

# Performance rights

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## Introduction

This practice note summarises the rights known as performance rights which are vested in the UK by virtue of the Copyright, Designs and Patents Act 1988 (CDPA 1988), which has subsequently been amended to comply with a number of EU Directives and other international obligations.

[References: CDPA 1988](#)

Performance rights are now a series of economic rights in performances which include non-property, property and moral rights, affording performers of qualifying performances a right to consent to and receive equitable remuneration for certain reproductions of their performances. They are in addition to and independent of the right of copyright and, like copyright, are an unregistered right in the UK. Performance rights should not be confused with the exclusive right, under s 16(1) (c) of the CDPA 1988, of a copyright owner to perform copyright-protected works in public.

[References: CDPA 1988, s 16\(1\)\(c\)](#)

Performance rights are particularly useful to protect the rights of performers in relation to 'bootleg' performances (ie when a recording is made of a live performance without the performer's consent).

## Non-property rights

Performance rights as originally contained in the CDPA 1988 were a series of non-proprietary rights providing that the performer's consent is required to:

- make a recording of the whole or substantial part of a qualifying performance directly from the live performance
- broadcast live the whole or substantial part of a qualifying performance
- make a recording of the whole or substantial part of a qualifying performance directly from a broadcast of the live performance

[References: CDPA 1988, s 182\(1\)\(a\)](#)

[References: CDPA 1988, s 182\(1\)\(b\)](#)

[References: CDPA 1988, s 182\(1\)\(c\)](#)

Without obtaining consent, the performer's rights are infringed. The performer's rights are also infringed where an illicit recording is imported, possessed or dealt.

[References: CDPA 1988, s 184](#)

Under the CDPA 1988, these rights cannot be assigned, but are transmissible on death.

[References: CDPA 1988, s 192A](#)

These non-proprietary rights have been maintained; however, a number of EU Directives and international obligations have extended rights in performances to include property rights and moral rights.

# Property rights

In order to comply with the Rental and Related Rights Directive (2006/115/EC), certain performers' rights must be capable of transfer and assignment. These rights are set out at ss 182A-CA of the CDPA 1988 and provide that consent is required to:

- copy a recording of the whole or substantial part of a qualifying performance
- issue to the public copies of a recording of the whole or substantial part of a qualifying performance
- rent or lend to the public copies of a recording of the whole or part of a qualifying performance
- make available to the public a recording of the whole or substantial part of a qualifying performance in such a way that members of the public can access it at a time and place chosen by them

The property rights above can be transmitted by assignment or upon death. There is a presumption of transfer of the rental right where there is a film production agreement but the performer also has a right of equitable remuneration where this rental right is transferred.

References: Council Directive (EC) 2006/115

CDPA 1988, ss 182A-182CA

References: CDPA 1988, s 182A

References: CDPA 1988, s 182B

References: CDPA 1988, s 182C

References: CDPA 1988, s 182CA

References: CDPA 1988, ss 191B, 191F

# Moral rights

CDPA 1988, Part II, Chapter 3 grants certain additional rights to a performer. These are:

- the right to be identified
- the right to object to derogatory treatment of a qualifying performance

These rights apply to live performances, broadcasts of live performances or performances recorded in sound recordings that are issued to the public.

A performer may waive his moral rights and no infringement will occur in respect of any act to which a performer has consented. Moral rights may be transmitted upon death. Moral rights in performances do not extend to performances in films.

References: CDPA 1988, Part II, Chapter 3

References: CDPA 1988, s 205C

References: CDPA 1988, s 205F

References: CDPA 1988, ss 205J, 205M

# Performance

The statutory definition of a performance in the CDPA 1988 is a live performance given by one or more individuals. Dramatic performances including dance and mime, musical performances and reading or reciting a literary work, the performance of a variety act or any similar presentation are all expressly included.

References: CDPA 1988, s 180(2)

# Qualifying performance

Section 181 of the CDPA 1988 defines a qualifying performance as a performance which either is given by a qualifying individual or takes place in a qualifying country. For a performance to be a qualifying performance it does not need to take place in public; a private performance can be a qualifying performance, but it must be a live performance.

References: CDPA 1988, s 181

## Qualifying individual

CDPA 1988 does not define a performer; however, the definition of performance describes a performer as an individual giving a live performance. A qualifying individual is a citizen of a qualifying country.

[References: CDPA 1988, s 180\(2\)](#)

## Qualifying country

A qualifying country is the UK, another member of the EEC, or a country that offers reciprocal protection.

[References: CDPA 1988, s 206](#)

## Ownership

The performer is the first owner of the performance right in a performance. The only exception is where before commencement of the Copyright and Related Rights Regulations 1996 (SI 1996/2967) a performer authorised someone to make a copy of the recording of a performance. Provided the parties have not agreed otherwise, any new rights created in the performance vest with the person authorised to make the copy and not with the performer.

[References: SI 1996/2967](#)

## Duration

Section 191 of the CDPA 1988 provides that performance rights continue for a period of 50 years from the end of the calendar year in which the performance took place or, if during this period a recording is released, 50 years from the end of the calendar year in which the recording was released.

[References: CDPA 1988, s 191](#)

The CDPA 1988 provides for reciprocal treatment for non-EEC nationals whereby non-qualifying legal persons are only entitled to the duration of the protection in their own country. Citizens and countries that are part of the European Economic Area are treated as UK citizens for the purposes of the duration calculation.

[References: CDPA 1988, s 208](#)

## Remedies

The remedies for infringement of property rights are akin to those available for breach of copyright.

[References: CDPA 1988, s 191I](#)

The remedies available for infringement of non-property rights or moral rights are conferred by a civil action for breach of statutory duty together with criminal sanctions.

[References: CDPA 1988, s 194](#)

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