

D R A F T S T A T U T O R Y I N S T R U M E N T S

2014 No. XXXX

COPYRIGHT

RIGHTS IN PERFORMANCES

**The Copyright and Rights in Performances (Research,
Education, Libraries and Archives) Regulations 2014**

Made - - - - *****

Coming into force in accordance with regulation 1

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to matters relating to copyright and rights in performances(b).

In accordance with paragraph 2(2) of Schedule 2 to that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

The Secretary of State, in exercise of the powers conferred by section 2(2) of that Act makes the following Regulations:

Citation and Commencement

1. These Regulations may be cited as the Copyright and Rights in Performances (Research, Education, Libraries and Archives) Regulations 2014 and come into force at 00.02 on 1st June 2014.

Amendments to the Copyright, Designs and Patents Act 1988 etc.

2.—(1) The Copyright, Designs and Patents Act 1988(c) is amended in accordance with these Regulations.

(2) The Schedule (which contains consequential amendments, repeals and revocations) has effect.

(a) 1972 c.68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1) and the European Union (Amendment) Act 2008 (c.7), section 3(3) and Part 1 of the Schedule.
(b) S.I. 1992/707 and S.I. 1993/595.
(c) 1988 c.48.

Research, private study and text and data analysis for non-commercial research

3.—(1) In section 29(a)—

- (a) in subsection (1), omit “literary, dramatic, musical or artistic”,
- (b) in subsection (1C), omit “literary, dramatic, musical or artistic”,
- (c) omit subsection (2),
- (d) for subsection (3)(a), substitute—

“(a) in the case of a librarian, or a person acting on behalf of a librarian, that person does anything which is not permitted under section 42A (copying by librarians: single copies of published works), or”, and

- (e) after subsection (4A) insert—

“(4B) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright, that term is unenforceable.”.

(2) After section 29 insert—

“29A Copies for text and data analysis for non-commercial research

(1) The making of a copy of a work by a person who has lawful access to the work does not infringe copyright in the work provided that—

- (a) the copy is made in order that a person who has lawful access to the work may carry out a computational analysis of anything recorded in the work for the sole purpose of research for a non-commercial purpose, and
- (b) the copy is accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise).

(2) Where a copy of a work has been made under this section, copyright in the work is infringed if—

- (a) the copy is transferred to any other person, except where the transfer is authorised by the copyright owner, or
- (b) the copy is used for any purpose other than that mentioned in subsection (1)(a), except where the use is authorised by the copyright owner.

(3) If a copy made under this section is subsequently dealt with—

- (a) it is to be treated as an infringing copy for the purposes of that dealing, and
- (b) if that dealing infringes copyright, it is to be treated as an infringing copy for all subsequent purposes.

(4) In subsection (3) “dealt with” means sold or let for hire, or offered or exposed for sale or hire.

(5) To the extent that a term of a contract purports to prevent or restrict the making of a copy which, by virtue of this section, would not infringe copyright, that term is unenforceable.”.

(3) In Schedule 2(b), immediately before paragraph 2, insert—

“Research and private study

1C.—(1) Fair dealing with a performance or a recording of a performance for the purposes of research for a non-commercial purpose does not infringe the rights conferred by this Chapter.

(2) Fair dealing with a performance or recording of a performance for the purposes of private study does not infringe the rights conferred by this Chapter.

(a) Section 29 was amended by S.I. 1992/3233, regulation 7, S.I. 1997/3032, regulation 8 and S.I. 2003/2498, regulation 9.

(b) Paragraph 2 of Schedule 2 was substituted by S.I. 2003/2498, regulation 10(2).

(3) Copying of a recording by a person other than the researcher or student is not fair dealing if—

- (a) in the case of a librarian, or a person acting on behalf of a librarian, that person does anything which is not permitted under paragraph 6F (copying by librarians: single copies of published recordings), or
- (b) in any other case, the person doing the copying knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time and for substantially the same purpose.

(4) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this paragraph, would not infringe any right conferred by this Chapter, that term is unenforceable.

(5) Expressions used in this paragraph have the same meaning as in section 29.

Copies for text and data analysis for non-commercial research

1D.—(1) The making of a copy of a recording of a performance by a person who has lawful access to the recording does not infringe any rights conferred by this Chapter provided that the copy is made in order that a person who has lawful access to the recording may carry out a computational analysis of anything recorded in the recording for the sole purpose of research for a non-commercial purpose.

(2) Where a copy of a recording has been made under this paragraph, the rights conferred by this Chapter are infringed if—

- (a) the copy is transferred to any other person, except where the transfer is authorised by the rights owner, or
- (b) the copy is used for any purpose other than that mentioned in sub-paragraph (1), except where the use is authorised by the rights owner.

(3) If a copy of a recording made under this paragraph is subsequently dealt with—

- (a) it is to be treated as an illicit recording for the purposes of that dealing, and
- (b) if that dealing infringes any right conferred by this Chapter, it is to be treated as an illicit recording for all subsequent purposes.

(4) To the extent that a term of a contract purports to prevent or restrict the making of a copy which, by virtue of this paragraph, would not infringe any right conferred by this Chapter, that term is unenforceable.

(5) Expressions used in this paragraph have the same meaning as in section 29A.”.

