

PART III

RIGHTS IN PERFORMANCES

Chapter 1

Performers' Rights

- Interpretation. **202.** – (1) In *Parts III and IV* “performance” means a performance of any actors, singers, musicians, dancers or other persons who act, sing, deliver, declaim, play in, interpret or otherwise perform literary, dramatic, musical or artistic works or expressions of works of folklore, which is a live performance given by one or more individuals, and shall include a performance of a variety act or any similar presentation.
- (2) A performance of a literary work includes a reading or recitation.
- (3) A performance of a dramatic work includes a choreographic work or a work of mime.
- (4) In *Parts III and IV* “recording”, in relation to a performance, means any fixation –
- (a) made directly or indirectly from the live performance,
 - (b) made from a broadcast of, or cable programme including, the performance, or
 - (c) made directly or indirectly from another recording of the performance.
- (5) The rights conferred by *Parts III and IV* are independent of -
- (a) the copyright in, or the rights conferred by *Chapter 7 of Part II* relating to, any work performed or any fixation of, or broadcast or cable programme including, the performance, and
 - (b) other rights or obligations arising otherwise than under *Parts III and IV*.
- Performer's rights: general. **203.** – (1) A performer has the exclusive right to authorise or prohibit –
- (a) the making of a recording of the whole or any substantial part of a qualifying performance directly from the live performance,
 - (b) the broadcasting live, or including live in a cable programme service, of the whole or any substantial part of a qualifying performance, or
 - (c) the making of a recording of the whole or any substantial part of a qualifying performance directly from a broadcast of, or cable programme including, the live performance.
- (2) The rights of a performer conferred by this section are infringed by a person who, without the consent of the performer, undertakes or authorises another to undertake any of the acts referred to in *subsection (1)*.
- (3) The rights of a performer conferred by this section are not infringed by the making of a recording referred to in *subsection (1) (c)* by a person for his or her private and domestic use.

(4) Where a recording, which would otherwise be an illicit recording, is made under this section but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an illicit recording for those purposes and for all subsequent purposes.

(5) In an action for infringement of the rights of a performer brought under this section, damages shall not be awarded against a defendant who shows that at the time of the infringement he or she did not know and had no reason to believe that consent had not been given.

204. – (1) A performer has the exclusive right to authorise or prohibit the making of a copy of a recording of the whole or any substantial part of a qualifying performance and it is immaterial whether the copy is made directly or indirectly.

(2) There shall be a right of a performer conferred by this section which shall be known and in this Part referred to as the “reproduction right”.

(3) The reproduction right is infringed by a person who, without the consent of the performer, undertakes or authorises another to undertake the act referred to in *subsection (1)*.

(4) The reproduction right is not infringed by the making of a copy referred to in *subsection (3)* by a person for his or her private and domestic use.

(5) Where a copy, which would otherwise by an illicit recording is made under this section but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an illicit recording for those purposes and for all subsequent purposes.

(6) For the purposes of *Parts III and IV* references to the making of a copy of a recording or to copying shall include the making of a temporary or permanent copy of a recording and the storing of a recording in any medium.

205. – (1) Subject to *subsection 2*, a performer has the exclusive right to authorise or prohibit the making available to the public of copies of a recording of the whole or any substantial part of a qualifying performance and it is immaterial whether the copy is made directly or indirectly.

(2) Where a copy of a sound recording is–

(a) played in public; or

(b) included in a broadcast or cable programme service,

(3) A reference in *Parts III and IV* to the making available to the public of copies of a recording shall include the making available to the public of the original recording of the live performance.

(4) There shall be a right conferred by this section which shall be known and in *Parts III and IV* referred to as the “making available right”.

(5) A reference in *Parts III and IV* to the making available to the public of copies of a recording of a qualifying performance shall include –

(a) making available to the public of copies of a recording, by wire or wireless means, in such a way that members of the public may access the recording from a place and at a time individually chosen by them, including the making available of copies of recordings through the Internet,

- (b) showing or playing a copy of the recording in public,
- (c) broadcasting a copy of the recording,
- (d) including a copy of the recording in a cable programme service,
- (e) issuing copies of the recording to the public,
- (f) renting copies of the recording, or
- (g) lending copies of the recording, without the payment of remuneration to the rights owner.

(6) The making available right is infringed by a person who, without the consent of the performer, undertakes or authorises another to undertake any of the acts referred to in *subsection (5)*

(7) Subject to *subsection (8)*, the provision of facilities for enabling the making available to the public of copies of a recording of a performance shall not of itself constitute an act of making available to the public of copies of the recording.

(8) Without prejudice to *subsection (7)*, where a person who provides facilities referred to in that subsection is notified by the rights-owner that those facilities are being used to infringe any of the rights conferred by *Parts III and IV* and that person fails to remove that infringing material as soon as is practicable thereafter, that person shall also be liable for the infringement.

(9) Without prejudice to subsection (8), the Minister may prescribe the form of the notice to be given under that subsection and the form shall specify –

- (a) the name and address of the person claiming to be the owner of the rights in the recording concerned,
- (b) the grounds that the person requesting the removal of material has for such removal, and
- (c) a list of the material which is to be removed.

(10) Where the making available right is infringed by a copy of the recording being played or shown in public, by means of apparatus for receiving sounds, images or data or any combination of sounds, images or data, or the representations thereof, conveyed by any means, the person by whom sounds, images or data or any combination of sounds, images or data, or the representations thereof, are sent shall not be regarded as liable for the infringement.

Distribution right of performers.

206. – (1) references in *Parts III and IV* to the issue of copies of a recording to the public shall be construed as including –

- (a) the act of putting into circulation in a Member State of the EEA copies of a recording not previously put into circulation in a Member State of the EEA by or with the consent of the performer, or
- (b) the act of putting into circulation outside the Member States of the EEA copies of a recording not previously put into circulation in a Member State of the EEA or elsewhere.

(2) Without prejudice to the rental right or the lending right, references in this Part of the issue of copies of a recording to the public shall not include –

(a) any subsequent circulation of copies of a recording previously put into circulation,
or

(b) any subsequent importation of such copies of a recording into the State or any other Member State of the EEA,

except in so far as *subsection (1) (a)* applies to putting into circulation in the Member States of the EEA copies of a recording previously put into circulation outside the Member States of the EEA.

(3) A reference in this section to circulation shall include sale, rental or loan.

(4) A performer has the exclusive right to authorise or prohibit the issue of copies of a recording to the public of the whole or any substantial part of a qualifying performance.

(5) There shall be a right conferred by this section which shall be known and in this Part referred to as the “distribution right”.

(6) The distribution right is infringed by a person who, without the consent of the performer, undertakes or authorises another to undertake the acts referred to in *subsection (4)*.

207. – (1) References in *Parts III and IV* to “rental” or “lending” shall not be construed as including the making available to the public of copies of a recording for the purposes of –

(a) playing or showing in public, broadcasting or inclusion in a cable programme service,

(b) exhibited in public, or

(c) on the spot reference use.

(2) A performer has the exclusive right to authorise or prohibit the rental or lending of copies of a recording of the whole or any substantial part of his or her qualifying performance.

(3) (a) There shall be a right of the performer to authorise or prohibit the rental of copies of a recording which shall be known and in *Parts III and IV* referred to as the “rental right”.

(b) There shall be a right of the performer to authorise or prohibit the lending of copies of a recording which shall be known and in *Parts III and in IV* referred to as the “lending right”.

(4) The rental right is infringed by a person who, without the consent of the performer, rents or authorises another to rent copies of a recording of the whole or any substantial part of a qualifying performance.

(5) The lending right is infringed by a person who, without the consent of the performer, lends or authorises another to lend copies of a recording of the whole or any substantial part of a qualifying performance.

(6) In *Parts III and IV*, and subject to *subsections (7) and (8)* –

(a) “rental” means making a copy of a recording available for use on terms that it will or may be returned after a limited period of time, for direct or indirect economic or commercial advantage;

(b) “lending” means making a copy of a recording available for use on terms that it will or may be returned after a limited period of time, otherwise than for direct or indirect economic or commercial advantage, through an establishment to which members of the public have access.

(7) The making of a copy of a recording available between establishments to which members of the public have access shall not infringe any of the rights conferred by *Parts III and IV*.

(8) Where lending by an establishment to which members of the public have access gives rise to a payment, the amount of which does not exceed what is necessary to cover the operating costs of the establishment, there is no direct or indirect economic or commercial advantage for the purposes of this section.

Right to equitable remuneration for exploitation of sound recording.

208. – (1) A performer has a right to equitable remuneration from the owner of the copyright in a sound recording where the sound recording of the whole or any substantial part of a qualifying performance which has been made available to the public for commercial purposes is –

(a) played in public,

(b) included in a broadcast or cable programme service.

(2) A performer shall not assign the right to equitable remuneration under this section except to a collecting society for the purpose of enabling the collecting society to exercise that right on his or her behalf.

(3) The right to equitable remuneration is transmissible by testamentary disposition or by operation of law, as personal or moveable property, and it may be assigned or further transmitted, including by assignment, by any person who legally acquires the right.

(4) Subject to *subsections (5) to (9)*, the amount of equitable remuneration payable under this section is that which has been agreed by or on behalf of the persons by and to whom it is payable.

(5) In default of agreement as to the amount of equitable remuneration payable, the person by or to whom it is payable may apply to the Controller for an order under *subsection (8)*.

(6) Subject to *subsection (7)*, a person to or by whom equitable remuneration is payable may also apply to the Controller –

(a) to vary any agreement as to the amount payable, or

(b) to vary any previous determination of the Controller as to the amount payable.

(7) An application may not be made under *subsection (6)* within 12 months from the date of the previous determination except with the special leave of the Controller.

(8) On an application being made under this section, the Controller shall consider the matter and make such order as to the method of calculating and paying equitable remuneration as he or she may determine to be reasonable in the circumstances, having regard to the importance of the contribution of the performer to the sound recording.

(9) An order made under this section shall have effect from the date on which it is made or such later date as may be specified by the Controller.

(10) An agreement as to the amount of equitable remuneration payable shall be void in so far as it purports –

- (a) to exclude or restrict the right to equitable remuneration conferred by this section,
- (b) to prevent a person questioning the amount of equitable remuneration, or
- (c) to restrict the powers of the Controller conferred by this section.

CHAPTER 2
Infringement of Performers' Rights

209. – A person infringes the rights of the performer conferred by *section 203* where he or she, without the consent of the performer –

- (a) shows or plays in public the whole or any substantial part of a qualifying performance, or
- (b) broadcasts or includes in a cable programme service the whole or any substantial part of a qualifying performance,

by means of a recording which was, and which that person knows or has reason to believe was, made without the consent of the performer.

210. – (1) In *Parts III* and *IV* “illicit recording”, in relation to a performance, shall be construed in accordance with this section.

(2) A recording of the whole or any substantial part of a performance shall be an illicit recording where the recording is made without the consent of the performer.

(3) A copy of a recording shall be an illicit recording where its making constitutes an infringement of a performer’s property rights in the recording concerned.

