

*Status: Point in time view as at 25/04/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise and Regulatory Reform Act 2013, SCHEDULE 22. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 22

Section 77(4)

#### LICENSING OF COPYRIGHT AND PERFORMERS' RIGHTS

##### PART 1

###### REGULATION OF LICENSING BODIES

1 In the Copyright, Designs and Patents Act 1988, before Schedule 1 insert—

###### “SCHEDULE A1

###### REGULATION OF LICENSING BODIES

###### *Codes of practice*

- 1 (1) The Secretary of State may by regulations make provision for a licensing body to be required to adopt a code of practice that complies with criteria specified in the regulations.
- (2) The regulations may provide that, if a licensing body fails to adopt such a code of practice, any code of practice that is approved for the purposes of that licensing body by the Secretary of State, or by a person designated by the Secretary of State under the regulations, has effect as a code of practice adopted by the body.
- (3) The regulations must provide that a code is not to be approved for the purposes of provision under sub-paragraph (2) unless it complies with criteria specified in the regulations.
- 2 Regulations under paragraph 1 may make provision as to conditions that are to be satisfied, and procedures that are to be followed—
  - (a) before a licensing body is required to adopt a code of practice as described in paragraph 1(1);
  - (b) before a code of practice has effect as one adopted by a licensing body as described in paragraph 1(2).

###### *Licensing code ombudsman*

- 3 (1) The Secretary of State may by regulations make provision—
  - (a) for the appointment of a person (the “licensing code ombudsman”) to investigate and determine disputes about a licensing body's compliance with its code of practice;
  - (b) for the reference of disputes to the licensing code ombudsman;
  - (c) for the investigation and determination of a dispute so referred.

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- (2) Provision made under this paragraph may in particular include provision—
- (a) about eligibility for appointment as the licensing code ombudsman;
  - (b) about the disputes to be referred to the licensing code ombudsman;
  - (c) requiring any person to provide information, documents or assistance to the licensing code ombudsman for the purposes of an investigation or determination;
  - (d) requiring a licensing body to comply with a determination of the licensing code ombudsman;
  - (e) about the payment of expenses and allowances to the licensing code ombudsman.

#### *Code reviewer*

- 4 (1) The Secretary of State may by regulations make provision—
- (a) for the appointment by the Secretary of State of a person (the “code reviewer”) to review and report to the Secretary of State on—
    - (i) the codes of practice adopted by licensing bodies, and
    - (ii) compliance with the codes of practice;
  - (b) for the carrying out of a review and the making of a report by that person.
- (2) The regulations must provide for the Secretary of State, before appointing a person as the code reviewer, to consult persons whom the Secretary of State considers represent the interests of licensing bodies, licensees, members of licensing bodies, and the Intellectual Property Office.
- (3) The regulations may, in particular, make provision—
- (a) requiring any person to provide information, documents or assistance to the code reviewer for the purposes of a review or report;
  - (b) about the payment of expenses and allowances to the code reviewer.
- (4) In this paragraph “member”, in relation to a licensing body, means a person on whose behalf the body is authorised to negotiate or grant licences.

#### *Sanctions*

- 5 (1) The Secretary of State may by regulations provide for the consequences of a failure by a licensing body to comply with—
- (a) a requirement to adopt a code of practice under provision within paragraph 1(1);
  - (b) a code of practice that has been adopted by the body in accordance with a requirement under provision within paragraph 1(1), or that has effect as one adopted by the body under provision within paragraph 1(2);
  - (c) a requirement imposed on the body under any other provision made under this Schedule;
  - (d) an authorisation under regulations under section 116A or 116B;
  - (e) a requirement imposed by regulations under section 116A or 116B;
  - (f) an authorisation under regulations under paragraph 1A or 1B of Schedule 2A;

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- (g) a requirement imposed by regulations under paragraph 1A or 1B of that Schedule.
- (2) The regulations may in particular provide for—
    - (a) the imposition of financial penalties or other sanctions;
    - (b) the imposition of sanctions on a director, manager or similar officer of a licensing body or, where the body's affairs are managed by its members, on a member.
  - (3) The regulations must include provision—
    - (a) for determining whether there has been a failure to comply with a requirement or code of practice for the purposes of any provision made under sub-paragraph (1);
    - (b) for determining any sanction that may be imposed in respect of the failure to comply;
    - (c) for an appeal against a determination within paragraph (a) or (b).
  - (4) A financial penalty imposed under sub-paragraph (2) must not be greater than £50,000.
  - (5) The regulations may provide for a determination within sub-paragraph (3) (a) or (3)(b) to be made by the Secretary of State or by a person designated by the Secretary of State under the regulations.
  - (6) The regulations may make provision for requiring a person to give the person by whom a determination within sub-paragraph (3)(a) falls to be made (the “adjudicator”) any information that the adjudicator reasonably requires for the purpose of making that determination.

#### *Fees*

- 6 (1) The Secretary of State may by regulations require a licensing body to which regulations under any other paragraph of this Schedule apply to pay fees to the Secretary of State.
- (2) The aggregate amount of fees payable under the regulations must not be more than the cost to the Secretary of State of administering the operation of regulations under this Schedule.

#### *General*

- 7 (1) The power to make regulations under this Schedule includes in particular 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 provision for bodies of a particular description, or carrying out activities of a particular description, not to be treated as licensing bodies for the purposes of requirements imposed under regulations under this Schedule;
  - (c) to make provision that applies only in respect of licensing bodies of a particular description, or only in respect of activities of a particular description;

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- (d) otherwise to make different provision for different purposes.
  - (2) Regulations under a paragraph of this Schedule may amend Part 1 or Part 2, or any other enactment or subordinate legislation passed or made before the paragraph in question comes into force, for the purpose of making consequential provision or extending or restricting the jurisdiction of the Copyright Tribunal or conferring powers on it.
  - (3) The power to make regulations is exercisable by statutory instrument.
  - (4) 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.
- 8 References in this Schedule to a licensing body are to a body that is a licensing body for the purposes of Chapter 7 of Part 1 or Chapter 2 of Part 2, and references to licensees are to be construed accordingly.”

## PART 2

### PERFORMERS' RIGHTS

- 2 Schedule 2A to the Copyright, Designs and Patents Act 1988 (licensing of performers' property rights) is amended as follows.
- 3 In the heading of the Schedule omit “property”.
- 4 In paragraph 1, after sub-paragraph (4) insert—
- “(5) Schedule A1 confers powers to provide for the regulation of licensing bodies.”
- 5 After paragraph 1 insert—

#### *“Power to provide for licensing of orphan rights*

- 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;

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- (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 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

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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 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.”

6 In section 205A of the Copyright, Designs and Patents Act 1988, and in the italic heading before that section (licensing of performers' property rights), omit “property”.

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