
STATUTORY INSTRUMENTS

1996 No. 2967

The Copyright and Related Rights Regulations 1996

PART II

AMENDMENTS OF THE COPYRIGHT, DESIGNS AND PATENTS ACT 1988

Performers' rights

Extension of performers' rights

20.—(1) For section 182 (performers' rights: consent required for recording or live transmission of performance) substitute—

“182 Consent required for recording, &c. of live performance.

(1) A performer's rights are infringed by a person who, without his consent—

- (a) makes a recording of the whole or any substantial part of a qualifying performance directly from the live performance,
- (b) broadcasts live, or includes live in a cable programme service, the whole or any substantial part of a qualifying performance,
- (c) makes a recording of the whole or any substantial part of a qualifying performance directly from a broadcast of, or cable programme including, the live performance.

(2) A performer's rights are not infringed by the making of any such recording by a person for his private and domestic use.

(3) In an action for infringement of a performer's rights brought by virtue of this section damages shall not be awarded against a defendant who shows that at the time of the infringement he believed on reasonable grounds that consent had been given.”.

(2) After that section insert—

“Consent required for copying of recording.

182A.—(1) A performer's rights are infringed by a person who, without his consent, makes, otherwise than for his private and domestic use, a copy of a recording of the whole or any substantial part of a qualifying performance.

(2) It is immaterial whether the copy is made directly or indirectly.

(3) The right of a performer under this section to authorise or prohibit the making of such copies is referred to in this Part as “reproduction right”.

Consent required for issue of copies to public.

182B.—(1) A performer’s rights are infringed by a person who, without his consent, issues to the public copies of a recording of the whole or any substantial part of a qualifying performance.

- (2) References in this Part to the issue to the public of copies of a recording are to—
- (a) the act of putting into circulation in the EEA copies not previously put into circulation in the EEA by or with the consent of the performer, or
 - (b) the act of putting into circulation outside the EEA copies not previously put into circulation in the EEA or elsewhere.
- (3) References in this Part to the issue to the public of copies of a recording do not include—
- (a) any subsequent distribution, sale, hiring or loan of copies previously put into circulation (but see section 182C: consent required for rental or lending), or
 - (b) any subsequent importation of such copies into the United Kingdom or another EEA state,

except so far as paragraph (a) of subsection (2) applies to putting into circulation in the EEA copies previously put into circulation outside the EEA.

(4) References in this Part to the issue of copies of a recording of a performance include the issue of the original recording of the live performance.

(5) The right of a performer under this section to authorise or prohibit the issue of copies to the public is referred to in this Part as “distribution right”.

Consent required for rental or lending of copies to public.

182C.—(1) A performer’s rights are infringed by a person who, without his consent, rents or lends to the public copies of a recording of the whole or any substantial part of a qualifying performance.

- (2) In this Part, subject to the following provisions of this section—
- (a) “rental” means making a copy of a recording available for use, on terms that it will or may be returned, for direct or indirect economic or commercial advantage, and
 - (b) “lending” means making a copy of a recording available for use, on terms that it will or may be returned, otherwise than for direct or indirect economic or commercial advantage, through an establishment which is accessible to the public.
- (3) The expressions “rental” and “lending” do not include—
- (a) making available for the purpose of public performance, playing or showing in public, broadcasting or inclusion in a cable programme service;
 - (b) making available for the purpose of exhibition in public; or
 - (c) making available for on-the-spot reference use.

(4) The expression “lending” does not include making available between establishments which are accessible to the public.

(5) Where lending by an establishment accessible to the public gives rise to a payment the amount of which does not go beyond what is necessary to cover the operating costs of the establishment, there is no direct or indirect economic or commercial advantage for the purposes of this section.

(6) References in this Part to the rental or lending of copies of a recording of a performance include the rental or lending of the original recording of the live performance.

- (7) In this Part—

“rental right” means the right of a performer under this section to authorise or prohibit the rental of copies to the public, and

“lending right” means the right of a performer under this section to authorise or prohibit the lending of copies to the public.

