

2005 No. 222

COPYRIGHT

The Copyright (Certification of Licensing Scheme for Educational Recording of Broadcasts) (Educational Recording Agency Limited) Order 2005

Made - - - - *2nd February 2005*

Whereas The Educational Recording Agency Limited (company number 2423219), whose registered office is at Hanover House, 14 Hanover Square, London W1S 1HP has applied to the Secretary of State to certify, for the purposes of section 35 of, and paragraph 6 of Schedule 2 to, the Copyright, Designs and Patents Act 1988 (“the Act”)(a), 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 her by section 143 of, and paragraph 16 of Schedule 2A to, 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) (Educational Recording Agency Limited) Order 2005.
2. The licensing scheme set out in the Schedule to this Order is certified for the purposes of section 35(b) of, and paragraph 6 of Schedule 2(c) to, the Copyright, Designs and Patents Act 1988.
3. The certification under article 2 shall come into operation on 1st April 2005.

2nd February 2005

Sainsbury of Turville
Parliamentary Under Secretary of State for Science and Innovation
Department of Trade and Industry

(a) 1988 c. 48.
(b) Amended by SI 2003/2498.
(c) Amended by SI 2003/2498.

The Educational Recording Agency Limited Licensing Scheme

LICENSING SCHEME

THE EDUCATIONAL RECORDING AGENCY LIMITED

Nature of the Licence

1. The Educational Recording Agency Limited (known as “ERA”) is authorised to operate a Licensing Scheme for the purposes of both section 35 of, and paragraph 6 of Schedule 2 to the Copyright, Designs and Patents Act 1988.

2. “The Act” refers to the Copyright, Designs and Patents Act 1988 or any relevant law amending, modifying or re-enacting it from time to time.

3. Set out below are the terms of the Licensing Scheme which ERA has been authorised to operate to the extent that the same has been certified for the purposes of both section 35 of the Act and paragraph 6 of Schedule 2 to the Act (“the Licensing Scheme”).

4. These terms shall form part of licences issued under the Licensing Scheme (“the Licence”).

5. The Licensing Scheme and Licences issued under it shall apply only to Relevant Rights when used for non-commercial educational purposes within or on behalf of an Educational Establishment. All licensees under the Licensing Scheme shall either be or represent an Educational Establishment (“Licensee”).

6. “Educational Establishment” shall mean any school and any other description of educational establishment as may be specified by order of the Secretary of State for the purposes of section 174 of the Act.

ERA Repertoire and Licensor Members

7. The copyright works and rights in performances relevant to a Licence granted under the Licensing Scheme (“ERA Repertoire”) are the works and performances in respect of which and to the extent which the Licensor Members of ERA (or persons represented by the Licensor Members) own or control Relevant Rights.

“Relevant Rights” shall comprise the right:

- (a) to cause or authorise the making of recordings of a broadcast and copies of such a recording and (only as a direct result of their inclusion in a broadcast) of such copyright works and/or performances contained in the recorded broadcast by or on behalf of an Educational Establishment for the educational purposes of that Educational Establishment (“ERA Recordings”); and
- (b) to authorise ERA Recordings to be communicated to the public by a person situated within the premises of an Educational Establishment but only to the extent that the communication cannot be received by any person situated outside the premises of that Educational Establishment.

8. The Licensor Members of ERA and the works and performances forming part of ERA Repertoire in respect of which the Relevant Rights are owned or controlled by such Licensors will for the purposes of Licences issued under the Licensing Scheme comprise:

AUTHORS’ 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.

BBC WORLDWIDE LIMITED

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

CHANNEL FOUR TELEVISION CORPORATION (“Channel 4”)

The broadcasts made on Channel 4, E4 and/or Film Four and/or any other broadcast service operated by Channel 4 or any of its subsidiary companies and all those copyright works owned or controlled by Channel 4 or any of its subsidiary companies included in any broadcast.