(4) Subject to *subsection (5)*, a copy of a recording shall be an illicit recording where –

- (a) it has been or is to be imported into the State, and
- (b) its making in the State would have constituted an infringement of a performer’s property rights in the recording concerned, or breach of an exclusive licence agreement relating to that recording.

(5) A copy of a recording which previously has been issued to the public in accordance with *section 206* in any other Member State of the EEA by, or with the consent of, the owner of the performers’ property rights in the recording, shall not be deemed to be an illicit recording for the purposes of *subsection (4)*.

(6) A recording of the whole or any substantial part of a performance which is subject to an exclusive recording contract shall be an illicit recording where it is made, otherwise than for private and domestic use, without the consent of the person having recording rights or the consent of the performer.

(7) For the purposes of *sections 258* and *260*, a recording shall be deemed to be an illicit recording where it is an illicit recording for the purposes referred to in *subsections (2), (3), (4)* and *(5)* of this section.

Presumptions. **211.** – Where in any proceedings for infringement of any right conferred by *Part III* or *Part IV* or the question arises as to whether a recording is an illicit recording and it is shown that –

(a) the recording is a recording of the performance concerned, and

(b) rights conferred by *Parts III* and *IV* subsist or have subsisted at any time in the recording,

it shall be presumed until the contrary is proved that the recording was made at a time when such rights subsisted.

Secondary infringement: importing, possessing or dealing with illicit recordings.

212. – (1) A person infringes the rights of a performer conferred by *section 203* where he or she, without the consent of the performer –

(a) sells, rents or lends, or offers or exposes for sale, rental or loan,

(b) imports into the State, otherwise than for his or her private and domestic use,

(c) in the course of business, trade or profession, has in his or her possession, custody or control, or makes available to the public, or

(d) otherwise than in the course of a business, trade or profession, makes available to the public to such an extent as to prejudice the interests of the performer,

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

(2) Where, in an action brought under this section for infringement of the rights of a performer, a defendant shows that the illicit recording was innocently acquired by him or her or his or her predecessor in title, the only remedy available against the defendant in respect of the infringement shall be an award of damages not exceeding a reasonable payment in respect of the act complained of.

(3) In *Parts III* and *IV* “innocently acquired” means that the person acquiring the recording did not know and had no reason to believe that it was an illicit recording.

Secondary infringement: providing means for making illicit recording.

213. – (1) A person infringes the rights of a performer conferred by *section 203* where he or she, without the consent of the performer –

(a) makes,

(b) sells, rents or lends, or offers or exposes for sale, rental or loan,

(c) imports into the State, or

(d) has in his or her possession, custody or control,

an article specifically designed or adapted for making recordings of a performance, knowing or having reason to believe that it has been or is to be used to make illicit recordings.

214. – (1) Where the rights of a performer conferred by this Part are infringed by a public performance of a recording of the performance, or by playing or showing the recording in public, by means of apparatus for–

(a) playing sound recordings,

(b) showing films, or

(c) receiving sounds or images or any combination of sounds or images, or the representation thereof, conveyed by any means.

the following persons shall also be liable for the infringement—

(i) a person who supplied the apparatus, or any substantial part thereof if, when he or she supplied the apparatus of part thereof—

(I) he or she knew or has reason to believe that the apparatus was likely to be used to infringe the rights of a performer conferred by this Part, or

(II) in the case of apparatus the normal use of which involves a public performance, playing or showing, he or she had reason to believe that it would be used to infringe the rights of a performer conferred by this Part;

(ii) an owner or occupier of premises who gave permission for the apparatus to be brought onto the premises if, when the owner or occupier gave permission, he or she knew or had reason to believe that the apparatus was likely to be used to infringe the rights of a performer conferred by this Part; and

(iii) a person who supplied a copy of a sound recording or film used to infringe the rights of a performer conferred by this Part if, when the person supplied it, he or she knew or had a reason to believe that what was supplied, or a copy made directly or indirectly therefrom, was likely to be used to infringe the rights of a performer conferred by this Part.

CHAPTER 3 *Recording Rights*

215. – (1) In *Parts III* and *IV* an “exclusive recording contract” means a contract between a performer and another person under which that person is entitled to the exclusion of all other persons (including the performer) to make recordings of one or more of that performer’s performances with a view to their commercial exploitation.

(2) Subject to *subsection (3)*, references in *Parts III* and *IV* to a “person having recording rights”, in relation to a performance, are to a person—

(a) who is party to and has the benefit of an exclusive recording contract to which the performance is subject, or

(b) to whom the benefit of such a contract has been assigned,

and who is a qualifying person.

(3) Where a performance is subject to an exclusive recording contract but the person mentioned in *subsection (2)* is not a qualifying person, references in *Parts III* and *IV* to a “person having recording rights”, in relation to the performance, are to a person—

(a) who is licensed by the person having recording rights to make recordings of the performance with a view to their commercial exploitation, or

(b) to whom the benefit of such a licence has been assigned,

and who is a qualifying person.

(4) In this section “with a view to their commercial exploitation” means with a view to the recordings being sold, rented or lent, or offered or exposed for sale, rental or loan or shown or played in public or otherwise made available to the public for commercial gain.

Infringement of recording rights by copying.

216. – (1) A person infringes the rights conferred by this Part on a person having recording rights in relation to a performance where he or she, without the consent of the performer or of the person having recording rights in relation to the performance, makes a recording of the whole or any substantial part of the performance.

(2) Without prejudice to any other remedy, in an action brought under this section for infringement of the rights referred to in *subsection (1)*, damages shall not be awarded against a defendant who shows that at the time of the infringement he or she did not know and had no reason to believe that consent had not been given.

Infringement of recording rights by use of illicit recording.

217. – (1) A person infringes the rights conferred by this Part on a person having recording rights in relation to a performance where he or she, without consent of the person having recording rights in relation to the performance or, in the case of qualifying performance, the consent of the performer–

(a) shows or plays in public the whole or any substantial part of the performance, or

(b) broadcasts or includes in a cable programme service the whole or any substantial part of performance,

by means of a recording which was, and which that person knows or has reason to believe was, made without the appropriate consent.

(2) The reference in *subsection (1)* to the “appropriate consent” is to the consent of–

(a) the performer, or

(b) the person who, at the time the consent was given, had recording rights in relation to the performance (or, where there was more than one such person, the consent of all of them).

218. – (1) A person infringes the rights conferred by this Part on a person having recording rights in relation to a performance where he or she, without the consent of the person having recording rights in relation to the performance or, in the case of a qualifying performance, the consent of the performer–

(a) sells, rents or lends, or offers or exposes for sale, rental or loan,

(b) imports into the State, otherwise than for his or her private and domestic use,

(c) in the course of a business, trade or profession, has in his or her possession, custody or control, or makes available to the public, or

(d) otherwise than in the course of a business, trade or profession, makes available to the public to such an extent as to prejudice the interests of the person having recording rights,

a recording of a performance which is, and which that person knows or has reason to believe is, an illicit recording.

(2) Where, in an action brought under this section for infringement of the rights conferred by this Part on a person having recording rights, a defendant shows that the illicit recording was innocently acquired by him or her or his or her predecessor in title, the only remedy available against the defendant in respect of the infringement shall be an award of damages not exceeding a reasonable payment in respect of the act complained of.

219. – A person infringes the rights conferred by this Part on a person having recording rights in relation to a performance where he or she, without the consent of the person having recording rights in relation to the performance or, in the case of a qualifying performance, the consent of the performer–

- (a) makes,
- (b) sells, rents or lends, or offers or exposes for sale, rental or loan
- (c) imports into the State, or
- (d) has in his or her possession, custody or control,

an article specifically designed or adapted for making recordings of a performance, knowing or having reason to believe that it has been or is used to make illicit recordings.

CHAPTER 4

Acts Permitted in Relation to Performances

220. – In this Part an act may be exempted under more than one category of exemption and the exemption of an act under one category of exemption shall not preclude its exemption under another category.

221. – (1) Fair dealing with a performance or recording for the purposes of criticism or review, of that or another performance or recording, or of a work, or for the purpose of reporting current events, shall not infringe any of the rights conferred by this Part.

(2) – In this Part “fair dealing” means the making use of a performance or a recording which has been lawfully made available to the public for a purpose and to an extent which will not unreasonably prejudice the interests of the rights owner.

Incidental use of performances.

222. – (1) The rights conferred by this Part are not infringed by the inclusion in an incidental manner of a performance or recording in another recording or work.

(2) The rights conferred by this Part are not infringed by the making available to the public of anything whose making was not, by virtue of *subsection (1)*, an infringement of those rights.

(3) A performance or recording shall not be regarded as included in an incidental manner in another recording or work where it is included in a manner where the interests of the rightsowner are unreasonably prejudiced.

Education

Copying of a performance for purpose of instruction etc.

223. – (1) The rights conferred by this Part are not infringed by the copying of a recording of a performance in the course of instruction or preparation for instruction where the copying is done by or on behalf of a person giving or receiving instruction.

(2) The rights conferred by this Part 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 examination candidates.

(3) Where a copy which would otherwise be an illicit recording is made under this section but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an illicit recording for those purposes and for all subsequent purposes.

Playing of sound recording etc., at an educational establishment.

224. – (1) The playing or showing of a sound recording, film, broadcast or cable programme before an audience limited to persons who are teachers in or pupils in attendance in an educational establishment or other persons directly connected with the activities of that establishment –

(a) by a teacher or pupil in the course of the activities of the establishment concerned, or

(b) by any person for the purposes of instruction,

is not a playing or showing of a performance or a recording in public for the purposes of infringement of the rights conferred by this Part.

(2) For the purposes of this section, a person is not directly connected with the activities of an educational establishment by reason only that he or she is a parent or guardian of a pupil in attendance at the educational establishment concerned.

225. – (1) A recording of a broadcast or a cable programme, or a copy of such a recording, may be made or on behalf of an educational establishment for the educational purposes of that establishment without infringing any of the rights conferred by this Part in relation to any performance or recording included in the broadcast or cable programme.

(2) Where a recording which would otherwise be an illicit recording is made under this section but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an illicit recording for those purposes and for all subsequent purposes.

226. – (1) Subject to *subsection (2)*, educational establishments and establishments to which members of the public have access shall be exempt from the payment of remuneration under *section 205(5)(g)* and shall not infringe the rights conferred by this Part by the lending of copies of a recording of a performance.

(2) The Minister shall prescribe the educational establishments and the establishments to which members of the public have access for the purposes of *subsection (1)*.

Libraries and Archives

Regulations relating to copying of recordings by libraries and archives.

227. – (1) The Minister may make regulations for the purposes of this section and those regulations may make different provisions for different classes of libraries or archives and for different purposes.

