



Copyright, Designs and Patents Act 1988

1988 CHAPTER 48

PART I

COPYRIGHT

CHAPTER VII

COPYRIGHT LICENSING

Reprographic copying by educational establishments

137 Power to extend coverage of scheme or licence

- (1) This section applies to—
- (a) a licensing scheme to which sections 118 to 123 apply (see section 117) and which is operated by a licensing body, or
 - (b) a licence to which sections 125 to 128 apply (see section 124),
- so far as it provides for the grant of licences, or is a licence, authorising the making by or on behalf of educational establishments for the purposes of instruction of reprographic copies of published literary, dramatic, musical or artistic works, or of the typographical arrangement of published editions.
- (2) If it appears to the Secretary of State with respect to a scheme or licence to which this section applies that—
- (a) works of a description similar to those covered by the scheme or licence are unreasonably excluded from it, and
 - (b) making them subject to the scheme or licence would not conflict with the normal exploitation of the works or unreasonably prejudice the legitimate interests of the copyright owners,
- he may by order provide that the scheme or licence shall extend to those works.

- (3) Where he proposes to make such an order, the Secretary of State shall give notice of the proposal to—
 - (a) the copyright owners,
 - (b) the licensing body in question, and
 - (c) such persons or organisations representative of educational establishments, and such other persons or organisations, as the Secretary of State thinks fit.
- (4) The notice shall inform those persons of their right to make written or oral representations to the Secretary of State about the proposal within six months from the date of the notice; and if any of them wishes to make oral representations, the Secretary of State shall appoint a person to hear the representations and report to him.
- (5) In considering whether to make an order the Secretary of State shall take into account any representations made to him in accordance with subsection (4), and such other matters as appear to him to be relevant.

138 Variation or discharge of order extending scheme or licence

- (1) The owner of the copyright in a work in respect of which an order is in force under section 137 may apply to the Secretary of State for the variation or discharge of the order, stating his reasons for making the application.
- (2) The Secretary of State shall not entertain an application made within two years of the making of the original order, or of the making of an order on a previous application under this section, unless it appears to him that the circumstances are exceptional.
- (3) On considering the reasons for the application the Secretary of State may confirm the order forthwith; if he does not do so, he shall give notice of the application to—
 - (a) the licensing body in question, and
 - (b) such persons or organisations representative of educational establishments, and such other persons or organisations, as he thinks fit.
- (4) The notice shall inform those persons of their right to make written or oral representations to the Secretary of State about the application within the period of two months from the date of the notice; and if any of them wishes to make oral representations, the Secretary of State shall appoint a person to hear the representations and report to him.
- (5) In considering the application the Secretary of State shall take into account the reasons for the application, any representations made to him in accordance with subsection (4), and such other matters as appear to him to be relevant.
- (6) The Secretary of State may make such order as he thinks fit confirming or discharging the order (or, as the case may be, the order as previously varied), or varying (or further varying) it so as to exclude works from it.

139 Appeals against orders

- (1) The owner of the copyright in a work which is the subject of an order under section 137 (order extending coverage of scheme or licence) may appeal to the Copyright Tribunal which may confirm or discharge the order, or vary it so as to exclude works from it, as it thinks fit having regard to the considerations mentioned in subsection (2) of that section.

- (2) Where the Secretary of State has made an order under section 138 (order confirming, varying or discharging order extending coverage of scheme or licence)—
 - (a) the person who applied for the order, or
 - (b) any person or organisation representative of educational establishments who was given notice of the application for the order and made representations in accordance with subsection (4) of that section,may appeal to the Tribunal which may confirm or discharge the order or make any other order which the Secretary of State might have made.
- (3) An appeal under this section shall be brought within six weeks of the making of the order or such further period as the Tribunal may allow.
- (4) An order under section 137 or 138 shall not come into effect until the end of the period of six weeks from the making of the order or, if an appeal is brought before the end of that period, until the appeal proceedings are disposed of or withdrawn.
- (5) If an appeal is brought after the end of that period, any decision of the Tribunal on the appeal does not affect the validity of anything done in reliance on the order appealed against before that decision takes effect.

140 Inquiry whether new scheme or general licence required

- (1) The Secretary of State may appoint a person to inquire into the question whether new provision is required (whether by way of a licensing scheme or general licence) to authorise the making by or on behalf of educational establishments for the purposes of instruction of reprographic copies of—
 - (a) published literary, dramatic, musical or artistic works, or
 - (b) the typographical arrangement of published editions,of a description which appears to the Secretary of State not to be covered by an existing licensing scheme or general licence and not to fall within the power conferred by section 137 (power to extend existing schemes and licences to similar works).
- (2) The procedure to be followed in relation to an inquiry shall be such as may be prescribed by regulations made by the Secretary of State.
- (3) The regulations shall, in particular, provide for notice to be given to—
 - (a) persons or organisations appearing to the Secretary of State to represent the owners of copyright in works of that description, and
 - (b) persons or organisations appearing to the Secretary of State to represent educational establishments,and for the making of written or oral representations by such persons; but without prejudice to the giving of notice to, and the making of representations by, other persons and organisations.
- (4) The person appointed to hold the inquiry shall not recommend the making of new provision unless he is satisfied—
 - (a) that it would be of advantage to educational establishments to be authorised to make reprographic copies of the works in question, and
 - (b) that making those works subject to a licensing scheme or general licence would not conflict with the normal exploitation of the works or unreasonably prejudice the legitimate interests of the copyright owners.

Status: This is the original version (as it was originally enacted).

- (5) If he does recommend the making of new provision he shall specify any terms, other than terms as to charges payable, on which authorisation under the new provision should be available.
- (6) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section (and section 141) a “general licence” means a licence granted by a licensing body which covers all works of the description to which it applies.

141 Statutory licence where recommendation not implemented

- (1) The Secretary of State may, within one year of the making of a recommendation under section 140 by order provide that if, or to the extent that, provision has not been made in accordance with the recommendation, the making by or on behalf of an educational establishment, for the purposes of instruction, of reprographic copies of the works to which the recommendation relates shall be treated as licensed by the owners of the copyright in the works.
- (2) For that purpose provision shall be regarded as having been made in accordance with the recommendation if—
 - (a) a certified licensing scheme has been established under which a licence is available to the establishment in question, or
 - (b) a general licence has been—
 - (i) granted to or for the benefit of that establishment, or
 - (ii) referred by or on behalf of that establishment to the Copyright Tribunal under section 125 (reference of terms of proposed licence), or
 - (iii) offered to or for the benefit of that establishment and refused without such a reference,
 and the terms of the scheme or licence accord with the recommendation.
- (3) The order shall also provide that any existing licence authorising the making of such copies (not being a licence granted under a certified licensing scheme or a general licence) shall cease to have effect to the extent that it is more restricted or more onerous than the licence provided for by the order.
- (4) The order shall provide for the licence to be free of royalty but, as respects other matters, subject to any terms specified in the recommendation and to such other terms as the Secretary of State may think fit.
- (5) The order may provide that where a copy which would otherwise be an infringing copy is made in accordance with the licence provided by the order but is subsequently dealt with, it shall be treated as an infringing copy for the purposes of that dealing, and if that dealing infringes copyright for all subsequent purposes.

In this subsection “dealt with” means sold or let for hire, offered or exposed for sale or hire, or exhibited in public.

- (6) The order shall not come into force until at least six months after it is made.
- (7) An order may be varied from time to time, but not so as to include works other than those to which the recommendation relates or remove any terms specified in the recommendation, and may be revoked.

- (8) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) In this section a “certified licensing scheme” means a licensing scheme certified for the purposes of this section under section 143.