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STATUTORY INSTRUMENTS

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**1990 No. 2008**

**COPYRIGHT**

**The Copyright (Certification of Licensing Scheme  
for Educational Recording of Broadcasts) (Open  
University Educational Enterprises Limited) Order 1990**

*Made - - - - 8th October 1990*

Whereas Open University Educational Enterprises Limited, whose registered office is at 12 Cofferridge Close, Stony Stratford, Milton Keynes, MK11 1BY, has applied to the Secretary of State to certify, for the purposes of section 35 of the Copyright, Designs and Patents Act 1988(1) (“the Act”), a licensing scheme to be operated by it:

And whereas the Secretary of State is satisfied that the scheme enables the works to which it relates to be identified with sufficient certainty by persons likely to require licences and that it sets out clearly the charges (if any) payable and the other terms on which licences will be granted:

Now, therefore, the Secretary of State, in exercise of the powers conferred upon him by section 143(2) and (3)(a) of the Act, hereby makes the following Order:—

1. This Order may be cited as the Copyright (Certification of Licensing Scheme for Educational Recording of Broadcasts) (Open University Educational Enterprises Limited) Order 1990.
2. The licensing scheme set out in the Schedule to this Order is certified for the purposes of section 35 of the Act (recording by educational establishments of broadcasts or cable programmes).
3. The certification under article 2 above shall, for the purposes of section 35 of the Act, come into operation on 3rd December 1990.

8th October 1990

*Douglas Hogg*  
Minister for Industry and Enterprise,  
Department of Trade and Industry

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## SCHEDULE

Article 2

### OPEN UNIVERSITY EDUCATIONAL ENTERPRISES LIMITED LICENSING SCHEME

#### **Licensing scheme for the recording of television programmes**

Open University Educational Enterprises Limited operates a licensing scheme for the off-air recording of designated television programmes. The scheme set out hereunder is operated for the purposes of section 35 of the Copyright, Designs and Patents Act 1988 (“the Act”) in respect of recording of broadcasts by educational establishments.

The works for which licences are offered under the scheme are designated programmes.

The charges payable for the licence (the programme fees) are set out in Appendix A hereto. Licences shall be issued on the terms set out in Appendix B hereto.

In the Scheme and the Appendices —

“designated programmes” means the broadcast television programmes which shall be those broadcast by the British Broadcasting Corporation or other broadcasting organisation on behalf of the Open University;

“educational establishments” means any school as defined in section 174 of the Act and any other description of educational establishment as may be specified by order of the Secretary of State under that section<sup>(2)</sup>;

“educational purposes” means the showing of recordings of designated programmes exclusively in teaching, training or study as part of a formal or informal course of instruction undertaken or carried out by the Licensee for non-profit making purposes and where no charge is made on any person for the purposes of viewing the designated programmes;

“the Licensor” means Open University Educational Enterprises Limited;

“programme fee” means the fee payable calculated in accordance with the Licensor’s scale of programme fees as set out in appendix A for the use of a designated programme in accordance with the terms of the licence for a period of up to twelve months from the date of its recording unless or until the licence is terminated pursuant to Clause 2 or 6 of Appendix B;

and “record off-air” means to record by the use of any available playback device on video tape a transmission by broadcast or diffusion of television programmes to be received by television or similar receiving device.

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(2) See the Copyright (Educational Establishments) (No. 2) Order 1989 (S.I.1989/1068).

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## APPENDIX A

### PROGRAMME FEES

#### CATEGORY: 1

Scale of fees per annum for Schools and Sixth Form Colleges

#### OPEN UNIVERSITY TITLES

Annual Programme Fees: £5.35 per programme (plus VAT)

Please note that the FEE relates to EACH EPISODE of a series. VAT is additional. Thus a series of six programmes will attract six programme fees.

These fees apply to those programmes which are retained for use. A FREE 28 day period for PREVIEW purposes ONLY is allowed to assess suitability.

#### CATEGORY: 2

Scale of fees per annum for Colleges of Further Education, Colleges of Higher Education, Polytechnics, Universities and certain other individual educational institutions

#### OPEN UNIVERSITY TITLES

Number of recordings	Fee per annum or part thereof	Unit cost of additional recordings
<b>(Under 5 recordings will be charged at £19.36 per recording)</b>		
5	£ 96.80	£19.36
6—9		
10	155.25	15.48
11—14		
15	212.55	14.20
16—24		
25	322.65	12.90
26—49		
50	594.75	11.88
51—74		
75	865.75	11.50
76—99		
100	1,128.50	11.30
101—124		

Please note that the FEES relate to EACH EPISODE of a series. Thus a series of six programmes will attract six programme fees.

These fees apply to those programmes which are retained for use. A FREE 28 day period for PREVIEW purposes ONLY is allowed to assess suitability.

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Number of recordings	Fee per annum or part thereof	Unit cost of additional recordings
125	1,355.40	10.86
126—149		
150	1,552.50	10.38
151—199		
200	1,934.60	9.68
201—249		
250	2,328.70	9.30
251—299		
300	2,651.10	8.88
301—399		
400	3,290.00	8.22
401—499		
500	3,869.20	7.15

VAT is additional

Please note that the FEES relate to EACH EPISODE of a series. Thus a series of six programmes will attract six programme fees.

These fees apply to those programmes which are retained for use. A FREE 28 day period for PREVIEW purposes ONLY is allowed to assess suitability.

## APPENDIX B

### TERMS OF LICENCE

#### 1 GRANT

The educational establishment (hereinafter referred to as “the Licensee”) shall warrant that it is an educational establishment and the Licensor shall grant to the Licensee on the terms set out below a non-exclusive licence to record off-air designated programmes for educational purposes.

