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STATUTORY INSTRUMENTS

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**2003 No. 2498**

**The Copyright and Related Rights Regulations 2003**

**PART 2**

**AMENDMENTS OF THE COPYRIGHT, DESIGNS AND PATENTS ACT 1988**

*Acts permitted in relation to copyright works and rights in performances*

**Amendment of provisions on public showing or playing of broadcast**

**21.**—(1) Section 72 shall be amended as follows—

(a) for subsections (1)(a) and (b) there shall be substituted—

“(a) the broadcast;

(b) any sound recording (except so far as it is an excepted sound recording) included in it; or

(c) any film included in it.”;

(b) after subsection (1) there shall be inserted—

“(1A) For the purposes of this Part an “excepted sound recording” is a sound recording—

(a) whose author is not the author of the broadcast in which it is included; and

(b) which is a recording of music with or without words spoken or sung.

(1B) Where by virtue of subsection (1) the copyright in a broadcast shown or played in public is not infringed, copyright in any excepted sound recording included in it is not infringed if the playing or showing of that broadcast in public—

(a) forms part of the activities of an organisation that is not established or conducted for profit; or

(b) is necessary for the purposes of—

(i) repairing equipment for the reception of broadcasts;

(ii) demonstrating that a repair to such equipment has been carried out; or

(iii) demonstrating such equipment which is being sold or let for hire or offered or exposed for sale or hire.”.

(2) Paragraph 18 of Schedule 2 shall be amended as follows—

(a) in sub-paragraph (1)(b) after the words “sound recording” there shall be inserted “(except so far as it is an excepted sound recording)”;

(b) after sub-paragraph (1) there shall be inserted—

“(1A) The showing or playing in public of a broadcast to an audience who have not paid for admission to the place where the broadcast is to be seen or heard does not infringe any right conferred by Part 2 in relation to a performance or recording included in any

excepted sound recording which is played in public by reception of the broadcast, if the playing or showing of that broadcast in public—

- (a) forms part of the activities of an organisation that is not established or conducted for profit; or
- (b) is necessary for the purposes of—
  - (i) repairing equipment for the reception of broadcasts;
  - (ii) demonstrating that a repair to such equipment has been carried out; or
  - (iii) demonstrating such equipment which is being sold or let for hire or offered or exposed for sale or hire.”.

(3) After section 128 there shall be inserted—

**“Notification of licence or licensing scheme for excepted sound recordings**

**128A.**—(1) This section only applies to a proposed licence or licensing scheme that will authorise the playing in public of excepted sound recordings included in broadcasts, in circumstances where by reason of the exclusion of excepted sound recordings from section 72(1), the playing in public of such recordings would otherwise infringe the copyright in them.

(2) A licensing body must notify the Secretary of State of the details of any proposed licence or licensing scheme for excepted sound recordings before it comes into operation.

(3) A licence or licensing scheme, which has been notified under subsection (2), may not be operated by the licensing body until 28 days have elapsed since that notification.

(4) Subject to subsection (5), the Secretary of State shall take into account the matters set out in subsection (6) and then either—

- (a) refer the licence or licensing scheme to the Copyright Tribunal for a determination of whether the licence or licensing scheme is reasonable in the circumstances, or
- (b) notify the licensing body that he does not intend to refer the licence or licensing scheme to the Tribunal.

(5) If the Secretary of State becomes aware—

- (a) that a licensing body has failed to notify him of a licence or licensing scheme under subsection (2) before it comes into operation; or
- (b) that a licence or licensing scheme has been operated within 28 days of a notification under subsection (2),

subsection (4) does not apply, but the Secretary of State may at any time refer the licence or licensing scheme to the Tribunal for a determination of whether the licence or licensing scheme is reasonable in the circumstances, or may notify the licensing body that he does not intend to refer it to the Tribunal.

