



**Isle of Man**

*Ellan Vannin*

**AT 12 of 1996**

**PERFORMERS PROTECTION ACT 1996**





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## PERFORMERS PROTECTION ACT 1996

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## PERFORMERS PROTECTION ACT 1996

<i>Received Royal Assent:</i>	<i>21 May 1996</i>
<i>Passed:</i>	<i>21 May 1996</i>
<i>Commenced:</i>	<i>1 July 1996</i>

**AN ACT** to confer rights on performers and others in respect of performances of musical and dramatic works; to amend the *Copyright Act 1991*; and to make further provision as to the seizure and forfeiture of counterfeit and pirated goods.

**EDITORIAL NOTE:** There are free-standing transitional provisions affecting the amendments made to this Act by the Performers' Protection (Amendment) Regulations 2013 (SD 75/13 Sch 2), commenced 1 April 2013, which are not reflected in the text of the Act. The transitionals can be found here <http://www.tynwald.org.im/links/tls/SD/2013/2013-SD-0075.pdf>

### *Introductory*

#### **1 Rights conferred on performers and persons having recording rights**

[P1988/48/180]

- (1) This Act confers rights —
- (a) on a performer, by requiring his consent to the exploitation of his performances (see sections 2 to 5), 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 6 to 9),

and creates offences in relation to dealing with or using illicit recordings and certain other related acts (see sections 19 and 23).

- (1A) Rights are also conferred on a performer by the following provisions of this Act (moral rights) —

- (a) section 26C (right to be identified);
- (b) section 26F (rights to object to derogatory treatment).<sup>1</sup>

- (2) In this Act —

“**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, or cable programme including, the performance, or
  - (c) made, directly or indirectly, from another recording of the performance.
- (3) Except as provided pursuant to section 29(1), nothing in this Act applies in relation to performances taking place before the commencement of this section; and no act taking place before such commencement, or in pursuance of arrangements made before such commencement, shall be regarded as infringing rights conferred by this Act.
- (4) The rights conferred by this Act are independent of —
- (a) any copyright in, or moral rights relating to, any work performed or any film or sound recording of, or broadcast or cable programme including, the performance, and
  - (b) any other right or obligation arising otherwise than under this Act.

### *Performers' rights*

## **2 Qualifying performances**

[P1988/48/181]

A performance is a qualifying performance for the purposes of the provisions of this Act relating to performers' rights if it is given by a qualifying individual (as defined in section 27) or takes place in a qualifying country (as so defined).

## **3 Consent required for recording, etc 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) 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.<sup>2</sup>

### 3A 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.
- (2) 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.
- (3) It is immaterial whether the copy is made directly or indirectly.
- (4) The right of a performer under this section to authorise or prohibit the making of such copies is referred to in this Act as "**reproduction right**".<sup>3</sup>

### 3B 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 Act to the issue to the public of copies of a recording are to —
  - (a) the act of putting into circulation in the UK-EEA area copies not previously put into circulation in the UK-EEA area by or with the consent of the performer, or<sup>4</sup>
  - (b) the act of putting into circulation outside the UK-EEA area copies not previously put into circulation in the UK-EEA area or elsewhere.<sup>5</sup>
- (3) References in this Act 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 3C), or
  - (b) any subsequent importation of such copies into the Island, the United Kingdom or an EEA state,<sup>6</sup>

except so far as subsection (2)(a) applies to putting into circulation in the UK-EEA area copies previously put into circulation outside the UK-EEA area.<sup>7</sup>

- (3A) In this section “UK-EEA area” means the United Kingdom and the EEA, taken together.<sup>8</sup>
- (4) References in this Act 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 Act as “**distribution right**”.
- (6) References in this section to putting anything into circulation in the UK-EEA area include putting into circulation in the Island.<sup>9 10</sup>

### 3C Consent required for rental of copies to public

- (1) A performer’s rights are infringed by a person who, without his consent, rents to the public copies of a recording of the whole or any substantial part of a qualifying performance.
- (2) In this Act, subject to the following provisions of this section, “**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.
- (3) The expression “rental” does 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) 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.
- (5) References in this Act to the rental of copies of a recording of a performance include the rental of the original recording of the live performance.
- (6) In this Act “**rental right**” means the right of a performer under this section to authorise or prohibit the rental of copies to the public.<sup>11</sup>

### 3D 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 Act as “**making available right**”.<sup>12</sup>

### **3E 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
  - (b) is communicated to the public otherwise than by its being made available to the public in the way mentioned in section 3D(1),
- the performer is entitled to equitable remuneration from the owner of the copyright in the sound recording.

- (1A) 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.<sup>13</sup>

- (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 Tribunal to determine the amount payable.
- (5) A person to or by whom equitable remuneration is payable may also apply to the 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 12 months from the date of a previous determination.

An order made on an application under this subsection has effect from the date on which it is made or such later date as may be specified by the Tribunal.

- (6) On an application under this section the Tribunal shall consider the matter and make such order as to the method of calculating and paying equitable

remuneration as it may determine to be reasonable in the circumstances, taking into account the importance of the contribution of the performer to the sound recording.

- (7) An agreement is of no effect in so far as it purports —
- (a) to exclude or restrict the right to equitable remuneration under this section, or
  - (b) to prevent a person questioning the amount of equitable remuneration or to restrict the powers of the Tribunal under this section.<sup>14</sup>

#### **4 Infringement of performer's rights by use of recording made without consent**

[P1988/48/183]

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, or
- (b) broadcasts or includes in a cable programme service 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.

#### **5 Infringement of performer's rights by importing, possessing or dealing with illicit recording**

[P1988/48/184]

- (1) A performer's rights are infringed by a person who, without his consent —
- (a) imports into the Island 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***6 Exclusive recording contracts and persons having recording rights**

[P1988/48/185]

- (1) In this Act an “**exclusive recording contract**” means a contract between a performer and another person under which that person is 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 Act 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 Act 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.

**7 Consent required for recording of performance subject to exclusive contract**

[P1988/48/186]

- (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.<sup>15</sup>
- (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.

## **8 Infringement of recording rights by use of recording made without consent**

[P1988/48/187]

- (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) broadcasts or includes in a cable programme service the whole or any substantial part of the performance,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).

## **9 Infringement of recording rights by importing, possessing or dealing with illicit recording**

[P1988/48/188]

- (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 Island 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***10 Acts permitted notwithstanding rights conferred by this Act**

[P1988/48/189]

The provisions of Schedule 1 specify acts which may be done notwithstanding the rights conferred by this Act, being acts which correspond broadly to certain of those specified in Part III of the *Copyright Act 1991* (acts permitted notwithstanding copyright).

*Right to equitable remuneration***10A 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 is included in a broadcast by way of satellite transmission, the performer is entitled to equitable remuneration from the owner of the copyright in the sound recording.
- (1A) 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.<sup>16</sup>
- (2) 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.
- (3) 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 Tribunal to determine the amount payable.
- (4) A person to or by whom equitable remuneration is payable may also apply to the 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 12 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.

- (5) 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.

