

Status: Point in time view as at 19/12/2009.

Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, SCHEDULE 2. (See end of Document for details)

SCHEDULES

SCHEDULE 2

Section 189.

RIGHTS IN PERFORMANCES: PERMITTED ACTS

Modifications etc. (not altering text)

- C1** Sch. 2 continued (31.10.2003) by virtue of [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), [reg. 33](#) (with [regs. 31-40](#))

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 [^{F1}this Chapter]; 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 [^{F1}this Chapter] 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.

Textual Amendments

- F1** Words in [Sch. 2 para. 1\(1\)\(2\)](#) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), [reg. 2](#), [Sch. para. 9](#) (with [reg. 8](#))

[^{F2}Making of temporary copies

Textual Amendments

- F2** [Sch. 2 para. 1A](#) and cross-heading inserted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), [reg. 8\(2\)](#) (with [regs. 31-40](#))

- 1A The rights conferred by [^{F3}this Chapter] 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;

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and which has no independent economic significance.]

Textual Amendments

- F3** Words in Sch. 2 para. 1A substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), reg. 2, **Sch. para. 9** (with reg. 8)

Criticism, reviews and news reporting

- 2 ^{F4}(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 ^{F5}[this Chapter] provided that the performance or recording has been made available to the public.
- (1A) Fair dealing with a performance or recording for the purpose of reporting current events does not infringe any of the rights conferred by ^{F5}[this Chapter].]
- (2) Expressions used in this paragraph have the same meaning as in section 30.

Textual Amendments

- F4** Sch. 2 para. 2(1)(1A) substituted (31.10.2003) for Sch. 2 para. 2(1) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), **reg. 10(2)** (with regs. 31-40)
- F5** Words in Sch. 2 para. 2(1)(1A) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), reg. 2, **Sch. para. 9** (with reg. 8)

Incidental inclusion of performance or recording

- 3 (1) The rights conferred by ^{F6}[this Chapter] are not infringed by the incidental inclusion of a performance or recording in a sound recording, film ^{F7}[or broadcast].
- (2) Nor are those rights infringed by anything done in relation to copies of, or the playing, showing ^{F8}[or communication to the public] of, anything whose making was, by virtue of sub-paragraph (1), not an infringement of those rights.
- (3) A performance or recording so far as it consists of music, or words spoken or sung with music, shall not be regarded as incidentally included in a sound recording ^{F7}[or broadcast] if it is deliberately included.
- (4) Expressions used in this paragraph have the same meaning as in section 31.

Textual Amendments

- F6** Words in Sch. 2 para. 3(1) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), reg. 2, **Sch. para. 9** (with reg. 8)
- F7** Words in Sch. 2 para. 3(1)(3) substituted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), reg. 2(1), **Sch. 1 para. 3(1)(l)(m)** (with regs. 31-40)
- F8** Words in Sch. 2 para. 3(2) substituted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), reg. 2(1), **Sch. 1 para. 6(2)(e)** (with regs. 31-40)

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Things done for purposes of instruction or examination

- 4 (1) The rights conferred by [F9this Chapter] 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 [F10and the instruction is for a non-commercial purpose].
- (2) The rights conferred by [F9this Chapter] 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 [F9this Chapter] for all subsequent purposes.
- [F11For 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 subparagraph (2)(b), is not an infringement of the rights conferred by [F9this Chapter].]

(4) Expressions used in this paragraph have the same meaning as in section 32.

Textual Amendments

- F9** Words in Sch. 2 para. 4(1)(2)(3) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), reg. 2, **Sch. para. 9** (with reg. 8)
- F10** Words in Sch. 2 para. 4(1) inserted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), **reg. 11(2)(a)** (with regs. 31-40)
- F11** Words in Sch. 2 para. 4(3) substituted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/24980\)](#), **reg. 11(2)(b)** (with regs. 31-40)

Playing or showing sound recording, film, [F12or broadcast]at educational establishment

Textual Amendments

- F12** Words in heading preceding Sch. 2 para. 5 substituted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), reg. 2(1), **Sch. 1 para. 2(2)** (with regs. 31-40)

- 5 (1) The playing or showing of a sound recording, film [F13or broadcast] at an educational establishment for the purposes of instruction before an audience consisting of teachers and pupils at the establishment and other persons directly connected with the activities of the establishment is not a playing or showing of a performance in public for the purposes of infringement of the rights conferred by [F14this Chapter] .

