



## 1993 No. 2755 COPYRIGHT

The Copyright (Certification of Licensing Scheme for Educational Recording of Broadcasts) (Open University Educational Enterprises Limited) Order 1993

*Made* 4th November 1993  
*Coming into force* 1st January 1994

Whereas by virtue of the Copyright (Certification of Licensing Scheme for Educational Recording of Broadcasts) (Open University Educational Enterprises Limited) Order 1990<sup>1</sup> the Secretary of State certified for the purposes of section 35 of the Copyright, Designs and Patents Act 1988<sup>2</sup> (“the Act”) the licensing scheme set out in the Schedule to that Order (“the 1990 scheme”), being a scheme operated by Open University Educational Enterprises Limited;

And whereas Open University Educational Enterprises Limited has applied to the Secretary of State to certify a new licensing scheme to be operated by it to replace the 1990 scheme;

And whereas the Secretary of State is satisfied that the new 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 powers conferred upon him by section 143 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) (Open University Educational Enterprises Limited) Order 1993 and shall come into force on 1st January 1994.

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 1st January 1994.

4. The Copyright (Certification of Licensing Scheme for Educational Recording of Broadcasts) (Open University Educational Enterprises Limited) Order 1990 is hereby revoked.

4th November 1993.

*Patrick McLoughlin*  
Department of Trade and Industry  
Parliamentary Under Secretary of  
State for Trade and Technology

<sup>1</sup>S.I. 1990/2008.

<sup>2</sup>1988 c.48.

## SCHEDULE

### OPEN UNIVERSITY EDUCATIONAL ENTERPRISES LIMITED LICENSING SCHEME

Open University Educational Enterprises Limited holds an exclusive right under copyright to licence the recording off air of all Open University television programmes in the United Kingdom by educational establishments and operates a licensing scheme for the off air recording of designated television programmes.

The scheme set out hereunder is operated for the purposes of section 35 of the Copyright, Designs and Patents Act 1988 in respect of recording of broadcasts by educational establishments and replaces the scheme scheduled to the Copyright (Certification of Licensing Scheme for Educational Recording of Broadcasts) (Open University Educational Enterprises Limited) Order 1990 ("the 1990 Scheme").

The educational establishments to which the licensing scheme applies are schools and further and higher educational establishments.

The charges payable under the licences are set out:

- (a) in respect of schools, in Appendix A to the licensing scheme;
- (b) subject to paragraph (c), in respect of further and higher educational establishments, in Appendix B to the licensing scheme;
- (c) where a licensee under the licensing scheme is an educational establishment which was a sixth form college licensee under the 1990 scheme, in Appendix A to the licensing scheme.

#### *The Open University Licensed Off Air Recording Scheme for Schools and Further and Higher Educational Establishments*

Licences shall be issued in accordance with the terms set out below.

### DEFINITIONS

In the Scheme and the Appendices the following expressions have the meanings set opposite them:

School:	Any school as defined in section 174 of the Copyright, Designs and Patents Act 1988 and any further educational establishment defined as a sixth form college under the/1990 scheme, which was also a licensee, and charged as such a college, under that scheme;
Educational Establishment:	Any further or higher educational establishment as defined in section 174 of the Copyright, Designs and Patents Act 1988 and any other description of such educational establishment as may be specified by order of the Secretary of State under that section <sup>3</sup> (except for any further educational establishment defined as a sixth form college under the 1990 scheme, which was also a licensee and charged as such a college under that scheme);
Licence Fee:	The fee payable by Schools calculated in accordance with Open University Educational Enterprises Limited's scale of fees set out in Appendix A for the use of designated programmes in accordance with the terms of the Licence for a period up to twelve months from the date of the Licence unless or until the Licence is terminated pursuant to Clauses 2 or 6 thereof;

<sup>3</sup>See the Copyright (Educational Establishments) (No. 2) Order 1989 (S.I. 1989/1068).

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Programme Fee:	The fee payable by Educational Establishments calculated in accordance with Open University Educational Enterprises Limited's scale of programme fees as set out in Appendix B for the use of a designated programme in accordance with the terms of the Licence for a period of up to twelve months from the date of its recording unless or until the Licence is terminated pursuant to Clauses 2 or 6 thereof;
Designated Programmes:	The broadcast television programmes which shall be those broadcast by the British Broadcasting Corporation or other broadcasting organisations on behalf of The Open University and as listed in the broadcast schedule published annually by Open University Educational Enterprises Limited;
Record off air:	To record by the use of any available playback device on video tape a transmission by broadcast or diffusion of television programmes to be received by television or similar receiving device; and
Educational Purposes:	The showing of recordings of Designated Programmes exclusively in teaching, training or study as part of a formal or informal course of instruction undertaken or carried out by the Licensee for non profit making purposes and where no charge is made on any person for the purposes of viewing the Designated Programmes, including the loan of recordings to bona fide students for such purposes.

