



# Copyright, Designs and Patents Act 1988

## 1988 CHAPTER 48

### PART I

#### COPYRIGHT

#### CHAPTER VII

##### COPYRIGHT LICENSING

**Modifications etc. (not altering text)**

**C1** Pt. I Ch. VII (ss. 116-144) applied (with modifications) (1.12.1996) by [S.I. 1996/2967, reg. 17\(1\)-\(3\)](#) (with [Pt. III](#))

*Licensing schemes and licensing bodies*

**116 Licensing schemes and licensing bodies.**

- (1) In this Part 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 copyright 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 Chapter a “licensing body” means a society or other organisation which has as its main object, or one of its main objects, the negotiation or granting, either as owner or prospective owner of copyright or as agent for him, of copyright licences, and whose objects include the granting of licences covering works of more than one author.
- (3) In this section “copyright licences” means licences to do, or authorise the doing of, any of the acts restricted by copyright.

*Status: Point in time view as at 28/05/1998. This version of this chapter contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Chapter VII. (See end of Document for details)*

- (4) References in this Chapter to licences or licensing schemes covering works of more than one author do not include licences or schemes covering only—
- (a) a single collective work or collective works of which the authors are the same, or
  - (b) works made by, or by employees of or commissioned by, a single individual, firm, company or group of companies.

For this purpose a group of companies means a holding company and its subsidiaries, within the meaning of section 736 of the <sup>M1</sup>Companies Act 1985.

#### Marginal Citations

**M1** 1985 c. 6.

#### *References and applications with respect to licensing schemes*

#### [<sup>F1</sup>117 **Licensing schemes to which following sections apply.**

Sections 118 to 123 (references and applications with respect to licensing schemes) apply to licensing schemes which are operated by licensing bodies and cover works of more than one author, so far as they relate to licences for—

- (a) copying the work,
- (b) rental or lending of copies of the work to the public,
- (c) performing, showing or playing the work in public, or
- (d) broadcasting the work or including it in a cable programme service;

and references in those sections to a licensing scheme shall be construed accordingly.]

#### Textual Amendments

**F1** S. 117 substituted (1.12.1996) by [S.I. 1996/2967](#), [reg. 15\(2\)](#) (with [Pt. III](#))

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

- (1) The terms of a licensing scheme proposed to be operated by a licensing body may be referred to the Copyright Tribunal by an organisation claiming to be representative of persons claiming that they require licences in cases of a description to which the scheme would apply, either generally or in relation to any description of case.
- (2) The Tribunal shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.
- (3) If the Tribunal decides to entertain the reference it shall consider the matter referred and make such order, either confirming or varying the proposed scheme, either generally or so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.
- (4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

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## **119 Reference of licensing scheme to tribunal.**

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

## **120 Further reference of scheme to tribunal.**

- (1) Where the Copyright Tribunal has on a previous reference of a licensing scheme under section 118 or 119, or under this section, made an order with respect to the scheme, then, while the order remains in force—
  - (a) the operator of the scheme,
  - (b) a person claiming that he requires a licence in a case of the description to which the order applies, or
  - (c) an organisation claiming to be representative of such persons,may refer the scheme again to the Tribunal so far as it relates to cases of that description.
- (2) A licensing scheme shall not, except with the special leave of the Tribunal, be referred again to the Tribunal in respect of the same description of cases—
  - (a) within twelve months from the date of the order on the previous reference, or
  - (b) if the order was made so as to be in force for 15 months or less, until the last three months before the expiry of the order.
- (3) A scheme which has been referred to the Tribunal under this section shall remain in operation until proceedings on the reference are concluded.
- (4) The Tribunal shall consider the matter in dispute and make such order, either confirming, varying or further varying the scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.
- (5) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

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

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

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

- (1) Where the Copyright Tribunal has made an order under section 121 that a person is entitled to a licence under a licensing scheme, the operator of the scheme or the original applicant may apply to the Tribunal to review its order.
- (2) An application shall not be made, except with the special leave of the Tribunal—
  - (a) within twelve months from the date of the order, or of the decision on a previous application under this section, or
  - (b) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this section is due to expire within 15 months of that decision, until the last three months before the expiry date.
- (3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal may determine to be reasonable having regard to the terms applicable in accordance with the licensing scheme or, as the case may be, the circumstances of the case.

