - (c) the publisher has complied with paragraph 3.
- (2) The reference in sub-paragraph (1) to refusing to grant a licence includes failing to do so within a reasonable time of being asked.
- (3) References below in this Schedule to the terms of payment are to the terms as to payment for doing any act restricted by the copyright in works containing information to which this Schedule applies.

Notice of intention to exercise right

- 3 (1) A publisher intending to avail himself of the right conferred by paragraph 4 must -
- (a) give notice of his intention to the person providing the programme service, asking that person to propose terms of payment, and
 - (b) after receiving the proposal or the expiry of a reasonable time, give reasonable notice to the person providing the programme service of the date on which he proposes to begin exercising the right and the terms of payment in accordance with which he intends to do so.
- (2) Before exercising the right the publisher must—
- (a) give reasonable notice to the Copyright Tribunal of his intention to exercise the right and of the date on which he proposes to begin to do so, and
 - (b) apply to the Tribunal under paragraph 5 to settle the terms of payment.

Conditions for exercise of right

- 4 (1) Where the publisher, on or after the date specified in a notice under paragraph 3(1)(b), does any act in circumstances in which this paragraph applies, he shall, if he makes the payments required by this paragraph, be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence to do so granted by the person providing the programme service.
- (2) Payments are to be made at not less than quarterly intervals in arrears.
- (3) The amount of any payment is that determined in accordance with any order of the Copyright Tribunal under paragraph 5 or, if no such order has been made—
- (a) in accordance with any proposal for terms of payment made by the person providing the programme service pursuant to a request under paragraph 3(1)(a), or
- (b) where no proposal has been so made or the amount determined in accordance with the proposal so made appears to the publisher to be unreasonably high, in accordance with the terms of payment notified under paragraph 3(1)(b).

Applications to settle payments

- 5 (1) On an application to settle the terms of payment, the Copyright Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.
- (2) An order under sub-paragraph (1) has effect from the date the applicant begins to exercise the right conferred by paragraph 4 and any necessary repayments, or further payments, shall be made in respect of amounts that have fallen due.

Application for review of order

- 6 (1) A person exercising the right conferred by paragraph 4, or the person providing the programme service, may apply to the Tribunal to review any order under paragraph 5.
- (2) An application under sub-paragraph (1) shall not be made, except with the special leave of the Tribunal—
- (a) within twelve months from the date of the order, or of the decision on a previous application under this paragraph, or
- (b) if the order was made so as to be in force for fifteen months or less, or as a result of a decision on a previous application is due to expire within fifteen months of that decision, until the last three months before the expiry date.
- (3) On the application 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 order under this paragraph has effect from the date on which it is made or such later date as may be specified by the Tribunal.

PART III

SUPPLEMENTARY

- 7 (1) This Schedule and the Copyright, Designs and Patents Act 1988 shall have effect as if the Schedule were included in Chapter III of Part I of that Act, and that Act shall have effect as if proceedings under this Schedule were listed in section 149 of that Act (jurisdiction of the Copyright Tribunal).
- (2) References in this Schedule to anything done by the publisher include anything done on his behalf.
- (3) References in this Schedule to works include future works, and references to the copyright in works include future copyright.

ANNEX II

BROADCASTING ACT 1996

SECTION 137

137²¹⁴ Avoidance of certain terms relating to use for purpose of news reporting of visual images from broadcast

- (1) Any provision in an agreement is void in so far as it purports to prohibit or restrict relevant dealing with a broadcast in any circumstances where by virtue of section 30(2) of the Copyright, Designs and Patents Act 1988 (fair dealing for the purpose of reporting current events) copyright in the broadcast is not infringed.
- (2) In subsection (1) -
 - (a) "relevant dealing", in relation to a broadcast, means dealing by communicating to the public any visual images taken from that broadcast, and
 - (b) "broadcast" and "communicating to the public" have the same meaning as in Part I of the Copyright, Designs and Patents Act 1988.

²¹⁴ As amended by SI 2003/2498.

ANNEX III

LEGAL DEPOSIT LIBRARIES ACT 2003

Duty to deposit

1 Deposit of publications

- (1) A person who publishes in the United Kingdom a work to which this Act applies must at his own expense deliver a copy of it to an address specified (generally or in a particular case) by any deposit library entitled to delivery under this section.
- (2) If a deposit library other than the authority controlling the Library of Trinity College, Dublin has not specified an address, the copy is to be delivered to the library.
- (3) In the case of a work published in print, this Act applies to –
 - (a) a book (including a pamphlet, magazine or newspaper),
 - (b) a sheet of letterpress or music,
 - (c) a map, plan, chart or table, and
 - (d) a part of any such work;
 but that is subject to any prescribed exception.
- (4) In the case of a work published in a medium other than print, this Act applies to a work of a prescribed description.
- (5) A prescribed description may not include works consisting only of –
 - (a) a sound recording or film or both, or
 - (b) such material and other material which is merely incidental to it.
- (6) Subject to section 6(2)(h), the obligation under subsection (1) is to deliver a copy of the work in the medium in which it is published.
- (7) In this section, "address" means an address in the United Kingdom or an electronic address.

2 New and alternative editions

- (1) This Act does not apply to a work which is substantially the same as one already published in the same medium in the United Kingdom.
- (2) Where substantially the same work is published in the United Kingdom in more than one medium –
 - (a) section 1(1) applies only in relation to its publication in one of those media, and
 - (b) that medium is to be determined in accordance with regulations made by the Secretary of State.
- (3) The Secretary of State may by regulations make provision as to circumstances in which works are or are not to be regarded for the purposes of this section as substantially the same.

3 Enforcement

- (1) This section applies where a person (in this section, "the publisher") who is required by or under this Act to deliver anything to an address specified by a deposit library, or to a deposit library, has failed to comply with that obligation.

- (2) The library may, in accordance with rules of court, apply to the county court (or, in Scotland, to the sheriff) for an order requiring the publisher to comply with the obligation.
- (3) If on an application under subsection (2) it appears that -
 - (a) the publisher is unable to comply with the obligation, or
 - (b) for any other reason, it is not appropriate to make an order under that subsection,
 the court or sheriff may instead make an order requiring the publisher to pay to the library an amount which is not more than the cost of making good the failure to comply.

Printed publications

4 Printed publications: the British Library

- (1) The British Library Board is entitled to delivery under section 1 of a copy of every work published in print.
- (2) The copy must be delivered within one month beginning with the day of publication.
- (3) The copy is to be of the same quality as the best copies which, at the time of delivery, have been produced for publication in the United Kingdom.
- (4) The Board must give a receipt in writing (whether sent by electronic or other means).

5 Printed publications: other libraries

- (1) Each deposit library other than the British Library Board is entitled to delivery under section 1 of a copy of any work published in print which it requests.
- (2) A request under this section must be in writing (whether sent by electronic or other means).
- (3) A request -
 - (a) may be made before publication, and
 - (b) in particular, may relate to all future numbers or parts of an encyclopaedia, newspaper, magazine or other work.
- (4) No request may be made after the end of 12 months beginning with the day of publication.
- (5) The copy must be delivered within one month beginning with -
 - (a) the day of publication, or
 - (b) if later, the day on which the request is received.
- (6) The copy is to be of the same quality as the largest number of copies which, at the time of delivery, have been produced for publication in the United Kingdom.

