

*Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, SCHEDULE 2A. (See end of Document for details)*

## SCHEDULES

### <sup>F1</sup>[SCHEDULE 2A

#### LICENSING OF PERFORMERS’ <sup>F2</sup> ... RIGHTS

##### Textual Amendments

- F1** Sch. 2A inserted (1.12.1996) by [S.I. 1996/2967](#), [reg. 22\(2\)](#) (with [Pt. III](#))
- F2** Word in Sch. 2A heading omitted (25.4.2013) by virtue of [Enterprise and Regulatory Reform Act 2013](#) (c. 24), s. 103(1), [Sch. 22 para. 3](#)

##### *Licensing schemes and licensing bodies*

- 1 (1) In [<sup>F3</sup>this Chapter] a “licensing scheme” means a scheme setting out—
- (a) the classes of case in which the operator of the scheme, or the person on whose behalf he acts, is willing to grant performers’ property right licences, and
  - (b) the terms on which licences would be granted in those classes of case;
- and for this purpose a “scheme” includes anything in the nature of a scheme, whether described as a scheme or as a tariff or by any other name.
- (2) In [<sup>F3</sup>this Chapter] a “licensing body” means a society or other organisation which has as its main object, or one of its main objects, the negotiating or granting, whether as owner or prospective owner of a performer’s property rights or as agent for him, of performers’ property right licences, and whose objects include the granting of licences covering the performances of more than one performer.
- (3) In this paragraph “performers’ property right licences” means licences to do, or authorise the doing of, any of the things for which consent is required under section 182A, [<sup>F4</sup>182B, 182C or 182CA] .
- (4) References in [<sup>F5</sup>this Chapter] to licences or licensing schemes covering the performances of more than one performer do not include licences or schemes covering only—
- (a) performances recorded in a single recording,
  - (b) performances recorded in more than one recording where—
    - (i) the performers giving the performances are the same, or
    - (ii) the recordings are made by, or by employees of or commissioned by, a single individual, firm, company or group of companies. For purpose a group of companies means a holding company and its subsidiaries within the meaning of [<sup>F6</sup>section 1159 of the Companies Act 2006].

[ Schedule A1 confers powers to provide for the regulation of licensing bodies.]

<sup>F7</sup>(5)

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#### Textual Amendments

- F3** Words in Sch. 2A para. 1(1)(2) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), reg. 2, **Sch. para. 9** (with reg. 8)
- F4** Words in Sch. 2A para. 1(3) substituted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), reg. 7(4)(a) (with reg. 31-40)
- F5** Words in Sch. 2A para. 1(4) substituted (1.2.2006) by [The Performances \(Moral Rights, etc.\) Regulations 2006 \(S.I. 2006/18\)](#), reg. 2, **Sch. para. 8** (with reg. 8)
- F6** Words in Sch. 2A para. 1(4) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), **Sch. 1 para. 98(b)** (with art. 10)
- F7** Sch. 2A para. 1(5) inserted (25.4.2013) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(1), **Sch. 22 para. 4**

### *[F8] Power to provide for licensing of orphan rights*

#### Textual Amendments

- F8** Sch. 2A paras. 1A-1D and cross-heading inserted (25.4.2013) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(1), **Sch. 22 para. 5**

- 1A (1) The Secretary of State may by regulations provide for the grant of licences to do, or authorise the doing of, acts to which section 182, 182A, 182B, 182C, 182CA, 183 or 184 applies in respect of a performance, where—
- (a) the performer's consent would otherwise be required under that section, but
  - (b) the right to authorise or prohibit the act qualifies as an orphan right under the regulations.
- (2) The regulations may—
- (a) specify a person or a description of persons authorised to grant licences, or
  - (b) provide for a person designated in the regulations to specify a person or a description of persons authorised to grant licences.
- (3) The regulations must provide that, for a right to qualify as an orphan right, it is a requirement that the owner of the right has not been found after a diligent search made in accordance with the regulations.
- (4) The regulations must provide for any licence—
- (a) to have effect as if granted by the missing owner;
  - (b) not to give exclusive rights;
  - (c) not to be granted to a person authorised to grant licences.
- (5) The regulations may apply in a case where it is not known whether a performer's right subsists, and references to a right, to a missing owner and to an interest of a missing owner are to be read as including references to a supposed right, owner or interest.