Right to equitable remuneration for exploitation of sound recording.

182D.—(1) Where a commercially published sound recording of the whole or any substantial part of a qualifying performance—

- (a) is played in public, or
- (b) is included in a broadcast or cable programme service,

the performer is entitled to equitable remuneration from the owner of the copyright in the sound recording.

(2) The right to equitable remuneration under this section may not be assigned by the performer except to a collecting society for the purpose of enabling it to enforce the right on his behalf.

The right is, however, transmissible by testamentary disposition or by operation of law as personal or moveable property; and it may be assigned or further transmitted by any person into whose hands it passes.

(3) The amount payable by way of equitable remuneration is as agreed by or on behalf of the persons by and to whom it is payable, subject to the following provisions.

(4) In default of agreement as to the amount payable by way of equitable remuneration, the person by or to whom it is payable may apply to the Copyright Tribunal to determine the amount payable.

(5) A person to or by whom equitable remuneration is payable may also apply to the Copyright Tribunal—

- (a) to vary any agreement as to the amount payable, or
- (b) to vary any previous determination of the Tribunal as to that matter;

but except with the special leave of the Tribunal no such application may be made within twelve months from the date of a previous determination.

An order made on an application under this subsection has effect from the date on which it is made or such later date as may be specified by the Tribunal.

(6) On an application under this section the Tribunal shall consider the matter and make such order as to the method of calculating and paying equitable remuneration as it may determine to be reasonable in the circumstances, taking into account the importance of the contribution of the performer to the sound recording.

(7) An agreement is of no effect in so far as it purports—

- (a) to exclude or restrict the right to equitable remuneration under this section, or
- (b) to prevent a person questioning the amount of equitable remuneration or to restrict the powers of the Copyright Tribunal under this section.”

(3) In Schedule 2 (rights in performances: permitted acts), after paragraph 6 insert—

“Lending of copies by educational establishments

6A.—(1) The rights conferred by Part II are not infringed by the lending of copies of a recording of a performance by an educational establishment.

(2) Expressions used in this paragraph have the same meaning as in section 36A; and any provision with respect to the application of that section made under section 174(2) (instruction given elsewhere than an educational establishment) applies also for the purposes of this paragraph.

Lending of copies by libraries or archives

6B.—(1) The rights conferred by Part II are not infringed by the lending of copies of a recording of a performance by a prescribed library or archive (other than a public library) which is not conducted for profit.

(2) Expressions used in this paragraph have the same meaning as in section 40A(2); and any provision under section 37 prescribing libraries or archives for the purposes of that section applies also for the purposes of this paragraph.”;

and after paragraph 14 insert—

“Lending of certain recordings

14A.—(1) The Secretary of State may by order provide that in such cases as may be specified in the order the lending to the public of copies of films or sound recordings shall be treated as licensed by the performer subject only to the payment of such reasonable royalty or other payment as may be agreed or determined in default of agreement by the Copyright Tribunal.

(2) No such order shall apply if, or to the extent that, there is a licensing scheme certified for the purposes of this paragraph under paragraph 16 of Schedule 2A providing for the grant of licences.

(3) An order may make different provision for different cases and may specify cases by reference to any factor relating to the work, the copies lent, the lender or the circumstances of the lending.

(4) An order shall be made by statutory instrument; and no order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

(5) Nothing in this section affects any liability under section 184(1)(b) (secondary infringement: possessing or dealing with illicit recording) in respect of the lending of illicit recordings.

(6) Expressions used in this paragraph have the same meaning as in section 66.”.

(4) In section 212 (index of defined expressions: Part II), at the appropriate places insert—

“distribution right section 182B(5)”

“lending right section 182C(7)”

“rental right section 182C(7)”

“reproduction right section 182A(3)”.

Performers' property rights

21.—(1) After section 191 insert—

“Performers' property rights

Performers' property rights.

191A.—(1) The following rights conferred by this Part on a performer—

reproduction right (section 182A),
distribution right (section 182B),
rental right and lending right (section 182C),
are property rights (“a performer’s property rights”).