(2) Without prejudice to the generality of *subsection (1)*, the Minister may prescribe the libraries and archives to which *sections 217 to 222* apply and may prescribe all or any of the following –

(a) the conditions that are to be complied with when a librarian or archivist of a prescribed library or prescribed archive makes and supplies a copy of any part of a recording of a performance which has been lawfully made available to the public to a person requiring a copy;

(b) the conditions that are to be complied with when a librarian or archivist of a prescribed library or prescribed archive makes and supplies to another prescribed library or prescribed archive a copy of a recording of a performance or part of a recording of a performance which has been lawfully made available to the public is required by that other prescribed library or archive;

(c) the conditions that are to be complied with before a librarian or archivist of a prescribed library or prescribed archive makes a copy of a recording of a performance in the permanent collection of the library or archive in order to preserve or replace that recording in the permanent collection of that library or prescribed archive, or in the permanent collection of another prescribed library or prescribed archive;

(d) the conditions that are to be complied with by a librarian or archivist of a prescribed library or prescribed archive when making or supplying a copy of the whole or part of certain recordings of a performance which have not been lawfully made available to the public from a recording in the prescribed library or prescribed archive to a person requiring the copy.

Libraries and archives: declarations.

228. – (1) Where regulations made by the Minister under *section 216* require a librarian or archivist to be satisfied as to any matter before making or supplying a copy of a recording of a performance –

(a) the librarian or archivist concerned may rely on a declaration as to that matter by the person requesting the copy, unless the librarian or archivist is aware that it is false in a material particular, and

(b) in such cases as may be prescribed, the librarian or archivist shall not make or supply the copy in the absence of a declaration in such form as may be prescribed.

(2) Where a person requesting a copy of a recording of a performance makes a declaration which is false in a material particular and is supplied with a copy which would have been an illicit recording if made by him or her –

(a) he or she shall be liable for infringement of the rights conferred by this Part as if he or she had made the copy, and

(b) the copy shall be treated as an illicit recording

Copying by librarians or archivists: parts of recordings lawfully made available to the public.

229. – (1) The librarian or archivist of a prescribed library or prescribed archive may, where the prescribed conditions are complied with, make and supply a copy of part of a recording of a performance which has been lawfully made available to the public without infringing any rights conferred by this Part.

(2) A copy made under *subsection (1)* shall not be supplied other than to a person who satisfies the librarian or archivist that he or she requires that copy for the purposes of research or private study and he or she shall not use it for any other purpose and that person shall not be furnished with more than one copy of the same recording unless the person satisfies the librarian or archivist that the previous copy has been lost, stolen, discarded or destroyed or a reasonable period of time has elapsed, and that the person shall not be furnished with a copy of more than a reasonable portion of any recording of a performance.

Multiple copying.

230. – (1) A copy of a recording shall not be supplied under *section 229* to more than 3 persons whose requirements are related to any similar requirement of any other person.

(2) For the purposes of *subsection (1)* –

(a) the requirements of persons shall be deemed to be similar where the requirements are for copies of substantially the same material at approximately the same time and substantially the same purpose, and

(b) the requirements of persons shall be deemed to be related where those persons receive instructions to which the material is relevant at the same time and place.

Copying by librarians or archivists: supply of copies to other libraries and archives.

231. – (1) The librarian or archivist of a prescribed library or archive may, where the prescribed conditions are complied with, make and supply to another prescribed library or prescribed archive a copy of the whole or part of a recording of a performance, which has been lawfully made available to the public, without infringing any rights conferred by this Part.

(2) *Subsection (1)* shall not apply where, at the time the copy is made, the librarian or archivist making it could, by reasonable enquiry, obtain the consent of a person entitled to authorise the making of the copy.

232. – (1) The librarian or archivist of a prescribed library or prescribed archive may, where the prescribed conditions are complied with, make a copy of a recording of a performance in the permanent collection of the library or archive –

(a) in order to preserve or replace that recording by placing the copy in the permanent collection of that library or archive in addition to or in place of that recording, or

(b) in order to replace in the permanent collection of another prescribed library or archive a recording which has been lost, destroyed or damaged,

without infringing any right conferred by this Part.

(2) This section shall only apply where it is not reasonably practicable to purchase a copy of the recording concerned for the purposes of *subsection (1)*.

233. – (1) The librarian or archivist of a prescribed library or prescribed archive may, where the prescribed conditions are complied with, make a copy of a recording of a performance in the permanent collection of the library or archive –

(a) for the purpose of obtaining insurance cover for the copy of a performance concerned;

- (b) for purposes of security;
- (c) for the purposes of compiling or preparing an archival record of the performance;
or
- (d) for exhibition in the library archive,

without infringing any rights conferred by this Part.

(2) This section shall apply to copying conducted for the curatorial purposes specified in subsection (1), and to an extent reasonably justified by the non-commercial purpose to be achieved.

234. – (1) The librarian or archivist of a prescribed library or prescribed archive may, where the prescribed conditions are complied with, make and supply a copy of the whole or part of a recording of a performance which has not been lawfully made available to the public from any recording in the permanent collection of the library or archive without infringing any right conferred by this Part.

(2) This section shall not apply where the performer, or the person having recording rights in the relevant performance, has prohibited copying of that recording of the performance and at the time the copy is made the librarian or archivist making the copy knew, or ought to have been aware of, that fact.

(3) A copy made under *subsection (1)* shall not be supplied other than to a person who satisfies the librarian or archivist that he or she requires that copy for purposes of research or private study and he or she shall not use it for any other purpose and that person shall not be furnished with more than one copy of that recording or part of that recording.

Copy of recording required to be made as condition of export.

235. – Where a recording of a performance of cultural or historical importance or interest may not lawfully be exported from the State unless a copy of it is made and deposited in a library, archive or other institution designated by the Minister for Arts, Heritage, Gaeltacht and the Islands under section 50 of the National Cultural Institutions Act, 1997, it shall not be an infringement of any right conferred by this Part to make that copy.

Copying by librarians or archivists: illicit recording.

236. – Where a copy which would otherwise be an illicit recording is made under section 229, 231, 232, 234 or 235 but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an illicit recording for those purposes and for all subsequent purposes.

Public Administration

Parliamentary and judicial proceedings.

237. – (1) The rights conferred by this Part are not infringed by anything done for the purposes of parliamentary or judicial proceedings or for the purpose of reporting those proceedings.

Statutory inquiries.

238. - (1) The rights conferred by this Part are not infringed by anything done for the purposes of a statutory inquiry or for the purpose of reporting any such inquiry.

(2) The rights conferred by this Part are not infringed by the making available to the public of copies of a report of a statutory inquiry containing a recording of a performance.

Copying of material in public records.

239. – Any material which is comprised in records which are open to public inspection may be copied, and a copy may be supplied to any person, without infringing any right conferred by this Part.

Material open to public inspection or on statutory register.

240. – (1) Without prejudice to the generality of *section 226*, where material is open to public inspection pursuant to a statutory requirement, or is on a statutory register, the rights conferred by this Part are not infringed by the copying, for a purpose which does not involve the making available to the public of copies, of so much of the material as contains factual information of any description, by or with the authority of the person required to make the material open to public inspection or, by or on the authority of the person maintaining the register.

(2) Where material is open to public inspection pursuant to a statutory requirement, or is on a statutory register, the rights conferred by this Part are not infringed by the copying or making available to the public of copies of that material, for the purpose of enabling the material to be inspected at another time or place, or otherwise facilitating the exercise of any right for the purpose of which the requirement is imposed, by or with the authority of the person required to make the material open to public inspection or, as the case may be, the person maintaining the register.

(3) Where a recording of a performance is made available to the public under this section the person granting access to the material shall ensure that it bears a mark clearly indicating that it is provided for the purpose of inspection and that no other use of the material may be made without the consent of the person entitled to authorise such use.

(4) Material may not be provided under this section unless the person granting access to the material has first obtained from the person requesting the material a declaration, in such form as may be prescribed, indicating that the material is required for the sole purpose of enabling the material to be inspected at another time or place or to otherwise facilitate the exercise of the right of public inspection.

(5) Where material which is open to public inspection pursuant to a statutory requirement, or is on a statutory register, contains information about matters of general, scientific, technical, commercial or economic interest, the rights conferred by this Part are not infringed by the copying or making available to the public of copies of that material for the purpose of disseminating that information, by or with the authority of the person required to make the material open to public inspection or, as the case may be, the person maintaining the register.

(6) The Minister may prescribe the conditions which are to be complied with before material is made available to the public under this section.

(7) The Minister may by order provide that *subsections (1) to (5)* apply –

(a) to material made open to public inspection by –

(i) an international organisation specified in the order, or

(ii) a person specified in the order who has functions in the State under an international agreement to which the State is party,

or

(b) to a register, maintained by an international organisation specified in the order,

as they apply in relation to material open to public inspection pursuant to a statutory requirement, or on a statutory register.

Acts done under statutory authority.

241. – (1) Where the undertaking of a particular act is specifically authorised by an enactment then, unless the enactment provides otherwise, the undertaking of that act shall not infringe any right conferred by this Part.

(2) Nothing in this section shall be construed as excluding any defence available under any enactment.

Recordings in Electronic Form

Transfer of copies of recordings in electronic form.

242. – (1) This section applies where a recording of a performance in electronic form has been purchased on terms which expressly or impliedly allow the purchaser to make further recordings in connection with his or her use of the recording.

(2) Where 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 licence or terminating any licence on a transfer, or

(b) specifying the conditions on which a transferee may undertake the acts which the purchaser was permitted to undertake,

then, any acts which the purchaser was permitted to undertake may also be undertaken by a transferee without infringement of any right conferred by this Part, but any recording made by the purchaser which is not also transferred shall be treated as an illicit recording for those purposes and for all subsequent purposes.

(3) *Subsection (2)* applies where the original purchased recording is no longer usable and that which is transferred is a further recording used in its place.

(4) This section shall apply on a second and subsequent transfer in like manner as to the first transfer to a purchaser and references to the purchaser shall be construed as references to a second or subsequent transferee.

(5) This section shall not apply in relation to a recording purchased before the commencement of this Part.

Use of recordings of spoken words in certain cases.

243. – (1) Subject to compliance with the conditions specified in *subsection (2)*, where a recording of the reading or recitation of a literary or a dramatic work is made for the purpose of –

(a) reporting current events, or

(b) broadcasting or including in a cable programme service the whole or part of the reading or recitation,

it is not an infringement of any right conferred by this Part to use the recording or to make further copies and use those copies for the purposes referred to in *paragraphs (a) and (b)*.

(2) The conditions referred to in *subsection (1)* are –

(a) that 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) that the making of the recording was not prohibited by or on behalf of the person giving the reading or recitation,

(c) that the use made of the recording is not prohibited by or on behalf of the person giving the reading or recitation before the recording was made, and

(d) that the use made of the recording is by or with the authority of a person who is lawfully in possession of the recording.

Transient and incidental copies.

244. – (1) The rights conferred by this Part are not infringed by the making of a transient and incidental copy of a recording of a performance which is technically required for the viewing of or listening to the recording by a member of the public to whom the recording is lawfully made available.

(2) Where a copy which would otherwise be an illicit recording is made under this section but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan or otherwise made available to the public, it shall be treated as an illicit recording for those purposes and for all subsequent purposes.

Recordings of works of folklore.

