

2010 No. 2694

INTELLECTUAL PROPERTY

COPYRIGHT

RIGHTS IN PERFORMANCES

**The Copyright, Designs and Patents Act 1988 (Amendment)
Regulations 2010**

Made - - - - - *4th November 2010*

Laid before Parliament *8th November 2010*

Coming into force - - - *1st January 2011*

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 Copyright, Designs and Patents Act 1988 (Amendment) Regulations 2010 and come into force on 1st January 2011.

Interpretation

2. In these Regulations “the Act” means the Copyright, Designs and Patents Act 1988(c).

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

3.—(1) Section 67(d) of the Act is omitted.

(2) Paragraph 15 of Schedule 2(e) to the Act is omitted

Free public showing or playing of broadcast

4.—(1) In section 72(1B)(f) of the Act, paragraph (a) is omitted.

(a) 1972 c.68.

(b) S.I.1992/707 and S.I.1993/595.

(c) 1988 c. 48.

(d) Section 67(2) was amended by the Copyright and Related Rights Regulations 2003 (SI. 2003/2498), regulations 3 and 18(1).

(e) Paragraph 15 was amended by regulations 3 and 18(2) of S.I. 2003/2498.

(f) Subsection (1B) was inserted by regulations 3 and 21(1)(b) of S.I.2003/2498.

(2) In sub-paragraph (1A)(a) of paragraph 18 of Schedule 2 to the Act, paragraph (a) is omitted.

Amendments to section 107

5. In section 107(5) of the Act, for the word “six” substitute “three”.

Notification of licence or licensing scheme and references to the Tribunal by the Secretary of State

6. Section 128A(b) and section 128B(c) of the Act are omitted.

4th November 2010

Wilcox
Parliamentary Secretary for Business, Innovation and Skills
Department for Business, Innovation and Skills

(a) Sub-paragraph (1A) was inserted by regulations 3 and 21(2)(b) of S.I. 2003/2498.
(b) Section 128A was inserted into the Act by regulations 3 and 21(3) of S.I. 2003/2498.
(c) Section 128B was inserted into the Act by regulations 3 and 21(3) of S.I. 2003/2498.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Copyright, Designs and Patents Act 1988 (“the Act”).

Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (codified version) (OJ L376, 27.12.2006, p 28) (“the Rental and Lending Directive”) sets out in Article 8(2) that member states shall provide a right in order to ensure that a single equitable remuneration is paid by the user, if a phonogram published for commercial purposes, or a reproduction of such a phonogram, is used for broadcasting by wireless means or for any communication to the public. These Regulations further implement Article 8(2) by amending sections in Part 1 of the Act and equivalent provisions for performers in Schedule 2 to the Act.

Regulation 3

Section 67 of the Act provides that it is not an infringement of copyright in a sound recording to play it as part of the activities of, or for the benefit of a club, society or other organisation if conditions in the section are met (which include that the organisation is not established or conducted for profit). Regulation 3(1) repeals section 67 and regulation 3(2) removes the equivalent exception in relation to performers’ rights.

Regulation 4

Section 72(1B)(a) of the Act provides that the showing or playing in public of a broadcast to an audience who have not paid for admission to the place where the broadcast is to be seen or heard does not infringe any copyright in an “excepted sound recording” (as defined in section 72(1A)) if the playing or showing of that broadcast in public forms part of the activities of an organisation that is not established or conducted for profit. Regulation 4(1) repeals section 72(1B)(a) and regulation 4(2) removes the equivalent exception in relation to performers’ rights.

Regulation 5

Regulation 5 reduces the maximum penalty that can be imposed by way of imprisonment for an offence to which section 107(5) of the Act applies from six months to three months.

Regulation 6

Section 128A provides that a licensing body must notify any licence or licensing scheme to the Secretary of State if that licence or scheme will authorise the playing in public of excepted sound recordings, as defined in section 72(1A) of the Act, included in broadcasts. The Secretary of State has powers to refer the licence or scheme to the Copyright Tribunal for a determination of whether the licence or scheme is reasonable in the circumstances. Section 128B applies to a reference made under section 128A. Regulation 5 repeals section 128A and section 128B.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available at <http://www.ipso.gov.uk/govresponse-musiclicensing.pdf> and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website. A transposition note is also annexed to the Explanatory Memorandum.

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STATUTORY INSTRUMENTS

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