



For Innovation

Moral Rights for Performers

Consultation on regulations implementing performers' moral rights in the UK resulting from WIPO Performances and Phonograms Treaty obligations





PATENT OFFICE

A DTI SERVICE

The Patent Office is an Executive Agency of DTI and is responsible for the national framework of Intellectual Property rights, comprising patents, designs, trade marks and copyright.

We manage an intellectual property system that stimulates innovation and creativity, balances the needs of consumers and users, promotes strong and competitive markets and is the foundation of the knowledge based economy.

The DTI drives our ambition of “prosperity for all” by working to create the best environment for business success in the UK. We help people and companies become more productive by promoting enterprise, innovation and creativity.

We champion UK business at home and abroad. We invest heavily in world-class science and technology. We protect the rights of working people and consumers. And we stand up for fair and open markets in the UK, Europe and the world.

Consultation on regulations implementing performers' moral rights in the UK resulting from WIPO Performances and Phonograms Treaty obligations

October 2004

Contents

	Page
Summary	1
Purpose of consultation	1
Who is being consulted	1
How and when to respond	2
Important note regarding publication of responses	2
Treaty requirements	2
Implementation of the requirements in the United Kingdom	2
Structure of the regulations	4
Conclusion	8
Annex A Relevant WPPT articles	9
Annex B Partial Regulatory Impact Assessment	11
Annex C Draft regulations	19
Annex D General principles of consultation	29
Annex E Organisations to which the consultation paper on performers' moral rights has been circulated	31

Summary

1. The 1996 WIPO Performances and Phonograms Treaty (WPPT), to which the United Kingdom is a signatory, includes provisions relating to moral rights for performers. To give these provisions effect in the United Kingdom, and permit ratification of that treaty, requires amendment of the Copyright, Designs and Patents Act 1988 (the CDPA).

2. We have already consulted once on the implementation of provisions in the WPPT requiring contracting parties to provide moral rights for performers. That consultation document is available here www.patent.gov.uk/copy/notices/1999/moralrights.htm and a summary of the responses is available here www.patent.gov.uk/copy/notices/2001/moralperform.htm.

3. As envisaged in the previous consultation document, we are now seeking comments on draft regulations implementing these treaty obligations (Annex C). In particular we welcome views on:

- (a) the desirability of the draft Regulations granting performers' moral rights that are related to those required by the WPPT (see paragraph 19);
- (b) the conditions for groups' moral rights (see paragraph 25 and section 205C in the draft regulations);
- (c) the exceptions provided to the right to be identified (see paragraph 29 and section 205E in the draft regulations); and
- (d) the partial Regulatory Impact Assessment (Annex B) and in particular any information that would help assess the compliance costs that might arise from providing moral rights for performers (paragraphs 24 to 30 in Annex B).

Purpose of the consultation

4. This consultation is intended to consult all interested parties, such as performers; those who organise or promote performances such as in concert halls, theatres, public houses or village halls; broadcasters and record producers, in order to seek their views on the benefits and disadvantages of the legislation proposed to implement the WPPT moral rights provisions. The consultation exercise will enable decisions to be taken on implementation in full knowledge of the views of different interested parties.

Who is being consulted

5. Responses are welcome from anyone in the UK or abroad who is interested in the operation of the intellectual property system in the UK, but especially from those who expect to be affected by performers' moral rights. Copies of this consultation document have been sent to the organisations listed in Annex E. Further copies, including large print and Braille versions, may be requested from the Patent Office by contacting Fraser Daviss, tel. 01633 814322, or via e-mail, fraser.daviss@patent.gov.uk.

6. This consultation document has been prepared in accordance with the Government Code of Practice on Written Consultations. The Code criteria are set out in Annex D.

How and when to respond

7. Comments should arrive by 18 March 2005 and be addressed to:

Karl Whitfield
The Patent Office
Room 1.R36
Concept House
Cardiff Road
Newport
South Wales
NP10 8QQ

Tel: 01633 814734

E-mail: karl.whitfield@patent.gov.uk

Important note regarding publication of responses

8. It is open to respondents to request that their views are not made public, but in this respect it is noted that many facsimile and e-mail messages carry, as a matter of course, a statement that the contents are for the eyes only of the intended recipient. In the context of this consultation such appended statements will not be construed as being requests for non-inclusion in the post-consultation review unless accompanied by an additional specific request for confidentiality.

Treaty requirements

9. Article 5 of the WPPT requires signatory States to grant moral rights to performers and Article 22 defines the application in time of the provisions of WPPT.

10. The WPPT requires two moral rights to be granted to performers, such rights are separate to any economic rights of performers. The first moral right is the right to claim to be identified as the performer of a performance (the right to be identified) and the second moral right is to object to any distortion, mutilation or other modification of his performance which would be prejudicial to his reputation (the right to object to derogatory treatment). The treaty only requires these rights to be granted in respect of live aural performances or performances recorded (fixed) in sound recordings (phonograms), which can clearly only be a recording of the aural part of a performance. The term "aural" is not defined in the WPPT, but the Government take it to mean the "sound element" of any performance.

Implementation of the requirements in the United Kingdom

11. At present there are no specific provisions for performers' moral rights in United Kingdom law, although moral rights are granted for authors and directors by sections 77 to 89 of the CDPA.

12. In theory implementation could go no further than the bare minimum required by the WPPT, limiting the rights in scope to the aural part of performances (the WPPT generally does not cover the audiovisual area) and to sound recordings of performances and taking up all of the limitations possible under the WPPT, for example that moral rights need not be applied to 'existing' performances (i.e. which have taken place prior to the introduction of the

rights in the UK). Such an approach would allow implementation using secondary legislation under the European Communities Act 1972 (the ECA), as explained below.

13. At the other extreme the scope of moral rights could be extended to all performances, including film. In particular this would apply rights to a performance that has been recorded as a film, such as by including it in a broadcast or other communication to the public. Indeed there have been calls to go beyond the requirements of the WPPT and to grant moral rights for all performers, including audiovisual performers. This would be a logical approach with which the Government has much sympathy. Such a legislative approach would, however, require primary legislation and there is no realistic prospect of Parliamentary time being found for this in the foreseeable future.

14. In the previous consultation a possible protocol to WPPT addressing moral rights in audiovisual performances was mentioned. A Diplomatic Conference was held in December 2000 with a view to concluding a treaty on the protection of audiovisual performances. However, ultimately no treaty was adopted. Although we hope this situation may change in the future, there is no immediate prospect of any significant progress on the audiovisual protocol.

15. Therefore it is not the intention of the Government to introduce moral rights for audiovisual performers at this time.

16. It is the Government's intention is to grant moral rights for performers in accordance with the WPPT using secondary legislation made under the European Communities Act 1972. Implementing the WPPT in this way means that it will not be necessary to wait for Parliamentary time to become available and therefore it will be possible to ratify the treaty sooner rather than later.

17. To enable the WPPT to be implemented in this way it is necessary to specify it is a community treaty in a separate Statutory Instrument.¹ This mechanism is appropriate because the treaty relates to community obligations; indeed the Council of the European Community have expressly approved the WPPT and the Community will in due course ratify the treaty.²

18. As explained above, the WPPT relates only to aural performances or the aural parts of a performance that comprises of other elements too. Notwithstanding this limitation, the powers conferred by ECA do permit provision to be made for the purpose of dealing with matters arising out of or related to the obligations imposed by the WPPT. The Government considers that limiting moral rights to live aural performances and excluding them from other parts of such live performances would create a complex and uncertain regime; particularly as the aural parts of the performance are normally intrinsically linked with the rest of the performance. Similarly, it believes that limiting moral rights to certain types of sound recordings, e.g. those made directly from the performance rather than as part of a film soundtrack, would require users to undertake difficult investigations into the origins of a work to determine whether moral rights attach.

