Draft Regulations laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No. XXXX

COPYRIGHT
RIGHTS IN PERFORMANCES

The Copyright and Rights in Performances (Research, Education, Libraries and Archives) Regulations 2014

Made - - - - ***

Coming into force in accordance with regulation 1

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(**1**) in relation to matters relating to copyright and rights in performances(**2**).

In accordance with paragraph 2(2) of Schedule 2 to that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

The Secretary of State, in exercise of the powers conferred by section 2(2) of that Act makes the following Regulations:

Citation and Commencement

1. These Regulations may be cited as the Copyright and Rights in Performances (Research, Education, Libraries and Archives) Regulations 2014 and come into force at 00.02 on 1st June 2014.

Amendments to the Copyright, Designs and Patents Act 1988 etc.

2.—(1) The Copyright, Designs and Patents Act 1988(**3**) is amended in accordance with these Regulations.

(2) The Schedule (which contains consequential amendments, repeals and revocations) has effect.

(**1**) 1972 c.68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1) and the European Union (Amendment) Act 2008 (c.7), section 3(3) and Part 1 of the Schedule.
(**2**) S.I. 1992/707 and S.I. 1993/595.
(**3**) 1988 c.48.

Research, private study and text and data analysis for non-commercial research

3.—(1) In section 29(**4**)—

(a) in subsection (1), omit "literary, dramatic, musical or artistic",

(b) in subsection (1C), omit "literary, dramatic, musical or artistic",

(c) omit subsection (2),

(d) for subsection (3)(a), substitute—

"(a) in the case of a librarian, or a person acting on behalf of a librarian, that person does anything which is not permitted under section 42A (copying by librarians: single copies of published works), or", and

(e) after subsection (4A) insert—

"(4B) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright, that term is unenforceable.".

(2) After section 29 insert—

" **Copies for text and data analysis for non-commercial research**

29A.—(1) The making of a copy of a work by a person who has lawful access to the work does not infringe copyright in the work provided that—

(a) the copy is made in order that a person who has lawful access to the work may carry out a computational analysis of anything recorded in the work for the sole purpose of research for a non-commercial purpose, and

(b) the copy is accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise).

(2) Where a copy of a work has been made under this section, copyright in the work is infringed if—

(a) the copy is transferred to any other person, except where the transfer is authorised by the copyright owner, or

(b) the copy is used for any purpose other than that mentioned in subsection (1)(a), except where the use is authorised by the copyright owner.

(3) If a copy made under this section is subsequently dealt with—

(a) it is to be treated as an infringing copy for the purposes of that dealing, and

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

(4) In subsection (3) "dealt with" means sold or let for hire, or offered or exposed for sale or hire.

(5) To the extent that a term of a contract purports to prevent or restrict the making of a copy which, by virtue of this section, would not infringe copyright, that term is unenforceable.".

(3) In Schedule 2(**5**), immediately before paragraph 2, insert—

(**4**) Section 29 was amended by S.I. 1992/3233, regulation 7, S.I. 1997/3032, regulation 8 and S.I. 2003/2498, regulation 9.
(**5**) Paragraph 2 of Schedule 2 was substituted by S.I. 2003/2498, regulation 10(2).

"Research and private study

1C.—(1) Fair dealing with a performance or a recording of a performance for the purposes of research for a non-commercial purpose does not infringe the rights conferred by this Chapter.

(2) Fair dealing with a performance or recording of a performance for the purposes of private study does not infringe the rights conferred by this Chapter.

(3) Copying of a recording by a person other than the researcher or student is not fair dealing if—

(a) in the case of a librarian, or a person acting on behalf of a librarian, that person does anything which is not permitted under paragraph 6F (copying by librarians: single copies of published recordings), or

(b) in any other case, the person doing the copying knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time and for substantially the same purpose.

(4) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this paragraph, would not infringe any right conferred by this Chapter, that term is unenforceable.

(5) Expressions used in this paragraph have the same meaning as in section 29.

Copies for text and data analysis for non-commercial research

1D.—(1) The making of a copy of a recording of a performance by a person who has lawful access to the recording does not infringe any rights conferred by this Chapter provided that the copy is made in order that a person who has lawful access to the recording may carry out a computational analysis of anything recorded in the recording for the sole purpose of research for a non-commercial purpose.

(2) Where a copy of a recording has been made under this paragraph, the rights conferred by this Chapter are infringed if—

(a) the copy is transferred to any other person, except where the transfer is authorised by the rights owner, or

(b) the copy is used for any purpose other than that mentioned in sub-paragraph (1), except where the use is authorised by the rights owner.