Education

4.—(1) For section 32(a), substitute—

“32 Illustration for instruction

(1) Fair dealing with a work for the sole purpose of illustration for instruction does not infringe copyright in the work provided that the dealing is—

- (a) for a non-commercial purpose,
- (b) by a person giving or receiving instruction (or preparing for giving or receiving instruction), and
- (c) accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise).

(a) Section 32 was amended by S.I. 2003/2498, regulation 11.

(2) For the purposes of subsection (1), “giving or receiving instruction” includes setting examination questions, communicating the questions to pupils and answering the questions.

(3) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright, that term is unenforceable.”.

(2) For section 35(a), substitute—

“35 Recording by educational establishments of broadcasts

(1) A recording of a broadcast, 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 infringing copyright in the broadcast, or in any work included in it, provided that—

- (a) the educational purposes are non-commercial, and
- (b) the recording or copy is accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise).

(2) Copyright is not infringed where a recording of a broadcast or a copy of such a recording, made under subsection (1), is communicated by or on behalf of the educational establishment to its pupils or staff for the non-commercial educational purposes of that establishment.

(3) Subsection (2) only applies to a communication received outside the premises of the establishment if that communication is made by means of a secure electronic network accessible only by the establishment’s pupils and staff.

(4) Acts which would otherwise be permitted by this section are not permitted if, or to the extent that, licences are available authorising the acts in question and the educational establishment responsible for those acts knew or ought to have been aware of that fact.

(5) If a copy made under this section is subsequently dealt with—

- (a) it is to be treated as an infringing copy for the purposes of that dealing, and
- (b) if that dealing infringes copyright, it is to be treated as an infringing copy for all subsequent purposes.

(6) In this section “dealt with” means—

- (a) sold or let for hire,
- (b) offered or exposed for sale or hire, or
- (c) communicated otherwise than as permitted by subsection (2).”.

(3) For section 36(b), substitute—

“36 Copying and use of extracts of works by educational establishments

(1) The copying of extracts of a relevant work by or on behalf of an educational establishment does not infringe copyright in the work, provided that—

- (a) the copy is made for the purposes of instruction for a non-commercial purpose, and
- (b) the copy is accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise).

(2) Copyright is not infringed where a copy of an extract made under subsection (1) is communicated by or on behalf of the educational establishment to its pupils or staff for the purposes of instruction for a non-commercial purpose.

(3) Subsection (2) only applies to a communication received outside the premises of the establishment if that communication is made by means of a secure electronic network accessible only by the establishment’s pupils and staff.

(a) Section 35 was amended by S.I. 2003/2498, regulation 12 and regulation 2(2) and Schedule 2.

(b) Section 36 was amended by S.I. 2003/2498, regulation 13 and regulation 2(2) and Schedule 2.

(4) In this section “relevant work” means a copyright work other than—

- (a) a broadcast, or
- (b) an artistic work which is not incorporated into another work.

(5) Not more than 5% of a work may be copied under this section by or on behalf of an educational establishment in any period of 12 months, and for these purposes a work which incorporates another work is to be treated as a single work.

(6) Acts which would otherwise be permitted by this section are not permitted if, or to the extent that, licences are available authorising the acts in question and the educational establishment responsible for those acts knew or ought to have been aware of that fact.

(7) The terms of a licence granted to an educational establishment authorising acts permitted by this section are of no effect so far as they purport to restrict the proportion of a work which may be copied (whether on payment or free of charge) to less than that which would be permitted by this section.

(8) If a copy made under this section is subsequently dealt with—

- (a) it is to be treated as an infringing copy for the purposes of that dealing, and
- (b) if that dealing infringes copyright, it is to be treated as an infringing copy for all subsequent purposes.

(9) In this section “dealt with” means—

- (a) sold or let for hire,
- (b) offered or exposed for sale or hire, or
- (c) communicated otherwise than as permitted by subsection (2).”.

(4) For paragraph 4 of Schedule 2(a), substitute—

“Illustration for instruction

4.—(1) Fair dealing with a performance or a recording of a performance for the sole purpose of illustration for instruction does not infringe the rights conferred by this Chapter provided that the dealing is—

- (a) for a non-commercial purpose, and
- (b) by a person giving or receiving instruction (or preparing for giving or receiving instruction).

(2) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this paragraph, would not infringe any right conferred by this Chapter, that term is unenforceable.

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

(5) For paragraph 6 of Schedule 2(b), substitute—

“Recording by educational establishments of broadcasts

6.—(1) A recording of a broadcast, 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 infringing any of the rights conferred by this Chapter in relation to any performance or recording included in it, provided that the educational purposes are non-commercial.

(2) The rights conferred by this Chapter are not infringed where a recording of a broadcast or a copy of such a recording, made under sub-paragraph (1), is communicated by or on behalf of the educational establishment to its pupils or staff for the non-commercial educational purposes of that establishment.

(a) Paragraph 4 of Schedule 2 was amended by S.I. 2003/2498, regulation 11(2).

(b) Paragraph 6 of Schedule 2 was amended by S.I. 2003/2498, regulation 12(2).

(3) Sub-paragraph (2) only applies to a communication received outside the premises of the establishment if that communication is made by means of a secure electronic network accessible only by the establishment's pupils and staff.

(4) Acts which would otherwise be permitted by this paragraph are not permitted if, or to the extent that, licences are available authorising the acts in question and the educational establishment responsible for those acts knew or ought to have been aware of that fact.

