

COPYRIGHT

RIGHTS IN DATABASES

The Copyright and Rights in Databases Regulations 1997

Made

18th December 1997

Coming into force

1st January 1998

Whereas a draft of the following Regulations has been approved by a resolution of each House of Parliament:

Now, therefore, the Secretary of State, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(1) in relation to measures relating to copyright(2) and measures relating to the prevention of unauthorised extraction of the contents of a database and of unauthorised re-utilisation of those contents(3), in exercise of the powers conferred by section 2(2) and (4) of that Act, hereby makes the following Regulations:—

PART I INTRODUCTORY PROVISIONS

Citation, commencement and extent

- 1.—(1) These Regulations may be cited as the Copyright and Rights in Databases Regulations 1997.
- (2) These Regulations come into force on 1st January 1998.
- (3) These Regulations extend to the whole of the United Kingdom.

Implementation of Directive

- 2.—(1) These Regulations make provision for the purpose of implementing—
 - (a) Council Directive No. [96/9/EC](#) of 11 March 1996(4) on the legal protection of databases, and
 - (b) certain obligations of the United Kingdom created by or arising under the EEA Agreement so far as relating to the implementation of that Directive.
- (2) In this Regulation “the EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992(5), as adjusted by the Protocol signed at Brussels on 17th March 1993(6).

Interpretation

3. In these Regulations “the 1988 Act” means the Copyright, Designs and Patents Act 1988(7).

Scheme of the Regulations

- 4.—(1) The 1988 Act is amended in accordance with the provisions of Part II of these Regulations, subject to the savings and transitional provisions in Part IV of these Regulations.
- (2) Part III of these Regulations has effect subject to those savings and transitional provisions.

PART II AMENDMENT OF THE COPYRIGHT, DESIGNS AND PATENTS ACT 1988

Copyright in databases

5. In section 3(1), in the definition of “literary work” —

(a) in paragraph (a) after “compilation” insert “other than a database”;

(b) at the end of paragraph (b) leave out “and”;

(c) at the end of paragraph (c) insert “and (d) a database;”.

Meaning of “database”

6. After section 3 insert—

“Databases

3A.—(1) In this Part “database” means a collection of independent works, data or other materials which—

(a) are arranged in a systematic or methodical way, and

(b) are individually accessible by electronic or other means.

(2) For the purposes of this Part a literary work consisting of a database is original if, and only if, by reason of the selection or arrangement of the contents of the database the database constitutes the author’s own intellectual creation.”.

Meaning of “adaptation” in relation to database

7. In section 21 (infringement by making adaptation or act done in relation to adaptation), in subsection (3)—

(a) in paragraph (a), for “other than a computer program or” substitute “other than a computer program or a database, or in relation to a”, and

(b) after paragraph (ab) insert—

“(ac) in relation to a database, means an arrangement or altered version of the database or a translation of it;”.

Research

8.—(1) In section 29 (research and private study), in subsection (1), after “literary” insert “work, other than a database, or a”.

(2) After subsection (1) of that section insert—

“(1A) Fair dealing with a database for the purposes of research or private study does not infringe any copyright in the database provided that the source is indicated.”.

(3) After subsection (4) of that section insert—

“(5) The doing of anything in relation to a database for the purposes of research for a commercial purpose is not fair dealing with the database.”.

Permitted acts in relation to databases

9. After section 50C insert—

“Databases: permitted acts

Acts permitted in relation to databases.

50D.—(1) It is not an infringement of copyright in a database for a person who has a right to use the database or any part of the database, (whether under a licence to do any of the acts restricted by the copyright in the database or otherwise) to do, in the exercise of that right, anything which is necessary for the purposes of access to and use of the contents of the database or of that part of the database.

(2) Where an act which would otherwise infringe copyright in a database is permitted under this section, it is irrelevant whether or not there exists any term or condition in any agreement which purports to prohibit or restrict the act (such terms being, by virtue of section 296B, void).”.

Avoidance of certain terms

10. After section 296A insert—

“Databases

Avoidance of certain terms relating to databases

296B. Where under an agreement a person has a right to use a database or part of a database, any term or condition in the agreement shall be void in so far as it purports to prohibit or restrict the performance of any act which would but for section 50D infringe the copyright in the database.”.

Defined expressions

11. In section 179 (index of defined expressions), in the appropriate place in alphabetical order insert—

“database section 3A(1)”

“original (in relation to a database) section 3A(2)”.

