Statutory Instrument 2003 No. 2498

The Copyright and Related Rights Regulations 2003

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STATUTORY INSTRUMENTS

2003 No. 2498

COPYRIGHT

RIGHTS IN PERFORMANCES

The Copyright and Related Rights Regulations 2003

Made	*27th September 2003*
Laid before Parliament	*3rd October 2003*
Coming into force	*31st October 2003*

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The Secretary of State, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972[1], in relation to measures relating to copyright and to rights in performances[2] and also in relation to measures relating to the prevention of unauthorised extraction of the contents of a database, and of unauthorised reutilisation of those contents[3], in exercise of the powers conferred on her by that section, hereby makes the following Regulations:

PART 1

INTRODUCTORY PROVISIONS

Citation and commencement

1. These Regulations may be cited as the Copyright and Related Rights Regulations 2003 and shall come into force on 31st October 2003.

Consequential amendments and repeals

2. - (1) Schedule 1 (consequential amendments) shall have effect.

(2) Schedule 2 (repeals) shall have effect.

PART 2

AMENDMENTS OF THE COPYRIGHT, DESIGNS AND PATENTS ACT 1988

Introductory

3. The Copyright, Designs and Patents Act 1988[4] shall be amended as follows and, except where otherwise indicated, any reference in this Part to a section or paragraph is a reference to a section or paragraph of that Act and reference to a Schedule is to a Schedule to that Act.

Broadcasts

Provisions relating to broadcasts

4. Section 6 shall be amended as follows -

(a) for subsection (1) there shall be substituted -

" (1) In this Part a "broadcast" means an electronic transmission of visual images, sounds or other information which -

(a) is transmitted for simultaneous reception by members of the public and is capable of being lawfully received by them, or

(b) is transmitted at a time determined solely by the person making the transmission for presentation to members of the public,

and which is not excepted by subsection (1A); and references to broadcasting shall be construed accordingly.

(1A) Excepted from the definition of "broadcast" is any internet transmission unless it is -

(a) a transmission taking place simultaneously on the internet and by other means,

(b) a concurrent transmission of a live event, or

(c) a transmission of recorded moving images or sounds forming part of a programme service offered by the person responsible for making the transmission, being a service in which programmes are transmitted at scheduled times determined by that person.";

(b) in subsection (3) for the words ", broadcasting a work, or including a work in a broadcast" there shall be substituted "or a transmission which is a broadcast";

(c) in subsection (4) before the word "broadcast", where it first appears, there shall be inserted "wireless";

(d) after subsection (5) there shall be inserted -

" (5A) The relaying of a broadcast by reception and immediate re-transmission

shall be regarded for the purposes of this Part as a separate act of broadcasting from the making of the broadcast which is so re-transmitted.".

Other amendments relating to broadcasts

5. - (1) Section 7 shall cease to have effect.

(2) In section 1(1)(b) for the words ", broadcasts or cable programmes" there shall be substituted "or broadcasts".

(3) Section 6A shall be amended as follows -

(a) in subsection (1)(a) -

(i) before the words "broadcasting equivalent" there shall be inserted "wireless";

(ii) for the words "infringement by broadcasting" there shall be substituted "infringement by communication to the public";

(b) in subsections (1)(b) and (1)(c) before the word "broadcasting" there shall be inserted "wireless".

(4) Section 9(2)(c) shall cease to have effect.

(5) In section 17(4) for the words ", television broadcast or cable programme" and ", broadcast or cable programme", there shall be substituted " or broadcast".

(6) In section 144A(1) before the word "broadcast" there shall be inserted "wireless".

Acts restricted by copyright

Restricted act: communication to the public of the work

6. - (1) For section 20 there shall be substituted -

" **Infringement by communication to the public**

20

(1) The communication to the public of the work is an act restricted by the copyright in -

(a) a literary, dramatic, musical or artistic work,

(b) a sound recording or film, or

(c) a broadcast.

(2) References in this Part to communication to the public are to communication to the public by electronic transmission, and in relation to a work include -

(a) the broadcasting of the work;

(b) the making available to the public of the work by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them.".

(2) For section 16(1)(d) there shall be substituted -

" (d) to communicate the work to the public (see section 20);".

Making available right

Making available right for performers

7. - (1) After section 182C there shall be inserted -

" **182CA Consent required for making available to the public**

(1) A performer's rights are infringed by a person who, without his consent, makes available to the public a recording of the whole or any substantial part of a qualifying performance by electronic transmission in such a way that members of the public may access the recording from a place and at a time individually chosen by them.

(2) The right of a performer under this section to authorise or prohibit the making available to the public of a recording is referred to in this Part as "making available right.".

(2) In section 182D (right to equitable remuneration for exploitation of sound recording) for subsection (1)(b) there shall be substituted -

" (b) is communicated to the public otherwise than by its being made available to the public in the way mentioned in section 182CA(1),".

(3) In section 191A (performers' property rights) in subsection (1) after the entry for "rental right and lending right" there shall be inserted "making available right (section 182CA),".

(4) Schedule 2A shall be amended as follows -

(a) in paragraph 1(3) for the words "182B or 182C" there shall be substituted "182B, 182C or 182CA";

(b) in paragraphs 2 and 9, for the "or" appearing at the end of sub-paragraph (a) there shall be substituted -

" (aa) making such a recording available to the public in the way mentioned in

section 182CA(1), or."

Acts permitted in relation to copyright works and rights in performances

Making temporary copies

8. - (1) After the heading "*General*" appearing before section 29 there shall be inserted -

" **28A Making of temporary copies**

Copyright in a literary work, other than a computer program or a database, or in a dramatic, musical or artistic work, the typographical arrangement of a published edition, a sound recording or a film, is not infringed by the making of a temporary copy which is transient or incidental, which is an integral and essential part of a technological process and the sole purpose of which is to enable -

(a) a transmission of the work in a network between third parties by an intermediary; or

(b) a lawful use of the work;

and which has no independent economic significance.".

(2) After paragraph 1 of Schedule 2 there shall be inserted -

" *Making of temporary copies*

1A. The rights conferred by Part 2 are not infringed by the making of a temporary copy of a recording of a performance which is transient or incidental, which is an integral and essential part of a technological process and the sole purpose of which is to enable -

(a) a transmission of the recording in a network between third parties by an intermediary; or

(b) a lawful use of the recording;

and which has no independent economic significance.".

(3) After section 182A(1) there shall be inserted -

" (1A) In subsection (1), making a copy of a recording includes making a copy which is transient or is incidental to some other use of the original recording.".

Amendment of provision relating to research and private study

9. Section 29 shall be amended as follows -

(a) for subsection (1) there shall be substituted -

" (1) Fair dealing with a literary, dramatic, musical or artistic work for the purposes of research for a non-commercial purpose does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement.";

(b) for subsection (1A) there shall be substituted -

" (1B) No acknowledgement is required in connection with fair dealing for the purposes mentioned in subsection (1) where this would be impossible for reasons of practicality or otherwise.

(1C) Fair dealing with a literary, dramatic, musical or artistic work for the purposes of private study does not infringe any copyright in the work.";

(c) in subsection (2) for the words "mentioned in subsection (1)" there shall be substituted "of research or private study";

(d) after subsection (4) there shall be inserted -

" (4A) It is not fair dealing to observe, study or test the functioning of a computer program in order to determine the ideas and principles which underlie any element of the program (these acts being permitted if done in accordance with section 50BA (observing, studying and testing)).";

(e) subsection (5) shall cease to have effect.

Amendment of provisions relating to criticism, review and news reporting

10. - (1) Section 30 shall be amended as follows -

(a) in subsection (1) after the word "acknowledgement" there shall be inserted " and provided that the work has been made available to the public";

(b) after subsection (1) there shall be inserted -

" (1A) For the purposes of subsection (1) a work has been made available to the public if it has been made available by any means, including -

(a) the issue of copies to the public;

(b) making the work available by means of an electronic retrieval system;

(c) the rental or lending of copies of the work to the public;

(d) the performance, exhibition, playing or showing of the work in public;

(e) the communication to the public of the work,

but in determining generally for the purposes of that subsection whether a work has been made available to the public no account shall be taken of any unauthorised act.";

(c) in subsection (3) for the words from ", broadcast" to "programme" there shall be substituted " or broadcast where this would be impossible for reasons of practicality or otherwise".

(2) For paragraph 2(1) of Schedule 2 there shall be substituted -

" **2.** - (1) Fair dealing with a performance or recording for the purpose of criticism or review, of that or another performance or recording, or of a work, does not infringe any of the rights conferred by Part 2 provided that the performance or recording has been made available to the public.

(1A) Fair dealing with a performance or recording for the purpose of reporting current events does not infringe any of the rights conferred by Part 2.".

Amendment of provisions relating to things done for the purposes of instruction or examination

11. Section 32 shall be amended as follows -

(a) for subsections (1) and (2) there shall be substituted -

" (1) Copyright in a literary, dramatic, musical or artistic work is not infringed by its being copied in the course of instruction or of preparation for instruction, provided the copying -

(a) is done by a person giving or receiving instruction,

(b) is not done by means of a reprographic process, and

(c) is accompanied by a sufficient acknowledgement,

and provided that the instruction is for a non-commercial purpose.

(2) Copyright in a sound recording, film or broadcast is not infringed by its being copied by making a film or film sound-track in the course of instruction, or of preparation for instruction, in the making of films or film sound-tracks, provided the copying -

(a) is done by a person giving or receiving instruction, and

(b) is accompanied by a sufficient acknowledgement,

and provided that the instruction is for a non-commercial purpose.

(2A) Copyright in a literary, dramatic, musical or artistic work which has been made available to the public is not infringed by its being copied in the course of instruction or of preparation for instruction, provided the copying -

(a) is fair dealing with the work,

(b) is done by a person giving or receiving instruction,

(c) is not done by means of a reprographic process, and

(d) is accompanied by a sufficient acknowledgement.

(2B) The provisions of section 30(1A) (works made available to the public) apply for the purposes of subsection (2A) as they apply for the purposes of section 30(1).";

(b) in subsection (3) after the words "answering the questions" there shall be inserted ", provided that the questions are accompanied by a sufficient acknowledgement";

(c) after subsection (3) there shall be inserted -

" (3A) No acknowledgement is required in connection with copying as mentioned in subsection (1), (2) or (2A), or in connection with anything done for the purposes mentioned in subsection (3), where this would be impossible for reasons of practicality or otherwise.";

(d) in subsection (5) for the words from "For this purpose" to the end of the subsection, there shall be substituted -

" For this purpose "dealt with" means -

(a) sold or let for hire, offered or exposed for sale or hire; or

(b) communicated to the public, unless that communication, by virtue of subsection (3), is not an infringement of copyright.".

(2) Paragraph 4 of Schedule 2 shall be amended as follows -

(a) in sub-paragraph (1) after the words "receiving instruction" there shall be inserted "and the instruction is for a non-commercial purpose";

(b) in sub-paragraph (3) for the words from "For this purpose" to the end of the sub-paragraph, there shall be substituted -

" For this purpose "dealt with" means -

(a) sold or let for hire, offered or exposed for sale or hire; or

(b) communicated to the public, unless that communication, by virtue of sub-paragraph (2)(b), is not an infringement of the rights conferred by Part 2.".