(5) If a recording made under this paragraph is subsequently dealt with—

- (a) it is to be treated as an illicit recording for the purposes of that dealing, and
- (b) if that dealing infringes any right conferred by this Chapter, it is to be treated as an illicit recording for all subsequent purposes.

(6) In this paragraph "dealt with" means—

- (a) sold or let for hire,
- (b) offered or exposed for sale or hire, or
- (c) communicated otherwise than as permitted by sub-paragraph (2).

(7) Expressions used in this paragraph (other than "dealt with") 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.

Copying and use of extracts of recordings by educational establishments

6ZA.—(1) The copying of extracts of a recording of a performance by or on behalf of an educational establishment does not infringe any of the rights conferred by this Chapter in the recording provided that the copy is made for the purposes of instruction for a non-commercial purpose.

(2) The rights conferred by this Chapter are not infringed where an extract of a recording of a performance, made under sub-paragraph (1), is communicated by or on behalf of the educational establishment to its pupils or staff for the purposes of instruction for a non-commercial purpose.

(3) Sub-paragraph (2) only applies to a communication received outside the premises of the establishment if that communication is made by means of a secure electronic network accessible only by the establishment's pupils and staff.

(4) Not more than 5% of a recording may be copied under this paragraph by or on behalf of an educational establishment in any period of 12 months.

(5) Acts which would otherwise be permitted by this paragraph are not permitted if, or to the extent that, licences are available authorising the acts in question and the educational establishment responsible for those acts knew or ought to have been aware of that fact.

(6) The terms of a licence granted to an educational establishment authorising acts permitted by this paragraph are of no effect so far as they purport to restrict the proportion of a recording which may be copied (whether on payment or free of charge) to less than that which would be permitted by this paragraph.

(7) If a recording made under this paragraph is subsequently dealt with—

- (a) it is to be treated as an illicit recording for the purposes of that dealing, and
- (b) if that dealing infringes any right conferred by this Chapter, it is to be treated as an illicit recording for all subsequent purposes.

(8) In this paragraph "dealt with" means—

- (a) sold or let for hire,
- (b) offered or exposed for sale or hire, or
- (c) communicated otherwise than as permitted by sub-paragraph (2).

(9) Expressions used in this paragraph (other than "dealt with") have the same meaning as in section 36 and any provision made under section 174(2) with respect to the application of that section also applies for the purposes of this paragraph."

Libraries and archives: amendments to Part 1 of the Act

5.—(1) After section 40A(a) insert—

“40B Libraries and educational establishments etc: making works available through dedicated terminals

(1) Copyright in a work is not infringed by an institution specified in subsection (2) communicating the work to the public or making it available to the public by means of a dedicated terminal on its premises, if the conditions in subsection (3) are met.

(2) The institutions are—

- (a) a library,
- (b) an archive,
- (c) a museum, and
- (d) an educational establishment.

(3) The conditions are that the work or a copy of the work—

- (a) has been lawfully acquired by the institution,
- (b) is communicated or made available to individual members of the public for the purposes of research or private study, and
- (c) is communicated or made available in compliance with any purchase or licensing terms to which the work is subject.”.

(2) For sections 41 to 43(b), substitute—

“41 Copying by librarians: supply of single copies to other libraries

(1) A librarian may, if the conditions in subsection (2) are met, make a single copy of the whole or part of a published work and supply it to another library, without infringing copyright in the work.

(2) The conditions are—

- (a) the copy is supplied in response to a request from a library which is not conducted for profit, and
- (b) at the time of making the copy the librarian does not know, or could not reasonably find out, the name and address of a person entitled to authorise the making of a copy of the work.

(3) The condition in subsection (2)(b) does not apply where the request is for a copy of an article in a periodical.

(4) Where a library makes a charge for supplying a copy under this section, the sum charged must be calculated by reference to the costs attributable to the production of the copy.

(5) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright, that term is unenforceable.

42 Copying by librarians etc: replacement copies of works

(1) A librarian, archivist or curator of a library, archive or museum may, without infringing copyright, make a copy of an item in that institution’s permanent collection—

- (a) in order to preserve or replace that item in that collection, or

(a) Section 40A was inserted by S.I. 1996/2967, regulation 11(2) and is prospectively amended by section 43 of the Digital Economy Act 2010 (c.24).

(b) Section 43 was amended by S.I. 2003/2498, regulation 14.

- (b) where an item in the permanent collection of another library, archive or museum has been lost, destroyed or damaged, in order to replace the item in the collection of that other library, archive or museum,

provided that the conditions in subsections (2) and (3) are met.

(2) The first condition is that the item is—

- (a) included in the part of the collection kept wholly or mainly for the purposes of reference on the institution's premises,
- (b) included in a part of the collection not accessible to the public, or
- (c) available on loan only to other libraries, archives or museums.

(3) The second condition is that it is not reasonably practicable to purchase a copy of the item to achieve either of the purposes mentioned in subsection (1).

(4) The reference in subsection (1)(b) to a library, archive or museum is to a library, archive or museum which is not conducted for profit.

(5) Where an institution makes a charge for supplying a copy to another library, archive or museum under subsection (1)(b), the sum charged must be calculated by reference to the costs attributable to the production of the copy.

(6) In this section "item" means a work or a copy of a work.