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- (2) A person is not for this purpose directly connected with the activities of the educational establishment simply because he is the parent of a pupil at the establishment.
- (3) Expressions used in this paragraph have the same meaning as in section 34 and any provision made under section 174(2) with respect to the application of that section also applies for the purposes of this paragraph.

Textual Amendments

- F13** Words in Sch. 2 para. 5(1) substituted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), reg. 2(1), **Sch. 1 para. 3(1)(n)** (with regs. 31-40)
- F14** Words in Sch. 2 para. 5(1) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), reg. 2, **Sch. para. 9** (with reg. 8)

Recording of broadcasts^{F15}. . . by educational establishments

Textual Amendments

- F15** Words in heading preceding Sch. 2 para. 6 repealed (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), reg. 2(2), **Sch. 2** (with regs. 31-40)

- 6 (1) A recording of a broadcast^{F16}. . . , 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 [^{F17}this Chapter] in relation to any performance or recording included in it [^{F18}, provided that the educational purposes are non-commercial].
- [^{F19}(1A) The rights conferred by [^{F17}this Chapter] are not infringed where a recording of a broadcast or a copy of such a recording, whose making was by virtue of subparagraph (1) not an infringement of such rights, is communicated to the public by a person situated within the premises of an educational establishment provided that the communication cannot be received by any person situated outside the premises of that establishment.
- (1B) This paragraph does not apply if or to the extent that there is a licensing scheme certified for the purposes of this paragraph under paragraph 16 of Schedule 2A providing for the grant of licences.]
- (2) Where a recording which would otherwise be an illicit recording is made in 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 [^{F17}this Chapter] for all subsequent purposes.
- For this purpose “dealt with” means sold or let for hire, [^{F20}, offered or exposed for sale or hire, or communicated from within the premises of an educational establishment to any person situated outside those premises.]
- (3) Expressions used in this paragraph have the same meaning as in section 35 and any provision made under section 174(2) with respect to the application of that section also applies for the purposes of this paragraph.

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Textual Amendments

- F16** Words in Sch. 2 para. 6(1) repealed (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), reg. 2(2), [Sch. 2](#) (with regs. 31-40)
- F17** Words in Sch. 2 para. 6(1)(1A)(2) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), reg. 2, [Sch. para. 9](#) (with reg. 8)
- F18** Words in Sch. 2 para. 6(1) inserted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), [reg. 12\(2\)\(a\)](#) (with regs. 31-40)
- F19** Sch. 2 para. 6(1A)(1B) inserted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), [reg. 12\(2\)\(b\)](#) (with regs. 31-40)
- F20** Words in Sch. 2 para. 6(2) substituted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), {reg. 12(2)(c)} (with regs. 31-40)

[^{F21}Lending of copies by educational establishments]

Textual Amendments

- F21** [Sch. 2 para. 6A](#) and crossheading inserted (1.12.1996) by [S.I. 1996/2967](#), [reg. 20\(3\)](#) (with Pt. III)

[^{F22}6A (1) The rights conferred by [^{F23}this Chapter] are not infringed by the lending of copies of a recording of a performance by an educational establishment.

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

Textual Amendments

- F22** [Sch. 2 para. 6A](#) inserted (1.12.1996) by [S.I. 1996/2967](#), [reg. 20\(3\)](#) (with Pt. III)
- F23** Words in [Sch. 2 para. 6A\(1\)](#) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), reg. 2, [Sch. para. 9](#) (with reg. 8)

[^{F24}Lending of copies by libraries or archives]

Textual Amendments

- F24** [Sch. 2 para. 6B](#) and crossheading inserted (1.12.1996) by [S.I. 1996/2967](#), [reg. 20\(3\)](#) (with Pt. III)

[^{F25}6B (1) The rights conferred by [^{F26}this Chapter] are not infringed by the lending of copies of a recording of a performance by a prescribed library or archive (other than a public library) which is not conducted for profit.

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

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Textual Amendments

- F25** Sch. 2 para. 6B inserted (1.12.1996) by S.I. 1996/2967, **reg. 20(3)** (with Pt. III)
F26 Words in Sch. 2 para. 6B(1) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), **reg. 2**, **Sch. para. 9** (with **reg. 8**)

Modifications etc. (not altering text)

- C2** Sch. 2 para. 6B modified (1.12.1996) by S.I. 1996/2967, **reg. 35** (with Pt. III)

Copy of work required to be made as condition of export

- 7 (1) If an article of cultural or historical importance or interest cannot lawfully be exported from the United Kingdom unless a copy of it is made and deposited in an appropriate library or archive, it is not an infringement of any right conferred by [^{F27}this Chapter] to make that copy.
- (2) Expressions used in this paragraph have the same meaning as in section 44.