### *Extended collective licensing*

- 1B (1) The Secretary of State may by regulations provide for a licensing body that applies to the Secretary of State under the regulations to be authorised to grant licences to do, or authorise the doing of, acts to which section 182, 182A, 182B, 182C, 182CA, 183

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or 184 applies in respect of a performance, where the right to authorise or prohibit the act is not owned by the body or a person on whose behalf the body acts.

- (2) An authorisation must specify the acts to which any of those sections applies that the licensing body is authorised to license.
- (3) The regulations must provide for the rights owner to have a right to limit or exclude the grant of licences by virtue of the regulations.
- (4) The regulations must provide for any licence not to give exclusive rights.

*General provision about licensing*

- 1C (1) This paragraph and paragraph 1D apply to regulations under paragraphs 1A and 1B.
- (2) The regulations may provide for a body to be or remain authorised to grant licences only if specified requirements are met, and for a question whether they are met to be determined by a person, and in a manner, specified in the regulations.
  - (3) The regulations may specify other matters to be taken into account in any decision to be made under the regulations as to whether to authorise a person to grant licences.
  - (4) The regulations must provide for the treatment of any royalties or other sums paid in respect of a licence, including—
    - (a) the deduction of administrative costs;
    - (b) the period for which sums must be held;
    - (c) the treatment of sums after that period (as bona vacantia or otherwise).
  - (5) The regulations must provide for circumstances in which an authorisation to grant licences may be withdrawn, and for determining the rights and obligations of any person if an authorisation is withdrawn.
  - (6) The regulations may include other provision for the purposes of authorisation and licensing, including in particular provision—
    - (a) for determining the rights and obligations of any person if a right ceases to qualify as an orphan right (or ceases to qualify by reference to any rights owner), or if a rights owner exercises the right referred to in paragraph 1B(3), while a licence is in force;
    - (b) about maintenance of registers and access to them;
    - (c) permitting the use of a work for incidental purposes including an application or search;
    - (d) for a right conferred by section 205C to be treated as having been asserted under section 205D;
    - (e) for the payment of fees to cover administrative expenses.
- 1D (1) The power to make regulations includes power—
  - (a) to make incidental, supplementary or consequential provision, including provision extending or restricting the jurisdiction of the Copyright Tribunal or conferring powers on it;
  - (b) to make transitional, transitory or saving provision;
  - (c) to make different provision for different purposes.
- (2) Regulations under any provision may amend this Part, or any other enactment or subordinate legislation passed or made before that provision comes into force, for the

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purpose of making consequential provision or extending or restricting the jurisdiction of the Copyright Tribunal or conferring powers on it.

- (3) Regulations may make provision by reference to guidance issued from time to time by any person.
- (4) The power to make regulations is exercisable by statutory instrument.
- (5) A statutory instrument containing regulations may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.]

*References and applications with respect to licensing schemes*

- 2 Paragraphs 3 to 8 (references and applications with respect to licensing schemes) apply to licensing schemes operated by licensing bodies in relation to a performer's property rights which cover the performances of more than one performer, so far as they relate to licences for—
  - (a) copying a recording of the whole or any substantial part of a qualifying performance, <sup>F9</sup> . . .
  - [ making such a recording available to the public in the way mentioned in <sup>F10</sup>(aa) section 182CA(1), or.]
  - (b) renting or lending copies of a recording to the public;
 and in those paragraphs "licensing scheme" means a licensing scheme of any of those descriptions.

**Textual Amendments**

- F9** Sch. 2A para. 2: word "or" appearing at the end of sub-para. (a) repealed (31.10.2003) by virtue of [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), reg. 2(2), [Sch. 2](#) (with regs. 31-40)
- F10** Sch. 2A para. 2(aa) substituted (31.10.2003) for word "or" appearing at the end of sub-para. (a) by virtue of [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), [reg. 7\(4\)\(b\)](#) (with regs. 31-40)

*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.