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

- (1) A licensing scheme which has been confirmed or varied by the Copyright Tribunal—
  - (a) under section 118 (reference of terms of proposed scheme), or
  - (b) under section 119 or 120 (reference of existing scheme to Tribunal),

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shall be in force or, as the case may be, remain in operation, so far as it relates to the description of case in respect of which the order was made, so long as the order remains in force.

- (2) While the order is in force a person who in a case of a class to which the order applies—
- (a) pays to the operator of the scheme any charges payable under the scheme in respect of a licence covering the case in question or, if the amount cannot be ascertained, gives an undertaking to the operator to pay them when ascertained, and
  - (b) complies with the other terms applicable to such a licence under the scheme,
- shall be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question in accordance with the scheme.
- (3) The Tribunal may direct that the order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference was made or, if later, on which the scheme came into operation.

If such a direction is made—

- (a) any necessary repayments, or further payments, shall be made in respect of charges already paid, and
- (b) the reference in subsection (2)(a) to the charges payable under the scheme shall be construed as a reference to the charges so payable by virtue of the order.

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

- (4) An order of the Tribunal under section 119 or 120 made with respect to a scheme which is certified for any purpose under section 143 has effect, so far as it varies the scheme by reducing the charges payable for licences, from the date on which the reference was made to the Tribunal.
- (5) Where the Tribunal has made an order under section 121 (order as to entitlement to licence under licensing scheme) and the order remains in force, the person in whose favour the order is made shall if he—
- (a) pays to the operator of the scheme any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained, and
  - (b) complies with the other terms specified in the order,
- be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question on the terms specified in the order.

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

## **[<sup>F2</sup>124 Licences to which following sections apply.**

Sections 125 to 128 (references and applications with respect to licensing by licensing bodies) apply to licences which are granted by a licensing body otherwise than in pursuance of a licensing scheme and cover works of more than one author, so far as they authorise—

- (a) copying the work,

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- (b) rental or lending of copies of the work to the public,
  - (c) performing, showing or playing the work in public, or
  - (d) broadcasting the work or including it in a cable programme service;
- and references in those sections to a licence shall be construed accordingly.]

#### Textual Amendments

**F2** S. 124 substituted (1.12.1996) by [S.I. 1996/2967, reg. 15\(3\)](#) (with [Pt. III](#))

### 125 Reference to tribunal of proposed licence.

- (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.

### 126 Reference to tribunal of expiring licence.

- (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.

### 127 Application for review of order as to licence.

- (1) Where the Copyright Tribunal has made an order under section 125 or 126, 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 section, or

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- (b) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this section is due to expire within 15 months of that decision, until the last three months before the expiry date.
- (3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal may determine to be reasonable in the circumstances.

## **128 Effect of order of tribunal as to licence.**

- (1) Where the Copyright Tribunal has made an order under section 125 or 126 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 copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question on the terms specified in the order.
- (2) The benefit of the order may be assigned—
  - (a) in the case of an order under section 125, if assignment is not prohibited under the terms of the Tribunal's order; and
  - (b) in the case of an order under section 126, if assignment was not prohibited under the terms of the original licence.
- (3) The Tribunal may direct that an order under section 125 or 126, or an order under section 127 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 subsection (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.

VALID FROM 31/10/2003

### **[<sup>F3</sup>128A Notification of licence or licensing scheme for excepted sound recordings**

- (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.

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- (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



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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.]

#### Textual Amendments

- F3** Ss. 128A, 128B inserted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), **reg. 21(3)** (with [regs. 31-40](#))

VALID FROM 31/10/2003

#### **[<sup>F3</sup>128B References to the Tribunal by the Secretary of State under section 128A**

- (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.

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- (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.]

#### Textual Amendments

- F3** Ss. 128A, 128B inserted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), [reg. 21\(3\)](#) (with [regs. 31-40](#))

#### *Factors to be taken into account in certain classes of case*

### **129 General considerations: unreasonable discrimination.**

In determining what is reasonable on a reference or application under this Chapter 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.

### **130 Licences for reprographic copying.**

Where a reference or application is made to the Copyright Tribunal under this Chapter relating to the licensing of reprographic copying of published literary, dramatic, musical or artistic works, or the typographical arrangement of published editions, the Tribunal shall have regard to—

- (a) the extent to which published editions of the works in question are otherwise available,
- (b) the proportion of the work to be copied, and
- (c) the nature of the use to which the copies are likely to be put.