- (6) An agreement is of no effect in so far as it purports —
  - (a) to exclude or restrict the right to equitable remuneration under this section, or
  - (b) to prevent a person questioning the amount of equitable remuneration or to restrict the powers of the Tribunal under this section.<sup>17</sup>

## 11 Power of tribunal to give consent on behalf of performer in certain cases

[P1988/48/190]

- (1) The Tribunal may, on the application of a person wishing to make a copy of a recording of a performance, give consent in a case where the identity or whereabouts of the person entitled to the reproduction right cannot be ascertained by reasonable inquiry.<sup>18</sup>
- (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 Act relating to performers' rights, and
  - (b) section 19(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.<sup>19</sup>
- (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 8 of the *Tribunals Act 2006* (general procedural rules) or as the Tribunal may in any particular case direct.<sup>20</sup>
- (4) [Repealed].<sup>21</sup>
- (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.<sup>22</sup>



*Duration of rights*<sup>23</sup>**12 Duration of rights**

- (1) The following provisions have effect with respect to the duration of the rights conferred by this Act.
- (2) The rights conferred by this Act 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 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 the United Kingdom, the duration of the rights conferred by this Act 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).<sup>24</sup>
- (5) If or to the extent that the application of subsection (4) would be at variance with an international obligation which extended to the Isle of Man before 1 April 2013, the duration of the rights conferred by this Act shall be as specified in subsections (2) and (3).<sup>25</sup>

**12A Performers’ property rights**

- (1) The following rights conferred by this Act on a performer —  
reproduction right (section 3A),  
distribution right (section 3B),  
rental right (section 3C),  
making available right (section 3D),  
are property rights (“**performer’s property rights**”).
- (2) References in this Act to the consent of the performer shall be construed in relation to a performer’s property rights as references to the consent of the rights owner.
- (3) Where different persons are (whether in consequence of a partial assignment or otherwise) entitled to different aspects of a performer’s property rights in relation to a performance, the rights owner for any purpose of this Act 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) are owned by more than one person jointly, references in this Act 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.<sup>26</sup>

### **12B 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 Act to doing anything with, or without, the licence of the rights owner shall be construed accordingly.<sup>27</sup>

### **12C 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 Act 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).<sup>28</sup>

### **12D Exclusive licences**

- (1) In this Act 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.<sup>29</sup>

### **12E 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.<sup>30</sup>

### **12F 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 12C (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 12G (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.<sup>31</sup>

### **12G 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 12H.
- (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.<sup>32</sup>

### **12H Equitable remuneration: reference of amount to Tribunal**

- (1) In default of agreement as to the amount payable by way of equitable remuneration under section 12G, the person by or to whom it is payable may apply to the Tribunal to determine the amount payable.
- (2) A person to or by whom equitable remuneration is payable may also apply to the 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 12 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 Tribunal under this section.<sup>33</sup>

### **12I 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 Act.<sup>34</sup>

### **12J 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.<sup>35</sup>

### **12K 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 Act 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.<sup>36</sup>

## **12L 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 16 or exercising the right conferred by section 17); and the court may on the application of the licensee make such order under section 16 or, as the case may be, prohibiting or permitting the exercise by the rights owner of the right conferred by section 17, as it thinks fit having regard to the terms of the licence.<sup>37</sup>

### 13 Performers' non-property rights

- (1) The rights conferred on a performer by —  
section 3 (consent required for recording, etc of live performance),  
section 4 (infringement of performer's rights by use of recording made without consent), and  
section 5 (infringement of performer's rights importing, possessing or dealing with illicit recording),  
are not assignable or transmissible, except to the following extent.  
They are referred to in this Act 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 Act to the performer, in the context of the person having any such right, shall be construed as references to the person for the time being entitled to exercise those rights.
- (4) Where by virtue of subsection (2)(a) a right becomes exercisable by more than one person, it is exercisable by each of them independently of the other or others.
- (5) Any damages recovered by personal representatives by virtue of this section in respect of an infringement after a person's death shall devolve as part of his estate as if the right of action had subsisted and been vested in him immediately before his death.<sup>38</sup>

#### 13A Transmissibility of rights of person having recording rights

- (1) The rights conferred by this Act on a person having recording rights are not assignable or transmissible.
- (2) This does not affect section 6(2)(b) or (3)(b), so far as those provisions confer rights under this Act on a person to whom the benefit of a contract or licence is assigned.<sup>39</sup>

### 14 Consent

[P1988/48/193]

- (1) Consent for the purposes of this Act 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.<sup>40</sup>

- (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.<sup>41</sup>

*Action for infringement*<sup>42</sup>

## 15 Infringement actionable as breach of statutory duty

[P1988/48/194]

- (1) An infringement of —
  - (a) a performer's non-property rights, or
  - (b) any right conferred by this Act on a person having recording rights,is actionable by the person entitled to the right as a breach of statutory duty.<sup>43</sup>
- (2) Where in an action for infringement of any right conferred by this Act it is shown that the defendant knew, or had reason to believe, that he was committing an infringement, the damages awarded to the claimant shall be appropriate to the actual prejudice he suffered as a result of the infringement.<sup>44</sup>
- (3) The High Court —
  - (a) in awarding such damages shall take into account all appropriate aspects, including in particular —
    - (i) the negative economic consequences, including any lost profits, which the claimant has suffered;
    - (ii) any unfair profits made by the defendant; and
    - (iii) elements other than economic factors, including the moral prejudice caused to the claimant by the infringement; or
  - (b) may where appropriate award such damages on the basis of the royalties or fees which would have been due had the defendant obtained a licence.<sup>45</sup>

*Delivery up or seizure of illicit recordings*<sup>46</sup>

## 16 Order for delivery up

[P1988/48/195]

- (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



performers' rights or recording rights in relation to the performance under this Act may apply to the High 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 25; and no order shall be made unless the High Court also makes, or it appears to the Court that there are grounds for making, an order under section 26 (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 26 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 High Court.

## 17 Right to seize illicit recordings

[P1988/48/196]

- (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 16, 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 High Court under section 26 (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 regulations made by the Department for Enterprise.<sup>47</sup>

## 18 Meaning of “illicit recording”

[P1988/48/197]

- (1) In this Act “**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 19 and 21 (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) In this Act “**illicit recording**” includes a recording falling to be treated as an illicit recording by virtue of any of the following provisions of Schedule 1 —
  - 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 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.<sup>48</sup>
- (6) It is immaterial for the purposes of this section where the recording was made.

## 18A Presumptions relevant to recordings of performances

- (1) In proceedings brought by virtue of this Act 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 19 (criminal liability for making etc. illicit recordings); but without

prejudice to its application in proceedings for an order under section 21 (order for delivery up in criminal proceedings).<sup>49</sup>

### *Offences*

## **19 Criminal liability for making, dealing with or using illicit recordings**

[P1988/48/198]

- (1) A person commits an offence who without sufficient consent —
- (a) makes for sale or hire, or
  - (b) imports into the Island 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 Act, 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.<sup>50</sup>
- (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) broadcast or included in a cable programme service,
- thereby infringing any of the rights conferred by this Act, if he knows or has reason to believe that those rights are thereby infringed.
- (3) In subsections (1) and (2) “sufficient consent” means —
- (a) in the case of a qualifying performance, the consent of the performer, and
  - (b) in the case of a non-qualifying performance subject to an exclusive recording contract —
    - (i) for the purposes of subsection (1)(a) (making of recording), the consent of the performer or the person having recording rights, and

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

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

- (4) No offence is committed under subsection (1) or (2) by the commission of an act which by virtue of any provision of Schedule 1 may be done without infringing the rights conferred by this Act.
- (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 6 months or a fine not exceeding 10 times level 5 on the standard scale, or both;<sup>51</sup>
  - (b) on conviction on information to a fine or imprisonment for a term not exceeding 10 years, or both.<sup>52</sup>
- (5A) A person guilty of an offence under subsection (1A) is liable —
  - (a) on summary conviction to custody for a term not exceeding 3 months or a fine not exceeding 10 times level 5 on the standard scale, or both;<sup>53</sup>
  - (b) on conviction on information to or custody for a term not exceeding 2 years or a fine, or both.<sup>54</sup>
- (6) A person guilty of any other offence under this section is liable on summary conviction to a fine not exceeding £5,000 or imprisonment for a term not exceeding 6 months, or both.

## 20 Enforcement of s 19

[P1988/48/198A; P1994/33/165]

- (1) It is the duty of the Isle of Man Office of Fair Trading to enforce the provisions of section 19.<sup>55</sup>
- (2) The following provisions of the *Consumer Protection (Trade Descriptions) Act 1970* apply in relation to the enforcement of that section by the Isle of Man Office of Fair Trading 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 inspectors) and
  - section 33 (compensation for loss etc. of goods seized).<sup>56</sup>
- (3) Any enactment which authorises the disclosure of information for the purpose of facilitating the enforcement of the said Act of 1970 shall apply

as if section 19 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.<sup>57</sup>

## 21 Order for delivery up in criminal proceedings

[P1988/48/199]

- (1) The court before which proceedings are brought against a person for an offence under section 19 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 when he is orally charged or is served with a summons or information.
- (3) An order may be made by the court —
  - (a) of its own motion or on the application of the prosecutor, and
  - (b) whether or not the person is convicted of the offence;but shall not be made if it appears to the court unlikely that any order will be made under section 26 (order as to disposal of illicit recording).
- (4) An appeal lies to the High Court from an order made under this section by a court of summary jurisdiction.
- (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 26.
- (6) Nothing in this section affects any other powers of a court with respect to forfeiture in criminal proceedings.