(2) References in this Part to the consent of the performer shall be construed in relation to a performer’s property rights as references to the consent of the rights owner.

(3) Where different persons are (whether in consequence of a partial assignment or otherwise) entitled to different aspects of a performer’s property rights in relation to a performance, the rights owner for any purpose of this Part is the person who is entitled to the aspect of those rights relevant for that purpose.

(4) Where a performer’s property rights (or any aspect of them) is owned by more than one person jointly, references in this Part to the rights owner are to all the owners, so that, in particular, any requirement of the licence of the rights owner requires the licence of all of them.

Assignment and licences.

191B.—(1) A performer’s property rights are transmissible by assignment, by testamentary disposition or by operation of law, as personal or moveable property.

(2) An assignment or other transmission of a performer’s property rights may be partial, that is, limited so as to apply—

- (a) to one or more, but not all, of the things requiring the consent of the rights owner;
- (b) to part, but not the whole, of the period for which the rights are to subsist.

(3) An assignment of a performer’s property rights is not effective unless it is in writing signed by or on behalf of the assignor.

(4) A licence granted by the owner of a performer’s property rights is binding on every successor in title to his interest in the rights, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser; and references in this Part to doing anything with, or without, the licence of the rights owner shall be construed accordingly.

Prospective ownership of a performer’s property rights.

191C.—(1) This section applies where by an agreement made in relation to a future recording of a performance, and signed by or on behalf of the performer, the performer purports to assign his performer’s property rights (wholly or partially) to another person.

(2) If on the rights coming into existence the assignee or another person claiming under him would be entitled as against all other persons to require the rights to be vested in him, they shall vest in the assignee or his successor in title by virtue of this subsection.

(3) A licence granted by a prospective owner of a performer’s property rights is binding on every successor in title to his interest (or prospective interest) in the rights, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser.

References in this Part to doing anything with, or without, the licence of the rights owner shall be construed accordingly.

(4) In subsection (3) “prospective owner” in relation to a performer’s property rights means a person who is prospectively entitled to those rights by virtue of such an agreement as is mentioned in subsection (1).

Exclusive licences.

191D.—(1) In this Part an “exclusive licence” means a licence in writing signed by or on behalf of the owner of a performer’s property rights authorising the licensee to the exclusion of all other persons, including the person granting the licence, to do anything requiring the consent of the rights owner.

(2) The licensee under an exclusive licence has the same rights against a successor in title who is bound by the licence as he has against the person granting the licence.

Performer’s property right to pass under will with unpublished original recording.

191E. Where under a bequest (whether general or specific) a person is entitled beneficially or otherwise to any material thing containing an original recording of a performance which was not published before the death of the testator, the bequest shall, unless a contrary intention is indicated in the testator’s will or a codicil to it, be construed as including any performer’s rights in relation to the recording to which the testator was entitled immediately before his death.

Presumption of transfer of rental right in case of film production agreement.

191F.—(1) Where an agreement concerning film production is concluded between a performer and a film producer, the performer shall be presumed, unless the agreement provides to the contrary, to have transferred to the film producer any rental right in relation to the film arising from the inclusion of a recording of his performance in the film.

(2) Where this section applies, the absence of signature by or on behalf of the performer does not exclude the operation of section 191C (effect of purported assignment of future rights).

(3) The reference in subsection (1) to an agreement concluded between a performer and a film producer includes any agreement having effect between those persons, whether made by them directly or through intermediaries.

(4) Section 191G (right to equitable remuneration on transfer of rental right) applies where there is a presumed transfer by virtue of this section as in the case of an actual transfer.

Right to equitable remuneration where rental right transferred.

191G.—(1) Where a performer has transferred his rental right concerning a sound recording or a film to the producer of the sound recording or film, he retains the right to equitable remuneration for the rental.

The reference above to the transfer of rental right by one person to another includes any arrangement having that effect, whether made by them directly or through intermediaries.