Amendment of provisions relating to recordings by educational establishments of broadcasts

12. - (1) Section 35 shall be amended as follows -

(a) in subsection (1) after the words "included in it" there shall be inserted ", provided that it is accompanied by a sufficient acknowledgement of the broadcast and that the educational purposes are non-commercial";

(b) after subsection (1) there shall be inserted -

" (1A) Copyright is not infringed where a recording of a broadcast or a copy of such a recording, whose making was by virtue of subsection (1) not an infringement of copyright, is communicated to the public by a person situated within the premises of an educational establishment provided that the communication cannot be received by any person situated outside the premises of that establishment.";

(c) In subsection (3) for the words from "or offered" to the end of the subsection, there shall be substituted ", offered or exposed for sale or hire, or communicated from within the premises of an educational establishment to any person situated outside those premises.".

(2) Paragraph 6 of Schedule 2 shall be amended as follows -

(a) in sub-paragraph (1) after the words "included in it" there shall be inserted ", provided that the educational purposes are non-commercial";

(b) after sub-paragraph (1) there shall be inserted -

" (1A) The rights conferred by Part 2 are not infringed where a recording of a broadcast or a copy of such a recording, whose making was by virtue of sub-paragraph (1) not an infringement of such rights, is communicated to the public by a person situated within the premises of an educational establishment provided that the communication cannot be received by any person situated outside the premises of that establishment.

(1B) This paragraph does not apply if or to the extent that there is a licensing scheme certified for the purposes of this paragraph under paragraph 16 of Schedule 2A providing for the grant of licences.";

(c) in sub-paragraph (2) for the words from "or offered" to the end of the sub-paragraph, there shall be substituted ", offered or exposed for sale or hire, or communicated from within the premises of an educational establishment to any person

situated outside those premises.".

Amendment of provision relating to reprographic copying by educational establishments

13. Section 36 shall be amended as follows -

(a) in subsection (1) for the words "or in the typographical arrangement" there shall be substituted "provided that they are accompanied by a sufficient acknowledgement and the instruction is for a non-commercial purpose";

(b) after subsection (1) there shall be inserted -

" (1A) No acknowledgement is required in connection with the making of copies as mentioned in subsection (1) where this would be impossible for reasons of practicality or otherwise.

(1B) Reprographic copies of passages from published editions may, to the extent permitted by this section, be made by or on behalf of an educational establishment for the purposes of instruction without infringing any copyright in the typographical arrangement of the edition.";

(c) in subsection (5) for the words from "or offered" to the end of the subsection, there shall be substituted ", offered or exposed for sale or hire or communicated to the public.".

Amendment of provisions relating to copying by librarians

14. - (1) In both sections 38 and 39 for subsection (2)(a) there shall be substituted -

" (a) that copies are supplied only to persons satisfying the librarian that they require them for the purposes of -

(i) research for a non-commercial purpose, or

(ii) private study,

and will not use them for any other purpose;".

(2) For section 43(3)(a) there shall be substituted -

" (a) that copies are supplied only to persons satisfying the librarian or archivist that they require them for the purposes of -

(i) research for a non-commercial purpose, or

(ii) private study,

and will not use them for any other purpose;".

Observing, studying and testing of computer programs

15. - (1) After section 50B there shall be inserted -

" **50BA Observing, studying and testing of computer programs**

(1) It is not an infringement of copyright for a lawful user of a copy of a computer program to observe, study or test the functioning of the program in order to determine the ideas and principles which underlie any element of the program if he does so while performing any of the acts of loading, displaying, running, transmitting or storing the program which he is entitled to do.

(2) Where an act is permitted under this section, it is irrelevant whether or not there exists any term or condition in an agreement which purports to prohibit or restrict the act (such terms being, by virtue of section 296A, void).".

(2) In section 50A(2) after the word "50B" there shall be inserted ", 50BA".

(3) In section 50C(3) for the words "section 50A or 50B" there shall be substituted "section 50A, 50B or 50BA".

(4) For section 296A(1)(c) there shall be substituted -

" (c) the observing, studying or testing of the functioning of the program in accordance with section 50BA.".

Amendment of provision relating to recordings of folksongs

16. For section 61(4)(a) there shall be substituted -

" (a) that copies are only supplied to persons satisfying the archivist that they require them for the purposes of -

(i) research for a non-commercial purpose, or

(ii) private study,

and will not use them for any other purpose, and."

Amendment of provision relating to the advertisement of sale of artistic work

17. In section 63(2) for the words "or distributed", there shall be substituted ", distributed or communicated to the public".

Amendment of provisions relating to the playing of sound recordings for the purposes of club, society &c

18. - (1) In section 67(2) for the words from "and" appearing at the end of paragraph (a)

to the end of the subsection there shall be substituted -

" (b) that the sound recording is played by a person who is acting primarily and directly for the benefit of the organisation and who is not acting with a view to gain,

(c) that the proceeds of any charge for admission to the place where the recording is to be heard are applied solely for the purposes of the organisation, and

(d) that the proceeds from any goods or services sold by, or on behalf of, the organisation -

(i) in the place where the sound recording is heard, and

(ii) on the occasion when the sound recording is played, are applied solely for the purposes of the organisation.".

(2) In paragraph 15 of Schedule 2, in sub-paragraph (2) for the words from "and" appearing at the end of paragraph (a) to the end of the sub-paragraph there shall be substituted -

" (b) that the sound recording is played by a person who is acting primarily and directly for the benefit of the organisation and who is not acting with a view to gain,

(c) that the proceeds of any charge for admission to the place where the recording is to be heard are applied solely for the purposes of the organisation, and

(d) that the proceeds from any goods or services sold by, or on behalf of, the organisation -

(i) in the place where the sound recording is heard, and

(ii) on the occasion when the sound recording is played, are applied solely for the purposes of the organisation.".

Provisions relating to recording for the purposes of time-shifting

19. - (1) What is now section 70 shall become subsection (1) of section 70.

(2) In the new section 70(1) after the words "The making" there shall be inserted " in domestic premises" and after that subsection there shall be inserted -

" (2) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with -

(a) it shall be treated as an infringing copy for the purposes of that dealing; and

(b) if that dealing infringes copyright, it shall be treated as an infringing copy

for all subsequent purposes.

(3) In subsection (2), "dealt with" means sold or let for hire, offered or exposed for sale or hire or communicated to the public.".

(3) After paragraph 17 of Schedule 2 there shall be inserted -

" *Recording for the purposes of time-shifting*

17A. - (1) The making in domestic premises for private and domestic use of a recording of a broadcast solely for the purpose of enabling it to be viewed or listened to at a more convenient time does not infringe any right conferred by Part 2 in relation to a performance or recording included in the broadcast.

(2) Where a recording which would otherwise be an illicit recording is made in accordance with this paragraph but is subsequently dealt with -

(a) it shall be treated as an illicit recording for the purposes of that dealing; and

(b) if that dealing infringes any right conferred by Part 2, it shall be treated as an illicit recording for all subsequent purposes.

(3) In sub-paragraph (2), "dealt with" means sold or let for hire, offered or exposed for sale or hire or communicated to the public.

(4) Expressions used in this paragraph have the same meaning as in section 70.".

Provisions relating to photographs of broadcasts

20. - (1) For section 71 there shall be substituted -

" **71 Photographs of broadcasts**

(1) The making in domestic premises for private and domestic use of a photograph of the whole or any part of an image forming part of a broadcast, or a copy of such a photograph, does not infringe any copyright in the broadcast or in any film included in it.

(2) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with -

(a) it shall be treated as an infringing copy for the purposes of that dealing; and

(b) if that dealing infringes copyright, it shall be treated as an infringing copy for all subsequent purposes.

(3) In subsection (2), "dealt with" means sold or let for hire, offered or exposed for sale or hire or communicated to the public.".

(2) After paragraph 17A of Schedule 2 (inserted by regulation 19(3)) there shall be inserted -

" *Photographs of broadcasts*

17B. - (1) The making in domestic premises for private and domestic use of a photograph of the whole or any part of an image forming part of a broadcast, or a copy of such a photograph, does not infringe any right conferred by Part 2 in relation to a performance or recording included in the broadcast.

(2) Where a recording which would otherwise be an illicit recording is made in accordance with this paragraph but is subsequently dealt with -

(a) it shall be treated as an illicit recording for the purposes of that dealing; and

(b) if that dealing infringes any right conferred by Part 2, it shall be treated as an illicit recording for all subsequent purposes.

(3) In sub-paragraph (2), "dealt with" means sold or let for hire, offered or exposed for sale or hire or communicated to the public.

(4) Expressions used in this paragraph have the same meaning as in section 71.".

(3) In section 27(6) for the "or" appearing at the end of the entry for section 68(4) there shall be substituted -

" section 70(2) (recording for the purposes of time-shifting),

section 71(2) (photographs of broadcasts), or."

(4) In section 197(5) at the appropriate place there shall be inserted -

" paragraph 17A(2) (recording for the purposes of time-shifting),or

paragraph 17B(2) (photographs of broadcasts),".

Amendment of provisions on public showing or playing of broadcast

21. - (1) Section 72 shall be amended as follows -

(a) for subsections (1)(a) and (b) there shall be substituted -

" (a) the broadcast;

(b) any sound recording (except so far as it is an excepted sound recording) included in it; or

(c) any film included in it.";

(b) after subsection (1) there shall be inserted -

" (1A) For the purposes of this Part an "excepted sound recording" is a sound recording -

(a) whose author is not the author of the broadcast in which it is included; and

(b) which is a recording of music with or without words spoken or sung.

(1B) Where by virtue of subsection (1) the copyright in a broadcast shown or played in public is not infringed, copyright in any excepted sound recording included in it is not infringed if the playing or showing of that broadcast in public -

(a) forms part of the activities of an organisation that is not established or conducted for profit; or

(b) is necessary for the purposes of -

(i) repairing equipment for the reception of broadcasts;

(ii) demonstrating that a repair to such equipment has been carried out; or

(iii) demonstrating such equipment which is being sold or let for hire or offered or exposed for sale or hire.".

(2) Paragraph 18 of Schedule 2 shall be amended as follows -

(a) in sub-paragraph (1)(b) after the words "sound recording" there shall be inserted "(except so far as it is an excepted sound recording)";

(b) after sub-paragraph (1) there shall be inserted -

" (1A) The showing or playing in public of a broadcast to an audience who have not paid for admission to the place where the broadcast is to be seen or heard does not infringe any right conferred by Part 2 in relation to a performance or recording included in any excepted sound recording which is played in public by reception of the broadcast, if the playing or showing of that broadcast in public -

(a) forms part of the activities of an organisation that is not established or conducted for profit; or

(b) is necessary for the purposes of -

(i) repairing equipment for the reception of broadcasts;

(ii) demonstrating that a repair to such equipment has been carried out; or

(iii) demonstrating such equipment which is being sold or let for hire or offered or exposed for sale or hire.".