## 22 Search warrants

[P1988/48/200]

- (1) Where a justice of the peace is satisfied by information on oath given by a constable that there are reasonable grounds for believing —
  - (a) that an offence under section 19(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<sup>58</sup>
  - (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) A warrant under subsection (1) —

- (a) may authorise persons to accompany any constable executing the warrant, and
  - (b) remains in force for 28 days from the date of its issue.
- (3) In this section “premises” includes land, buildings, fixed or moveable structures, vehicles, vessels, aircraft and hovercraft.
- (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 19(1) or (1A) has been or is about to be committed.<sup>59</sup>

### 23 False representation of authority to give consent

[P1988/48/201]

- (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 Act 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 6 months or a fine not exceeding £5,000 or both.

### 24 Offence by body corporate: liability of officers

- (1) Where an offence under this Act 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.

*Delivery up and seizure: supplemental*

### 25 Period after which remedy of delivery up not available

[P1988/48/203]

- (1) An application for an order under section 16 (order for delivery up in civil proceedings) may not be made after the end of the period of 6 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 6 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” has the same meaning as in the *Limitation Act 1984*.
- (4) An order under section 21 (order for delivery up in criminal proceedings) shall not, in any case, be made after the end of the period of 6 years from the date on which the illicit recording in question was made.

## 26 Order as to disposal of illicit recording

[P1988/48/204]

- (1) An application may be made to the High Court for an order that an illicit recording of a performance delivered up in pursuance of an order under section 16 or 21, or seized and detained in pursuance of the right conferred under section 17, 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 High Court shall consider whether other remedies available in an action for infringement of the rights conferred by this Act 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 under this section or under section 113 of the *Copyright Act 1991*, section 19 of the *Design Right Act 1991* or section 19 of the *Trade Marks Act 1994* (an Act of Parliament) (which make similar provision in relation to infringement of copyright, design right and trade marks).

### **26ZA Forfeiture of illicit recordings**

- (1) 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 19(1) or (1A) (criminal liability for making or dealing with illicit recordings);
  - (b) an offence under the *Consumer Protection (Trade Descriptions) Act 1970*;
  - (ba) an offence under the *Consumer Protection from Unfair Trading Regulations 2019*<sup>1</sup>; or<sup>60</sup>
  - (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 court of summary jurisdiction.
- (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.
- (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).

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<sup>1</sup> SD 2019/0359



- (6) Any person aggrieved by an order made under this section by a court of summary jurisdiction, or by a decision of such a court not to make such an order, may appeal against that order or decision to the High 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 109 of the *Summary Jurisdiction Act 1989* (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.<sup>61</sup>

## 26A Licensing of performers' rights<sup>62</sup>

The provisions of Schedule 1A have effect with respect to the licensing of performers' rights.<sup>63</sup>

### *Jurisdiction of Copyright Tribunal<sup>64</sup>*

## 26B Jurisdiction of Tribunal

- (1) The Tribunal has jurisdiction under this Act to hear and determine proceedings under —
  - (a) section 3D;
  - (b) section 11;
  - (c) section 12H; and
  - (d) paragraphs 3, 4, 5, 6, 7, 10, 11 and 12 of Schedule 1A.
- (2) The provisions of Part VIII of the *Copyright Act 1991* apply in relation to the Tribunal when exercising any jurisdiction under this Act.
- (3) Provision shall be made by rules under section 145 of that Act prohibiting the Tribunal from entertaining a reference under paragraph 3, 4 or 5 of Schedule 1A 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.<sup>65</sup>

*Right to be identified as performer*<sup>66</sup>**26C 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 which 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 which 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 which 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 which 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 subsection (2)(a), (b) or (c); or
  - (b) in a case falling within subsection (2)(d) 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 26D 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 26E (exceptions to right).<sup>67</sup>

### **26D Requirement that right be asserted**

- (1) A person does not infringe the right conferred by section 26C (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.<sup>68</sup>

### **26E Exceptions to right**

- (1) The right conferred by section 26C (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 26C(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 1 would not infringe any of the rights conferred by sections 3 to 13 —

- (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 (Tynwald and judicial proceedings);
- (e) paragraph 9 (commissions and statutory inquiries).<sup>69</sup>

*Right to object to derogatory treatment*<sup>70</sup>

## **26F 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 26G (exceptions to right).<sup>71</sup>

## **26G Exceptions to right**

- (1) The right conferred by section 26F (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.<sup>72</sup>

### **26H Infringement of right by possessing or dealing with infringing article**

- (1) The right conferred by section 26F (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.<sup>73</sup>

### *Supplementary*<sup>74</sup>

### **26I Duration of rights**

- (1) A performer’s rights under sections 26C to 26H in relation to a performance subsist so long as that performer’s rights under sections 3 to 13 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.<sup>75</sup>

### **26J Consent and waiver of rights**

- (1) It is not an infringement of the rights conferred by sections 26C to 26H 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 sections 26C to 26N 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 those sections.<sup>76</sup>

### **26K Application of provisions to parts of performances**

- (1) The right conferred by section 26C (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 26F (right to object to derogatory treatment of performance) applies in relation to the whole or any part of a performance.<sup>77</sup>

### **26L Moral rights not assignable**

The rights conferred by sections 26C to 26H are not assignable.<sup>78</sup>

### **26M Transmission of moral rights on death**

- (1) On the death of a person entitled to a right conferred by sections 26C to 26H —
  - (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 26F (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 26J 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.<sup>79</sup>

## **26N Remedies for infringement of moral rights**

- (1) An infringement of a right conferred by sections 26C to 26H 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 sections 26C to 26H;
  - (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 sections 26C to 26H, 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 26F 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.<sup>80</sup>

*Qualification for protection and extent***27 Qualifying countries, individuals and persons**

[P1988/48/206]

(1) In this Act —

**“qualifying country”** means —

- (a) the Island,
- (b) the United Kingdom;<sup>81</sup>
- (ba) the Channel Islands or Gibraltar;<sup>82</sup>
- (bb) a country which is a party to the Rome Convention; or<sup>83</sup>
- (c) to the extent that an order under section 28 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 the Island 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 Island, the United Kingdom or any of the Channel Islands, 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.
- (4) The Council of Ministers may by order —
- (a) make provision for the application of this Act to a country by virtue of paragraph (bb) or (c) of the definition of “qualifying country” in subsection (1) to be subject to specified restrictions;
  - (b) amend the definition of “qualifying country” in subsection (1) so as to add a country which is not a party to the Rome Convention;
  - (c) make provision for the application of this Act to a country added under paragraph (b) to be subject to specified restrictions.<sup>84</sup>



- (5) In this section, “the Rome Convention” means the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations done at Rome on 26 October 1961.<sup>85</sup>

## 28 Countries enjoying reciprocal protection

[P1988/48/208]

- (1) The Council of Ministers may by order designate as enjoying reciprocal protection under this Act<sup>86</sup> —
- (a) a Convention country, or
  - (b) a country as to which the Council of Ministers<sup>87</sup> is satisfied that provision has been or will be made under its law giving adequate protection for Manx 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 and which extends to the Island.
- (3) A “**Manx performance**” means a performance —
- (a) given by an individual who is a British citizen or resident in the Island, or
  - (b) taking place in the Island.
- (4) The power conferred by subsection (1)(b) is exercisable in relation to any colony of the United Kingdom, as in relation to a foreign country.<sup>88</sup>

## 29 Extension or restriction of protection

- (1) The Council of Ministers may by order provide that the protection afforded by this Act in relation to performances connected with a country outside the Island shall, to such extent as may be specified in the order, apply in relation to performances, or performances of a class or description so specified, taking place before as well as after the commencement of section 1.<sup>89</sup>
- (2) If the Council of Ministers is satisfied that the law of a country outside the Island provides adequate protection only for certain descriptions of performance, or only for certain infringements of performers’ rights or the rights of persons having recording rights, he may by order limit to a corresponding extent the protection afforded by this Act in relation to performances connected with that country.<sup>90</sup>

## 30 Ships etc

[P1988/48/209(1), 210]

- (1) This Act applies to things done on a Manx ship as it applies to things done in the Island.