### **131 Licences for educational establishments in respect of works included in broadcasts or cable programmes.**

- (1) This section applies to references or applications under this Chapter relating to licences for the recording by or on behalf of educational establishments of broadcasts or cable programmes which include copyright works, or the making of copies of such recordings, for educational purposes.
- (2) The Copyright Tribunal shall, in considering what charges (if any) should be paid for a licence, have regard to the extent to which the owners of copyright in the works included in the broadcast or cable programme have already received, or are entitled to receive, payment in respect of their inclusion.

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### **132 Licences to reflect conditions imposed by promoters of events.**

- (1) This section applies to references or applications under this Chapter in respect of licences relating to sound recordings, films, broadcasts or cable programmes which include, or are to include, any entertainment or other event.
- (2) The Copyright Tribunal shall have regard to any conditions imposed by the promoters of the entertainment or other event; and, in particular, the Tribunal shall not hold a refusal or failure to grant a licence to be unreasonable if it could not have been granted consistently with those conditions.
- (3) Nothing in this section shall require the Tribunal to have regard to any such conditions in so far as they—
  - (a) purport to regulate the charges to be imposed in respect of the grant of licences, or
  - (b) relate to payments to be made to the promoters of any event in consideration of the grant of facilities for making the recording, film, broadcast or cable programme.

### **133 Licences to reflect payments in respect of underlying rights.**

- [<sup>F4</sup>(1) In considering what charges should be paid for a licence—
- (a) on a reference or application under this Chapter relating to licences for the rental or lending of copies of a work, or
  - (b) on an application under section 142 (royalty or other sum payable for lending of certain works), the Copyright Tribunal shall take into account any reasonable payments which the owner of the copyright in the work is liable to make in consequence of the granting of the licence, or of the acts authorised by the licence, to owners of copyright in works included in that work.]
- (2) On any reference or application under this Chapter relating to licensing in respect of the copyright in sound recordings, films, broadcasts or cable programmes, the Copyright Tribunal shall take into account, in considering what charges should be paid for a licence, any reasonable payments which the copyright owner is liable to make in consequence of the granting of the licence, or of the acts authorised by the licence, in respect of any performance included in the recording, film, broadcast or cable programme.

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#### **Textual Amendments**

**F4** S. 133(1) substituted (1.12.1996) by **S.I. 1996/2967, reg. 13(1)** (with Pt. III)

### **134 Licences in respect of works included in re-transmissions.**

- (1) [<sup>F5</sup>Subject to subsection (3A)] this section applies to references or applications under this Chapter relating to licences to include in a broadcast or cable programme service—
- (a) literary, dramatic, musical or artistic works, or,
  - (b) sound recordings or films,
- where one broadcast or cable programme (“the first transmission”) is, by reception and immediate re-transmission, to be further broadcast or included in a cable programme service (“the further transmission”).

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- (2) So far as the further transmission is to the same area as the first transmission, the Copyright Tribunal shall, in considering what charges (if any) should be paid for licences for either transmission, have regard to the extent to which the copyright owner has already received, or is entitled to receive, payment for the other transmission which adequately remunerates him in respect of transmissions to that area.
- (3) So far as the further transmission is to an area outside that to which the first transmission was made, the Tribunal shall (except where subsection (4) applies) leave the further transmission out of account in considering what charges (if any) should be paid for licences for the first transmission.
- [<sup>F6</sup>(3A) This section does not apply in relation to any application under section 73A (royalty or other sum payable in pursuance of section 73(4)).]

<sup>F7</sup>(4) . . . . .

#### Textual Amendments

- F5** Words in s. 134(1) inserted (1.10.1996) by 1996 c. 55, s. 138, **Sch. 9 para. 2(2)** (with s. 43(6)); S.I. 1996/2120, art. 4(1), **Sch. 1**
- F6** S. 134(3A) inserted (1.10.1996) by 1996 c. 55, s. 138, **Sch. 9 para. 2(3)** (with s. 43(6)); S.I. 1996/2120, art. 4(1), **Sch. 1**
- F7** S. 134(4) repealed by **Broadcasting Act 1990 (c. 42, SIF 96), s. 203(3), Sch. 21**

### 135 Mention of specific matters not to exclude other relevant considerations.

The mention in sections 129 to 134 of specific matters to which the Copyright Tribunal is to have regard in certain classes of case does not affect the Tribunal's general obligation in any case to have regard to all relevant considerations.