(2) The right to equitable remuneration under this section may not be assigned by the performer except to a collecting society for the purpose of enabling it to enforce the right on his behalf.

The right is, however, transmissible by testamentary disposition or by operation of law as personal or moveable property; and it may be assigned or further transmitted by any person into whose hands it passes.

(3) Equitable remuneration under this section is payable by the person for the time being entitled to the rental right, that is, the person to whom the right was transferred or any successor in title of his.

(4) The amount payable by way of equitable remuneration is as agreed by or on behalf of the persons by and to whom it is payable, subject to section 191H (reference of amount to Copyright Tribunal).

(5) An agreement is of no effect in so far as it purports to exclude or restrict the right to equitable remuneration under this section.

(6) In this section a “collecting society” means a society or other organisation which has as its main object, or one of its main objects, the exercise of the right to equitable remuneration on behalf of more than one performer.

Equitable remuneration: reference of amount to Copyright Tribunal.

191H.—(1) In default of agreement as to the amount payable by way of equitable remuneration under section 191G, the person by or to whom it is payable may apply to the Copyright Tribunal to determine the amount payable.

(2) A person to or by whom equitable remuneration is payable may also apply to the Copyright Tribunal—

- (a) to vary any agreement as to the amount payable, or
- (b) to vary any previous determination of the Tribunal as to that matter;

but except with the special leave of the Tribunal no such application may be made within twelve months from the date of a previous determination.

An order made on an application under this subsection has effect from the date on which it is made or such later date as may be specified by the Tribunal.

(3) On an application under this section the Tribunal shall consider the matter and make such order as to the method of calculating and paying equitable remuneration as it may determine to be reasonable in the circumstances, taking into account the importance of the contribution of the performer to the film or sound recording.

(4) Remuneration shall not be considered inequitable merely because it was paid by way of a single payment or at the time of the transfer of the rental right.

(5) An agreement is of no effect in so far as it purports to prevent a person questioning the amount of equitable remuneration or to restrict the powers of the Copyright Tribunal under this section.

Infringement actionable by rights owner.

191I.—(1) An infringement of a performer’s property rights is actionable by the rights owner.

(2) In an action for infringement of a performer’s property rights all such relief by way of damages, injunctions, accounts or otherwise is available to the plaintiff as is available in respect of the infringement of any other property right.

(3) This section has effect subject to the following provisions of this Part.

Provisions as to damages in infringement action.

191J.—(1) Where in an action for infringement of a performer’s property rights it is shown that at the time of the infringement the defendant did not know, and had no reason to believe, that the rights subsisted in the recording to which the action relates, the plaintiff is not entitled to damages against him, but without prejudice to any other remedy.

(2) The court may in an action for infringement of a performer’s property rights having regard to all the circumstances, and in particular to—

- (a) the flagrancy of the infringement, and
- (b) any benefit accruing to the defendant by reason of the infringement,

award such additional damages as the justice of the case may require.

Undertaking to take licence of right in infringement proceedings.

191K.—(1) If in proceedings for infringement of a performer's property rights in respect of which a licence is available as of right under paragraph 17 of Schedule 2A (powers exercisable in consequence of competition report) the defendant undertakes to take a licence on such terms as may be agreed or, in default of agreement, settled by the Copyright Tribunal under that paragraph—

- (a) no injunction shall be granted against him,
- (b) no order for delivery up shall be made under section 195, and
- (c) the amount recoverable against him by way of damages or on an account of profits shall not exceed double the amount which would have been payable by him as licensee if such a licence on those terms had been granted before the earliest infringement.

(2) An undertaking may be given at any time before final order in the proceedings, without any admission of liability.

(3) Nothing in this section affects the remedies available in respect of an infringement committed before licences of right were available.

Rights and remedies for exclusive licensee.

191L.—(1) An exclusive licensee has, except against the owner of a performer's property rights, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment.

(2) His rights and remedies are concurrent with those of the rights owner; and references in the relevant provisions of this Part to the rights owner shall be construed accordingly.

