



# Copyright, Designs and Patents Act 1988

## 1988 CHAPTER 48

### PART I

#### COPYRIGHT

### CHAPTER VII

#### COPYRIGHT LICENSING

*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.

### **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**

- (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 to the public of copies of sound recordings, films or computer programs, or
  - (b) on an application under section 142 (settlement of royalty or other sum payable for deemed licence),the Copyright Tribunal shall take into account any reasonable payments which the owner of the copyright in the sound recording, film or computer program 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.

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

- (1) 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”).
- (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.
- (4) If the Tribunal is satisfied that requirements imposed under section 13(1) of the Cable and Broadcasting Act 1984 (duty of Cable Authority to secure inclusion of certain broadcasts in cable programme services) will result in the further transmission being to areas part of which fall outside the area to which the first transmission is made, the Tribunal shall exercise its powers so as to secure that the charges payable for licences for the first transmission adequately reflect that fact.

### **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.