



1990 No. 879 COPYRIGHT

The Copyright (Certification of Licensing Scheme
for Educational Recording of Broadcasts and Cable Programmes)
(Educational Recording Agency Limited) Order 1990

Made

5th April 1990

Whereas the Educational Recording Agency Limited, whose registered office is at Hanover House, 14 Hanover Square, London W1R 0BE has applied to the Secretary of State to certify, for the purposes of section 35 of the Copyright, Designs and Patents Act 1988¹ (“the Act”), a licensing scheme to be operated by it:

And whereas the Secretary of State is satisfied that the scheme enables the works to which it relates to be identified with sufficient certainty by persons likely to require licences and that it sets out clearly the charges (if any) payable and the other terms on which licences will be granted:

Now, therefore, the Secretary of State, in exercise of the powers conferred upon him by section 143(2) and (3)(a) of the Act, hereby makes the following Order:—

1. This Order may be cited as the Copyright (Certification of Licensing Scheme for Educational Recording of Broadcasts and Cable Programmes) (Educational Recording Agency Limited) Order 1990.
2. The licensing scheme set out in the Schedule to this Order is certified for the purposes of section 35 of the Act (recording by educational establishments of broadcasts or cable programmes).
3. The certification under article 2 above shall, for the purposes of section 35 of the Act, come into operation on 30th May 1990.

5th April 1990

Douglas Hogg
Minister for Industry and Enterprise,
Department of Trade and Industry

SCHEDULE THE EDUCATIONAL RECORDING AGENCY LIMITED

LICENSING SCHEME

1. The Educational Recording Agency Limited (to be known as E.R.A.) has been established to operate a Licensing Scheme for the purposes of section 35 of the Copyright, Designs and Patents Act 1988 (“the Act”).

¹1988 c.48.

2. The Licensing Scheme set out hereunder shall apply to any school as defined in section 174 of the Act and any other description of educational establishment as may be specified by order of the Secretary of State under that section (“Educational Establishment”)².

3. The copyright works covered by a Licence granted under the Licensing Scheme are the works in respect of which the Licensor Members of E.R.A. (or persons represented by the Licensor Members) own or control the right to cause or authorise the recording of such copyright works by Educational Establishments for the educational purposes of that Establishment.

4. The Licensor Members of E.R.A. and the works in respect of which the relevant rights are generally owned or controlled by such Licensors will be specified in Licences issued as follows:–

AUTHOR'S LICENSING AND COLLECTING SOCIETY LIMITED (“ALCS”)

Those literary and dramatic works which are owned by or controlled by persons represented by ALCS and which are included in any broadcast or cable programme.

BBC ENTERPRISES LIMITED

The broadcasts of the British Broadcasting Corporation and all those copyright works of the British Broadcasting Corporation which are included in any broadcast or cable programme.

CHANNEL FOUR TELEVISION COMPANY LIMITED (“Channel 4”)

The copyright works of Channel 4 including any broadcasts made by Channel 4 itself and the films and sound recordings comprising television programmes which are commissioned by Channel 4 and broadcast on the Fourth Channel or otherwise included in any broadcast or cable programme.

DESIGN AND ARTISTS COPYRIGHT SOCIETY LIMITED (“DACS”)

Those artistic works which are owned or controlled by persons represented by DACS and which are included in any broadcast or cable programme.

THE BRITISH PHONOGRAPHIC INDUSTRY LIMITED (“BPI”)

Those sound recordings which are owned or controlled by persons represented by BPI and which are included in any broadcast or cable programme.

INDEPENDENT TELEVISION ASSOCIATION (“ITV Association”)

The copyright works of members of the ITV Association including any broadcasts made by one or more members of the ITV Association themselves and the films and sound recordings comprising television programmes made or commissioned by such members and those copyright works which have been contributed to those programmes by employees of any ITV Company and which are included in any broadcast or cable programme.

MECHANICAL COPYRIGHT PROTECTION SOCIETY LIMITED (“MCPS”)

Those musical works and sound recordings which are owned or controlled by members of MCPS and entrusted by its members to MCPS and which are included in any broadcast or cable programme.

SIANEL PEDWAR CYMRU (“S4C”)

The copyright works of S4C including any broadcasts made by S4C itself and those films and sound recordings comprising television programmes which are commissioned by S4C and broadcast on the Welsh Fourth Channel or otherwise included in any broadcast or cable programme.

However, Licences under the E.R.A. Licensing Scheme shall not authorise the recording of Open University or Open College programmes. If the Licensee is in any doubt as to whether a Licence covers a particular right or a particular copyright work the Licensee shall be entitled to contact E.R.A. who shall be obliged within a reasonable time (by one of the Licensor Members) to confirm whether or not a particular right or work is owned by one of the Licensors.

²See the Copyright (Educational Establishments) (No. 2) Order 1989 (S.I. 1989/1068).

