

ISRAEL

Unofficial translation of the Israel -

PERFORMERS' AND BROADCASTERS' RIGHTS LAW, 5744-1984, as amended. (translation made 12/2005)

Chapter One: Interpretation		
Definitions	1.	<p>In this Law-</p> <p>“performer” – means a person who by acting, singing, playing an instrument, dancing or in some other way performs a literary, artistic, dramatic or musical work;</p> <p>“broadcaster” – means a person who makes, with consents as required by law, a radio or television broadcast;</p> <p>“performance” – means the performance of a literary, artistic, dramatic or musical work by a performer;</p> <p>“fixation” – means the preservation of a performance or a broadcast by any means that allow the performance or broadcast to be seen, heard or reproduced;</p> <p>“broadcast” – means the transmission or dissemination to the public, by wire, wireless or any other means, of sounds and images or of a combination of sounds and images;</p> <p>“secondary broadcast” – means a broadcast in which one person broadcasts the broadcast of another person, simultaneously with the that other person’s broadcast;</p> <p>“reproduction” - means the preparation of a copy of a fixation or of a significant portion thereof.</p>
Chapter Two: Performers’ and Broadcasters’ Rights		
Performers’ Rights	2.	<p>It shall be the right of a performer that the following acts shall not be done without his consent:</p> <p>(1) fixation;</p> <p>(2) reproduction of the fixation, unless both of the following apply:</p> <p style="padding-left: 40px;">(a) the fixation was made with the performer’s consent;</p> <p style="padding-left: 40px;">and;</p> <p style="padding-left: 40px;">(b) the reproduction is made for the same purpose for which the performer’s consent was given.</p> <p>(3) The broadcast of a performance, unless one of the following applies:</p> <p style="padding-left: 40px;">(a) the performance is broadcast by The Broadcasting Authority, Educational Television or Army Radio from a fixation or a reproduction thereof, made with the consent of the performer, and an agreement exists between the entity making the broadcast and the person who made the fixation concerning the right to use the performance;</p> <p style="padding-left: 40px;">(b) the broadcast is a secondary broadcast made with the consent of the entity making the original broadcast;</p>

		(4) The sale, lending, rental, distribution, importation or possession- for commercial purposes, of a fixation or a reproduction thereof, if the fixation or reproduction was made without the consent of the performer.
Granting of consent	3.	Consent for purposes of section 2 will be deemed granted: (1) where the performer is a soloist or an individual who is not a member of a group – is given by the performer or a representative authorized by him in writing; (2) where the performer is a group – is given by a representative authorized in writing by the members of the group or, if there is no such representative, by the majority of the members of the group.
Royalties for public performance	3A	(a) A performer is entitled to equitable remuneration for the public performance or display of his performance. (b) Remuneration pursuant to subsection (a) shall be paid to the Collective Rights Management Society that represents the largest number of performers and of holders of performers' rights (hereinafter – Representative Collecting Society). (c) The Representative Collecting Societies shall transmit the royalties to performers who are members of the Representative Collecting Society and to performers' who are not members of the Representative Collecting Society, in the manner to be prescribed by regulation enacted by the Minister of Justice with the approval of the Knesset Constitution, Law and Justice Committee.
Exemption from consent	4.	The provision of section 2 shall not apply when the said acts constitute fair distribution or fair use done for purposes of private study or non-profit instruction, or for research, critique, survey or a journalistic summary.
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 distortion, damage or other change be made of a fixation of performance in which he participated or of a reproduction of a said fixation, 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 provision of the Civil Wrongs Ordinance (New Version) shall apply to it.
Broadcasters' rights	4A 1	A broadcaster has the right that the acts specified below shall only be done with his agreement: (1) Fixation of the broadcast; (2) Reproduction of a fixation of the broadcast; (3) Broadcast of a fixation of a broadcast, or broadcast of a reproduction of such fixation; (4) The sale, rental, distribution, importation or