(3) In an action brought by an exclusive licensee by virtue of this section a defendant may avail himself of any defence which would have been available to him if the action had been brought by the rights owner.

Exercise of concurrent rights.

191M.—(1) Where an action for infringement of a performer's property rights brought by the rights owner or an exclusive licensee relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action, the rights owner or, as the case may be, the exclusive licensee may not, without the leave of the court, proceed with the action unless the other is either joined as plaintiff or added as a defendant.

(2) A rights owner or exclusive licensee who is added as a defendant in pursuance of subsection (1) is not liable for any costs in the action unless he takes part in the proceedings.

(3) The above provisions do not affect the granting of interlocutory relief on an application by the rights owner or exclusive licensee alone.

(4) Where an action for infringement of a performer's property rights is brought which relates (wholly or partly) to an infringement in respect of which the rights owner and an exclusive licensee have or had concurrent rights of action—

- (a) the court shall in assessing damages take into account—
 - (i) the terms of the licence, and
 - (ii) any pecuniary remedy already awarded or available to either of them in respect of the infringement;

- (b) no account of profits shall be directed if an award of damages has been made, or an account of profits has been directed, in favour of the other of them in respect of the infringement; and
- (c) the court shall if an account of profits is directed apportion the profits between them as the court considers just, subject to any agreement between them; and these provisions apply whether or not the rights owner and the exclusive licensee are both parties to the action.

(5) The owner of a performer’s property rights shall notify any exclusive licensee having concurrent rights before applying for an order under section 195 (order for delivery up) or exercising the right conferred by section 196 (right of seizure); and the court may on the application of the licensee make such order under section 195 or, as the case may be, prohibiting or permitting the exercise by the rights owner of the right conferred by section 196, as it thinks fit having regard to the terms of the licence.”.

(2) For section 192 (transmission of rights) substitute—

“Non-property rights

192A Performers' non-property rights.

- (1) the rights conferred on a performer by—
 - section 182 (consent required for recording, &c. of live performance),
 - section 183 (infringement of performer’s rights by use of recording made without consent), and
 - section 184 (infringement of performer’s rights importing, possessing or dealing with illicit recording),are not assignable or transmissible, except to the following extent.

They are referred to in this Part as “a performer’s non-property rights”.

- (2) On the death of a person entitled to any such right—
 - (a) the right passes to such person as he may by testamentary disposition specifically direct, and
 - (b) if or to the extent that there is no such direction, the right is exercisable by his personal representatives.

(3) References in this Part to the performer, in the context of the person having any such right, shall be construed as references to the person for the time being entitled to exercise those rights.

(4) Where by virtue of subsection (2)(a) a right becomes exercisable by more than one person, it is exercisable by each of them independently of the other or others.

(5) Any damages recovered by personal representatives by virtue of this section in respect of an infringement after a person’s death shall devolve as part of his estate as if the right of action had subsisted and been vested in him immediately before his death.

192B Transmissibility of rights of person having recording rights.

(1) The rights conferred by this Part on a person having recording rights are not assignable or transmissible.

(2) This does not affect section 185(2)(b) or (3)(b), so far as those provisions confer rights under this Part on a person to whom the benefit of a contract or licence is assigned.”.

- (3) In section 193 (consent)—
- (a) in subsection (1), after “Consent for the purposes of this Part” insert “by a person having a performer’s non-property rights, or by a person having recording rights,”; and
 - (b) in subsection (3), for “a right conferred by this Part” substitute “a performer’s non-property right”.
- (4) In section 194 (infringement actionable as breach of statutory duty), for “any of the rights conferred by this Part” substitute
- (a) “a performer’s non-property rights, or
 - (b) any right conferred by this Part on a person having recording rights,”.
- (5) The headings in Part II falsified by the above amendments are amended as follows—
- (a) for the heading before section 191 substitute—

“Duration of rights”;
 - (b) omit the heading before section 194;
 - (c) before section 195 insert the heading—

“Delivery up or seizure of illicit recordings”.
- (6) In section 212 (index of defined expressions: Part II), at the appropriate places insert—
- “consent of performer (in relation to performer’s property rights) section 191A(2)”
 - “performer’s non-property rights section 192A(1)”
 - “performer’s property rights section 191A(1)”
 - “rights owner (in relation to performer’s property rights) section 191A(3) and (4)”.