5. No recording or copying under any Licence shall be made except by or on behalf of the Licensee and any such recording or copying shall be made either—

- (a) on the premises of the Educational Establishment by or under the direct supervision of a teacher or employee of the Licensee; or
- (b) at the residence of a teacher employed by the Licensee by that teacher; or
- (c) at the premises of a third party authorised by the Licensee to make recordings or copies on behalf of the Licensee under written contractual terms and conditions which prevent the retention of any recordings or copies by that third party or any other third party unless E.R.A. shall have expressly agreed that a specific third party may retain any recordings or copies for subsequent use only by authorised Licensees of E.R.A. in accordance with the provisions of the Licensing Scheme.

6. Licensees shall be required to ensure that all recordings or copies made under a Licence are marked with the date and title of the recording, and with a statement in clear and bold lettering that “this recording is to be used only for educational purposes” or such other wording or prohibition as E.R.A. shall reasonably require from time to time.

7. Licensees may be required to undertake and maintain at the request of E.R.A. details of television or radio programmes or any part or parts of such programmes which are recorded and the number of copies of such recordings made under a Licence. In addition, Licensees may be required to maintain further records and answer questionnaires or surveys as E.R.A. may reasonably require to monitor and administer proper operation of the Licensing Scheme.

8. E.R.A. shall be entitled to inspect and have access to all records that Licensees are required to maintain under the above provisions, and further have access to all recordings and copies of copyright works made by a Licensee under the terms of a Licence granted, in order to inspect the same to check compliance with the Licence.

9. Licences shall operate for such period or periods as may from time to time be specified or agreed with E.R.A.

10. The annual tariff for Licences, applicable from the date of operation of the certification of the Licensing Scheme and calculated on a full time and full time equivalents per capita basis by type of Educational Establishment, shall be:—

- (a) Primary/Preparatory Educational Establishments (including Preparatory Schools)—15p per student.
- (b) Secondary Educational Establishments (including Sixth Form Colleges)—30p per student.
- (c) Educational Establishments of Further Education—50p per student.
- (d) Educational Establishments of Higher Education (including Higher Education Colleges, Polytechnics and Universities)—£1.00 per student.
- (e) Other Educational Establishments designated from time to time by the Secretary of State—a fee related to the above by type.

NOTE 1

Under the Licensing Scheme discounted rates below the above tariff may be negotiated covering large user groups and may form part of Licences agreed to operate for more than one year.

NOTE 2

An individual Educational Establishment not covered by a blanket discount arrangement of the type referred to in NOTE 1 above which does not wish to avail itself of the entire Repertoire available under an E.R.A. Licence, will, on signing a declaration to the relevant effect, be granted a licence by E.R.A. with a current zero tariff. A Licence granted on this basis will entitle the individual Educational Establishment to record only that part of the E.R.A. Repertoire included in broadcasts by the BBC and ITV Companies which are designated as educational.

11. Licensees shall pay agreed Licence Fees together with any V.A.T. or other Government tax which may be applicable from time to time in addition to such Licence Fee on such date or dates as may be from time to time required by E.R.A.

12. E.R.A. shall be entitled to terminate Licences granted—

- (a) if Licence Fees are not paid when due—provided that E.R.A. shall have given to a Licensee such period of notice as E.R.A. may from time to time reasonably include in the terms of Licences issued;
- (b) for any other substantial breach of the conditions of Licence; and
- (c) if a Licensee becomes insolvent.

13. If punctual payment of agreed Licence Fees is not made, E.R.A. shall be entitled to charge interest on amounts unpaid at such reasonable rate as E.R.A. may from time to time require.

14. If a Licence is terminated by E.R.A. it shall be entitled to require a Licensee to delete all recordings or copies made by the Educational Establishment to which the Licence formerly related.

15. If a Licensee is in breach of the terms of a Licence and E.R.A. incurs costs and expenses either in monitoring and discovering any breach of the terms of a Licence or in enforcing the conditions of any Licence, the Licensee shall be required to indemnify E.R.A. in respect of any such costs and expenses so incurred.

16. Licensees shall be required to take all reasonable steps to comply with reasonable recommendations of E.R.A. to ensure that rights granted by a Licence are not exceeded or abused by teachers, employees, pupils or other persons.

17. Licences issued shall be governed by and interpreted in accordance with the law of England.

EXPLANATORY NOTE

(This note is not part of the Order)

Under section 35 of the Copyright, Designs and Patents Act 1988 recordings of broadcasts and cable programmes may be made by or on behalf of educational establishments without thereby infringing copyright. The section does not, however, apply if and to the extent that there is a licensing scheme certified for the purposes of that section providing for the grant of licences.

This Order certifies the licensing scheme to be operated by the Educational Recording Agency Limited (effective from 30th May 1990) for the granting of licences to educational establishments for the recording by them of broadcasts and cable programmes, other than television programmes broadcast on behalf of the Open University or the Open College which are the subject of a separate licensing scheme certified under the Copyright (Certification of Licensing Scheme for Educational Recording of Broadcasts) (Guild Sound and Vision Limited) Order 1990 (S.I. 1990/878).