(3) After section 128 there shall be inserted -

" **128A Notification of licence or licensing scheme for excepted sound recordings**

(1) This section only applies to a proposed licence or licensing scheme that will authorise the playing in public of excepted sound recordings included in broadcasts, in circumstances where by reason of the exclusion of excepted sound recordings from section 72(1), the playing in public of such recordings would otherwise infringe the copyright in them.

(2) A licensing body must notify the Secretary of State of the details of any proposed licence or licensing scheme for excepted sound recordings before it comes into operation.

(3) A licence or licensing scheme, which has been notified under subsection (2), may not be operated by the licensing body until 28 days have elapsed since that notification.

(4) Subject to subsection (5), the Secretary of State shall take into account the matters set out in subsection (6) and then either -

(a) refer the licence or licensing scheme to the Copyright Tribunal for a determination of whether the licence or licensing scheme is reasonable in the circumstances, or

(b) notify the licensing body that he does not intend to refer the licence or licensing scheme to the Tribunal.

(5) If the Secretary of State becomes aware -

(a) that a licensing body has failed to notify him of a licence or licensing scheme under subsection (2) before it comes into operation; or

(b) that a licence or licensing scheme has been operated within 28 days of a notification under subsection (2),

subsection (4) does not apply, but the Secretary of State may at any time refer the licence or licensing scheme to the Tribunal for a determination of whether the licence or licensing scheme is reasonable in the circumstances, or may notify the licensing body that he does not intend to refer it to the Tribunal.

(6) The matters referred to in subsection (4) are -

(a) whether the terms and conditions of the proposed licence or licensing scheme have taken into account the factors set out in subsection (7);

(b) any written representations received by the Secretary of State;

(c) previous determinations of the Tribunal;

(d) the availability of other schemes, or the granting of other licences, to other persons in similar circumstances, and the terms of those schemes or licences; and

(e) the extent to which the licensing body has consulted any person who would be affected by the proposed licence or licensing scheme, or organisations representing such persons, and the steps, if any, it has taken as a result.

(7) The factors referred to in subsection (6) are -

(a) the extent to which the broadcasts to be shown or played by a potential licensee in circumstances mentioned in subsection (1) are likely to include excepted sound recordings;

(b) the size and the nature of the audience that a licence or licensing scheme would permit to hear the excepted sound recordings;

(c) what commercial benefit a potential licensee is likely to obtain from playing the excepted sound recordings; and

(d) the extent to which the owners of copyright in the excepted sound recordings will receive equitable remuneration, from sources other than the proposed licence or licensing scheme, for the inclusion of their recordings in the broadcasts to be shown or played in public by a potential licensee.

(8) A proposed licence or licensing scheme that must be notified to the Secretary of State under subsection (2) may only be referred to the Tribunal under section 118 or 125 before such notification takes place.

(9) A proposed licensing scheme that has been notified to the Secretary of State under subsection (2) may only be referred to the Tribunal under section 119 after the Secretary of State has notified the licensing body that he does not intend to refer the licensing scheme to the Tribunal.

(10) If a reference made to the Tribunal under section 118 or 125 is permitted under subsection (8) then -

(a) the reference shall not be considered premature only because the licence or licensing scheme has not been notified to the Secretary of State under subsection (2); and

(b) where the Tribunal decides to entertain the reference, subsection (2) to (5) shall not apply.

(11) Nothing in this section shall be taken to prejudice any right to make a reference or application to the Tribunal under sections 120 to 122, 126 or 127.

(12) This section applies to modifications to an existing licence or licensing scheme as it applies to a proposed licence or licensing scheme.

(13) In this section and in section 128B, any reference to a "licence" means a licence granted by a licensing body otherwise than in pursuance of a licensing scheme and which covers works of more than one author.

128B References to the Tribunal by the Secretary of State under section 128A

(1) The Copyright Tribunal may make appropriate enquiries to establish whether a licence or licensing scheme referred to it by the Secretary of State under section 128A(4)(a) or (5) is reasonable in the circumstances.

(2) When considering the matter referred, and after concluding any such enquiries, the Tribunal shall take into account -

(a) whether the terms and conditions of the proposed licence or licensing scheme have taken into account the factors set out in section 128A(7); and

(b) any other factors it considers relevant,

and shall then make an order under subsection (3).

(3) The Tribunal shall make such order -

(a) in the case of a licensing scheme, either confirming or varying the proposed scheme, either generally or so far as it relates to cases of any description; or

(b) in the case of a licence, either confirming or varying the proposed licence, as the Tribunal may determine to be reasonable in the circumstances.

(4) The Tribunal may direct that the order, so far as it reduces the amount of charges payable, has effect from a date before that on which it is made.

If such a direction is made, any necessary repayments to a licensee shall be made in respect of charges already paid.

(5) The Tribunal may award simple interest on repayments, at such rate and for such period, ending not later than the date of the order, as it thinks fit.".

(4) In section 120(1) for the words "section 118 or 119" there shall be substituted "section 118, 119 or 128A".

(5) In section 127(1) for the words "section 125 or 126" there shall be substituted "section 125, 126 or 128B (where that order did not relate to a licensing scheme)".

(6) In section 149 after paragraph (c) there shall be inserted -

" (ca) section 128B (reference by the Secretary of State under section 128A);".

(7) In section 179 (index of defined expressions: Part 1), at the appropriate place insert -

excepted sound recording	section 72(1A)".

Amendment of provisions on the reception and re-transmission of broadcasts

22. - (1) Section 73 shall be amended as follows -

(a) in the heading for the words from "broadcast" to "service" there shall be substituted "wireless broadcast by cable";

(b) in subsection (1), before the word "broadcast" there shall be inserted "wireless" and for the words from ", by reception" to "service" there shall be substituted "received and immediately re-transmitted by cable";

(c) in subsection (2)(a) for the word "inclusion" there shall be substituted "re-transmission by cable";

(d) in both subsection (2)(b) and subsection (3) for the words from "the cable" to "provided" there shall be substituted "it is re-transmitted by cable";

(e) in subsection (3) for the words from "as a programme" to "service" there shall be substituted "by cable";

(f) in subsection (4) -

(i) in paragraph (a) for the word "inclusion" there shall be substituted "re-transmission by cable";

(ii) in paragraph (b) for the words "cable programme service is provided" there shall be substituted "re-transmission by cable takes place";

(iii) for the words "inclusion in the cable programme service" there shall be substituted "re-transmission by cable";

(iv) for the words from "inclusion of the broadcast" to "service" there shall be substituted "re-transmission by cable of the broadcast";

(g) in subsection (5) for the words from "inclusion" to "service" there shall be substituted "re-transmission of the work by cable";

(h) after subsection (12) there shall be inserted -

" (13) In this section references to re-transmission by cable include the transmission of microwave energy between terrestrial fixed points.".

(2) In section 73A(1) for the words from "broadcast", where it first appears, to "service" there shall be substituted "wireless broadcast by cable".

(3) Paragraph 19 of Schedule 2 shall be amended as follows -

(a) in the heading for the words from "broadcast" to "service" there shall be substituted "wireless broadcast by cable";

(b) in sub-paragraph (1) -

(i) before the word "broadcast" there shall be inserted "wireless"; and

(ii) for the words from ", by reception" to "service" there shall be substituted "received and immediately re-transmitted by cable";

(c) in sub-paragraph (2) -

(i) for the words from "the cable" to "provided" there shall be substituted "it is re-transmitted by cable"; and

(ii) for the words from "as a programme" to "service" there shall be substituted "by cable";

(d) in sub-paragraph (3) -

(i) in paragraph (a) for the word "inclusion" there shall be substituted "re-transmission by cable";

(ii) in paragraph (b) for the words "cable programme service is provided" there shall be substituted "re-transmission by cable takes place";

(iii) for the words "inclusion in the cable programme service" there shall be substituted "re-transmission by cable";

(iv) for the words from "inclusion of the broadcast" to "service" there shall be substituted "re-transmission by cable of the broadcast";

(e) in sub-paragraph (4) for the words from "inclusion" to "service" there shall be substituted "re-transmission of the performance or recording by cable".

Amendment of the provisions on the sub-titling of copies of broadcasts

23. - (1) In section 74(1) after the word "issue" there shall be inserted " or lend".

(2) Paragraph 20 of Schedule 2 shall be amended as follows -

(a) in sub-paragraph (1) for the words from "television" to "programmes" there shall be substituted "broadcasts and copies of such recordings, and issue or lend copies to the

public,";

(b) after sub-paragraph (1) there shall be inserted -

" (1A) This paragraph does not apply if, or to the extent that, there is a licensing scheme certified for the purposes of this paragraph under paragraph 16 of Schedule 2A providing for the grant of licences.".

Technical measures and rights management information

Circumvention of protection measures

24. - (1) For the heading "*Devices designed to circumvent copy-protection*" (appearing before section 296) and for section 296 there shall be substituted -

" *Circumvention of protection measures*

296 Circumvention of technical devices applied to computer programs

(1) This section applies where -

(a) a technical device has been applied to a computer program; and

(b) a person (A) knowing or having reason to believe that it will be used to make infringing copies -

(i) manufactures for sale or hire, imports, distributes, sells or lets for hire, offers or exposes for sale or hire, advertises for sale or hire or has in his possession for commercial purposes any means the sole intended purpose of which is to facilitate the unauthorised removal or circumvention of the technical device; or

(ii) publishes information intended to enable or assist persons to remove or circumvent the technical device.

(2) The following persons have the same rights against A as a copyright owner has in respect of an infringement of copyright -

(a) a person -

(i) issuing to the public copies of, or

(ii) communicating to the public,

the computer program to which the technical device has been applied;

(b) the copyright owner or his exclusive licensee, if he is not the person specified in paragraph (a);

(c) the owner or exclusive licensee of any intellectual property right in the technical device applied to the computer program.

(3) The rights conferred by subsection (2) are concurrent, and sections 101(3) and 102(1) to (4) apply, in proceedings under this section, in relation to persons with concurrent rights as they apply, in proceedings mentioned in those provisions, in relation to a copyright owner and exclusive licensee with concurrent rights.

(4) Further, the persons in subsection (2) have the same rights under section 99 or 100 (delivery up or seizure of certain articles) in relation to any such means as is referred to in subsection (1) which a person has in his possession, custody or control with the intention that it should be used to facilitate the unauthorised removal or circumvention of any technical device which has been applied to a computer program, as a copyright owner has in relation to an infringing copy.

(5) The rights conferred by subsection (4) are concurrent, and section 102(5) shall apply, as respects anything done under section 99 or 100 by virtue of subsection (4), in relation to persons with concurrent rights as it applies, as respects anything done under section 99 or 100, in relation to a copyright owner and exclusive licensee with concurrent rights.

(6) In this section references to a technical device in relation to a computer program are to any device intended to prevent or restrict acts that are not authorised by the copyright owner of that computer program and are restricted by copyright.