[<sup>F8</sup> Use as of right of sound recordings in broadcasts and cable programme services]

#### Textual Amendments

- F8** Ss. 135A–135G inserted by **Broadcasting Act 1990 (c. 42, SIF 96), s. 175(1)**

### 135A Circumstances in which right available.

- (1) Section 135C applies to the inclusion in a broadcast or cable programme service of any sound recordings if—
- (a) a licence to include those recordings in the broadcast or cable programme service could be granted by a licensing body or such a body could procure the grant of a licence to do so,
  - (b) the condition in subsection (2) or (3) applies, and
  - (c) the person including those recordings in the broadcast or cable programme service has complied with section 135B.
- (2) Where the person including the recordings in the broadcast or cable programme service does not hold a licence to do so, the condition is that the licensing body refuses to grant, or procure the grant of, such a licence, being a licence—

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- (a) whose terms as to payment for including the recordings in the broadcast or cable programme service would be acceptable to him or comply with an order of the Copyright Tribunal under section 135D relating to such a licence or any scheme under which it would be granted, and
  - (b) allowing unlimited needletime or such needletime as he has demanded.
- (3) Where he holds a licence to include the recordings in the broadcast or cable programme service, the condition is that the terms of the licence limit needletime and the licensing body refuses to substitute or procure the substitution of terms allowing unlimited needletime or such needletime as he has demanded, or refuses to do so on terms that fall within subsection (2)(a).
- (4) The references in subsection (2) to refusing to grant, or procure the grant of, a licence, and in subsection (3) to refusing to substitute or procure the substitution of terms, include failing to do so within a reasonable time of being asked.
- (5) In the group of sections from this section to section 135G—
  - “needletime” means the time in any period (whether determined as a number of hours in the period or a proportion of the period, or otherwise) in which any recordings may be included in a broadcast or cable programme service;
  - “sound recording” does not include a film sound track when accompanying a film.
- (6) In sections 135B to 135G, “terms of payment” means terms as to payment for including sound recordings in a broadcast or cable programme service.

**[<sup>F9</sup>135B Notice of intention to exercise right.**

- (1) A person intending to avail himself of the right conferred by section 135C must—
  - (a) give notice to the licensing body of his intention to exercise the right, asking the body to propose terms of payment, and
  - (b) after receiving the proposal or the expiry of a reasonable period, give reasonable notice to the licensing body of the date on which he proposes to begin exercising that right, and the terms of payment in accordance with which he intends to do so.
- (2) Where he has a licence to include the recordings in a broadcast or cable programme service, the date specified in a notice under subsection (1)(b) must not be sooner than the date of expiry of that licence except in a case falling within section 135A(3).
- (3) Before the person intending to avail himself of the right begins to exercise it, he must—
  - (a) give reasonable notice to the Copyright Tribunal of his intention to exercise the right, and of the date on which he proposes to begin to do so, and
  - (b) apply to the Tribunal under section 135D to settle the terms of payment.]

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**Textual Amendments**

**F9** Ss. 135A–135G inserted by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), s. 175(1)

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### [<sup>F10</sup>135C] **Conditions for exercise of right.**

- (1) A person who, on or after the date specified in a notice under section 135B(1)(b), includes in a broadcast or cable programme service any sound recordings in circumstances in which this section applies, and who—
  - (a) complies with any reasonable condition, notice of which has been given to him by the licensing body, as to inclusion in the broadcast or cable programme service of those recordings,
  - (b) provides that body with such information about their inclusion in the broadcast or cable programme service as it may reasonably require, and
  - (c) makes the payments to the licensing body that are required by this section,
 shall be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question.
- (2) Payments are to be made at not less than quarterly intervals in arrears.
- (3) The amount of any payment is that determined in accordance with any order of the Copyright Tribunal under section 135D or, if no such order has been made—
  - (a) in accordance with any proposal for terms of payment made by the licensing body pursuant to a request under section 135B, or
  - (b) where no proposal has been so made or the amount determined in accordance with the proposal so made is unreasonably high, in accordance with the terms of payment notified to the licensing body under section 135B(1)(b).
- (4) Where this section applies to the inclusion in a broadcast or cable programme service of any sound recordings, it does so in place of any licence.]