Licensing of performers' property rights

- 22.**—(1) In Part II (performers' rights), after section 205 insert—

“Licensing of performers' property rights

Licensing of performers' property rights.

205A. The provisions of Schedule 2A have effect with respect to the licensing of performers' property rights.”.

- (2) After Schedule 2 insert—

“SCHEDULE 2A

LICENSING OF PERFORMERS' PROPERTY RIGHTS

Licensing schemes and licensing bodies

- 1.**—(1) In Part II a “licensing scheme” means a scheme setting out—
- (a) the classes of case in which the operator of the scheme, or the person on whose behalf he acts, is willing to grant performers' property right licences, and
 - (b) the terms on which licences would be granted in those classes of case;

and for this purpose a “scheme” includes anything in the nature of a scheme, whether described as a scheme or as a tariff or by any other name.

(2) In Part II a “licensing body” means a society or other organisation which has as its main object, or one of its main objects, the negotiating or granting, whether as owner or prospective owner of a performer’s property rights or as agent for him, of performers’ property right licences, and whose objects include the granting of licences covering the performances of more than one performer.

(3) In this paragraph “performers’ property right licences” means licences to do, or authorise the doing of, any of the things for which consent is required under section 182A, 182B or 182C.

(4) References in this Part to licences or licensing schemes covering the performances of more than one performer do not include licences or schemes covering only—

- (a) performances recorded in a single recording,
- (b) performances recorded in more than one recording where—
 - (i) the performers giving the performances are the same, or
 - (ii) the recordings are made by, or by employees of or commissioned by, a single individual, firm, company or group of companies. For purpose a group of companies means a holding company and its subsidiaries within the meaning of section 736 of the Companies Act 1985.

References and applications with respect to licensing schemes

2. Paragraphs 3 to 8 (references and applications with respect to licensing schemes) apply to licensing schemes operated by licensing bodies in relation to a performer’s property rights which cover the performances of more than one performer, so far as they relate to licences for—

- (a) copying a recording of the whole or any substantial part of a qualifying performance, or
- (b) renting or lending copies of a recording to the public;

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

Reference of proposed licensing scheme to tribunal

3.—(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.

Reference of licensing scheme to tribunal

4.—(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 paragraph 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.

Further reference of scheme to tribunal

5.—(1) Where the Copyright Tribunal has on a previous reference of a licensing scheme under paragraph 3 or 4, or under this paragraph, 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 paragraph 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.

Application for grant of licence in connection with licensing scheme

6.—(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 subparagraph (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.

Application for review of order as to entitlement to licence

7.—(1) Where the Copyright Tribunal has made an order under paragraph 6 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 paragraph, 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 paragraph 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.

Effect of order of tribunal as to licensing scheme

- 8.—(1) A licensing scheme which has been confirmed or varied by the Copyright Tribunal—
 - (a) under paragraph 3 (reference of terms of proposed scheme), or
 - (b) under paragraph 4 or 5 (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 performers' property rights as if he had at all material times been the holder of a licence granted by the rights owner 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 sub-paragraph (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 sub-paragraph (4) below applies.

(4) An order of the Tribunal under paragraph 4 or 5 made with respect to a scheme which is certified for any purpose under paragraph 16 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 paragraph 6 (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 performers' property rights as if he had at all material times been the holder of a licence granted by the rights owner in question on the terms specified in the order.

References and applications with respect to licensing by licensing bodies

9. Paragraphs 10 to 13 (references and applications with respect to licensing by licensing bodies) apply to licences relating to a performer's property rights which cover the performance of more than one performer granted by a licensing body otherwise than in pursuance of a licensing scheme, so far as the licences authorise—

- (a) copying a recording of the whole or any substantial part of a qualifying performance, or
- (b) renting or lending copies of a recording to the public;

and references in those paragraphs to a licence shall be construed accordingly.