Textual Amendments

- F27** Words in [Sch. 2 para. 7\(1\)](#) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), **reg. 2**, **Sch. para. 9** (with **reg. 8**)

Parliamentary and judicial proceedings

- 8 (1) The rights conferred by [^{F28}this Chapter] are not infringed by anything done for the purposes of parliamentary or judicial proceedings or for the purpose of reporting such proceedings.
- (2) Expressions used in this paragraph have the same meaning as in section 45.

Textual Amendments

- F28** Words in [Sch. 2 para. 8\(1\)](#) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), **reg. 2**, **Sch. para. 9** (with **reg. 8**)

Royal Commissions and statutory inquiries

- 9 (1) The rights conferred by [^{F29}this Chapter] are not infringed by anything done for the purposes of the proceedings of a Royal Commission or statutory inquiry or for the purpose of reporting any such proceedings held in public.
- (2) Expressions used in this paragraph have the same meaning as in section 46.

Textual Amendments

- F29** Words in [Sch. 2 para. 9\(1\)](#) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), **reg. 2**, **Sch. para. 9** (with **reg. 8**)

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Public records

- 10 (1) Material which is comprised in public records within the meaning of the ^{M1}Public Records Act 1958, the ^{M2}Public Records (Scotland) Act 1937 or the ^{M3}Public Records Act (Northern Ireland) 1923 [^{F30}, or in Welsh public records (as defined in [^{F31}the Government of Wales Act 2006]),] which are open to public inspection in pursuance of that Act, may be copied, and a copy may be supplied to any person, by or with the authority of any officer appointed under that Act, without infringing any right conferred by [^{F32}this Chapter].
- (2) Expressions used in this paragraph have the same meaning as in section 49.

Textual Amendments

- F30** Words in Sch. 2 para. 10(1) inserted (1.4.1999) by 1998 c. 38, s. 125, **Sch. 12 para. 29** (with ss. 139(2), 143(2)); S.I. 1999/782, **art. 2**
- F31** Words in Sch. 2 para. 10(1) substituted by Government of Wales Act 2006 (c. 32), s. 160(1), **Sch. 10 para. 32** (with Sch. 11 para. 22), the amending provision coming into force immediately after "the 2007 election" (held on 3.5.2007) subject to s. 161(4)(5) of the amending Act, which provides for certain provisions to come into force for specified purposes immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see ss. 46, 161(1)(4)(5) of the amending Act.
- F32** Words in Sch. 2 para. 10(1) substituted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 9** (with reg. 8)

Marginal Citations

- M1** 1958 c. 51.
M2 1937 c. 43.
M3 1923 c. 20 (N.I.).

Acts done under statutory authority

- 11 (1) Where the doing of a particular act is specifically authorised by an Act of Parliament, whenever passed, then, unless the Act provides otherwise, the doing of that act does not infringe the rights conferred by [^{F33}this Chapter] .
- (2) Sub-paragraph (1) applies in relation to an enactment contained in Northern Ireland legislation as it applies to an Act of Parliament.
- (3) Nothing in this paragraph shall be construed as excluding any defence of statutory authority otherwise available under or by virtue of any enactment.
- (4) Expressions used in this paragraph have the same meaning as in section 50.

Textual Amendments

- F33** Words in Sch. 2 para. 11(1) substituted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 9** (with reg. 8)

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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 [^{F34}this Chapter], 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 [^{F35}this Chapter].
- (6) Expressions used in this paragraph have the same meaning as in section 56.

Textual Amendments

F34 Words in Sch. 2 para. 12(2) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), reg. 2, **Sch. para. 8** (with reg. 8)

F35 Words in Sch. 2 para. 12(5) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), reg. 2, **Sch. para. 9** (with reg. 8)

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 [^{F36}communicating to the public] the whole or part of the reading or recitation,
- it is not an infringement of the rights conferred by [^{F37}this Chapter] 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 ^{F38}. . . ;

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- (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.