#### 2. TERM

The licence shall continue from the date of issue for a period of twelve months and shall be automatically renewed for further periods of twelve months unless or until terminated in accordance with Clause 6, or by either side giving to the other not less than one calendar month’s notice in writing to expire on the date of anniversary of any twelve month period.

#### 3. WARRANTIES AND OBLIGATIONS OF THE LICENSOR

3.—(1) Warranties: the Licensor warrants that it is the owner of the relevant copyrights, or the duly appointed licensor of the relevant copyright owners and/or broadcasting companies and it has full power and authority to grant the rights set out herein.

(2) Obligations: the Licensor shall publish a schedule of titles annually.

#### 4. OBLIGATIONS OF THE LICENSEE

The Licensee shall:

(1) Ensure that all recording off-air is made by a lecturer, instructor, teacher or other suitably qualified person appointed for the purpose by the Licensee.

(2) Ensure that recordings of the designated programmes are not edited, cut or amended in any way without prior written permission of the Licensor and are not shown or disclosed or passed into the possession of any third party and are not removed from the direct control of the Licensee.

(3) Ensure that the recorded designated programmes are used for educational purposes only and the Licensee shall not itself or through its employees or agents sell, lend, hire or otherwise use or dispose of recordings of designated programmes other than in accordance with the terms of the licence and shall prevent any third party from duplicating, selling, lending, hiring or otherwise using or disposing of recordings of the designated programmes.

(4) Make up, retain and keep made up such detailed and accurate records as may be required by the Licensor of the designated programmes recorded and in particular shall complete the log sheets provided by or approved in writing by the Licensor.

(5) Affix to each recording in a prominent place and shall not obscure, remove, alter or deface a label which shall include the title of the designated programme and the date upon which it was recorded.

(6) Return to the Licensor copies of all duly completed log sheets on dates, not exceeding three times in each twelve month licence period (and on termination of the licence), to be notified to the Licensee in writing by the Licensor.

(7) Subject to paragraph (8) below erase any and all recordings of the designated programmes in existence at the expiration of the licence period or upon termination of the licence whichever shall be sooner and shall supply to the Licensor a certificate of erasure within 28 days of such expiration or termination.

(8) If the licence period is automatically continued without interruption for a further period of twelve months pursuant to Clause 2 the Licensee may at its option and subject to paragraph (7)

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above retain recordings of designated programmes provided such programmes remain entered into the log for the following twelve month period and subject always to the proper programme fees thereof being paid.

## **5. CONSIDERATION**

In consideration for this licence:

- (1) The Licensee shall pay the Licensor (inclusive of VAT) the fees as set out in Appendix A.
- (2) Fees payable under paragraph (1) hereof shall be calculated by the Licensor annually and shall be payable within thirty days of the date of the invoice whenever sent to the Licensee by the Licensor.
- (3) The Licensee shall permit its records and accounts to be examined upon reasonable notice in writing from the Licensor by the Licensor's properly appointed representative at the Licensor's expense to verify the records and payments for which a provision is made in the licence.

## **6. TERMINATION**

The Licensor shall at its option be entitled by notice in writing to the Licensee to terminate the licence forthwith in any of the following events that is to say if the Licensee shall:

- (1) Fail to promptly account and make payments hereunder or shall fail to perform any other obligation required of it thereunder and the Licensee shall not have cured or remedied such failure within fourteen days of a request from the Licensor (time being of the essence).
- (2) Adopt a resolution for its winding up (otherwise than for the purpose of and followed by an amalgamation or reconstruction) or if a petition is presented for the appointment of an administrator or if a receiver or an administrative receiver is appointed in respect of, or an encumbrancer takes possession of, the whole or any part of its undertaking or assets or if the Licensee is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.
- (3) Cease to carry on the business or function as an educational establishment.

## **7. ALTERATIONS TO AGREEMENT**

Any alteration or variation to this licence shall not be valid or enforceable unless recorded in writing and signed by an authorised signatory of each party.

## **8. ASSIGNMENT**

The licence is personal to the Licensee and the Licensee shall not assign the benefits or obligations of agreement.

## **9. EXPENSES**

Save as otherwise expressed all expenses of and incidental to the fulfilment of the licence shall be borne by the party incurring such expense.

## **10. FORCE MAJEURE**

Neither party shall be liable in any way for any delays or failure to perform its obligations under the licence resulting from any cause beyond its reasonable control.

## **11. NOTICE**

Any notice or other communication required to be given (whether required to be given in writing or otherwise) shall be given by post, cable, telex or facsimile copy addressed to the party to receive such notice at its address for service being its address contained in the licence or such other address as shall have been notified to the other party for the purpose. Any notice given by post shall be deemed to have been served at the expiration of three days after it is posted. Any notice given by cable, telex or facsimile copy shall be deemed to have been served (at the sender's address for service) on the date on which it was dispatched.

## 12. INDEMNITY

The Licensee will indemnify and at all times keep the Licensor fully indemnified against all actions, proceedings, claims, costs and damages whatsoever made against or incurred by the Licensor in consequence of any breach or non-performance by the Licensee, its employees or agents of any of the covenants herein contained.

## 13. LAW OF ENGLAND

The law of England and Wales shall govern the licence.

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### EXPLANATORY NOTE

*(This note is not part of the Order)*

Under section 35 of the Copyright, Designs and Patents Act 1988 recordings of broadcasts and cable programmes may be made by or on behalf of educational establishments without thereby infringing copyright. The section does not, however, apply if and to the extent that there is a licensing scheme certified for the purposes of that section providing for the grant of licences.

This Order certifies the licensing scheme to be operated by Open University Educational Enterprises Limited (effective from 3rd December 1990) for the granting of licences to educational establishments for the recording by them of television programmes broadcast on behalf of the Open University.