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# PERFORMERS' AND BROADCASTERS' RIGHTS LAW 5744 – 1984

[as consolidated 2014, prepared by WIPO]

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## CHAPTER ONE: INTERPRETATION

### Definitions

1. In this Law –

“performer” – a person who performs a literary, artistic, dramatic or musical work by acting, singing, playing an instrument, dancing or in some other manner;

“broadcaster” – a person who makes, with certification to do so under the law, a radio or television broadcast;

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“performance” – the performance of a literary, artistic, dramatic or musical work by a performer;

“recording” – the preservation of a performance by any means, in such a way that allows the performance or broadcast to be seen, heard or copied;

“broadcast” – transmission or distribution to the public – by wire, wireless or any other means – of sounds and images or of a combination of sounds and images;

“subsidiary broadcast” – a broadcast in which one person broadcasts the broadcast of another person, simultaneously with the other person’s broadcast;

“copying” – the preparation of a copy of a recording or of a significant part thereof.

## CHAPTER TWO: PERFORMERS’ AND BROADCASTERS’ RIGHTS

### Performers’ Rights

2. The performer has the right that the following be done only with his agreement:

- (1) recording;
- (2) copying, unless the following two conditions have been met:
  - (a) the recording was made with the performer’s agreement;
  - (b) copying was carried out for the same purpose for which the performer’s agreement was given;
- (3) broadcast of a performance, unless one of the following conditions has been met:
  - (a) the performance is broadcast by the Broadcasting Authority, Educational Television or Galei Zahal, it is made by a recording or its copy which was made with the performer’s agreement, and there is an agreement between the broadcaster and the recorder on the right to use the performance;
  - (b) the broadcast is a subsidiary broadcast, to which the original broadcaster agreed;
- (4) selling, renting, distributing, importing or holding – for purposes of commerce, in order to record or to copy a recording, if the recording or the copy were made without the performer’s agreement.

### Agreement

3. Agreement for purposes of section 2 shall be given –

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- (1) if the performer is a soloist or an individual who is not part of a group – by the performer or by a representative whom he authorized in writing;
  - (2) if the performers are a group – by a representative whom the members of the group authorized in writing, and when there is no such representative – by a majority of the group's members.

### **Royalties for Playing and Presenting**

**3A.** – (a) A performer is entitled to royalties for playing or presenting his performance.

(b) Royalties under subsection (a) shall be paid to the royalties organization that represents the largest number of performers and of holders of performers' rights (hereafter: royalties organization).

(c) The representative royalties organization shall also transmit the royalties to performers and holders of performers' rights who are not members in it, in the manner to be prescribed by the Minister of Justice with approval by the Knesset Constitution, Law and Justice Committee.

### **Exemptions from Agreement**

**4.** The provisions of section 2 shall not apply when the said acts constitute fair distribution or use, for purposes of private study or nonprofit instruction, or for research, criticism, survey or a journalistic precis.

### **Moral Right**

**4A.** – (a) The performer has the right to have his name stated with every performance by him and on every recording or copy thereof, to an extent and degree customary in such cases.

(b) The performer is entitled that no falsification, damage or other change be made on a performance in which he participated or on a copy of a said performance, or that no other act be performed that denigrates the performance in a manner liable to injure the performer's honor or reputation.

(c) The infringement of a right under this section is a civil wrong and the provisions of the Civil Wrongs Ordinance (New Version) shall apply to it.

(d) Notwithstanding the provisions of paragraph (c), an act with respect to a performance or a recording of a performance or, a copy of a recording or performance, which infringes a right under subsection (b), shall not constitute a civil wrong if the act performed in the aforesaid performance, recording or copy, which are not accessible to the needs of a person with disability, for the purpose of making a formatted recording , under section 4(c)(1)(b).