19. Therefore, the Government propose to make draft regulations that provide moral rights in relation to any type of live performances and to sound recordings of any type of performance regardless of whether that is made directly from the live performance (i.e. the performance is first fixed as a sound recording) or indirectly, for example where a recording

¹ The WIPO Copyright Treaty (the WCT) will also be specified.

² See Council Decision 2000/278/EC; this Decision also relates to the WCT.

that is originally a film sound track (and so first fixed as part of a film) is later released as a sound recording of the film sound track.

- Comments are invited on the desirability of the draft Regulations granting performers' moral rights that are related to those required by the WPPT.

Structure of the regulations

20. Regulation 2 gives effect to the Schedule of minor and consequential amendments (discussed below). Regulation 4 divides Part 2 of the CDPA, which provides UK law on rights in performances, into four chapters. Regulations 5 and 6 make provision for performers' moral rights, the substantive provision being inserted by Regulation 6 into the new Chapter 3 of Part 2 of the CDPA which will have the title "Moral Rights". Regulation 7 modifies provisions relating to signatures in Part 2. Regulations 8 to 10 provide transitional provisions.

Regulation 6: substantive provision on performers' moral rights

Right to be identified as the performer

21. The right to be identified as the performer will be granted by new section 205C. The circumstances in which the right arises are defined in sections 205C(1)(a) to (d) and the rights themselves in sections 205C(2)(a) to (d). Essentially when a performance is given in public or broadcast live or a sound recording of the performance is communicated or issued to the public then the performer has a right to be identified. In this context communication means communication by electronic transmission, see section 20 of the CDPA. There is considerable flexibility about how this right can be satisfied. For example, it is specifically stated that the right could be satisfied for live performances by identification of the performer in a programme and for copies of a recording of a performance issued to the public by identification in or on the copies. For a live performance, it is the person who organises or promotes the performance who will have to give effect to the right to be identified. This requirement would therefore have to be met by those who regularly organise performances in concert halls or theatres, or those who only occasionally organise or promote a performance in a village or church hall or other venue, but in many cases, of course, performers are already identified in programmes.

22. Section 205D requires that the right to be identified must be asserted, in a similar manner to the rights of authors and directors (see section 78 of the CDPA). We are aware that authors have concerns about the requirement for assertion, and that performers may also prefer rights that do not need to be asserted. However, a review of authors' moral rights is not appropriate at this time; any changes would require primary legislation with the same difficulties of obtaining Parliamentary time as has been identified for making comprehensive provision for performers' moral rights. Providing performers' moral rights on a different basis from authors' moral rights might not be fair.

Groups

23. Special provision is made for performances given by a group in sections 205C(3) and (4). This provision makes it clear that there is no right for performers to be identified individually where a performance is given by a group, where “group” means two or more performers known by a particular collective name. Section 205D(3) makes it clear that any assertion must be by a person acting on behalf of the group.

24. This provision is included because there may be practical difficulties or a particularly heavy burden on those who have to give effect to moral rights where a very large group of individuals perform, such as an orchestra or choir. Even smaller groups may often choose the name of the group as more important to their identity than the names of the individual members of the group, so could prefer the right to be identified to require the group rather than individuals to be identified. In some cases those organising a live performance, or broadcasting it live, may not even have easy access to all the names of the members of the group, such as where competitive events for group performances are being staged with no prior registration.

25. It may be that special provision relating to groups should only apply to some circumstances when the right to be identified arises. For example, it may be that it should apply where there is a live broadcast of a performance, but not where copies of recordings are issued to the public, where including the names of all members of the group with those copies may be reasonable.

- Comments on whether there should be specific provision dealing with groups, and if so how it should apply, are invited.

Exceptions

26. Certain exceptions to the right to be identified are set out in section 205E. The majority of these are similar to the exceptions provided in relation to authors’ and directors’ moral rights (set out in section 79 of the CDPA). The exceptions include performances given for reporting current events, incidental inclusion, for purposes of examination and for parliamentary proceedings.

27. There are two exceptions in section 205E(2) that do not have a counterpart in section 79. The first relates to advertising goods and services and the second specifies that the right to be identified does not apply where it is not reasonably practicable to identify the performer.

28. The Government believes that the first new exception is necessary because listing performers featured in advertisements would be a substantial hindrance on advertisers and provide little benefit to performers. The second new exception is intended to deal with situations that might, in some cases, also be dealt with by the provision on groups. However, the provision on groups would not cover situations where large numbers of performers perform together but where they cannot be identified by a collective name. For example, a choir assembled from scratch to give a concert on the same day, or actors drawn together only to put on a particular play, may not perform under a group name.

29. Whereas it might be reasonable to include all the performers’ names in an insert included with a copy of a sound recording of the performance issued to the public, where the

performance is broadcast live and the number of performers is very large, a requirement to name them all on air after a radio broadcast of their performance could take a very long time and so may not be reasonably practicable. Indeed, where there is a radio broadcast designed to provide uninterrupted music, it may not be reasonably practicable to identify the performers, or the names of groups, even where there are few performers or groups.

- Comments are invited on these exceptions and in particular whether the exception in section 205(E)(2) is necessary as well as, or instead of, specific provision dealing with groups.

The right to object to derogatory treatment

30. The right to object to derogatory treatment, or integrity right, is established in section 205F, with certain exceptions laid down in section 205G. This right is infringed if the performance is broadcast with modifications prejudicial to the performer's reputation or if a sound recording of the performance is played, communicated or issued to the public with such modifications.

31. This is broadly similar to that relating to the authors' and directors' rights in section 80 of the CDPA. The right to object to derogatory treatment applies to all performers individually and so there is no separate provision for groups. The Government feels a "groups" provision would not be appropriate as, where a group performs, it would be possible for a broadcaster or producer to make a modification that affects only one or some members of the group in a way that is prejudicial to their reputation, but not the reputation of the group and so the affected performers should be entitled to take action individually in such circumstances.

32. The Government believes that no provision is necessary to protect live performances from modification. This is because in the United Kingdom protection is only afforded to performers in respect of their performances and not in respect of their "intended" performances. Therefore, a performance (or part thereof) only comes into being after it has happened. This being the case it would be impossible to "modify" a live performance, because it would already have occurred. Although it would be possible for an actor to modify his "intended" performance either by choice or by the action of a third party, this would not amount to a modification of his actual performance. In contrast a performance can be broadcast or recorded with derogatory modifications and in such circumstances it is proposed that the performer should have a right to oppose such modifications.

33. Possessing or dealing with a sound recording of a performance with modifications prejudicial to the performer's reputation also infringes the performer's integrity right, as set out in section 205H. Once again this follows similar provisions for authors, found in section 83 of the CDPA.

34. The Government proposes to include exceptions to the right to object to derogatory treatment. These will allow modifications where the performance is for the purpose of reporting current events or to avoid committing an offence, complying with a duty under an enactment or, for the BBC, avoiding the broadcast of anything which offends good taste or decency or public feeling, which is likely to encourage crime or lead to disorder. All of these are subject to sufficient disclaimer being provided, i.e. a clear and reasonably prominent indication that the modifications did not have the consent of the performer, given at the time

of the act and appearing with the identification of the performer, if any. Similar provisions for authors can be found in section 81 of the CDPA.