Non-print publications

6 Regulations: deposit of non-print publications

- (1) The Secretary of State may make regulations supplementing sections 1 and 2 as they apply to works published in media other than print.
- (2) Regulations under this section may in particular -
 - (a) make provision about the time at which or the circumstances in which any deposit library becomes or ceases to be entitled to delivery under section 1;
 - (b) require the person mentioned in section 1(1) to deliver, with the copy of the work,

a copy of any computer program and any information necessary in order to access the work, and a copy of any manual and other material that accompanies the work and is made available to the public;

- (c) require delivery within a time prescribed by reference to publication or another event;
- (d) permit or require delivery by electronic means;
- (e) where a work is produced for publication in copies of differing quality, specify the quality of copies to be delivered;
- (f) where a work is published or made available to the public in different formats, provide for the format in which any copy is to be delivered to be determined in accordance with requirements specified (generally or in a particular case) by the deposit libraries or any of them;
- (g) make provision as to the circumstances in which works published on line are or are not to be treated as published in the United Kingdom;
- (h) specify the medium in which a copy of a work published on line is to be delivered.

7 Restrictions on activities in relation to non-print publications

- (1) Subject to subsection (3), a relevant person may not do any of the activities listed in subsection (2) in relation to relevant material.
- (2) The activities are -
 - (a) using the material (whether or not such use necessarily involves the making of a temporary copy of it);
 - (b) copying the material (other than by making a temporary copy where this is necessary for the purpose of using the material);
 - (c) in the case of relevant material comprising or containing a computer program or database, adapting it;
 - (d) lending the material to a third party (other than lending by a deposit library to a reader for use by the reader on library premises controlled by the library);
 - (e) transferring the material to a third party;
 - (f) disposing of the material.
- (3) The Secretary of State may by regulations make provision permitting relevant persons to do any of the activities listed in subsection (2) in relation to relevant material, subject to such conditions as may be prescribed.
- (4) Regulations under this section may in particular make provision about -
 - (a) the purposes for which relevant material may be used or copied;
 - (b) the time at which or the circumstances in which readers may first use relevant material;
 - (c) the description of readers who may use relevant material;
 - (d) the limitations on the number of readers who may use relevant material at any one time (whether by limiting the number of terminals in a deposit library from which readers may at any one time access an electronic publication or otherwise).
- (5) In this section -
 - (a) "reader" means a person who, for the purposes of research or study and with the permission of a deposit library, is on library premises controlled by it;
 - (b) "relevant material" means -
 - (i) a copy delivered under section 1 of a work published in a medium other than print;
 - (ii) a copy delivered pursuant to regulations under section 6 of a computer program or material within section 6(2)(b);

- (iii) a copy of a work to which section 10(6) applies;
 - (iv) a copy (at any remove) of anything within any of sub-paragraphs (i) to (iii);
 - (c) "relevant person" means -
 - (i) a deposit library or person acting on its behalf;
 - (ii) a reader;
 - (d) references to a deposit library include references to the Faculty of Advocates.
 - (6) A contravention of this section is actionable at the suit of a person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.
- [8 *This section introduced s.44A into the Copyright, Designs and Patents Act 1988 (see page 29) and regulation 20A into the Copyright and Rights in Databases Regulations 1997, SI 1997/3032 (see page 198).*]

Exemption from liability

9 Exemption from liability: deposit of publications etc.

- (1) The delivery by a person, pursuant to section 1, of a copy of a work is to be taken -
 - (a) not to breach any contract relating to any part of the work to which that person is a party, and
 - (b) not to infringe copyright, publication right or database right in relation to any part of the work or any patent.
- (2) Subsection (1) applies to the delivery, pursuant to regulations under section 6, of a copy of a computer program or material within section 6(2)(b) as it applies to the delivery of a copy of a work pursuant to section 1.

10 Exemption from liability: activities in relation to publications

- (1) A deposit library, or a person acting on its behalf, is not liable in damages, or subject to any criminal liability, for defamation arising out of the doing by a relevant person of an activity listed in section 7(2) in relation to a copy of a work delivered under section 1.
- (2) Subsection (1) does not apply to the liability of a deposit library where -
 - (a) it knows, or in the case of liability in damages it knows of facts or circumstances from which it ought to know, that the copy contains a defamatory statement, and
 - (b) it has had a reasonable opportunity since obtaining that knowledge to prevent the doing of the activity in relation to the copy.
- (3) Where, pursuant to section 1, a person (in this section, "the publisher") has delivered a copy of a work to an address specified by a deposit library, the publisher is not liable in damages, or subject to any criminal liability, for defamation arising out of the doing by a relevant person of an activity listed in section 7(2) in relation to the copy.
- (4) Subsection (3) does not apply where -
 - (a) the publisher knows, or in the case of liability in damages the publisher knows of facts or circumstances from which it ought to know, that the copy contains a defamatory statement, and
 - (b) it has had a reasonable opportunity since obtaining that knowledge to inform the library of the matter, facts or circumstances known to it and has not done so.
- (5) Where a work is published on the internet, subsection (6) applies to a copy of the work if -
 - (a) the work is of a description prescribed by regulations under this subsection,

- (b) the publication of the work on the internet, or a person publishing it there, is connected with the United Kingdom in a manner so prescribed, and
 - (c) the copy was made by a deposit library or person acting on its behalf copying the work from the internet in accordance with any conditions so prescribed.
- (6) Where this subsection applies to a copy of a work -
- (a) no person other than the library is liable in damages, or subject to any criminal liability, for defamation arising out of the doing by a relevant person of an activity listed in section 7(2) in relation to the copy, and
 - (b) subsections (1) and (2) apply in relation to the doing of an activity in relation to the copy as they apply in relation to the doing of the activity in relation to a copy of a work delivered under section 1.
- (7) In this section -
- (a) "relevant person" has the same meaning as in section 7;
 - (b) references to activities listed in section 7(2) are references to those activities whether or not done in relation to relevant material (as defined in section 7);
 - (c) references to a deposit library include references to the Faculty of Advocates.
- (8) The Secretary of State may by regulations provide for this section, as it applies in relation to liability in damages and criminal liability for defamation, to apply in relation to liability (including criminal liability) of any description prescribed in the regulations, subject to such modifications as may be prescribed.
- (9) Where this section applies to the doing of an activity in relation to a copy of a work it also applies to the doing of the activity in relation to a copy (at any remove) of that copy.
- (10) Nothing in this section imposes liability on any person.

Regulations

11 Regulations: general

- (1) Any power under this Act to make regulations-
- (a) includes power to make different provision for different purposes, including in particular different media, descriptions of work, deposit libraries or areas, and
 - (b) as well as being exercisable in relation to all cases to which it extends, may be exercised in relation to those cases subject to specified exceptions, or in relation to a particular case or class of cases.
- (2) Regulations under this Act may not be made unless the Secretary of State has consulted -
- (a) the deposit libraries, and
 - (b) the publishers appearing to the Secretary of State to be likely to be affected.
- (3) Regulations under section 1(4) or 6 may not be made so as to apply to works published before the regulations are made.
- (4) Regulations under section 1(4), 2 or 6 may not be made unless the Secretary of State considers that the costs likely to be incurred as a result of the regulations by persons who publish works to which the regulations relate are not disproportionate to the benefit to the public arising from the delivery of copies of such works.
- (5) Regulations under section 1(4), 2, 6, 7 or 10(5) may not be made unless the Secretary of State considers that the regulations do not unreasonably prejudice the interests of persons who publish
- works to which the regulations relate.
- (6) Any power to make regulations under this Act is exercisable by statutory instrument, and no such regulations may be made unless a draft of the instrument containing them has been laid before and approved by a resolution of each House of Parliament.

