



# Copyright, Designs and Patents Act 1988

## 1988 CHAPTER 48

### PART II

#### RIGHTS IN PERFORMANCES

#### [<sup>F1</sup>CHAPTER 2

#### ECONOMIC RIGHTS]

#### <sup>X1</sup> *Offences*

#### **Editorial Information**

**X1** The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

#### <sup>X2</sup>**198 Criminal liability for making, dealing with or using illicit recordings.**

- (1) A person commits an offence who without sufficient consent—
- (a) makes for sale or hire, or
  - (b) imports into the United Kingdom otherwise than for his private and domestic use, or
  - (c) possesses in the course of a business with a view to committing any act infringing the rights conferred by [<sup>F1</sup>this Chapter], or
  - (d) in the course of a business—
    - (i) sells or lets for hire, or
    - (ii) offers or exposes for sale or hire, or
    - (iii) distributes,

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a recording which is, and which he knows or has reason to believe is, an illicit recording.

- [<sup>F2</sup>(1A) A person who infringes a performer’s making available right—
- (a) in the course of a business, or
  - (b) otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the making available right,
- commits an offence if he knows or has reason to believe that, by doing so, he is infringing the making available right in the recording.]
- (2) A person commits an offence who causes a recording of a performance made without sufficient consent to be—
- (a) shown or played in public, or
  - [<sup>F3</sup>(b) communicated to the public,]
- thereby infringing any of the rights conferred by [<sup>F1</sup>this Chapter], if he knows or has reason to believe that those rights are thereby infringed.
- (3) In subsections (1) and (2) “sufficient consent” means—
- (a) in the case of a qualifying performance, the consent of the performer, and
  - (b) in the case of a non-qualifying performance subject to an exclusive recording contract—
    - (i) for the purposes of subsection (1)(a) (making of recording), the consent of the performer or the person having recording rights, and
    - (ii) for the purposes of subsection (1)(b), (c) and (d) and subsection (2) (dealing with or using recording), the consent of the person having recording rights.

The references in this subsection to the person having recording rights are to the person having those rights at the time the consent is given or, if there is more than one such person, to all of them.
- (4) No offence is committed under subsection (1) or (2) by the commission of an act which by virtue of any provision of Schedule 2 may be done without infringing the rights conferred by [<sup>F1</sup>this Chapter].
- (5) A person guilty of an offence under subsection (1)(a), (b) or (d)(iii) is liable—
- (a) on summary conviction to imprisonment for a term not exceeding six months or [<sup>F4</sup>a fine], or both;
  - (b) on conviction on indictment to a fine or imprisonment for a term not exceeding [<sup>F5</sup>ten] years, or both.
- [<sup>F6</sup>(5A) A person guilty of an offence under subsection (1A) is liable—
- (a) on summary conviction to imprisonment for a term not exceeding three months or [<sup>F7</sup>a fine], or both;
  - (b) on conviction on indictment to a fine or imprisonment for a term not exceeding two years, or both.]

(6) A person guilty of any other offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale or imprisonment for a term not exceeding six months, or both.

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### Editorial Information

- X2** The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

### Textual Amendments

- F1** Words in s. 198(1)(c)(2)(4) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), reg. 2, **Sch. para. 8** (with reg. 8)
- F2** S. 198(1A) inserted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), **reg. 26(3)(a)** (with regs. 31-40)
- F3** S. 198(2)(b) substituted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), reg. 2(1), **Sch. 1 para. 4(5)** (with regs. 31-40)
- F4** Words in s. 198(5)(a) substituted (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), **Sch. 4 para. 17(3)(a)** (with reg. 5(1))
- F5** S. 198(5)(b) substituted (20.11.2002) by 2002 c. 25, s. 1(3)(5); S.I. 2002/2749, **art. 2**
- F6** S. 198(5A) inserted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), **reg. 26(3)(b)** (with regs. 31-40)
- F7** Words in s. 198(5A)(a) substituted (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), **Sch. 4 para. 17(3)(b)** (with reg. 5(1))

### <sup>X3</sup><sup>F8</sup> **198A Enforcement by local weights and measures authority.**

(1) It is the duty of every local weights and measures authority to enforce within their area the provisions of section 198.