Supplementary provisions

35. Sections 205I to 205N deal with supplementary provisions relating to moral rights in a way that is broadly similar to those relating to authors' moral rights found in sections 86 to 89 of the CDPA.

36. The WPPT requires that the right to be identified and the right to object to derogatory treatment subsist so long as the economic rights subsist in a performance; this obligation is set out in section 205I. The rights can be waived and otherwise infringing acts can be consented to and there is specific provision that, in relation to the right for a group to be identified, consent or waiver must be done by a person acting on behalf of the group (section 205J). However, these rights are not assignable (section 205L). The right to be identified applies to the whole or any substantial part of a performance, while the right to object to derogatory treatment applies to the whole or any part of a performance (section 205K). Details of transmission of these rights on death can be found in section 205M. Remedies for infringement of moral rights are set out in section 205N, including that such infringement is actionable as a breach of statutory duty and that the court may grant an injunction prohibiting an act unless a disclaimer is made.

Regulation 5: Introductory provision on performers' moral rights

37. Regulation 5 amends section 180 of the CDPA, the introductory sections for Part 2 of that Act providing rights in performances, so that the provision of moral rights as well as economic rights is foreshadowed.

Regulations 8 to 11: Transitional provisions

38. The transitional provisions, amongst other things, specify that the rights do not apply in relation to a sound recording where the performer dies before the regulations come into force or, where the performer no longer owned the property rights immediately prior to the regulations coming into force, to anything done by the owner of the property rights or with his licence. This is allowed by WPPT Article 22, which permits limitation of the application of performers' moral rights to performances which occurred after the treaty entered into force for one of its parties, and in line with provision made on introduction of authors' moral rights when that provision came into force in 1989.

Minor and Consequential amendments

39. As already mentioned, regulation 4 has the effect of dividing Part 2 of the CDPA into chapters, further consequential provision are included in paragraphs 8 and 9 of the Schedule.

40. Regulation 7 makes provision in Part 2 in line with that in Part 1 regarding signatures by a body corporate, including where a body corporate might be exercising moral rights on behalf of a group.

41. Paragraph 2 of the Schedule clarifies the application of some of the acts restricted by copyright to film sound tracks to make it clear, as is already the case where a film is shown in public, that references to doing these acts to a sound recording does not include doing them to

a film sound track accompanying a film (because that is covered by doing those acts to the film).

42. Paragraph 3(1) of the Schedule implements our obligation under Article 15(4) of the WPPT, by modifying the definition of publication in section 182D.

43. The remaining provision in the Schedule corrects other minor drafting errors in the CDPA.

Conclusion

44. The draft Regulations are intended to implement WPPT obligations to provide performers with a right to be identified and a right to object to derogatory treatment in a way that complies with treaty obligations and balances the interests of performers and those who organise or promote performances or use performances. The provisions are modelled on the authors' moral rights provisions already found within the CDPA.

Annex A

WIPO PERFORMANCES AND PHONOGRAMS TREATY

Article 5

Moral Rights of Performers

(1) Independently of a performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his live aural performances or performances fixed in phonograms, have the right to claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.

(2) The rights granted to a performer in accordance with paragraph (1) shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the Contracting Party where protection is claimed. However, those Contracting Parties whose legislation, at the moment of their ratification of or accession to this Treaty, does not provide for protection after the death of the performer of all rights set out in the preceding paragraph may provide that some of these rights will, after his death, cease to be maintained.

(3) The means of redress for safeguarding the rights granted under this Article shall be governed by the legislation of the Contracting Party where protection is claimed.

Article 15

Right to Remuneration for Broadcasting and Communication to the Public

(4) For the purposes of this Article, phonograms made available to the public by wire or wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them shall be considered as if they had been published for commercial purposes.

Article 22

Application in time

(1) Contracting Parties shall apply the provisions of Article 18 of the Berne Convention, *mutatis mutandis*, to the rights of performers and producers of phonograms provided for in this Treaty.

(2) Notwithstanding paragraph (1), a Contracting Party may limit the application of Article 5 of this Treaty to performances which occurred after the entry into force of this Treaty for that Party.

Annex B

Partial Regulatory Impact Assessment

Title: Performers (Moral Rights, etc.) Regulations 2004

The issue and objective

1. **Objective:** The 1996 WIPO¹ Performances and Phonograms Treaty (WPPT), amongst other things, requires that moral rights are granted to performers, and their introduction is therefore necessary to enable the UK to ratify the treaty. This is considered essential to the future protection of UK rights² in overseas markets.
2. **Issue:** The introduction in UK law of moral rights for performers, that is:
 - the right to be identified as the performer of a performance, and
 - the right to object to derogatory treatment of a performance, that is, treatment prejudicial to the performer's reputation.

Risk Assessment

3. Action is necessary in order to meet an obligation in a treaty that the UK, along with all other Member States of the European Community, has agreed to ratify³. Not to ratify the treaty would prejudice the interests of United Kingdom performers abroad, and also the interests of the producers of sound recordings in other countries given that the WPPT provides rights in this area too. Other countries party to the WPPT would not be obliged to grant rights to UK performers and producers. Not to do so could, moreover, prevent the European Community and other Member States from ratifying the treaty as already agreed in a Council Decision, or put the UK in breach of that Council Decision to ratify the treaty, with the risk of infraction proceedings against the UK.
4. Ratification of the WPPT would give rise to an obligation to provide rights in the UK to performers and the producers of sound recordings from other countries with the risk that those who exploit protected material in the UK ignoring these rights could face court action for infringement of those rights. However, other international treaties that the UK is already a party to mean that many of these rights are already granted to people from other countries. As one of the world leaders in the creation of material to which the rights in the WPPT apply, the UK has more to gain rather than lose by ratifying the WPPT. Ratification would also bring the risk that other countries party to the WPPT could raise concerns about UK compliance with the WPPT. However, UK legislation on performers' moral rights would provide compliance with effectively the only area of the WPPT that UK law does not already comply with.

¹ The World Intellectual Property Organisation is a specialist agency of the United Nations with a mandate to manage intellectual property matters, which includes copyright and performers' rights.

² The WPPT also covers economic rights for performers and economic rights for the producers of sound recordings (phonograms). These rights already exist in the UK for at least UK right holders, but would not necessarily be granted to UK right holders in countries party to the WPPT if the UK does not ratify the WPPT as there would often be no obligations on those countries to do so.

³ Council Decision 2000/278/EC, O.J. No L 89, 11.4.2000, p. 6

The benefits to performers

5. The Musicians' Union and Equity claim to represent over 31,000 and 37,000 members respectively in the UK. Their members and other performers will benefit from moral rights in that they will enable them to seek redress (ultimately through the courts) if users of their work fail to identify them in cases where the right to be identified applies, or subject their work to modifications prejudicial to their reputation. It is envisaged that both injunctive relief (a court order to restrain offending activity) and damages would be available to performers.

6. It is difficult to quantify the benefits to performers of moral rights, particularly since they are largely intangible rights aimed at protecting their personality and reputation, rather than being economic rights intended to enable them to obtain payments for the use of their work, although potentially they could waive those rights in return for a payment. Moreover, there have only been a limited number of court actions for infringement of authors' moral rights to indicate levels of damages which might be awarded since those rights were introduced in 1988.

