

**Performers' and Broadcasters' Rights Law 5744 —1984**

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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 whom a radio or television broadcast by lawful agreement;

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

“recording”—the preservation of a performance by any means that allow the performance 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 —

(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 organizations 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 non-profit instruction, or for research, criticism, survey or 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.

(Note: two separate sections "4A" were inserted by two separate amendments, the one in SH of 5756, p. 88, the other in SH of 5756, p. 245 —Tr.)

Broadcaster's Rights

4A 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 broadcasts lawfully performed as a transmission or distribution by cable;

(b) subsidiary broadcasts performed by way of combined wireless and cable transmission of broadcasts which the broadcaster is obligated to transmit by virtue of a franchise under the Telecommunications Law 5742 — 1982;

(c) wireless subsidiary broadcast, performed under an obligation imposed on the broadcaster by another enactment.

Protection

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

Does not Require Agreement

4C. The provisions of section 4A(1) and (2) shall not apply to acts performed for private use or for fair use; in this section, "fair use" — proper use for private study or non-profit instruction, or for research or criticism.

Applicability of Provisions

4D. In Chapters Three and Four, for "performer" and "performance", 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) If a person knowingly violates performers' rights under this law, then he shall be liable to six months' imprisonment, or to a fine as said in section 61 (a)(4) of the Penal Law 5737—1977.

(b) If a person presumes to give an agreement for purposes of section 2 with a person authorized to do so or in disregard of the authorization, or if a person acts on the basis of such an agreement, knowing it to have been given without authorization or in disregard of the authorization, shall be liable to a fine.

Responsibility for Offense

7.—(a) If an offense under this Law was committed by a body corporate, then every person who —when the offense was committed —was an active manager, partner (other than a limited partner) or senior employee responsible for that sphere shall also be charged with the offense, unless she proves that the offense was committed without his knowledge and that he took all reasonable steps to assure compliance with this 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 she 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 or ordered seizure, the court shall order what is to be done with these seized recordings 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).

(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 25 years have elapsed from the end of the year in which the original performance 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 performers 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 —

(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 may 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.



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.