(3) If a copy of a recording made under this paragraph is subsequently dealt with—

(a) it is to be treated as an illicit recording for the purposes of that dealing, and

(b) if that dealing infringes any right conferred by this Chapter, it is to be treated as an illicit recording for all subsequent purposes.

(4) To the extent that a term of a contract purports to prevent or restrict the making of a copy which, by virtue of this paragraph, would not infringe any right conferred by this Chapter, that term is unenforceable.

(5) Expressions used in this paragraph have the same meaning as in section 29A.".

Education

4.—(1) For section 32(**6**), substitute—

(**6**) Section 32 was amended by S.I. 2003/2498, regulation 11.

"**Illustration for instruction**

32.—(1) Fair dealing with a work for the sole purpose of illustration for instruction does not infringe copyright in the work provided that the dealing is—

(a) for a non-commercial purpose,

(b) by a person giving or receiving instruction (or preparing for giving or receiving instruction), and

(c) accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise).

(2) For the purposes of subsection (1), "giving or receiving instruction" includes setting examination questions, communicating the questions to pupils and answering the questions.

(3) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright, that term is unenforceable.".

(2) For section 35(**7**), substitute—

"**Recording by educational establishments of broadcasts**

35.—(1) A recording of a broadcast, or a copy of such a recording, may be made by or on behalf of an educational establishment for the educational purposes of that establishment without infringing copyright in the broadcast, or in any work included in it, provided that—

(a) the educational purposes are non-commercial, and

(b) the recording or copy is accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise).

(2) Copyright is not infringed where a recording of a broadcast or a copy of such a recording, made under subsection (1), is communicated by or on behalf of the educational establishment to its pupils or staff for the non-commercial educational purposes of that establishment.

(3) Subsection (2) only applies to a communication received outside the premises of the establishment if that communication is made by means of a secure electronic network accessible only by the establishment's pupils and staff.

(4) Acts which would otherwise be permitted by this section are not permitted if, or to the extent that, licences are available authorising the acts in question and the educational establishment responsible for those acts knew or ought to have been aware of that fact.

(5) If a copy made under this section is subsequently dealt with—

(a) it is to be treated as an infringing copy for the purposes of that dealing, and

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

(6) In this section "dealt with" means—

(a) sold or let for hire,

(b) offered or exposed for sale or hire, or

(c) communicated otherwise than as permitted by subsection (2).".

(3) For section 36(**8**), substitute—

(**7**) Section 35 was amended by S.I. 2003/2498, regulation 12 and regulation 2(2) and Schedule 2.
(**8**) Section 36 was amended by S.I. 2003/2498, regulation 13 and regulation 2(2) and Schedule 2.

"**Copying and use of extracts of works by educational establishments**

36.—(1) The copying of extracts of a relevant work by or on behalf of an educational establishment does not infringe copyright in the work, provided that—

(a) the copy is made for the purposes of instruction for a non-commercial purpose, and

(b) the copy is accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise).

(2) Copyright is not infringed where a copy of an extract made under subsection (1) is communicated by or on behalf of the educational establishment to its pupils or staff for the purposes of instruction for a non-commercial purpose.

(3) Subsection (2) only applies to a communication received outside the premises of the establishment if that communication is made by means of a secure electronic network accessible only by the establishment's pupils and staff.

(4) In this section "relevant work" means a copyright work other than—

(a) a broadcast, or

(b) an artistic work which is not incorporated into another work.

(5) Not more than 5% of a work may be copied under this section by or on behalf of an educational establishment in any period of 12 months, and for these purposes a work which incorporates another work is to be treated as a single work.

(6) Acts which would otherwise be permitted by this section are not permitted if, or to the extent that, licences are available authorising the acts in question and the educational establishment responsible for those acts knew or ought to have been aware of that fact.

(7) The terms of a licence granted to an educational establishment authorising acts permitted by this section are of no effect so far as they purport to restrict the proportion of a work which may be copied (whether on payment or free of charge) to less than that which would be permitted by this section.

(8) If a copy made under this section is subsequently dealt with—

(a) it is to be treated as an infringing copy for the purposes of that dealing, and

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

(9) In this section "dealt with" means—

(a) sold or let for hire,

(b) offered or exposed for sale or hire, or

(c) communicated otherwise than as permitted by subsection (2).".

(4) For paragraph 4 of Schedule 2(**9**), substitute—

"Illustration for instruction

4.—(1) Fair dealing with a performance or a recording of a performance for the sole purpose of illustration for instruction does not infringe the rights conferred by this Chapter provided that the dealing is—

(a) for a non-commercial purpose, and

(b) by a person giving or receiving instruction (or preparing for giving or receiving instruction).

(**9**) Paragraph 4 of Schedule 2 was amended by S.I. 2003/2498, regulation 11(2).