PART III DATABASE RIGHT

Interpretation

12.—(1) In this Part—

- “database” has the meaning given by section 3A(1) of the 1988 Act (as inserted by Regulation 6);
- “extraction”, in relation to any contents of a database, means the permanent or temporary transfer of those contents to another medium by any means or in any form;
- “insubstantial”, in relation to part of the contents of a database, shall be construed subject to Regulation 16(2);
- “investment” includes any investment, whether of financial, human or technical resources;
- “jointly”, in relation to the making of a database, shall be construed in accordance with Regulation 14(6);

- “lawful user”, in relation to a database, means any person who (whether under a licence to do any of the acts restricted by any database right in the database or otherwise) has a right to use the database;
- “maker”, in relation to a database, shall be construed in accordance with Regulation 14;
- “re-utilisation”, in relation to any contents of a database, means making those contents available to the public by any means;
- “substantial”, in relation to any investment, extraction or re-utilisation, means substantial in terms of quantity or quality or a combination of both.

(2) The making of a copy of a database available for use, on terms that it will or may be returned, otherwise than for direct or indirect economic or commercial advantage, through an establishment which is accessible to the public shall not be taken for the purposes of this Part to constitute extraction or re-utilisation of the contents of the database.

(3) Where the making of a copy of a database available through an establishment which is accessible to the public gives rise to a payment the amount of which does not go beyond what is necessary to cover the costs of the establishment, there is no direct or indirect economic or commercial advantage for the purposes of paragraph (2).

(4) Paragraph (2) does not apply to the making of a copy of a database available for on -the-spot reference use.

(5) Where a copy of a database has been sold within the EEA by, or with the consent of, the owner of the database right in the database, the further sale within the EEA of that copy shall not be taken for the purposes of this Part to constitute extraction or re-utilisation of the contents of the database.

Database right

13.—(1) A property right (“database right”) subsists, in accordance with this Part, in a database if there has been a substantial investment in obtaining, verifying or presenting the contents of the database.

(2) For the purposes of paragraph (1) it is immaterial whether or not the database or any of its contents is a copyright work, within the meaning of Part I of the 1988 Act.

(3) This Regulation has effect subject to Regulation 18.

The maker of a database

14.—(1) Subject to paragraphs (2) to (4), the person who takes the initiative in obtaining, verifying or presenting the contents of a database and assumes the risk of investing in that obtaining, verification or presentation shall be regarded as the maker of, and as having made, the database.

(2) Where a database is made by an employee in the course of his employment, his employer shall be regarded as the maker of the database, subject to any agreement to the contrary.

(3) Subject to paragraph (4), where a database is made by Her Majesty or by an officer or servant of the Crown in the course of his duties, Her Majesty shall be regarded as the maker of the database.

(4) Where a database is made by or under the direction or control of the House of Commons or the House of Lords—

(a) the House by whom, or under whose direction or control, the database is made shall be regarded as the maker of the database, and

(b) if the database is made by or under the direction or control of both Houses, the two Houses shall be regarded as the joint makers of the database.

(5) For the purposes of this Part a database is made jointly if two or more persons acting together in collaboration take the initiative in obtaining, verifying or presenting the contents of the database and assume the risk of investing in that obtaining, verification or presentation.

(6) References in this Part to the maker of a database shall, except as otherwise provided, be construed, in relation to a database which is made jointly, as references to all the makers of the database.

First ownership of database right

15. The maker of a database is the first owner of database right in it.

Acts infringing database right

16.—(1) Subject to the provisions of this Part, a person infringes database right in a database if, without the consent of the owner of the right, he extracts or re-utilises all or a substantial part of the contents of the database.

(2) For the purposes of this Part, the repeated and systematic extraction or re-utilisation of insubstantial parts of the contents of a database may amount to the extraction or re-utilisation of a substantial part of those contents.

Term of protection

17.—(1) Database right in a database expires at the end of the period of fifteen years from the end of the calendar year in which the making of the database was completed.

(2) Where a database is made available to the public before the end of the period referred to in paragraph (1), database right in the database shall expire fifteen years from the end of the calendar year in which the database was first made available to the public.

(3) Any substantial change to the contents of a database, including a substantial change resulting from the accumulation of successive additions, deletions or alterations, which would result in the database being considered to be a substantial new investment shall qualify the database resulting from that investment for its own term of protection.

(4) This Regulation has effect subject to Regulation 30.

