

SCHEDULES

SCHEDULE 2

Section 189.

RIGHTS IN PERFORMANCES: PERMITTED ACTS

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 Part II; 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 Part II 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.

Criticism, reviews and news reporting

- 2 (1) Fair dealing with a performance or recording—
- (a) for the purpose of criticism or review, of that or another performance or recording, or of a work, or
 - (b) for the purpose of reporting current events,
- does not infringe any of the rights conferred by Part II.
- (2) Expressions used in this paragraph have the same meaning as in section 30.

Incidental inclusion of performance or recording

- 3 (1) The rights conferred by Part II 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.

Status: This is the original version (as it was originally enacted).

Things done for purposes of instruction or examination

- 4 (1) The rights conferred by Part II 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.
- (2) The rights conferred by Part II 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 Part II for all subsequent purposes.
- For this purpose “dealt with” means sold or let for hire, or offered or exposed for sale or hire.
- (4) Expressions used in this paragraph have the same meaning as in section 32.

*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 Part II.
- (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.

Recording of broadcasts and cable programmes by educational establishments

- 6 (1) A recording of a broadcast or cable programme, 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 Part II in relation to any performance or recording included in it.
- (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 Part II for all subsequent purposes.

For this purpose “dealt with” means sold or let for hire, or offered or exposed for sale or hire.

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- (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.

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 Part II to make that copy.
- (2) Expressions used in this paragraph have the same meaning as in section 44.

Parliamentary and judicial proceedings

- 8 (1) The rights conferred by Part II 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.

Royal Commissions and statutory inquiries

- 9 (1) The rights conferred by Part II 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.

Public records

- 10 (1) Material which is comprised in public records within the meaning of the Public Records Act 1958, the Public Records (Scotland) Act 1937 or the Public Records Act (Northern Ireland) 1923 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 Part II.
- (2) Expressions used in this paragraph have the same meaning as in section 49.

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 Part II.
- (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.

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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 this Part, 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 Part II.
- (6) Expressions used in this paragraph have the same meaning as in section 56.

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 broadcasting or including in a cable programme service the whole or part of the reading or recitation,
- it is not an infringement of the rights conferred by Part II 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 or cable programme;
 - (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.

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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 Part II, 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 Part II.
- (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.

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

- 15 (1) It is not an infringement of any right conferred by Part II 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, and
 - (b) 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.
- (3) Expressions used in this paragraph have the same meaning as in section 67.

Incidental recording for purposes of broadcast or cable programme

- 16 (1) A person who proposes to broadcast a recording of a performance, or include a recording of a performance in a cable programme service, in circumstances not infringing the rights conferred by Part II shall be treated as having consent for the purposes of that Part for the making of a further recording for the purposes of the broadcast or cable programme.
- (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 or including it in a cable programme service.

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- (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.

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

- 17 (1) The rights conferred by Part II 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 Part II are not infringed by—
- (a) the making or use of recordings by the Independent Broadcasting Authority for the purposes mentioned in section 4(7) of the Broadcasting Act 1981 (maintenance of supervision and control over programmes and advertisements); or
 - (b) anything done under or in pursuance of provision included in a contract between a programme contractor and the Authority in accordance with section 21 of that Act.
- (3) The rights conferred by Part II are not infringed by—
- (a) the making by or with the authority of the Cable Authority, or the use by that Authority, for the purpose of maintaining supervision and control over programmes included in services licensed under Part I of the Cable and Broadcasting Act 1984, of recordings of those programmes; or
 - (b) anything done under or in pursuance of—
 - (i) a notice or direction given under section 16 of the Cable and Broadcasting Act 1984 (power of Cable Authority to require production of recordings); or
 - (ii) a condition included in a licence by virtue of section 35 of that Act (duty of Authority to secure that recordings are available for certain purposes).
- (4) Expressions used in this paragraph have the same meaning as in section 69.

Free public showing or playing of broadcast or cable programme

- 18 (1) The showing or playing in public of a broadcast or cable programme to an audience who have not paid for admission to the place where the broadcast or programme is to be seen or heard does not infringe any right conferred by Part II in relation to a performance or recording included in—
- (a) the broadcast or cable programme, or
 - (b) any sound recording or film which is played or shown in public by reception of the broadcast or cable programme.
- (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

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- (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 programme, 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 or programmes is only incidental to the main purposes of the club or society.
- (4) Where the making of the broadcast or inclusion of the programme in a cable programme service was an infringement of the rights conferred by Part II in relation to a performance or recording, the fact that it was heard or seen in public by the reception of the broadcast or programme 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.

Reception and re-transmission of broadcast in cable programme service

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- (1) This paragraph applies where a broadcast made from a place in the United Kingdom is, by reception and immediate re-transmission, included in a cable programme service.
 - (2) The rights conferred by Part II in relation to a performance or recording included in the broadcast are not infringed—
 - (a) if the inclusion of the broadcast in the cable programme service is in pursuance of a requirement imposed under section 13(1) of the Cable and Broadcasting Act 1984 (duty of Cable Authority to secure inclusion in cable service of certain programmes), or
 - (b) if and to the extent that the broadcast is made for reception in the area in which the cable programme service is provided;but where the making of the broadcast was an infringement of those rights, the fact that the broadcast was re-transmitted as a programme in a cable programme service shall be taken into account in assessing the damages for that infringement.
 - (3) Expressions used in this paragraph have the same meaning as in section 73.

Provision of sub-titled copies of broadcast or cable programme

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- (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 television broadcasts or cable programmes without infringing any right conferred by Part II in relation to a performance or recording included in the broadcast or cable programme.
 - (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.

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Recording of broadcast or cable programme for archival purposes

- 21 (1) A recording of a broadcast or cable programme 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 Part II in relation to a performance or recording included in the broadcast or cable programme.
- (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.