245. – (1) A recording of a performance of an anonymous work which has not been lawfully made available to the public may be made for the purpose of including it in an archive maintained by a designated body without infringing any right conferred by this Part where at the time the recording is made –

(a) the making of the recording does not infringe any copyright, and

(b) the making of the recording is not prohibited by any performer.

(2) A copy of a recording made under *subsection (1)* and included in an archive maintained by a designated body may, subject to compliance with the conditions referred to in *subsection (3)*, be made and supplied by an archivist without infringing any right conferred by this Part.

(3) The conditions referred to in *subsection (2)* relating to the actions of archivists are –

(a) that a copy may not be supplied other than to a person who satisfies the archivist that he or she requires that copy for the purposes of private research or private study and he or she shall not use it for any other purpose, and

(b) that a person shall not be furnished with more than one copy of the same recording.

(4) In this section “designated body” means a body designated for the purposes of *section 92*.

Playing or showing sound recordings, broadcasts and cable programmes in certain premises.

246. – (1) Subject to subsection (2), it is not an infringement of any of the rights conferred by this Part to cause a sound recording, broadcast or cable programme to be heard or viewed where it is heard or viewed–

(a) in part of the premises where sleeping accommodation is provided for the residents or inmates, and

(b) as part of the amenities provided exclusively or mainly for residents or inmates.

(2) Subsection (1) does not apply in respect of any part of premises to which subsection (1) applies where there is a discrete charge made for admission to the part of the premises where a sound recording, broadcast or cable programme is to be heard or viewed.

Playing of sound recordings for clubs, societies, etc.

247. – (1) Subject to compliance with the conditions specified in *subsection (2)*, it is not an infringement of any right conferred by this Part to play a sound recording as part of the private activities of or for the benefit of a club, society, or other organisation.

(2) The conditions referred to in *subsection (1)* are –

(a) that the club, society or other organisation is not established or conducted for profit and its main objects are charitable or are otherwise connected with the advancement of religion, education or social welfare, and

(b) the proceeds of any charge for admission to the place where the sound recording is to be heard are applied solely for the purposes of the club, society or organisation.

(3) *Subsection (1)* shall not apply in the case of any club, society or other organisation where a charge is made for admission to the place where the sound recording is to be heard and any of the proceeds of the charge are applied otherwise than for the purpose of the club, society or other organisation.

Recording for purposes of broadcast or cable programme.

248. – (1) Where, by virtue of a licence or assignment of a right conferred by this Part, a person is authorised to broadcast or include on a cable programme service a recording of a performance, he or she shall be deemed to be licensed by the owner of the right in the recording to copy or authorise the copying of that recording by means of his or her facilities for the purposes of his or her broadcast or cable programme.

(2) A licence conferred by *subsection (1)* shall be subject to the condition that any copy resulting from the exercise of that licence shall not be used for purpose other than the broadcast or cable programme and shall be destroyed within 6 months of first being used for broadcasting or included in a cable programme service.

(3) A copy of a recording made under this section shall be treated as an illicit recording where it is used for purposes other than broadcasting or inclusion in a cable programme service or where it is used after the expiration of 6 months from the date it is first used for broadcasting or included in a cable programme service.

Recording for purposes of supervision and control of broadcasts and cable programmes.

249. – (1) The rights conferred by this Part are not infringed by the making or use by an authorised broadcaster or authorised cable programme service provider, for the purpose of maintaining supervision and control over programmes broadcast by them or included by them in a cable programme service, of recordings of those programmes.

(2) The rights conferred by this Part are not infringed by any use made by any body established by the State to regulate the operations of broadcasters or cable programme service providers of any recordings of broadcasts or cable programmes.

Recording for the purpose of time shifting.

250. – (1) The making for private and domestic use of a fixation of a broadcast or cable programme solely for the purpose of enabling it to be viewed or listened to at another time or place shall not infringe any right conferred by this Part.

(2) Subject to subsection (3), the making by an establishment for private and domestic use of a fixation of a broadcast or cable programme solely for the purpose of enabling it to be viewed or listened to at another time or place shall not infringe any right conferred by this Part.

(3) The Minister may specify by order establishments for the purposes of this section.

Reception and retransmission of broadcast in cable programme service.

251. – (1) This section applies where a broadcast made from a place in the State is, by reception and immediate retransmission, without alteration, included in a cable programme service.

(2) The rights conferred by this Part in relation to a performance or recording included in a broadcast to which this section applies are not infringed where –

(a) the inclusion is pursuant to a statutory requirement, or

(b) the broadcast is made for reception in the area in which the cable programme service is provided and it is not a satellite transmission or an encrypted transmission.

(3) Where the making of a broadcast is an infringement of any right conferred by this Part, the fact that the broadcast was retransmitted as a programme in a cable programme service shall be taken into account in assessing the damages for that infringement.

Provision of modified recordings.

252. – (1) A designated body may –

(a) make a copy of a recording, for the purpose of modifying that copy to meet the special needs of a person who has a physical or mental disability, and

(b) supply that modified copy to that person without infringing any right conferred by this Part.

(2) Where a copy which would otherwise be an illicit recording is made under this section but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an illicit recording for those purposes and for all subsequent purposes.

(3) In this section “designated body” means a body designated for the purposes of *section 104*.

Recording for archival purposes.

253. – (1) A recording of a broadcast or a cable programme of a designated class or a copy of such a recording may be made for the purpose of including it in an archive maintained by a designated body without infringing any right conferred by this Part in relation to a performance or recording included in the broadcast or cable programme.

(2) In this section –

“designated body” means a body designated for the purposes of *section 105*;

“designated class” means a class designated for the purposes of *section 105*.

Power of Controller to consent on behalf of performer.

254. – (1) Subject to the service or publication of such notices as may be required by rules made under *section 363* or as the Controller may in any particular case direct, the Controller may by order, on the application of a person wishing to make a copy of a recording of a performance, consent to the making of the copy in a case where the identity or location of the person entitled to the reproduction right cannot be ascertained by reasonable enquiry.

(2) The consent given by the Controller under *subsection (1)* has effect in the same manner as the consent of the person entitled to the reproduction right for the purposes of *section 204* and may be given subject to any conditions specified in the order made under *subsection (1)*.

(3) For the purposes of giving consent under *subsection (1)*, the Controller shall take into account –

(a) whether the original recording was made with the consent of the performer and is lawfully in the possession, custody or control of the person proposing to make the copy, and

(b) whether the making of the copy is consistent with the obligations of the parties to the arrangements under which, or is otherwise consistent with the purposes for which,

the original recording was made.

(4) *Subsection (3)* shall not affect the obligation of the Controller in any case to have regard to all relevant circumstances.

(5) Where the Controller consents under *subsection (1)* he or she shall, in default of agreement between the applicant and the person entitled to the reproduction right, make such order as the Controller thinks fit as to the payment to be made to the person entitled to the reproduction right in consideration of consent being given.

CHAPTER 5 *Deliver Up and Seizure*

Order for
delivery up.

255. – (1) Where a person –

(a) in the course of a business, trade or profession, has in his or her possession, custody or control in illicit recording of a performance,

(b) has in his or her possession, custody or control an article specifically designed or adapted for making recordings of a performance, knowing or having reason to believe that it has been or is to be used to make illicit recordings, or

(c) has in his or her possession, custody or control a protection-defeating device,

a person having rights conferred by this Part in relation to the performance may apply to the appropriate court for an order that the illicit recording, article or device be delivered up to him or her or to such other person as the court may direct.

(2) An application under *subsection (1)* shall not be made after the expiration of the period specified in *section 263(1)* as being the limit of the period for delivery up and no order shall be made unless the court also makes, or it appears to the court that there are grounds for making an order as to the disposal of the illicit recording, article or device.

(3) A person to whom an illicit recording, article or device is delivered up pursuant to an order made under this section shall, where an order under *section 264* as to the disposal of the illicit recording, article or device is not made, retain it pending the making of an order, or the decision not to make an order, under that section.

Application to
District Court for
seizure of illicit
recordings,
articles, or
devices.

256. – (1) Without prejudice to *section 257* where the owner of the rights in a recording of a performance conferred by this Part applies to the District Court, it may, where satisfied that there are reasonable grounds for believing that there are being hawked, carried about or marketed–

(a) illicit recordings of the performance,

(b) articles specifically designed or adapted for making recordings of a performance, which the person hawking, carrying about or marketing those articles, knows or has reason to believe that they have been or are to be used to make illicit recordings of a performance, or

(c) protection-defeating devices,

authorise by order a member of the Garda Síochána to seize without warrant the recordings, articles or devices and to bring them before the District Court.

(2) On being satisfied that a recording, article or device referred to in *subsection (1)* is –

- (a) an illicit recording,
- (b) an article that has been or is to be used to make illicit recordings, or
- (c) a protection-defeating device,

the District Court may order the recording, article or device to be destroyed or to be delivered up to the rightsowner or otherwise dealt with as the Court may think fit.

(3) In an application to the District Court under *subsection (1)* or, in any *ex parte* application or interlocutory motion to a court of competent jurisdiction for an order which would permit the applicant to enter and search premises specified therein and take possession of material found therein on terms set out in such order, the court hearing such an application may receive hearsay evidence to the effect that the witness or deponent believes that the material may be found in a particular location.

(4) A witness or deponent shall not be obliged to indicate the source of the information upon which that witness formed the belief that material may be found in a particular location.

(5) After the implementation of an order made under this section, the court may, on the application of a person aggrieved by it, award damages against the applicant for the order as it considers just, on being satisfied that–

- (a) no infringement of a right conferred by this Part has been established, and
- (b) the information on which the rightsowner applied for the order was given maliciously.

Right of
rightsowner to
seize illicit
recordings,
articles or
devices etc.

257. – (1) Where it would be impracticable for the owner of the rights in a recording of a performance to apply to the District Court for an order under *section 256*, a recording, article or device referred to in *section 256(1)*, in respect of which the rightsowner would be entitled to apply for an order for delivery up under *section 255*, may be seized and detained by the rightsowner or a designated representative of that owner where the recording, article or device is found being hawked, carried about or marketed.

(2) The right to seize and detain conferred by *subsection (1)* is exercisable subject to *subsections (4) to (8)* and is subject to any decision of the court relating to disposal of illicit recordings, articles or devices under *section 264*.

(3) A person who seizes any illicit recordings, articles or devices under this section shall apply to the District Court for an order to dispose of those recordings, articles or devices within 30 days of the seizure.

(4) Before any illicit recordings, articles or devices are seized under this section notice of the time and place of the proposed seizure shall be given to a member of the Garda Síochána in the District Court Area in which the recordings, articles or devices are to be seized.

(5) A person exercising the right to seize and detain conferred by *subsection (1)* may enter premises to which members of the public have access.

(6) A person exercising the right to seize and detain conferred by *subsection (1)* may not seize anything in the possession, custody or control of a person at his or her permanent or regular place of business, trade or profession, and may not use any force.

(7) Without prejudice to the generality of *subsection (6)* a person exercising the right to seize and detain conferred by *subsection (1)* may make an inventory or prepare other evidence of

infringement of any of the rights conferred by this Part or potential infringement of such rights.