Qualification for database right

18.—(1) Database right does not subsist in a database unless, at the material time, its maker, or if it was made jointly, one or more of its makers, was—

(a) an individual who was a national of an EEA state or habitually resident within the EEA,

(b) a body which was incorporated under the law of an EEA state and which, at that time, satisfied one of the conditions in paragraph (2), or

(c) a partnership or other unincorporated body which was formed under the law of an EEA state and which, at that time, satisfied the condition in paragraph (2)(a).

(2) The conditions mentioned in paragraphs (1)(b) and (c) are—

(a) that the body has its central administration or principal place of business within the EEA, or

(b) that the body has its registered office within the EEA and the body's operations are linked on an ongoing basis with the economy of an EEA state.

(3) Paragraph (1) does not apply in any case falling within Regulation 14(4).

(4) In this Regulation—

(a) "EEA" and "EEA state" have the meaning given by section 172A of the 1988 Act;

(b) "the material time" means the time when the database was made, or if the making extended over a period, a substantial part of that period.

Avoidance of certain terms affecting lawful users

19.—(1) A lawful user of a database which has been made available to the public in any manner shall be entitled to extract or re-utilise insubstantial parts of the contents of the database for any purpose.

(2) Where under an agreement a person has a right to use a database, or part of a database, which has been made available to the public in any manner, any term or condition in the agreement shall be void in so far as it purports to prevent that person from extracting or re-utilising insubstantial parts of the contents of the database, or of that part of the database, for any purpose.

Exceptions to database right

20.—(1) Database right in a database which has been made available to the public in any manner is not infringed by fair dealing with a substantial part of its contents if—

(a) that part is extracted from the database by a person who is apart from this paragraph a lawful user of the database,

(b) it is extracted for the purpose of illustration for teaching or research and not for any commercial purpose, and

(c) the source is indicated.

(2) The provisions of Schedule 1 specify other acts which may be done in relation to a database notwithstanding the existence of database right.

Acts permitted on assumption as to expiry of database right

21.—(1) Database right in a database is not infringed by the extraction or re-utilisation of a substantial part of the contents of the database at a time when, or in pursuance of arrangements made at a time when—

(a) it is not possible by reasonable inquiry to ascertain the identity of the maker, and

(b) it is reasonable to assume that database right has expired.

(2) In the case of a database alleged to have been made jointly, paragraph (1) applies in relation to each person alleged to be one of the makers.

Presumptions relevant to database right

22.—(1) The following presumptions apply in proceedings brought by virtue of this Part of these Regulations with respect to a database.

(2) Where a name purporting to be that of the maker appeared on copies of the database as published, or on the database when it was made, the person whose name appeared shall be presumed, until the contrary is proved—

(a) to be the maker of the database, and

(b) to have made it in circumstances not falling within Regulation 14(2) to (4).

(3) Where copies of the database as published bear a label or a mark stating—

(a) that a named person was the maker of the database, or

(b) that the database was first published in a specified year,

the label or mark shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

(4) In the case of a database alleged to have been made jointly, paragraphs (2) and (3), so far as is applicable, apply in relation to each person alleged to be one of the makers.

Application of copyright provisions to database right

23. The following provisions of the 1988 Act—

- sections 90 to 93 (dealing with rights in copyright works);
- sections 96 to 98 (rights and remedies of copyright owner);
- sections 101 and 102 (rights and remedies of exclusive licensee);

apply in relation to database right and databases in which that right subsists as they apply in relation to copyright and copyright works.

Licensing of database right

24. The provisions of Schedule 2 have effect with respect to the licensing of database right.

Database right: jurisdiction of Copyright Tribunal

25.—(1) The Copyright Tribunal has jurisdiction under this Part to hear and determine proceedings under the following provisions of Schedule 2—

(a) paragraph 3, 4 or 5 (reference of licensing scheme);

(b) paragraph 6 or 7 (application with respect to licence under licensing scheme);

(c) paragraph 10, 11 or 12 (reference or application with respect to licence by licensing body).

(2) The provisions of Chapter VIII of Part I of the 1988 Act (general provisions relating to the Copyright Tribunal) apply in relation to the Tribunal when exercising any jurisdiction under this Part.

(3) Provision shall be made by rules under section 150 of the 1988 Act prohibiting the Tribunal from entertaining a reference under paragraph 3, 4 or 5 of Schedule 2 (reference of licensing scheme) by a representative organisation unless the Tribunal is satisfied that the organisation is reasonably representative of the class of persons which it claims to represent.