- (2) In this section “Manx ship” has the same meaning as in the *Merchant Shipping Registration Act 1991*.
- (3) For the purposes of this Act the territorial waters of the Island shall be treated as part of the Island.

*Circumvention of protection measures etc<sup>91</sup>*

**30A Circumvention of protection measures and rights management information**

- (1) The following provisions of the *Copyright Act 1991* apply, with any necessary modifications, to rights in performances as they apply to copyright –
  - (a) subsections (1) to (4) and (5)(b) of section 163ZA (circumvention of technological measures);
  - (b) subsections (1) to (5), (6)(b) and (7) of section 163ZD (rights and remedies in respect of devices and services) of that Act;
  - (c) section 163ZE (remedy where effective technological measures prevent permitted acts).
  - (d) subsections (1) to (5) and (6)(b) of section 163ZG (rights management information); and
  - (e) any other provision as it has effect for the purposes of the subsections mentioned in paragraphs (a), (b) and (d).
- (2) For the purpose of this section the expression “permitted act” in section 163ZE refers to an act that may be done by virtue of any of the following provisions of Schedule 1 –
  - paragraph 4 (things done for purposes of instruction or examination)
  - paragraph 6 (recording of broadcasts by educational establishments)
  - paragraph 7 (copy of work required to be made as condition of export)
  - paragraph 8 (Tynwald and judicial proceedings)
  - paragraph 9 (Commissions and statutory inquiries)
  - paragraph 10 (public records)
  - paragraph 11 (acts done under statutory authority)
  - paragraph 14 (recordings of folksongs)
  - paragraph 16 (incidental recording for purposes of broadcast)
  - paragraph 17 (recordings for purposes of supervision and control of broadcasts)
  - paragraph 17A (recording for the purposes of time-shifting)
  - paragraph 17B (photographs of broadcasts)
  - paragraph 20 (provision of sub-titled copies of broadcast)

paragraph 21 (recording of broadcast for archival purposes).<sup>92</sup>

### *Supplemental*

#### **30A Power to amend in consequence of changes to international law**

The Council of Ministers may by order amend this Act in consequence of changes to international law in the area of performance rights.<sup>94</sup>

#### **30B 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 12B(3) (assignment of performer's property rights);
  - section 12C(1) (assignment of future performer's property rights);
  - section 12D(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 —
  - (a) section 26D(2)(a) (assertion of performer's moral rights);
  - (b) section 26J(2) (waiver of performer's moral rights).<sup>95 96</sup>

#### **31 Subordinate legislation**

- (1) The provisions of section 176 of the *Copyright Act 1991* (orders etc.) apply with any necessary modifications for the purposes of this Act and subordinate legislation made under this Act as they apply for the purposes of that Act and subordinate legislation made under that Act.
- (2) In this section "subordinate legislation" means any order or regulations made by the Council of Ministers<sup>97</sup> or any Department (except an order under section 36).

#### **32 Expressions having same meaning as in copyright provisions**

[P1988/48/211]

- (1) The following expressions have the same meaning in this Act as in the *Copyright Act 1991* —
  - broadcast,
  - business,
  - [Repealed]<sup>98</sup>
  - country,
  - film,

the EEA,<sup>99</sup>  
 EEA state,<sup>100</sup>  
 literary work,  
 Marrakesh Contracting Party,<sup>101</sup>  
 national of the United Kingdom,<sup>102</sup>  
 published,  
 sound recording, and  
 the Tribunal.

- (2) The provisions of —
- (a) section 5A(2) and (3) (supplementary provisions relating to films), and
- (b) section 6(3) and (4) and section 19(4) (supplementary provisions relating to broadcasting),

of the *Copyright Act 1991* apply for the purposes of this Act, and in relation to an infringement of the rights conferred by this Act, as they apply for the purposes of that Act and in relation to an infringement of copyright.<sup>103</sup>

### 33 Index of defined expressions<sup>104</sup>

[P1988/48/212]

The following Table shows provisions defining or otherwise explaining expressions used in this Act (other than provisions defining or explaining an expression used only in the same section) —

broadcast (and related expressions)	section 32(1) (and Copyright Act 1991 section 6)
business	section 32(1) (and Copyright Act 1991 section 174)
consent of performer (in relation to performer's property rights)	section 12A(2)
country	section 32(1) (and Copyright Act 1991 section 174)
distribution right	section 3B(5)
the EEA and EEA state	section 32(1) (and Copyright Act 1991 section 169A)
exclusive recording contract	section 6(1)
film	section 32(1) (and Copyright Act 1991 section 5A)
group	section 26C(4)
illicit recording	section 18
literary work	section 32(1) (and Copyright Act 1991 section 3(1))
Marrakesh Contracting Party	Section 32(1) (and Copyright Act 1991 section 174)
national of the United Kingdom <sup>105</sup>	Section 32(1) (and Copyright Act 1991 section 174)

performance	section 1(2)
performer's non-property rights	section 13(1)
performer's property rights	section 13(1)
published	section 32(1) (and Copyright Act 1991 section 172)
qualifying country	section 27(1)
qualifying individual	section 27(1) and (2)
qualifying performance	section 2
qualifying person	section 27(1) and (3)
recording (of a performance)	section 1(2)
recording rights (person having)	section 6(2) and (3)
rental right	section 3C(6)
reproduction right	section 3A(4)
rights owner (in relation to performer's property rights)	section 12A(3) and (4)
sound recording	section 32(1) (and Copyright Act 1991 section 5)
the Tribunal	section 32(1) (and Copyright Act 1991 section 142) <sup>106</sup>

### 34 Amendments

- (1) [Amends section 113 of the *Copyright Act 1991*.]
- (2) [Amends section 19 of the *Design Right Act 1991*.]

### 35 Amendments

- (1) The *Copyright Act 1991* is further amended in accordance with Part 1 of Schedule 2.
- (2) Schedule 3 (provisions relating to forfeiture) to the *Customs and Excise Management Act 1986* is amended in accordance with Part 2 of Schedule 2.

### 36 Short title and commencement

This Act may be cited as the *Performers' Protection Act 1996*, and shall come into operation on such day as the Department of Community, Culture and Leisure may by order appoint.<sup>107 108</sup>



## Schedule 1

## RIGHTS IN PERFORMANCES: PERMITTED ACTS

## Section 10

[P1988/48/Sch 2]

*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 this Act; 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 this Act 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<sup>109</sup>*

1A. The rights conferred by this Act 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.<sup>110</sup>

*Criticism, reviews and news reporting*

2. (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 this Act provided that the performance or recording has been made available to the public.<sup>111</sup>

(1A) Fair dealing with a performance or recording for the purpose of reporting current events does not infringe any of the rights conferred by this Act.<sup>112</sup>

(2) Expressions used in this paragraph have the same meaning as in section 30 of the *Copyright Act 1991*.

*Incidental inclusion of performance or recording*

3. (1) The rights conferred by this Act are not infringed by the incidental inclusion of a performance or recording in a sound recording, film, broadcast or cable programme.

(2) Nor are those rights infringed by anything done in relation to copies of, or the playing, showing, broadcasting or inclusion in a cable programme service 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, broadcast or cable programme if it is deliberately included.

(4) Expressions used in this paragraph have the same meaning as in section 31 of the *Copyright Act 1991*.

*Disabled persons: copies of recordings for personal use<sup>113e</sup>*

3A. (1) This paragraph applies if—

- (a) a disabled person has lawful access to a copy of the whole or part of a recording of a performance; and
- (b) the person's disability prevents the person from enjoying the recording to substantially the same degree as a person who does not have that disability.

(2) The making of an accessible copy of the copy of the recording referred to in sub-paragraph (1)(a) does not infringe the rights conferred by this Act if—

- (a) the copy is made by the disabled person or by a person acting on behalf of the disabled person; and
- (b) the copy is made for the disabled person's personal use.

(3) The rights conferred by this Act are infringed by the transfer of an accessible copy of a recording made under this paragraph to any person other than—

- (a) a person by or for whom an accessible copy of the recording may be made under this paragraph; or
- (b) a person who intends to transfer the copy to a person falling within paragraph (a),

except where the transfer is authorised by the rights owner.