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## 1. GRANT

The School or the Educational Establishment (hereinafter referred to as "the Licensee") shall warrant that it is a School or Educational Establishment, as the case may be, and Open University Educational Enterprises Limited shall grant to the Licensee on the terms set out below a non-exclusive Licence to Record off air Designated Programmes for Educational Purposes.

## 2. TERM

The Licence shall continue from the date of issue for a period of twelve months and shall be automatically renewed for further periods of twelve months unless or until terminated in accordance with Clause 6, or by either side giving to the other not less than one calendar month's notice in writing, in the case of Educational Establishments, to expire on the date of the anniversary of any twelve month period.

## 3. WARRANTIES AND OBLIGATIONS OF OPEN UNIVERSITY EDUCATIONAL ENTERPRISES LIMITED

### (1) *Warranties*

Open University Educational Enterprises Limited warrants that it is duly appointed by the relevant copyright owners and/or broadcasting organisations to act as Licensor on their behalf and it has full power and authority to grant the rights set out herein.

### (2) *Obligations*

Open University Educational Enterprises Limited shall publish a broadcast schedule annually.

## 4. OBLIGATIONS OF THE LICENSEE

The Licensee shall:

- (1) ensure that all Recording off air is made by a lecturer, instructor, teacher or other suitably qualified person appointed for the purpose by the Licensee;
- (2) ensure that recordings of the Designated Programmes are not edited, cut or amended in any way without prior written permission of Open University Educational Enterprises Limited and are not shown or disclosed or passed into the possession of any third party and are not removed from the direct control of the Licensee;
- (3) ensure that the recorded Designated Programmes are used for Educational Purposes only and the Licensee shall not itself or through its employees or agents, sell, lend, hire or otherwise use or dispose of recordings of Designated Programmes other than in accordance with the terms of the Licence and shall prevent any third party from duplicating, selling, lending, hiring or otherwise using or disposing of recordings of the Designated Programmes;

- (4) where the Licensee is an Educational Establishment, make up, retain and keep made up such detailed and accurate records as may be required by Open University Educational Enterprises Limited of the Designated Programmes recorded and in particular shall complete the log sheets provided by or approved in writing by Open University Educational Enterprises Limited;
- (5) affix to each recording in a prominent place and shall not obscure, remove, alter or deface a label which shall include the title of the Designated Programme and the date upon which it was recorded;
- (6) where the Licensee is an Educational Establishment, return to Open University Educational Enterprises Limited all duly completed log sheets on dates specified by Open University Educational Enterprises Limited to a maximum number of three times in each twelve month licence period and on termination of the Licence;
- (7) subject to paragraph (8) below, erase any and all recordings of the Designated Programmes in existence at the expiration of the licence period or upon termination of the Licence whichever shall be the sooner and shall supply to Open University Educational Enterprises Limited a certificate of erasure within 28 days of such expiration or termination;
- (8) if the licence period is automatically continued without interruption for a further period of twelve months pursuant to Clause 2 the Licensee may at its option and subject to paragraph (7) retain recordings of Designated Programmes:
  - (a) where the Licensee is a School, for the following twelve month period and subject always to the proper Licence fee therefor being paid;
  - (b) where the Licensee is an Educational Establishment, provided such programmes remain entered into the log for the following twelve month period and subject always to the proper recording fees therefor being paid.

## 5. CONSIDERATION

In consideration for the Licence:

- (1) where the Licensee is a School,
  - (a) the Licensee shall pay Open University Educational Enterprises Limited (inclusive of VAT) the fee set out in Appendix A;
  - (b) Licence Fees payable under paragraph (1)(a) shall be paid within thirty days of the date of the invoice whenever sent to the Licensee by Open University Educational Enterprises Limited;
- (2) where the Licensee is an Educational Establishment,
  - (a) the Licensee shall pay Open University Educational Enterprises Limited (inclusive of VAT) the fees set out in Appendix B;
  - (b) fees payable under paragraph (2)(a) shall be calculated by Open University Educational Enterprises Limited annually and shall be paid within thirty days of the date of the invoice whenever sent to the Licensee by Open University Educational Enterprises Limited;
  - (c) the Licensee shall permit its records and accounts to be examined upon reasonable notice in writing from Open University Educational Enterprises Limited by Open University Educational Enterprises Limited's properly appointed representative at Open University Educational Enterprises Limited's expense to verify the records and payments for which provision is made in the Licence.