#### **Textual Amendments**

**F10** Ss. 135A–135G inserted by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), s. 175(1)

### [<sup>F11</sup>135D] **Applications to settle payments.**

- (1) On an application to settle the terms of payment, the Copyright Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.
- (2) An order under subsection (1) has effect from the date the applicant begins to exercise the right conferred by section 135C and any necessary repayments, or further payments, shall be made in respect of amounts that have fallen due.]

#### **Textual Amendments**

**F11** Ss. 135A–135G inserted by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), s. 175(1)

### [<sup>F12</sup>135E] **References etc. about conditions, information and other terms.**

- (1) A person exercising the right conferred by section 135C, or who has given notice to the Copyright Tribunal of his intention to do so, may refer to the Tribunal—

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- (a) any question whether any condition as to the inclusion in a broadcast or cable programme service of sound recordings, notice of which has been given to him by the licensing body in question, is a reasonable condition, or
  - (b) any question whether any information is information which the licensing body can reasonably require him to provide.
- (2) On a reference under this section, the Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.]

#### Textual Amendments

**F12** Ss. 135A–135G inserted by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), s. 175(1)

#### [<sup>F13</sup>135F Application for review of order.

- (1) A person exercising the right conferred by section 135C or the licensing body may apply to the Copyright Tribunal to review any order under section 135D or 135E.
- (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 fifteen months or less, or as a result of a decision on a previous application is due to expire within fifteen months of that decision, until the last three months before the expiry date.
- (3) On the application 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 order under this section has effect from the date on which it is made or such later date as may be specified by the Tribunal.]

#### Textual Amendments

**F13** Ss. 135A–135G inserted by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), s. 175(1)

#### [<sup>F14</sup>135G Factors to be taken into account.

- (1) In determining what is reasonable on an application or reference under section 135D or 135E, or on reviewing any order under section 135F, the Copyright Tribunal shall—
  - (a) have regard to the terms of any orders which it has made in the case of persons in similar circumstances exercising the right conferred by section 135C, and
  - (b) exercise its powers so as to secure that there is no unreasonable discrimination between persons exercising that right against the same licensing body.
- (2) In settling the terms of payment under section 135D, the Tribunal shall not be guided by any order it has made under any enactment other than that section.
- (3) Section 134 (factors to be taken into account: retransmissions) applies on an application or reference under sections 135D to 135F as it applies on an application or reference relating to a licence.]



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#### Textual Amendments

**F14** Ss. 135A–135G inserted by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), **s. 175(1)**

### [<sup>F15</sup>135H Power to amend sections 135A to 135G.

- (1) The Secretary of State may by order, subject to such transitional provision as appears to him to be appropriate, amend sections 135A to 135G so as—
  - (a) to include in any reference to sound recordings any works of a description specified in the order; or
  - (b) to exclude from any reference to a broadcast or cable programme service any broadcast or cable programme service of a description so specified.
- (2) 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 resolution of each House of Parliament.]

#### Textual Amendments

**F15** S. 135H inserted (1.11.1996) by [1996 c. 55, s. 139\(1\)](#) (with [s. 43\(6\)](#)); [S.I. 1996/2120, art. 5, Sch. 2](#)

### *Implied indemnity in schemes or licences for reprographic copying*

## 136 Implied indemnity in certain schemes and licences for reprographic copying.

- (1) This section applies to—
  - (a) schemes for licensing reprographic copying of published literary, dramatic, musical or artistic works, or the typographical arrangement of published editions, and
  - (b) licences granted by licensing bodies for such copying,
 where the scheme or licence does not specify the works to which it applies with such particularity as to enable licensees to determine whether a work falls within the scheme or licence by inspection of the scheme or licence and the work.
- (2) There is implied—
  - (a) in every scheme to which this section applies an undertaking by the operator of the scheme to indemnify a person granted a licence under the scheme, and
  - (b) in every licence to which this section applies an undertaking by the licensing body to indemnify the licensee,
 against any liability incurred by him by reason of his having infringed copyright by making or authorising the making of reprographic copies of a work in circumstances within the apparent scope of his licence.
- (3) The circumstances of a case are within the apparent scope of a licence if—
  - (a) it is not apparent from inspection of the licence and the work that it does not fall within the description of works to which the licence applies; and
  - (b) the licence does not expressly provide that it does not extend to copyright of the description infringed.