(8) At the time when any illicit recordings, articles or devices are seized under this section there shall be given to the owner, occupier or person in charge of the place where the recordings, articles or devices are seized a notice, in the prescribed form, informing the person of the right of the owner of the recordings, articles or devices being seized to apply to the District Court for the return of the recordings, articles or devices on the grounds that they are not—

- (a) illicit recordings of a performance,
- (b) articles that have been or are to be used to make illicit recordings, or
- (c) protection-defeating devices.

(9) Without prejudice to the generality of *subsection (8)*, the Minister shall prescribe the form of the notice to be given under that subsection and the form shall specify —

- (a) the name and the address of the person claiming to be the owner of the rights in the recording concerned,
- (b) the statutory authority for the seizure,
- (c) the grounds that the person seizing the recordings, articles or devices has for such seizure, and
- (d) a list of that which is seized.

(10) The owner of any recordings, articles or devices seized under this section may apply to the District Court for the return of those recordings, articles or devices.

(11) Rules of court shall be made under this section and the rules shall provide for procedures to enable applications to be made and dealt with in an expeditious manner.

(12) Where there has been an exercise of the right to seize and detain, conferred by subsection (1), the court may, on the application of a person aggrieved by it, award damages against a person who exercises that right as it considers just, on being satisfied that —

- (a) no infringement of a right conferred by this Part has been established, and
- (b) the person had no reasonable grounds for such seizure.

CHAPTER 6

Offences: Performances

Offences **258.** — (1) A person who, without the consent of the rightsowner —

- (a) makes for sale, rental or loan,
- (b) sells, rents or lends, or offers or exposes for sale, rental or loan,
- (c) imports into the State, otherwise than for his or her private and domestic use,
- (d) in the course of a business, trade or profession, has in his or her possession, custody or control, or makes available to the public, or

(e) otherwise that in the course of a business, trade or profession, makes available to the public to such an extent as to prejudice the interests of the rightsowner,

a recording which is, and which he or she knows or has reason to believe is, an illicit recording, shall be guilty of an offence.

(2) A person who—

- (a) makes,
- (b) sells, rents or lends, or offers or exposes for sale, rental or loan,
- (c) imports into the State, or
- (d) has in his or her possession, custody or control,

an article specifically designed or adapted for making recordings of a performance, knowing or having reason to believe that it has been or is to be used to make illicit recordings, shall be guilty of an offence.

(3) A person who –

- (a) (i) makes,
- (ii) sells, rents or lends, or offers or exposes for sale, rental or loan,
- (iii) imports into the State, or
- (iv) has in his or her possession, custody or control,

a protection-defeating device, knowing or having reason to believe that it has been or is to be used in circumvent rights protection measures, or

(b) provides information, or offers or performs any service intended to enable or assist persons to circumvent rights protection measures,

shall be guilty of an offence.

(4) Where the rights conferred by this Part are infringed –

- (a) by the playing or showing in public of a recording of a performance, or
- (b) by the broadcasting or inclusion in a cable programme service of a performance or a recording of a performance,

the person who caused the recording of the performance to be shown or played, or the performance or the recording of the performance to be broadcast or included in a cable programme service, shall be guilty of an offence where he or she knew or had reason to believe that the rights conferred by this Part would be infringed.

(5) An offence shall not be committed under *subsection (1)* or *(4)* by the undertaking of an act which under this Part may be undertaken without infringing the rights conferred by this Part.

(6) A person guilty of an offence under *subsection (1)*, *(2)* or *(3)* shall be liable –

- (a) on summary conviction, to a fine not exceeding £1,500 in respect of each illicit recording, article or device, or to imprisonment for a term not exceeding 12 months, or

both, or

(b) on conviction on indictment, to a fine not exceeding £100,000, or to imprisonment for a term not exceeding 5 years, or both.

(7) A person guilty of an offence under *subsection (4)* shall be liable—

(a) on summary conviction to a fine not exceeding £1,500 in respect of each offence, or to imprisonment for a term not exceeding 12 months, or both, or

(b) on conviction on indictment, to a fine not exceeding £100,000, or to imprisonment for a term not exceeding 5 years, or both.

False claims of rights in performances.

259. – A person who, for financial gain, makes a claim to enjoy a right under this Part or *Part IV* which is, and which he or she knows or has reason to believe is, false, shall be guilty of any offence and shall be liable on conviction on indictment to a fine not exceeding £100,000, or to imprisonment for a term not exceeding 5 years, or both.

Order for delivery up in criminal proceedings.

260. – (1) The court may, on conviction of a person or being satisfied that this is a *prima facie* case to answer, where the court is satisfied that at the time of the arrest or charge the person has in his or her possession, custody or control –

(a) in the course of a business, trade or profession, a recording of a performance, knowing or having reason to believe it to be an illicit recording,

(b) an article specifically designed or adapted for making recordings of a performance, knowing or having reason to believe that it had been or was to be used to make illicit recordings, or

(c) a protection-defeating device,

order that the illicit recording, article or device be delivered up to the rightsowner or to such other person as the court may direct.

(2) An order may be made by the court of its own motion, or on the application of the person bringing a prosecution, and may be made whether or not the person is convicted of the offence, but shall not be made –

(a) after the expiration of the period specified in *section 263(3)* as being the limit of the period for delivery up, or

(b) where it appears to the court unlikely that any order will be made as to the disposal of the illicit recordings, articles or devices.

(3) A person whom an illicit recording, article or device is delivered up pursuant to an order made under this section shall retain it pending the making of a final order or decision not to make an order, as the case may be.

Search warrants and seizure.

261. – (1) Where a Judge of the District Court is satisfied by information on oath that there are reasonable grounds for suspecting –

(a) that an offence under *section 258* has been, or is about to be committed in, on or at any premises or place, and

(b) that evidence that such an offence has been, or is about to be, committed is in, on or at those premises or that place,

the court may issue a warrant authorising a member of the Garda Síochána, accompanied by such other members of the Garda Síochána or other person or persons as that member thinks proper, at any time or times within 28 days from the date of the issue of the warrant, on production, where requested of that warrant, to enter and search the premises or place specified in the warrant using reasonable force where necessary, and to do all or any of the following acts—

(i) to seize any copies of any recordings, articles or devices in respect of which he or she has reasonable grounds for suspecting that an offence under *section 258* has been or is about to be committed;

(ii) to make an inventory or prepare other evidence of infringement or potential infringement of any right conferred by this Part;

(iii) to seize anything found there which he or she believes on reasonable grounds may be required to be used in evidence in any proceedings brought in respect of an offence under this Act;

(iv) to require any person found there to give his or her name and address.

(2) A warrant issued under this section may authorise persons, including the rightsowner or designated representative thereof, to accompany and assist any member of the Garda Síochána in executing the warrant or in collating any inventory or other evidence.

(3) A person who –

(a) obstructs or interferes with a person acting under the authority of a warrant issued under this section,

(b) is found in, on or at the premises or place specified in the warrant by a member of the Garda Síochána acting as aforesaid and who fails or refuses to give the member his or her name and address when required to do so or gives a name or address that is false or misleading,

(c) obstructs the exercise of an authority conferred by a warrant under this section, or

(d) fails or refuses to give information to a member of the Garda Síochána when required to do so under this section,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500, or to imprisonment for a term not exceeding 12 months, or both.

False representation of authority to give consent.

262. – (1) It shall be an offence for a person to represent falsely that he or she is authorised by any person to give consent for the purposes of this Part in relation to a performance, unless he or she believes on reasonable grounds that he or she is so authorised.

(2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding £1,500, or to imprisonment for a term not exceeding 12 months, or both.

Period after which remedy of delivery up is not available.

263. – (1) Subject to *subsection (2)*, an application for an order under *section 255* may not be made after the expiration of 6 years from the date of which the illicit recording, article or device was made.

(2) Where, during the whole or any part of the period referred to in *subsection (1)*, a person entitled to apply for an order for delivery up –

(a) is under a disability, or

(b) is prevented by fraud or concealment from discovering the facts entitling him or her to apply for an order,

an application under *section 255* may be made at any time before the expiration of 6 years from the date on which the applicant ceased to be under a disability, or, as the case may be, could, with reasonable diligence, have discovered those facts.

(3) An order for delivery up in criminal proceedings under *section 260* shall not, in any case, be made after the expiration of 6 years from the date on which the proceedings under *section 260* were initiated.

(4) Where in any proceedings for an order for delivery up under *section 255* or *260* the date of the making of the illicit recording, article or device is put into question by the defendant, the onus of proof shall be on the defendant that the illicit recording, article or device was made more than 6 years before the date on which an application for an order under *section 255* was made or proceedings under *section 260* were initiated.

Order as to disposal of illicit recording, article or device.

264. – (1) An application may be made to the appropriate court for an order that an illicit recording, article or device –

(a) delivered up under *section 255* or *260*, or

(b) seized and detained under *section 256* or *261*,

shall be–

(i) forfeited to the rightsowner, or

(ii) destroyed or otherwise dealt with as the court may direct,

and the court may make such an order or such other order as it thinks fit.

(2) In considering what order, if any, should be made under *subsection (1)* the court shall consider whether other remedies available in an action for infringement of the rights conferred by this Part would be adequate to compensate the person entitled to those rights and to protect his or her interests.

(3) Provisions shall be made by rules of court as to the service of notice on persons having an interest in the recordings, articles or devices concerned, and any such person may–

(a) appear in proceedings for an order under this section whether or not he or she was served with notice, or

(b) appeal against any order made, whether or not he or she appeared in the proceedings concerned.

(4) An order made under this section shall not take effect until the expiration of the period within which notice of an appeal may be given or, where before the expiration of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

(5) Where there is more than one person interested in a recording, article or device, the court shall make such order as it thinks fit and may direct the recording, article or device to be sold or otherwise dealt with and any proceeds divided in accordance with the direction of the

court.

(6) Where the court decides that no order shall be made under this section, the person who had the recording, article or device in his or her possession, custody or control immediately before it was delivered up or seized shall be entitled to its return.

(7) References in this section to a person having an interest in a recording, article or device include any person in whose favour an order may be made under this section in respect of the recording, article or device or under *section 139* or under *section 23* of the Trade Marks Act, 1996.

CHAPTER 7

Licensing Schemes: Performers' Property Rights Licensing

Licensing schemes and licensing bodies.

265. – (1) In this Part –

“licences” means licences to undertake or authorise the undertaking of any of the acts restricted by a performer’s property rights;

“licensing body” means a society or other organisation which has as its main object, or one of its main objects, the negotiating or granting, either as owner or prospective owner of a performer’s property rights, or as exclusive licensee or as agent for him or her, of performers’ property rights licences, and whose objects include the granting of licences relating to the performances of more than one performer;

“licensing scheme” means a scheme specifying–

- (a) the classes of case in which the operator of the scheme, or the person on whose behalf that operator acts, is willing to grant performers’ property rights licences, and
- (b) the terms on which licences would be granted in those classes of case,

and for this purpose a “scheme” includes anything in the nature of a scheme, whether described as a scheme or as a tariff or by any other name.