12 Regulations: Scotland and Wales

- (1) Regulations under this Act may not be made without the consent of the Scottish Ministers if they would -
 - (a) remove an entitlement conferred by or under this Act on the authority controlling the National Library of Scotland, or
 - (b) confer an entitlement that is not conferred on that authority on any other deposit library.
- (2) Subsection (1) does not apply where the entitlement is to delivery of copies of electronic publications and -
 - (a) in the case of legal publications, the Faculty of Advocates, or
 - (b) in any other case, the authority controlling the National Library of Scotland,
 is provided with a means of accessing those publications electronically.
- (3) Where subsection (1) does not apply, regulations under this Act that would affect the authority controlling the National Library of Scotland may not be made unless the Secretary of State has consulted the Scottish Ministers.
- (4) Regulations under this Act may not be made without the consent of the National Assembly for Wales if they would -
 - (a) remove an entitlement conferred by or under this Act on the authority controlling the National Library of Wales, or
 - (b) confer an entitlement that is not conferred on that authority on any other deposit library;
 but this does not apply where the entitlement is to delivery of copies of electronic publications and that authority is provided with a means of accessing those publications electronically.
- (5) Where subsection (4) does not apply, regulations under this Act that would affect the authority controlling the National Library of Wales may not be made unless the Secretary of State has consulted the National Assembly for Wales.

13 Regulations: Trinity College, Dublin

- (1) Regulations under this Act which confer an entitlement on the authority controlling the Library of Trinity College, Dublin may not be made unless the Secretary of State is satisfied, in relation to relevant material delivered pursuant to such an entitlement -
 - (a) that as regards the restriction by section 7 (having regard to any regulations made under that section) of activities in relation to relevant material, the restriction of those activities under the laws of Ireland is not substantially less,
 - (b) that as regards the protection under the laws of any part of the United Kingdom of copyright, publication right, database right and patents in relation to relevant material, the protection under the laws of Ireland of corresponding rights is not substantially less, and
 - (c) that as regards the protection from liability under subsections (3) and (4) of section 10 (or those subsections as applied by regulations under that section), the protection under the laws of Ireland in relation to corresponding liability is not substantially less.
- (2) In this section "relevant material" has the same meaning as in section 7.

General

14 Interpretation

In this Act -

"the 1988 Act" means the Copyright, Designs and Patents Act 1988 (c. 48);

"database right" has the meaning given by regulation 13(1) of the Copyright and Rights in Databases Regulations 1997 (S.I. 1997/3032);

"deposit library" means any of the British Library Board and the authorities controlling -

- (a) the National Library of Scotland,
- (b) the National Library of Wales,
- (c) the Bodleian Library, Oxford,
- (d) the University Library, Cambridge,
- (e) the Library of Trinity College, Dublin;

"electronic publication" means an on line or off line publication including any publication in electronic form (within the meaning given by section 178 of the 1988 Act);

"film" has the meaning given by section 5B of the 1988 Act;

"medium" means any medium of publication, including in particular any form of on line or off line publication;

"prescribed" means prescribed by regulations made by the Secretary of State;

"publication", in relation to a work -

- (a) means the issue of copies of the work to the public, and
- (b) includes making the work available to the public by means of an electronic retrieval system;

and related expressions are to be interpreted accordingly;

"publication right" has the meaning given by regulation 16(1) of the Copyright and Related Rights Regulations 1996 (S.I. 1996/2967);

"sound recording" has the meaning given by section 5A of the 1988 Act.

[15 Consequential amendments, repeals and revocation

Not relevant

16 Commencement and extent

- (1) The preceding provisions of this Act, except so far as they confer power to make regulations, come into force in accordance with provision made by the Secretary of State by order made by statutory instrument.
- (2) Different provision may be made for different purposes.
- (3) An order under subsection (1) may not be made unless the Secretary of State has consulted the Scottish Ministers and the National Assembly for Wales.
- (4) This Act does not apply to works published before the commencement of section 1.
- (5) This Act extends to Northern Ireland.

17 Short title

This Act may be cited as the Legal Deposit Libraries Act 2003.

ANNEX IV

THE ELECTRONIC COMMERCE (EC DIRECTIVE) REGULATIONS 2002, SI 2002/2013

[Selected provisions only reproduced]

Interpretation

2.—(1) In these Regulations and in the Schedule—

"enforcement action" means any form of enforcement action including, in particular –

- (a) in relation to any legal requirement imposed by or under any enactment, any action taken with a view to or in connection with imposing any sanction (whether criminal or otherwise) for failure to observe or comply with it; and
- (b) in relation to a permission or authorisation, anything done with a view to removing or restricting that permission or authorisation;

"enforcement authority" does not include courts but, subject to that, means any person who is authorised, whether by or under an enactment or otherwise, to take enforcement action;

"information society services" (which is summarised in recital 17 of the Directive as covering "any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service") has the meaning set out in Article 2(a) of the Directive, (which refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations, as amended by Directive 98/48/EC of 20 July 1998);²¹⁵

"service provider" means any person providing an information society service;

[Part only of Regulation 2(1) is reproduced.]

General information to be provided by a person providing an information society service

6.—(1) A person providing an information society service shall make available to the recipient of the service and any relevant enforcement authority, in a form and manner which is easily, directly and permanently accessible, the following information -

- (a) the name of the service provider;
- (b) the geographic address at which the service provider is established;
- (c) the details of the service provider, including his electronic mail address, which make it possible to contact him rapidly and communicate with him in a direct and effective manner;

[Part only of Regulation 6(1) is reproduced.]

²¹⁵

The wording in brackets relating to recital 17 of 'the Directive' (ie 2000/31/EC) in fact indicates essentially what is meant by an 'information society service'.

Mere conduit

17.—(1) Where an information society service is provided which consists of the transmission in a communication network of information provided by a recipient of the service or the provision of access to a communication network, the service provider (if he otherwise would) shall not be liable for damages or for any other pecuniary remedy or for any criminal sanction as a result of that transmission where the service provider -

- (a) did not initiate the transmission;
- (b) did not select the receiver of the transmission; and
- (c) did not select or modify the information contained in the transmission.

(2) The acts of transmission and of provision of access referred to in paragraph (1) include the automatic, intermediate and transient storage of the information transmitted where:

- (a) this takes place for the sole purpose of carrying out the transmission in the communication network, and
- (b) the information is not stored for any period longer than is reasonably necessary for the transmission.

Caching

18. Where an information society service is provided which consists of the transmission in a communication network of information provided by a recipient of the service, the service provider (if he otherwise would) shall not be liable for damages or for any other pecuniary remedy or for any criminal sanction as a result of that transmission where -

- (a) the information is the subject of automatic, intermediate and temporary storage where that storage is for the sole purpose of making more efficient onward transmission of the information to other recipients of the service upon their request, and
- (b) the service provider -
 - (i) does not modify the information;
 - (ii) complies with conditions on access to the information;
 - (iii) complies with any rules regarding the updating of the information, specified in a manner widely recognised and used by industry;
 - (iv) does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information; and
 - (v) acts expeditiously to remove or to disable access to the information he has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or an administrative authority has ordered such removal or disablement.

Hosting

19. Where an information society service is provided which consists of the storage of information provided by a recipient of the service, the service provider (if he otherwise would) shall not be liable for damages or for any other pecuniary remedy or for any criminal sanction as a result of that storage

where -

- (a) the service provider -
 - (i) does not have actual knowledge of unlawful activity or information and, where a claim for damages is made, is not aware of facts or circumstances from which it would have been apparent to the service provider that the activity or information was unlawful; or
 - (ii) upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information, and
- (b) the recipient of the service was not acting under the authority or the control of the

service provider.

Protection of rights

20.—(1) Nothing in regulations 17, 18 and 19 shall —

- (a) prevent a person agreeing different contractual terms; or
- (b) affect the rights of any party to apply to a court for relief to prevent or stop infringement of any rights.