Textual Amendments

- F36** Words in Sch. 2 para. 12 substituted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), reg. 2(1), [Sch. 1 para. 12\(b\)](#) (with regs. 31-40)
- F37** Words in Sch. 2 para. 13(1) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), reg. 2, [Sch. para. 9](#) (with reg. 8)
- F38** Words in Sch. 2 para. 13(2)(a) repealed (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), reg. 2(2), [Sch. 2](#) (with regs. 31-40)

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 [F39this Chapter] , 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 [F39this Chapter] .
- (4) In this paragraph—
- “designated body” means a body designated for the purposes of section 61, and
 - “the prescribed conditions” means the conditions prescribed for the purposes of subsection (3) of that section;
- and other expressions used in this paragraph have the same meaning as in that section.

Textual Amendments

- F39** Words in Sch. 2 para. 14(1)(3) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), reg. 2, [Sch. para. 9](#) (with reg. 8)

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[^{F40}Lending of certain recordings]

Textual Amendments

F40 Sch. 2 para. 14A and crossheading inserted (1.12.1996) by S.I. 1996/2967, reg. 20(3) (with Pt. III)

- ^{F41}14A(1) The Secretary of State may by order provide that in such cases as may be specified in the order the lending to the public of copies of films or sound recordings shall be treated as licensed by the performer subject only to the payment of such reasonable royalty or other payment as may be agreed or determined in default of agreement by the Copyright Tribunal.
- (2) No such order shall apply if, or to the extent that, there is a licensing scheme certified for the purposes of this paragraph under paragraph 16 of Schedule 2A providing for the grant of licences.
- (3) An order may make different provision for different cases and may specify cases by reference to any factor relating to the work, the copies lent, the lender or the circumstances of the lending.
- (4) An order shall be made by statutory instrument; and no order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (5) Nothing in this section affects any liability under section 184(1)(b) (secondary infringement: possessing or dealing with illicit recording) in respect of the lending of illicit recordings.
- (6) Expressions used in this paragraph have the same meaning as in section 66.

Textual Amendments

F41 Sch. 2 para. 14A inserted (1.12.1996) by S.I. 1996/2967, reg. 20(3) (with Pt. III)

Playing of sound recordings for purposes of club, society, &c

- 15 (1) It is not an infringement of any right conferred by [^{F42}this Chapter] 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,
- [^{F43}(b) that the sound recording is played by a person who is acting primarily and directly for the benefit of the organisation and who is not acting with a view to gain,
- (c) that the proceeds of any charge for admission to the place where the recording is to be heard are applied solely for the purposes of the organisation, and

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- (d) that the proceeds from any goods or services sold by, or on behalf of, the organisation—
- (i) in the place where the sound recording is heard, and
 - (ii) on the occasion when the sound recording is played, are applied solely for the purposes of the organisation.]
- (3) Expressions used in this paragraph have the same meaning as in section 67.

Textual Amendments

- F42** Words in Sch. 2 para. 15(1) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), reg. 2, **Sch. para. 9** (with reg. 8)
- F43** Sch. 2 para. 15(2)(b)-(d) substituted (31.10.2003) for Sch. 2 para. 15(2)(b) and preceding word by virtue of [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), **reg. 18(2)** (with regs. 31-40)

Incidental recording for purposes of broadcast^{F44} . . .

Textual Amendments

- F44** Words in heading preceding Sch. 2 para. 16 repealed (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), reg. 2(2), **Sch. 2** (with regs. 31-40)

- 16 (1) A person who proposes to broadcast a recording of a performance^{F45} . . . in circumstances not infringing the rights conferred by [^{F46}this Chapter] shall be treated as having consent for the purposes of [^{F47}this Chapter] for the making of a further recording for the purposes of the broadcast^{F45}
- (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^{F45}
- (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 subparagraph (2)(a), and
 - (b) for all purposes after that condition or the condition mentioned in subparagraph (2)(b) is broken.
- (4) Expressions used in this paragraph have the same meaning as in section 68.

Textual Amendments

- F45** Words in Sch. 2 para. 16(1)(2)(b) repealed (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), reg. 2(2), **Sch. 2** (with regs. 31-40)
- F46** Words in Sch. 2 para. 16(1) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), reg. 2, **Sch. para. 9** (with reg. 8)
- F47** Words in Sch. 2 para. 16(1) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), reg. 2, **Sch. para. 10** (with reg. 8)

Status: Point in time view as at 19/12/2009.

Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, SCHEDULE 2. (See end of Document for details)

Recordings for purposes of supervision and control of broadcasts and [F48 other services]

Textual Amendments

F48 Words in heading preceding Sch. 2 para. 17 substituted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), reg. 2(1), **Sch. 1 para. 2(1)** (with regs. 31-40)

- 17 (1) The rights conferred by [F49 this Chapter] 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 [F50 or included in any on-demand programme service provided by them], of recordings of those programmes.
- [F51(2) The rights conferred by [F49 this Chapter] are not infringed by anything done in pursuance of—
- [F52(a) section 167(1) of the Broadcasting Act 1990, section 115(4) or (6) or 117 of the Broadcasting Act 1996 or paragraph 20 of Schedule 12 to the Communications Act 2003;]
 - (b) a condition which, [F53 by virtue of section 334(1) of the Communications Act 2003], is included in a licence granted under Part I or III of that Act or Part I or II of the Broadcasting Act 1996; [F54 . . .
 - (c) a direction given under section 109(2) of the Broadcasting Act 1990 (power of [F55 OFCOM] to require production of recordings etc).
 - [section 334(3) [F57, 368O(1) or (3)] of the Communications Act 2003.]
- [F56(d)
- [F58(3) The rights conferred by [F49 this Chapter] are not infringed by the use by OFCOM in connection with the performance of any of their functions under the Broadcasting Act 1990, the Broadcasting Act 1996 or the Communications Act 2003 of—
- (a) any recording, script or transcript which is provided to them under or by virtue of any provision of those Acts; or
 - (b) any existing material which is transferred to them by a scheme made under section 30 of the Communications Act 2003.]
- (4) In subsection (3), “existing material” means—
- (a) any recording, script or transcript which was provided to the Independent Television Commission or the Radio Authority under or by virtue of any provision of the Broadcasting Act 1990 or the Broadcasting Act 1996; and
 - (b) any recording or transcript which was provided to the Broadcasting Standards Commission under section 115(4) or (6) or 116(5) of the Broadcasting Act 1996.
- [F59(5) Copyright is not infringed by the use by an appropriate regulatory authority designated under section 368B of the Communications Act 2003, in connection with the performance of any of their functions under that Act, of any recording, script or transcript which is provided to them under or by virtue of any provision of that Act.
- (6) In this section “on-demand programme service” has the same meaning as in the Communications Act 2003 (see section 368A of that Act).]

Status: Point in time view as at 19/12/2009.

Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, SCHEDULE 2. (See end of Document for details)

Textual Amendments

- F49** Words in Sch. 2 para. 17(1)(2)(3) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), reg. 2, **Sch. para. 9** (with reg. 8)
- F50** Words in Sch. 2 para. 17(1) inserted (19.12.2009) by [The Audiovisual Media Services Regulations 2009 \(S.I. 2009/2979\)](#), **reg. 12(3)(a)**
- F51** Sch. 2 para. 17(2)(3) substituted (1.10.1996 for certain purposes and 1.4.1997 otherwise) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. III para. 32** (with s. 43(6)); S.I. 1996/2120, art. 4(1), **Sch. 1**; S.I. 1997/1005, **art. 4**
- F52** Sch. 2 para. 17(2)(a) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 406, 411, **Sch. 17 para. 93(2)(a)** (with Sch. 18); S.I. 2003/3142, **art. 3**, Sch. 1 (with art. 11)
- F53** Words in Sch. 2 para. 17(2)(b) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 406, 411, **Sch. 17 para. 93(2)(b)** (with Sch. 18); S.I. 2003/3142, **art. 3**, Sch. 1 (with art. 11)
- F54** Word in Sch. 2 para. 17(2)(b) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 406, 411, **Sch. 19(1)** (with Sch. 18, Sch. 19(1) Note 1); S.I. 2003/3142, **art. 3**, Sch. 1 (with art. 11)
- F55** Word in Sch. 2 para. 17(2)(c) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 406, 411, **Sch. 17 para. 93(2)(c)** (with Sch. 18); S.I. 2003/3142, **art. 3**, Sch. 1 (with art. 11)
- F56** Sch. 2 para. 17(2)(d) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 406, 411, **Sch. 17 para. 93(2)(d)** (with Sch. 18); S.I. 2003/3142, **art. 3**, Sch. 1 (with art. 11)
- F57** Words in Sch. 2 para. 17(2)(d) inserted (19.12.2009) by [The Audiovisual Media Services Regulations 2009 \(S.I. 2009/2979\)](#), **reg. 12(3)(b)**
- F58** Sch. 2 para. 17(3)(4) substituted (29.12.2003) for Sch. 2 para. 17(3) by [Communications Act 2003 \(c. 21\)](#), ss. 406, 411, **Sch. 17 para. 93(3)** (with Sch. 18); S.I. 2003/3142, **art. 3**, Sch. 1 (with art. 11)
- F59** Sch. 2 para. 17(5)(6) inserted (19.12.2009) by [The Audiovisual Media Services Regulations 2009 \(S.I. 2009/2979\)](#), **reg. 121(3)(c)**

