

Performers' Protection Act, 1968

(No. 19, of July 2, 1968)*

An Act to prevent the making of unauthorised records, films and broadcasts of performances of literary, dramatic, musical and artistic works

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
2. Prohibition of making records without consent of performers.
3. Prohibition of making cinematograph films without consent of performers.
4. Foreign records and films to be deemed to contravene Act in certain circumstances.
5. Prohibition of broadcasting without consent of performers.
6. Rebroadcasting of performances.
7. Prohibition of making or having plates for making records in contravention of Act.
8. Power of court to order destruction of records contravening Act.
9. Special defences.
10. Consent on behalf of performers.
11. Giving of consent without authority.
12. Application of certain provisions of Act to other countries.
13. Short title and commencement.

Interpretation

1. —

(1) In this Act, unless the context otherwise requires —

“broadcast” means broadcast by wireless telegraphy whether by way of sound broadcasting or of television;

“cinematograph film” means any print, negative, tape or other article on which a performance of performers or part thereof is recorded for the purposes of visual reproduction;

“communication to the public” includes transmission by wire to subscribers to a diffusion service;

“performance” means a performance of any actors, singers, musicians, dancers or other persons who act, sing, deliver, declaim, play in or otherwise perform literary, dramatic, musical or artistic works, and includes any such performance rendered or intended to be rendered audible or visible by mechanical or electrical means;

“performers”, in the case of a mechanical performance, means the persons whose performance is mechanically reproduced;

“Radio Telefís Éireann” means the broadcasting authority established by virtue of the Broadcasting Authority Acts, 1960 to 1966;

“rebroadcast” means the simultaneous broadcast by one broadcasting organisation of a broadcast of another broadcasting organisation;

“record” means any record or similar contrivance for reproducing sound, including the sound-track of a cinematograph film.

(2) Any reference in this Act to the making of a cinematograph film is a reference to the carrying out of any process whereby a performance or part thereof is recorded for the purposes of visual reproduction.

* This Act came into operation on October 1, 1968, by virtue of the *Performers' Protection Act, 1968 (Commencement) Order, 1968*, of September 19, 1968.

Prohibition of making records without consent of performers.

2. —

(1) Subject to the provisions of this Act, if a person knowingly —

- (a) makes a record, directly or indirectly from or by means of a performance without the consent in writing of the performers, or
- (b) sells or lets for hire, or distributes for the purposes of trade, or by way of trade exposes or offers for sale or hire, a record made or deemed to have been made in contravention of this Act, or
- (c) uses for the purposes of a broadcast or communication to the public such a record,

he shall be guilty of an offence, and shall be liable, on summary conviction, to a fine not exceeding five pounds for each record in respect of which an offence is proved, but not exceeding one hundred pounds in respect of any one transaction or on conviction on indictment to a fine not exceeding two thousand pounds.

(2) Where a person is charged with an offence under *subsection (1)(a)* of this section, it shall be a defence to prove that the record to which the charge relates was made for his private and domestic use only.

(3) The making of a record from or by means of a performance without the consent in writing of the performers shall not be a contravention of *subsection (1)* of this section if —

- (a) the record was made by Radio Telefís Éireann by means of its own facilities, the performers had consented in writing to the broadcasting of the performance by Radio Telefís Éireann and the record, or a reproduction thereof, was not used by Radio Telefís Éireann for any purpose other than such broadcasting, or
- (b) the record was —
 - (i) a reproduction of a performance incorporated in a record made with the consent of the performers and the reproduction was not made for a purpose different from those for which that consent was given, or
 - (ii) a reproduction of a performance incorporated in a record made for the purpose of reporting current events and the reproduction was not made for a different purpose, or
 - (iii) a reproduction of a performance incorporated in a record by way of background, or otherwise as incidental to the principal matters comprised or represented in the record, and the reproduction was not made for a different purpose.

(4) Where Radio Telefís Éireann makes a record (other than a record of the kind referred to in *subsection (3)(b)* of this section) directly or indirectly by means of its own facilities of a performance without the consent in writing of the performers, but the performance is one to the broadcasting of which the performers had consented in writing, Radio Telefís Éireann shall, not more than six months after the date on which the making of the record was completed or such longer period (if any) as may be agreed upon by Radio Telefís Éireann and the performers, destroy the record and any reproductions of it, and, if Radio Telefís Éireann contravenes the provisions of this subsection, it shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one hundred pounds.

(5)

(a) *Subsection (4)* of this section shall not apply in relation to a record of a performance which is of an exceptional documentary character, but such a record shall not be used for broadcasting or for any other purpose without the consent of the performers and section 12 (9) of the Copyright Act, 1963, shall apply in relation thereto as if it were a reproduction of a work made under *subsection (7)* of that section which is of an exceptional documentary character.

(b) A person who contravenes *paragraph (a)* of this subsection shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one hundred pounds and, on conviction on indictment, to a fine not exceeding two thousand pounds.

Prohibition of making cinematograph films without consent of performers

3. —

- (1) Subject to the provisions of this Act, if a person knowingly —
- (a) makes a cinematograph film, directly or indirectly, from or by means of a performance without the consent in writing of the performers, or
 - (b) sells or lets for hire, or distributes for the purposes of trade, or by way of trade exposes or offers for sale or hire, a cinematograph film made or deemed to have been made in contravention of this Act, or
 - (c) uses for the purposes of a broadcast or communication to the public such a cinematograph film, he shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding five pounds for each fifty feet of film in respect of which an offence is proved, but not exceeding one hundred pounds in respect of any one transaction or on conviction on indictment to a fine not exceeding two thousand pounds.

(2) Where a person is charged with an offence under *subsection (1)(a)* of this section, it shall be a defence to prove that the cinematograph film to which the charge relates was made for his private and domestic use only.