(2) Any power of an administrative authority to prevent or stop infringement of any rights shall continue to apply notwithstanding regulations 17, 18 and 19.

Defence in Criminal Proceedings: burden of proof

21.—(1) This regulation applies where a service provider charged with an offence in criminal proceedings arising out of any transmission, provision of access or storage falling within regulation 17, 18 or 19 relies on a defence under any of regulations 17, 18 and 19.

(2) Where evidence is adduced which is sufficient to raise an issue with respect to that defence, the court or jury shall assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

Notice for the purposes of actual knowledge

22. In determining whether a service provider has actual knowledge for the purposes of regulations 18(b)(v) and 19(a)(i), a court shall take into account all matters which appear to it in the particular circumstances to be relevant and, among other things, shall have regard to -

- (a) whether a service provider has received a notice through a means of contact made available in accordance with regulation 6(1)(c), and
- (b) the extent to which any notice includes -
 - (i) the full name and address of the sender of the notice;
 - (ii) details of the location of the information in question; and
 - (iii) details of the unlawful nature of the activity or information in question.

ANNEX V

STANDING OR INTERPRETATION OF CERTAIN PROVISIONS OF THE COPYRIGHT, DESIGNS AND PATENTS ACT 1988

Section 144 and paragraph 17 of Schedule 2A

The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (SI 2003/1592) provides that:

“In section 144 of the Copyright, Design and Patents Act 1988 (powers exercisable in consequence of report of Competition Commission) -

(a) the reference in subsection (1) to -

(i) section 66(6) of the Enterprise Act 2002 shall have effect as if it included a reference to article 12(7) of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003; and

(ii) paragraph 5(2) or 10(2) of Schedule 7 to the Enterprise Act 2002 shall have effect as if it included a reference to paragraph 5(2) or 10(2) of Schedule 2 to the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003; and

(b) the reference in subsection (2) to paragraphs 5, 10 and 11 of Schedule 7 to the Enterprise Act 2002 shall have effect as if it included a reference to paragraphs 5, 10 and 11 of Schedule 2 to the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003.”

Equivalent provision is made in relation to paragraph 17 of Schedule 2A.

Sections 145(2) and 150(1)

The functions of the Lord Advocate under these sections have been transferred to Scottish Ministers by virtue of the following Orders:

The Transfer of Functions (Lord Advocate and Secretary of State) Order 1999 (SI 1999/678),

The Scotland Act 1998 (Functions Exercisable in or as Regards Scotland) Order 1999 (SI 1999/1748), and

The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (SI 1999/ 1750)

In essence, SI 1999/678 transferred the functions of the Lord Advocate under ss.145(2) and 150(1) to the Secretary of State, SI 1999/1748 designated the Secretary of State’s functions under these sections as being exercisable in or as regards Scotland, and SI 1999/ 1750 transferred the so designated functions (of being consulted by the Lord Chancellor) to Scottish Ministers.

However, no action appears to have been taken in respect of the similar provision in section 146(6) concerning the Lord Advocate.

Section 165

Interpretation in relation to the Scottish Parliament

The Parliamentary Copyright (Scottish Parliament) Order 1999 (SI 1999/676) provides as follows (“the Act” meaning the Copyright, Designs and Patents Act 1998):

“Modification of section 165 of the Act

2. In the application of section 165 (parliamentary copyright) of the Act to works made by or under the direction or control of the Scottish Parliament, it shall be read as if -

- (a) references to "the House of Commons or the House of Lords", "that House" or "either House" were references to "the Scottish Parliament";
- (b) for subsection (1)(b) there were substituted -
 "(b) the Scottish Parliamentary Corporate Body is the first owner of any copyright in the work.";
- (c) the reference in subsection (4)(a) to "employee" were a reference to "member of the staff"; and
- (d) in subsection (4) -
 "officer" meant the Presiding Officer and any deputy, elected under section 19 of the Scotland Act 1998;
 "proceedings" included proceedings of any committee or sub-committee; and
 "staff" had the same meaning as "staff of the Parliament" in the Scotland Act 1998."

Interpretation in relation to the Northern Ireland Assembly

The Parliamentary Copyright (Northern Ireland Assembly) Order 1999 (SI 1999/3146) provides as follows ("the Act" meaning the Copyright, Designs and Patents Act 1988):

“Modification of section 165 of the Act

2. In the application of section 165 (parliamentary copyright) of the Act to works made by or under the direction or control of the Northern Ireland Assembly, it shall be read as if -

- (a) references to "the House of Commons or the House of Lords", "that House" or "either House" were references to "the Northern Ireland Assembly";
- (b) for subsection (1)(b) there were substituted -
 "(b) the Northern Ireland Assembly Commission is the first owner of any copyright in the work";
- (c) the reference in subsection (4)(a) to "employee" were a reference to "member of the staff"; and
- (d) in subsection (4) -
 "officer" meant the Presiding Officer and any deputy, elected under section 39 of the Northern Ireland Act 1998;
 "proceedings" included proceedings of any committee or sub-committee; and
 "staff" had the same meaning as "staff of the Assembly" in the Northern Ireland Act 1998."

ANNEX VI

REPEALED OR SUPERSEDED PROVISIONS OF THE COPYRIGHT, DESIGNS AND PATENTS ACT 1988

s.5 (sound recordings and films)

[Replaced by ss.5A & 5B, SI 1995/3297]

5.—(1) In this Part—

"sound recording" means—

- (a) a recording of sounds, from which the sounds may be reproduced, or
- (b) a recording of the whole or any part of a literary, dramatic or musical work, from which sounds reproducing the work or part may be produced,

regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced; and

"film" means a recording on any medium from which a moving image may by any means be produced.

(2) Copyright does not subsist in a sound recording or film which is, or to the extent that it is, a copy taken from a previous sound recording or film.

s.6 (broadcasts)

[ss.6(1) & 6(4) replaced by revised text, SI 2003/2498 & SI 1996/2967 respectively]

6.—(1) In this Part a "broadcast" means a transmission by wireless telegraphy of visual images, sounds or other information which—

- (a) is capable of being lawfully received by members of the public, or
- (b) is transmitted for presentation to members of the public;

and references to broadcasting shall be construed accordingly.

(4) For the purposes of this Part the place from which a broadcast is made is, in the case of a satellite transmission, the place from which the signals carrying the broadcast are transmitted to the satellite.

s.7 (cable programmes)

[Repealed by SI 2003/2498]

7.—(1) In this Part—

"cable programme" means any item included in a cable programme service; and

"cable programme service" means a service which consists wholly or mainly in sending visual images, sounds or other information by means of a telecommunications system, otherwise than by wireless telegraphy, for reception—

- (a) at two or more places (whether for simultaneous reception or at different times in response to requests by different users), or
- (b) for presentation to members of the public,

and which is not, or so far as it is not, excepted by or under the following provisions of this section.