(7) The following provisions apply in relation to proceedings under this section as in relation to proceedings under Part 1 (copyright) -

> (a) sections 104 to 106 of this Act (presumptions as to certain matters relating to copyright); and
>
> (b) section 72 of the Supreme Court Act 1981, section 15 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 and section 94A of the Judicature (Northern Ireland) Act 1978 (withdrawal of privilege against self-incrimination in certain proceedings relating to intellectual property);

and section 114 of this Act applies, with the necessary modifications, in relation to the disposal of anything delivered up or seized by virtue of subsection (4).

(8) Expressions used in this section which are defined for the purposes of Part 1 of this Act (copyright) have the same meaning as in that Part.

296ZA Circumvention of technological measures

(1) This section applies where -

> (a) effective technological measures have been applied to a copyright work other than a computer program; and
>
> (b) a person (B) does anything which circumvents those measures knowing, or with reasonable grounds to know, that he is pursuing that objective.

(2) This section does not apply where a person, for the purposes of research into cryptography, does anything which circumvents effective technological measures unless in so doing, or in issuing information derived from that research, he affects prejudicially the rights of the copyright owner.

(3) The following persons have the same rights against B as a copyright owner has in respect of an infringement of copyright -

(a) a person -

(i) issuing to the public copies of, or

(ii) communicating to the public,

the work to which effective technological measures have been applied; and

(b) the copyright owner or his exclusive licensee, if he is not the person specified in paragraph (a).

(4) The rights conferred by subsection (3) are concurrent, and sections 101(3) and 102(1) to (4) apply, in proceedings under this section, in relation to persons with concurrent rights as they apply, in proceedings mentioned in those provisions, in relation to a copyright owner and exclusive licensee with concurrent rights.

(5) The following provisions apply in relation to proceedings under this section as in relation to proceedings under Part 1 (copyright) -

(a) sections 104 to 106 of this Act (presumptions as to certain matters relating to copyright); and

(b) section 72 of the Supreme Court Act 1981, section 15 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 and section 94A of the Judicature (Northern Ireland) Act 1978 (withdrawal of privilege against self-incrimination in certain proceedings relating to intellectual property).

(6) Subsections (1) to (4) and (5)(b) and any other provision of this Act as it has effect for the purposes of those subsections apply, with any necessary adaptations, to rights in performances, publication right and database right.

(7) The provisions of regulation 22 (presumptions relevant to database right) of the Copyright and Rights in Databases Regulations 1997 (SI 1997/3032) apply in proceedings brought by virtue of this section in relation to database right.

296ZB Devices and services designed to circumvent technological measures

(1) A person commits an offence if he -

(a) manufactures for sale or hire, or

(b) imports otherwise than for his private and domestic use, or

(c) in the course of a business -

(i) sells or lets for hire, or

(ii) offers or exposes for sale or hire, or

(iii) advertises for sale or hire, or

(iv) possesses, or

(v) distributes, or

(d) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the copyright owner,

any device, product or component which is primarily designed, produced, or adapted for the purpose of enabling or facilitating the circumvention of effective technological measures.

(2) A person commits an offence if he provides, promotes, advertises or markets -

(a) in the course of a business, or

(b) otherwise than in the course of a business to such an extent as to affect prejudicially the copyright owner,

a service the purpose of which is to enable or facilitate the circumvention of effective technological measures.

(3) Subsections (1) and (2) do not make unlawful anything done by, or on behalf of, law enforcement agencies or any of the intelligence services -

(a) in the interests of national security; or

(b) for the purpose of the prevention or detection of crime, the investigation of an offence, or the conduct of a prosecution,

and in this subsection "intelligence services" has the meaning given in section 81 of the Regulation of Investigatory Powers Act 2000.

(4) A person guilty of an offence under subsection (1) or (2) is liable -

(a) on summary conviction, to imprisonment for a term not exceeding three months, or to a fine not exceeding the statutory maximum, or both;

(b) on conviction on indictment to a fine or imprisonment for a term not exceeding

two years, or both.

(5) It is a defence to any prosecution for an offence under this section for the defendant to prove that he did not know, and had no reasonable ground for believing, that -

(a) the device, product or component; or

(b) the service,

enabled or facilitated the circumvention of effective technological measures.

296ZC Devices and services designed to circumvent technological measures: search warrants and forfeiture

(1) The provisions of sections 297B (search warrants), 297C (forfeiture of unauthorised decoders: England and Wales or Northern Ireland) and 297D (forfeiture of unauthorised decoders: Scotland) apply to offences under section 296ZB with the following modifications.

(2) In section 297B the reference to an offence under section 297A(1) shall be construed as a reference to an offence under section 296ZB(1) or (2).

(3) In sections 297C(2)(a) and 297D(15) the references to an offence under section 297A(1) shall be construed as a reference to an offence under section 296ZB(1).

(4) In sections 297C and 297D references to unauthorised decoders shall be construed as references to devices, products or components for the purpose of circumventing effective technological measures.

296ZD Rights and remedies in respect of devices and services designed to circumvent technological measures

(1) This section applies where -

(a) effective technological measures have been applied to a copyright work other than a computer program; and

(b) a person (C) manufactures, imports, distributes, sells or lets for hire, offers or exposes for sale or hire, advertises for sale or hire, or has in his possession for commercial purposes any device, product or component, or provides services which -

(i) are promoted, advertised or marketed for the purpose of the circumvention of, or

(ii) have only a limited commercially significant purpose or use other than to circumvent, or

(iii) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of,

those measures.

(2) The following persons have the same rights against C as a copyright owner has in respect of an infringement of copyright -

(a) a person -

(i) issuing to the public copies of, or

(ii) communicating to the public,

the work to which effective technological measures have been applied;

(b) the copyright owner or his exclusive licensee, if he is not the person specified in paragraph (a); and

(c) the owner or exclusive licensee of any intellectual property right in the effective technological measures applied to the work.

(3) The rights conferred by subsection (2) are concurrent, and sections 101(3) and 102(1) to (4) apply, in proceedings under this section, in relation to persons with concurrent rights as they apply, in proceedings mentioned in those provisions, in relation to a copyright owner and exclusive licensee with concurrent rights.

(4) Further, the persons in subsection (2) have the same rights under section 99 or 100 (delivery up or seizure of certain articles) in relation to any such device, product or component which a person has in his possession, custody or control with the intention that it should be used to circumvent effective technological measures, as a copyright owner has in relation to any infringing copy.

(5) The rights conferred by subsection (4) are concurrent, and section 102(5) shall apply, as respects anything done under section 99 or 100 by virtue of subsection (4), in relation to persons with concurrent rights as it applies, as respects anything done under section 99 or 100, in relation to a copyright owner and exclusive licensee with concurrent rights.

(6) The following provisions apply in relation to proceedings under this section as in relation to proceedings under Part 1 (copyright) -

(a) sections 104 to 106 of this Act (presumptions as to certain matters relating to copyright); and

(b) section 72 of the Supreme Court Act 1981, section 15 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 and section 94A of the Judicature (Northern Ireland) Act 1978 (withdrawal of privilege against self-incrimination in certain proceedings relating to intellectual property);

and section 114 of this Act applies, with the necessary modifications, in relation to the

disposal of anything delivered up or seized by virtue of subsection (4).

(7) In section 97(1) (innocent infringement of copyright) as it applies to proceedings for infringement of the rights conferred by this section, the reference to the defendant not knowing or having reason to believe that copyright subsisted in the work shall be construed as a reference to his not knowing or having reason to believe that his acts enabled or facilitated an infringement of copyright.

(8) Subsections (1) to (5), (6)(b) and (7) and any other provision of this Act as it has effect for the purposes of those subsections apply, with any necessary adaptations, to rights in performances, publication right and database right.

(9) The provisions of regulation 22 (presumptions relevant to database right) of the Copyright and Rights in Databases Regulations 1997 (SI 1997/3032) apply in proceedings brought by virtue of this section in relation to database right.

296ZE Remedy where effective technological measures prevent permitted acts

(1) In this section -

> "permitted act" means an act which may be done in relation to copyright works, notwithstanding the subsistence of copyright, by virtue of a provision of this Act listed in Part 1 of Schedule 5A;
>
> "voluntary measure or agreement" means -
>
> (a) any measure taken voluntarily by a copyright owner, his exclusive licensee or a person issuing copies of, or communicating to the public, a work other than a computer program, or
>
> (b) any agreement between a copyright owner, his exclusive licensee or a person issuing copies of, or communicating to the public, a work other than a computer program and another party,

the effect of which is to enable a person to carry out a permitted act.

(2) Where the application of any effective technological measure to a copyright work other than a computer program prevents a person from carrying out a permitted act in relation to that work then that person or a person being a representative of a class of persons prevented from carrying out a permitted act may issue a notice of complaint to the Secretary of State.

(3) Following receipt of a notice of complaint, the Secretary of State may give to the owner of that copyright work or an exclusive licensee such directions as appear to the Secretary of State to be requisite or expedient for the purpose of -

> (a) establishing whether any voluntary measure or agreement relevant to the copyright work the subject of the complaint subsists; or
>
> (b) (where it is established there is no subsisting voluntary measure or agreement) ensuring that the owner or exclusive licensee of that copyright work makes available

to the complainant the means of carrying out the permitted act the subject of the complaint to the extent necessary to so benefit from that permitted act.

(4) The Secretary of State may also give directions -

(a) as to the form and manner in which a notice of complaint in subsection (2) may be delivered to him;

(b) as to the form and manner in which evidence of any voluntary measure or agreement may be delivered to him; and

(c) generally as to the procedure to be followed in relation to a complaint made under this section;

and shall publish directions given under this subsection in such manner as in his opinion will secure adequate publicity for them.

(5) It shall be the duty of any person to whom a direction is given under subsection (3)(a) or (b) to give effect to that direction.

(6) The obligation to comply with a direction given under subsection (3)(b) is a duty owed to the complainant or, where the complaint is made by a representative of a class of persons, to that representative and to each person in the class represented; and a breach of the duty is actionable accordingly (subject to the defences and other incidents applying to actions for breach of statutory duty).

(7) Any direction under this section may be varied or revoked by a subsequent direction under this section.

(8) Any direction given under this section shall be in writing.

(9) This section does not apply to copyright works made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them.

(10) This section applies only where a complainant has lawful access to the protected copyright work, or where the complainant is a representative of a class of persons, where the class of persons have lawful access to the work.

(11) Subsections (1) to (10) apply with any necessary adaptations to -

(a) rights in performances, and in this context the expression "permitted act" refers to an act that may be done by virtue of a provision of this Act listed in Part 2 of Schedule 5A;

(b) database right, and in this context the expression "permitted act" refers to an act that may be done by virtue of a provision of this Act listed in Part 3 of Schedule 5A; and

(c) publication right.

296ZF Interpretation of sections 296ZA to 296ZE

(1) In sections 296ZA to 296ZE, "technological measures" are any technology, device or component which is designed, in the normal course of its operation, to protect a copyright work other than a computer program.