<sup>F9</sup>(2) .....

(3) Subsection (1) above does not apply in relation to the enforcement of section 198 in Northern Ireland, but it is the duty of the Department of Economic Development to enforce that section in Northern Ireland.

<sup>F10</sup> ...

[ For the investigatory powers available to a local weights and measures authority or the <sup>F11</sup>(3A) Department of Enterprise, Trade and Investment in Northern Ireland for the purposes of the duties in this section, see Schedule 5 to the Consumer Rights Act 2015.]

(4) Any enactment which authorises the disclosure of information for the purpose of facilitating the enforcement of the Trade Descriptions Act 1968 shall apply as if section 198 were contained in that Act and as if the functions of any person in relation to the enforcement of that section were functions under that Act.

(5) Nothing in this section shall be construed as authorising a local weights and measures authority to bring proceedings in Scotland for an offence.]

### Editorial Information

- X3** The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on

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1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

#### Textual Amendments

- F8** S. 198A inserted (6.4.2007) by 1994 c. 33, ss. 165(3), 172(2); S.I. 2007/621, art. 2
- F9** S. 198A(2) omitted (1.10.2015) by virtue of Consumer Rights Act 2015 (c. 15), s. 100(5), Sch. 6 para. 50(2); S.I. 2015/1630, art. 3(i) (with art. 8)
- F10** Words in s. 198A(3) omitted (1.10.2015) by virtue of Consumer Rights Act 2015 (c. 15), s. 100(5), Sch. 6 para. 50(3); S.I. 2015/1630, art. 3(i) (with art. 8)
- F11** S. 198A(3A) inserted (1.10.2015) by Consumer Rights Act 2015 (c. 15), s. 100(5), Sch. 6 para. 50(4); S.I. 2015/1630, art. 3(i)

#### <sup>X4</sup>199 Order for delivery up in criminal proceedings.

- (1) The court before which proceedings are brought against a person for an offence under section 198 may, if satisfied that at the time of his arrest or charge he had in his possession, custody or control in the course of a business an illicit recording of a performance, order that it be delivered up to a person having performers' rights or recording rights in relation to the performance or to such other person as the court may direct.
- (2) For this purpose a person shall be treated as charged with an offence—
  - (a) in England, Wales and Northern Ireland, when he is orally charged or is served with a summons or indictment;
  - (b) in Scotland, when he is cautioned, charged or served with a complaint or indictment.
- (3) An order may be made by the court of its own motion or on the application of the prosecutor (or, in Scotland, the Lord Advocate or procurator-fiscal), and may be made whether or not the person is convicted of the offence, but shall not be made—
  - (a) after the end of the period specified in section 203 (period after which remedy of delivery up not available), or
  - (b) if it appears to the court unlikely that any order will be made under section 204 (order as to disposal of illicit recording).
- (4) An appeal lies from an order made under this section by a magistrates' court—
  - (a) in England and Wales, to the Crown Court, and
  - (b) in Northern Ireland, to the county court;
 and in Scotland, where an order has been made under this section, the person from whose possession, custody or control the illicit recording has been removed may, without prejudice to any other form of appeal under any rule of law, appeal against that order in the same manner as against sentence.
- (5) A person to whom an illicit recording is delivered up in pursuance of an order under this section shall retain it pending the making of an order, or the decision not to make an order, under section 204.
- (6) Nothing in this section affects the powers of the court under [F12]section 143 of the Powers of Criminal Courts (Sentencing) Act 2000], [F13]Part II of the Proceeds of Crime (Scotland) Act 1995] or [F14]Article 11 of the Criminal Justice (Northern Ireland) Order 1994] (general provisions as to forfeiture in criminal proceedings).