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## **Broadcaster's Rights**

**4A1.** A broadcaster has the right that the acts specified below shall only be done with his agreement:

- (1) recording of his broadcasts;
- (2) copying of recordings of his broadcasts;
- (3) broadcasting of recordings or of copies of recordings of his broadcasts;
- (4) selling, renting, distributing, importing or holding – for purposes of commerce, in order to record or to copy a recording of his broadcasts;
- (5) subsidiary broadcasting of his broadcasts, other than a subsidiary broadcast under mandate to be transmitted under sections 6HA(a) ir 6MI(4) of the Telecommunications Law (Bezeq and Broadcasting), 5742–1982.

## **Protection**

**4B.** The provision of section 4A1 shall not apply to a broadcast performed in violation of a copyright or of performers' rights.

## **Does not Require Agreement**

**4C.** The provisions of section 4A1(1) and (2) shall not apply to aforesaid acts performed for private use or for fair use; in this section, "fair use" – proper use for private study or nonprofit instruction, or for research or criticism.

## **Formatting of performance or broadcast for persons with disability**

- 4C1.** (a) In this paragraph –  
" person with disability" – as defined in paragraph 5 of the Law for Equality of Rights for Persons with Disabilities, 5758–1998;  
"Formatted Copy" – copy of a performance or copy of a broadcast, in a format accessible for use by a person with a disability.
- (b) The provisions of paragraph 2 and 4A1 shall not apply where the acts, with respect to the aforementioned acts of a performance, broadcast, or copy of a performance or broadcast, or reproduction of the copy of a performance or broadcast, which are not accessible to a person with disability, are performed for the purpose of making a formatted copy, provided that the conditions set forth in paragraph 28A of the Copyright Law are fulfilled, *mutatis mutandis*.
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## Applicability of Provisions

**4D.** In Chapters Three and Four, except for sections 6, 10, 11 and 12, where “performer” and “performance”, are mentioned, read also by implication “broadcaster” and broadcast”.

## CHAPTER THREE: REMEDIES AND PENALTIES

### Civil Remedies

**5.** All the civil remedies provided under any Law for the owner of a copyright whose rights were violated shall be available, *mutatis mutandis*, to a performer, whose right under this Law has been violated.

### Penalties

**6. – (a)** A person who commits one of the following shall be liable to three years imprisonment, or to a fine seven times what is said in section 61(a)(4) of the Penal Law 5737 – 1977 (Hereinafter – the Penal Law):

(1) Makes an infringing copy of a performance for a commercial purpose.

(2) Deals in selling, renting or distribution of an infringing copy of a performance, or he is selling, renting or distributing infringing copies of a performance in a commercial capacity.

(a1) a person who holds an infringing copy of a performance for purpose of dealing in it commercially, he shall be liable to imprisonment of a year or a fine of up to five time the said fine in section 61(a)(4) of the Penal Law.

(a2) in subsections (a) and (a1), “infringing copy” – copy of a performance or reproduction of a copy of a performance, made without the consent of the performer, contrary to the provisions of section 2 and 3, except for if their making was permitted under a provision of the provisions of this Law or they were made with the consent of another person who holds the right to permit so under the provisions of this Law.

(a3)(1) The following are liable to imprisonment of six months or double the fine aforesaid in section 61(a)(3) of the Penal Law:

(a) a person who make an infringing copy of a broadcast for a commercial purpose.

(b) a person who deals in the sale, renting or distribution of an infringing copy of a broadcast, or, he sells or rents or distributes infringing copies of a broadcast in a commercial capacity.

(2) in this subsection, “infringing copy” – a copy of a broadcast or reproduction of a copy of a broadcast, made without the consent of the broadcaster, contrary to the provisions of section 4A1, except for if their making was permitted under the Law.

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(a4) If an act under subsections (a), (a1) or (a3) was committed by a firm, it shall be liable to twice the set fine for the offence.

(b) If a person presumes to give agreement for purposes of section 2 without being authorized to do so or in digression from the authorization, shall be liable to a fine.

### **Responsibility for Offense**

7. – (a) An officer of a company shall supervise and take all reasonable steps do to prevent an offence of the offenses aforementioned under section 6 (hereinafter – the offense) to be committed by a corporation or by an employee thereof; If he failed to do so he shall be liable to the fine, pursuant to section 61(a)(4) of the Penal Law.