(2) Such measures are "effective" if the use of the work is controlled by the copyright owner through -

(a) an access control or protection process such as encryption, scrambling or other transformation of the work, or

(b) a copy control mechanism,

which achieves the intended protection.

(3) In this section, the reference to -

(a) protection of a work is to the prevention or restriction of acts that are not authorised by the copyright owner of that work and are restricted by copyright; and

(b) use of a work does not extend to any use of the work that is outside the scope of the acts restricted by copyright.

(4) Expressions used in sections 296ZA to 296ZE which are defined for the purposes of Part 1 of this Act (copyright) have the same meaning as in that Part.".

(2) After Schedule 5 there shall be inserted, as Schedule 5A, the Schedule which is set out in Schedule 3 (new Schedule 5A to the Copyright, Designs and Patents Act 1988).

Rights management information

25. After section 296ZF (inserted by regulation 24(1)) there shall be inserted -

" *Rights management information*

296ZG Electronic rights management information

(1) This section applies where a person (D), knowingly and without authority, removes or alters electronic rights management information which -

(a) is associated with a copy of a copyright work, or

(b) appears in connection with the communication to the public of a copyright work, and

where D knows, or has reason to believe, that by so doing he is inducing, enabling,

facilitating or concealing an infringement of copyright.

(2) This section also applies where a person (E), knowingly and without authority, distributes, imports for distribution or communicates to the public copies of a copyright work from which electronic rights management information -

(a) associated with the copies, or

(b) appearing in connection with the communication to the public of the work,

has been removed or altered without authority and where E knows, or has reason to believe, that by so doing he is inducing, enabling, facilitating or concealing an infringement of copyright.

(3) A person issuing to the public copies of, or communicating, the work to the public, has the same rights against D and E as a copyright owner has in respect of an infringement of copyright.

(4) The copyright owner or his exclusive licensee, if he is not the person issuing to the public copies of, or communicating, the work to the public, also has the same rights against D and E as he has in respect of an infringement of copyright.

(5) The rights conferred by subsections (3) and (4) are concurrent, and sections 101(3) and 102(1) to (4) apply, in proceedings under this section, in relation to persons with concurrent rights as they apply, in proceedings mentioned in those provisions, in relation to a copyright owner and exclusive licensee with concurrent rights.

(6) The following provisions apply in relation to proceedings under this section as in relation to proceedings under Part 1 (copyright) -

(a) sections 104 to 106 of this Act (presumptions as to certain matters relating to copyright); and

(b) section 72 of the Supreme Court Act 1981, section 15 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 and section 94A of the Judicature (Northern Ireland) Act 1978 (withdrawal of privilege against self-incrimination in certain proceedings relating to intellectual property).

(7) In this section -

(a) expressions which are defined for the purposes of Part 1 of this Act (copyright) have the same meaning as in that Part; and

(b) "rights management information" means any information provided by the copyright owner or the holder of any right under copyright which identifies the work, the author, the copyright owner or the holder of any intellectual property rights, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information.

(8) Subsections (1) to (5) and (6)(b), and any other provision of this Act as it has effect for the purposes of those subsections, apply, with any necessary adaptations, to rights in performances, publication right and database right.

(9) The provisions of regulation 22 (presumptions relevant to database right) of the Copyright and Rights in Databases Regulations 1997 (SI 1997/3032) apply in proceedings brought by virtue of this section in relation to database right.".

Sanctions and remedies

New criminal offences

26. - (1) Section 107 shall be amended as follows -

(a) after subsection (2) there shall be inserted -

" (2A) A person who infringes copyright in a work by communicating the work to the public -

(a) in the course of a business, or

(b) otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright,

commits an offence if he knows or has reason to believe that, by doing so, he is infringing copyright in that work.";

(b) after subsection (4) there shall be inserted -

" (4A) A person guilty of an offence under subsection (2A) is liable -

(a) on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum, or both;

(b) on conviction on indictment to a fine or imprisonment for a term not exceeding two years, or both.".

(2) In the following provisions -

(i) section 109(1)(a);

(ii) section 109(4);

(iii) section 114A(2)(a);

(iv) section 114B(15);

for the words "section 107(1) or (2)" there shall be substituted "section 107(1), (2) or (2A)".

(3) Section 198 shall be amended as follows -

(a) after subsection (1) there shall be inserted -

" (1A) A person who infringes a performer's making available right -

(a) in the course of a business, or

(b) otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the making available right,

commits an offence if he knows or has reason to believe that, by doing so, he is infringing the making available right in the recording.";

(b) after subsection (5) there shall be inserted -

" (5A) A person guilty of an offence under subsection (1A) is liable -

(a) on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum, or both;

(b) on conviction on indictment to a fine or imprisonment for a term not exceeding two years, or both.".

(4) In the following provisions -

(a) section 200(1)(a);

(b) section 200(3A);

(c) section 204A(2)(a);

(d) section 204B(15);

for the words "section 198(1)" there shall be substituted "section 198(1) or (1A)".

Injunctions against service providers

27. - (1) After section 97 there shall be inserted -

" **97A Injunctions against service providers**

(1) The High Court (in Scotland, the Court of Session) shall have power to grant an injunction against a service provider, where that service provider has actual knowledge of another person using their service to infringe copyright.

(2) In determining whether a service provider has actual knowledge for the purpose of this section, a court shall take into account all matters which appear to it in the particular circumstances to be relevant and, amongst other things, shall have regard to -

(a) whether a service provider has received a notice through a means of contact made available in accordance with regulation 6(1)(c) of the Electronic Commerce (EC Directive) Regulations 2002 (SI 2002/2013); and

(b) the extent to which any notice includes -

(i) the full name and address of the sender of the notice;

(ii) details of the infringement in question.

(3) In this section "service provider" has the meaning given to it by regulation 2 of the Electronic Commerce (EC Directive) Regulations 2002.".

(2) After section 191J there shall be inserted -

" **191JA Injunctions against service providers**

(1) The High Court (in Scotland, the Court of Session) shall have power to grant an injunction against a service provider, where that service provider has actual knowledge of another person using their service to infringe a performer's property right.

(2) In determining whether a service provider has actual knowledge for the purpose of this section, a court shall take into account all matters which appear to it in the particular circumstances to be relevant and, amongst other things, shall have regard to -

(a) whether a service provider has received a notice through a means of contact made available in accordance with regulation 6(1)(c) of the Electronic Commerce (EC Directive) Regulations 2002 (SI 2002/2013); and

(b) the extent to which any notice includes -

(i) the full name and address of the sender of the notice;

(ii) details of the infringement in question.

(3) In this section "service provider" has the meaning given to it by regulation 2 of the Electronic Commerce (EC Directive) Regulations 2002.

(4) Section 177 applies in respect of this section as it applies in respect of Part 1.".

Rights and remedies of a non-exclusive licensee

28. After section 101 there shall be inserted -

" **101A Certain infringements actionable by a non-exclusive licensee**

(1) A non-exclusive licensee may bring an action for infringement of copyright if -

(a) the infringing act was directly connected to a prior licensed act of the licensee; and

(b) the licence -

(i) is in writing and is signed by or on behalf of the copyright owner; and

(ii) expressly grants the non-exclusive licensee a right of action under this section.

(2) In an action brought under this section, the non-exclusive licensee shall have the same rights and remedies available to him as the copyright owner would have had if he had brought the action.

(3) The rights granted under this section are concurrent with those of the copyright owner and references in the relevant provisions of this Part to the copyright owner shall be construed accordingly.

(4) In an action brought by a non-exclusive licensee by virtue of this section a defendant may avail himself of any defence which would have been available to him if the action had been brought by the copyright owner.

(5) Subsections (1) to (4) of section 102 shall apply to a non-exclusive licensee who has a right of action by virtue of this section as it applies to an exclusive licensee.

(6) In this section a "non-exclusive licensee" means the holder of a licence authorising the licensee to exercise a right which remains exercisable by the copyright owner.".

Duration

Duration of copyright in sound recordings

29. Section 13A shall be amended as follows -

(a) for subsection (2) there shall be substituted -

" (2) Subject to subsections (4) and (5), copyright expires -

(a) at the end of the period of 50 years from the end of the calendar year in which the recording is made, or

(b) if during that period the recording is published, 50 years from the end of the calendar year in which it is first published, or

(c) if during that period the recording is not published but is made available to the public by being played in public or communicated to the public, 50 years from the end of the calendar year in which it is first so made available,

but in determining whether a sound recording has been published, played in public or communicated to the public, no account shall be taken of any unauthorised act.";

(b) subsection (3) shall cease to have effect;

(c) in both subsections (4) and (5) for the words "subsections (2) and (3)" there shall be substituted "subsection (2)".

PART 3

SAVINGS AND TRANSITIONAL PROVISIONS

General provisions

Introductory

30. - (1) In this Part -

"commencement" means the date upon which these regulations come into force;

"extended copyright" means any copyright in sound recordings which subsists by virtue of section 13A of the 1988 Act (as amended by regulation 29) after the date on which it would have expired under the 1988 provisions;

"prospective owner" includes a person who is prospectively entitled to extended copyright in a sound recording by virtue of such an agreement as is mentioned in regulation 37(1);

"the 1988 Act" means the Copyright, Designs and Patents Act 1988; and

"the 1988 provisions" means the provisions of the 1988 Act as they stood immediately before commencement (including the provisions of Schedule 1 to that Act continuing the effect of earlier enactments).

(2) Expressions used in this Part which are defined for the purposes of Part 1 or 2 of the 1988 Act have the same meaning as in that Part.

General rules

31. - (1) Subject to regulation 32, these Regulations apply to -

(a) copyright works made,

(b) performances given,

(c) databases, in which database right vests, made, and

(d) works, in which publication right vests, first published,

before or after commencement.

(2) No act done before commencement shall be regarded as an infringement of any new or

extended right arising by virtue of these Regulations.

Savings for certain existing agreements

32. - (1) Nothing in these Regulations affects any agreement made before 22nd December 2002.

(2) No act done after commencement, in pursuance of an agreement made before 22nd December 2002, shall be regarded as an infringement of any new or extended right arising by virtue of these Regulations.

Special provisions

Permitted acts

33. The provisions of Chapter 3 of Part 1 (acts permitted in relation to copyright works) and Schedule 2 (rights in performances: permitted acts) in the 1988 provisions shall continue to apply to anything done after commencement in completion of an act begun before commencement which was permitted by those provisions.

Performers' rights: making available to the public

34. - (1) Those parts of section 182D in the 1988 provisions which confer a right to equitable remuneration in relation to the making available to the public in the way mentioned in section 182CA(1) (regulation 7) of a commercially published sound recording shall cease to apply on commencement.

(2) Any assignment made before commencement under the provisions of section 182D(2) shall, on commencement, cease to apply insofar as it relates to the new making available to the public right conferred by section 182CA (regulation 7).