		possession for commercial purposes, of a fixation of the broadcast or a reproduction of the said fixation; (5) secondary broadcast of a broadcast, except where transmission of the secondary broadcast is required pursuant to either Paragraph 6[21](a) or Paragraph 6[49](4) of the Telecommunications Law (transmissions and broadcasts), 5742-1982.
Protection	4B.	The provisions of Paragraph 4A1 above shall not apply to a broadcast performed in violation of a copyright or of a performer's rights.
Exemption from consent	4C.	The provisions of Paragraph 4A1(1) and (2) shall not apply where the aforesaid acts were performed for private use or for fair use. In this paragraph "fair use"- means reasonable use for purposes of private study or unremunerated instruction, or for research or critique.
Applicability of provisions	4D.	In Chapters Three and Four, except for Paragraphs 6,10,11 and 12, references to the terms "performer" and "performance" should be deemed to include "broadcaster" and "broadcast".
		CHAPTER THREE: REMEDIES AND PENALTIES
Civil remedies	5.	A performer whose right under this Law has been infringed, shall, <i>mutatis mutandis</i> , have all the civil remedies available in law to the holder of a copyright whose copyright has been infringed.
Penalties	6.	(A) The following acts shall be punishable by imprisonment for a term of three years or a fine seven times the fine provided for in section 61(a)(4) of the Penal Law, 5737-1977 ² : (1) the making an infringing copy of a performance for the purpose of trading therein; (2) engaging, by way of trade, in the sale, hire or distribution of an infringing copy of a performance, or selling, letting for hire or distributing infringing copies on a commercial scale. (a1) The possession of an infringing copy of a performance for the purpose of trading therein shall be liable to imprisonment for a term of one year or a fine five times the fine provided for in section 61(a)(4) of the Penal Law. (a2) In subparagraphs (a) and (a1) above, "infringing copy" means the fixation of a performance or reproduction of such a fixation, made without the consent of the performer, contrary to the provisions of Paragraphs 2 and 3 (of this law), unless the doing thereof is permitted under the provisions of this Law or where such acts were done with the consent of any person authorized to

²Sefer Ha-Chukkim of 5737, p. 226 – LSI, Special Volume.

		<p>grant such consents pursuant to the provisions of this Law.</p> <p>(a3) The following offences shall be punishable by imprisonment for a term of six months or double the fine provided for in section 61(a)(3) of the Penal Law:</p> <p style="padding-left: 40px;">(a) the making of an infringing copy of a broadcast for the purposes of trading therein;</p> <p style="padding-left: 40px;">(b) engaging, by way of trade, in the sale, hire or distribution of an infringing copy of a broadcast, or selling, letting for hire or distributing infringing copies of a broadcast on a commercial scale.</p> <p style="padding-left: 40px;">In this subsection, “infringing copy” means a fixation of a broadcast or reproduction thereof, made without the consent of the broadcaster, contrary to the provisions of section 4A1, unless the commission thereof was permitted by law.</p> <p>(a4) Where an offence has been committed under subsections (a), (a1) or (a3) by a corporate body, the penalty shall be double the fine provided for the offence.”</p> <p>(B) It shall be an offense, punishable by fine, for a person to purport to act on the basis of consent knowing that such was not given or knowingly acting in excess of the scope of such consent.</p>
Duty of supervision	7.	<p>(a) A senior officer in a corporate body shall be obliged to supervise and take any action necessary to prevent any of the offences set forth in section 6 (hereinafter referred to as “the offence”) by a body corporate or any of its employees. Where such senior officer is in breach of his aforesaid obligation he shall be liable to the fine provided for in section 61(a)(4) of the Penal Law.</p> <p>(b) Where an offence has been committed by a corporate body or one of its employees, there is a presumption that the senior officer was in breach of his obligation under subsection (a), unless it is proved that he took action necessary to perform his aforesaid obligation.</p> <p>(c) In this section, “senior officer” means an active manager of a corporate body, a partner - excluding a limited partner - and an officer responsible on behalf of the body corporate in the field in question in which the offence was committed.</p>
Order of seizure or prohibition of distribution	8.	<p>In addition to any other relief, the court may order the seizure of, or prohibit the distribution of, a fixation or of any reproduction thereof; Where the court grants a seizure order, it shall direct how the seized fixation or reproductions shall be disposed of.</p>
Application of	9.	<p>(a) A seizure order pursuant to paragraph 8 shall have effect</p>