(7) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright, that term is unenforceable.

42A Copying by librarians: single copies of published works

(1) A librarian of a library which is not conducted for profit may, if the conditions in subsection (2) are met, make and supply a single copy of—

- (a) one article in any one issue of a periodical, or
- (b) a reasonable proportion of any other published work,

without infringing copyright in the work.

(2) The conditions are—

- (a) the copy is supplied in response to a request from a person who has provided the librarian with a declaration in writing which includes the information set out in subsection (3), and
- (b) the librarian is not aware that the declaration is false in a material particular.

(3) The information which must be included in the declaration is—

- (a) the name of the person who requires the copy and the material which that person requires,
- (b) a statement that the person has not previously been supplied with a copy of that material by any library,
- (c) a statement that the person requires the copy for the purposes of research for a non-commercial purpose or private study, will use it only for those purposes and will not supply the copy to any other person, and
- (d) a statement that to the best of the person's knowledge, no other person with whom the person works or studies has made, or intends to make, at or about the same time as the person's request, a request for substantially the same material for substantially the same purpose.

(4) Where a library makes a charge for supplying a copy under this section, the sum charged must be calculated by reference to the costs attributable to the production of the copy.

(5) Where a person (“P”) makes a declaration under this section that is false in a material particular and is supplied with a copy which would have been an infringing copy if made by P—

- (a) P is liable for infringement of copyright as if P had made the copy, and
- (b) the copy supplied to P is to be treated as an infringing copy for all purposes.

(6) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright, that term is unenforceable.

43 Copying by librarians or archivists: single copies of unpublished works

(1) A librarian or archivist may make and supply a single copy of the whole or part of a work without infringing copyright in the work, provided that—

- (a) the copy is supplied in response to a request from a person who has provided the librarian or archivist with a declaration in writing which includes the information set out in subsection (2), and
- (b) the librarian or archivist is not aware that the declaration is false in a material particular.

(2) The information which must be included in the declaration is—

- (a) the name of the person who requires the copy and the material which that person requires,
- (b) a statement that the person has not previously been supplied with a copy of that material by any library or archive, and
- (c) a statement that the person requires the copy for the purposes of research for a non-commercial purpose or private study, will use it only for those purposes and will not supply the copy to any other person.

(3) But copyright is infringed if—

- (a) the work had been published or communicated to the public before the date it was deposited in the library or archive, or
- (b) the copyright owner has prohibited the copying of the work,

and at the time of making the copy the librarian or archivist is, or ought to be, aware of that fact.

(4) Where a library or archive makes a charge for supplying a copy under this section, the sum charged must be calculated by reference to the costs attributable to the production of the copy.

(5) Where a person (“P”) makes a declaration under this section that is false in a material particular and is supplied with a copy which would have been an infringing copy if made by P—

- (a) P is liable for infringement of copyright as if P had made the copy, and
- (b) the copy supplied to P is to be treated as an infringing copy for all purposes.

43A Sections 40A to 43: interpretation

(1) The following definitions have effect for the purposes of sections 40A to 43.

(2) “Library” means—

- (a) a library which is publicly accessible, or
- (b) a library of an educational establishment.

(3) “Museum” includes a gallery.

(4) “Conducted for profit”, in relation to a library, archive or museum, means a body of that kind which is established or conducted for profit or which forms part of, or is administered by, a body established or conducted for profit.

(5) References to a librarian, archivist or curator include a person acting on behalf of a librarian, archivist or curator.”.

Libraries and archives: amendments to Part 2 of the Act

6. In Schedule 2, after paragraph 6B(a), insert—

“Libraries and educational establishments etc: making recordings of performances available through dedicated terminals

6C.—(1) The rights conferred by this Chapter in a recording of a performance are not infringed by an institution specified in sub-paragraph (2) communicating the recording to the public or making it available to the public by means of a dedicated terminal on its premises, if the conditions in sub-paragraph (3) are met.

(2) The institutions are—

- (a) a library,
- (b) an archive,
- (c) a museum, and
- (d) an educational establishment.

(3) The conditions are that the recording or a copy of the recording—

- (a) has been lawfully acquired by the institution,
- (b) is communicated or made available to individual members of the public for the purposes of research or private study, and
- (c) is communicated or made available in compliance with any purchase or licensing terms to which the recording is subject.

Copying by librarians: supply of single copies to other libraries

6D.—(1) A librarian may, if the conditions in sub-paragraph (2) are met, make a single copy of the whole or part of a published recording of a performance and supply it to another library, without infringing any rights conferred by this Chapter in the recording.

(2) The conditions are—

- (a) the copy is supplied in response to a request from a library which is not conducted for profit, and
- (b) at the time of making the copy the librarian does not know, or could not reasonably find out, the name and address of a person entitled to authorise the making of a copy of the recording.

(3) Where a library makes a charge for supplying a copy under this paragraph, the sum charged must be calculated by reference to the costs attributable to the production of the copy.

(4) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this paragraph, would not infringe any right conferred by this Chapter, that term is unenforceable.

Copying by librarians etc: replacement copies of recordings

6E.—(1) A librarian, archivist or curator of a library, archive or museum may, without infringing any rights conferred by this Chapter, make a copy of a recording of a performance in that institution’s permanent collection—

- (a) in order to preserve or replace that recording in that collection, or

(a) Paragraph 6B was inserted into Schedule 2 by S.I. 1996/2967, regulation 20(3), was amended by S.I. 2006/18, paragraph 9 of the Schedule and is prospectively amended by section 43 of the Digital Economy Act 2010 (c.24).