Exercise of rights in relation to performances

35. - (1) The new right conferred by section 182CA (consent required for making available to the public) (in regulation 7) is exercisable as from commencement by the performer or (if he has died) by the person who immediately before commencement was entitled by virtue of section 192A(2) to exercise the rights conferred on the performer by Part 2 in relation to that performance.

(2) Any damages received by a person's personal representatives by virtue of the right conferred by paragraph (1) shall devolve as part of that person's estate as if the right had subsisted and been vested in him immediately before his death.

Ownership of extended copyright in sound recordings

36. The person who is the owner of the copyright in a sound recording immediately before commencement is as from commencement the owner of any extended copyright in that sound recording.

Prospective ownership of extended copyright in sound recordings

37. - (1) Where by an agreement made before commencement in relation to extended copyright in a sound recording, and signed by or on behalf of the prospective owner of the copyright, the prospective owner purports to assign the extended copyright (wholly or partially) to another person, then, if on commencement the assignee or another person claiming under him would be entitled as against all other persons to require the copyright to be vested in him, the copyright shall vest in the assignee or his successor in title by virtue of this paragraph.

(2) A licence granted by a prospective owner of extended copyright in a sound recording is binding on every successor in title to his interest (or prospective interest) in the right, 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 Part 1 of the 1988 Act to doing anything with, or without, the licence of the copyright owner shall be construed accordingly.

Extended copyright in sound recordings: existing licences, agreements, etc.

38. - (1) Any copyright licence or any term or condition of an agreement relating to the exploitation of a sound recording which -

(a) subsists immediately before commencement in relation to an existing sound recording, and

(b) is not to expire before the end of the copyright period under the 1988 provisions,

shall continue to have effect during the period of any extended copyright in that sound recording, subject to any agreement to the contrary.

(2) Any copyright licence, or term or condition relating to the exploitation of a sound recording, imposed by order of the Copyright Tribunal which -

(a) subsists immediately before commencement in relation to an existing sound recording, and

(b) is not to expire before the end of the copyright period under the 1988 provisions,

shall continue to have effect during the period of any extended copyright, subject to any further order of the Tribunal.

Duration of copyright in sound recordings: general saving

39. Copyright in an existing sound recording shall continue to subsist until the date it would have expired under Regulation 15 of the Duration of Copyright and Rights in Performances Regulations 1995 (SI 1995/3297) if that date is later than the date on which copyright would expire under the provisions of section 13A of the 1988 Act as amended by regulation 29.

Sanctions and remedies

40. - (1) Section 296 in the 1988 provisions (devices designed to circumvent copy-protection) shall continue to apply to acts done in relation to computer programs or other works prior to commencement.

(2) Section 296 as substituted by regulation 24(1) (circumvention of technical devices applied to computer programs), and sections 296ZA (circumvention of technological measures) and 296ZD (rights and remedies in respect of devices designed to circumvent technological measures), introduced by regulation 24(1), shall apply to acts done in relation to computer programs or other works on or after commencement.

(3) Sections 107(2A), 198(1A) and 296ZB(1) and (2) (offences) do not have effect in relation to any act committed before commencement.

Sainsbury of Turville,
Parliamentary Under-Secretary of State for Science and Innovation, Department of Trade and Industry

27th September 2003

SCHEDULE 1

Regulation 2(1)

CONSEQUENTIAL AMENDMENTS

PART 1

AMENDMENTS OF THE COPYRIGHT, DESIGNS AND PATENTS ACT 1988

1. The Copyright, Designs and Patents Act 1988[5] shall be amended as follows and, except where otherwise indicated, any reference in this Part to a section or paragraph is a reference to a section or paragraph of that Act and reference to a Schedule is to a Schedule to that Act.

Amending the headings of certain provisions

2. - (1) In the headings of section 69 and paragraph 17 of Schedule 2 for the words "cable programmes" there shall be substituted "other services".

(2) In the heading of paragraph 5 of Schedule 2 for the words ", broadcast or cable programme" there shall be substituted "or broadcast".

Amendments relating to the new definition of "broadcast"

3. - (1) In each of the following provisions -

(a) section 17(4);

(b) section 19(2)(b);

(c) section 19(3);

(d) section 31(1);

(e) section 31(3);

(f) section 34(2);

(g) section 79(4)(a);

(h) section 79(4)(b);

(i) section 85(2)(a);

(j) section 132(3)(b);

(k) section 133(2);

(l) paragraph 3(1) of Schedule 2;

(m) paragraph 3(3) of Schedule 2;

(n) paragraph 5(1) of Schedule 2;

for the words ", broadcast or cable programme" there shall be substituted "or broadcast".

(2) In each of the follow provisions -

(a) section 132(1);

(b) section 133(2);

for the words ", broadcasts or cable programmes" there shall be substituted "or broadcasts".

(3) In section 299(5) for the words ', "broadcasting"' to "service"' there shall be substituted 'and "broadcasting"'.

Amendments relating to "communication to the public" etc

4. - (1) For section 12(5)(a)(ii) there shall be substituted -

" (ii) communication to the public;".

(2) For section 12(5)(b)(iii) there shall be substituted -

" (iii) communication to the public;".

(3) For section 13B(6)(b) there shall be substituted -

" (b) communicating to the public;".

(4) For both section 117(d) and section 124(d) there shall be substituted -

" (d) communicating the work to the public;".

(5) For section 198(2)(b) there shall be substituted -

" (b) communicated to the public,".

(6) For paragraph 17(b) of Schedule 1 there shall be substituted -

" (b) communicating the work to the public, or."

5. In each of the following provisions -

(a) section 24(2);

(b) section 59(2);

(c) section 62(3);

for the words from "broadcasting" to "service" there shall be substituted "communication to the public".

6. - (1) In each of the following provisions -

(a) section 175(4)(a)(ii);

(b) section 175(4)(b)(iv);

(c) section 175(4)(c)(ii);

for the words from "broadcasting" to "service" there shall be substituted "communication to the public of the work".

(2) In each of the following provisions -

(a) section 18A(3)(a);

(b) section 31(2);

(c) section 182C(3)(a);

(d) section 301;

(e) paragraph 3(2) of Schedule 2;

(f) paragraph 2(1) of Schedule 6;

for the words from ", broadcasting" to "service" there shall be substituted "or communication to the public".

7. In section 151A(1)(a) for the words from "broadcasting" to "service" there shall be substituted "communicating a work to the public".

8. - (1) In each of the following provisions -

(a) section 77(2)(a);

(b) section 77(6);

(c) section 105(5);

(d) section 191(3);

for the words ", broadcast or included in a cable programme service", in each place where they occur, there shall be substituted "or communicated to the public".

(2) In each of the following provisions -

(a) section 77(4)(a);

(b) section 85(1)(c);

for the words from "broadcast" to "service" there shall be substituted "communicated to the public".

(3) In section 51(2) for the words from ", broadcast" to "service" there shall be substituted "or communicate to the public".

9. - (1) In each of the following provisions -

(a) section 59(2);

(b) section 77(7)(c);

for the words from ", broadcast" to "programme" there shall be substituted "or communication to the public".

(2) In section 107(3) for the words from "broadcast" to "programme" there shall be substituted "communication to the public".

10. - (1) In each of the following provisions -

(a) section 80(3)(a);

(b) section 80(6)(a);

for the words from ", broadcasts" to "service" there shall be substituted "or communicates to the public".

(2) In each of the following provisions -

(a) section 84(3)(a);

(b) section 84(3)(b);

for the words from ", broadcasts" to "service" there shall be substituted "or communicates it to the public".

11. In each of the following provisions -

(a) section 163(1A);

(b) section 165(4)(b);

for the words from ", live broadcast" to "programme" there shall be substituted "or live broadcast".

12. In each of the following provisions -

(a) section 58(1)(b);

(b) paragraph 13(1)(b) of Schedule 2;

for the words from "broadcasting" to "service" there shall be substituted "communicating to the public".

13. - (1) In each of the following provisions -

(a) section 183(b);

(b) section 187(1)(b);

for the words from "broadcasts" to "service" there shall be substituted "communicates to the public".

(2) In section 80(4)(a) for the words from "or broadcasts" to "service" there shall be substituted "or communicates to the public".

14. In section 62(2)(c) for the words from "broadcasting" to "service" there shall be substituted "making a broadcast of".

Amendment of certain definitions

15. - (1) In section 135A(5), before the definition of "needletime", there shall be inserted -

" "broadcast" does not include any broadcast which is a transmission of the kind specified in section 6(1A)(b) or (c);".

(2) For section 144A(7) there shall be substituted -

" (7) In this section -

"cable operator" means a person responsible for cable re-transmission of a wireless broadcast; and

"cable re-transmission" means the reception and immediate re-transmission by cable, including the transmission of microwave energy between terrestrial fixed points, of a wireless broadcast.".

(3) In section 178, at the appropriate places, the following definitions shall be inserted -

" "private study" does not include any study which is directly or indirectly for a commercial purpose;";

"wireless broadcast" means a broadcast by means of wireless telegraphy;".

(4) In section 179, at the appropriate places, the following entries shall be inserted -

communication to the public	section 20"

private study	section 178"

wireless broadcast	section 178".

(5) Section 211 shall be amended as follows -

(a) in subsection (1) -

(i) at the appropriate places the following entries shall be inserted -

" communication to the public,"

injunction (in Scotland)"

wireless broadcast.";

(ii) for "sound recording." there shall be substituted "sound recording, and";

(b) in subsection (2) for the words "6(3) to (5), section 7(5) and 19(4)" there shall be substituted "6(3) to (5A) and section 19(4)".

(6) In section 212, at the appropriate places, the following entries shall be inserted -

communication to the public	section 211(1) (and section 20)"

injunction (in Scotland)	section 211(1) (and section 177)"

making available right	section 182CA".

Amendment of Schedule 1

16. Schedule 1 shall be amended as follows -

(a) for paragraph 9 there shall be substituted -

" **9.** No copyright subsists in -

(a) a wireless broadcast made before 1st June 1957, or

(b) a broadcast by cable made before 1st January 1985;

and any such broadcast shall be disregarded for the purposes of section 14(5) (duration of copyright in repeats).";

(b) paragraph 15(3) shall cease to have effect.

Amendment of Schedule 2A

17. In paragraph 16 of Schedule 2A -

(a) in sub-paragraph (1), for "paragraph 14A of Schedule 2 (lending of certain recordings)" there shall be substituted "paragraph 6, 14A or 20 of Schedule 2 (recording of broadcasts by educational establishments, lending of certain recordings, provision of sub-titled copies of broadcast)"; and

(b) in sub-paragraph (3), for "paragraph 14A" there shall be substituted "the relevant paragraph".

Further amendments resulting from Directive 93/98/EEC

18. - (1) In section 79(3) for the words from "vested" to the end of the subsection there shall be substituted "vested in the author's or director's employer by virtue of section 11(2) (works produced in the course of employment).".

(2) In section 82(1)(a) after the word "author's" there shall be inserted " or director's" and the words from "or", appearing after the word "employment)", to the end of the paragraph shall be omitted.