- (2) The following are excepted from the definition of "cable programme service"—
- (a) a service or part of a service of which it is an essential feature that while visual images, sounds or other information are being conveyed by the person providing the service there will or may be sent from each place of reception, by means of the same system or (as the case may be) the same part of it, information (other than signals sent for the operation or control of the service) for reception by the person providing the service or other persons receiving it;
 - (b) a service run for the purposes of a business where—
 - (i) no person except the person carrying on the business is concerned in the control of the apparatus comprised in the system,
 - (ii) the visual images, sounds or other information are conveyed by the system solely for purposes internal to the running of the business and not by way of rendering a service or providing amenities for others, and
 - (iii) the system is not connected to any other telecommunications system;
 - (c) a service run by a single individual where—
 - (i) all the apparatus comprised in the system is under his control,
 - (ii) the visual images, sounds or other information conveyed by the system are conveyed solely for domestic purposes of his, and
 - (iii) the system is not connected to any other telecommunications system;
 - (d) services where—
 - (i) all the apparatus comprised in the system is situated in, or connects, premises which are in single occupation, and
 - (ii) the system is not connected to any other telecommunications system,
 other than services operated as part of the amenities provided for residents or inmates of premises run as a business;
 - (e) services which are, or to the extent that they are, run for persons providing broadcasting or cable programme services or providing programmes for such services.
- (3) The Secretary of State may by order amend subsection (2) so as to add or remove exceptions, subject to such transitional provision as appears to him to be appropriate.
- (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 resolution of each House of Parliament.
- (5) References in this Part to the inclusion of a cable programme or work in a cable programme service are to its transmission as part of the service; and references to the person including it are to the person providing the service.
- (6) Copyright does not subsist in a cable programme—
- (a) if it is included in a cable programme service by reception and immediate re-transmission of a broadcast, or
 - (b) if it infringes, or to the extent that it infringes, the copyright in another cable programme or in a broadcast.

s.9 (authorship of work)

[s.9(2)(a) replaced by ss.9(2)(aa) & (ab) SI 1996/2967. s.9(2)(c) deleted by SI 2003/2498]

- (2) That person* shall be taken to be—
- (a) in the case of a sound recording or film, the person by whom the arrangements necessary for the making of the recording or film are undertaken;
 - (c) in the case of a cable programme, the person providing the cable programme service in which the programme is included;

[* *ie the author*]

s.12 (duration of copyright in literary &c works)

[Replaced by revised version, SI 1995/3297]

12.—(1) Copyright in a literary, dramatic, musical or artistic work expires at the end of the period of 50 years from the end of the calendar year in which the author dies, subject to the following provisions of this section.

(2) If the work is of unknown authorship, copyright expires at the end of the period of 50 years from the end of the calendar year in which it is first made available to the public; and subsection (1) does not apply if the identity of the author becomes known after the end of that period.

For this purpose making available to the public includes—

- (a) in the case of a literary, dramatic or musical work—
 - (i) performance in public, or
 - (ii) being broadcast or included in a cable programme service;
- (b) in the case of an artistic work—
 - (i) exhibition in public,
 - (ii) a film including the work being shown in public, or
 - (iii) being included in a broadcast or cable programme service;

but in determining generally for the purposes of this subsection whether a work has been made available to the public no account shall be taken of any unauthorised act.

(3) If the work is computer-generated neither of the above provisions applies and copyright expires at the end of the period of 50 years from the end of the calendar year in which the work was made.

(4) In relation to a work of joint authorship—

- (a) the reference in subsection (1) to the death of the author shall be construed—
 - (i) if the identity of all the authors is known, as a reference to the death of the last of them to die, and
 - (ii) if the identity of one or more of the authors is known and the identity of one or more others is not, as a reference to the death of the last of the authors whose identity is known; and
- (b) the reference in subsection (2) to the identity of the author becoming known shall be construed as a reference to the identity of any of the authors becoming known.

(5) This section does not apply to Crown copyright or Parliamentary copyright (see section 163 to section 166) or to copyright which subsists by virtue of section 168 (copyright of certain international organisations).

s.13 (duration of copyright in sound recordings and films)

[Replaced by ss. 13A & 13B, SI 1995/3297]

13.—(1) Copyright in a sound recording or film expires—

- (a) at the end of the period of 50 years from the end of the calendar year in which it is made, or
- (b) if it is released before the end of that period, 50 years from the end of the calendar year in which it is released.

(2) A sound recording or film is "released" when—

- (a) it is first published, broadcast or included in a cable programme service, or
- (b) in the case of a film or film sound-track, the film is first shown in public;

but in determining whether a work has been released no account shall be taken of any

unauthorised act.

s.14 (duration of copyright in broadcasts and cable programmes)

[Replaced by revised version, SI 1995/3297]

14.—(1) Copyright in a broadcast or cable programme expires at the end of the period of 50 years from the end of the calendar year in which the broadcast was made or the programme was included in a cable programme service.

(2) Copyright in a repeat broadcast or cable programme expires at the same time as the copyright in the original broadcast or cable programme; and accordingly no copyright arises in respect of a repeat broadcast or cable programme which is broadcast or included in a cable programme service after the expiry of the copyright in the original broadcast or cable programme.

(3) A repeat broadcast or cable programme means one which is a repeat either of a broadcast previously made or of a cable programme previously included in a cable programme service.

s.16 (acts restricted by copyright in a work)

[s. 16(1)(d) replaced by revised version, SI 2003/2498]

(d) to broadcast the work or include it in a cable programme service (see section 20);

s.18 (infringement by issue of copies to the public)

[s. 18(2) amended as shown, and s. 18(3) added, by SI 1992/3233 (subsequently replaced by revised versions, SI 1996/2967)]

(2) References in this Part to the issue to the public of copies of a work *except where the work is a computer program* are to the act of putting into circulation copies not previously put into circulation, in the United Kingdom or elsewhere, and not to—

(a) any subsequent distribution, sale, hiring or loan of those copies, or

(b) any subsequent importation of those copies into the United Kingdom;

except that in relation to sound recordings *and films and computer programs* the restricted act of issuing copies to the public includes any rental of copies to the public.

(3) References in this Part to the issue to the public of copies of a work where the work is a computer program are to the act of putting into circulation copies of that program not previously put into circulation in the United Kingdom or any other member State, by or with the consent of the copyright owner, and

not to—

(a) any subsequent, distribution, sale hiring or loan of those copies, or

(b) any subsequent importation of those copies into the United Kingdom,

except that the restricted act of issuing copies to the public includes any rental of copies to the public.

s.20 (infringement by broadcasting or inclusion in a cable programme service)

[Replaced by revised version, SI 2003/2498]

20. The broadcasting of the work or its inclusion in a cable programme service is an act restricted by the copyright in—

(a) a literary, dramatic, musical or artistic work,

(b) a sound recording or film, or

(c) a broadcast or cable programme.

s.27 (meaning of “infringing copy”)

[s.27(3A), added by SI 1992/3233 (subsequently repealed by SI 1996/2967)]

(3A) A copy of a computer program which has previously been sold in any other member State, by or with the consent of the copyright owner, is not an infringing copy for the purposes of subsection (3).

s.29 (research and private study)

[s.29(1), amended as indicated by SI 1997/3032 (subsequently replaced by revised text, SI 2003/2498). ss.29(1A) & (5) added by SI 1997/3032 (and repealed by SI 2003/2498).]

29.—(1) Fair dealing with a literary work, other than a database, or a dramatic, musical or artistic work for the purposes of research or private study does not infringe any copyright in the work or, in the case of a published edition, in the typographical arrangement.

(1A) Fair dealing with a database for the purposes of research or private study does not infringe any copyright in the database provided that the source is indicated.

(5) The doing of anything in relation to a database for the purposes of research for a commercial purpose is not fair dealing with the database.

s.32 (things done for purposes of instruction or examination)

[ss.32(1) & (2) replaced by revised versions, SI 2003/2498]

32.—(1) Copyright in a literary, dramatic, musical or artistic work is not infringed by its being copied in the course of instruction or of preparation for instruction, provided the copying—

- (a) is done by a person giving or receiving instruction, and
- (b) is not by means of a reprographic process.