Business sectors affected

7. Potentially, performers' rights to be identified could affect a wide range of businesses, particularly since there are many places where live performances could from time-to-time take place, e.g. in hotels, restaurants and bars and at sports grounds. Live performances could also take place in non-commercial situations such as at events held by charities or voluntary bodies, and in schools. However, the right is likely to be most relevant to those more directly involved in regularly holding live performances or using live or recorded performances. Business sectors in this category are, e.g., record producers, broadcasters, cable operators, concert halls and theatres.

8. The right to object to derogatory treatment could impact on virtually any sector where performances are used (in any manner), but there seems no reason to believe that activities in many fields would be likely to involve prejudice to the reputation of performers. Again, the potential impact is likely to be greatest on business sectors most directly involved in using the work of performers, such as those exemplified above as falling in this category.

9. The extent to which business sectors using performances will be affected by the right to be identified will depend on the circumstances when performers assert this right if the regulations impose this requirement (as the current draft does). The extent will also depend on the situations in which moral rights are not already respected, even though there is no specific statutory provision. For example, programmes listing the performers are commonly available at venues where performances take place and performers' names are often included in the information provided with CDs being sold to the public.

10. The extent to which the business sectors identified above will be affected will also vary with the detail of how the rights are provided once they have been asserted. For example, the wider the range of circumstances in which the right to be identified applies, or applying moral rights to existing performances as well as new ones, would increase the potential impact on users. However, in the latter case suitable transitional provisions would reduce the effects. Extending the scope of moral rights to performances in the audiovisual area would mean that further business sectors would be affected, notably film & video

producers, and that the potential impact would increase for users of visual as well as sound elements of performances, e.g. broadcasters.

Options considered

11. The introduction of moral rights for performers is necessary if the UK is to ratify the WPPT. However, the treaty sets only the minimum level of rights which contracting states must provide and leaves open a number of possibilities as to the precise scope and form of the rights in UK law. In this respect, four main options arise:

Option 1 - do no more than required by the WPPT

12. This would mean limiting the rights in scope to the aural parts of performances (the WPPT generally does not cover the audiovisual area), and taking up all of the limitations possible under the WPPT, notably that the right to be identified need not apply to all uses of performances and that moral rights need not be applied to 'existing' performances (i.e. which have taken place prior to the introduction of the rights in the UK).

Option 2 - go beyond the WPPT obligations, but not to cover film

13. This could include applying rights to all the elements of live performances, and not just in respect of the aural parts of performances, and applying moral rights to existing performances, but would not go so far as applying rights where a performance has been recorded as a film.

Option 3 - extend the scope of moral rights to all performances, including film

14. In particular this would apply rights to a performance that has been recorded as a film and downstream use of that film, such as by including it in a broadcast or other communication to the public.

Option 4 – apply each of Options 1 to 3 in a similar way to authors' moral rights

15. In particular, this would mean providing the right to be identified so that it is subject to assertion by the performer, and also with the possibility that the performer can contractually agree to waive moral rights.

Option 5 – rely on existing practice and legislative provision, and encourage greater compliance if necessary, ie a non-legislative option

16. Performers are protected by some statutory provision at the moment, ie they could in some circumstances pursue a common law claim for 'passing off' where a person has passed off a performance of theirs as that of someone else's and in other situations a claim for defamation might apply where a performance has been modified in a way that damages the performer's reputation. Moreover, many people do already identify performers in programmes, inserts with CDs and so on and this non-legislative recognition of performers' rights could be encouraged, perhaps by facilitating the drawing up of a code of practice.

Analysis of the options

17. Option 1 would allow implementation using secondary legislation, through the powers of the European Communities Act (ECA) 1972. Option 3 would require primary legislation and there is no realistic prospect of Parliamentary time being found for this in the foreseeable future. Option 2 could be delivered by secondary legislation as it would amount to matter arising out of or related to the WPPT. Option 4 could be added to any of Options 1 to 3 whatever the legislative route used. Option 5 does not require legislation.

18. For practical reasons, therefore, Option 3 is not possible at this time. A Diplomatic Conference was held under the auspices of WIPO in December 2000 with a view to concluding a treaty on the protection of audiovisual performances which would have introduced moral rights in line with Option 3. However, ultimately no treaty was adopted. This situation may change in the future and, although there is no immediate prospect of any significant progress on such a treaty, it may additionally not be sensible to follow Option 3 at this time and introduce a regime in the United Kingdom that could be out of line with future international obligations.

19. Although the WPPT is limited to aural performances, limiting moral rights to live aural performances and excluding them from other parts of such performances would create a complex and uncertain regime; particularly as the aural parts of the performance are normally intrinsically linked with the rest of the performance. Similarly, limiting moral rights to certain types of sound recordings would require users to undertake difficult investigations into the origins of a work to determine whether moral rights attach. This would be the effect if Option 1 is adopted.

20. Since the powers conferred by ECA do permit provision to be made for matters arising out of or related to the obligations imposed by the WPPT, moral rights can be provided in relation to any type of live performances and to sound recordings of any type of performance regardless of whether that is made directly or indirectly from the live performance. Moreover, moral rights can be provided in relation to some existing performances, specifically those where the performer is alive and still owns the property rights in the recording of the performance. Provision of this type would be consistent with Option 2.

21. The existing legislative provision indicated in Option 5 would not give performers clear moral rights in all the situations envisaged by the WPPT. If the UK and other Member States of the European Community ratify the WPPT in line with the Council Decision to do so, the UK could in the future face infraction proceedings were there to be any discrepancy between UK provision on performers' moral rights and the WPPT. Moreover, the same provisions under the law relating to passing off and defamation would have applied to authors of copyright works, but this did not stop introduction of specific moral rights for authors in the Copyright, Designs and Patents Act 1988. The lack of legislative underpinning would also mean that a code of practice would have least effect on those people who do not currently give effect to moral rights for performers. Performers would be likely to perceive the lack of specific legislative provision as particularly unfair in all these circumstances. Option 5 is therefore not favoured, although a code of practice could still be encouraged to help give practical effect to legislative provision.

22. Performers may feel that it is unfair or illogical if their moral rights are limited to the minimum required by the WPPT (see Option 1 above), e.g. so as to extend only to sound

aspects of performances or not apply at all to past performances. However, the interests of a wide range of users of their work, who stand to be affected to a greater or lesser extent depending on the precise nature of the rights granted to performers, have also to be considered. The impact on users would be least with Option 5, then Option 1 and greatest with Option 3. With Option 4 added to any of Options 1 to 3, the impact on users would, however, be reduced, particularly as performers would probably not assert their rights in all situations and may waive them in others. Also, authors may feel aggrieved if performers' rights are not subject to similar conditions as apply to their own moral rights which would be the case if Option 4 is not combined with whichever of Options 1 to 3 is taken forward. The legislation therefore needs to balance competing interests and to find solutions which are workable and fair to all concerned.

23. For these reasons the draft regulations are based upon Option 2 combined with Option 4, ie going slightly further than the strict limits of the WPPT and imposing similar conditions to those that currently apply to authors' moral rights.

Compliance costs for a 'Typical' Business

Costs for performers

24. The rights granted to performers arise automatically on giving a performance, and there is no legal requirement for registration of a performance in order to secure rights. Therefore, there will be no costs to performers in obtaining moral rights, although small costs would arise from the necessity to assert the rights. Clearly, however, there may be costs involved in exercising or enforcing the rights, such as legal professional costs. It would be helpful to receive specific information from performers about the expected compliance costs from asserting rights, or exercising and enforcing rights. In this respect, the equivalent costs for authors in respect of their moral rights might give a helpful indication of the likely costs, so any specific information from authors about the costs for them of asserting rights, or exercising and enforcing them, would be useful.

