

2006 No. 18

COPYRIGHT

RIGHTS IN PERFORMANCES

The Performances (Moral Rights, etc.) Regulations 2006

<i>Made</i>	- - - -	<i>9th January 2006</i>
<i>Laid before Parliament</i>		<i>11th January 2006</i>
<i>Coming into force</i>	- -	<i>1st February 2006</i>

The Secretary of State, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972^(a), in relation to measures relating to copyright and to rights in performances^(b), in exercise of the powers conferred on him by that section, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Performances (Moral Rights, etc.) Regulations 2006 and shall come into force on 1st February 2006.

Minor and consequential amendments

2. The Schedule (minor and consequential amendments) shall have effect.

Introductory

3. The Copyright, Designs and Patents Act 1988^(c) shall be amended as follows.

Division into Chapters of Part 2 of the Copyright, Designs and Patents Act 1988

4.—(1) The cross-heading before section 180 shall be omitted.

(2) Sections 180 and 181 shall become Chapter 1 of Part 2, entitled “INTRODUCTORY”, and accordingly that heading shall be inserted in the appropriate place.

(3) The cross-heading before section 181 shall be omitted.

(4) Sections 182 to 205B shall become Chapter 2 of Part 2, entitled “ECONOMIC RIGHTS”, and accordingly that heading shall be inserted in the appropriate place.

(5) At the beginning of that Chapter there shall be inserted the cross-heading “*Performers’ rights*”.

(a) 1972 c. 68.
(b) SI 1993/595.
(c) 1988 c. 48.

(6) Sections 205C to 205N (inserted by regulation 6) shall become Chapter 3 of Part 2, entitled “MORAL RIGHTS”, and accordingly that heading shall be inserted in the appropriate place.

(7) Sections 206 to 212 shall become Chapter 4 of Part 2, entitled “QUALIFICATION FOR PROTECTION, EXTENT AND INTERPRETATION”, and accordingly that heading shall be inserted in the appropriate place.

Performers’ moral rights

5.—(1) In subsection (1) of section 180 (rights conferred on performers and persons having recording rights), for the words “This Part” there shall be substituted “Chapter 2 of this Part (economic rights)”.

(2) After that subsection, there shall be inserted—

“(1A) Rights are also conferred on a performer by the following provisions of Chapter 3 of this Part (moral rights)—

- (a) section 205C (right to be identified);
- (b) section 205F (right to object to derogatory treatment of performance).”.

6. After section 205B there shall be inserted—

“Right to be identified as performer

205C Right to be identified as performer

(1) Whenever a person—

- (a) produces or puts on a qualifying performance that is given in public,
- (b) broadcasts live a qualifying performance,
- (c) communicates to the public a sound recording of a qualifying performance, or
- (d) issues to the public copies of such a recording,

the performer has the right to be identified as such.

(2) The right of the performer under this section is—

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

or (in any of the above cases) to be identified in such other manner as may be agreed between the performer and the person mentioned in subsection (1).

(3) The right conferred by this section in relation to a performance given by a group (or so much of a performance as is given by a group) is not infringed—

- (a) in a case falling within paragraph (a), (b) or (c) of subsection (2), or
- (b) in a case falling within paragraph (d) of that subsection in which it is not reasonably practicable for each member of the group to be identified,

if the group itself is identified as specified in subsection (2).

(4) In this section “group” means two or more performers who have a particular name by which they may be identified collectively.

(5) If the assertion under section 205D specifies a pseudonym, initials or some other particular form of identification, that form shall be used; otherwise any reasonable form of identification may be used.

(6) This section has effect subject to section 205E (exceptions to right).

205D Requirement that right be asserted

(1) A person does not infringe the right conferred by section 205C (right to be identified as performer) by doing any of the acts mentioned in that section unless the right has been asserted in accordance with the following provisions so as to bind him in relation to that act.

(2) The right may be asserted generally, or in relation to any specified act or description of acts—

- (a) by instrument in writing signed by or on behalf of the performer, or
- (b) on an assignment of a performer's property rights, by including in the instrument effecting the assignment a statement that the performer asserts in relation to the performance his right to be identified.

(3) The persons bound by an assertion of the right under subsection (2) are—

- (a) in the case of an assertion under subsection (2)(a), anyone to whose notice the assertion is brought;
- (b) in the case of an assertion under subsection (2)(b), the assignee and anyone claiming through him, whether or not he has notice of the assertion.

(4) In an action for infringement of the right the court shall, in considering remedies, take into account any delay in asserting the right.

205E Exceptions to right

(1) The right conferred by section 205C (right to be identified as performer) is subject to the following exceptions.