Modifications etc. (not altering text)

- C3** Sch. 2 para. 17 modified (20.7.2004) [The Contracting Out \(Functions relating to Broadcast Advertising\) and Specification of Relevant Functions Order 2004 \(S.I. 2004/1975\)](#), **art. 9(1)(3)** (with reg. 5)

[^{F60}Recording for the purposes of time-shifting

Textual Amendments

- F60** Sch. 2 para. 17A and preceding heading inserted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), **reg. 19(3)** (with regs. 31-40)

- 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 [^{F61}this Chapter] 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 [^{F61}this Chapter], it shall be treated as an illicit recording for all subsequent purposes.
- (3) In sub-paragraph (2), “dealt with” means sold or let for hire, offered or exposed for sale or hire or communicated to the public.
- (4) Expressions used in this paragraph have the same meaning as in section 70.]

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Textual Amendments

- F61** Words in Sch. 2 para. 17A(1)(2)(b) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), reg. 2, [Sch. para. 9](#) (with reg. 8)

[^{F62}Photographs of broadcasts

Textual Amendments

- F62** Sch. 2 para. 17B and preceding heading inserted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), [reg. 20\(2\)](#) (with regs. 31-40)

- 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 [^{F63}this Chapter] 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 [^{F63}this Chapter] , it shall be treated as an illicit recording for all subsequent purposes.
- (3) In sub-paragraph (2), “dealt with” means sold or let for hire, offered or exposed for sale or hire or communicated to the public.
- (4) Expressions used in this paragraph have the same meaning as in section 71.]

Textual Amendments

- F63** Words in Sch. 2 para. 17B(1)(2)(b) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), reg. 2, [Sch. para. 9](#) (with reg. 8)

Free public showing or playing of broadcast ^{F64}. . .

Textual Amendments

- F64** Words in heading preceding Sch.2 para. 18 repealed (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), [reg. 2\(2\)](#), [Sch. 2](#) (with regs. 31-40)

- 18 (1) The showing or playing in public of a broadcast ^{F65}. . . to an audience who have not paid for admission to the place where the broadcast ^{F65}. . . is to be seen or heard does not infringe any right conferred by [^{F66}this Chapter] in relation to a performance or recording included in—
- (a) the broadcast ^{F65}. . . , or

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- (b) any sound recording [^{F67}(except so far as it is an excepted sound recording)] or film which is played or shown in public by reception of the broadcast

^{F65}

[^{F68}(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 [^{F66}this Chapter] in relation to a performance or recording included in any excepted sound recording which is played in public by reception of the broadcast, if the playing or showing of that broadcast in public—

- (a) forms part of the activities of an organisation that is not established or conducted for profit; or
(b) is necessary for the purposes of—
(i) repairing equipment for the reception of broadcasts;
(ii) demonstrating that a repair to such equipment has been carried out; or
(iii) demonstrating such equipment which is being sold or let for hire or offered or exposed for sale or hire.]

(2) The audience shall be treated as having paid for admission to a place—

- (a) if they have paid for admission to a place of which that place forms part; or
(b) if goods or services are supplied at that place (or a place of which it forms part)—
(i) at prices which are substantially attributable to the facilities afforded for seeing or hearing the broadcast ^{F69}. . . , or
(ii) at prices exceeding those usually charged there and which are partly attributable to those facilities.

(3) The following shall not be regarded as having paid for admission to a place—

- (a) persons admitted as residents or inmates of the place;
(b) persons admitted as members of a club or society where the payment is only for membership of the club or society and the provision of facilities for seeing or hearing broadcasts ^{F69}. . . is only incidental to the main purposes of the club or society.

(4) Where the making of the broadcast ^{F69}. . . was an infringement of the rights conferred by [^{F66}this Chapter] in relation to a performance or recording, the fact that it was heard or seen in public by the reception of the broadcast ^{F69}. . . shall be taken into account in assessing the damages for that infringement.