Costs to users of performances

25. There could be additional, recurring, costs for users in identifying performers, if as a result of the right to be identified they become obliged to do this in circumstances where they do not at present. Any information from performers, or those who would have to identify performers, about the situations when performers are not currently identified would therefore be welcome. Any assessment of the cost of identifying performers in situations where they are already identified would also be useful as this would help with an assessment of the costs for those who do not currently identify performers, but would have to do so.

26. Additional costs might also arise if the effect of either the right to be identified or the right to object to derogatory treatment is that businesses have to alter or discontinue any existing practices or methods of operation. There would also be non-recurring costs for users in defending actions brought by performers for infringement of their moral rights, and in payment of damages resulting from successful actions. Indirect, recurring, costs might arise from insurance against litigation or claims for damages. It would be useful to receive specific information about any of these matters that would help reach an assessment on costs. Equivalent information regarding authors' moral rights would provide a useful indication of such costs, but such information is hard to come by. The limited number of court actions, which might help an assessment of levels of damages, has already been pointed out in

paragraph 6, so it would be useful to hear from any authors or users affected by authors' moral rights who have specific information about costs.

27. However, given that it is already the practice to name performers in many cases, and the Government is not aware that practices likely to prejudice the reputation of performers are widespread, it seems unlikely that the level of any additional costs identified above would be high.

28. The nature of the potential costs to users is similar whichever of Options 1-3 is considered, but Options 2 and 3 imply progressively higher levels of potential cost since each would further extend the scope of moral rights. Adding Option 4 to one of the other Options 1-3 would reduce costs for users however, and Option 5 would only give rise to an additional cost for users where users who do not currently give effect to moral rights for performers are influenced by a code of practice to do so.

Consultation with Small Business: 'The Litmus Test'

29. Initial soundings with trade associations in the music industry have not identified any negative impacts on small firms. However further soundings will now be taken as part of stage one of the small firms impact test with trade associations representing small firms in other sectors who we believe may potentially be affected by the regulations. Should any negative impact or unintended consequences on small firms be identified during these soundings, stage two of the impact test will be undertaken. We have consulted with the Small Business Service, who are content with this approach.

Other Costs

30. Charities, voluntary bodies and other non-business users such as schools might incur costs, e.g. if they become obliged to identify performers where they would not do so at present or if they infringe the right to object to derogatory treatment, but it is not anticipated that the impact on such users would be significant. However, any specific information from charities, voluntary bodies, schools and so on where performances are likely to take place about the additional costs for them of giving effect to performers' moral rights would be welcome.

Competition assessment

31. A simple assessment has been carried out using the competition filter test set out in Cabinet Office guidance. This indicated that the draft regulations would not have a significant effect on competition.

32. Relevant business sectors are performers, record producers, broadcasters, cable operators, and venue operators, including theatres. Between them these markets include a very large number of firms, ranging from individual performers, through public houses, local theatres, small independent broadcasters and record producers to national broadcasters and major international record producers. Since the draft regulations do not address the audio visual area, film & video producers should not be affected.

33. As discussed above, the regulations are not anticipated to have a significant cost impact on any of the markets affected. In addition the markets are not characterised by rapid technological change brought about by these regulations, they are not made up of small numbers of firms, the regulations should not impact on some firms more than others in the

relevant markets, nor change the number or size of firms. Equally, ongoing costs should not be greater for new businesses than for existing firms.

Enforcement and sanctions

34. The regulations provide rights for performers which would be enforced by those performers, ultimately through the courts. However, it is believed that featured performers in particular and groups are currently identified along with their performances in the majority of cases. Therefore relatively few cases are envisaged concerning this right.

Consultation

35. A formal consultation on certain principles took place in 1999, and there have subsequently been some informal contacts with interested organisations. The first consultation related to the generality of implementation of WPPT obligation for performers' moral rights and the views received from a range of interests, both those representing performers and those representing those who would have to give effect to performers' moral rights, have influenced the refinement of the policy options and the current proposal, as set out in the draft regulations, to adopt Option 2 with Option 4. As well as a further formal consultation on draft regulations, open to all interested parties, it is envisaged that there will also be more informal contacts with the most affected interested parties.

Summary and recommendation

36.

Ministerial declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs

Signed by the responsible Minister

.....

Date

Contact point: Karl Whitfield
The Patent Office
Room 1.R36
Concept House
Cardiff Road
Newport
South Wales
NP10 8QQ
Tel: 01633 814734
E-mail karl.whitfield@patent.gov.uk

Annex C

STATUTORY INSTRUMENTS

2004 No.

COPYRIGHT

RIGHTS IN PERFORMANCES

Performers (Moral Rights, etc.) Regulations 2004

Made - - - -

Laid before Parliament

Coming into force - -

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⁾, in exercise of the powers conferred on her by that section, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Performers (Moral Rights, etc.) Regulations 2004 and shall come into force on [].

Minor and consequential amendments

2. The Schedule (minor and consequential amendments) shall have effect.

Introductory

3. The Copyright, Designs and Patents Act 1988⁽³⁾ shall be amended as follows.

Division into Chapters of Part 2 of the Copyright, Designs and Patents Act 1988

4.—(1) The cross-heading before section 180 shall be omitted.

(2) Sections 180 and 181 shall become Chapter 1 of Part 2, entitled “INTRODUCTORY”, and accordingly that heading shall be inserted in the appropriate place.

(3) The cross-heading before section 181 shall be omitted.

(4) Sections 182 to 205B shall become Chapter 2 of Part 2, entitled “ECONOMIC RIGHTS”, and accordingly that heading shall be inserted in the appropriate place.

(5) At the beginning of that Chapter there shall be inserted the cross-heading “*Performers’ rights*”.

⁽¹⁾ 1972 c. 68.
⁽²⁾ SI 1993/595.
⁽³⁾ 1988 c. 48.

Consultation draft

(6) Sections 205C to 205N (inserted by regulation 6) shall become Chapter 3 of Part 2, entitled “MORAL RIGHTS”, and accordingly that heading shall be inserted in the appropriate place.

(7) Sections 206 to 212 shall become Chapter 4 of Part 2, entitled “QUALIFICATION FOR PROTECTION, EXTENT AND INTERPRETATION”, and accordingly that heading shall be inserted in the appropriate place.

Performers’ moral rights

5.—(1) In subsection (1) of section 180 (rights conferred on performers and persons having recording rights), for the words “This Part” there shall be substituted “Chapter 2 of this Part (economic rights)”.

(2) After that subsection, there shall be inserted—

“(1A) Rights are also conferred on a performer by the following provisions of Chapter 3 of this Part (moral rights)—

- (a) section 205C (right to be identified);
- (b) section 205F (right to object to derogatory treatment of performance).”.

6. After section 205B there shall be inserted—

“Right to be identified as performer

205C Right to be identified as performer

(1) Whenever a person—

- (a) organises or promotes a qualifying performance that is given in public,
- (b) broadcasts live a qualifying performance,
- (c) communicates to the public a sound recording of a qualifying performance, or
- (d) issues to the public copies of such a recording,

the performer has the right to be identified as such.