(3) Paragraph 12(3) of Schedule 1 shall be amended as follows -

(a) in paragraph (b) for the words "section 12(2)" there shall be substituted "section 12(3)";

(b) for the words "section 12(1)" there shall be substituted "section 12(2)";

(c) for the words "plus 50" there shall be substituted "plus 70".

PART 2

AMENDMENTS OF OTHER ACTS

Amendment of the Medicines Act 1968

19. Section 92 of the Medicines Act 1968[6] shall be amended as follows -

(a) in subsection (1) for the words ", broadcast or cable programme" there shall be substituted " or broadcast";

(b) in subsection (2)(a) after the words "recording" there shall be inserted " or film sound track".

Amendment of the Olympic Symbol etc (Protection) Act 1995

20. In section 4(3) of the Olympic Symbol etc (Protection) Act 1995[7] for the words ", a broadcast and a cable programme" there shall be substituted "and a broadcast".

Amendment of the Broadcasting Act 1996

21. Section 137 of the Broadcasting Act 1996[8] shall be amended as follows -

(a) for subsection (2)(a) there shall be substituted -

" (a) "relevant dealing", in relation to a broadcast, means dealing by communicating to the public any visual images taken from that broadcast, and";

(b) in subsection (2)(b) for the words "cable programme" there shall be substituted "communicating to the public".

Amendment of the Copyright (Visually Impaired Persons) Act 2002

22. The Copyright (Visually Impaired Persons) Act 2002[9] shall be amended as follows -

(a) in section 1 for the words from "included in" to "programme service" there shall be substituted "communicated to the public";

(b) in section 2 for the words from "included in" to "programme service" there shall be substituted "communicated to the public";

(c) in section 7 after subsection (2) there shall be inserted -

" (3) In Part 1 of Schedule 5A (permitted acts to which section 296ZE applies) insert at the appropriate place -

" section 31A (making a single accessible copy for personal use)

section 31B (multiple copies for visually impaired persons)

section 31C (intermediate copies and records)".".

Amendment of the Communications Act 2003

23. In paragraph 92(1) of Schedule 17 of the Communications Act 2003[10] for the words from "broadcast" to "service" there shall be substituted "wireless broadcasts by cable".

PART 3

AMENDMENTS OF INSTRUMENTS

Amendments of the Copyright (Recording of Folksongs for Archives) (Designated Bodies) Order 1989

24. In article 3(2)(a) of the Copyright (Recording of Folksongs for Archives) (Designated Bodies) Order 1989[11] after the word "research" there shall be inserted "for a non-commercial purpose".

Amendment of the Copyright Tribunal Rules 1989

25. In Form 15 found in Schedule 3 to the Copyright Tribunal Rules 1989[12] for the words "broadcasting/inclusion in a cable programme service" there shall be substituted "communication to the public".

Amendments of the Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989

26. The Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989[13] shall be amended as follows -

(a) in regulations 4(2)(a)(i) and 7(2)(a)(i) after the word "research" there shall be inserted "for a non-commercial purpose";

(b) in regulations 5(2)(c) and 6(2)(d) for the words "not less than" there shall be substituted "equivalent to but not exceeding";

(c) in paragraph 2(b) in Forms A and B in Schedule 2 to the Regulations after the word "research" there shall be inserted "for a non-commercial purpose".

Amendments of the Copyright and Related Rights Regulations 1996

27. Regulation 16(2) of the Copyright and Related Rights Regulations 1996[14] shall be amended as follows -

(a) for the word "communication" there shall be substituted "making available";

(b) for paragraph (e) there shall be substituted -

" (e) communicating the work to the public.".

SCHEDULE 2

Regulation 2(2)

REPEALS

ENACTMENTS

Title and chapter	*Extent of repeal*
Medicines Act 1968 (c. 67)	In section 92 - (a) in subsection (2)(b), the words from "or" to "service"; (b) in subsection (6), the words from ""cable", where it first appears, to "service"".
Copyright, Designs and Patents Act 1988 (c. 48)	In section 6(6) the words "or in a cable programme". Section 7. Section 9(2)(c). Section 13A(3). In section 14 - (a) in the heading the words "and cable programmes"; (b) the words "or cable programme", wherever occurring; (c) in subsection (2) the words from "or the programme" to "service"; (d) in subsection (5) the words from "or included" to "service"; (e) in subsection (6) the word "either" and the words from "or of a cable" to "service". In section 27(6) the words "or cable programme". Section 29(5). In section 35 -

(a) in the heading the words "and cable programmes";

(b) in subsection (1) the words "or cable programme", in both places they occur.

In section 36(4) the words "literary, dramatic or musical".

In section 58(2)(a) the words "or cable programme".

In the heading appearing before section 68 the words "*and cable programmes*".

In section 68 -

(a) in the heading the words "or cable programme";

(b) in subsection (1) the words from "or include" to "service";

(c) in subsection (2) the words "or cable programme";

(d) in subsection (3)(b) the words from "or, as" to "service".

(e) In section 70(1) the words "or cable programme" in both places they occur.

In section 72 -

(a) in the heading the words "or cable programme";

(b) in subsection (1) the words "or cable programme", where they first occur and the words "or programme";

(c) in subsection (2)(b)(i) the words "or programme";

(d) in subsection (3)(b) the words "or programmes";

(e) in subsection (4) the words from "or inclusion" to "programme service" and the words "or programme".

In section 74 -

(a) in the heading the words "or cable programme";

(b) in subsection (1) the word "television" and the words "or cable programmes", in both places they occur.

(c) In section 75(1) the words "or cable programme" in both places they occur.

(d) In section 82(1)(a) the words from "or", appearing after the word "employment)", to the end of the paragraph.

In section 131 -

(a) in the heading the words "or cable programmes";

(b) in subsection (1) the words "or cable programmes";

(c) in subsection (2) the words "or cable programme".

In section 134 -

In subsection (1) -

(a) the words "or cable programme service" appearing after the words "in a broadcast";

(b) the words "or cable programme", appearing before the words "("the first transmission")";

(c) the words "or included" to "service";

(d) in subsection (3) the words "(except where subsection (4) applies)".

In the heading appearing before section 135A the words "*and cable programme services*".

In section 135A the words "or cable programme service" wherever occurring.

In section 135B(2) the words "or cable programme service".

In section 135C(1) and (4) the words "or cable programme service", wherever occurring.

In section 135E(1)(a) the words "or cable programme

service".

In section 135H(1)(b) the words "or cable programme service" in both places they occur.

In section 143 -

(a) in subsection (1)(a) the words "or cable programmes";

(b) in subsection (1)(d) the words "or cable programmes".

In section 149(cc) the words "or cable programme services".

In section 153(1)(c) the words "or cable programme" and the words "or the cable programme was sent".

Section 154(5)(c).

In section 156 -

(a) in subsection (1) the words from ", and a cable" to "sent from,";

(b) in subsection (2) -

(i) the words "or cable programme";

(ii) the words "or, as the case may be, sent from".

In section 159(1)(d) the words "or cable programmes sent from", in both places they occur.

In section 179 the entry for "cable programme, cable programme service (and related expressions)".

In section 180 -

(a) in subsection (2), in the definition of "recording" the words ", or cable programme including,";

(b) in subsection (4)(a) the words "or cable programme".

In section 182(1) -

(a) in paragraph (b), the words from ", or includes" to "service,";

(b) in paragraph (c), the words ", or cable programme including,".

Section 182(2).

In section 182A(1) the words from ", otherwise" to "use,".

In section 186(1) the words from ", otherwise" to "use".

In section 197(5) the words "or cable programme" and the word "or" immediately preceding the words "paragraph 16(3)".

In section 211 -

(a) in subsection (1) -

(i) the entries for "cable programme," and "cable programme service,";

(ii) the word "and" appearing after the word "published,";

(b) in subsection (2) the words "and cable programme services".

In section 212 the entry for "cable programme, cable programme service (and related expressions)".

In section 297(1) the words "or cable programme".

In section 297A(4) the words "or cable programme".

In section 298(1)(a) the words "or cable programme".

In section 299(4) the words "or cable programme service".

Schedule 1, paragraph 15(3).

In Schedule 2, paragraph 6 -

(a) in the heading the words "and cable programmes";

(b) in sub-paragraph (1) the words "or cable programme".

In Schedule 2, paragraph 13(2)(a) the words "or cable programme".

In Schedule 2, paragraph 16 -

(a) in the heading the words "or cable programme";

(b) in sub-paragraph (1) the words from ", or include" to "service," and the words "or cable programme" appearing after the word "broadcast";

(c) in sub-paragraph (2)(b) the words from "or including" to "service".

In Schedule 2, paragraph 18 -

(a) in the heading the words "or cable programme";

(b) in sub-paragraph (1) -

(i) the words "or cable programme", appearing before the words "to an audience";

(ii) the words "or programme";

(iii) in paragraph (a) the words "or cable programme";

(iv) in paragraph (b) the words "or cable programme".

(c) in sub-paragraph (2)(b)(i) the words "or programme";

(d) in sub-paragraph (3)(b) the words "or programmes";

(e) in sub-paragraph (4) the words from "or inclusion" to "programme service" and the words "or programme".

In Schedule 2, paragraph 20 -

(a) in the heading the words "or cable programme";

	(b) in sub-paragraph (1) the words "or cable programme". In Schedule 2, paragraph 21 - (a) in the heading the words "or cable programme"; (b) in sub-paragraph (1) the words "or cable programme" in both places they occur. In Schedule 2A, paragraph 2 the word "or" appearing at the end of sub-paragraph (a). In Schedule 2A, paragraph 9 the word "or" appearing at the end of sub-paragraph (a). Schedule 7, paragraph 10(3).
Broadcasting Act 1996 (c. 55)	In section 137(1) the words "or cable programme", in both placers where they occur.
Copyright, etc. and Trade Marks (Offences and Enforcement) Act 2002 (c. 25)	In section 2 - (a) subsections (2)(a) and (b); and (b) subsection (3)(a)(i).
Communications Act 2003 (c. 21)	In section 125(2) the words "or cable programme".

INSTRUMENTS

Title and no.	*Extent of revocation*
Copyright (Application of Provisions relating to Educational Establishments to Teachers) (No. 2) Order 1989 (SI 1989/1067)	In Article 2 the words "and cable programmes".
Copyright Tribunal Rules 1989 (SI 1989/1129)	In the heading before rule 26A the words "*and cable programme services*". In rule 26A(1) the words "or cable programme services". In Schedule 3 - (a) In Form 10A the words "/and/cable programme service", in both places they

	appear; (b) In Form 10B the words "/and/cable programme service"; (c) In Form 10C the words "/and/cable programme service".
Copyright (Certification of Licensing Scheme for Educational Recording of Broadcasts and Cable Programmes) (Educational Recording Agency Limited) Order 1990 (SI 1990/879)	In Article 2 the words "or cable programmes". In paragraph 4 of the Schedule the words "or cable programme", wherever occurring.
Copyright (Recording for Archives of Designated Class of Broadcasts and Cable Programmes) (Designated Bodies) Order 1993 (SI 1993/74)	In Article 2 the words "or cable programme". In Article 3 the words "and all cable programmes".
Copyright (Certification of Licensing Scheme for Educational Recording of Broadcasts) (Open University) Order 2003 (SI 2003/187)	In Article 2 the words "and cable programmes".