(2) The right does not apply where it is not reasonably practicable to identify the performer (or, where identification of a group is permitted by virtue of section 205C(3), the group).

(3) The right does not apply in relation to any performance given for the purposes of reporting current events.

(4) The right does not apply in relation to any performance given for the purposes of advertising any goods or services.

(5) The right is not infringed by an act which by virtue of any of the following provisions of Schedule 2 would not infringe any of the rights conferred by Chapter 2—

- (a) paragraph 2(1A) (news reporting);
- (b) paragraph 3 (incidental inclusion of a performance or recording);
- (c) paragraph 4(2) (things done for the purposes of examination);
- (d) paragraph 8 (parliamentary and judicial proceedings);
- (e) paragraph 9 (Royal Commissions and statutory inquiries).

Right to object to derogatory treatment

205F Right to object to derogatory treatment of performance

(1) The performer of a qualifying performance has a right which is infringed if—

- (a) the performance is broadcast live, or
- (b) by means of a sound recording the performance is played in public or communicated to the public,

with any distortion, mutilation or other modification that is prejudicial to the reputation of the performer.

(2) This section has effect subject to section 205G (exceptions to right).

205G Exceptions to right

(1) The right conferred by section 205F (right to object to derogatory treatment of performance) is subject to the following exceptions.

(2) The right does not apply in relation to any performance given for the purposes of reporting current events.

(3) The right is not infringed by modifications made to a performance which are consistent with normal editorial or production practice.

(4) Subject to subsection (5), the right is not infringed by anything done for the purpose of—

- (a) avoiding the commission of an offence,
- (b) complying with a duty imposed by or under an enactment, or
- (c) in the case of the British Broadcasting Corporation, avoiding the inclusion in a programme broadcast by them of anything which offends against good taste or decency or which is likely to encourage or incite crime or lead to disorder or to be offensive to public feeling.

(5) Where—

- (a) the performer is identified in a manner likely to bring his identity to the notice of a person seeing or hearing the performance as modified by the act in question; or
- (b) he has previously been identified in or on copies of a sound recording issued to the public,

subsection (4) applies only if there is sufficient disclaimer.

(6) In subsection (5) “sufficient disclaimer”, in relation to an act capable of infringing the right, means a clear and reasonably prominent indication—

- (a) given in a manner likely to bring it to the notice of a person seeing or hearing the performance as modified by the act in question, and
- (b) if the performer is identified at the time of the act, appearing along with the identification,

that the modifications were made without the performer’s consent.

205H Infringement of right by possessing or dealing with infringing article

(1) The right conferred by section 205F (right to object to derogatory treatment of performance) is also infringed by a person who—

- (a) possesses in the course of business, or
- (b) sells or lets for hire, or offers or exposes for sale or hire, or
- (c) distributes,

an article which is, and which he knows or has reason to believe is, an infringing article.

(2) An “infringing article” means a sound recording of a qualifying performance with any distortion, mutilation or other modification that is prejudicial to the reputation of the performer.

Supplementary

205I Duration of rights

(1) A performer’s rights under this Chapter in relation to a performance subsist so long as that performer’s rights under Chapter 2 subsist in relation to the performance.

(2) In subsection (1) “performer’s rights” includes rights of a performer that are vested in a successor of his.

205J Consent and waiver of rights

(1) It is not an infringement of the rights conferred by this Chapter to do any act to which consent has been given by or on behalf of the person entitled to the right.

(2) Any of those rights may be waived by instrument in writing signed by or on behalf of the person giving up the right.

(3) A waiver—

- (a) may relate to a specific performance, to performances of a specified description or to performances generally, and may relate to existing or future performances, and
- (b) may be conditional or unconditional and may be expressed to be subject to revocation,

and if made in favour of the owner or prospective owner of a performer’s property rights in the performance or performances to which it relates, it shall be presumed to extend to his licensees and successors in title unless a contrary intention is expressed.

(4) Nothing in this Chapter shall be construed as excluding the operation of the general law of contract or estoppel in relation to an informal waiver or other transaction in relation to either of the rights conferred by this Chapter.

205K Application of provisions to parts of performances

(1) The right conferred by section 205C (right to be identified as performer) applies in relation to the whole or any substantial part of a performance.

(2) The right conferred by section 205F (right to object to derogatory treatment of performance) applies in relation to the whole or any part of a performance.

205L Moral rights not assignable

The rights conferred by this Chapter are not assignable.