(3) The making by Radio Telefís Éireann by means of its own facilities of a cinematograph film from or by means of a performance without the consent in writing of the performers shall not be a contravention of *subsection (1)* of this section if —

- (a) the performers had consented in writing to the broadcasting of the performance by Radio Telefís Éireann and the film or a reproduction of it was not used by Radio Telefís Éireann for any purpose other than the broadcast, or
- (b) the film was a film of a performance incorporated in a cinematograph film lawfully made.

(4) Where Radio Telefís Éireann makes a cinematograph film (other than a film of the kind referred to in *subsection (3)(b)* of this section) directly or indirectly by means of its own facilities of a performance without the consent in writing of the performers, but the performance is one to the broadcasting of which the performers had consented in writing, Radio Telefís Éireann shall, not more than six months after the date on which the making of the film was completed or such longer period (if any) as may be agreed upon by Radio Telefís Éireann and the performers, destroy the film and any reproductions of it, and, if Radio Telefís Éireann contravenes the provisions of this subsection, it shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one hundred pounds.

(5)

- (a) *Subsection (4)* of this section shall not apply in relation to a film of a performance which is of an exceptional documentary character, but such a film shall not be used for broadcasting or for any other purpose without the consent of the performers and section 12 (9) of the Copyright Act, 1963, shall apply in relation thereto as if it were a reproduction of a work made under *subsection (7)* of that section which is of an exceptional documentary character.
- (b) A person who contravenes *paragraph (a)* of this subsection shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one hundred pounds and, on conviction on indictment, to a fine not exceeding two thousand pounds.

Foreign records and films to be deemed to contravene Act in certain circumstances

4. — For the purposes of *paragraphs (b)* and *(c)* of *section 2 (1)* of this Act and *paragraphs (b)* and *(c)* of *section 3 (1)* of this Act, a record or film to which an order under *section 12* of this Act applies and which is made directly or indirectly from or by means of a performance shall, if the consent of any performer to the making of the record or film was required by the law of the country in which it was made, be deemed to have been made in contravention of the Act if, whether knowingly or not, it was made without the consent so required.

Prohibition of broadcasting without consent of performers

5. — Subject to the provisions of this Act, a person who, otherwise than by the use of a record or cinematograph film or the reception of a broadcast, knowingly broadcasts or makes a communication to the

public of a performance of performers, or any part of such a performance, without the consent in writing of the performers, shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding one hundred pounds.

Rebroadcasting of performances

6. — A consent to the broadcasting of a performance shall, unless the consent provides otherwise, be deemed to include consent to the rebroadcasting of the performance.

Prohibition of making or having plates for making records in contravention of Act

7. — If a person makes, or has in his possession a plate or similar contrivance for the purpose of making records in contravention of this Act, he shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding one hundred pounds.

Power of court to order destruction of records contravening Act

8. — The court before which any proceedings are taken under this Act may, on conviction of the offender, order that all records, cinematograph films, plates or similar contrivances in the possession of the offender which appear to the court to have been made in contravention of this Act, or to be adapted for the making of records in contravention of this Act, and in respect of which the offender has been convicted, be destroyed, or otherwise dealt with as the court may think fit.

Special defences

9. — Notwithstanding anything in the preceding provisions of this Act, where a person is charged with an offence under any provision of this Act, it shall be a defence to prove —

- (a) that the record, cinematograph film, broadcast or communication to the public to which the charge relates was made only for the purpose of reporting current events, or
- (b) that the inclusion of the performance in question in the record, cinematograph film, broadcast or communication to the public to which the charge relates was only by way of background or was otherwise only incidental to the principal matters comprised or represented in the record, film, broadcast or communication to the public.

Consent on behalf of performers

10. — Where in any proceedings under this Act it is proved —

- (a) that the record, cinematograph film, broadcast or communication to the public to which the proceedings relate was made with the consent in writing of a person who, at the time of giving the consent, represented that he was authorised by the performers to give it on their behalf, and
 - (b) that the person making the record, film, broadcast or communication to the public had no reasonable grounds for believing that the person giving the consent was not so authorised,
- the provisions of this Act shall apply as if it had been proved that the performers had themselves consented in writing to the making of the record, film, broadcast or communication to the public.

Giving of consent without authority

11. —

- (1) Where —
 - (a) a record, cinematograph film, broadcast or transmission is made with the consent in writing of a person who, at the time of giving the consent, represented that he was authorised by the performers to give it on their behalf when to his knowledge he was not so authorised, and

- (b) the consent would, by virtue of *section 10* of this Act afford a defence to any proceedings in relation to such making against the person to whom the consent was given, the person giving the consent shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one hundred pounds.
- (2) The said *section 10* shall not apply to proceedings under this section.

Application of certain provisions of Act to other countries

12. —

(1) The Government may by order provide that such provisions of this Act as may be specified in the order shall apply in relation to performances, records and cinematograph films, respectively, made in such foreign countries or group or groups of foreign countries as may be specified in the order, in circumstances that are such that, if the performances, records or cinematograph films had been made in the State, the making would have contravened the provisions of the Act.

(2) The Government shall not make an order under this section applying any of the provisions of this Act in respect of any country which is not a party to a convention for the protection of performers to which the State is also a party unless the Government is satisfied that provision has been or will be made under the laws of that country whereby adequate protection will be given in that country to performances in the State.

(3) The Government may by order revoke or amend an order under this section including an order under this subsection.

(4) Every order made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made, and if a resolution annulling the order is passed by either House within the next twenty-one days on which that House has sat after the order has been laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Short title and commencement

13. —

(1) This Act may be cited as the Performers' Protection Act, 1968.

(2) This Act shall come into operation on such day as the Minister for Industry and Commerce appoints by order.