- (b) where a recording in the permanent collection of another library, archive or museum has been lost, destroyed or damaged, in order to replace the recording in the collection of that other library, archive or museum,

provided that the conditions in sub-paragraphs (2) and (3) are met.

(2) The first condition is that the recording is—

- (a) included in the part of the collection kept wholly or mainly for the purposes of reference on the institution's premises,
- (b) included in a part of the collection not accessible to the public, or
- (c) available on loan only to other libraries, archives or museums.

(3) The second condition is that it is not reasonably practicable to purchase a copy of the recording to achieve either of the purposes mentioned in sub-paragraph (1).

(4) The reference in sub-paragraph (1)(b) to a library, archive or museum is to a library, archive or museum which is not conducted for profit.

(5) Where an institution makes a charge for supplying a copy to another library, archive or museum under sub-paragraph (1)(b), the sum charged must be calculated by reference to the costs attributable to the production of the copy.

(6) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this paragraph, would not infringe any right conferred by this Chapter, that term is unenforceable.

Copying by librarians: single copies of published recordings

6F.—(1) A librarian of a library which is not conducted for profit may, if the conditions in sub-paragraph (2) are met, make and supply a single copy of a reasonable proportion of a published recording without infringing any of the rights in the recording conferred by this Chapter.

(2) The conditions are—

- (a) the copy is supplied in response to a request from a person who has provided the librarian with a declaration in writing which includes the information set out in sub-paragraph (3), and
- (b) the librarian is not aware that the declaration is false in a material particular.

(3) The information which must be included in the declaration is—

- (a) the name of the person who requires the copy and the material which that person requires,
- (b) a statement that the person has not previously been supplied with a copy of that material by any library,
- (c) a statement that the person requires the copy for the purposes of research for a non-commercial purpose or private study, will use it only for those purposes and will not supply the copy to any other person, and
- (d) a statement that to the best of the person's knowledge, no other person with whom the person works or studies has made, or intends to make, at or about the same time as the person's request, a request for substantially the same material for substantially the same purpose.

(4) Where a library makes a charge for supplying a copy under this paragraph, the sum charged must be calculated by reference to the costs attributable to the production of the copy.

(5) Where a person ("P") makes a declaration under this paragraph that is false in a material particular and is supplied with a copy of a recording which would have been an illicit recording if made by P—

- (a) P is liable for infringement of the rights conferred by this Chapter as if P had made the copy, and

(b) the copy supplied to P is to be treated as an illicit recording for all purposes.

(6) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this paragraph, would not infringe any right conferred by this Chapter, that term is unenforceable.

Copying by librarians or archivists: single copies of unpublished recordings

6G.—(1) A librarian or archivist may make and supply a single copy of the whole or part of a recording without infringing any of the rights conferred by this Chapter in the recording, provided that—

(a) the copy is supplied in response to a request from a person who has provided the librarian or archivist with a declaration in writing which includes the information set out in sub-paragraph (2), and

(b) the librarian or archivist is not aware that the declaration is false in a material particular.

(2) The information which must be included in the declaration is—

(a) the name of the person who requires the copy and the material which that person requires,

(b) a statement that the person has not previously been supplied with a copy of that material by any library or archive, and

(c) a statement that the person requires the copy for the purposes of research for a non-commercial purpose or private study, will use it only for those purposes and will not supply the copy to any other person.

(3) But the rights conferred by this Chapter are infringed if—

(a) the recording had been published or communicated to the public before the date it was deposited in the library or archive, or

(b) the rights owner has prohibited the copying of the recording,

and at the time of making the copy the librarian or archivist is, or ought to be, aware of that fact.

(4) Where a library or archive makes a charge for supplying a copy under this paragraph, the sum charged must be calculated by reference to the costs attributable to the production of the copy.

(5) Where a person (“P”) makes a declaration under this paragraph that is false in a material particular and is supplied with a copy of a recording which would have been an illicit recording if made by P—

(a) P is liable for infringement of the rights conferred by this Chapter as if P had made the copy, and

(b) the copy supplied to P is to be treated as an illicit recording for all purposes.

Paragraphs 6B to 6G: interpretation

6H. Expressions used in paragraphs 6B to 6G have the same meaning as in sections 40A to 43.”.

Recordings of folksongs

7.—(1) In section 61(1), for “designated body” substitute “body not established or conducted for profit”.

(2) For section 61(3) to (6)(a), substitute—

(a) Section 61(4) was amended by S.I. 2003/2498, regulation 16.

“(3) A single copy of a sound recording made in reliance on subsection (1) and included in an archive referred to in that subsection may be made and supplied by the archivist without infringing copyright in the recording or the works included in it, provided that—

- (a) the copy is supplied in response to a request from a person who has provided the archivist with a declaration in writing which includes the information set out in subsection (4), and
- (b) the archivist is not aware that the declaration is false in a material particular.

(4) The information which must be included in the declaration is—

- (a) the name of the person who requires the copy and the sound recording which is the subject of the request,
- (b) a statement that the person has not previously been supplied with a copy of that sound recording by any archivist, and
- (c) a statement that the person requires the copy for the purposes of research for a non-commercial purpose or private study, will use it only for those purposes and will not supply the copy to any other person.