(2) The right of the performer under this section is—

- (a) in the case of a performance that is given in public, to be identified in any programme accompanying the performance or in some other manner likely to bring his identity to the notice of a person seeing or hearing the performance,
- (b) in the case of a performance that is broadcast, to be identified in a manner likely to bring his identity to the notice of a person seeing or hearing the broadcast,
- (c) in the case of a sound recording that is communicated to the public, to be identified in a manner likely to bring his identity to the notice of a person hearing the communication, and
- (d) in the case of a sound recording that is issued to the public, to be identified in or on each copy or, if that is not appropriate, in some other manner likely to bring his identity to the notice of a person acquiring a copy.

(3) If or to the extent that the performance is given by a group—

- (a) the right conferred by this section on a performer is a right to have the group identified (and not a right to be identified individually);
- (b) subsections (1) and (2) apply with the necessary modifications.

(4) In this Chapter “group” means two or more performers who have a particular name by which they may be identified collectively.

(5) If the assertion under section 205D specifies a pseudonym, initials or some other particular form of identification, that form shall be used; otherwise any reasonable form of identification may be used.

(6) This section has effect subject to section 205E (exceptions to right).

205D Requirement that right be asserted

(1) A person does not infringe the right conferred by section 205C (right to identified as performer) by doing any of the acts mentioned in that section unless the right has been asserted in accordance with the following provisions so as to bind him in relation to that act.

(2) The right may be asserted generally, or in relation to any specified act or description of acts—

- (a) by instrument in writing signed by the performer, or
- (b) on an assignment of a performer's property rights, by including in the instrument effecting the assignment a statement that the performer asserts in relation to the performance his right to be identified.

(3) An assertion which relates to a performance by a group may be made only by a person acting on behalf of the group.

(4) The persons bound by an assertion of the right under subsection (2) are—

- (a) in the case of an assertion under subsection (2)(a), anyone to whose notice the assertion is brought;
- (b) in the case of an assertion under subsection (2)(b), the assignee and anyone claiming through him, whether or not he has notice of the assertion.

(5) In an action for infringement of the right the court shall, in considering remedies, take into account any delay in asserting the right.

205E Exceptions to right

(1) The right conferred by section 205C (right to be identified as performer) is subject to the following exceptions.

(2) The right does not apply where it is not reasonably practicable to identify the performer.

(3) The right does not apply in relation to any performance given for the purposes of reporting current events.

(4) The right does not apply in relation to any performance given for the purposes of advertising any goods or services.

(5) The right is not infringed by an act which by virtue of any of the following provisions of Schedule 2 would not infringe any of the rights conferred by Chapter 2—

- (a) paragraph 2(1A) (news reporting);
- (b) paragraph 3 (incidental inclusion of a performance or recording);
- (c) paragraph 4(2) (things done for the purposes of examination);
- (d) paragraph 8 (parliamentary and judicial proceedings);
- (e) paragraph 9 (Royal Commissions and statutory inquiries).

Right to object to derogatory treatment

205F Right to object to derogatory treatment of performance

(1) The performer of a qualifying performance has a right which is infringed if—

- (a) the performance is broadcast live with modifications that are prejudicial to the reputation of the performer, or
- (b) by means of a sound recording the performance is played in public, or communicated or issued to the public, with such modifications.

(2) This section has effect subject to section 205G (exceptions to right).

205G Exceptions to right

(1) The right conferred by section 205F (right to object to derogatory treatment of performance) is subject to the following exceptions.

Consultation draft

(2) The right does not apply in relation to any performance given for the purposes of reporting current events.

(3) The right is not infringed by anything done for the purpose of—

- (a) avoiding the commission of an offence,
- (b) complying with a duty imposed by or under an enactment, or
- (c) in the case of the British Broadcasting Corporation, avoiding the inclusion in a programme broadcast by them of anything which offends against good taste or decency or which is likely to encourage or incite crime or lead to disorder or to be offensive to public feeling,

provided, where the performer is identified at the time of the relevant act or has previously been identified in or on copies of a sound recording issued to the public, that there is sufficient disclaimer.

(4) For the purposes of this section “sufficient disclaimer”, in relation to an act capable of infringing the right, means a clear and reasonably prominent indication—

- (a) given at the time of the act, and
- (b) if the performer is then identified, appearing along with the identification,

that the modifications in question were made without the performer’s consent.

205H Infringement of right by possessing or dealing with infringing article

(1) The right conferred by section 205F (right to object to derogatory treatment of performance) is also infringed by a person who—

- (a) possesses in the course of business, or
- (b) sells or lets for hire, or offers or exposes for sale or hire, or
- (c) distributes,

an article which is, and which he knows or has reason to believe is, an infringing article.

(2) An “infringing article” means a sound recording of a qualifying performance with modifications that are prejudicial to the reputation of the performer.

Supplementary

205I Duration of rights

(1) A performer’s rights under this Chapter in relation to a performance subsist so long as that performer’s rights under Chapter 2 subsist in relation to the performance.

(2) In subsection (1) “performer’s rights” includes rights of a performer that are vested in a successor of his.

(3) References in this Chapter to a person acting on behalf of a group are to a person acting on behalf of the members (including, where appropriate, any persons treated as members by virtue of section 205M(4)) with subsisting rights under this Chapter.

205J Consent and waiver of rights

(1) It is not an infringement of the rights conferred by this Chapter to do any act to which the person entitled to the right has consented.

(2) Any of those rights may be waived by instrument in writing signed by the person giving up the right.

(3) A waiver—

- (a) may relate to a specific performance, to performances of a specified description or to performances generally, and may relate to existing or future performances, and
- (b) may be conditional or unconditional and may be expressed to be subject to revocation,

Consultation draft

and if made in favour of the owner or prospective owner of a performer's property rights in the performance or performances to which it relates, it shall be presumed to extend to his licensees and successors in title unless a contrary intention is expressed.

(4) In respect of a performance by a group, consent or waiver of the right conferred by section 205C may be given or made only by a person acting on behalf of the group.

(5) Nothing in this Chapter shall be construed as excluding the operation of the general law of contract or estoppel in relation to an informal waiver or other transaction in relation to either of the rights conferred by this Chapter.

205K Application of provisions to parts of performances

(1) The right conferred by section 205C (right to be identified as performer) applies in relation to the whole or any substantial part of a performance.

(2) The right conferred by section 205F (right to object to derogatory treatment of performance) applies in relation to the whole or any part of a performance.

205L Moral rights not assignable

The rights conferred by this Chapter are not assignable.

205M Transmission of moral rights on death

(1) On the death of a person entitled to a right conferred by this Chapter—

- (a) the right passes to such person as he may by testamentary disposition specifically direct,
- (b) if there is no such direction but the performer's property rights in respect of the performance in question form part of his estate, the right passes to the person to whom the property rights pass,
- (c) if or to the extent that the right does not pass under paragraph (a) or (b) it is exercisable by his personal representatives.

(2) Where a performer's property rights pass in part to one person and in part to another, as for example where a bequest is limited so as to apply—

- (a) to one or more, but not all, of the things to which the owner has the right to consent, or
- (b) to part, but not the whole, of the period for which the rights subsist,

any right which by virtue of subsection (1) passes with the performer's property rights is correspondingly divided.

(3) Where by virtue of subsection (1)(a) or (1)(b) a right becomes exercisable by more than one person—

- (a) it is, in the case of the right conferred by section 205F (right to object to derogatory treatment of performance), a right exercisable by each of them and is satisfied in relation to any of them if he consents to the treatment or act in question, and
- (b) any waiver of the right in accordance with section 205J by one of them does not affect the rights of the others.