(4) An accessible copy of a recording made under this paragraph is to be treated for all purposes as an illicit recording if it is held by a person at a time when the person does not fall within sub-paragraph (3)(a) or (b).

(5) If an accessible copy of a recording made under this paragraph is subsequently dealt with—



- (a) it is to be treated as an illicit recording for the purposes of that dealing; and
- (b) if that dealing infringes any right conferred by this Act, it is to be treated as an illicit recording for all subsequent purposes.<sup>114</sup>

*Making, communicating, making available, distributing or lending of accessible copies by authorised bodies<sup>115</sup>*

3B. (1) If—

- (a) an authorised body has lawful access to the whole or part of a work which has been published or otherwise made available; and
- (b) the body complies with sub-paragraph (2),

the body may, without infringing the rights conferred by this Act, make, communicate, make available, distribute or lend accessible copies of the work on a non-profit basis for the personal use of disabled persons in the Island, the United Kingdom or another Marrakesh Contracting Party.

(2) An authorised body complies with this sub-paragraph if it—

- (a) distributes, communicates, makes available or lends accessible copies only to disabled persons or other authorised bodies;
- (b) takes appropriate steps to discourage the unauthorised reproduction, distribution, communication to the public or making available to the public of accessible copies;
- (c) demonstrates due care in, and maintains records of, its handling of works and accessible copies; and
- (d) publishes and updates, on its website if appropriate, or through other online or offline channels, information on how it complies with the obligations in paragraphs (a), (b) and (c).

(2) For the purposes of sub-paragraph (1) communicate, make available, distribute or lend “**for the personal use of disabled persons**” includes to communicate, make available, distribute or lend to a person acting on behalf of a disabled person.

(3) An authorised body which has made an accessible copy of a recording under this paragraph may communicate, make available, distribute or lend it to another authorised body established in the Island, the United Kingdom or another Marrakesh Contracting Party which is entitled to make accessible copies of the recording under this paragraph for the purposes of enabling that other body to make accessible copies of the recording.

(4) If an accessible copy of a recording made under this paragraph is subsequently dealt with—

- (a) it is to be treated as an illicit recording for the purposes of that dealing; and

- (b) if that dealing infringes any right conferred by this Act, it is to be treated as an illicit recording for all subsequent purposes.

(5) In this paragraph “**dealt with**” means sold or let for hire or offered or exposed for sale or hire.<sup>116</sup>

*Making, communicating, making available, distributing or lending of intermediate copies by authorised bodies<sup>117</sup>*

3C. (1) An authorised body which is entitled to make an accessible copy of a recording of a performance under paragraph 3B may, without infringing the rights conferred by this Act, make a copy of the recording (“**an intermediate copy**”) if this is necessary in order to make the accessible copy.

(2) An authorised body which has made an intermediate copy of a recording under this paragraph may communicate, make available, distribute or lend it on a non-profit basis to another authorised body which is entitled to make accessible copies of the recording under paragraph 3B for the purposes of enabling that other body to make accessible copies of the recording.

(3) The rights conferred by this Act are infringed by the transfer of an intermediate copy made under this paragraph to a person other than another authorised body as permitted by sub-paragraph (2), except where the transfer is authorised by the rights owner.<sup>118</sup>

*Accessible and intermediate copies: records<sup>119</sup>*

- 3D. (1) A person listed in sub-paragraph (3) may request an authorised body—
- (a) making accessible copies under paragraph 3B; or
  - (b) making intermediate copies under paragraph 3C,

to provide the person with the information in sub-paragraph (4).

(2) On receipt of a request under sub-paragraph (1), an authorised body must provide the information to the person in an accessible way within a reasonable time.

(3) The persons who may make a request under sub-paragraph (1) are—

- (a) disabled persons;
- (b) other authorised bodies;
- (c) rightholders.

(4) The information that must be provided by the authorised body is—

- (a) the list of works for which it has accessible copies and the available format; and
- (b) the name and contact details of any authorised body established in the Island, the United Kingdom or another Marrakesh Contracting

Party, from which, or to which, it has imported, exported or accessed an accessible copy.<sup>120</sup>

*Remedy where effective technological measures prevent permitted acts<sup>121</sup>*

3E. Subsections (1) to (11) of section 163ZE of the *Copyright Act 1991* apply with any necessary adaptations to rights in performances, and in this context the expression “**permitted act**” refers to an act that may be done by virtue of a provision listed in Schedule 1.<sup>122</sup>

*Paragraphs 3A to 3E: interpretation and general<sup>123</sup>*

3F. (1) This paragraph supplements paragraphs 3A to 3E and includes definitions.

(2) “**Disabled person**” means a person who has a physical or mental impairment which prevents the person from enjoying a recording of a performance to substantially the same degree as a person who does not have that impairment, and “**disability**” is to be construed accordingly.

(3) But a person is not to be regarded as disabled by reason only of an impairment of visual function which can be improved, for example by the use of corrective lenses, to a level that is normally acceptable for reading without a special level or kind of light.

(4) An “**accessible copy**” of a recording of a performance means a version of the recording which enables disabled persons to access that version, including accessing it as feasibly and comfortably as a person who is not a disabled person.

(5) An accessible copy —

- (a) may include facilities for navigating around the version of the recording; but
- (b) must not include any changes to the recording which are not necessary to overcome the problems suffered by the disabled persons for whom the accessible copy is intended.

(6) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of paragraph 3A, 3B or 3C, would not infringe any right conferred by this Act, that term is unenforceable.

(7) “**Authorised body**” has the meaning given in section 31F of the *Copyright Act 1991*, and other expressions used in paragraphs 3A to 3E but not defined in this paragraph have the same meaning as in sections 31A to 31D of the *Copyright Act 1991*.<sup>124</sup>

*Things done for purposes of instruction or examination*

4. (1) The rights conferred by this Act 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.<sup>125</sup>

- (2) The rights conferred by this Act 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 this Act 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 this Act.<sup>126</sup>

(4) Expressions used in this paragraph have the same meaning as in section 32 of the *Copyright Act 1991*.

*Playing or showing sound recording, film, broadcast or cable programme at educational establishment*

5. (1) The playing or showing of a sound recording, film, broadcast or cable programme 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 this Act.

(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 of the *Copyright Act 1991* and any provision made under section 171(2) of that Act with respect to the application of that section also applies for the purposes of this paragraph.

*Recording of broadcasts by educational establishments<sup>127</sup>*

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 this Act in relation to any performance or recording included in it, provided that it is accompanied

by a sufficient acknowledgement of the broadcast and that the educational purposes are non-commercial.<sup>128</sup>

(1A) The rights conferred by this Act 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.<sup>129</sup>

(2) 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 this Act 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.<sup>130</sup>

(3) Expressions used in this paragraph have the same meaning as in section 35 of the *Copyright Act 1991* and any provision made under section 171(2) of that Act with respect to the application of that section also applies 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 Island 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 this Act to make that copy.

(2) Expressions used in this paragraph have the same meaning as in section 44 of the *Copyright Act 1991*.

#### *Tynwald and judicial proceedings*

8. (1) The rights conferred by this Act are not infringed by anything done for the purposes of Tynwald proceedings 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 of the *Copyright Act 1991*.

#### *Commissions and statutory inquiries*

9. (1) The rights conferred by this Act are not infringed by anything done for the purposes of the proceedings of a commission or committee appointed by the Governor or a 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 of the *Copyright Act 1991*.

*Public records*

10. Material which is comprised in records which are open to public inspection at the Principal Registry, the General Registry, the Diocesan Registry or the Manx Museum may be copied, and a copy may be supplied to any person, by or with the authority of the Registrar General, the Chief Registrar, the Diocesan Registrar or the Director of the Manx Museum, as the case may be, without infringing any right conferred by this Act.<sup>131</sup>

*Acts done under statutory authority*

11. (1) Where the doing of a particular act is specifically authorised by a statutory provision, whenever made, then, unless it provides otherwise, the doing of that act does not infringe the rights conferred by this Act.

(2) Nothing in this paragraph shall be construed as excluding any defence of statutory authority otherwise available under or by virtue of any enactment.