(5) Where an archive makes a charge for supplying a copy under this section, the sum charged must be calculated by reference to the costs attributable to the production of the copy.

(6) Where a person (“P”) makes a declaration under this section that is false in a material particular and is supplied with a copy which would have been an infringing copy if made by P—

- (a) P is liable for infringement of copyright as if P had made the copy, and
- (b) the copy supplied to P is to be treated as an infringing copy for all purposes.

(7) In this section references to an archivist include a person acting on behalf of an archivist.”.

(3) In paragraph 14(1)(a) of Schedule 2, for “designated body” substitute “body not established or conducted for profit”.

(4) For paragraph 14(3) and (4), substitute—

“(3) A single copy of a recording made in reliance on sub-paragraph (1) and included in an archive referred to in that sub-paragraph may be made and supplied by the archivist without infringing any right conferred by this Chapter, provided that—

- (a) the copy is supplied in response to a request from a person who has provided the archivist with a declaration in writing which includes the information set out in sub-paragraph (4), and
- (b) the archivist is not aware that the declaration is false in a material particular.

(4) The information which must be included in the declaration is—

- (a) the name of the person who requires the copy and the recording which is the subject of the request,
- (b) a statement that the person has not previously been supplied with a copy of that recording by any archivist, and
- (c) a statement that the person requires the copy for the purposes of research for a non-commercial purpose or private study, will use it only for those purposes and will not supply the copy to any other person.

(5) Where an archive makes a charge for supplying a copy under this paragraph, the sum charged must be calculated by reference to the costs attributable to the production of the copy.

(a) Paragraph 14 was amended by S.I. 2006/18, paragraph 9 of the Schedule.

(6) Where a person (“P”) makes a declaration under this paragraph that is false in a material particular and is supplied with a copy of a recording which would have been an illicit recording if made by P—

(a) P is liable for infringement of the rights conferred by this Chapter as if P had made the copy, and

(b) the copy supplied to P is to be treated as an illicit recording for all purposes.

(7) In this paragraph references to an archivist include a person acting on behalf of an archivist.

(8) Expressions used in this paragraph have the same meaning as in section 61.”.

Recording of broadcasts for archival purposes

8.—(1) For section 75(a), substitute—

“75 Recording of broadcast for archival purposes

(1) A recording of a broadcast or a copy of such a recording may be made for the purpose of being placed in an archive maintained by a body which is not established or conducted for profit without infringing any copyright in the broadcast or in any work included in it.

(2) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright, that term is unenforceable.”.

(2) For paragraph 21(b) of Schedule 2, substitute—

“Recording of broadcast for archival purposes

21.—(1) A recording of a broadcast or a copy of such a recording may be made for the purpose of being placed in an archive maintained by a body which is not established or conducted for profit without infringing any right conferred by this Chapter in relation to a performance or recording included in the broadcast.

(2) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this paragraph, would not infringe any right conferred by this Chapter, that term is unenforceable.

(3) Expressions used in this paragraph have the same meaning as in section 75.”.

Date _____ Parliamentary Under Secretary of State for Business, Innovation and Skills
Name _____ Department for Business, Innovation and Skills

(a) Section 75 was amended by S.I. 2003/2498, regulation 2(2) and Schedule 2.
(b) Paragraph 21 of Schedule 2 was amended by S.I. 2003/2498, Schedule 2 and S.I. 2006/18, paragraph 9 of the Schedule.

SCHEDULE

Regulation 2(2)

CONSEQUENTIAL AMENDMENTS, REPEALS AND REVOCATIONS

Interpretation

1. References in this Schedule to the “1988 Act” are references to the Copyright, Designs and Patents Act 1988(a).

Consequential amendments

2. In section 27(6)(b) of the 1988 Act (meaning of infringing copy)—
- (a) omit the entries relating to sections 32(5), 35(3), 36(5) and 37(3)(b),
 - (b) insert into the list in the proper place the following entries—
 - “section 29A(3) (copies for text and data analysis for non-commercial research),”,
 - “section 35(5) (recording by educational establishments of broadcasts),”,
 - “section 36(8) (copying and use of extracts of works by educational establishments),”,
 - “section 42A(5)(b) (copying by librarians: single copies of published works),”,
 - “section 43(5)(b) (copying by librarians or archivists: single copies of unpublished works),”and
 - “section 61(6)(b) (recordings of folksongs),”.
3. In section 40A(2)(c) of the 1988 Act, omit “prescribed”.
4. In section 79(d) of the 1988 Act—
- (a) omit subsection (4)(c), and
 - (b) after subsection (4) insert—
 - “(4A) The right is also not infringed by any act done for the purposes of an examination which by virtue of any provision of Chapter 3 of Part 1 would not infringe copyright.”.
5. In section 143(e) of the 1988 Act—
- (a) omit subsection (1)(a), and
 - (b) in subsection (3) omit “35,”.
6. In section 179(f) of the 1988 Act (index of defined expressions for the purposes of Part 1 of the 1988 Act)—
- (a) for the entry relating to the definition of “archivist” substitute—

“archivist (in sections 40A to 43)	section 43A(5),”
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 - (b) for the entry relating to the definition of “librarian” substitute—

“librarian (in sections 40A to 43)	section 43A(5),”
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 - (c) insert in alphabetical order in the table each of the following entries—

“conducted for profit (in sections 40A to 43)	section 43A(4),”
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(a) 1988 c.48.

