

7.7 PERSONAL COPYING FOR PRIVATE USE – THE COPYRIGHT AND RIGHTS IN PERFORMANCES (PERSONAL COPIES FOR PRIVATE USE) REGULATIONS 2014

7.7.1 The Statutory Instrument introduces a new exception to copyright allowing limited personal copying by individual consumers. It allows individuals to copy media they own, such as CDs or eBooks, from one medium or device to another, for their own private use. For example, it will allow an individual to copy a CD they have bought onto their computer, or move an eBook from one type of e-reader to another (and to make further copies of such copies), without risk of copyright infringement.

7.7.2 The regulations implement Article 5(2)(b) and the second and fourth sub-paragraphs of Article 6(4) of the Infosoc Directive. The exception is narrowly drawn to prevent people relying on the exception to obtain copies without paying for them. To use this exception, an individual must have lawfully acquired a copy of a work such as a book, film or music on a permanent basis (i.e. they must have bought it or been given it as a gift). They can only make copies for their private use and for non-commercial ends, and cannot give those copies to other people (except with the copyright owner's consent). No one other than the person who lawfully acquired the original copy is entitled to make a private copy for that person, including a third-party on behalf of that person.

Comment [DF1]: This sentence is very confusing as it seems to suggest that the exception requires payment for the private copy made pursuant to the exception.

7.7.3 The exception does not prevent copyright owners from using technology measures to restrict copying – such as the copy protection found on DVDs and Blu Ray discs. It remains illegal to circumvent such technological measures. However, consumers will be able to appeal to the Secretary of State, who may take steps to give them access to the copy if a technological measure is unreasonable having regard to the right of the copyright owner to limit the number of personal copies which may be made, and whether other copies that allow personal copying are commercially available on reasonable terms on the market. Copies of the work lawfully acquired through an on-demand service, including download, are not subject to the Secretary of State procedure.

7.7.4 This exception applies to all types of copyright works, and is technology neutral, permitting copying to all types of personal storage, including remote “cloud” storage. However, cloud providers are not the beneficiary of the exception: i.e. the exception is not detrimental to the legal framework for copyright infringements vis-à-vis cloud providers and to the extent a cloud provider can benefit from liability privileges, the ability for rights holders to obtain injunctive relief to bring infringements to an end and to prevent future infringements against cloud providers whose services are being used for infringements is not affected. A cloud provider is not permitted to make a private copy for or on behalf of the person who lawfully acquired the original copy. The person who lawfully acquired the original copy is not permitted to provide access to the work to any third person via his/her cloud account. An equivalent personal copying exception is provided in relation to the copying of a recording of a performance as regards performers' rights. In common with most of the exceptions covered by this Memorandum, the Statutory Instrument stipulates that to the extent that any term of a contract seeks to prevent or restrict the making of a personal copy in accordance with this exception, that term will be unenforceable. However, this provision is not applicable in the case of on-demand services referred to in the Secretary of State procedure (s. 296ZEA(7)).

7.7.5 The instrument contains a transitional provision which provides that where a copy of a work was made prior to the date on which the regulations come into force, if that copy would have satisfied the requirements of the new personal copying exception had it been in force at that time, then such personal copy shall be treated as a “personal copy” for the purposes of the exception with the result that further copies may be made of it in accordance with the exception. The provision on enforceability of contractual terms however is not retrospective.