SCHEDULE 3

Regulation 24(2)

NEW SCHEDULE 5A TO THE COPYRIGHT, DESIGNS AND PATENTS ACT 1988

" SCHEDULE 5A

Section 296ZE

PERMITTED ACTS TO WHICH SECTION 296ZE APPLIES

PART 1

Copyright exceptions

section 29 (research and private study)

section 32(1), (2) and (3) (things done for purposes of instruction or examination)

section 35 (recording by educational establishments of broadcasts)

section 36 (reprographic copying by educational establishments of passages from published works)

section 38 (copying by librarians: articles in periodicals)

section 39 (copying by librarians: parts of published works)

section 41 (copying by librarians: supply of copies to other libraries)

section 42 (copying by librarians or archivists: replacement copies of works)

section 43 (copying by librarians or archivists: certain unpublished works)

section 44 (copy of work required to be made as condition of export)

section 45 (Parliamentary and judicial proceedings)

section 46 (Royal Commissions and statutory inquiries)

section 47 (material open to public inspection or on official register)

section 48 (material communicated to the Crown in the course of public business)

section 49 (public records)

section 50 (acts done under statutory authority)

section 61 (recordings of folksongs)

section 68 (incidental recording for purposes of broadcast)

section 69 (recording for purposes of supervision and control of broadcasts)

section 70 (recording for purposes of time-shifting)

section 71 (photographs of broadcasts)

section 74 (provision of sub-titled copies of broadcast)

section 75 (recording for archival purposes)

PART 2

Rights in performances exceptions

paragraph 4 of Schedule 2 (things done for purposes of instruction or examination) paragraph 6 of Schedule 2 (recording of broadcasts by educational establishments) paragraph 7 of Schedule 2 (copy of work required to be made as condition of export)paragraph 8 of Schedule 2 (Parliamentary and judicial proceedings) paragraph 9 of Schedule 2 (Royal Commissions and statutory inquiries) paragraph 10 of Schedule 2 (public records) paragraph 11 of Schedule 2 (acts done under statutory authority) paragraph 14 of Schedule 2 (recordings of folksongs) paragraph 16 of Schedule 2 (incidental recording for purposes of broadcast) paragraph 17 of Schedule 2 (recordings for purposes of supervision and control of broadcasts)paragraph 17A of Schedule 2 (recording for the purposes of time-shifting) paragraph 17B of Schedule 2 (photographs of broadcasts) paragraph 20 of Schedule 2 (provision of sub-titled copies of broadcast) paragraph 21 of Schedule 2 (recording of broadcast for archival purposes)

PART 3

Database right exceptions

regulation 20 of and Schedule 1 to the Copyright and Rights in Databases Regulations 1997 (S.I. 1997/3032)"

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive 2001/29/EC of the European Parliament and of the Council of 22nd May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (O.J. No L167, 22.6.2001, p.10) ("the Directive") which provides for a general and flexible legal framework at Community level in order to foster the development of the information society in the European Community. In particular, the Directive harmonises the basic rights relevant to uses of copyright material in the information society and e-commerce, namely the rights of reproduction (copying) and communication to the public (electronic transmission, including digital broadcasting and "on-demand" services). It also limits the type and scope of permitted exceptions to these rights and provides legal protection for technological measures used to safeguard rights and identify and manage copyright material. These Regulations also adjust the implementation of Council Directive 91/250/EEC on the legal protection of computer programs (O.J. No L122, 17.5.1991, p.42) so far as is necessary in consequence of amendments required by the Directive, and take account of the amendments required by the Directive to Council Directive 92/100/EEC on rental and lending right and on certain rights related to copyright in the field of intellectual property (O.J. No. L346, 27.11.1992, p.61) and Council Directive 93/98/EEC harmonising the term of protection of copyright and certain related rights (O.J. No L290, 24.11.1993, p.9).

The Copyright, Designs and Patents Act 1988 ("the Act") already provides protection similar to many of the obligations contained in the Directive. These Regulations amend the Act insofar as its provisions do not conform or comply with the Directive and regarding matters that are related to or consequential upon these obligations. In particular, these Regulations -

(a) redefine the meaning of "broadcast" in section 6 of the Act, mainly by subsuming within that definition cable programmes sent for simultaneous reception by members of the public or transmitted at a time determined by the person making the transmission for presentation to the public, and by stating expressly that, save for some exceptions, internet transmissions are not broadcasts for the purposes of the Act (regulations 4 and 5);

(b) redefine in section 20 of the Act, the exclusive right granted to the copyright owner to control broadcasting a work or including it in a cable programme service to provide more transparently and with greater certainty that the copyright owner has the right to control any communication to the public by electronic transmission, including by means of a broadcast, but also in respect of the making available to the public of works in such a way that members of the public may access them from a place and at a time individually chosen by them, as required by Article 3 of the Directive (regulation 6). A new exclusive right, formerly largely within the scope of a remuneration right, is given to performers to control the making available to the public in this way of recordings of their performances, as required by Article 3(2) (the making available right) (regulation 7);

(c) amend various sections in Chapter 3 of Part 1 of the Act (acts permitted in relation to copyright works) to comply with the regime of compulsory and permitted areas for exceptions to copyright contained in Article 5 of the Directive, and in certain cases to take account of new obligations arising from the application of the 'three-step' test that is applied by Article 5(4) to all the permitted areas for exceptions set out in Article 5 and by Article 11(1) to limitations to rights permitted by Article 10 of Council Directive 92/100/EEC. Where appropriate, similar amendments are made to Schedule 2 to the Act (rights in performances: permitted acts) (regulations 8 to 23);

(d) substitute section 296 of the Act so that it applies only to the regime on circumvention of technical devices applied to computer programs required by Council Directive 91/250/EEC; for devices applied to other copyright works currently also covered by section 296 introduce new sections 296ZA (circumvention of technological measures), 296ZD (rights and remedies in respect of devices and services designed to circumvent technological measures) and 296ZE (remedy where effective technological measures prevent permitted acts) to cater for the more comprehensive legal protection for technological protection systems required by Article 6 of the Directive (regulation 24);

(e) introduce a new section 296ZG of the Act (electronic rights management information) for the protection of electronic rights management information required by Article 7 of the Directive (regulation 25);

(f) improve existing criminal sanctions and civil remedies so that they are effective, proportionate and dissuasive as required by Article 8 of the Directive by introducing the following:

> (i) add to the making for sale and dealing offences concerning infringing copies of copyright material so that where a person wilfully infringes copyright by communicating that copyright work to the public on a scale that is prejudicial to the copyright owner or in the course of a business, he will commit an offence under section 107(2A) of the Act (regulation 26),
>
> (ii) add to the making for sale and dealing offences concerning illicit recordings of performances so that where a person wilfully infringes a performer's making available right on a scale that is prejudicial to the right holder or in the course of a business, he will commit an offence under section 198(1A) of the Act (regulation 26),

(iii) introduce a new offence that where a person manufactures or deals in a device which is capable of circumventing an effective technological measure, he will commit an offence under new section 296ZB of the Act unless he does not have the necessary knowledge that the device facilitates circumvention of the technological measures (regulation 24),

(iv) clarifying that an injunction can be sought against an internet service provider where he has actual knowledge of another person using his service to infringe copyright (section 97A of the Act) or a performer's property right (section 191JA of the Act) (regulation 27),

(v) enabling a non-exclusive licensee to bring an action for infringement of copyright in certain circumstances (section 101A of the Act) (regulation 28),

(vi) extending the right to bring an action against a person who either himself circumvents effective technological measures or who manufactures or deals in devices, or provides services, designed to circumvent those measures to persons issuing copies of, or communicating to the public, works to which those measures have been applied (sections 296ZA and 296ZD of the Act) (regulation 24); and

(g) adjust provisions dealing with the duration of copyright in sound recordings in section 13A of the Act as required by Article 11(2) of the Directive (regulation 29).

These Regulations come into force on 31st October 2003 and in Part 3 -

(a) subject as expressly provided in the special transitional provisions and savings (regulations 33 to 40), make provision for and apply to: (i) works made, (ii) performances given, (iii) databases in which database right vests which are made, and (iv) works in which publication right vests which are first published, before or after the commencement of these Regulations; acts done before commencement of these Regulations do not infringe any new or extended right arising under these Regulations; except as expressly provided, nothing in these Regulations affects any agreements entered into before 22 December 2002 (the implementation date set out in Article 13 of the Directive), and acts done after commencement in pursuance of an agreement made before 22 December 2002 do not infringe any new or extended right arising under these Regulations (regulations 31 and 32);

(b) ensure the provisions of Chapter 3 of Part 1 of the Act (acts permitted in relation to copyright works) and Schedule 2 to the Act (rights in performances: permitted acts) as they stood before commencement continue apply to anything done after commencement in completion of an act begun before commencement (regulation 33);

(c) ensure that performers' new making available right replaces that part of the existing remuneration right which might cover this activity and that it is exercisable from commencement, and make provision in circumstances where a performer has died (regulations 34 and 35);

(d) make provision in relation to any extended copyright in sound recordings arising out of the minor adjustment to copyright term required by Article 11(2) of the Directive and preserve any longer period of copyright in an existing sound recording that continues to subsist until the date it would have expired under Regulation 15 of SI 1995/3297 (regulations 36 to 39);

(e) make provision in relation to the operation of sanctions and remedies dealing with acts involving devices designed to circumvent copy-protection arising out of the limitation of section 296 to computer programs and the new sections 296ZA and 296AD inserted by these Regulations applying to copy-protection of other works (regulation 40); and

(f) expressly provide that the new criminal offences apply only to acts committed after commencement (regulation 40).

These Regulations contain three Schedules. Schedule 1 contains consequential amendments of the Act and other enactments, Schedule 2 contains a schedule of repeals, and Schedule 3 contains new Schedule 5A to the Act which relates to regulation 24 which inserts into the Act section 296ZE which makes reference to Schedule 5A.

A regulatory impact assessment and transposition note is available, copies of which have been placed in the libraries of both Houses of Parliament. Copies of the assessment and transposition note are also available from the Intellectual Property and Innovation Directorate, The Patent Office, Harmsworth House, 13-15 Bouverie Street, London EC4Y 8DP.

Notes:

[1] 1972 c .68.

[2] SI 1993/595.

[3] SI 1996/3155.

[4] 1988 c. 48.

[5] 1988 c. 48.

[6] 1968 c. 67.

[7] 1995 c. 32.

[8] 1996 c. 55.

[9] 2002 c. 33.

[10] 2003 c. 21.

[11] SI 1989/1012.

[12] SI 1989/1129.

[13] SI 1989/1212, which has been amended by SI 1999/1042.

[14] SI 1996/2967.