205M Transmission of moral rights on death

(1) On the death of a person entitled to a right conferred by this Chapter—

- (a) the right passes to such person as he may by testamentary disposition specifically direct,
- (b) if there is no such direction but the performer’s property rights in respect of the performance in question form part of his estate, the right passes to the person to whom the property rights pass,
- (c) if or to the extent that the right does not pass under paragraph (a) or (b) it is exercisable by his personal representatives.

(2) Where a performer’s property rights pass in part to one person and in part to another, as for example where a bequest is limited so as to apply—

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

any right which by virtue of subsection (1) passes with the performer’s property rights is correspondingly divided.

(3) Where by virtue of subsection (1)(a) or (1)(b) a right becomes exercisable by more than one person—

- (a) it is, in the case of the right conferred by section 205F (right to object to derogatory treatment of performance), a right exercisable by each of them and is satisfied in relation to any of them if he consents to the treatment or act in question, and

- (b) any waiver of the right in accordance with section 205J by one of them does not affect the rights of the others.

(4) A consent or waiver previously given or made binds any person to whom a right passes by virtue of subsection (1).

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

205N Remedies for infringement of moral rights

(1) An infringement of a right conferred by this Chapter is actionable as a breach of statutory duty owed to the person entitled to the right.

(2) Where—

- (a) there is an infringement of a right conferred by this Chapter,
- (b) a person falsely claiming to act on behalf of a performer consented to the relevant conduct or purported to waive the right, and
- (c) there would have been no infringement if he had been so acting,

that person shall be liable, jointly and severally with any person liable in respect of the infringement by virtue of subsection (1), as if he himself had infringed the right.

(3) Where proceedings for infringement of the right conferred on a performer by this Chapter, it shall be a defence to prove—

- (a) that a person claiming to act on behalf of the performer consented to the defendant's conduct or purported to waive the right, and
- (b) that the defendant reasonably believed that the person was acting on behalf of the performer.

(4) In proceedings for infringement of the right conferred by section 205F the court may, if it thinks it an adequate remedy in the circumstances, grant an injunction on terms prohibiting the doing of any act unless a disclaimer is made, in such terms and in such manner as may be approved by the court, dissociating the performer from the broadcast or sound recording of the performance.”.

Requirement for signatures and its application in relation to body corporate

7. Before section 211 there shall be inserted—

“210A Requirement of signature: application in relation to body corporate

(1) The requirement in the following provisions that an instrument be signed by or on behalf of a person is also satisfied in the case of a body corporate by the affixing of its seal—

- section 191B(3) (assignment of performer's property rights);
- section 191C(1) (assignment of future performer's property rights);
- section 191D(1) (grant of exclusive licence).

(2) The requirement in the following provisions that an instrument be signed by a person is also satisfied in the case of a body corporate by signature on behalf of the body or by the affixing of its seal—

- section 205D(2)(a) (assertion of performer's moral rights);
- section 205J(2) (waiver of performer's moral rights).”.

Transitional provision

8. The rights conferred by Chapter 3 of Part 2 of the Copyright, Designs and Patents Act 1988 (as inserted by these Regulations) do not apply in relation to any performance that took place before these Regulations come into force.

9th January 2006

Sainsbury of Turville
Parliamentary Under Secretary of State for Science and Innovation
Department of Trade and Industry

SCHEDULE

MINOR AND CONSEQUENTIAL AMENDMENTS

1. The Copyright, Designs and Patents Act 1988 shall be amended as follows.
2. In subsection (3) of section 5B (films)(a) for paragraph (b) and the word “and” immediately preceding it there shall be substituted—
 - “(b) references in this Part to playing a sound recording, or to communicating a sound recording to the public, do not include playing or communicating the film sound track to accompany the film,
 - (c) references in this Part to copying a work, so far as they apply to a sound recording, do not include copying the film sound track to accompany the film, and
 - (d) references in this Part to the issuing, rental or lending of copies of a work, so far as they apply to a sound recording, do not include the issuing, rental or lending of copies of the sound track to accompany the film.”.
- 3.—(1) Section 182D (right to equitable remuneration for exploitation of sound recording)(b) shall be amended as follows.
 - (2) After subsection (1) there shall be inserted—

“(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.”.
 - (3) After subsection (7) there shall be inserted—

“(8) In this section “collecting society” means a society or other organisation which has as its main object, or one of its main objects, the exercise of the right to equitable remuneration on behalf of more than one performer.”.
4. In subsection (1) of section 191A (performers’ property rights)(c) the word “a” appearing before the words “performer’s property rights” shall be omitted.
5. In subsection (1) of section 192A (performers’ non-property rights) the word “a” appearing before the words “performer’s non-property rights” shall be omitted.
- 6.—(1) Section 211 (expressions having the same meaning as in copyright provisions) shall be amended as follows.
 - (2) In subsection (1), at the appropriate places, there shall be inserted—

“assignment (in Scotland),”;

“signed,”.
 - (3) In subsection (2) for the words from the beginning to the word “apply” there shall be substituted—

“The provisions of—

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

(a) Section 5B of the Copyright, Designs and Patents Act 1988 was inserted by regulation 9(1) of the Duration of Copyright and Rights in Performances Regulations 1995 (SI 1995/3297).