(4) Where a right in respect of a performance by a group becomes exercisable by another person, section 205J(4) and 205N(2) (which relate to consent and waiver of the right to be identified) apply as if the person were a member of the group.

(5) A consent or waiver previously given or made binds any person to whom a right passes by virtue of subsection (1).

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

205N Remedies for infringement of moral rights

(1) An infringement of a right conferred by this Chapter is actionable as a breach of statutory duty owed to the person entitled to the right.

(2) Where proceedings for infringement of the right conferred by section 205C relate to a performance by a group, it shall be a defence to prove—

- (a) that a person claiming to act on behalf of the group consented to the defendant's conduct or purported to waive the right, and
- (b) that the defendant reasonably believed that the person was acting on behalf of the group.

(3) In proceedings for infringement of the right conferred by section 205F the court may, if it thinks it an adequate remedy in the circumstances, grant an injunction on terms prohibiting the doing of any act unless a disclaimer is made, in such terms and in such manner as may be approved by the court, dissociating the performer from the broadcast or sound recording of the performance.”.

Requirement for signatures and its application in relation to body corporate

7. Before section 211 there shall be inserted—

“210A Requirement of signature: application in relation to body corporate

(1) The requirement in the following provisions that an instrument be signed by or on behalf of a person is also satisfied in the case of a body corporate by the affixing of its seal—

- section 191B(3) (assignment of performer's property rights);
- section 191C(1) (assignment of future performer's property rights);
- section 191D(1) (grant of exclusive licence).

(2) The requirement in the following provisions that an instrument be signed by a person is also satisfied in the case of a body corporate by signature on behalf of the body or by the affixing of its seal—

- section 205D(3) (assertion on behalf of a group);
- section 205J(2) (waiver of performer's moral rights);
- section 205J(4) (waiver on behalf of a group).”.

Transitional provisions

8. In regulations 9 and 10—

“commencement” means the date upon which these Regulations come into force;

“the relevant Chapter” means Chapter 3 of Part 2 of the Copyright, Designs and Patents Act 1988 (as inserted by these Regulations).

9. The rights conferred by the relevant Chapter do not apply in relation to a sound recording—

- (a) where the performer of that recording died before commencement;
- (b) where the performer's property rights in that recording are no longer owned by the performer immediately prior to commencement, to anything done by or with the licence of the owner of those rights.

10. The rights conferred by the relevant Chapter apply in relation to performances taking place before commencement; but no act done before commencement, or in pursuance of arrangements made before commencement, shall be regarded as infringing those rights.

[Signature]

SCHEDULE

MINOR AND CONSEQUENTIAL AMENDMENTS

11. The Copyright, Designs and Patents Act 1988 shall be amended as follows.

12. In subsection (3) of section 5B (films)(1) for paragraph (b) and the word “and” immediately preceding it there shall be substituted—

- “(b) references in this Part to playing a sound recording, or to communicating a sound recording to the public, do not include playing or communicating the film sound track to accompany the film,
- (c) references in this Part to copying a work, so far as they apply to a sound recording, do not include copying the film sound track to accompany the film, and
- (d) references in this Part to the issuing, rental or lending of copies of a work, so far as they apply to a sound recording, do not include the issuing, rental or lending of copies of the sound track to accompany the film.”.

13.—(1) Section 182D (right to equitable remuneration for exploitation of sound recording)(2) shall be amended as follows.

(2) After subsection (1) there shall be inserted—

“(1A) In subsection (1), the reference to publication of a sound recording includes making it available to the public 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.”.

(3) After subsection (7) there shall be inserted—

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

14. In subsection (1) of section 191A (performers’ property rights)(3) the word “a” appearing before the words “performer’s property rights” shall be omitted.

15. In subsection (1) of section 192A (performers’ non-property rights) the word “a” appearing before the words “performer’s non-property rights” shall be omitted.

16.—(1) Section 211 (expressions having the same meaning as in copyright provisions) shall be amended as follows.

(2) In subsection (1), at the appropriate places, there shall be inserted—

“assignment (in Scotland),”;

“signed,”.

(3) In subsection (2) for the words from the beginning to the word “apply” there shall be substituted—

“The provisions of—

- (a) section 5B(2) and (3) (supplementary provisions relating to films), and
- (b) section 6(3) to (5A) and section 19(4) (supplementary provisions relating to broadcasting), apply”.

17. In section 212 (index of defined expressions), at the appropriate places, there shall be inserted—

(1) Section 5B of the Copyright, Designs and Patents Act 1988 was inserted by regulation 9(1) of the Duration of Copyright and Rights in Performances Regulations 1995 (SI 1995/3297).

(2) Section 182D of the Copyright, Designs and Patents Act 1988 was inserted by regulation 20(2) of the Copyright and Related Rights Regulations 1996 (SI 1996/2967).

(3) Section 191A and 192A of the Copyright, Designs and Patents Act 1988 were inserted by regulation 21(1) of the Copyright and Related Rights Regulations 1996.

Consultation draft

“assignment (in Scotland)	section 211(1) (and section 177)”;
“group	section 205C(4)”;
“issue to the public	section 182B”;
“signed	section 211(1) (and section 176)”;
“wireless broadcast	section 211(1) (and section 178)”.

18.—(1) In the provisions listed in sub-paragraph (2) for the words “this Part” there shall be substituted “this Chapter”.

(2) Those provisions are—

- (a) section 182A(3);
- (b) section 182B(5);
- (c) section 182C(2), (6) and (7);
- (d) section 182CA(2);
- (e) section 185(1) to (3);
- (f) section 189 (and the heading to that section);
- (g) section 190(2)(a);
- (h) section 191(1), (2), (4) and (5);
- (i) section 191A(1) to (4);
- (j) section 191B(4);
- (k) section 191C(3);
- (l) section 191D(1);
- (m) section 191I(3);
- (n) section 191L(2);
- (o) section 192A(1) and (3);
- (p) section 192B(1) and (2);
- (q) section 193(1);
- (r) section 194(b);
- (s) section 195(1);
- (t) section 197(1) and (5);
- (u) section 198(1)(c), (2) and (4);
- (v) section 201(1);
- (w) section 202(1);
- (x) section 204(2);
- (y) section 205B(1) and (2);
- (z) paragraph 12(2) of Schedule 2;
- (aa) paragraph 1(4) of Schedule 2A.

19.—(1) In the provisions listed in sub-paragraph (2) for the words “Part 2” (or “Part II”), wherever they appear, there shall be substituted “this Chapter”.