*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 Act, 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 section 1.

(6) Expressions used in this paragraph have the same meaning as in section 56 of the *Copyright Act 1991*.

*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,<sup>132</sup>

it is not an infringement of the rights conferred by this Act to use the recording (or to copy the recording and use the copy) for that purpose, provided the following conditions are 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,<sup>133</sup>
- (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 of the *Copyright Act 1991*.

*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 this Act, 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 this Act.

(4) In this paragraph —

“designated body” means a body designated for the purposes of section 61 of the *Copyright Act 1991*, 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.

*Playing of sound recordings for purposes of club, society, etc*

15. (1) It is not an infringement of any right conferred by this Act 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) 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,<sup>134</sup>
- (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<sup>135</sup>
- (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.<sup>136</sup>

(3) Expressions used in this paragraph have the same meaning as in section 67 of the *Copyright Act 1991*.

*Incidental recording for purposes of broadcast*<sup>137</sup>

16. (1) A person who proposes to broadcast a recording of a performance in circumstances not infringing the rights conferred by this Act shall be treated as having consent for the purposes of that Act for the making of a further recording for the purposes of the broadcast.<sup>138</sup>

(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.<sup>139</sup>

(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 of the *Copyright Act 1991*.

*Recordings for purposes of supervision and control of broadcasts and cable programmes*

17. (1) The rights conferred by this Act 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.

(2) The rights conferred by this Act are not infringed by anything done in pursuance of —

- (a) section 11(1) or 95(1) of the Broadcasting Act 1990 (an Act of Parliament) or section 115(4) or (6), 116(5) or 117 of the Broadcasting Act 1996 (an Act of Parliament), as they have effect in the Island;
  - (b) a condition which, by virtue of section 11(2) or 95(2) of the said Act of 1990, is included in a licence granted under Part I or III of that Act or Part I or II of the said Act of 1996; or
  - (c) a direction given under section 109(2) of the said Act of 1990 (power to require production of recordings etc.).<sup>140</sup>
- (3) The rights conferred by this Act are not infringed by —
- (a) the use by the Independent Television Commission or the Radio Authority, in connection with the performance of any of their functions under the said Act of 1990 or the said Act of 1996, of any recording, script or transcript which is provided to them under or by virtue of any provision of those Acts;
  - (b) the use by the Broadcasting Standards Commission, in connection with any complaint made to them under the said Act of 1996 of any recording or transcript which is provided to them in accordance with section 115(4) or (6) or 116(5) of that Act; or
  - (c) the making or use of recordings by the Communications Commission for the purpose of maintaining supervision over the programmes included in licensed services within the meaning of Part 1 of the *Broadcasting Act 1993*, or by the licence holder in pursuance of a condition included in a licence under that Part for that purpose.<sup>141</sup>

*Recording for purposes of time-shifting<sup>142</sup>*

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 this Act in relation to a performance or recording included in the broadcast.

(2) The making by or on behalf of an educational establishment of a recording of a broadcast solely for the purpose of enabling it to be viewed or listened to at a more convenient time for the educational purposes of that establishment does not infringe any right conferred by this Act in relation to a performance or recording included in the broadcast, provided that it is accompanied by a sufficient acknowledgement of the broadcast and that the educational purposes are non-commercial.

(3) 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 this Act, it shall be treated as an illicit recording for all subsequent purposes.

(4) In sub-paragraph (3), “dealt with” means sold or let for hire, offered or exposed for sale or hire or communicated to the public.

(5) Expressions used in this paragraph have the same meanings as in section 70 of the *Copyright Act 1991*.<sup>143</sup>

#### *Photographs of broadcasts*<sup>144</sup>

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 this Act 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 this Act, 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 meanings as in section 71 of the *Copyright Act 1991*.<sup>145</sup>

#### *Free public showing or playing of broadcast*<sup>146</sup>

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 this Act 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.<sup>147</sup>

(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 this Act 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 is necessary for the purposes of —

- (a) repairing equipment for the reception of broadcasts;
- (b) demonstrating that a repair to such equipment has been carried out; or
- (c) demonstrating such equipment which is being sold or let for hire or offered or exposed for sale or hire.<sup>148</sup>

(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.<sup>149</sup>

(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.<sup>150</sup>

(4) Where the making of the broadcast was an infringement of the rights conferred by this Act 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.<sup>151</sup>

(5) Expressions used in this paragraph have the same meaning as in section 72 of the *Copyright Act 1991*.

*Reception and re-transmission of wireless broadcast by cable*<sup>152</sup>

19. (1) This paragraph applies where a wireless broadcast made from a place in the Island is received and immediately re-transmitted by cable.<sup>153</sup>

(2) The rights conferred by this Act 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.<sup>154</sup>

(3) Expressions used in this paragraph have the same meaning as in section 73 of the *Copyright Act 1991*.

*Provision of sub-titled copies of broadcast*<sup>155</sup>

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 copies to the public, without infringing any right conferred by this Act in relation to a performance or recording included in the broadcast.<sup>156</sup>

(2) In this paragraph “designated body” means a body designated for the purposes of section 74 of the *Copyright Act 1991* and other expressions used in this paragraph have the same meaning as in that section.

*Recording of broadcast for archival purposes*<sup>157</sup>

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 this Act in relation to a performance or recording included in the broadcast.<sup>158</sup>

(2) In this paragraph “designated class” and “designated body” means a class or body designated for the purposes of section 75 of the *Copyright Act 1991* and other expressions used in this paragraph have the same meaning as in that section.

**SCHEDULE 1A**<sup>159</sup>

## Sections 26A and 26B

**LICENSING OF PERFORMERS' RIGHTS**<sup>160</sup>*Licensing schemes and licensing bodies*

1. (1) In this Act 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 this Act 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 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 3A, 3B, 3C or 3D.

(4) References in this Act 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 purpose a group of companies means a holding company and its subsidiaries within the meaning of section 1 of the *Companies Act 1974*.

*Power to provide for licensing of orphan rights<sup>161</sup>*

1A. (1) The Department may by regulations provide for the grant of licences to do, or authorise the doing of, acts to which section 3, 3A, 3B, 3C, 3D, 4 or 5 applies in respect of a performance, where —

- (a) the performer's consent would otherwise be required under that section; but
  - (b) the right to authorise or prohibit the act qualifies as an orphan right under the regulations.
- (2) The regulations may —
- (a) authorise a person or a description of persons specified, or determined in accordance with, the regulations to grant licences; or
  - (b) provide for a person designated, or determined in accordance with, the regulations to specify a person or a description of persons authorised to grant licences.

(3) The regulations must provide that, for a right to qualify as an orphan right, it is a requirement that the owner of the right has not been found after a diligent search made in accordance with the regulations.

- (4) The regulations must provide for any licence —
- (a) to have effect as if granted by the missing owner;
  - (b) not to give exclusive rights;
  - (c) not to be granted to a person authorised to grant licences.

(5) The regulations may apply in a case where it is not known whether a performer's right subsists, and references to a right, to a missing owner and to an interest of a missing owner are to be read as including references to a supposed right, owner or interest.<sup>162</sup>

*Extended collective licensing*<sup>163</sup>

1B. (1) The Department may by regulations provide for a licensing body specified in or determined in accordance with the regulations to be authorised to grant licences to do, or authorise the doing of, acts to which section 3, 3A, 3B, 3C, 3D, 4 or 5 applies in respect of a performance, where the right to authorise or prohibit the act is not owned by the body or a person on whose behalf the body acts.

(2) An authorisation must specify the acts to which any of those sections applies that the licensing body is authorised to license.

(3) The regulations must provide for the rights owner to have a right to limit or exclude the grant of licences by virtue of the regulations.

(4) The regulations must provide for any licence not to give exclusive rights.<sup>164</sup>

*General provision about licensing*<sup>165</sup>

1C. (1) This paragraph and paragraph 1D apply to regulations under paragraphs 1A and 1B.

(2) The regulations may provide for a body to be or remain authorised to grant licences only if specified requirements are met, and for a question whether they are met to be determined by a person, and in a manner, specified in the regulations.

(3) The regulations may specify other matters to be taken into account in any decision to be made under the regulations as to whether to authorise a person to grant licences.