(5) Expressions used in this paragraph have the same meaning as in section 72.

Textual Amendments

- F65** Words in Sch. 2 para. 18(1) repealed (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), reg. 2(2), **Sch. 2** (with regs. 31-40)
F66 Words in Sch. 2 para. 18(1)(1A)(4) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), reg. 2, **Sch. para. 9** (with reg. 8)
F67 Words in Sch. 2 para. 18(1)(b) inserted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), **reg. 21(2)(a)** (with regs. 31-40)
F68 Sch. 2 para. 18(1A) inserted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), **reg. 21(2)(b)** (with regs. 31-40)

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F69 Words in Sch. 2 para. 18(2)(b)(i)(3)(4) repealed (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), reg. 2(2), Sch. 2 (with regs. 31-40)

[^{F70}Reception and re-transmission of [^{F71}wireless broadcast by cable]]

Textual Amendments

F70 Crossheading substituted (1.10.1996) by 1996 c. 55, s. 138, Sch. 9 para. 5 (with s. 43(6)); S.I. 1996/2120, art. 4(1), Sch. 1

F71 Words in heading preceding Sch. 2 para. 19 substituted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I.2003/2498), reg. 22(3)(a) (with regs. 31-40)

- ^{F72}19 (1) This paragraph applies where a [^{F73}wireless] broadcast made from a place in the United Kingdom is, [^{F74}received and immediately re-transmitted by cable].
- (2) The rights conferred by [^{F75}this Chapter] 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 [^{F76}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 [^{F77}by cable] shall be taken into account in assessing the damages for that infringement.
- (3) Where—
- (a) the [^{F78}re-transmission by cable] is in pursuance of a relevant requirement, but
 - (b) to any extent, the area in which the [^{F79}re-transmission by cable takes place] (“the cable area”) falls outside the area for reception in which the broadcast is made (“the broadcast area”),
- the [^{F80}re-transmission by cable] (to the extent that it is provided for so much of the cable area as falls outside the broadcast area) of any performance or recording included in the broadcast shall, subject to sub-paragraph (4), be treated as licensed by the owner of the rights conferred by [^{F75}this Chapter] in relation to the performance or recording, subject only to the payment to him by the person making the broadcast of such reasonable royalty or other payment in respect of the [^{F81}re-transmission by cable of the broadcast] as may be agreed or determined in default of agreement by the Copyright Tribunal.
- (4) Sub-paragraph (3) does not apply if, or to the extent that, the [^{F82}re-transmission of the performance or recording by cable] is (apart from that sub-paragraph) licensed by the owner of the rights conferred by [^{F75}this Chapter] in relation to the performance or recording.
- (5) The Secretary of State may by order—
- (a) provide that in specified cases sub-paragraph (2) is to apply in relation to broadcasts of a specified description which are not made as mentioned in that sub-paragraph, or
 - (b) exclude the application of that sub-paragraph in relation to broadcasts of a specified description made as mentioned in that sub-paragraph.

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- (6) Where the Secretary of State exercises the power conferred by sub-paragraph (5) (b) in relation to broadcasts of any description, the order may also provide for sub-paragraph (3) to apply, subject to such modifications as may be specified in the order, in relation to broadcasts of that description.
- (7) An order under this paragraph may contain such transitional provision as appears to the Secretary of State to be appropriate.
- (8) An order under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) Expressions used in this paragraph have the same meaning as in section 73.]

Textual Amendments

- F72** Sch. 2 para. 19 substituted (1.10.1996) by 1996 c. 55, s. 138, **Sch. 9 para. 5** (with s. 43(6)); S.I. 1996/2120, art. 4(1), **Sch. 1**
- F73** Word in Sch. 2 para. 19(1) inserted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), **reg. 22(3)(b)(i)** (with regs. 31-40)
- F74** Words in Sch. 2 para. 19(1) substituted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), **reg. 22(3)(b)(ii)** (with regs. 31-40)
- F75** Words in Sch. 2 para. 19(2)(3)(4) substituted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, **Sch. para. 9** (with reg. 8)
- F76** Words in Sch. 2 para. 19(2) substituted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S. I. 2003/2498), **reg. 22(3)(c)(i)** (with regs. 31-40)
- F77** Words in Sch. 2 para. 19(2) substituted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), **reg. 22(3)(c)(ii)** (with regs. 31-40)
- F78** Words in Sch. 2 para. 19(3)(a) substituted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), **reg. 22(3)(d)(i)** (with regs. 31-40)
- F79** Words in Sch. 2 para. 19(3)(b) substituted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), **reg. 22(3)(d)(ii)** (with regs. 31-40)
- F80** Words in Sch. 2 para. 19(3) substituted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), **reg. 22(3)(d)(iii)** (with regs. 31-40)
- F81** Words in Sch. 2 para. 19(3) substituted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), **reg. 22(3)(d)(iv)** (with regs. 31-40)
- F82** Words in Sch. 2 para. 19(4) substituted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), **reg. 22(3)(e)** (with regs. 31-40)

