



Copyright, Designs and Patents Act 1988

1988 CHAPTER 48

PART I

COPYRIGHT

CHAPTER VII

COPYRIGHT LICENSING

References and applications with respect to licensing by licensing bodies

VALID FROM 31/10/2003

[^{F1}128A Notification of licence or licensing scheme for excepted sound recordings

- (1) This section only applies to a proposed licence or licensing scheme that will authorise the playing in public of excepted sound recordings included in broadcasts, in circumstances where by reason of the exclusion of excepted sound recordings from section 72(1), the playing in public of such recordings would otherwise infringe the copyright in them.
- (2) A licensing body must notify the Secretary of State of the details of any proposed licence or licensing scheme for excepted sound recordings before it comes into operation.
- (3) A licence or licensing scheme, which has been notified under subsection (2), may not be operated by the licensing body until 28 days have elapsed since that notification.
- (4) Subject to subsection (5), the Secretary of State shall take into account the matters set out in subsection (6) and then either—

Status: Point in time view as at 01/07/1999. This version of this provision is not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Section 128A. (See end of Document for details)

- (a) refer the licence or licensing scheme to the Copyright Tribunal for a determination of whether the licence or licensing scheme is reasonable in the circumstances, or
 - (b) notify the licensing body that he does not intend to refer the licence or licensing scheme to the Tribunal.
- (5) If the Secretary of State becomes aware—
- (a) that a licensing body has failed to notify him of a licence or licensing scheme under subsection (2) before it comes into operation; or
 - (b) that a licence or licensing scheme has been operated within 28 days of a notification under subsection (2),
- subsection (4) does not apply, but the Secretary of State may at any time refer the licence or licensing scheme to the Tribunal for a determination of whether the licence or licensing scheme is reasonable in the circumstances, or may notify the licensing body that he does not intend to refer it to the Tribunal.
- (6) The matters referred to in subsection (4) are—
- (a) whether the terms and conditions of the proposed licence or licensing scheme have taken into account the factors set out in subsection (7);
 - (b) any written representations received by the Secretary of State;
 - (c) previous determinations of the Tribunal;
 - (d) the availability of other schemes, or the granting of other licences, to other persons in similar circumstances, and the terms of those schemes or licences; and
 - (e) the extent to which the licensing body has consulted any person who would be affected by the proposed licence or licensing scheme, or organisations representing such persons, and the steps, if any, it has taken as a result.
- (7) The factors referred to in subsection (6) are—
- (a) the extent to which the broadcasts to be shown or played by a potential licensee in circumstances mentioned in subsection (1) are likely to include excepted sound recordings;
 - (b) the size and the nature of the audience that a licence or licensing scheme would permit to hear the excepted sound recordings;
 - (c) what commercial benefit a potential licensee is likely to obtain from playing the excepted sound recordings; and
 - (d) the extent to which the owners of copyright in the excepted sound recordings will receive equitable remuneration, from sources other than the proposed licence or licensing scheme, for the inclusion of their recordings in the broadcasts to be shown or played in public by a potential licensee.
- (8) A proposed licence or licensing scheme that must be notified to the Secretary of State under subsection (2) may only be referred to the Tribunal under section 118 or 125 before such notification takes place.
- (9) A proposed licensing scheme that has been notified to the Secretary of State under subsection (2) may only be referred to the Tribunal under section 119 after the Secretary of State has notified the licensing body that he does not intend to refer the licensing scheme to the Tribunal.
- (10) If a reference made to the Tribunal under section 118 or 125 is permitted under subsection (8) then—

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- (a) the reference shall not be considered premature only because the licence or licensing scheme has not been notified to the Secretary of State under subsection (2); and
 - (b) where the Tribunal decides to entertain the reference, subsection (2) to (5) shall not apply.
- (11) Nothing in this section shall be taken to prejudice any right to make a reference or application to the Tribunal under sections 120 to 122, 126 or 127.
- (12) This section applies to modifications to an existing licence or licensing scheme as it applies to a proposed licence or licensing scheme.
- (13) In this section and in section 128B, any reference to a “licence” means a licence granted by a licensing body otherwise than in pursuance of a licensing scheme and which covers works of more than one author.]

Textual Amendments

F1 Ss. 128A, 128B inserted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), [reg. 21\(3\)](#) (with [regs. 31-40](#))

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