PART IV SAVINGS AND TRANSITIONAL PROVISIONS

Introductory

26.—(1) In this Part “commencement” means the commencement of these Regulations.

(2) Expressions used in this Part which are defined for the purposes of Part I of the 1988 Act have the same meaning as in that Part.

General rule

27. Subject to Regulations 28 and 29, these Regulations apply to databases made before or after commencement.

General savings

28.—(1) Nothing in these Regulations affects any agreement made before commencement.

(2) No act done—

(a) before commencement, or

(b) after commencement, in pursuance of an agreement made before commencement,

shall be regarded as an infringement of database right in a database.

Saving for copyright in certain existing databases

29.—(1) Where a database—

(a) was created on or before 27th March 1996, and

(b) is a copyright work immediately before commencement,

copyright shall continue to subsist in the database for the remainder of its copyright term.

(2) In this Regulation “copyright term” means the period of the duration of copyright under section 12 of the 1988 Act (duration of copyright in literary, dramatic, musical or artistic works).

Database right: term applicable to certain existing databases

30. Where—

(a) the making of a database was completed on or after 1st January 1983, and

(b) on commencement, database right begins to subsist in the database,

database right shall subsist in the database for the period of fifteen years beginning with 1st January 1998.

Ian McCartney,

Minister of State,

Department of Trade and Industry

18th December 1997

Regulation 20(2).

SCHEDULE 1 EXCEPTIONS TO DATABASE RIGHT FOR PUBLIC ADMINISTRATION

Parliamentary and judicial proceedings

1. Database right in a database is not infringed by anything done for the purposes of parliamentary or judicial proceedings or for the purposes of reporting such proceedings.

Royal Commissions and statutory inquiries

2.—(1) Database right in a database is not infringed by anything done for—

(a) the purposes of the proceedings of a Royal Commission or statutory inquiry, or

(b) the purpose of reporting any such proceedings held in public.

(2) Database right in a database is not infringed by the issue to the public of copies of the report of a Royal Commission or statutory inquiry containing the contents of the database.

(3) In this paragraph “Royal Commission” and “statutory inquiry” have the same meaning as in section 46 of the 1988 Act.

Material open to public inspection or on official register

3.—(1) Where the contents of a database are open to public inspection pursuant to a statutory requirement, or are on a statutory register, database right in the database is not infringed by the extraction of all or a substantial part of the contents containing factual information of any description, by or with the authority of the appropriate person, for a purpose which does not involve re-utilisation of all or a substantial part of the contents.

(2) Where the contents of a database are open to public inspection pursuant to a statutory requirement, database right in the database is not infringed by the extraction or re-utilisation of all or a substantial part of the contents, by or with the authority of the appropriate person, for the purpose of enabling the contents to be inspected at a more convenient time or place or otherwise facilitating the exercise of any right for the purpose of which the requirement is imposed.

(3) Where the contents of a database which is open to public inspection pursuant to a statutory requirement, or which is on a statutory register, contain information about matters of general scientific, technical, commercial or economic interest, database right in the database is not infringed by the extraction or re-utilisation of all or a

substantial part of the contents, by or with the authority of the appropriate person, for the purpose of disseminating that information.

(4) In this paragraph—

“appropriate person” means the person required to make the contents of the database open to public inspection or, as the case may be, the person maintaining the register;

“statutory register” means a register maintained in pursuance of a statutory requirement; and

“statutory requirement” means a requirement imposed by provision made by or under an enactment.

Material communicated to the Crown in the course of public business

4.—(1) This paragraph applies where the contents of a database have in the course of public business been communicated to the Crown for any purpose, by or with the licence of the owner of the database right and a document or other material thing recording or embodying the contents of the database is owned by or in the custody or control of the Crown.

(2) The Crown may, for the purpose for which the contents of the database were communicated to it, or any related purpose which could reasonably have been anticipated by the owner of the database right in the database, extract or re-utilise all or a substantial part of the contents without infringing database right in the database.

(3) The Crown may not re-utilise the contents of a database by virtue of this paragraph if the contents have previously been published otherwise than by virtue of this paragraph.

(4) In sub-paragraph (1) “public business” includes any activity carried on by the Crown.

(5) This paragraph has effect subject to any agreement to the contrary between the Crown and the owner of the database right in the database.