- [^{F83}19A(1) An application to settle the royalty or other sum payable in pursuance of sub-paragraph (3) of paragraph 19 may be made to the Copyright Tribunal by the owner of the rights conferred by [^{F84}this Chapter] or the person making the broadcast.
- (2) The Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.
 - (3) Either party may subsequently apply to the Tribunal to vary the order, and the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.
 - (4) An application under sub-paragraph (3) shall not, except with the special leave of the Tribunal, be made within twelve months from the date of the original order or of the order on a previous application under that sub-paragraph.

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Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, SCHEDULE 2. (See end of Document for details)

- (5) An order under sub-paragraph (3) has effect from the date on which it is made or such later date as may be specified by the Tribunal.]

Textual Amendments

- F83** Sch. 2 para. 19A inserted (1.10.1996) by 1996 c. 55, s. 138, **Sch. 9 para. 6** (with s. 43(6)); S.I. 1996/2120, art. 4(1), **Sch. 1**
- F84** Words in Sch. 2 para. 19A(1) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006](#) (S.I. 2006/18), reg. 2, **Sch. para. 9** (with reg. 8)

Provision of sub-titled copies of broadcast^{F85} . . .

Textual Amendments

- F85** Words in heading preceding Sch. 2 para. 20 repealed (31.10.2003) by [The Copyright and Related Rights Regulations 2003](#) (S.I. 2003/2498), reg. 2(2), **Sch. 2** (with regs. 31-40)

- 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 [^{F86}broadcasts and copies of such recordings, and issue or lend copies to the public.] without infringing any right conferred by [^{F87}this Chapter] in relation to a performance or recording included in the broadcast^{F88}
- [^{F89}(1A) This paragraph does not apply if, or to the extent that, there is a licensing scheme certified for the purposes of this paragraph under paragraph 16 of Schedule 2A providing for the grant of licences.]
- (2) In this paragraph “designated body” means a body designated for the purposes of section 74 and other expressions used in this paragraph have the same meaning as in that section.

Textual Amendments

- F86** Words in Sch. 2 para. 20(1) substituted (31.10.2003) by [The Copyright and Related Rights Regulations 2003](#) (S.I. 2003/2498), **reg. 23(2)(a)** (with regs. 31-40)
- F87** Words in Sch. 2 para. 20(1) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006](#) (S.I. 2006/18), reg. 2, **Sch. para. 9** (with reg. 8)
- F88** Words in Sch. 2 para. 20(1) repealed (31.10.2003) by [The Copyright and Related Rights Regulations 2003](#) (S.I. 2003/2498), reg. 2(2), **Sch. 2** (with regs. 31-40)
- F89** Sch. 2 para. 20(1A) inserted (31.10.2003) by [The Copyright and Related Rights Regulations 2003](#) (S.I. 2003/2498), **reg. 23(2)(b)** (with regs. 31-40)

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Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, SCHEDULE 2. (See end of Document for details)

Recording of broadcast^{F90} . . . for archival purposes

Textual Amendments

F90 Words in heading preceding Sch. 2 para. 21 repealed (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), reg. 2(2), **Sch. 2** (with regs. 31-40)

- 21 (1) A recording of a broadcast^{F91} . . . 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 [^{F92}this Chapter] in relation to a performance or recording included in the broadcast^{F91}
- (2) In this paragraph “designated class” and “designated body” means a class or body designated for the purposes of section 75 and other expressions used in this paragraph have the same meaning as in that section.

Textual Amendments

F91 Words in [Sch. 2 para. 21\(1\)](#) repealed (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), reg. 2(2), **Sch. 2** (with regs. 31-40)

F92 Words in [Sch. 2 para. 21\(1\)](#) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), reg. 2, **Sch. para. 9** (with reg. 8)

Status:

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Changes to legislation:

There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, SCHEDULE 2.