



# Copyright, Designs and Patents Act 1988

## 1988 CHAPTER 48

### PART I

#### COPYRIGHT

#### CHAPTER VII

#### COPYRIGHT LICENSING

*References and applications with respect to licensing schemes*

**117 Licensing schemes to which ss. 118 to 123 apply**

Sections 118 to 123 (references and applications with respect to licensing schemes) apply to—

- (a) licensing schemes operated by licensing bodies in relation 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 relate to licences for—
  - (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) all licensing schemes in relation to the copyright in sound recordings (other than film sound-tracks when accompanying a film), broadcasts or cable programmes, or the typographical arrangement of published editions; and
- (c) all licensing schemes in relation to the copyright in sound recordings, films or computer programs so far as they relate to licences for the rental of copies to the public;

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

**118 Reference of proposed licensing scheme to tribunal**

- (1) The terms of a licensing scheme proposed to be operated by a licensing body may be referred to the Copyright Tribunal by an organisation claiming to be representative of persons claiming that they require licences in cases of a description to which the scheme would apply, either generally or in relation to any description of case.
- (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 matter referred and make such order, either confirming or varying the proposed scheme, either generally or so far as it relates to cases of the description to which the reference relates, as the Tribunal 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.

**119 Reference of licensing scheme to tribunal**

- (1) If while a licensing scheme is in operation a dispute arises between the operator of the scheme and—
  - (a) a person claiming that he requires a licence in a case of a description to which the scheme applies, or
  - (b) an organisation claiming to be representative of such persons,that person or organisation may refer the scheme to the Copyright Tribunal in so far as it relates to cases of that description.
- (2) A scheme which has been referred to the Tribunal under this section shall remain in operation until proceedings on the reference are concluded.
- (3) The Tribunal shall consider the matter in dispute and make such order, either confirming or varying the scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal 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.

**120 Further reference of scheme to tribunal**

- (1) Where the Copyright Tribunal has on a previous reference of a licensing scheme under section 118 or 119, or under this section, made an order with respect to the scheme, then, while the order remains in force—
  - (a) the operator of the scheme,
  - (b) a person claiming that he requires a licence in a case of the description to which the order applies, or
  - (c) an organisation claiming to be representative of such persons,may refer the scheme again to the Tribunal so far as it relates to cases of that description.
- (2) A licensing scheme shall not, except with the special leave of the Tribunal, be referred again to the Tribunal in respect of the same description of cases—
  - (a) within twelve months from the date of the order on the previous reference, or

- (b) if the order was made so as to be in force for 15 months or less, until the last three months before the expiry of the order.
- (3) A scheme which has been referred to the Tribunal under this section shall remain in operation until proceedings on the reference are concluded.
- (4) The Tribunal shall consider the matter in dispute and make such order, either confirming, varying or further varying the scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.
- (5) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

## **121 Application for grant of licence in connection with licensing scheme**

- (1) A person who claims, in a case covered by a licensing scheme, that the operator of the scheme has refused to grant him or procure the grant to him of a licence in accordance with the scheme, or has failed to do so within a reasonable time after being asked, may apply to the Copyright Tribunal.
- (2) A person who claims, in a case excluded from a licensing scheme, that the operator of the scheme either—
  - (a) has refused to grant him a licence or procure the grant to him of a licence, or has failed to do so within a reasonable time of being asked, and that in the circumstances it is unreasonable that a licence should not be granted, or
  - (b) proposes terms for a licence which are unreasonable,may apply to the Copyright Tribunal.
- (3) A case shall be regarded as excluded from a licensing scheme for the purposes of subsection (2) if—
  - (a) the scheme provides for the grant of licences subject to terms excepting matters from the licence and the case falls within such an exception, or
  - (b) the case is so similar to those in which licences are granted under the scheme that it is unreasonable that it should not be dealt with in the same way.
- (4) If the Tribunal is satisfied that the claim is well-founded, it shall make an order declaring that, in respect of the matters specified in the order, the applicant is entitled to a licence on such terms as the Tribunal may determine to be applicable in accordance with the scheme or, as the case may be, to be reasonable in the circumstances.
- (5) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

## **122 Application for review of order as to entitlement to licence**

- (1) Where the Copyright Tribunal has made an order under section 121 that a person is entitled to a licence under a licensing scheme, the operator of the scheme or the original applicant 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

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*Status: This is the original version (as it was originally enacted).*

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- (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 having regard to the terms applicable in accordance with the licensing scheme or, as the case may be, the circumstances of the case.

### **123 Effect of order of tribunal as to licensing scheme**

- (1) A licensing scheme which has been confirmed or varied by the Copyright Tribunal—
  - (a) under section 118 (reference of terms of proposed scheme), or
  - (b) under section 119 or 120 (reference of existing scheme to Tribunal),
 shall be in force or, as the case may be, remain in operation, so far as it relates to the description of case in respect of which the order was made, so long as the order remains in force.
- (2) While the order is in force a person who in a case of a class to which the order applies—
  - (a) pays to the operator of the scheme any charges payable under the scheme in respect of a licence covering the case in question or, if the amount cannot be ascertained, gives an undertaking to the operator to pay them when ascertained, and
  - (b) complies with the other terms applicable to such a licence under the scheme,
 shall 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 in accordance with the scheme.
- (3) The Tribunal may direct that the 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 was made or, if later, on which the scheme came into operation.

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 (2)(a) to the charges payable under the scheme shall be construed as a reference to the charges so payable by virtue of the order.

No such direction may be made where subsection (4) below applies.

- (4) An order of the Tribunal under section 119 or 120 made with respect to a scheme which is certified for any purpose under section 143 has effect, so far as it varies the scheme by reducing the charges payable for licences, from the date on which the reference was made to the Tribunal.
- (5) Where the Tribunal has made an order under section 121 (order as to entitlement to licence under licensing scheme) and the order remains in force, the person in whose favour the order is made shall if he—
  - (a) pays to the operator of the scheme 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.