(b) If an offense under this Law was committed by an employee in the course of his employer’s business, or by an agent who acts in the sphere of his competence, then his employer or the person who authorized him shall also be charged with the offense, unless he proves that the offense was committed without his knowledge and that he took all reasonable steps to assure compliance with this law.

### **Order to Seize or to Prohibit Distribution**

8. In addition to every other relief the court may order that a recording be seized or that its or its copies’ distribution be prohibited; having ordered seizure, the court shall order what is to be done with the seized recording or copies.

### **Applicability of Seizure Order to Person Who is Not a Party**

9. – (a) A seizure order issued under section 8 shall also be in effect against a person whose name appears in it and who has in his possession a recording or copies for sale, rental, distribution or storage, also if that person is not a party to the trial (hereinafter: person who is not a party).

(b) The court may make a seizure order against a person who is not a party conditional upon the provision of surety to its satisfaction; if the court finds – on application by the person who is not a party that the application for the order was not reasonable, then it may – after it has given the concerned parties an opportunity to state their cases – order all or part of the surety to be forfeit for the benefit of the person against whom the order was issued, to compensate him for damage caused to him by the execution of the order.

(c) A seizure order executed against a person who is not a party shall lapse 30 days after it was executed, unless a criminal or civil complaint was brought against him before that for the violation which was the grounds for making the order, or if it was cancelled under subsection (e).

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(d) A seizure order which was not executed shall lapse 90 days after it was issued.

(e) If a seizure order was executed against a person under subsection (c), then he may – within 30 days after the day of its execution – apply to the court that issued the order to cancel or change it; the court is authorized to extend this time, if it finds it justified to do so under the circumstances of the case.

## CHAPTER FOUR: MISCELLANEOUS PROVISIONS

### Period of Performers' Rights

10. The provisions of this Law shall not apply to a performance after 50 years have elapsed from the end of the year in which the original performance took place.

### Period of Broadcasters' Rights

10A. The provisions of this Law shall not apply to a broadcast after 25 years have elapsed from the end of the year in which the original broadcast took place.

### Performer Who is Employee

11. If a performer was employed as an employee and the performance took place in the course of his service with the employer and in consequence of that service, then the rights assigned by this Law to the performer shall be owned by the employer during the first 15 years of the period said in section 10, and by the performer during the rest of the period, unless determined otherwise by agreement.

### Performer Who is a Policeman or Soldier

12. – (a) If a performance takes place in the course of the performer's service in the police or the army and in consequence of that service, then the provisions of section 11 shall apply, as if the State were the performer's employer, if he is one of the following:

- (1) a policeman;
- (2) a person in the regular army forces;
- (3) a person in the reserve army forces – if the performance was produced by the army;

(b) If the performance takes place during the performer's reserve service and in consequence of that service, then the State shall be entitled to broadcast it and to record it without the performer's agreement.

(c) In this section –

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(1) “a person in the regular army forces” and “a person in the reserve army forces” – as defined in the definition of “soldier” in section 1 of the Military Justice Law 5715 – 1955;

(2) “reserve service” – within its meaning in the Defense Service Law 5719 – 1959 (Consolidated Version).

### **Performance Outside Israel**

**13.** – (a) This Law shall not apply to performances performed outside Israel.

(b) Notwithstanding the provision of subsection (a), the Minister of Justice, with the approval of the Knesset’s Constitution, Justice and Law Committee, make an order that the all or some of the provisions of this Law shall apply to performances performed outside Israel, if it is so determined in an international convention to which Israel is a party, and for performances performed in a state who is party to an international convention on the subject of rights protected under this law, to which Israel is a party.

### **Performance Before this Law Went Into Effect**

**14.** This Law shall not apply to a performance which took place before it went into effect.

### **Saving of Laws**

**15.** This Law shall add to, and not derogate from any other enactment.

### **Freedom to Set Terms**

**16.** The provisions of this Law shall not affect or derogate from terms under any agreement made before or after it went into effect.

### **Applicable to State**

**17.** This Law shall apply to the State.

### **Effect**

**18.** This Law shall go into effect 30 days after its publication.

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