



# Copyright, Designs and Patents Act 1988

## 1988 CHAPTER 48

### PART I

#### COPYRIGHT

#### CHAPTER VII

#### COPYRIGHT LICENSING

*References and applications with respect to licensing by licensing bodies*

**124 Licences to which ss. 125 to 128 apply.**

Sections 125 to 128 (references and applications with respect to licensing by licensing bodies) apply to the following descriptions of licence granted by a licensing body otherwise than in pursuance of a licensing scheme—

- (a) licences relating to the copyright in literary, dramatic, musical or artistic works or films (or film sound-tracks when accompanying a film) which cover works of more than one author, so far as they authorise—
  - (i) copying the work,
  - (ii) performing, playing or showing the work in public, or
  - (iii) broadcasting the work or including it in a cable programme service;
- (b) any licence relating to the copyright in a sound recording (other than a film sound-track when accompanying a film), broadcast or cable programme, or the typographical arrangement of a published edition; and
- (c) all licences in relation to the copyright in sound recordings, films or computer programs so far as they relate to the rental of copies to the public;

and in those sections a “licence” means a licence of any of those descriptions.

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### **125 Reference to tribunal of proposed licence.**

- (1) The terms on which a licensing body proposes to grant a licence may be referred to the Copyright Tribunal by the prospective licensee.
- (2) The Tribunal shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.
- (3) If the Tribunal decides to entertain the reference it shall consider the terms of the proposed licence and make such order, either confirming or varying the terms, as it may determine to be reasonable in the circumstances.
- (4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

### **126 Reference to tribunal of expiring licence.**

- (1) A licensee under a licence which is due to expire, by effluxion of time or as a result of notice given by the licensing body, may apply to the Copyright Tribunal on the ground that it is unreasonable in the circumstances that the licence should cease to be in force.
- (2) Such an application may not be made until the last three months before the licence is due to expire.
- (3) A licence in respect of which a reference has been made to the Tribunal shall remain in operation until proceedings on the reference are concluded.
- (4) If the Tribunal finds the application well-founded, it shall make an order declaring that the licensee shall continue to be entitled to the benefit of the licence on such terms as the Tribunal may determine to be reasonable in the circumstances.
- (5) An order of the Tribunal under this section may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

### **127 Application for review of order as to licence.**

- (1) Where the Copyright Tribunal has made an order under section 125 or 126, the licensing body or the person entitled to the benefit of the order may apply to the Tribunal to review its order.
- (2) An application shall not be made, except with the special leave of the Tribunal—
  - (a) within twelve months from the date of the order or of the decision on a previous application under this section, or
  - (b) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this section is due to expire within 15 months of that decision, until the last three months before the expiry date.
- (3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal may determine to be reasonable in the circumstances.

### **128 Effect of order of tribunal as to licence.**

- (1) Where the Copyright Tribunal has made an order under section 125 or 126 and the order remains in force, the person entitled to the benefit of the order shall if he—

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- (a) pays to the licensing body any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained, and
  - (b) complies with the other terms specified in the order,
- be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question on the terms specified in the order.
- (2) The benefit of the order may be assigned—
- (a) in the case of an order under section 125, if assignment is not prohibited under the terms of the Tribunal's order; and
  - (b) in the case of an order under section 126, if assignment was not prohibited under the terms of the original licence.
- (3) The Tribunal may direct that an order under section 125 or 126, or an order under section 127 varying such an order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference or application was made or, if later, on which the licence was granted or, as the case may be, was due to expire.

If such a direction is made—

- (a) any necessary repayments, or further payments, shall be made in respect of charges already paid, and
- (b) the reference in subsection (1)(a) to the charges payable in accordance with the order shall be construed, where the order is varied by a later order, as a reference to the charges so payable by virtue of the later order.

VALID FROM 31/10/2003

#### **[<sup>F1</sup>128A Notification of licence or licensing scheme for excepted sound recordings**

- (1) This section only applies to a proposed licence or licensing scheme that will authorise the playing in public of excepted sound recordings included in broadcasts, in circumstances where by reason of the exclusion of excepted sound recordings from section 72(1), the playing in public of such recordings would otherwise infringe the copyright in them.
- (2) A licensing body must notify the Secretary of State of the details of any proposed licence or licensing scheme for excepted sound recordings before it comes into operation.
- (3) A licence or licensing scheme, which has been notified under subsection (2), may not be operated by the licensing body until 28 days have elapsed since that notification.
- (4) Subject to subsection (5), the Secretary of State shall take into account the matters set out in subsection (6) and then either—
  - (a) refer the licence or licensing scheme to the Copyright Tribunal for a determination of whether the licence or licensing scheme is reasonable in the circumstances, or
  - (b) notify the licensing body that he does not intend to refer the licence or licensing scheme to the Tribunal.