## 6. TERMINATION

Open University Educational Enterprises Limited shall at its option be entitled by notice in writing to the Licensee to terminate the Licence forthwith in any of the following events that is to say if the Licensee shall:

- (1) fail to promptly account and make payments thereunder or shall fail to perform any other obligation required of it thereunder and the Licensee shall not have cured or remedied such failure within 14 (fourteen) days of a request from Open University Educational Enterprises Limited (time being of the essence);



- (2) adopt a resolution for its winding up (otherwise than for the purpose of and followed by an amalgamation or reconstruction) or if a petition is presented for the appointment of an administrator or if a receiver or an administrative receiver is appointed in respect of, or an encumbrancer takes possession of, the whole or any part of its undertaking or assets or if the Licensee is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (3) cease to carry on the business or function as a School or an Educational Establishment, as the case may be.

#### 7. ALTERATIONS TO AGREEMENT

Any alteration or variation to the Licence shall not be valid or enforceable unless recorded in writing and signed by an authorised signatory of each party.

#### 8. ASSIGNMENT

The Licence is specific to the Licensee and the Licensee shall not assign the benefits or the obligations of the Licence.

#### 9. EXPENSES

Save as otherwise expressed all expenses of and incidental to the fulfilment of the Licence shall be borne by the party incurring such expense.

#### 10. FORCE MAJEURE

Neither party to the Licence shall be liable in any way for any delays or failure to perform its obligations thereunder resulting from any cause beyond its reasonable control.

#### 11. NOTICE

Any notice or other communication required to be given (whether required to be given in writing or otherwise) shall be given by post, cable, telex or facsimile copy addressed to the party to receive such notice at its address for service being its address contained in the Licence or such other address as shall have been notified to the other for the purpose of the Licence. Any notice given by post shall be deemed to have been served at the expiration of three days after it is posted. Any notice given by cable, telex or facsimile copy shall be deemed to have been served (at the sender's address for service) on the date on which it was despatched.

#### 12. INDEMNITY

The Licensee will indemnify and at all times keep Open University Educational Enterprises Limited fully indemnified against all actions, proceedings, claims, costs and damages whatsoever made against or incurred by Open University Educational Enterprises Limited in consequence of any breach or nonperformance by the Licensee, its employees or agents of any of the covenants contained in the Licence.

#### 13. LAW OF ENGLAND

The law of England shall govern the Licence.

## **APPENDIX A THE OPEN UNIVERSITY LICENSED OFF AIR RECORDING SCHEME SCALE OF LICENCE FEES FOR SCHOOLS**

CATEGORY 1A:	Licence fee per annum for Primary Schools £28 per annum (plus VAT)
CATEGORY 1B:	Licence fee per annum for Secondary Schools and Sixth Form Colleges £78 per annum (plus VAT)

**APPENDIX B**  
**THE OPEN UNIVERSITY LICENSED**  
**OFF AIR RECORDING SCHEME**  
**SCALE OF FEES FOR FURTHER AND HIGHER**  
**EDUCATIONAL ESTABLISHMENTS**

Scale of Fees per annum for Colleges of Further Education, Colleges of Higher Education, Polytechnics, Universities and certain other individual Educational Institutions

Number of Recordings	Fee Per Annum or Part Thereof	Unit Cost per Additional Recordings
Under 5 recordings will be charged at £19.36 per recording		
5	£96.80	
6-9		£19.36
10	£155.25	
11-14		£15.48
15	£212.55	
16-24		£14.20
25	£322.65	
26-49		£12.90
50	£594.75	
51-74		£11.88
75	£865.75	
76-99		£11.50
100	£1,128.50	
101-124		£11.30
125	£1,355.40	
126-149		£10.86
150	£1,552.50	
151-199		£10.38
200	£1,934.60	
201-249		£9.68
250	£2,328.70	
251-299		£9.30
300	£2,651.10	
301-399		£8.88
400	£3,290.00	
401-499		£8.22
500	£3,869.20	£7.15

**VAT IS ADDITIONAL**

Please note that the FEES relate to EACH EPISODE of a series. Thus a series of six programmes will attract six programme fees.

These fees apply to those programmes which are retained for use. A FREE 28 day period for PREVIEW purposes ONLY is allowed to assess suitability.

**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 apply, however, if and to the extent that there is a licensing scheme certified for the purposes of that section providing for the grant of licences.

Pursuant to the Copyright (Certification of Licensing Scheme for Educational Recording of Broadcasts) (Open University Educational Enterprises Limited) Order 1990 (S.I. 1990/2008), the Secretary of State certified the licensing scheme to be operated by Open University Educational Enterprises Limited as scheduled to that Order (“the 1990 scheme”).

Open University Educational Enterprises has applied to the Secretary of State to certify a new licensing scheme which it proposes to operate from 1st January 1994 to replace the 1990 scheme.

This Order, made under section 143 of the Act, both certifies the new licensing scheme as scheduled to the Order and revokes the earlier Order which certified the 1990 scheme, with effect from 1st January 1994.