Public records

5. The contents of a database which are comprised in public records within the meaning of the Public Records Act 1958(8), the Public Records (Scotland) Act 1937(9) or the Public Records Act (Northern Ireland) 1923(10) which are open to public inspection in pursuance of that Act, may be re-utilised by or with the authority of any officer appointed under that Act, without infringement of database right in the database.

Acts done under statutory authority

6.—(1) Where the doing of a particular act is specifically authorised by an Act of Parliament, whenever passed, then, unless the Act provides otherwise, the doing of that act does not infringe database right in a database.

(2) Sub-paragraph (1) applies in relation to an enactment contained in Northern Ireland legislation as it applies in relation to an Act of Parliament.

(3) Nothing in this paragraph shall be construed as excluding any defence of statutory authority otherwise available under or by virtue of any enactment.

SCHEDULE 2 LICENSING OF DATABASE RIGHT

Licensing scheme and licensing bodies

1.—(1) In this Schedule 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 database 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 this Schedule 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 database right or as agent for him, of database right licences, and whose objects include the granting of licences covering the databases of more than one maker.

(3) In this paragraph “database right licences” means licences to do, or authorise the doing of, any of the things for which consent is required under Regulation 16.

2. Paragraphs 3 to 8 apply to licensing schemes which are operated by licensing bodies and cover databases of more than one maker so far as they relate to licences for extracting or re-utilising all or a substantial part of the contents of a database; and references in those paragraphs to a licensing scheme shall be construed accordingly.

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.

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 section 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.

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 section, 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 section 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—

(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 database right as if he had at all material times been the holder of a licence granted by the owner of the database right 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) 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 database right as if he had at all material times been the holder of a licence granted by the owner of the database right in question on the terms specified in the order.

References and applications with respect to licences by licensing bodies

9. Paragraphs 10 to 13 (references and applications with respect to licensing by licensing bodies) apply to licences relating to database right which cover databases of more than one maker granted by a licensing body otherwise than in pursuance of a licensing scheme, so far as the licences authorise extracting or re-utilising all or a substantial part of the contents of a database; and references in those paragraphs to a licence shall be construed accordingly.

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 section 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 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 section 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 database right as if he had at all material times been the holder of a licence granted by the owner of the database right 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. 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—

(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.

Powers exercisable in consequence of competition report

15.—(1) Where the matters specified in a report of the Monopolies and Mergers Commission as being those which in the Commission's opinion operate, may be expected to operate or have operated against the public interest include—

(a) conditions in licences granted by the owner of database right in a database restricting the use of the database by the licensee or the right of the owner of the database right to grant other licences, or

(b) a refusal of an owner of database right to grant licences on reasonable terms,

the powers conferred by Part I of Schedule 8 to the Fair Trading Act 1973([11](#)) (powers exercisable for purpose of remedying or preventing adverse effects specified in report of Commission) include power to cancel or modify those conditions and, instead or in addition, to provide that licences in respect of the database right shall be available as of right.

(2) The references in sections 56(2) and 73(2) of that Act, and sections 10(2)(b) and 12(5) of the Competition Act 1980([12](#)), to the powers specified in that Part of that Schedule shall be construed accordingly.

(3) 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 requiring the licence; and terms so settled shall authorise the licensee to do everything in respect of which a licence is so available.

(4) 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.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement the provisions of Council Directive No. [96/9/EC](#) of 11 March 1996 (O.J. No. L77, 27.3.96, page 20) on the legal protection of databases (“the Directive”). The Regulations come into force on 1st January 1998.

The Directive harmonises the laws of member states relating to the protection of copyright in databases and also introduces a new *sui generis* right to prevent extraction and re-utilisation of the contents of a database (“database right”).

The Copyright, Designs and Patents Act 1988 (“the Act”) makes no specific provision for databases. The Act currently makes provision for protection of copyright in compilations. A database may fall to be considered as a type of compilation. The Directive requires that a database be defined and that copyright protection should only be accorded to a database which by virtue of the selection or arrangement of the contents constitutes the author's own intellectual creation.