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- (5) If the Secretary of State becomes aware—
- (a) that a licensing body has failed to notify him of a licence or licensing scheme under subsection (2) before it comes into operation; or
  - (b) that a licence or licensing scheme has been operated within 28 days of a notification under subsection (2),
- subsection (4) does not apply, but the Secretary of State may at any time refer the licence or licensing scheme to the Tribunal for a determination of whether the licence or licensing scheme is reasonable in the circumstances, or may notify the licensing body that he does not intend to refer it to the Tribunal.
- (6) The matters referred to in subsection (4) are—
- (a) whether the terms and conditions of the proposed licence or licensing scheme have taken into account the factors set out in subsection (7);
  - (b) any written representations received by the Secretary of State;
  - (c) previous determinations of the Tribunal;
  - (d) the availability of other schemes, or the granting of other licences, to other persons in similar circumstances, and the terms of those schemes or licences; and
  - (e) the extent to which the licensing body has consulted any person who would be affected by the proposed licence or licensing scheme, or organisations representing such persons, and the steps, if any, it has taken as a result.
- (7) The factors referred to in subsection (6) are—
- (a) the extent to which the broadcasts to be shown or played by a potential licensee in circumstances mentioned in subsection (1) are likely to include excepted sound recordings;
  - (b) the size and the nature of the audience that a licence or licensing scheme would permit to hear the excepted sound recordings;
  - (c) what commercial benefit a potential licensee is likely to obtain from playing the excepted sound recordings; and
  - (d) the extent to which the owners of copyright in the excepted sound recordings will receive equitable remuneration, from sources other than the proposed licence or licensing scheme, for the inclusion of their recordings in the broadcasts to be shown or played in public by a potential licensee.
- (8) A proposed licence or licensing scheme that must be notified to the Secretary of State under subsection (2) may only be referred to the Tribunal under section 118 or 125 before such notification takes place.
- (9) A proposed licensing scheme that has been notified to the Secretary of State under subsection (2) may only be referred to the Tribunal under section 119 after the Secretary of State has notified the licensing body that he does not intend to refer the licensing scheme to the Tribunal.
- (10) If a reference made to the Tribunal under section 118 or 125 is permitted under subsection (8) then—
- (a) the reference shall not be considered premature only because the licence or licensing scheme has not been notified to the Secretary of State under subsection (2); and
  - (b) where the Tribunal decides to entertain the reference, subsection (2) to (5) shall not apply.

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- (11) Nothing in this section shall be taken to prejudice any right to make a reference or application to the Tribunal under sections 120 to 122, 126 or 127.
- (12) This section applies to modifications to an existing licence or licensing scheme as it applies to a proposed licence or licensing scheme.
- (13) In this section and in section 128B, any reference to a “licence” means a licence granted by a licensing body otherwise than in pursuance of a licensing scheme and which covers works of more than one author.]

#### Textual Amendments

**F1** Ss. 128A, 128B inserted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), [reg. 21\(3\)](#) (with [regs. 31-40](#))

VALID FROM 31/10/2003

#### [<sup>F1</sup>128B References to the Tribunal by the Secretary of State under section 128A

- (1) The Copyright Tribunal may make appropriate enquiries to establish whether a licence or licensing scheme referred to it by the Secretary of State under section 128A(4)(a) or (5) is reasonable in the circumstances.
- (2) When considering the matter referred, and after concluding any such enquiries, the Tribunal shall take into account—
  - (a) whether the terms and conditions of the proposed licence or licensing scheme have taken into account the factors set out in section 128A(7); and
  - (b) any other factors it considers relevant,and shall then make an order under subsection (3).
- (3) The Tribunal shall make such order—
  - (a) in the case of a licensing scheme, either confirming or varying the proposed scheme, either generally or so far as it relates to cases of any description; or
  - (b) in the case of a licence, either confirming or varying the proposed licence, as the Tribunal may determine to be reasonable in the circumstances.
- (4) The Tribunal may direct that the order, so far as it reduces the amount of charges payable, has effect from a date before that on which it is made.

If such a direction is made, any necessary repayments to a licensee shall be made in respect of charges already paid.
- (5) The Tribunal may award simple interest on repayments, at such rate and for such period, ending not later than the date of the order, as it thinks fit.]

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