(2) Those provisions are—

- (a) paragraph 1(1) and (2) of Schedule 2;
- (b) paragraph 1A of Schedule 2;
- (c) paragraph 2(1) and (1A) of Schedule 2;
- (d) paragraph 3(1) of Schedule 2;
- (e) paragraph 4(1), (2) and (3) of Schedule 2;

Consultation draft

- (f) paragraph 5(1) of Schedule 2;
- (g) paragraph 6(1), (1A) and (2) of Schedule 2;
- (h) paragraph 6A(1) of Schedule 2;
- (i) paragraph 6B(1) of Schedule 2;
- (j) paragraph 7(1) of Schedule 2;
- (k) paragraph 8(1) of Schedule 2;
- (l) paragraph 9(1) of Schedule 2;
- (m) paragraph 10(1) of Schedule 2;
- (n) paragraph 11(1) of Schedule 2;
- (o) paragraph 12(5) of Schedule 2;
- (p) paragraph 13(1) of Schedule 2;
- (q) paragraph 14(1) and (3) of Schedule 2;
- (r) paragraph 15(1) of Schedule 2;
- (s) paragraph 16(1) of Schedule 2;
- (t) paragraph 17(1), (2) and (3) of Schedule 2;
- (u) paragraph 17A(1) and (2)(b) of Schedule 2;
- (v) paragraph 17B(1) and (2)(b) of Schedule 2;
- (w) paragraph 18(1), (1A) and (4) of Schedule 2;
- (x) paragraph 19(2), (3) and (4) of Schedule 2;
- (y) paragraph 19A(1) of Schedule 2;
- (z) paragraph 20(1) of Schedule 2;
- (aa) paragraph 21(1) of Schedule 2;
- (bb) paragraph 1(1) and (2) of Schedule 2A.

20. In paragraph 16(1) of Schedule 2 for the words “that Part” there shall be substituted “this Chapter”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations makes the necessary amendments to the Copyright, Designs and Patents Act 1988 (“the 1988 Act”) to enable the United Kingdom to ratify the WIPO Performers and Phonograms Treaty⁽¹⁾. This Treaty was specified by the European Communities (Definition of Treaties) (WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty) Order 2004 (SI 2004/[]) to be a Community Treaty as defined in section 1(2) of the European Communities Act 1972.

These Regulations create two new moral rights for performers of qualifying performances. The first right (granted by section 205C) is the right to be identified as the performer, the second right (granted by section 205F) is the right to object to derogatory treatment. Exceptions to these rights are set out in section 205E and 205G respectively.

These Regulations divide up Part 2 of the 1988 Act into four chapters and make a number of minor amendments.

(1) Cm 3728.

Annex D

General Principles of Consultation

1. This consultation is being conducted according to the Cabinet Office Code of Practice on Consultation www.cabinet-office.gov.uk/regulation/Consultation/code.asp. This recommends the following criteria:

Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.

Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.

Ensure that your consultation is clear, concise and widely accessible.

Give feedback regarding the responses received and how the consultation process influenced the policy.

Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.

Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

Comments about the consultation process

2. If you have any comments or complaints about how this consultation process is being handled, please tell the Patent Office's Consultation Co-ordinator, who is:

Kath Gibbs
Consultation Co-ordinator
The Patent Office
Concept House
Cardiff Road
Newport
NP10 8QQ
Tel: +44 (0)1633 813775
Fax: +44 (0)1633 814509
E-mail: kath.gibbs@patent.gov.uk

Annex E

ORGANISATIONS TO WHICH THE CONSULTATION PAPER ON PERFORMERS' MORAL RIGHTS HAS BEEN CIRCULATED

Action with Communities in Rural England (ACRE)
American Film Marketing Association (AFMA - Europe)
Arts Council of England
Arts Council of Northern Ireland
Arts Council of Wales
Association of British Bookmakers
Association of British Concert Promoters
Association of British Orchestras (ABO)
Association of Independent Music (AIM)
Association of London Government
Association of Professional Recording Services (APRS)
Association of United Recording Artists
Authors Licensing & Collecting Society (ALCS)
Bar Council
Benesh Institute of Choreology
British Academy of Composers & Songwriters
British Association of Record Dealers
British Beer and Pub Association
British Broadcasting Corporation (BBC)
British Chambers of Commerce
British Copyright Council
British Film Institute (BFI)
British Horseracing Board
British Hospitality Association
British Interactive Multimedia Association (BIMA)
British Library
British Literary & Artistic Copyright Association (BLACA)
British Music Rights
British Phonographic Industry (BPI)
British Photographers Liaison Committee
British Retail Consortium
British Screen Advisory Council (BSAC)
British Shops and Stores Association (BSSA)
British Sky Broadcasting Limited
British Telecommunications plc (BT)
British Video Association (BVA)
Broadcasting, Entertainment, Cinematograph & Theatre Union (BECTU)
Business in the Community
Cable & Wireless plc
Channel 5 Broadcasting
Channel Four Television
Chartered Institute of Journalists
Cinema Exhibitors Association
Commercial Radio Companies Association (CRCA)
Community Media Association (CMA)

Confederation of British Industry (CBI)
Confederation of Information Communication Industries (CICI)
Consumers Association
Convention of Scottish Local Authorities (COSLA)
Design & Artists Copyright Society (DACS)
Directors Guild of Great Britain
Directors & Producers Rights Society (DPRS)
DMX Music Limited
Educational Copyright Users Forum (ECUF)
Educational Recording Agency (ERA)
Equity
Entertainment & Leisure Software Publishers Association (ELSPA)
Federation of Small Businesses
Federation of the Retail Licensed Trade (Northern Ireland)
Film Council
Film Distributors Association
General Consumer Council for Northern Ireland
GMS (Recordings) Limited
Hospital Broadcasting Association
Incorporated Society of British Advertisers
Incorporated Society of Musicians (ISM)
Independent Schools Council
Independent Television Association (ITVA)
Independent Television Commission (ITC)
Institute of Directors
Institute of Practitioners in Advertising
Intellectual Property Institute (IPI)
International Artist Managers Association (IAMA)
International Association of Music Libraries (IAML - UK)
International Federation of the Phonographic Industry (IFPI)
International Visual Communication Association
Law Society
Law Society of Northern Ireland
Law Society of Scotland
Library and Archive Copyright Alliance
Library and Information Commission
Local Government Association
Music Managers Forum (UK)
Mechanical Copyright Protection Society (MCPS)
Museums Copyright Group
Music Choice Europe
Music Managers Forum
Music Producers Guild
Music Publishers Association (MPA)
Musicians Union (MU)
Music Users Council (UK)
National Consumer Council
National Council for Voluntary Organisations (NCVO)
National Federation of Retail Newsagents
National Hairdressers Federation

National Union of Journalists (NUJ)
National Union of Students
Newspaper Publishers Association (NPA)
Newspaper Society
Nickelodeon UK
Northern Ireland Hotels Federation
ntl
OFCOM
Open University Worldwide
Performers Alliance
Performing Artists Media Rights Association (PAMRA)
Performing Right Society (PRS)
Periodical Publishers Association (PPA)
Personal Managers Association (PMA)
Phonographic Performance Limited (PPL)
Producers Alliance for Cinema & Television (PACT)
Producers Rights Agency
Publishers Association
Radio, Electrical and Television Retailers Association
Restaurant Association
Rivers Consultancy
Satellite & Cable Broadcasters Group
Scottish Arts Council
Scottish Consumer Council
Scottish Council for Voluntary Organisations
Scottish Licensed Trade Association
Sianel Pedwar Cymru (S4C)
Society of Authors
Society of London Theatre
Spoken Word Publishing Association
Student Radio Association
TEAMtalk Broadcast
Telewest
Theatrical Management Association
Training Media Copyright Association
tsg
Video Performance Limited
Welsh Consumer Council
Welsh Local Government Association
Writers Guild of Great Britain

Concept House,
Cardiff Road,
Newport,
NP10 8QQ

Tel: 08459 500 505
Minicom: 08459 222 250
Fax: 01633 817777

www.ipo.gov.uk

For copies in alternative formats,
please contact our Central Enquiry Unit.



CUSTOMER SERVICE EXCELLENCE



INVESTOR IN PEOPLE

DDU/A150/0607