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#### Editorial Information

- X4** The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

#### Textual Amendments

- F12** Words in s. 199(6) substituted (25.8.2000) by 2000 c. 6 ss. 165, 168, Sch. 9 para. 116
- F13** Words in s. 199(6) substituted (1.4.1996) by 1995 c. 20, ss. 5, 7(2), **Sch. 4 para. 70(3)**
- F14** Words in s. 199(6) substituted (9.1.1995) by S.I. 1994/2795 (N.I. 15), art. 26(1), **Sch. 2 para. 14**; S.R. 1994/446, **art. 2**

### <sup>X5</sup>200 Search warrants.

- (1) Where a justice of the peace (in Scotland, a sheriff or justice of the peace) is satisfied by information on oath given by a constable (in Scotland, by evidence on oath) that there are reasonable grounds for believing—

- (a) that an offence under [<sup>F15</sup>section 198(1) or (1A)](offences of making, importing [<sup>F16</sup>, possessing, selling etc.] or distributing illicit recordings) has been or is about to be committed in any premises, and
- (b) that evidence that such an offence has been or is about to be committed is in those premises,

he may issue a warrant authorising a constable to enter and search the premises, using such reasonable force as is necessary.

- (2) The power conferred by subsection (1) does not, in England and Wales, extend to authorising a search for material of the kinds mentioned in section 9(2) of the <sup>M1</sup>Police and Criminal Evidence Act 1984 (certain classes of personal or confidential material).

- (3) A warrant under subsection (1)—

- (a) may authorise persons to accompany any constable executing the warrant, and
- (b) remains in force for [<sup>F17</sup>three months] from the date of its issue.

[<sup>F18</sup>(3A) In executing a warrant issued under subsection (1) a constable may seize an article if he reasonably believes that it is evidence that any offence under [<sup>F19</sup>section 198(1) or (1A)] has been or is about to be committed.]

- (4) In this section “premises” includes land, buildings, fixed or moveable structures, vehicles, vessels, aircraft and hovercraft.

#### Editorial Information

- X5** The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

#### Textual Amendments

- F15** Words in s. 200(1)(a) substituted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), **reg. 26(4)(a)** (with [regs. 31-40](#))

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- F16** Words in s. 200(1)(a) inserted (20.11.2002) by 2002 c. 25, s. 2(3)(a)(ii); S.I. 2002/2749, art. 2
- F17** Words in s. 200(3)(b) substituted (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 174(1), 178, Sch. 16 para. 6(3); S.I. 2005/3495, art. 2(1)(s) (subject to art. 2(2))
- F18** S. 200(3A) inserted (20.11.2002) by 2002 c. 25, s. 2(3)(b); S.I. 2002/2749, art. 2
- F19** Words in s. 200(3A) substituted (31.10.2003) by The Copyright and Related Rights Regulations 2003 (S.I. 2003/2498), reg. 26(4)(b) (with reg. 31-40)

#### Marginal Citations

- M1** 1984 c. 60.

### <sup>X6</sup>201 False representation of authority to give consent.

- (1) It is an offence for a person to represent falsely that he is authorised by any person to give consent for the purposes of [<sup>F20</sup>this Chapter] in relation to a performance, unless he believes on reasonable grounds that he is so authorised.
- (2) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both.

#### Editorial Information

- X6** The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

#### Textual Amendments

- F20** Words in s. 201(1) substituted (1.2.2006) by The Performances (Moral Rights, etc.) Regulations 2006 (S.I. 2006/18), reg. 2, Sch. para. 8 (with reg. 8)

### <sup>X7</sup>202 Offence by body corporate: liability of officers.

- (1) Where an offence under [<sup>F21</sup>this Chapter] committed by a body corporate is proved to have been committed with the consent or connivance of a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) In relation to a body corporate whose affairs are managed by its members “director” means a member of the body corporate.

#### Editorial Information

- X7** The insertion of the new headings "Chapter 1 Introductory", "Chapter 2 Economic Rights", "Chapter 3 Moral Rights" and "Chapter 4 Qualification for Protection, Extent and Interpretation" in Pt. II on 1.2.2006 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

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**Textual Amendments**

**F21** Words in s. 202(1) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), reg. 2, **Sch. para. 8** (with reg. 8)

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