(2) Copyright in a sound recording, film, broadcast or cable programme is not infringed by its being copied by making a film or film sound-track in the course of instruction, or of preparation for instruction, in the making of films or film sound-tracks, provided the copying is done by a person giving or receiving instruction.

s.38(2)(a) (copying by librarians, prescribed conditions)

[Replaced by revised version SI 2003/2498]

(2) The prescribed conditions shall include the following—

- (a) that copies are supplied only to persons satisfying the librarian that they require them for purposes of research or private study, and will not use them for any other purpose;

[The original form of ss.39(2)(a), 43(3)(a) & 61(4)(a), also replaced by revised versions by SI 2003/2498, was similar]

s.66 (rental of sound recordings, films and computer programs)

[Replaced by revised s.66, SI 1996/2967]

66.—(1) The Secretary of State may by order provide that in such cases as may be specified in the order the rental to the public of copies of sound recordings, films or computer programs 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 rented, the renter or the circumstances of the rental.

(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) Copyright in a computer program is not infringed by the rental of copies to the public after the end of the period of 50 years from the end of the calendar year in which copies of it were first issued to the public in electronic form.

(6) Nothing in this section affects any liability under section 23 (secondary infringement) in respect of the rental of infringing copies.

s.71 (photographs of television broadcasts or cable programmes)

[Replaced by revised version, SI 2003/2498]

71. The making for private and domestic use of a photograph of the whole or any part of an image forming part of a television broadcast or cable programme, or a copy of such a photograph, does not infringe any copyright in the broadcast or cable programme or in any film included in it.

s.72 (free public showing or playing of broadcast or cable programme)

[s.72(1) replaced by revised version, SI 2003/2498]

72.—(1) The showing or playing in public of a broadcast or cable programme to an audience who have not paid for admission to the place where the broadcast or programme is to be seen or heard does not infringe any copyright in—

- (a) the broadcast or cable programme, or
- (b) any sound recording or film included in it.

s.73 (cable retransmission of broadcasts)

[Amended as indicated by the Broadcasting Act 1990]

73.—(1) This section applies where a broadcast made from a place in the United Kingdom is, by reception and immediate re-transmission, included in a cable programme service.

(2) The copyright in the broadcast is not infringed—

- ~~(a) if the inclusion is in pursuance of a requirement imposed under section 13(1) (inclusion in cable service of certain programmes), or~~
- (b) if and to the extent that the broadcast is made for reception in the area in which the cable programme service is provided and is not a satellite transmission or an encrypted transmission.

(3) The copyright in any work included in the broadcast is not infringed—

- ~~(a) if the inclusion is in pursuance of a requirement imposed under section 13(1) of the Cable and Broadcasting Act 1984 (duty of Cable Authority to secure inclusion in cable service of certain programmes), or~~
- (b) if and to the extent that the broadcast is made for reception in the area in which the cable programme service is provided;

but where the making of the broadcast was an infringement of the copyright in the work, the fact that the broadcast was re-transmitted as a programme in a cable programme service shall be taken into account in assessing the damages for that infringement.

[As amended by the Broadcasting Act 1996 (subsequently further amended by the Communications Act 2003 and SI 2003/2498)]

73.—(1) This section applies where a broadcast made from a place in the United Kingdom is, by reception and immediate re-transmission, included in a cable programme service.

(2) The copyright in the broadcast is not infringed—

- (a) if the inclusion is in pursuance of a relevant requirement, or
- (b) if and to the extent that the broadcast is made for reception in the area in which the cable programme service is provided and forms part of a qualifying service.

(3) The copyright in any work included in the broadcast is not infringed if and to the extent that the broadcast is made for reception in the area in which the cable programme service is provided; but where the making of the broadcast was an infringement of the copyright in the work, the fact that the broadcast was re-transmitted as a programme in a cable programme service shall be taken into account in assessing the damages for that infringement.

(4) Where—

- (a) the inclusion is in pursuance of a relevant requirement, but
- (b) to any extent, the area in which the cable programme service is provided (“the cable area”) falls outside the area for reception in which the broadcast is made (“the broadcast area”),

the inclusion in the cable programme service (to the extent that it is provided for so much of the cable area as falls outside the broadcast area) of any work included in the broadcast shall, subject to subsection (5), be treated as licensed by the owner of the copyright in the work, subject only to the payment to him by the person making the broadcast of such reasonable royalty or other payment in respect of the inclusion of the broadcast in the cable programme service as may be agreed or determined in default of agreement by the Copyright Tribunal.

(5) Subsection (4) does not apply if, or to the extent that, the inclusion of the work in the cable programme service is (apart from that subsection) licensed by the owner of the copyright in the work.

(6) In this section “qualifying service” means, subject to subsection (8), any of the following services—

- (a) a regional or national Channel 3 service,
- (b) Channel 4, Channel 5 and S4C,
- (c) the teletext service referred to in section 49(2) of the Broadcasting Act 1990,
- (d) the service referred to in section 57(1A)(a) of that Act (power of S4C to provide digital service), and
- (e) the television broadcasting services and teletext service of the British Broadcasting Corporation;

and expressions used in this subsection have the same meaning as in Part I of the Broadcasting Act 1990.

(7) In this section “relevant requirement” means a requirement imposed under—

- (a) section 78A of the Broadcasting Act 1990 (inclusion of certain services in local delivery services provided by digital means), or
- (b) paragraph 4 of Part III of Schedule 12 to that Act (inclusion of certain services in diffusion services originally licensed under the Cable and Broadcasting Act 1984).

(8) The Secretary of State may by order amend subsection (6) so as to add any service to, or remove any service from, the definition of “qualifying service”.

(9) The Secretary of State may also by order—

- (a) provide that in specified cases subsection (3) is to apply in relation to broadcasts of a specified description which are not made as mentioned in that subsection, or

(b) exclude the application of that subsection in relation to broadcasts of a specified description made as mentioned in that subsection.

(10) Where the Secretary of State exercises the power conferred by subsection (9)(b) in relation to broadcasts of any description, the order may also provide for subsection (4) to apply, subject to such modifications as may be specified in the order, in relation to broadcasts of that description.

(11) An order under this section may contain such transitional provision as appears to the Secretary of State to be appropriate.

(12) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

s.117 (licensing schemes to which ss.118-123 apply)

[Amended as indicated by SI 1995/3297 (s.117 as a whole subsequently replaced by revised version, SI 1996/2967)]

117.—Sections 118 to 123 (references and applications with respect to licensing schemes) apply to—

(a) licensing schemes operated by licensing bodies in relation to the copyright in literary, dramatic, musical or artistic works or films ~~(or film sound-tracks when accompanying a film)~~ which cover works of more than one author, so far as they relate to licences for—

- (i) copying the work,
- (ii) performing, playing or showing the work in public, or
- (iii) broadcasting the work or including it in a cable programme service;

(b) all licensing schemes in relation to the copyright in sound recordings ~~(other than film sound-tracks when accompanying a film)~~, broadcasts or cable programmes, or the typographical arrangement of published editions; and

(c) all licensing schemes in relation to the copyright in sound recordings, films or computer programs so far as they relate to licences for the rental of copies to the public;

and in those sections "licensing scheme" means a licensing scheme of any of those descriptions.

[s. 124 was similarly amended by SI 1995/3297 and then SI 1996/2967]

s.133 (licences to reflect payments in respect of underlying rights)

[s. 133(1) replaced by revised version, SI 1996/2967]

133.—(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 to the public of copies of sound recordings, films or computer programs, or

(b) on an application under section 142 (settlement of royalty or other sum payable for deemed licence),

the Copyright Tribunal shall take into account any reasonable payments which the owner of the copyright in the sound recording, film or computer program 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.

s.134 (licences in respect of works included in re-transmissions)

[s. 134(4) repealed by the Broadcasting Act 1990]

(4) If the Tribunal is satisfied that requirements imposed under section 13(1) of the Cable and Broadcasting Act 1984 (duty of Cable Authority to secure inclusion of certain broadcasts

in cable programme services) will result in the further transmission being to areas part of which fall outside the area to which the first transmission is made, the Tribunal shall exercise its powers so as to secure that the charges payable for licences for the first transmission adequately reflect that fact.

s.142 (royalty payable for rental of sound recording, film or computer program)

[Replaced by revised version, SI 1996/2967]

142.—(1) An application to settle the royalty or other sum payable in pursuance of section 66 (rental of sound recordings, films and computer programs) 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.

s.144 (powers exercisable in consequence of report of Monopolies & Mergers Commission)

[ss.144(1) & (2), amended as indicated by SI 1999/506 and SI 2000/311 (ss.144(1)-(3) subsequently replaced by revised versions, Enterprise Act 2002).]