(b) Section 27(6) has been amended but none of the amendments are relevant.

(c) Section 40A was inserted by S.I. 1996/2967, regulation 11(2) and is prospectively amended by section 43 of the Digital Economy Act 2010 (c.24).

(d) Section 79 has been amended but none of the amendments are relevant.

(e) Section 143(1)(a) was amended by S.I. 2003/2498, regulation 2(2) and Schedule 2.

(f) Section 179 has been amended but none of the amendments are relevant.

“curator (in sections 40A to 43)	section 43A(5),”
“library (in sections 40A to 43)	section 43A(2),”
“museum (in sections 40A to 43)	section 43A(3),”

and

(d) omit the entries for “prescribed conditions” and “prescribed library or archive”.

7. In section 197(5)(a) of the 1988 Act (meaning of illicit recording)—

(a) insert into the list in the proper place—

“paragraph 1D(3) (copies for text and data analysis for non-commercial research),”

“paragraph 6ZA(7) (copying and use of extracts of recordings by educational establishments),”

“paragraph 6F(5)(b) (copying by librarians: single copies of published recordings),”

“paragraph 6G(5)(b) (copying by librarians or archivists: single copies of unpublished recordings),” and

“paragraph 14(6)(b) (recordings of folksongs),”

(b) omit the entry for paragraph 4(3), and

(c) for the entry relating to paragraph 6(2), substitute—

“paragraph 6(5) (recording by educational establishments of broadcasts),”.

8. In paragraph 6B of Schedule 2(b) to the 1988 Act—

(a) in sub-paragraph (1), omit “prescribed”; and

(b) omit sub-paragraph (2).

9. In paragraph 16(1) of Schedule 2A(c) to the 1988 Act, omit “6,” and “recording of broadcasts by educational establishments,”.

10.—(1) Schedule 5A(d) to the 1988 Act (permitted acts to which section 296ZE applies) is amended as follows.

(2) In Part 1—

(a) for the entry relating to section 32(1), (2) and (3), substitute—

“section 32 (illustration for instruction),”

(b) for the entry relating to section 36, substitute—

“section 36 (copying and use of extracts of works by educational establishments),”

(c) omit the entries relating to sections 38, 39, 41, 42 and 43,

(d) insert in the proper place the following entries—

“section 29A (copies for text and data analysis for non-commercial research),”

“section 41 (copying by librarians: supply of single copies to other libraries),”

“section 42 (copying by librarians etc: replacement copies of works),”

“section 42A (copying by librarians: single copies of published works),” and

(a) Section 197(5) was amended by S.I. 2003/2498 regulation 20(4) and Schedule 2 and S.I. 2006/18, paragraph 8 of the Schedule.

(b) Paragraph 6B of Schedule 2 was inserted in to the 1988 Act by S.I. 1996/2967 regulation 20(3), was amended by S.I. 2006/18, paragraph 9 of the Schedule and is prospectively amended by section 43 of the Digital Economy Act 2010 (c.24).

(c) Schedule 2A was inserted into the 1988 Act by S.I. 1996/2967, regulation 22(2) and paragraph 16(1) of Schedule 2A was amended by S.I. 2003/2498, Schedule 1, Part 1, paragraph 17.

(d) Schedule 5A was inserted into the 1988 Act by S.I. 2003/2498, regulation 24(2).

“section 43 (copying by librarians or archivists: single copies of unpublished works)”, and
 (e) for the entry relating to section 75, substitute—
 “section 75 (recording of broadcast for archival purposes)”.

(3) In Part 2—

(a) for the entry relating to paragraph 4 of Schedule 2, substitute—

“paragraph 4 of Schedule 2 (illustration for instruction)”,

(b) for the entry relating to paragraph 6 of Schedule 2, substitute:

“paragraph 6 of Schedule 2 (recording by educational establishments of broadcasts)”,

(c) insert into the list in the proper place, the following entries—

“paragraph 1C of Schedule 2 (research and private study)”,

“paragraph 1D of Schedule 2 (copies for text and data analysis for non-commercial research)”,

“paragraph 6ZA of Schedule 2 (copying and use of extracts of recordings by educational establishments)”,

“paragraph 6D of Schedule 2 (copying by librarians: supply of single copies to other libraries)”,

“paragraph 6E of Schedule 2 (copying by librarians etc: replacement copies of recordings)”,

“paragraph 6F of Schedule 2 (copying by librarians: single copies of published recordings)”, and

“paragraph 6G of Schedule 2 (copying by librarians or archivists: single copies of unpublished recordings)”.

11. In section 185 of the Broadcasting Act 1990(a), omit subsection (2)(a).

12. In section 43(8) of the Digital Economy Act 2010(b), omit paragraph (b).

13. In article 2 of the Copyright (Application of Provisions relating to Educational Establishments to Teachers) (No.2) Order 1989(c), for the words “which provide for educational use of recordings of broadcasts and copying of passages from published works in which copyright subsists”, substitute “recording by educational establishments of broadcasts and copying and use of extracts by educational establishments”.