Reference to tribunal of proposed licence

10.—(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.

Reference to tribunal of expiring licence

11.—(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 paragraph may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

Application for review of order as to licence

12.—(1) Where the Copyright Tribunal has made an order under paragraph 10 or 11, 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 paragraph, 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 paragraph 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.

Effect of order of tribunal as to licence

13.—(1) Where the Copyright Tribunal has made an order under paragraph 10 or 11 and the order remains in force, the person entitled to the benefit of the order shall if he—

(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 performers' property rights as if he had at all material times been the holder of a licence granted by the rights owner 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 paragraph 10, if assignment is not prohibited under the terms of the Tribunal's order; and

(b) in the case of an order under paragraph 11, if assignment was not prohibited under the terms of the original licence.

(3) The Tribunal may direct that an order under paragraph 10 or 11, or an order under paragraph 12 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 sub-paragraph (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.

General considerations: unreasonable discrimination

14.—(1) In determining what is reasonable on a reference or application under this Schedule relating to a licensing scheme or licence, the Copyright Tribunal shall have regard to—

- (a) the availability of other schemes, or the granting of other licences, to other persons in similar circumstances, and
- (b) the terms of those schemes or licences,

and shall exercise its powers so as to secure that there is no unreasonable discrimination between licensees, or prospective licensees, under the scheme or licence to which the reference or application relates and licensees under other schemes operated by, or other licences granted by, the same person.

(2) This does not affect the Tribunal's general obligation in any case to have regard to all relevant circumstances.

Application to settle royalty or other sum payable for lending

15.—(1) An application to settle the royalty or other sum payable in pursuance of paragraph 14A of Schedule 2 (lending of certain recordings) may be made to the Copyright Tribunal by the owner of a performer's property rights or the person claiming to be treated as licensed by him.

(2) The Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.

(3) Either party may subsequently apply to the Tribunal to vary the order, and the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.

(4) An application under sub-paragraph (3) shall not, except with the special leave of the Tribunal, be made within twelve months from the date of the original order or of the order on a previous application under that sub-paragraph.

(5) An order under sub-paragraph (3) has effect from the date on which it is made or such later date as may be specified by the Tribunal.

Certification of licensing schemes

16.—(1) A person operating or proposing to operate a licensing scheme may apply to the Secretary of State to certify the scheme for the purposes of paragraph 14A of Schedule 2 (lending of certain recordings).

(2) The Secretary of State shall by order made by statutory instrument certify the scheme if he is satisfied that it—

- (a) enables the works to which it relates to be identified with sufficient certainty by persons likely to require licences, and

- (b) sets out clearly the charges (if any) payable and the other terms on which licences will be granted.
- (3) The scheme shall be scheduled to the order and the certification shall come into operation for the purposes of paragraph 14A of Schedule 2—
 - (a) on such date, not less than eight weeks after the order is made, as may be specified in the order, or
 - (b) if the scheme is the subject of a reference under paragraph 3 (reference of proposed scheme), any later date on which the order of the Copyright Tribunal under that paragraph comes into force or the reference is withdrawn.
- (4) A variation of the scheme is not effective unless a corresponding amendment of the order is made; and the Secretary of State shall make such an amendment in the case of a variation ordered by the Copyright Tribunal on a reference under paragraph 3, 4 or 5, and may do so in any other case if he thinks fit.
- (5) The order shall be revoked if the scheme ceases to be operated and may be revoked if it appears to the Secretary of State that it is no longer being operated according to its terms.