144.—(1) Where the matters specified in a report of the ~~Monopolies and Mergers~~ *Competition* Commission as being those which in the Commission's opinion operate, may be expected to operate or have operated against the public interest include-

(a) conditions in licences granted by the owner of copyright in a work restricting the use of the work by the licensee or the right of the copyright owner to grant other licences, or

(b) a refusal of a copyright owner to grant licences on reasonable terms,

the powers conferred by Part I of Schedule 8 to the Fair Trading Act 1973 (powers exercisable for purpose of remedying or preventing adverse effects specified in report of Commission) include power to cancel or modify those conditions and, instead or in addition, to provide that licences in respect of the copyright shall be available as of right.

(2) The references in sections 56(2) and 73(2) of that Act, and sections ~~40(2)(b) and~~ 12(5) of the Competition Act 1980, to the powers specified in that Part of that Schedule shall be construed accordingly.

(3) A Minister shall only exercise the powers available by virtue of this section if he is satisfied that to do so does not contravene any Convention relating to copyright to which the United Kingdom is a party.

s.145 (the Copyright Tribunal), subsection (3)

[s.145(3) replaced by revised version, Courts and Legal Services Act 1990]

(3) A person is not eligible for appointment as chairman or deputy chairman unless he is a barrister, advocate or solicitor of not less than seven years' standing or has held judicial office.

s.149 (jurisdiction of the Tribunal)

[Opening wording revised, and ss. 149(g) & (h) deleted, by SI 1996/2967]

- 149.** The function of the Copyright Tribunal is to hear and determine proceedings under—
- (g) section 190 (application to give consent for purposes of Part II on behalf of performer);
 - (h) Paragraph 5 of Schedule 6 (determination of royalty or other remuneration to be paid to trustees for the Hospital for Sick Children).

s.150 (general power to make rules (for Tribunal)), subsection (2)

[Replaced by revised version, Arbitration Act 1996]

- (2) The rules may apply in relation to the Tribunal—
- (a) as respects proceedings in England and Wales, any of the provisions of the Arbitration Act 1950;
 - (b) as respects proceedings in Northern Ireland, any of the provisions of the Arbitration Act (Northern Ireland) 1937;

and any provisions so applied shall be set out in or scheduled to the rules.

s.154 (qualification by reference to author)

[s.154(3), second indent, replaced by revised version, SI 1995/3297, and s.154(5)(c) repealed by SI 2003/2498]

- (3) -----
 section 12(1) and (2) (duration of copyright; dependent on life of author unless work of unknown authorship), and section 9(4) (meaning of "unknown authorship") so far as it applies for the purposes of section 12(2), and
- (5) -----
 (c) in the case of a cable programme, when the programme was included in a cable programme service;

s.172A (meaning of EEA national and EEA state)

[s. 172A(1) inserted by SI 1995/3297, replaced by revised version, SI 1996/2967]

172A.—(1) In this part—

“EEA national means a national of an EEA state; and

“EEA state” means a state which is a contracting party to the EEA Agreement.

s.182 (consent required for recording or live transmission of performance)

[Replaced by revised version, SI 1996/2967]

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

- (a) makes, otherwise than for his private and domestic use, a recording of the whole or any substantial part of a qualifying performance, or
- (b) broadcasts live, or includes live in a cable programme service, the whole or any substantial part
 of a qualifying performance.

(2) 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.

s.182D (right to equitable remuneration for exploitation of sound recording)

[s.182D(1)(b), introduced by SI 1996/2967, replaced by revised version SI 2003/2498]

(1) -----

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

s.190 (power of tribunal to give consent on behalf of performer in certain cases)

[s.190(1) replaced by revised version, and s.190(4) repealed, SI 1996/2967]

190.—(1) The Copyright Tribunal may, on the application of a person wishing to make a recording from a previous recording of a performance, give consent in a case where—

(a) the identity or whereabouts of a performer cannot be ascertained by reasonable inquiry, or

(b) a performer unreasonably withholds his consent.

(4) The Tribunal shall not give consent under subsection (1)(b) unless satisfied that the performer's reasons for withholding consent do not include the protection of any legitimate interest of his; but it shall be for the performer to show what his reasons are for withholding consent, and in default of evidence as to his reasons the Tribunal may draw such inferences as it thinks fit.

s.191 (duration of rights)

[Replaced by revised version, SI 1995/3297]

191. The rights conferred by this Part continue to subsist in relation to a performance until the end of the period of 50 years from the end of the calendar year in which the performance takes place.

s.192 (transmission of rights)

[Replaced by ss. 192A & 192B, SI 1996/2967]

192.—(1) The rights conferred by this Part are not assignable or transmissible, except to the extent that performers' rights are transmissible in accordance with the following provisions.

(2) On the death of a person entitled to performer's rights—

(a) the rights pass 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 rights are exercisable by his personal representatives;

and references in this Part to the performer, in the context of the person having performers' rights, shall be construed as references to the person for the time being entitled to exercise those rights.

(3) 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.

(4) The above provisions do not affect section 185(2)(b) or section 185(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.

(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.

s.296 (devices designed to circumvent copy-protection)

[Amended as indicated by SI 1992/3233 (then replaced by revised version, SI 2003/2498)]

296.—(1) This section applies where copies of a copyright work are issued to the public, by or with the licence of the copyright owner, in an electronic form which is copy-protected.

(2) The person issuing the copies to the public has the same rights against a person who, knowing or having reason to believe that it will be used to make infringing copies—

(a) makes, imports, sells or lets for hire, offers or exposes for sale or hire, or advertises for sale or hire, any device or means specifically designed or adapted to circumvent the form of copy-protection employed, or

(b) publishes information intended to enable or assist persons to circumvent that form of copy-protection,

as a copyright owner has in respect of an infringement of copyright.

(2A) Where the copies being issued to the public as mentioned in subsection (1) are copies of a computer program, subsection (2) applies as if for the words “or advertises for sale or hire” there were substituted “advertises for sale or hire or possesses in the course of a business”.

(3) Further, he has the same rights under section 99 or 100 (delivery up or seizure of certain articles) in relation to any such device or means which a person has in his possession, custody or control with the intention that it should be used to make infringing copies of copyright works, as a copyright owner has in relation to an infringing copy.

(4) References in this section to copy-protection include any device or means intended to prevent or restrict copying of a work or to impair the quality of copies made.

(5) Expressions used in this section which are defined for the purposes of Part I of this Act (copyright) have the same meaning as in that Part.