(2) References in this Part to licences or licensing schemes relating to the performances of more than one performer shall not include licences or schemes relating to–

- (a) performances recorded in a single recording, or
- (b) performances recorded in more than one recording where–
 - (i) the performers giving the performances are the same, or
 - (ii) the recordings are made by, or by employees of or commissioned by, a single individual, firm, company or group of companies, including holding companies and their subsidiaries.

References and Applications Relating to Licensing Schemes

General references.

266. – *Sections 267 to 272* apply to licensing schemes which are operated by licensing bodies in relation to the performer’s property rights of more than one performer, in so far as they relate to licences for any of the acts restricted by a performer’s property rights under *sections 204 and 205*.

Reference of proposed licensing scheme to Controller.

267. – (1) The terms of a licensing scheme proposed to be operated by a licensing body may be referred to the Controller by an organisation which claims to be representative of persons claiming that they require licences in cases of a description to which the scheme would apply.

(2) The Controller shall not consider a reference by an organisation under *subsection (1)* unless the Controller is satisfied that the organisation is representative of the class of persons that it claims to represent.

(3) The Controller may refuse to consider a reference under *subsection (1)* on the ground that the reference is premature.

(4) Where the Controller decides to consider a reference under *subsection (1)* he or she shall consider the subject matter of the reference and make an order, either confirming or varying the proposed scheme, as the Controller may determine to be reasonable in the circumstances.

(5) An order under *subsection (4)* may be made for such period as the Controller may determine.

Reference of licensing scheme to Controller.

268. – (1) Where a licensing scheme is in operation and a dispute arises with respect to the scheme between the operator of the scheme and –

(a) a person claiming that he or she requires a licence in a case of a description to which the scheme applies, or

(b) an organisation claiming to be representative of such persons,

that operator, person or organisation may refer the scheme to the Controller in so far as it relates to cases of that description.

(2) The Controller shall not consider a reference by an organisation under *subsection (1)* unless the Controller is satisfied that the organisation is representative of the class of persons that it claims to represent.

(3) A scheme which has been referred to the Controller under *subsection (1)* shall remain in operation until proceedings in relation to the reference are concluded.

(4) The Controller shall consider the matter referred to him or her and shall make an order, confirming or varying the scheme, as the Controller may determine to be reasonable in the circumstances.

(5) An order under *subsection (4)* may be made for such period as the Controller may determine.

Further reference of scheme to Controller.

269. – (1) Where the Controller has, in respect of a licensing scheme under *section 267* or *268* or under this section, made an order in respect of a scheme, and the order remains in force, the persons to whom this section applies may refer the scheme to the Controller in so far as it relates to cases of that description.

(2) This section applies to –

(a) the operator of the scheme,

(b) a person claiming that he or she requires a licence in a case of the description to which the order applies, and

(c) an organisation claiming to be representative of persons referred to in *paragraph (b)*.

(3) Where an order under *section 267* or *268* or this section is in force the licensing scheme in respect of the order is made shall not, except with the special leave of the Controller, be referred to the Controller in respect of the same description of cases –

- (a) within 12 months from the date of the order in respect of the previous reference, or
- (b) where the order was made so as to be in force for 15 months or less, until the last 3 months before the expiration of the order.

(4) A scheme which has been referred to the Controller under *subsection (1)* shall remain in operation until proceedings in relation to the reference are concluded.

(5) The Controller shall consider the matter referred to him or her and shall make an order, confirming, varying, or further varying the scheme, as the Controller may determine to be reasonable in the circumstances.

(6) An order under *subsection (5)* may be made for such period as the Controller may determine.

Application for grant of a licence in connection with licensing scheme.

270. – (1) A person who claims, in a case to which a licensing scheme relates, that the operator of the scheme has refused to grant or to procure the grant to him or her of a licence in accordance with the scheme, or has failed to do so within a reasonable period, may apply to the Controller for an order under *subsection (4)*.

(2) A person who claims, in a case excluded from a licensing scheme, that the operator of the scheme –

- (a) has refused to grant or to procure the grant to him or her of a licence, or has failed to do so within a reasonable period and that in the circumstances it is unreasonable that a licence should not be granted, or
- (b) proposes terms for a licence that are unreasonable,

may apply to the Controller for an order under *subsection (4)*.

(3) A case shall be regarded as being excluded from a licensing scheme for the purposes of *subsection (2)* where –

- (a) the scheme provides for the grant of licences, subject to terms excepting matters from the licence and the case is within such an exception, or
- (b) the case is so similar to those in which licences are granted under the scheme that it is unreasonable that it should not be dealt with in the same way.

(4) Where the Controller is satisfied that a claim under this section is well-founded, he or she shall make an order declaring that in respect of the matters specified in the order, the applicant is entitled to a licence on such terms as the Controller may determine to be applicable in accordance with the scheme, or as the case may be to be reasonable in the circumstances.

(5) An order under *subsection (4)* may be made for such period as the Controller may determine.

Review of orders made by Controller.

271. – (1) Where the Controller has made an order under *section 270* that a person is entitled to a licence under a licensing scheme, the operator of the scheme or the original applicant may apply to the Controller for a review of that order.

(2) An application under *subsection (1)* shall not be made except with the special leave of the Controller –

(a) within 12 months from the date of the order or of the decision on a previous application under this section, or

(b) where –

(i) the order was made so as to be in force for 15 months or less, or

(ii) as a result of the decision on a previous application under this section the order is due to expire within 15 months of that decision,

until the last 3 months before the expiration date.

(3) The Controller shall, on an application for review, confirm or vary his or her order as the Controller may determine to be reasonable, having regard to the terms applicable in accordance with the licensing scheme, or, as the case may be, the circumstances of the case.

Effect of order of
Controller as to
licensing scheme.

272. – (1) A licensing scheme which has been confirmed or varied by the Controller under *section 267, 268 or 269* shall be in operation or, as the case may be, remain in operation, in so far as it relates to the description of case in respect of which the order was made, for such period as the order remains in force.

(2) Where an order made by the Controller under *section 267, 268 or 269* confirming or varying a licensing scheme is in force (in this section referred to as “an order to which this section applies”), a person who, in a case of a class to which the order applies–

(a) pays to the operator of the scheme any charges payable under the scheme in respect of a licence applying to the case concerned or, where the amount cannot be ascertained, gives an undertaking to the operator to pay the charges when ascertained, and

(b) complies with the other terms applicable to the licence under the scheme,

is in the same position as regards infringement of a performer’s property rights as if he or she had at all material times been the holder of a licence granted by the rightsowner concerned in accordance with the scheme.

(3) The Controller may direct that an order to which this section applies, in so far as it varies the amount of charges payable, has effect from a date that on which it was made, but not earlier than the date on which the reference was made, or where later, the date on which the scheme came into operation.

(4) Where a direction is made under *subsection (3)* –

(a) any necessary repayments or further payments shall be made in respect of charges already paid, and

(b) the reference in *subsection (2) (a)* to the charges payable under the scheme shall be construed as a reference to the charges so payable by virtue of the order.

(5) Where the Controller has made an order under *section 270* and the order remains in force, the person in whose favour the order is made, where he or she –

(a) pays to the operator of the scheme any charges payable in accordance with the order or, where the amount cannot be ascertained, gives an undertaking to the operator

to pay the charges when ascertained, and

(b) complies with the other terms specified in the order,

is in the same position as regards infringement of a performer's property rights as if he or she had at all material times been the holder of a licence granted by the rightsowner concerned on the terms specified in the order.

References and Applications Relating to Licensing by Licensing Bodies

General references by licensing bodies.

273. – Sections 274 to 277 apply to licences in relation to the performer's property rights of more than one performer, granted by a licensing body otherwise than pursuant to a licensing scheme, in so far as the licences relate to any of the acts restricted by a performer's property rights under sections 204 and 205.

Reference to Controller of proposed licence.

274. – (1) The terms on which a licensing body proposes to grant a licence may be referred to the Controller by the prospective licensee for an order under subsection (3).

(2) The Controller may refuse to consider a reference under subsection (1) on the ground that the reference is premature.

(3) Where the Controller decides to consider a reference under subsection (1), he or she shall consider the terms of the proposed licence and make an order, confirming or varying the terms, as the Controller may determine to be reasonable in the circumstances.

(4) An order under subsection (3) may be made for such period as the Controller may determine.

Reference to Controller of expiring licence.

275. – (1) A licensee under a licence which is due to expire with the passage of time or as a result of notice given by the licensing body may apply to the Controller on the ground that it is unreasonable in the circumstances that the licence should cease to be in force.

(2) An application under subsection (1) may be made at any time during the last 3 months before the expiration of the licence.

(3) A licence in respect of which a reference has been made to the Controller under subsection (1) shall remain in force until proceedings in relation to the reference are concluded.

(4) Where the Controller is satisfied that an application made under subsection (1) is well-founded, he or she shall make an order declaring that the licensee shall continue to be entitled to the benefit of the licence on such terms as the Controller may determine to be reasonable in the circumstances.

(5) An order under subsection (4) may be made for such period as the Controller may determine.

Application for review of order made by Controller.

276. – (1) Where the Controller had made an order under section 274 or 275, the licensing body or the person entitled to the benefit of the order may apply to the Controller for a review of that order.

(2) An application under subsection (1) shall not be made except with the special leave of the Controller—

(a) within 12 months from the date of the order or of the decision on a previous application under this section, or

(b) where—

(i) the order was made as to be in force for 15 months or less, or

(ii) as a result of the decision on a previous application under this section the order is due to expire within 15 months of that decision,

until the last 3 months before the expiration date.

(3) The Controller shall, on an application for review, confirm or vary his or her order as the Controller may determine to be reasonable in the circumstance.

Effect of order of
Controller as to
licence.

277. – (1) Where the Controller has made an order under *section 274* or *275*, and the order remains in force, the person entitled to the benefit of the order, where he or she –

(a) pays to the licensing body any charges payable in accordance with the order or, where the amount cannot be ascertained, gives an undertaking to the Controller to pay the charges when ascertained, and

(b) complies with the other terms specified in the order,

is in the same position as regards infringement of a performer’s property rights as if he or she had at all material times been the holder of a licence granted by the rightsowner concerned on the terms specified in the order.

(2) The benefit of an order made under *section 274* or *275* may be assigned –

(a) in the case of an order made under *section 274*, where assignment is not prohibited under the terms of the order of the Controller, and

(b) in the case of an order made under *section 275*, where assignment was not prohibited under the terms of the original licence.

(3) The Controller may direct that an order made under *section 274* or *275* or an order made under *section 276* varying such an order, in so far as it varies the amount of charges payable, has effect from a date before that on which it was made, but not earlier than the date on which the reference or application was made or, where later, the date on which the licence was granted or, as the case may be, was due to expire.

(4) Where a direction is given under *subsection (3)* –

(a) any necessary repayments or further payments shall be made in respect of charges already paid, and

(b) the reference in *subsection (1) (a)* to the charges payable in accordance with the order shall be construed, where the order is varied by a further order, as a reference to the charges so payable by virtue of that further order.

