



# Copyright, Designs and Patents Act 1988

## 1988 CHAPTER 48

### PART II

#### RIGHTS IN PERFORMANCES

##### *Exceptions to rights conferred*

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

- (1) The Copyright Tribunal may, on the application of a person wishing to make a recording from a previous recording of a performance, give consent in a case where—
  - (a) the identity or whereabouts of a performer cannot be ascertained by reasonable inquiry, or
  - (b) a performer unreasonably withholds his consent.
- (2) Consent given by the Tribunal has effect as consent of the performer for the purposes of—
  - (a) the provisions of this Part relating to performers' rights, and
  - (b) section 198(3)(a) (criminal liability: sufficient consent in relation to qualifying performances),and may be given subject to any conditions specified in the Tribunal's order.
- (3) The Tribunal shall not give consent under subsection (1)(a) except after the service or publication of such notices as may be required by rules made under section 150 (general procedural rules) or as the Tribunal may in any particular case direct.
- (4) The Tribunal shall not give consent under subsection (1)(b) unless satisfied that the performer's reasons for withholding consent do not include the protection of any legitimate interest of his; but it shall be for the performer to show what his reasons are for withholding consent, and in default of evidence as to his reasons the Tribunal may draw such inferences as it thinks fit.
- (5) In any case the Tribunal shall take into account the following factors—

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*Status: This is the original version (as it was originally enacted).*

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- (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 performer, make such order as it thinks fit as to the payment to be made to the performer in consideration of consent being given.