Powers exercisable in consequence of competition report

17.—(1) Where the matters specified in a report of the Monopolies and Mergers Commission as being those which in the Commission’s opinion operate, may be expected to operate or have operated against the public interest include—

- (a) conditions in licences granted by the owner of a performer’s property rights restricting the use to which a recording may be put by the licensee or the right of the owner to grant other licences, or
- (b) a refusal of an owner of a performer’s property rights to grant licences on reasonable terms,

the powers conferred by Part I of Schedule 8 to the Fair Trading Act 1973 (powers exercisable for purpose of remedying or preventing adverse effects specified in report of Commission) include power to cancel or modify those conditions and, instead or in addition, to provide that licences in respect of the performer’s property rights shall be available as of right.

(2) The references in sections 56(2) and 73(2) of that Act, and sections 10(2)(b) and 12(5) of the Competition Act 1980, to the powers specified in that Part of that Schedule shall be construed accordingly.

(3) A Minister shall only exercise the powers available by virtue of this paragraph if he is satisfied that to do so does not contravene any Convention relating to performers’ rights to which the United Kingdom is a party.

(4) The terms of a licence available by virtue of this paragraph shall, in default of agreement, be settled by the Copyright Tribunal on an application by the person requiring the licence; and terms so settled shall authorise the licensee to do everything in respect of which a licence is so available.

(5) Where the terms of a licence are settled by the Tribunal, the licence has effect from the date on which the application to the Tribunal was made.”.

Performers’ rights: power of Copyright Tribunal to give consent

23.—(1) Section 190 (power of tribunal to give consent on behalf of performer in certain cases) is amended as follows.

- (2) For subsection (1) substitute—

- “(1) The Copyright Tribunal may, on the application of a person wishing to make a copy of a recording of a performance, give consent in a case where the identity or whereabouts of the person entitled to the reproduction right cannot be ascertained by reasonable inquiry.”.
- (3) In subsection (2) for “the performer” substitute “the person entitled to the reproduction right”.
- (4) Omit subsection (4).
- (5) In subsection (6)—
- (a) for “the performer” in the first place where it occurs substitute “the person entitled to the reproduction right”, and
- (b) for “the performer” in the second place where it occurs substitute “that person”.

Performers' rights: jurisdiction of Copyright Tribunal

24.—(1) After section 205A (inserted by regulation 22(1)) insert—

“Jurisdiction of Copyright Tribunal

Jurisdiction of Copyright Tribunal.

205B.—(1) The Copyright Tribunal has jurisdiction under this Part to hear and determine proceedings under—

- (a) section 182D (amount of equitable remuneration for exploitation of commercial sound recording);
- (b) section 190 (application to give consent on behalf of owner of reproduction right);
- (c) section 191H (amount of equitable remuneration on transfer of rental right);
- (d) paragraph 3, 4 or 5 of Schedule 2A (reference of licensing scheme);
- (e) paragraph 6 or 7 of that Schedule (application with respect to licence under licensing scheme);
- (f) paragraph 10, 11 or 12 of that Schedule (reference or application with respect to licensing by licensing body);
- (g) paragraph 15 of that Schedule (application to settle royalty for certain lending);
- (h) paragraph 17 of that Schedule (application to settle terms of licence available as of right).

(2) The provisions of Chapter VIII of Part I (general provisions relating to the Copyright Tribunal) apply in relation to the Tribunal when exercising any jurisdiction under this Part.

(3) Provision shall be made by rules under section 150 prohibiting the Tribunal from entertaining a reference under paragraph 3, 4 or 5 of Schedule 2A (reference of licensing scheme) by a representative organisation unless the Tribunal is satisfied that the organisation is reasonably representative of the class of persons which it claims to represent.”.

- (2) In section 149 (jurisdiction of the Tribunal)—
- (a) in the opening words for “The function of the Copyright Tribunal is” substitute “The Copyright Tribunal has jurisdiction under this Part”;
- (b) omit paragraphs (g) and (h).
- (3) In paragraph 5 of Schedule 6 (determination by Tribunal of royalty or other remuneration to be paid), after sub-paragraph (4) add—

“(5) The provisions of Chapter VIII of Part I (general provisions relating to the Copyright Tribunal) apply in relation to the Tribunal when exercising any jurisdiction under this paragraph.”.