Licensing: Miscellaneous

General
considerations:
unreasonable

278. – (1) In determining what is reasonable, on a reference or application under this Chapter relating to a licensing scheme or licence, the Controller shall have regard to –

discrimination.

(a) the availability of other schemes, or the granting of other licences, to other persons in similar circumstances, and

(b) the terms of those schemes or licences,

and shall exercise his or her powers so as to ensure that there is no unreasonable discrimination between licensees, or prospective licensees, under the scheme or licence to which the reference or application relates and licensees under other schemes operated by, or other licences granted by, the same person.

(2) *Subsection (1)* shall not affect the obligation of the Controller in any case to have regard to all relevant circumstances.

Licenses to reflect payments in respect of underlying rights.

279. – Where a reference or application is made under this Chapter in relation to licensing in respect of the performer’s property rights in a recording, the Controller shall take into accounts, in considering what charges are to be paid for a licence, any payments which the owner of the performer’s property right is liable to make pursuant to the granting of the licence, or pursuant to the acts authorised by the licence–

(a) to owners of the copyright in works included in the recording, or

(b) in respect of any performance included in the recording.

CHAPTER 8

Registration of Licensing Bodies in Respect of Performers’ Property Rights

Register of licensing bodies for performers property rights.

280. – (1) The Controller shall establish and maintain a register of licensing bodies in respect of performers’ property rights in such form and manner and containing such particulars as the Minister may prescribe to be known as the “Register of Licensing Bodies for Performers’ Property Rights” and referred to in this Part as the “Register”.

(2) The Controller shall keep the Register in such form that the Register is capable of being used to make a copy of any entry in the Register.

(3) The Register shall be kept at such place as may be prescribed by the Minister and, subject to the payment of such fee as may be prescribed by the Minister with the consent of the Minister for Finance –

(a) the Register shall be made available for inspection by a person at such times and in such manner as may be prescribed by the Minister, and

(b) where a request is made to the Controller for a certified or uncertified copy of, or extract from, an entry in the Register, the Controller shall issue a copy of the entry or extract to the applicant.

(4) An application for registration or renewal of a registration of a licensing body shall be made to the Controller in such form and manner as may be prescribed by the Minister and shall be subject to the payment of such fee as may be prescribed by the Minister with the consent of the Minister for Finance.

(5) The Controller shall register an applicant or renew a registration where the Controller is satisfied that –

(a) the applicant complies with the definition of a licensing body specified in *section 249*, and

(b) the applicant has provided such information and satisfied such conditions as may be prescribed by the Minister for the purposes of registration.

(6) The information to be prescribed by the Minister under *subsection (5) (b)* shall include the following:

(a) the name of the applicant;

(b) the address of the applicant;

(c) the names of the chairperson and other members of the board or officers, or names of partners, as the case may be, of the applicant;

(d) a copy of the memorandum and articles of association or partnership agreement, of the applicant;

(e) details of the scheme;

(f) details of the scales of charges or proposed charges to be levied by the applicant; and

(g) the class of rightsowners represented or proposed to be represented by the applicant.

(7) On the registration or renewal of a registration of a licensing body the Controller shall issue to the applicant a certificate of registration in such form as the Controller shall determine.

Proof that
licensing body
may act on behalf
of specified
classes.

281. – A certificate granted under *section 280 (7)* shall include the particulars specified in *subsection (6)* of that section and certificate shall be evidence of the right of the licensing body, until the contrary is proved, to act on behalf of the classes of rightsowners for whom it claims representation rights or on behalf of the rightsowners who have assigned rights to it, or exclusively licensed it, as specified in that certificate.

Notification of
charges.

282. – (1) A licensing body registered under this Part which proposes to impose a charge, otherwise than in accordance with the scales of charges included in an application for registration or for renewal of a registration, shall provide the Controller in writing with details of the proposed charge not less than one month before the charge comes into effect.

(2) The registration of a licensing body which fails to comply with *subsection (1)* is deemed to be cancelled from the date on which the proposed charge comes into effect.

Validity of
certificates of
registration.

283. – (1) A certificate of registration issued under *section 280 (7)* shall be valid for a period of 12 months from the date of registration or such lesser period as may be specified by the Controller in the certificate.

(2) Subject to *section 280 (4)*, a licensing body registered under this Part may apply for renewal of its registration for further periods each of which shall not exceed 12 months.

(3) An application for renewal of a registration shall be made not less than one month before the expiration of the period of validity of the certificate of registration.

(4) A term of renewal of a registration shall take effect from the expiration of the previous registration.

Refusal of application. **284.** – (1) The Controller may refuse an application for renewal of a registration by a licensing body registered under this Part or cancel the registration of a licensing body where the body no longer fulfils the requirements specified in *section 280 (5)*.

(2) The Controller shall remove a licensing body from the Register where its application for renewal of its registration is refused or its registration cancelled.

Indemnity for Controller. **285.** – No action or other proceedings shall lie or be maintainable against the Controller (except in the case of wilful neglect of duty) in respect of anything done or omitted to be done by him or her in the *bona fide* exercise of any functions, powers or duties conferred or imposed by or under this Chapter.

Obligation of collecting societies to register (performers' property rights). **286.** – (1) Any body operating as a licensing body within the meaning specified in *section 265* shall be obliged to register in accordance with the provisions of this Chapter, and to remain registered for so long as it continues to operate in this capacity.

(2) Any body to which the provisions of *subsection (1)* applies which –

(a) fails within 6 months of the commencement of this Chapter to register under the terms of this Chapter,

(b) fails within 2 months of its establishment in the case of a body established after the commencement of this Chapter to register under the terms of this Chapter, or

(c) continues to operate as such a body having been removed from the Register for any reason,

shall be guilty of an offence.

(3) A person guilty of an offence under subsection (2) shall be liable–

(a) on summary conviction, to a fine not exceeding £1,500, or to imprisonment for a term not exceeding 12 months, or both, or,

(b) on conviction on indictment, to a fine not exceeding £100,000, or to imprisonment for a term not exceeding 5 years, or both.

CHAPTER 9

Qualification: Performances

Definition of qualifying person. **287.** – In this Part, and *Part IV*, subject to *section 271*, “qualifying person” means –

(a) an individual domiciled or ordinarily resident in the State or elsewhere,

(b) a body incorporated under the law of any country, territory, state or area,

(c) a partnership or unincorporated body formed under the law of any country, territory, state or area, or

(d) any other body.

Qualifying performance. **288.** – A performance is a qualifying performance for the purposes of the provision of this Part and *Part IV* if it is given by a qualifying individual or a qualifying person, or takes place in a qualifying country, state or area, in accordance with this Chapter.

Designation of qualifying countries.

289. – (1) The Government may by order designate as a qualifying country enjoying protection under this Part and *Part IV* any country, territory, state or area, as to which the government is satisfied that provision has been or will be made under its law giving adequate protection for Irish performers.

(2) For the purposes of this section, an “Irish performance” means a performance—

(a) given by an Irish citizen, or by an individual who is domiciled or ordinarily resident in the State, or

(b) taking place in the State.

(3) Where the law of that country, territory, state or area provides adequate protection only for certain descriptions or performance, an order under subsection (1) designating that country, territory, state or area may contain provision limiting to a corresponding extent the protection afforded by this Part of *Part IV* in relation to performances connected with the country, territory, state or area.

Territorial waters and Continental Shelf.

290. – For the purposes of this Part and *Part IV* –

(a) acts undertaken in, on, under or over –

(i) the waters in the portion of the sea which comprises the territorial seas of the State,

(ii) the waters in all areas of the sea to which the internal or inland waters of the State are extended by section 5 of the Maritime Jurisdiction Act, 1959, and

(iii) the waters in any area which is for the time being a designated area within the meaning of section 1 of the Continental Shelf Act, 1968,

and

(b) acts undertaken on an Irish ship, aircraft or hovercraft registered under the laws of the State,

shall be deemed to have been undertaken in the State.

CHAPTER 10

Duration of Rights in Performances

Duration of rights.

291. – The rights conferred by this Part shall expire 50 years from the end of the calendar year in which –

(a) the performance takes place, or

(b) where within that period a recording of the performance is lawfully made available to the public, that recording is first so lawfully made available to the public.

CHAPTER 11

Performers' Property Rights

Performers' property rights.

292. – (1) The rights conferred on a performer by *sections 204, 205, 206 and 207* are property rights and shall be known and in *Parts III and IV* referred to as “performers’ property rights”.

(2) Where different persons are (whether in consequence of a partial assignment or otherwise) entitled to different aspects of a performers’ property rights in relation to a

performance, the rightsowner for the purposes of *Parts III* and *IV* is the person who is entitled to the aspect of those rights relevant for those purposes.

(3) Where a performers' property rights (or any aspect of them) are owned jointly by more than one person, references in this Part to the rightsowner shall include references to all those owners, such that, in particular, any requirement of the licence of the rightsowner requires the licence of all of them.

(4) References in *Parts III* and *IV* to the consent of a performer shall be construed in relation to the performer's property rights as references to the consent of the rightsowner.

CHAPTER 12 Transmission of Performers' Property Rights

Assignment and
licences.

293. – (1) A performer's property rights are transmissible by assignment, by testamentary disposition or by operation of law, as personal or moveable property.

(2) A transmission of a performer's property rights by assignment, by testamentary disposition or by operation of law may be partial, so as to apply –

(a) to one or more but not all of the acts a performer has the right to authorise or prohibit, or

(b) to part but not the whole of the period for which the rights in the performance are to subsist.

(3) An assignment of a performer's property rights, whether in whole or in part, is not effective unless it is in writing and signed by or on behalf of the assignor.

(4) A licence granted by the owner of a performer's property rights is binding on every successor in title to his or her interest in the rights, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser and references in this Part to undertaking any act with or without the licence of the rightsowner shall be construed accordingly.

(5) A licence granted by a prospective owner of a performer's property rights is binding on every successor in title to his or her interest (or prospective interest) in the rights, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser, and references in this Part to undertaking any act with or without the licence of the rightsowner shall be construed accordingly.

Prospective
ownership of
performers'
property rights.

294. – (1) Where, by an agreement made in relation to a performer's property rights in respect of a future performance and signed by or on behalf of the performance, whether in whole or in part, to another person then where, on the rights coming into existence, the assignee or his or her successor in title or another person claiming under him or her would be entitled as against all other persons to require the rights to be vested in him or her, the rights shall vest in the assignee or his or her successor in title under this section or any other person claiming under him or her would be entitled.

(2) Where, at the time when any performer's property right comes into existence, the person who, if he or she were then living, would be entitled to the right is dead, the right shall devolve as if it had existed immediately before his or her death and he or she had then been the owner of the right.

(3) The rights of an assignee in a future performance shall not be prejudiced by the fact that the agreement referred to in *subsection (1)* was made before the commencement of this

section.

(4) In this Part –

“future performance” means any performance which will or may take place at some date in the future;

“prospective owner”, in relation to performer’s property rights, includes a person who is prospectively entitled to those rights by virtue of an agreement referred to in *subsection (1)*.

Exclusive licences.