(4) The regulations must provide for the treatment of any royalties or other sums paid in respect of a licence, including —

- (a) the deduction of administrative costs;
- (b) the period for which sums must be held;
- (c) the treatment of sums after that period (as bona vacantia or otherwise).

(5) The regulations must provide for circumstances in which an authorisation to grant licences may be withdrawn, and for determining the rights and obligations of any person if an authorisation is withdrawn.

(6) The regulations may include other provision for the purposes of authorisation and licensing, including in particular provision —

- (a) for determining the rights and obligations of any person if a right ceases to qualify as an orphan right (or ceases to qualify by reference to any rights owner), or if a rights owner exercises the right referred to in paragraph 1B(3), while a licence is in force;
- (b) about maintenance of registers and access to them;
- (c) permitting the use of a work for incidental purposes including an application or search;
- (d) for a right conferred by section 26C to be treated as having been asserted under section 26D;
- (e) for the payment of fees to cover administrative expenses.<sup>166</sup>

1D. (1) The power to make regulations includes power —

- (a) to make incidental, supplementary or consequential provision, including provision extending or restricting the jurisdiction of the Tribunal or conferring powers on it;
- (b) to make transitional, transitory or saving provision;
- (c) to make different provision for different purposes.

(2) Regulations under any provision may amend this Act, or any statutory provision made before that provision comes into operation, for the purpose of making consequential provision or extending or restricting the jurisdiction of the Tribunal or conferring powers on it.

(3) Regulations may make provision by reference to guidance issued from time to time by any person.<sup>167</sup>

*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,
- (b) renting copies of a recording to the public, or
- (c) making such a recording available to the public in the way mentioned in section 3D(1),

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 be referred to the 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 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 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 12 months from the date of the order on the previous reference, or
- (b) if the order has made so as to be in force for 15 months or less, until the last 3 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 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 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 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 12 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 3 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 Tribunal under paragraph 3, 4 or 5 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) 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 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,
- (b) renting copies of a recording to the public, or
- (c) making such a recording available to the public in the way mentioned in section 3D(1),

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 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 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 3 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 paragraph 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 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 12 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 3 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 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 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.

**Schedule 2**

**FURTHER AMENDMENTS**

Section 35

**PART 1 – MINOR AMENDMENTS OF THE COPYRIGHT ACT  
1991**

*Enforcement*

1. [Section 106A inserted]

**PART 2 – AMENDMENTS OF SCHEDULE 3 TO THE CUSTOMS  
AND EXCISE MANAGEMENT ACT 1986**

## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement

### Table of Renumbered Provisions

Original	Current

### Table of Endnote References

- 
- <sup>1</sup> Subs (1A) inserted by Copyright etc (Amendment) Act 2014 s 18.
- <sup>2</sup> S 3 substituted by SD75/13.
- <sup>3</sup> S 3A inserted by SD75/13.
- <sup>4</sup> Para (a) amended by SD2019/0120 with effect from 31/12/2020 at 23:00.
- <sup>5</sup> Para (b) amended by SD2019/0120 with effect from 31/12/2020 at 23:00.
- <sup>6</sup> Para (b) amended by SD2019/0120 with effect from 31/12/2020 at 23:00.
- <sup>7</sup> Subs (3) amended by SD2019/0120 with effect from 31/12/2020 at 23:00.
- <sup>8</sup> Subs (3A) inserted by SD2019/0120 with effect from 31/12/2020 at 23:00.
- <sup>9</sup> Subs (6) inserted by SD2019/0120 with effect from 31/12/2020 at 23:00.
- <sup>10</sup> S 3B inserted by SD75/13.
- <sup>11</sup> S 3C inserted by SD75/13.
- <sup>12</sup> S 3D inserted by SD75/13.
- <sup>13</sup> Subs (1A) inserted by SD2020/0434.
- <sup>14</sup> S 3E inserted by SD75/13.
- <sup>15</sup> Subs (1) amended by SD75/13.
- <sup>16</sup> Subs (1A) inserted by SD2020/0434.
- <sup>17</sup> S 10A inserted by Copyright (Amendment) Act 1999 s 2.
- <sup>18</sup> Subs (1) substituted by SD75/13.
- <sup>19</sup> Subs (2) amended by SD75/13.
- <sup>20</sup> Subs (3) amended by Copyright etc (Amendment) Act 2014 s 7.
- <sup>21</sup> Subs (4) repealed by SD75/13.

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- <sup>22</sup> Subs (6) amended by SD75/13.
- <sup>23</sup> Cross-heading substituted by SD75/13.
- <sup>24</sup> Subs (4) amended by SD2019/0120 with effect from 31/12/2020 at 23:00.
- <sup>25</sup> S 12 substituted by SD75/13.
- <sup>26</sup> S 12A inserted by SD75/13.
- <sup>27</sup> S 12B inserted by SD75/13.
- <sup>28</sup> S 12C inserted by SD75/13.
- <sup>29</sup> S 12D inserted by SD75/13.
- <sup>30</sup> S 12E inserted by SD75/13.
- <sup>31</sup> S 12F inserted by SD75/13.
- <sup>32</sup> S 12G inserted by SD75/13.
- <sup>33</sup> S 12H inserted by SD75/13.
- <sup>34</sup> S 12I inserted by SD75/13.
- <sup>35</sup> S 12J inserted by SD75/13.
- <sup>36</sup> S 12K inserted by SD75/13.
- <sup>37</sup> S 12L inserted by SD75/13.
- <sup>38</sup> S 13 substituted by SD75/13.
- <sup>39</sup> S 13A inserted by SD75/13.
- <sup>40</sup> Subs (1) amended by SD75/13.
- <sup>41</sup> Subs (3) amended by SD75/13.
- <sup>42</sup> Cross-heading amended by SD75/13.
- <sup>43</sup> Subs (1) amended by SD75/13.
- <sup>44</sup> Subs (2) inserted by SD75/13.
- <sup>45</sup> Subs (3) inserted by SD75/13.
- <sup>46</sup> Cross-heading inserted by SD75/13.
- <sup>47</sup> Definition of “prescribed” amended by SD321/96, by SD155/10 Sch 1, by SD2014/07 and by SD2017/0325.
- <sup>48</sup> Subs (5) amended by SD75/13.
- <sup>49</sup> S 18A inserted by SD75/13.
- <sup>50</sup> Subs (1A) inserted by SD75/13.
- <sup>51</sup> Para (a) amended by Copyright etc (Amendment) Act 2014 s 16 and by Interpretation Act 2015 s 55.
- <sup>52</sup> Para (b) amended by Copyright etc (Amendment) Act 2014 s 16.
- <sup>53</sup> Para (a) amended by Copyright etc (Amendment) Act 2014 s 16 and by Interpretation Act 2015 s 55.
- <sup>54</sup> Subs (5A) inserted by SD75/13.
- <sup>55</sup> Subs (1) amended by SD579/98.
- <sup>56</sup> Subs (2) amended by SD579/98.
- <sup>57</sup> S 20 commences 1/1/2013 by SD691/12
- <sup>58</sup> Para (a) amended by SD75/13.
- <sup>59</sup> Subs (4) inserted by SD75/13.
- <sup>60</sup> Para (ba) inserted by SD2019/0359.
- <sup>61</sup> S 26ZA inserted by Copyright etc (Amendment) Act 2014 s 17.