Repeals and revocations

14. The enactments listed in column 1 of the Table are repealed or revoked to the extent specified in column 2.

Table

<i>Enactment</i>	<i>Extent of repeal or revocation</i>
The Copyright, Designs and Patents Act 1988	sections 37 to 40
The Copyright and Related Rights Regulations 2003(d)	regulations 11 to 14 and 16

(a) 1990 c.42. Section 185(2) was amended by the Communications Act 2003 (c.21), Schedule 15, paragraph 64.

(b) 2010 c.24.

(c) S.I. 1989/1067. Regulation 2 was amended by S.I. 2003/2498, regulation 2(2) and Schedule 2 and S.I. 2010/1172, Schedule 3, paragraph 15.

(d) S.I. 2003/2498.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the implementation of Member State options in relation to exceptions relating to copyright and performers' rights which are permitted by Directive 2001/29/EC(a) of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society. The provisions of the Directive relied on are Article 5(2)(c) in relation to publicly accessible libraries, educational establishments, museums and archives, Article 5(3)(a) in relation to illustration for teaching and scientific research and Article 5(3)(n) in relation to research and private study through dedicated terminals on the premises of educational and other establishments.

The Regulations make amendments to Chapter 3 of Part 1 of, and Schedule 2 to, the Copyright, Designs and Patents Act 1988 ("the 1988 Act"). These provisions relate to exceptions relating to copyright and rights in performances. The provision made by these Regulations relate to research and private study (including text and data analysis for non-commercial research), education, libraries and archives, recordings of folksongs and recording of broadcasts for archival purposes.

Regulation 3 extends the provisions of section 29 (which currently allows some types of copyright works to be copied for research and private study) to cover all types of copyright work and introduces a new section 29A (which makes provision for the copying of material in order to carry out a computational analysis of all the materials contained therein, for the purposes of non-commercial research). Corresponding amendments are made to Schedule 2 by the introduction of paragraphs 1C and 1D which introduce corresponding exceptions to rights in performances.

Regulation 4 substitutes new sections 32, 35 and 36 relating to education. New section 32 permits fair dealing with a copyright work for the sole purpose of illustration for instruction (which includes acts done in relation to the setting and answering of examination questions). The dealing must be for a non-commercial purpose and be by a person giving or receiving the instruction. New section 35 permits educational establishments to make copies of recordings of broadcasts which have been made for the non-commercial educational purposes of the establishment and communicate them to staff and pupils, provided that where the communication may be received off the premises it must be made by means of a secure electronic network which is accessible only to staff or pupils. The exception to copyright does not apply if or to the extent that licences are available authorising the acts in question and the educational establishment knew or ought to have been aware of the fact. The existing requirement that the licensing scheme must be certified by the Secretary of State has been removed. New section 36 permits educational establishments to copy up to 5% of a work (other than a broadcast, or an artistic work which is not included in another work) in any 12 month period, provided that the copy is made for the purposes of instruction for a non-commercial purpose and is accompanied by a sufficient acknowledgement. It also permits such copies to be communicated to staff and pupils (for example by means of an interactive white board), provided that where the communication may be received off the premises it must be made by means of a secure electronic network which is accessible only to staff or pupils. The exception to copyright does not apply if or to the extent that licences are available authorising the acts in question and the educational establishment knew or ought to have been aware of the fact. Any term of a licence which purports to restrict the proportion of any work which may be copied to less than 5% is of no effect. Corresponding amendments are made to Schedule 2 by the substitution of new paragraphs 4 and 6 and the insertion of new paragraph 6ZA which introduce similar exceptions to performers' rights in relation to fair dealing with their performances and the copying of recordings of performances.

Regulations 5 and 6 make a number of amendments to the provisions which relate to exceptions to copyright regarding libraries and archives. The effect of these amendments is to expand the scope of the existing exceptions to cover more types of copyright works. A new section 40B is introduced into the 1988 Act which allows libraries, archives, museums and educational

(a) OJ No L167, 22.6.2001, p 10.

establishments to make material available by means of dedicated terminals on their premises. New section 41 is introduced which allows librarians to supply copies of copyright works to other libraries provided certain conditions are met. New section 42 allows the making of replacement copies of works for other libraries. New section 42A makes provision for the supply by librarians of single copies of published works to persons requesting them providing that certain conditions are met. New section 43 makes provision for the provision of single copies of unpublished works provided that certain conditions are met. New section 43A contains definitions. Corresponding amendments are made to Schedule 2 by the introduction of paragraphs 6C to 6H which introduce similar exceptions to rights in performances in relation to the copying of recordings of performances.

Regulation 7 makes amendments to section 61 and paragraph 14 of Schedule 2, the main effect of which is to remove the requirements for an archive for folksongs to be designated by order.

Regulation 8 substitutes a new section 75 and paragraph 21 of Schedule 2, the main effect of which is to remove the requirement for broadcasting archives to be designated.

The Schedule makes a number of consequential amendments, repeals and revocations.

Full impact assessments of the effect that this instrument will have on the cost of business and the voluntary sector are available from the Intellectual Property Office, Concept House, Cardiff Road, Newport, NP10 8QQ and are annexed to the Explanatory Memorandum (together with a transposition note) which is available alongside the instrument on www.legislation.gov.uk.

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£5.75

UK2014032422 03/2014 19585

<http://www.legislation.gov.uk/id/ukdsi/2014/9780111112755>

ISBN 978-0-11-111275-5



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