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*Reference of licensing scheme to tribunal*

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

*Further reference of scheme to tribunal*

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

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*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 sub-paragraph (2) if—
- (a) the scheme provides for the grant of licences subject to terms excepting matters from the licence and the case falls within such an exception, or
  - (b) the case is so similar to those in which licences are granted under the scheme that it is unreasonable that it should not be dealt with in the same way.
- (4) If the Tribunal is satisfied that the claim is well-founded, it shall make an order declaring that, in respect of the matters specified in the order, the applicant is entitled to a licence on such terms as the Tribunal may determine to be applicable in accordance with the scheme or, as the case may be, to be reasonable in the circumstances.
- (5) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

*Application for review of order as to entitlement to licence*

- 7 (1) Where the Copyright Tribunal has made an order under paragraph 6 that a person is entitled to a licence under a licensing scheme, the operator of the scheme or the original applicant may apply to the Tribunal to review its order.
- (2) An application shall not be made, except with the special leave of the Tribunal—
- (a) within twelve months from the date of the order, or of the decision on a previous application under this paragraph, or
  - (b) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this paragraph is due to expire within 15 months of that decision, until the last three months before the expiry date.
- (3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal may determine to be reasonable having regard to the terms applicable in accordance with the licensing scheme or, as the case may be, the circumstances of the case.

*Effect of order of tribunal as to licensing scheme*

- 8 (1) A licensing scheme which has been confirmed or varied by the Copyright Tribunal—

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- (a) under paragraph 3 (reference of terms of proposed scheme), or
- (b) under paragraph 4 or 5 (reference of existing scheme to Tribunal),

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

- (2) While the order is in force a person who in a case of a class to which the order applies—

- (a) pays to the operator of the scheme any charges payable under the scheme in respect of a licence covering the case in question or, if the amount cannot be ascertained, gives an undertaking to the operator to pay them when ascertained, and
- (b) complies with the other terms applicable to such a licence under the scheme, shall be in the same position as regards infringement of performers’ property rights as if he had at all material times been the holder of a licence granted by the rights owner in question in accordance with the scheme.

- (3) The Tribunal may direct that the order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference was made or, if later, on which the scheme came into operation.

If such a direction is made—

- (a) any necessary repayments, or further payments, shall be made in respect of charges already paid, and
- (b) the reference in sub-paragraph (2)(a) to the charges payable under the scheme shall be construed as a reference to the charges so payable by virtue of the order. No such direction may be made where sub-paragraph (4) below applies.

- (4) An order of the Tribunal under paragraph 4 or 5 made with respect to a scheme which is certified for any purpose under paragraph 16 has effect, so far as it varies the scheme by reducing the charges payable for licences, from the date on which the reference was made to the Tribunal.

- (5) Where the Tribunal has made an order under paragraph 6 (order as to entitlement to licence under licensing scheme) and the order remains in force, the person in whose favour the order is made shall if he—

- (a) pays to the operator of the scheme any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained, and
- (b) complies with the other terms specified in the order,

be in the same position as regards infringement of performers’ property rights as if he had at all material times been the holder of a licence granted by the rights owner in question on the terms specified in the order.

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

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

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- (a) copying a recording of the whole or any substantial part of a qualifying performance,<sup>F11</sup> . . .
  - [ making such a recording available to the public in the way mentioned in
  - <sup>F12</sup>(aa) section 182CA(1), or.]
  - (b) renting or lending copies of a recording to the public;
- and references in those paragraphs to a licence shall be construed accordingly.

#### Textual Amendments

- F11** Sch. 2A para. 9: word "or" appearing at the end of sub-para. (a) repealed (31.10.2003) by virtue of [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), reg. 2(2), [Sch. 2](#) (with regs. 31-40)
- F12** Sch. 2A para. 9(aa) substituted (31.10.2003) for word "or" appearing at the end of sub-para. (a) by virtue of [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), [reg. 7\(4\)\(b\)](#) (with regs. 31-40)

#### *Reference to tribunal of proposed licence*

- 10 (1) The terms on which a licensing body proposes to grant a licence may be referred to the Copyright Tribunal by the prospective licensee.
- (2) The Tribunal shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.
- (3) If the Tribunal decides to entertain the reference it shall consider the terms of the proposed licence and make such order, either confirming or varying the terms as it may determine to be reasonable in the circumstances.
- (4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

#### *Reference to tribunal of expiring licence*

- 11 (1) A licensee under a licence which is due to expire, by effluxion of time or as a result of notice given by the licensing body, may apply to the Copyright Tribunal on the ground that it is unreasonable in the circumstances that the licence should cease to be in force.
- (2) Such an application may not be made until the last three months before the licence is due to expire.
- (3) A licence in respect of which a reference has been made to the Tribunal shall remain in operation until proceedings on the reference are concluded.
- (4) If the Tribunal finds the application well-founded, it shall make an order declaring that the licensee shall continue to be entitled to the benefit of the licence on such terms as the Tribunal may determine to be reasonable in the circumstances.
- (5) An order of the Tribunal under this paragraph may be made so as to be in force indefinitely or for such period as the Tribunal may determine.