(6) The following provisions apply in relation to proceedings under this section as in relation to proceedings under Part I (copyright)—

(a) sections 104 to 106 of this Act (presumptions as to certain matters relating to copyright), and

(b) section 72 of the Supreme Court Act 1981, section 15 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 and section 94A of the Judicature (Northern Ireland) Act 1978 (withdrawal of privilege against self-incrimination in certain proceedings relating to intellectual property);

and section 114 of this Act applies, with the necessary modifications, in relation to the disposal of anything delivered up or seized by virtue of subsection (3) above.

s.296A (Avoidance of certain terms)

[s.296A(1)(c) introduced by SI 1992/3233, replaced by revised version, SI 2003/2498]

(1) -----

(c) the use of any device or means to observe, study or test the functioning of the program in order to understand the ideas and principles which underlie any element of the program.

s.297A (unauthorised decoders)

[Added by the Broadcasting Act 1990 and amended as indicated by the Broadcasting Act 1996 (then replaced by revised version, SI 2000/1175)]

297A.—(1) A person who makes, imports, sells or lets for hire, *offers or exposes for sale or hire, or advertises for sale or hire*, any unauthorised decoder shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale —

(a) on summary conviction, to a fine not exceeding the statutory maximum;

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

(2) It is a defence to any prosecution for an offence under this section for the defendant to prove that he did not know, and had no reasonable ground for knowing, that the decoder was an unauthorised decoder.

(3) In this section—

“apparatus” includes any device, component or electronic data;

“decoder” means any apparatus which is designed or adapted to enable (whether on its own or with any other apparatus) an encrypted transmission to be decoded;

“transmission” means any programme included in a broadcasting or cable programme service which is provided from a place in the United Kingdom; and

“unauthorised”, in relation to a decoder, means a decoder which will enable encrypted transmissions to be viewed in decoded form without payment of the fee (however imposed) which the person making the transmission, or on whose behalf it is made, charges for viewing those transmissions, or viewing any service of which they form part.

s.298 (rights &c. in respect of apparatus &c. for unauthorised reception of transmissions)

[Amended as indicated by the Broadcasting Act 1996 (then replaced by revised version, SI 2000/1175)]

298.—(1) A person who—

(a) makes charges for the reception of programmes included in a broadcasting or cable programme service provided from a place in the United Kingdom, or

(b) sends encrypted transmissions of any other description from a place in the United Kingdom,

is entitled to the following rights and remedies.

(2) He has the same rights and remedies against a person who—

(a) makes, imports or sells or lets for hire, *offers or exposes for sale or hire, or advertises for sale or hire*, any apparatus or device designed or adapted to enable or assist persons to receive the programmes or other transmissions when they are not entitled to do so, or

(b) publishes any information which is calculated to enable or assist persons to receive the programmes or other transmissions when they are not entitled to do so,

as a copyright owner has in respect of an infringement of copyright.

(3) Further, he has the same rights under section 99 or 100 (delivery up or seizure of certain articles) in relation to any such apparatus or device as a copyright owner has in relation to an infringing copy.

(4) Section 72 of the Supreme Court Act 1981, section 15 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 and section 94A of the Judicature (Northern Ireland) Act 1978 (withdrawal of privilege against self-incrimination in certain proceedings relating to intellectual property) apply to proceedings under this section as to proceedings under Part I of this Act (copyright).

(5) In section 97(1) (innocent infringement of copyright) as it applies to proceedings for infringement of the rights conferred by this section, the reference to the defendant not knowing or having reason to believe that copyright subsisted in the work shall be construed as a reference, to his not knowing or having reason to believe that his acts infringed the rights conferred by this section.

(6) Section 114 of this Act applies, with the necessary modifications, in relation to the disposal of anything delivered up or seized by virtue of subsection (3) above.

s.299 (supplementary provisions as to fraudulent reception)

[s.299(2) repealed by the Broadcasting Act 1990]

(2) No such Order shall be made unless it appears to Her Majesty that provision has been or will be made under the laws of that country or territory giving adequate protection to persons making charges for programmes included in broadcasting or cable programme services provided from the United Kingdom or, as the case may be, for encrypted transmissions sent from the United Kingdom.



ANNEX VII

STATUTORY INSTRUMENTS

2007 No. 1116

COPYRIGHT

DEVOLUTION, WALES

The Parliamentary Copyright (National Assembly for Wales) Order 2007

Made *4th April 2007*

Laid before Parliament *11th April 2007*

Coming into force in accordance with article 1(2)

At the Court at Windsor Castle, the 4th day of April 2007

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 165(7) of the Copyright, Designs and Patents Act 1988[1] is pleased, by and with the advice of Her Privy Council, to order, as follows—

1. Citation and commencement

(1) This Order may be cited as the Parliamentary Copyright (National Assembly for Wales) Order 2007.

(2) This Order shall come into force immediately after the ordinary election under section 3 of the Government of Wales Act 1998 [2] held in 2007.

2. Modification of section 165 of the Copyright, Designs and Patents Act 1988-

(1) This article modifies the effect of section 165 of the Copyright, Designs and Patents Act 1988 (parliamentary copyright) in its application to works made by or under the direction or control of the National Assembly for Wales.

(2) The section has effect as if for subsection (1) there were substituted—

- (1) "Where a work is made by or under the direction or control of the National Assembly for Wales—

- (a) the work qualifies for copyright protection notwithstanding section 153(1) (ordinary requirement as to qualification for copyright protection), and
- (b) the National Assembly for Wales Commission^[3] is the first owner of any copyright in the work."

(3) The section has effect as if for subsection (4) there were substituted^[4]—

"(4) For the purposes of this section, works made by or under the direction or control of the National Assembly for Wales include—

- (a) any work made by a relevant person in the course of his duties, and
- (b) any sound recording, film or live broadcast of the proceedings of the Assembly (including proceedings of a committee or sub-committee of the Assembly),

but a work shall not be regarded as made by or under the direction or control of the Assembly by reason only of its being commissioned by or on behalf of the Assembly.

(2) (4A) The following are relevant persons for the purposes of subsection (4)—

- (a) the presiding officer of the National Assembly for Wales elected under section 25 of the Government of Wales Act 2006^[5],
- (b) the deputy presiding officer of the Assembly elected under that section,
- (c) the members of the Assembly Commission appointed under the standing orders of the Assembly by virtue of section 27(3) of that Act, and
- (d) the members of the staff of the Assembly, within the meaning of that Act (see paragraph 3(2) of Schedule 2 to that Act)."

(4) The section has effect as if in subsection (5) for "the House of Commons or the House of Lords" there were substituted "the National Assembly for Wales".

EXPLANATORY NOTE

(This note is not part of the Order)

This Order modifies the provisions of section 165 of the Copyright, Designs and Patents Act 1988 (Parliamentary copyright), so that its provisions apply with modifications to works made by or under the direction or control of the National Assembly for Wales.

By virtue of subsection (7) of section 165 of the Copyright, Designs and Patents Act 1988 ("the Act"), the provisions of that section apply not only in respect of works made by or under the direction or control of the House of Commons or the House of Lords, but also, subject to any exceptions or modifications specified by Order in Council, to works made by or under the direction or control of any other legislative body of a country to which Part I of the Act extends. Part I of the Act extends to Wales. By virtue of Part III of the Government of Wales Act 2006, the National Assembly for Wales has legislative powers.

The effect of this Order is that when section 165 is applied to works made by or under the direction or control of the National Assembly for Wales, that section is to be read as if—

subsections (1) and (4) were substituted with the subsections (1) and (4) set out in Article 2 of this Order, subsection (4A) (also set out in Article 2) were inserted, and the reference in subsection (5) to "the House of Commons or the House of Lords" were a reference to "the National Assembly for Wales". As a result, the National Assembly for Wales Commission is the first owner of any copyright in works made by or under the direction or control of the National Assembly for Wales.

In addition, works made in their course of their duties by— the Presiding Officer and the Deputy Presiding Officer of the National Assembly for Wales, members of the National Assembly for Wales Commission, and members of the staff of the Assembly, are works made by or under the direction or control of the National Assembly for Wales for the purposes of section 165.