In relation to copyright in databases, Part II of the Regulations (Regulations 5—11) amend and modify Part I of the Act in order to properly align its provisions with those of the Directive for those matters where the Act makes no specific provision or makes different provision. In particular, the Regulations—

(a) modify the definition of literary work in section 3 by including database, as defined in the Directive (regulations 5 and 6);

(b) introduce new section 3A defining the meaning of “original” in relation to databases so that a database is only accorded copyright protection where the conditions of that section are satisfied (regulation 6);

(c) make provision for adaptation and translation in relation to a database at section 21 (regulation 7);

(d) amend section 29 so as to remove research for a commercial purpose from the general application of the fair dealing provision in relation to a database (regulation 8);

(e) introduce new section 50D containing specific exceptions to the exclusive rights of the copyright owner which permit any person having a right to use a database to do any acts that are necessary for access to and use of the contents of the database without infringing copyright (regulation 9);

(f) introduce new section 296B which renders void any term in an agreement which seeks to prohibit or restrict the doing of any act permitted under section 50D (regulation 10).

In relation to database right, the Directive provides a right for the maker of a database in which there has been a substantial investment in the obtaining, verification or presentation of the contents of the database to prevent extraction and/or re-utilisation of the whole or a substantial part of the contents of the database. Database right is to apply irrespective of the eligibility of the database for protection by copyright and without prejudice to rights existing in the contents of the database.

Part III of the Regulations (Regulations 12—25) provide for database right and in particular—

(a) make provision for the interpretation of certain terms, in particular database, extraction, insubstantial, investment, jointly, lawful user, maker, re-utilisation and substantial; and exclude public lending from database right (regulation 12);

(b) create a new property right, “database right” for a database in respect of which there has been a substantial investment (regulation 13);

(c) provide that the maker of a database is the person who takes the initiative and risk of investing in obtaining, verifying or presenting the contents and that the maker is the first owner of database right (regulations 14 and 15);

(d) provide for the acts infringing database right (regulation 16);

(e) provide that the duration of the term of protection of database right is to be 15 years from the end of the calendar year in which the making of the database was completed and that substantial changes give rise to a further term of protection (regulation 17);

(f) provide that database right does not subsist in a database unless when the database was made, or if the making extended over a period, a substantial part of that period, its maker or one of its makers meets the qualifying conditions for database right to subsist (regulation 18);

(g) provide that lawful users are entitled to extract or re-utilise insubstantial parts of a database and render void any term or condition in an agreement which seeks to prohibit or restrict such extraction or re-utilisation (regulations 19 and 20);

(h) provide specific exceptions to database right for a lawful user and other acts which may be done in relation to a database (regulation 20 and Schedule 1);

(i) provide for acts permitted on assumption as to expiry of database right and certain presumptions relevant to database right (regulations 21 and 22);

(j) apply in relation to database right certain provisions of Part I of the Act as they apply to copyright in particular dealing with the rights in copyright works, rights and remedies of rights owners and exclusive licensees (regulation 23);

(k) provide for licensing of database right and extension of the jurisdiction of the Copyright Tribunal to hear and determine proceedings relating to the licensing of database right (regulations 24 and 25 and Schedule 2).

These Regulations apply to databases made before and after the 1st January 1998. However, there is a general saving in relation to agreements made before commencement; in particular acts done in pursuance of such agreements whether before or after commencement are not regarded as infringing database right (regulations 27 and 28). In relation to a database which was created on or before 27th March 1996 (the date of publication of the Directive) and which is a copyright work immediately before commencement, copyright will continue to subsist in such a database for the remainder of the term of copyright (regulation 29). In relation to a database which was completed on or after 1st January 1983 in which database right subsists at 1 January 1998, such a database qualifies for a term of protection of 15 years from 1st January 1998 (regulation 30).

A Compliance Cost Assessment is available, copies of which have been placed in the libraries of both Houses of Parliament. Copies of the assessment are available to the public from the Copyright Directorate of The Patent Office, 25 Southampton Buildings, London WC2A 1AY.

(1)

[1972 c. 68](#); by virtue of the amendment of section 1(2) of that Act by section 1 of the European Economic Area Act [1993 \(c. 51\)](#) regulations may be made under section 2(2) to implement obligations of the United Kingdom arising under the EEA Agreement.

(2)

S.I. [1993/595](#).

(3)

S.I. [1996/3155](#).

(4)

O.J. No. L77, 27.3.96 p.20.

(5)

Cm 2073.

(6)

Cm 2183.

(7)

[1988 c. 48.](#)

(8)

[1958 c. 51.](#)

(9)

[1937 c. 43.](#)

(10)

[1923 c. 20 \(N.I.\).](#)

(11)

[1973 c. 41.](#)

(12)

[1980 c. 21.](#)