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*Application for review of order as to licence*

- 12 (1) Where the Copyright Tribunal has made an order under paragraph 10 or 11, the licensing body or the person entitled to the benefit of the order may apply to the Tribunal to review its order.
- (2) An application shall not be made, except with the special leave of the Tribunal—
- (a) within twelve months from the date of the order or of the decision on a previous application under this paragraph, or
  - (b) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this paragraph is due to expire within 15 months of that decision, until the last three months before the expiry date.
- (3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal may determine to be reasonable in the circumstances.

*Effect of order of tribunal as to licence*

- 13 (1) Where the Copyright Tribunal has made an order under paragraph 10 or 11 and the order remains in force, the person entitled to the benefit of the order shall if he—
- (a) pays to the licensing body any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained, and
  - (b) complies with the other terms specified in the order,
- be in the same position as regards infringement of performers’ property rights as if he had at all material times been the holder of a licence granted by the rights owner in question on the terms specified in the order.
- (2) The benefit of the order may be assigned—
- (a) in the case of an order under paragraph 10, if assignment is not prohibited under the terms of the Tribunal’s order; and
  - (b) in the case of an order under paragraph 11, if assignment was not prohibited under the terms of the original licence.
- (3) The Tribunal may direct that an order under paragraph 10 or 11, or an order under paragraph 12 varying such an order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference or application was made or, if later, on which the licence was granted or, as the case may be, was due to expire.
- If such a direction is made—
- (a) any necessary repayments, or further payments, shall be made in respect of charges already paid, and
  - (b) the reference in sub-paragraph (1)(a) to the charges payable in accordance with the order shall be construed, where the order is varied by a later order, as a reference to the charges so payable by virtue of the later order.

*General considerations: unreasonable discrimination*

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

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

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

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

*Application to settle royalty or other sum payable for lending*

- 15 (1) An application to settle the royalty or other sum payable in pursuance of paragraph 14A of Schedule 2 (lending of certain recordings) may be made to the Copyright Tribunal by the owner of a performer's property rights or the person claiming to be treated as licensed by him.
- (2) The Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.
- (3) Either party may subsequently apply to the Tribunal to vary the order, and the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.
- (4) An application under sub-paragraph (3) shall not, except with the special leave of the Tribunal, be made within twelve months from the date of the original order or of the order on a previous application under that sub-paragraph.
- (5) An order under sub-paragraph (3) has effect from the date on which it is made or such later date as may be specified by the Tribunal.

*Certification of licensing schemes*

- 16 (1) A person operating or proposing to operate a licensing scheme may apply to the Secretary of State to certify the scheme for the purposes of [<sup>F13</sup> paragraph <sup>F14</sup> ... 14A <sup>F15</sup> ... of Schedule 2 ( <sup>F14</sup> ... lending of certain recordings <sup>F15</sup> ... ) ] .
- (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 [<sup>F16</sup>the relevant paragraph] of Schedule 2—
  - (a) on such date, not less than eight weeks after the order is made, as may be specified in the order, or
  - (b) if the scheme is the subject of a reference under paragraph 3 (reference of proposed scheme), any later date on which the order of the Copyright Tribunal under that paragraph comes into force or the reference is withdrawn.

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- (4) A variation of the scheme is not effective unless a corresponding amendment of the order is made; and the Secretary of State shall make such an amendment in the case of a variation ordered by the Copyright Tribunal on a reference under paragraph 3, 4 or 5, and may do so in any other case if he thinks fit.
- (5) The order shall be revoked if the scheme ceases to be operated and may be revoked if it appears to the Secretary of State that it is no longer being operated according to its terms.

