



# Copyright, Designs and Patents Act 1988

## 1988 CHAPTER 48

### PART II U.K.

#### RIGHTS IN PERFORMANCES

#### [<sup>F1</sup>CHAPTER 2 U.K.]

#### ECONOMIC RIGHTS]

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

#### <sup>X1</sup>198 Criminal liability for making, dealing with or using illicit recordings. U.K.

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

[<sup>F2</sup>(1A) A person (“P”) who infringes a performer's making available right in a recording commits an offence if P—

- (a) knows or has reason to believe that P is infringing the right, and
- (b) either—
  - (i) intends to make a gain for P or another person, or

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*Changes to legislation:* There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Section 198. (See end of Document for details)

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- (ii) knows or has reason to believe that infringing the right will cause loss to the owner of the right, or expose the owner of the right to a risk of loss.
- (1B) For the purposes of subsection (1A)—
- (a) “gain” and “loss”—
    - (i) extend only to gain or loss in money, and
    - (ii) include any such gain or loss whether temporary or permanent, and
  - (b) “loss” includes a loss by not getting what one might get.]
- (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 [<sup>F8</sup>ten] 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

- 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.

### 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)(1B) substituted for s. 198(1A) (1.10.2017) by [Digital Economy Act 2017 \(c. 30\)](#), **ss. 32(4)**, 118(6) (with s. 32(6)); S.I. 2017/765, reg. 3(a)
- 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))
- F8** Word in s. 198(5A)(b) substituted (1.10.2017) by [Digital Economy Act 2017 \(c. 30\)](#), **ss. 32(5)**, 118(6) (with s. 32(6)); S.I. 2017/765, reg. 3(a)

**Changes to legislation:**

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