seizure order to person not party		<p>against any person named therein who possess a fixation or reproduction thereof for purposes of sale, hire, distribution or storage even if such person was not a party to the proceeding (such a person hereinafter referred to as a "non-party").</p> <p>(b) The court may make the grant of a seizure order against a non-party conditional on the submission to the court of a security deposit of an adequate amount; If the court, on the application of a non-party, is satisfied that the application for the order was unreasonable, it may, after giving the parties concerned an opportunity to be heard, direct the forfeiture of the whole or part of the security deposit in favor of the person against whom the order was issued, to compensate him for the damage caused by the implementation of the order.</p> <p>(c) A seizure order that has been executed against a non-party will lapse in accordance with subparagraph (e) below, or upon the expiration of 30 days from date of execution, unless in the interim a criminal or civil complaint of infringement has been filed with the court against said non-party and such complaint cites a cause of action that justifies the maintaining the seizure order in force.</p> <p>(d) A seizure order that has not been implemented shall become void upon the expiration of ninety (90) days from the date on which it was made.</p> <p>(e) A person against whom a seizure order under subsection (c) has been implemented may, within thirty (30) from the date of the implementation, apply to the court that made the order to revoke or vary it. The court may extend the period if it deems it justified to do so in the circumstances of the case.</p>
		CHAPTER FOUR: Miscellaneous Provisions
Period of performer's rights	10.	The provisions of this Law shall not apply to a performance after the expiration of fifty years from the end of the year in which the original performance was given.
Period of broadcaster's rights	10A	The provisions of this Law shall not apply to a broadcast after the expiration of twenty five years from the end of the year in which the original performance was given.
Performer being an employee	11.	Where a performer is employed as an employee and the performance is given in the course of, and in the consequence of, his service with his employer, the rights conferred by this Law on the performer shall, in the first fifteen years of the period mentioned in section 10, vest in the employer, and during the remainder of that period, in the performer, then unless otherwise

		provided for by agreement.
Performer being a police officer or soldier	12.	<p>(a) Where a performance is given in the course of and in consequence of the service of the performer in the Police or Military, the provisions of section 11 shall apply as if the State were their performer's employer if –</p> <p>(1) the performer is a police officer, or;</p> <p>(2) the performer is a person who is in the course of regular service in the Armed Forces;</p> <p>(3) the performer is a person who in the reserve forces of the Israel Defense Forces and performance is produced by the Israel Defense Forces.</p> <p>(b) Where a performance is given in the course and in consequence of the service of the performer in reserve service, the State may broadcast and fix it without his consent.</p> <p>(c) In this section –</p> <p>(1) The phrases "a person who serves in the standing Army" and "a person who serves in the Army reserves forces" shall have the respective meanings assigned to these phrases in the definition of "soldier" in section 1 of the Military Justice Law, 5709-1955;</p> <p>(2) "reserve service" shall have the same meaning as in the Defense Service Law (Consolidated Version), 5719-1959.</p>
Performance outside Israel	13.	<p>(a) This Law shall not apply to performances given outside Israel.</p> <p>(b) Notwithstanding the provisions of subsection (a), the Minister of Justice may direct by Order that all or part of the provisions of this Law shall apply to performances given outside Israel if so provided for by an [bilateral] international convention to which Israel is a party and to performance given outside of Israel if so provided for by a multilateral convention to which Israel is a party.</p>
Performance before coming into force of law	14.	This Law shall not apply to a performance which took place before its coming into force.
Saving of laws	15.	This Law shall be in addition to, and not in derogation of, any other law.
Freedom of stipulation	16.	The provisions of this Law shall not affect or derogate from the conditions of any agreement made either before or after its coming into force.
Status of the State	17.	This Law shall apply to the State.

Commencement	18.	This Law shall come into force upon the expiration of thirty days from the date of its publication [20.6.1984].