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- (4) In this section “liability” includes liability to pay costs; and this section applies in relation to costs reasonably incurred by a licensee in connection with actual or contemplated proceedings against him for infringement of copyright as it applies to sums which he is liable to pay in respect of such infringement.
- (5) A scheme or licence to which this section applies may contain reasonable provision—
  - (a) with respect to the manner in which, and time within which, claims under the undertaking implied by this section are to be made;
  - (b) enabling the operator of the scheme or, as the case may be, the licensing body to take over the conduct of any proceedings affecting the amount of his liability to indemnify.

### *Reprographic copying by educational establishments*

## **137 Power to extend coverage of scheme or licence.**

- (1) This section applies to—
  - (a) a licensing scheme to which sections 118 to 123 apply (see section 117) and which is operated by a licensing body, or
  - (b) a licence to which sections 125 to 128 apply (see section 124),so far as it provides for the grant of licences, or is a licence, authorising the making by or on behalf of educational establishments for the purposes of instruction of reprographic copies of published literary, dramatic, musical or artistic works, or of the typographical arrangement of published editions.
- (2) If it appears to the Secretary of State with respect to a scheme or licence to which this section applies that—
  - (a) works of a description similar to those covered by the scheme or licence are unreasonably excluded from it, and
  - (b) making them subject to the scheme or licence would not conflict with the normal exploitation of the works or unreasonably prejudice the legitimate interests of the copyright owners,he may by order provide that the scheme or licence shall extend to those works.
- (3) Where he proposes to make such an order, the Secretary of State shall give notice of the proposal to—
  - (a) the copyright owners,
  - (b) the licensing body in question, and
  - (c) such persons or organisations representative of educational establishments, and such other persons or organisations, as the Secretary of State thinks fit.
- (4) The notice shall inform those persons of their right to make written or oral representations to the Secretary of State about the proposal within six months from the date of the notice; and if any of them wishes to make oral representations, the Secretary of State shall appoint a person to hear the representations and report to him.
- (5) In considering whether to make an order the Secretary of State shall take into account any representations made to him in accordance with subsection (4), and such other matters as appear to him to be relevant.

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**Modifications etc. (not altering text)**

**C2** Ss. 137–141 extended by [S.I. 1989/1067, art. 2](#)

**138 Variation or discharge of order extending scheme or licence.**

- (1) The owner of the copyright in a work in respect of which an order is in force under section 137 may apply to the Secretary of State for the variation or discharge of the order, stating his reasons for making the application.
- (2) The Secretary of State shall not entertain an application made within two years of the making of the original order, or of the making of an order on a previous application under this section, unless it appears to him that the circumstances are exceptional.
- (3) On considering the reasons for the application the Secretary of State may confirm the order forthwith; if he does not do so, he shall give notice of the application to—
  - (a) the licensing body in question, and
  - (b) such persons or organisations representative of educational establishments, and such other persons or organisations, as he thinks fit.
- (4) The notice shall inform those persons of their right to make written or oral representations to the Secretary of State about the application within the period of two months from the date of the notice; and if any of them wishes to make oral representations, the Secretary of State shall appoint a person to hear the representations and report to him.
- (5) In considering the application the Secretary of State shall take into account the reasons for the application, any representations made to him in accordance with subsection (4), and such other matters as appear to him to be relevant.
- (6) The Secretary of State may make such order as he thinks fit confirming or discharging the order (or, as the case may be, the order as previously varied), or varying (or further varying) it so as to exclude works from it.

**Modifications etc. (not altering text)**

**C3** Ss. 137–141 extended by [S.I. 1989/1067, art. 2](#)

**139 Appeals against orders.**

- (1) The owner of the copyright in a work which is the subject of an order under section 137 (order extending coverage of scheme or licence) may appeal to the Copyright Tribunal which may confirm or discharge the order, or vary it so as to exclude works from it, as it thinks fit having regard to the considerations mentioned in subsection (2) of that section.
- (2) Where the Secretary of State has made an order under section 138 (order confirming, varying or discharging order extending coverage of scheme or licence)—
  - (a) the person who applied for the order, or
  - (b) any person or organisation representative of educational establishments who was given notice of the application for the order and made representations in accordance with subsection (4) of that section,

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may appeal to the Tribunal which may confirm or discharge the order or make any other order which the Secretary of State might have made.