CHANNEL 5 BROADCASTING LIMITED (“Channel 5”)

The broadcasts made on Five and/or any other broadcast service operated by Channel 5 or any of its subsidiary companies and all those copyright works owned or controlled by Channel 5 or any of its subsidiary companies included in any broadcast

DESIGN AND ARTISTS COPYRIGHT SOCIETY LIMITED (“DACS”)

Those artistic works (as defined in the Act) in which the copyright is owned or controlled by the members of DACS or the members of those copyright societies represented by DACS and which are included in any broadcast.

EQUITY

The performances by persons represented by Equity which are included in any broadcast.

THE INCORPORATED SOCIETY OF MUSICIANS (“ISM”)

The literary and musical works which are owned by or controlled by persons represented by ISM and the performances by persons who are represented by ISM which are included in any broadcast.

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 from which an ERA Recording is made.

ITV NETWORK LIMITED (“ITV Network”)

The broadcasts made on the channel branded as ITV1 in England and Wales, as Grampian TV and Scottish TV in Scotland, as Ulster in Northern Ireland, and as Channel TV in the Channel Islands, on ITV 2, on ITV 3, on the ITV News Channel and/or any other broadcast service operated by ITV Network Limited or any of its associated or subsidiary companies and all those copyright works owned or controlled by ITV Network Limited or any of its subsidiary or associated companies included in any broadcast.

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 from which an ERA Recording is made.

MUSICIANS’ UNION (“the MU”)

The performances by persons represented by the MU which are included in any broadcast.

THE PERFORMING RIGHT SOCIETY LIMITED (“PRS”)

The musical works which are owned or controlled by the PRS or by persons represented by the PRS and which are included in any broadcast from which an ERA Recording has been made.

PHONOGRAPHIC PERFORMANCE LIMITED (“PPL”)

Those sound recordings which are owned or represented by PPL and which are included in any broadcast from which an ERA Recording is made.

SIANEL PEDWAR CYMRU (“S4C”)

The broadcasts made on S4C, S4C Digital and/or S4C2 and/or any other broadcast service operated by S4C or any of its subsidiary companies and all those copyright works owned or controlled by S4C or any of its subsidiary companies included in any broadcast.

For the above purposes “broadcast” shall have the meaning provided by section 6 of the Act.

However, Licences under the Licensing Scheme shall not authorise the recording of Open University 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 ERA who shall be obliged within a reasonable time (by one of the Licensor Members) to confirm whether or not a particular right is owned or controlled by one of the Licensors.

9. No recording or copying of a broadcast under any Licence shall be made except by or on behalf of an Educational Establishment 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 or use of any recordings or copies by that third party or any other third party unless ERA shall have expressly agreed that a specific third party may retain any recordings or copies for subsequent use only by authorised Licensees of ERA in accordance with the provisions of the Licensing Scheme.

Maintaining records

10. Licensees shall be required to ensure that all ERA Recordings or copies comprising ERA Recordings made under a Licence provide for sufficient acknowledgement of the broadcast relevant to the ERA Recording to be given with each ERA Recording being marked with the name of the broadcaster, the date upon which the broadcast took place and the title of the recording.

To provide sufficient acknowledgement all copies shall be marked with a statement in clear and bold lettering reading:

“This recording is to be used only for non-commercial educational purposes under the terms of the ERA Licence”

or such other wording or statement as ERA shall reasonably require from time to time.

Physical copies shall include the statement on the exterior of the copy, and /or its packaging. When under the Licence copies are made and stored in digital form for access through a computer server, the statement shall also be included as a written opening credit or webpage which must be viewed or listened to before access to the ERA Recording is permitted.

11. Licensees may be required to record and maintain at the request of ERA details of broadcasts and television or radio programmes or any part or parts of such programmes which are made as ERA Recordings and the number of copies of such recordings made under a Licence and to make available to ERA such records for inspection.

12. Licensees shall undertake that if and when any ERA Recordings are communicated to the public by a person situated within the premises of an Educational Establishment under the Licence suitable password, and other digital rights management or technological protection systems are operated and applied by the Licensee to ensure that such communication is not received or receivable by persons situated outside the premises of the licensed Educational Establishment.