(6) The matters referred to in subsection (4) are—

- (a) whether the terms and conditions of the proposed licence or licensing scheme have taken into account the factors set out in subsection (7);
- (b) any written representations received by the Secretary of State;
- (c) previous determinations of the Tribunal;
- (d) the availability of other schemes, or the granting of other licences, to other persons in similar circumstances, and the terms of those schemes or licences; and

- (e) the extent to which the licensing body has consulted any person who would be affected by the proposed licence or licensing scheme, or organisations representing such persons, and the steps, if any, it has taken as a result.
- (7) The factors referred to in subsection (6) are—
- (a) the extent to which the broadcasts to be shown or played by a potential licensee in circumstances mentioned in subsection (1) are likely to include excepted sound recordings;
  - (b) the size and the nature of the audience that a licence or licensing scheme would permit to hear the excepted sound recordings;
  - (c) what commercial benefit a potential licensee is likely to obtain from playing the excepted sound recordings; and
  - (d) the extent to which the owners of copyright in the excepted sound recordings will receive equitable remuneration, from sources other than the proposed licence or licensing scheme, for the inclusion of their recordings in the broadcasts to be shown or played in public by a potential licensee.
- (8) A proposed licence or licensing scheme that must be notified to the Secretary of State under subsection (2) may only be referred to the Tribunal under section 118 or 125 before such notification takes place.
- (9) A proposed licensing scheme that has been notified to the Secretary of State under subsection (2) may only be referred to the Tribunal under section 119 after the Secretary of State has notified the licensing body that he does not intend to refer the licensing scheme to the Tribunal.
- (10) If a reference made to the Tribunal under section 118 or 125 is permitted under subsection (8) then—
- (a) the reference shall not be considered premature only because the licence or licensing scheme has not been notified to the Secretary of State under subsection (2); and
  - (b) where the Tribunal decides to entertain the reference, subsection (2) to (5) shall not apply.
- (11) Nothing in this section shall be taken to prejudice any right to make a reference or application to the Tribunal under sections 120 to 122, 126 or 127.
- (12) This section applies to modifications to an existing licence or licensing scheme as it applies to a proposed licence or licensing scheme.
- (13) In this section and in section 128B, any reference to a “licence” means a licence granted by a licensing body otherwise than in pursuance of a licensing scheme and which covers works of more than one author.

### **References to the Tribunal by the Secretary of State under section 128A**

**128B.**—(1) The Copyright Tribunal may make appropriate enquiries to establish whether a licence or licensing scheme referred to it by the Secretary of State under section 128A(4)(a) or (5) is reasonable in the circumstances.

(2) When considering the matter referred, and after concluding any such enquiries, the Tribunal shall take into account—

- (a) whether the terms and conditions of the proposed licence or licensing scheme have taken into account the factors set out in section 128A(7); and
  - (b) any other factors it considers relevant,
- and shall then make an order under subsection (3).

- (3) The Tribunal shall make such order—
  - (a) in the case of a licensing scheme, either confirming or varying the proposed scheme, either generally or so far as it relates to cases of any description; or
  - (b) in the case of a licence, either confirming or varying the proposed licence, as the Tribunal may determine to be reasonable in the circumstances.

(4) The Tribunal may direct that the order, so far as it reduces the amount of charges payable, has effect from a date before that on which it is made.

If such a direction is made, any necessary repayments to a licensee shall be made in respect of charges already paid.

(5) The Tribunal may award simple interest on repayments, at such rate and for such period, ending not later than the date of the order, as it thinks fit.”.

(4) In section 120(1) for the words “section 118 or 119” there shall be substituted “section 118, 119 or 128A”.

(5) In section 127(1) for the words “section 125 or 126” there shall be substituted “section 125, 126 or 128B (where that order did not relate to a licensing scheme)”.

(6) In section 149 after paragraph (c) there shall be inserted—

“(ca) section 128B (reference by the Secretary of State under section 128A);”.

(7) In section 179 (index of defined expressions: Part 1), at the appropriate place insert—

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“excepted sound recording

section 72(1A)”.

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