- (3) An appeal under this section shall be brought within six weeks of the making of the order or such further period as the Tribunal may allow.
- (4) An order under section 137 or 138 shall not come into effect until the end of the period of six weeks from the making of the order or, if an appeal is brought before the end of that period, until the appeal proceedings are disposed of or withdrawn.
- (5) If an appeal is brought after the end of that period, any decision of the Tribunal on the appeal does not affect the validity of anything done in reliance on the order appealed against before that decision takes effect.

**Modifications etc. (not altering text)**

C4 Ss. 137–141 extended by S.I. 1989/1067, art. 2

**140 Inquiry whether new scheme or general licence required.**

- (1) The Secretary of State may appoint a person to inquire into the question whether new provision is required (whether by way of a licensing scheme or general licence) to authorise the making by or on behalf of educational establishments for the purposes of instruction of reprographic copies of—
  - (a) published literary, dramatic, musical or artistic works, or
  - (b) the typographical arrangement of published editions,of a description which appears to the Secretary of State not to be covered by an existing licensing scheme or general licence and not to fall within the power conferred by section 137 (power to extend existing schemes and licences to similar works).
- (2) The procedure to be followed in relation to an inquiry shall be such as may be prescribed by regulations made by the Secretary of State.
- (3) The regulations shall, in particular, provide for notice to be given to—
  - (a) persons or organisations appearing to the Secretary of State to represent the owners of copyright in works of that description, and
  - (b) persons or organisations appearing to the Secretary of State to represent educational establishments,and for the making of written or oral representations by such persons; but without prejudice to the giving of notice to, and the making of representations by, other persons and organisations.
- (4) The person appointed to hold the inquiry shall not recommend the making of new provision unless he is satisfied—
  - (a) that it would be of advantage to educational establishments to be authorised to make reprographic copies of the works in question, and
  - (b) that making those works subject to a licensing scheme or general licence would not conflict with the normal exploitation of the works or unreasonably prejudice the legitimate interests of the copyright owners.

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- (5) If he does recommend the making of new provision he shall specify any terms, other than terms as to charges payable, on which authorisation under the new provision should be available.
- (6) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section (and section 141) a “general licence” means a licence granted by a licensing body which covers all works of the description to which it applies.

**Modifications etc. (not altering text)**

C5 Ss. 137–141 extended by S.I. 1989/1067, art. 2

**141 Statutory licence where recommendation not implemented.**

- (1) The Secretary of State may, within one year of the making of a recommendation under section 140 by order provide that if, or to the extent that, provision has not been made in accordance with the recommendation, the making by or on behalf of an educational establishment, for the purposes of instruction, of reprographic copies of the works to which the recommendation relates shall be treated as licensed by the owners of the copyright in the works.
- (2) For that purpose provision shall be regarded as having been made in accordance with the recommendation if—
  - (a) a certified licensing scheme has been established under which a licence is available to the establishment in question, or
  - (b) a general licence has been—
    - (i) granted to or for the benefit of that establishment, or
    - (ii) referred by or on behalf of that establishment to the Copyright Tribunal under section 125 (reference of terms of proposed licence), or
    - (iii) offered to or for the benefit of that establishment and refused without such a reference,
 and the terms of the scheme or licence accord with the recommendation.
- (3) The order shall also provide that any existing licence authorising the making of such copies (not being a licence granted under a certified licensing scheme or a general licence) shall cease to have effect to the extent that it is more restricted or more onerous than the licence provided for by the order.
- (4) The order shall provide for the licence to be free of royalty but, as respects other matters, subject to any terms specified in the recommendation and to such other terms as the Secretary of State may think fit.
- (5) The order may provide that where a copy which would otherwise be an infringing copy is made in accordance with the licence provided by the order but is subsequently dealt with, it shall be treated as an infringing copy for the purposes of that dealing, and if that dealing infringes copyright for all subsequent purposes.

In this subsection “dealt with” means sold or let for hire, offered or exposed for sale or hire, or exhibited in public.

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- (6) The order shall not come into force until at least six months after it is made.
- (7) An order may be varied from time to time, but not so as to include works other than those to which the recommendation relates or remove any terms specified in the recommendation, and may be revoked.
- (8) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) In this section a “certified licensing scheme” means a licensing scheme certified for the purposes of this section under section 143.