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- <sup>62</sup> Heading amended by Copyright etc (Amendment) Act 2014 s 19.
- <sup>63</sup> S 26A inserted by SD75/13 and amended by Copyright etc (Amendment) Act 2014 s 19.
- <sup>64</sup> Cross-heading inserted by SD75/13.
- <sup>65</sup> S 26B inserted by SD75/13.
- <sup>66</sup> Heading inserted by Copyright etc (Amendment) Act 2014 s 18.
- <sup>67</sup> S 26C inserted by Copyright etc (Amendment) Act 2014 s 18, not applicable to performances before 01/05/2015.
- <sup>68</sup> S 26D inserted by Copyright etc (Amendment) Act 2014 s 18, not applicable to performances before 01/05/2015.
- <sup>69</sup> S 26E inserted by Copyright etc (Amendment) Act 2014 s 18, not applicable to performances before 01/05/2015.
- <sup>70</sup> Heading inserted by Copyright etc (Amendment) Act 2014 s 18.
- <sup>71</sup> S 26F inserted by Copyright etc (Amendment) Act 2014 s 18, not applicable to performances before 01/05/2015.
- <sup>72</sup> S 26G inserted by Copyright etc (Amendment) Act 2014 s 18, not applicable to performances before 01/05/2015.
- <sup>73</sup> S 26H inserted by Copyright etc (Amendment) Act 2014 s 18, not applicable to performances before 01/05/2015.
- <sup>74</sup> Heading inserted by Copyright etc (Amendment) Act 2014 s 18.
- <sup>75</sup> S 26I inserted by Copyright etc (Amendment) Act 2014 s 18.
- <sup>76</sup> S 26J inserted by Copyright etc (Amendment) Act 2014 s 18.
- <sup>77</sup> S 26K inserted by Copyright etc (Amendment) Act 2014 s 18.
- <sup>78</sup> S 26L inserted by Copyright etc (Amendment) Act 2014 s 18.
- <sup>79</sup> S 26M inserted by Copyright etc (Amendment) Act 2014 s 18.
- <sup>80</sup> S 26N inserted by Copyright etc (Amendment) Act 2014 s 18.
- <sup>81</sup> Para (b) substituted by SD2019/0120 with effect from 31/12/2020 at 23:00.
- <sup>82</sup> Para (ba) inserted by Copyright etc (Amendment) Act 2014 s 20.
- <sup>83</sup> Para (bb) inserted by Copyright etc (Amendment) Act 2014 s 20.
- <sup>84</sup> Subs (4) inserted by Copyright etc (Amendment) Act 2014 s 20.
- <sup>85</sup> Subs (5) inserted by Copyright etc (Amendment) Act 2014 s 20.
- <sup>86</sup> Opening words of subs (1) amended by SD861/11.
- <sup>87</sup> Para (b) amended by SD861/11.
- <sup>88</sup> Subs (4) amended by Copyright etc (Amendment) Act 2014 s 20.
- <sup>89</sup> Subs (1) amended by SD861/11.
- <sup>90</sup> Subs (2) amended by SD861/11.
- <sup>91</sup> Cross-heading inserted by SD75/13.
- <sup>92</sup> S 30A [Circumvention of protection measures and rights management information ] inserted by SD75/13.
- <sup>93</sup> S 30A [Power to amend in consequence of changes to international law] inserted by Copyright etc (Amendment) Act 2014 s 20.
- <sup>94</sup> S 30A [Power to amend in consequence of changes to international law] inserted by Copyright etc (Amendment) Act 2014 s 20.

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- <sup>95</sup> Subs (2) inserted by Copyright etc (Amendment) Act 2014 s 18.
- <sup>96</sup> S 30B inserted by SD75/13.
- <sup>97</sup> Subs (2) amended by SD861/11.
- <sup>98</sup> Expressions “cable programme” and “cable programme service” repealed by SD75/13.
- <sup>99</sup> Expression “the EEA” inserted by SD75/13.
- <sup>100</sup> Expression “EEA state” inserted by SD75/13.
- <sup>101</sup> Entry inserted by SD2020/0434.
- <sup>102</sup> Entry inserted by SD2019/0120 with effect from 31/12/2020 at 23:00.
- <sup>103</sup> Subs (2) amended by SD75/13.
- <sup>104</sup> Table amended by Copyright etc (Amendment) Act 2014 s 18.
- <sup>105</sup> Entry inserted by SD2019/0120 with effect from 31/12/2020 at 23:00.
- <sup>106</sup> S 33 amended by SD75/13.
- <sup>107</sup> S 36 amended by SD155/10 Sch 1.
- <sup>108</sup> ADO (whole Act except s 20 and para 1 of Sch 2) 1/7/1996 (SD354/96): remainder 1/1/13 (SD 691/12)).
- <sup>109</sup> Cross-heading inserted by SD75/13.
- <sup>110</sup> Para 1A inserted by SD75/13.
- <sup>111</sup> Subpara (1) substituted by SD75/13.
- <sup>112</sup> Subpara (1A) inserted by SD75/13.
- <sup>113</sup> Cross-heading inserted by SD2020/0434.
- <sup>114</sup> Para 3A inserted by SD2020/0434.
- <sup>115</sup> Cross-heading inserted by SD2020/0434.
- <sup>116</sup> Para 3B inserted by SD2020/0434.
- <sup>117</sup> Cross-heading inserted by SD2020/0434.
- <sup>118</sup> Para 3C inserted by SD2020/0434.
- <sup>119</sup> Cross-heading inserted by SD2020/0434.
- <sup>120</sup> Para 3D inserted by SD2020/0434.
- <sup>121</sup> Cross-heading inserted by SD2020/0434.
- <sup>122</sup> Para 3E inserted by SD2020/0434.
- <sup>123</sup> Cross-heading inserted by SD2020/0434.
- <sup>124</sup> Para 3F inserted by SD2020/0434.
- <sup>125</sup> Subpara (1) amended by SD75/13.
- <sup>126</sup> Subpara (3) amended by SD75/13.
- <sup>127</sup> Cross-heading amended by SD75/13.
- <sup>128</sup> Subpara (1) amended by SD75/13.
- <sup>129</sup> Subpara (1A) inserted by SD75/13.
- <sup>130</sup> Subpara (2) amended by SD75/13.
- <sup>131</sup> Para 10 amended by Central Registry Act 2018 Sch.
- <sup>132</sup> Subpara (b) amended by SD75/13.
- <sup>133</sup> Subpara (a) amended by SD75/13.
- <sup>134</sup> Subpara (b) substituted by SD75/13.
- <sup>135</sup> Subpara (c) inserted by SD75/13.



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- <sup>136</sup> Subpara (d) inserted by SD75/13.
- <sup>137</sup> Cross-heading amended by SD75/13.
- <sup>138</sup> Subpara (1) amended by SD75/13.
- <sup>139</sup> Subpara (b) amended by SD75/13.
- <sup>140</sup> Subpara (2) substituted by Statute Law Revision Act 1997 Sch 1.
- <sup>141</sup> Subpara (3) substituted by Statute Law Revision Act 1997 Sch 1.
- <sup>142</sup> Cross-heading inserted by SD75/13.
- <sup>143</sup> Para 17A inserted by SD75/13.
- <sup>144</sup> Cross-heading inserted by SD75/13.
- <sup>145</sup> Para 17B inserted by SD75/13.
- <sup>146</sup> Cross-heading amended by SD75/13.
- <sup>147</sup> Subpara (1) amended by SD75/13.
- <sup>148</sup> Subpara (1A) inserted by SD75/13.
- <sup>149</sup> Item (i) amended by SD75/13.
- <sup>150</sup> Subpara (b) amended by SD75/13.
- <sup>151</sup> Subpara (4) amended by SD75/13.
- <sup>152</sup> Cross-heading amended by SD75/13.
- <sup>153</sup> Subpara (1) amended by SD75/13.
- <sup>154</sup> Subpara (2) amended by SD75/13.
- <sup>155</sup> Cross-heading amended by SD75/13.
- <sup>156</sup> Subpara (2) amended by SD75/13.
- <sup>157</sup> Cross-heading amended by SD75/13.
- <sup>158</sup> Subpara (1) amended by SD75/13.
- <sup>159</sup> Sch 1A inserted by SD75/13.
- <sup>160</sup> Heading amended by Copyright etc (Amendment) Act 2014 s 19.
- <sup>161</sup> Heading inserted by Copyright etc (Amendment) Act 2014 s 19.
- <sup>162</sup> Para 1A inserted by Copyright etc (Amendment) Act 2014 s 19.
- <sup>163</sup> Heading inserted by Copyright etc (Amendment) Act 2014 s 19.
- <sup>164</sup> Para 1B inserted by Copyright etc (Amendment) Act 2014 s 19.
- <sup>165</sup> Heading inserted by Copyright etc (Amendment) Act 2014 s 19.
- <sup>166</sup> Para 1C inserted by Copyright etc (Amendment) Act 2014 s 19.
- <sup>167</sup> Para 1D inserted by Copyright etc (Amendment) Act 2014 s 19.