295. – (1) In this Part an “exclusive licence” means a licence in writing which is signed by or on behalf of an owner or prospective owner of a performer’s property rights authorising the licensee, to the exclusion of all other persons, including the person granting the licence, to exercise a right which would otherwise be exercisable exclusively by the rightsowner and references to an exclusive licensee shall be construed accordingly.

(2) An exclusive licensee has the same rights against a successor in title who is bound by the licence as he or she has against the person granting the licence.

Performers’ property rights to pass under will with certain recordings.

296. – Where, under a bequest (whether specific or general), a person is entitled, beneficially or otherwise, to any material thing containing an original recording of a performance which had not been made available to the public before the death of the testator, the bequest shall be construed as including any performer’s property rights in relation to the recording in so far as the testator was the owner of the rights immediately before his or her death, unless a contrary intention is indicated in the will of the testator or in a codicil to that will.

Presumption of transfer of rental right in case of film production agreement.

297. – (1) Without prejudice to the right of a performer to receive equitable remuneration in respect of a rental right, where an agreement concerning film production is concluded between a performer and a film producer, the performer shall be presumed, unless the agreement provides to the contrary, to have transferred to the film producer any rental right in relation to the film arising by virtue of the inclusion of a recording of his or her performance in the film.

(2) Where a presumption of transfer of the rental right arises by virtue of *subsection (1)*, the absence of a signature by or on behalf of the performer shall not restrict the operation of *section 293* or *294*.

(3) The reference in *subsection (1)* to an agreement concluded between a performer and a film producer includes any agreement whether made by them directly or through intermediaries.

(4) The right to equitable remuneration on the transfer of the rental right applies where there is a presumed transfer under this section as in the case of an actual transfer.

Right to equitable remuneration where rental right is transferred.

298. – (1) Without prejudice to the generality of *section 297*, where a performer has transferred his or her rental right he or she retains the right to equitable remuneration for the rental.

(2) The right to equitable remuneration conferred by this section shall not be waived by the performer and the performer shall not assign the right to equitable remuneration except to a collecting society for the purpose of enabling the collecting society to exercise that right on his or her behalf.

(3) The right to equitable remuneration is transmissible by way of testamentary disposition or by operation of law, as personal or moveable property and it may be further transmitted,

including by assignment, by any person who legally acquires the right.

(4) Equitable remuneration under this section is payable by the person to whom the rental right is transferred or any successor in title.

(5) Subject to *section 299*, the amount payable by way of equitable remuneration is that which has been agreed by or on behalf of the persons by and to whom it is payable.

(6) An agreement is void in so far as it purports to exclude or restrict the right to equitable remuneration conferred by this section.

(7) References in this Part to the transfer of the rental right by one person to another include any arrangement having that effect whether made by them directly or through intermediaries.

(8) In this section “collecting society” means a society or other organisation which has as one of its main objects the exercise of the right to collect equitable remuneration under this section on behalf of more than one performer.

Equitable remuneration: reference of determination of amount to Controller.

299. – (1) In default of agreement as to the amount of equitable remuneration payable under *section 298*, the person by or to whom it is payable may apply to the Controller for an order under *subsection (4)*.

(2) Subject to *subsection (3)*, a person by or to whom equitable remuneration is payable under *section 298* may also apply to the Controller –

(a) to vary any agreement as to the amount payable, or

(b) to vary any previous determination of the Controller as to the amount payable.

(3) An application may not be made under *subsection (2)* within 12 months from the date of the previous determination except with the special leave of the Controller.

(4) On an application being made under this section the Controller shall consider the matter and make such order as to the method of calculating and paying equitable remuneration as he or she may determine to be reasonable in the circumstances, having regard to the importance of the contribution of the performer.

(5) An order made under *subsection (4)* shall have effect from the date on which it is made or such later date as may be specified by the Controller.

(6) Remuneration shall not be considered inequitable because it is paid by way of a single payment or at the time of transfer of the rental right.

(7) An agreement is void in so far as it purports to prevent a person challenging the amount of equitable remuneration or to restrict the powers of the Controller under this section.

CHAPTER 13

Transmission of Recording Rights and Performers’ Non-Property Rights

Performers’ non-property rights.

300. – (1) The rights conferred on a performer by *sections 203, 209 and 212* are non-property rights and shall be known and in *Parts III and IV* referred to as “performers’ non-property rights”.

(2) A performer’s non-property rights are not assignable or transmissible, except to the extent provided for in *subsection (3)*.

(3) On the death of a person entitled to a performer’s non-property rights –

(a) the rights pass by testamentary disposition to such person as the person entitled to the right may direct, and

(b) where there is no such direction, the right is exercisable by the personal representatives of the person entitled to the right.

(4) References in *Parts III* and *IV* to the performer, in the context of the person having any right referred to in *subsection (1)*, shall be construed as references to the person for the time being entitled to exercise those rights.

(5) Where, under *subsection (3) (a)*, a right becomes exercisable by more than one person, it is exercisable by each of them.

(6) Any damages recovered by personal representatives under this section in respect of an infringement after a person's death shall devolve as part of the person's estate as if the right of action had subsisted and been vested in that person immediately before his or her death.

Transmissibility
of rights of
person having
recording rights.

301. – (1) The rights conferred by this Part on a person having recording rights in relation to a performance are not assignable or transmissible.

(2) *Subsection (1)* shall not affect the operation of *section 215(2) (b)* or *Section 215(3) (b)* in so far as those provisions confer rights under this Part on a person to whom the benefit of a contract or licence is assigned.

Consent.

302. – (1) For the purposes of this Part and *Part IV*, consent by a person having a performer's non-property rights, or by a person having recording rights, may be given in relation to a specific performance, a specified description of performances or performances generally, and may relate to past or future performances.

(2) A person having recording rights in relation to a performance shall be bound by any consent given by a person through whom he or she derives his or her rights under the exclusive recording contract or licence concerned, in the same way as if the consent had been given by him or her.

(3) Where a performer's non-property right passes to another person, any consent binding on the person previously entitled to the right binds the person to whom the right passes in the same way as if the consent had been given by him or her.

CHAPTER 14

Remedies: Owner of Performers' Property Rights

Infringement
actionable by
rightsowner.

303. – (1) An infringement of a performer's property rights is actionable by the rightsowner.

(2) In an action for infringement of a performer's property rights under this section all relief by way of damages, injunctions, account of profits or otherwise is available to the plaintiff as it is available in respect of the infringement of any other property right.

(3) Where, in an action for infringement of a performer's property rights, the defendant does not admit that the plaintiff is owner of the performer's property rights, the court may direct that evidence in relation to ownership of the performer's property rights be given on affidavit and the court may decide to issue on consideration of any affidavit presented to it unless it is satisfied that any conflict of evidence between the affidavits may not be resolved other than

by hearing oral testimony in which case the court may order that oral evidence may be adduced.

(4) Hearsay evidence may be accepted for the purposes of any hearing under *subsection (3)*.

Award of damages in infringement action.

304. – (1) The court may, in an action for infringement of a performer’s property right award such damages as, having regard to all the circumstances of the case, it considers just.

(2) Without any prejudice to any other remedy, where, in an action for infringement of a performer’s property rights, it is shown that at the time of the infringement the defendant did not know and had no reason to believe that the rights subsisted in the recordings to which the action relates, the plaintiff is not entitled to damages against the defendant.

(3) In exercising its powers under *subsection (1)* in addition to or as an alternative to compensating the plaintiff for financial loss, the court may award aggravated or exemplary damages or both aggravated and exemplary damages.

Undertakings concerning licences of right.

305. – (1) Where, in proceedings for infringement of a performer’s property rights in respect of which a licence is available as of right, the defendant undertakes to take a licence on such terms as may be agreed or, in default of agreement, settled by the Controller –

(a) no injunction shall be granted against the defendant,

(b) no order for delivery up shall be made under *section 255*, and

(c) the amount recoverable against the defendant by way of damages or on an account of profits shall not exceed three times the amount which would have been payable by the defendant as licensee where a licence on those terms had been granted before the earliest infringement.

(2) An undertaking under *subsection (1)* may be given at any time before the final order in the proceedings without any admission of liability.

(3) Nothing in this section shall affect the remedies available in respect of an infringement committed before a licence was available as of right.

CHAPTER 15

Rights and Remedies: Exclusive Licensee

Rights and remedies of exclusive licensee.

306. – (1) An exclusive licensee has, except as against the owner of the performer’s property rights, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment.

(2) The rights and remedies of an exclusive licensee are concurrent with those of the rightsowner and references in *sections 255, 256, 303, 304 and 305* to the rightsowner shall be construed accordingly.

(3) In proceedings brought by an exclusive licensee under this section a defendant may avail of any defence which would have been available to the defendant if the action had been brought by the rightsowner.

Exercise of concurrent rights.

307. – (1) Where an action for infringement of a performer’s property rights brought by the rightsowner or an exclusive licensee relates, whether in whole or in part, to an infringement in respect of which the have concurrent rights or action, the rightsowner or, as the case may

be, the exclusive licensee, may not, without the leave of the appropriate court, proceed with the action unless the other is either joined as plaintiff or added as a defendant.

(2) A rightsowner or exclusive licensee who is added as a defendant under *subsection (1)* shall not be liable for any costs in an action unless he or she takes part in the proceedings.

(3) Nothing in this section shall affect the granting of interlocutory relief on an application by the rightsowner or exclusive licensee.

(4) Where an action for infringement of a performer's property rights is brought which relates, whether in whole or in part, to an infringement in respect of which the rightsowner and an exclusive licensee have or had concurrent rights of action –

(a) in assessing damages the appropriate court shall have regard to –

(i) the terms of the licence, and

(ii) any pecuniary remedy already awarded or available to either of them in respect of the infringement;

(b) no account of profits shall be directed where an award of damages has been made, or an account of profits has been directed, in favour of one of them in respect of the infringement; and

(c) the appropriate court shall, where an account of profits is directed, apportion the profits between them as the appropriate court thinks fit, subject to any agreement between the rightsowner and the exclusive licensee.

(5) *Subsection (4)* shall apply whether or not the rightsowner and the exclusive licensee are both parties to the action.

(6) Before –

(a) applying for an order for delivery up under *section 255*,

(b) applying for an order to seize illicit recordings, articles, or devices under *section 256*, or

(c) exercising the right to seize and detain conferred by *section 257*,

the rightsowner shall notify any exclusive licensee having concurrent rights and the appropriate court may, on the application of the licensee, make such order for delivery up, seizure of illicit recordings, articles or devices or, as the case may be, prohibiting or permitting the exercise by the rightsowner of the right to seize and detain, as it thinks fit, having regard to the terms of the license between the rightsowner and the exclusive licensee.

CHAPTER 16

Remedies: Owner of Performers' Non-Property Rights and Person Having Recorded Rights

Infringement
actionable as a
breach of
statutory duty.

308. – (1) An infringement of –

(a) a performer's non-property rights, or

(b) any right conferred by this Part on a person having recording rights,

is actionable as a breach of statutory duty owed to the person entitled to the right.

(2) A person may apply to the appropriate court for damages or other relief in respect of an

infringement of a right referred to in *subsection (1)*.