13. Licensees may be required to maintain further records and answer questionnaires or surveys as ERA may reasonably require for the proper operation of the Licensing Scheme.

14. ERA shall be entitled to inspect and Licensees shall provide for ERA to have access to all records that Licensees and licensed Educational Establishments are required to maintain under the above provisions, and further to have access to all ERA Recordings however stored under the terms of a Licence, in order to inspect the same to check compliance with the Licence.

Period of Licence and Fees

15. Licences shall be made in consideration of payment of the agreed Licence fees and may be granted for such period or periods as may from time to time be specified by or agreed with ERA.

16. The Licence fee shall be calculated by reference to the period for which the Licence is granted and to the tariff applicable in respect of that period.

17. The annual tariff shall be calculated on a full-time or full-time equivalent per head basis by category of student in an Educational Establishment. For Licences taking effect on or after 1st April 2005 the annual tariff shall be:

Students in Primary schools (including Educational Establishments known as Preparatory Schools)	29p per head
Students in Secondary schools	50p per head
Students in Educational Establishments of Further Education (including former Sixth Form Colleges)	95p per head
Students in Educational Establishments of Higher Education (including Higher Education Colleges, Theological Colleges and Universities)	£1.50 per head
Students in Educational Establishments not listed above specified from time to time by the Secretary of State under section 174 of the Act	£1.50 per head

Discounted rates may be negotiated at ERA's discretion to cover groups of Educational Establishments.

18. Licence fees for Licences running for a period of less than one year shall be calculated on a pro-rata basis against the applicable annual tariff.

19. Licensees shall pay agreed Licence fees together with any VAT and any other Government tax which may be applicable from time to time in addition to such Licence Fee on such a date or dates as may from time to time be required by ERA in the Licence and within 28 days of invoice.

Termination

20. ERA shall be entitled to terminate Licences granted:

- (a) if Licence Fees are not paid when due; or
- (b) for any other substantial breach of the conditions of the Licence,

provided that ERA shall have given to the Licensee written notice identifying the nature of late payment or the nature of the breach.

The termination will become effective twenty eight days after receipt of the written notice unless during the relevant period of twenty eight days the Licensee makes payment of outstanding fees or remedies the breach.

21. Licences will automatically terminate:

- (a) if and when an administrator, receiver, administrative receiver or other encumbrancer takes possession of, or is appointed over, the whole or any substantial part of the assets of a Licensee;
- (b) if the Licensee enters into an arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement under the Insolvency Act 1986);
- (c) if a petition is presented for the purpose of considering a resolution for the making of an administration order, the winding-up or dissolution of the Licensee.

22. If punctual payment of agreed Licence Fees is not made, ERA shall be entitled to charge interest on amounts unpaid at the rate of statutory interest prescribed under section 6 of the Late Payment of Commercial Debts (Interest) Act 1998.

23. Upon expiry of a Licence without renewal or when a Licence is terminated by ERA it shall be entitled to require a Licensee to delete all ERA Recordings or copies made by the Educational Establishment to which the Licence related.

24. If a Licensee is in breach of the terms of a Licence and ERA 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 ERA in respect of any such costs and expenses so incurred.

25. Licensees shall be required to take all reasonable steps to ensure that rights granted by a Licence are not exceeded or abused by teachers, employees, pupils or other persons.

26. Licences issued shall be governed and interpreted in accordance with the laws of England and Wales.

EXPLANATORY NOTE

(This note is not part of the Order)

Under section 35 of the Copyright, Designs and Patents Act 1988 recordings of broadcasts may be made by or on behalf of educational establishments without thereby infringing copyright. Similar provision is made by paragraph 6 of Schedule 2 to that Act in relation to performances. These provisions do not, however, apply if and to the extent that there is a licensing scheme certified for the purposes of the relevant provision providing for the grant of licences.

This Order certifies the licensing scheme to be operated by the Educational Recording Agency Limited (effective from 1st April 2005) for the granting of licences to educational establishments for the recording by them of broadcasts, other than television programmes broadcast on behalf of the Open University which are the subject of a separate licensing scheme (SI 2003/187).

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