(b) Section 182D of the Copyright, Designs and Patents Act 1988 was inserted by regulation 20(2) of the Copyright and Related Rights Regulations 1996 (SI 1996/2967).

(c) Section 191A and 192A of the Copyright, Designs and Patents Act 1988 were inserted by regulation 21(1) of the Copyright and Related Rights Regulations 1996.

apply”.

7. In section 212 (index of defined expressions), at the appropriate places, there shall be inserted—

“assignment (in Scotland)	section 211(1) (and section 177);”
“group	section 205C(4);”
“issue to the public	section 182B;”
“signed	section 211(1) (and section 176);”
“wireless broadcast	section 211(1) (and section 178).”

8.—(1) In the provisions listed in sub-paragraph (2) for the words “this Part” there shall be substituted “this Chapter”.

(2) Those provisions are—

section 182A(3);
section 182B(5);
section 182C(2), (6) and (7);
section 182CA(2);
section 185(1) to (3);
section 189 (and the heading to that section);
section 190(2)(a);
section 191(1), (2), (4) and (5);
section 191A(1) to (4);
section 191B(4);
section 191C(3);
section 191D(1);
section 191I(3);
section 191L(2);
section 192A(1) and (3);
section 192B(1) and (2);
section 193(1);
section 194(b);
section 195(1);
section 197(1) and (5);
section 198(1)(c), (2) and (4);
section 201(1);
section 202(1);
section 204(2);
section 205B(1) and (2);
paragraph 12(2) of Schedule 2;
paragraph 1(4) of Schedule 2A.

9.—(1) In the provisions listed in sub-paragraph (2) for the words “Part 2” (or “Part II”), wherever they appear, there shall be substituted “this Chapter”.

(2) Those provisions are—

paragraph 1(1) and (2) of Schedule 2;
paragraph 1A of Schedule 2;
paragraph 2(1) and (1A) of Schedule 2;

paragraph 3(1) of Schedule 2;
paragraph 4(1), (2) and (3) of Schedule 2;
paragraph 5(1) of Schedule 2;
paragraph 6(1), (1A) and (2) of Schedule 2;
paragraph 6A(1) of Schedule 2;
paragraph 6B(1) of Schedule 2;
paragraph 7(1) of Schedule 2;
paragraph 8(1) of Schedule 2;
paragraph 9(1) of Schedule 2;
paragraph 10(1) of Schedule 2;
paragraph 11(1) of Schedule 2;
paragraph 12(5) of Schedule 2;
paragraph 13(1) of Schedule 2;
paragraph 14(1) and (3) of Schedule 2;
paragraph 15(1) of Schedule 2;
paragraph 16(1) of Schedule 2;
paragraph 17(1), (2) and (3) of Schedule 2;
paragraph 17A(1) and (2)(b) of Schedule 2;
paragraph 17B(1) and (2)(b) of Schedule 2;
paragraph 18(1), (1A) and (4) of Schedule 2;
paragraph 19(2), (3) and (4) of Schedule 2;
paragraph 19A(1) of Schedule 2;
paragraph 20(1) of Schedule 2;
paragraph 21(1) of Schedule 2;
paragraph 1(1) and (2) of Schedule 2A.

10. In paragraph 16(1) of Schedule 2 for the words “that Part” there shall be substituted “this Chapter”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations makes the necessary amendments to the Copyright, Designs and Patents Act 1988 (“the 1988 Act”) to enable the United Kingdom to ratify the WIPO Performers and Phonograms Treaty (Cm 3728). This Treaty was specified by the European Communities (Definition of Treaties) (WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty) Order 2005 (SI 2005/3431) to be a Community Treaty as defined in section 1(2) of the European Communities Act 1972.

These Regulations create two new moral rights for performers of qualifying performances. The first right (granted by section 205C) is the right to be identified as the performer, the second right (granted by section 205F) is the right to object to derogatory treatment. Exceptions to these rights are set out in section 205E and 205G respectively.

These Regulations divide up Part 2 of the 1988 Act into four chapters and make a number of minor amendments.

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