

## SCHEDULE 2

Regulation 24.

### LICENSING OF DATABASE RIGHT

#### *Licensing scheme and licensing bodies*

1.—(1) In this Schedule 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 database 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 this Schedule 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 database right or as agent for him, of database right licences, and whose objects include the granting of licences covering the databases of more than one maker.

(3) In this paragraph “database right licences” means licences to do, or authorise the doing of, any of the things for which consent is required under Regulation 16.

2. Paragraphs 3 to 8 apply to licensing schemes which are operated by licensing bodies and cover databases of more than one maker so far as they relate to licences for extracting or re-utilising all or a substantial part of the contents of a database; and references in those paragraphs to a licensing scheme shall be construed accordingly.

#### *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.

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(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 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.

*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 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 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 database right as if he had at all material times been the holder of a licence granted by the owner of the database right 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—

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- (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) 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 database right as if he had at all material times been the holder of a licence granted by the owner of the database right in question on the terms specified in the order.

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

**9.** Paragraphs 10 to 13 (references and applications with respect to licensing by licensing bodies) apply to licences relating to database right which cover databases of more than one maker granted by a licensing body otherwise than in pursuance of a licensing scheme, so far as the licences authorise extracting or re-utilising all or a substantial part of the contents of a database; 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 section 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 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.

*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 database right as if he had at all material times been the holder of a licence granted by the owner of the database right 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.

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*General considerations: unreasonable discrimination*

**14.** 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.

*Powers exercisable in consequence of competition report*

**15.—(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 database right in a database restricting the use of the database by the licensee or the right of the owner of the database right to grant other licences, or
- (b) a refusal of an owner of database right to grant licences on reasonable terms,

the powers conferred by Part I of Schedule 8 to the Fair Trading Act 1973<sup>(1)</sup> (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 database right 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<sup>(2)</sup>, to the powers specified in that Part of that Schedule shall be construed accordingly.

(3) 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.

(4) 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.

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(1) 1973 c. 41.  
(2) 1980 c. 21.