**Modifications etc. (not altering text)**

**C6** Ss. 137–141 extended by [S.I. 1989/1067, art. 2](#)

*[<sup>F16</sup>Royalty or other sum payable for lending of certain works]*

**Textual Amendments**

**F16** S. 142 and crossheading substituted (1.12.1996) by [S.I. 1996/2967, reg. 13\(2\)](#) (with [Pt. III](#))

**142** [<sup>F17</sup> **Royalty or other sum payable for lending of certain works.**]

- (1) An application to settle the royalty or other sum payable in pursuance of section 66 (lending of copies of certain copyright works) may be made to the Copyright Tribunal by the copyright owner 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 subsection (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 subsection.
- (5) An order under subsection (3) has effect from the date on which it is made or such later date as may be specified by the Tribunal.

**Textual Amendments**

**F17** S. 142 substituted (1.12.1996) by [S.I. 1996/2967, reg. 13\(2\)](#) (with [Pt. III](#))

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### *Certification of licensing schemes*

#### **143 Certification of licensing schemes.**

- (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—
  - (a) section 35 (educational recording of broadcasts or cable programmes),
  - (b) section 60 (abstracts of scientific or technical articles),
  - [<sup>F18</sup>(c) section 66 (lending to public of copies of certain works),]
  - (d) section 74 (sub-titled copies of broadcasts or cable programmes for people who are deaf or hard of hearing), or
  - (e) section 141 (reprographic copying of published works by educational establishments).
- (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 section 35, 60, 66, 74 or 141, as the case may be—
  - (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 section 118 (reference of proposed scheme), any later date on which the order of the Copyright Tribunal under that section 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 section 118, 119 or 120, 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.

#### **Textual Amendments**

**F18** S. 143(1)(c) substituted (1.12.1996) by S.I. 1996/2967, reg. 11(4) (with Pt. III)

### *Powers exercisable in consequence of competition report*

#### **144 Powers exercisable in consequence of report of Monopolies and Mergers Commission.**

- (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—

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- (a) conditions in licences granted by the owner of copyright in a work restricting the use of the work by the licensee or the right of the copyright owner to grant other licences, or
  - (b) a refusal of a copyright owner to grant licences on reasonable terms, the powers conferred by Part I of Schedule 8 to the <sup>M2</sup>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 copyright 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 <sup>M3</sup>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 section if he is satisfied that to do so does not contravene any Convention relating to copyright to which the United Kingdom is a party.
  - (4) The terms of a licence available by virtue of this section 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.

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**Marginal Citations**

**M2** 1973 c. 41.

**M3** 1980 c. 21.

*[<sup>F19</sup>Compulsory collective administration of certain rights]*

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**Textual Amendments**

**F19** S. 144A and crossheading inserted (1.12.1996) by S.I. 1996/2967, reg. 7 (with Pt. III)

**[<sup>F20</sup>144A Collective exercise of certain rights in relation to cable re-transmission.**

- (1) This section applies to the right of the owner of copyright in a literary, dramatic, musical or artistic work, sound recording or film to grant or refuse authorisation for cable re-transmission of a broadcast from another EEA member state in which the work is included. That right is referred to below as “cable re-transmission right”.
- (2) Cable re-transmission right may be exercised against a cable operator only through a licensing body.
- (3) Where a copyright owner has not transferred management of his cable re-transmission right to a licensing body, the licensing body which manages rights of the same category shall be deemed to be mandated to manage his right. Where more than one licensing body manages rights of that category, he may choose which of them is deemed to be mandated to manage his right.

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- (4) A copyright owner to whom subsection (3) applies has the same rights and obligations resulting from any relevant agreement between the cable operator and the licensing body as have copyright owners who have transferred management of their cable re-transmission right to that licensing body.
- (5) Any rights to which a copyright owner may be entitled by virtue of subsection (4) must be claimed within the period of three years beginning with the date of the cable re-transmission concerned.
- (6) This section does not affect any rights exercisable by the maker of the broadcast, whether in relation to the broadcast or a work included in it.
- (7) In this section— “cable operator” means a person providing a cable programme service; and
- “cable re-transmission” means the reception and immediate re-transmission by way of a cable programme service of a broadcast.]

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**Textual Amendments**

**F20** S. 144A inserted (1.12.1996) by [S.I. 1996/2967](#), [reg. 7](#) (with [Pt. III](#))



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