#### Textual Amendments

- F13** Words in Sch. 2A para. 16(1) substituted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), reg. 2(1), [Sch. 1 para. 17\(a\)](#) (with regs. 31-40)
- F14** Words in Sch. 2A para. 16(1) omitted (1.6.2014) by virtue of [The Copyright and Rights in Performances \(Research, Education, Libraries and Archives\) Regulations 2014 \(S.I. 2014/1372\)](#), reg. 1, [Sch. para. 9](#)
- F15** Words in Sch. 2A para. 16(1) omitted (1.6.2014) by virtue of [The Copyright and Rights in Performances \(Disability\) Regulations 2014 \(S.I. 2014/1384\)](#), reg. 1(1), [Sch. para. 6](#)
- F16** Words in Sch. 2A para. 16(3) substituted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), reg. 2(1), [Sch. 1 para. 17\(b\)](#) (with regs. 31-40)

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

- 17 [ Sub-paragraph (1A) applies where whatever needs to be remedied, mitigated or <sup>F17</sup>(1) prevented by the Secretary of State [<sup>F18</sup> or (as the case may be) the Competition and Markets Authority ] under section 12(5) of the Competition Act 1980 or section 41(2), 55(2), 66(6), 75(2), 83(2), 138(2), 147(2)[<sup>F19</sup>, 147A(2) ] or 160(2) of, or paragraph 5(2) or 10(2) of Schedule 7 to, the Enterprise Act 2002 (powers to take remedial action following references to the [<sup>F20</sup> Competition and Markets Authority ] in connection with public bodies and certain other persons, mergers or market investigations etc. ) consists of or includes—
- (a) conditions in licences granted by the owner of a performer's property rights restricting the use to which a recording may be put by the licensee or the right of the owner to grant other licenses, or
  - (b) a refusal of an owner of a performer's property rights to grant licences on reasonable terms.
- (1A) The powers conferred by Schedule 8 to the Enterprise Act 2002 include power to cancel or modify those conditions and, instead or in addition, to provide that licences in respect of the performer's property rights shall be available as of right.
- (2) The references to anything permitted by Schedule 8 to the Enterprise Act 2002 in section 12(5A) of the Competition Act 1980 and in sections 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a) and 164(1) of, and paragraphs 5, 10 and 11 of Schedule 7 to, the Act of 2002 shall be construed accordingly.]]
- (3) [<sup>F21</sup>The Secretary of State [<sup>F22</sup>or (as the case may be) the Competition and Markets Authority]] shall only exercise the powers available by virtue of this paragraph if he [<sup>F23</sup>or it] is satisfied that to do so does not contravene any Convention relating to performers' rights to which the United Kingdom is a party.
- (4) The terms of a licence available by virtue of this paragraph shall, in default of agreement, be settled by the Copyright Tribunal on an application by the person

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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.

#### Textual Amendments

- F17** Sch. 2A para. 17(1)(1A)(2) substituted (20.6.2003 for certain purposes and 29.12.2004 otherwise) for Sch. 2A para. 17(1)(2) by 2002 c. 40, ss. 278(1), 279, Sch. 25 para. 18(5)(a); S.I. 2003/1397, **arts. 2, 3(1)**, Sch. (with arts. 4-12); S.I. 2004/3233, **art. 2**, Sch. (with arts. 3-5)
- F18** Words in Sch. 2A para. 17(1) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 59(a)(i)** (with art. 3)
- F19** Word in Sch. 2A para. 17(1) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 59(a)(ii)** (with art. 3)
- F20** Words in Sch. 2A para. 17(1) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 59(a)(iii)** (with art. 3)
- F21** Words in Sch. 2A para. 17(3) substituted (20.6.2003 for certain purposes and 29.12.2004 otherwise) by 2002 c. 40, ss. 278(1), 279, Sch. 25 para. 18(5)(b)(i); S.I. 2003/1397, **arts. 2, 3(1)**, Sch. (with arts. 4-12); S.I. 2004/3233, **art. 2**, Sch. (with arts. 3-5)
- F22** Words in Sch. 2A para. 17(3) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 59(b)** (with art. 3)
- F23** Words in Sch. 2A para. 17(3) inserted (20.6.2003 for certain purposes and 29.12.2004 otherwise) by 2002 c. 40, ss. 278(1), 279, Sch. 25 para. 18(5)(b)(ii); S.I. 2003/1397, **arts. 2, 3(1)**, Sch. (with arts. 4-12); S.I. 2004/3233, **art. 2**, Sch. (with arts. 3-5)

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

- C1** Sch. 2A para. 17(1) amended (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), **Sch. 4 para. 7(3)(a)**
- C2** Sch. 2A para. 17(2) amended (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), **Sch. 4 para. 7(3)(b)**

**Changes to legislation:**

There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, SCHEDULE 2A.