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STATUTORY INSTRUMENTS

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**2003 No. 187**

**COPYRIGHT**

**The Copyright (Certification of Licensing Scheme for Educational Recording of Broadcasts) (Open University) Order 2003**

*Made* - - - - *30th January 2003*

*Coming into force* - - *1st April 2003*

Whereas Open University Worldwide Limited (company number 01260275 previously named Open University Educational Enterprises Limited) has applied to the Secretary of State to certify for the purposes of section 35 of the Copyright, Designs and Patents Act 1988(1) (“the Act”) a new licensing scheme to replace the licensing scheme set out in the Schedule to the Copyright (Certification of Licensing Scheme for Educational Recording of Broadcasts) (Open University Educational Enterprises Limited) Order 1993(2) (“the 1993 Order”);

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 the powers conferred upon her 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) Order 2003 and shall come into force on 1st April 2003.
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 and cable programmes).
3. The certification under article 2 above shall for the purposes of section 35 of the Act come into operation on 1st April 2003.
4. The 1993 Order and the Copyright (Certification of Licensing Scheme for Educational Recording of Broadcasts) (Open University Educational Enterprises Limited) (Amendment) Order 1996(3) are hereby revoked.
5. Nothing in this Order shall affect the operation of licences granted under the 1993 scheme and in force at the coming into force of this Order.

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(1) 1988 c. 48.

(2) S.I. 1993/2755, as amended by S.I. 1996/190.

(3) S.I. 1996/190.

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30th January 2003

Melanie Johnson,  
Parliamentary Under-Secretary of State for  
Competition, Consumers and Markets,  
Department of Trade and Industry

## SCHEDULE

Article 2

### OPEN UNIVERSITY LICENSING SCHEME

Open University Worldwide 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 (“the Act”) 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 1993 (“the 1993 Scheme”).

The charges payable under the licences are set out:

- (a) in respect of Schools, in Appendix A to the licensing scheme;
- (b) in respect of Educational Institutions, in Appendix B to the licensing scheme.

#### *The Open University Licensed Off Air Recording Scheme for 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:

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School:	Any school as defined in section 174 of the Act.
Educational Institution:	Any educational establishment specified by order of the Secretary of State under section 174(1)(b) of the Act.
Licence Fee:	The fee payable by Schools calculated in accordance with Open University Worldwide 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 of up to twelve months from the date of the Licence as originally granted or renewed unless or until the Licence is terminated pursuant to Clauses 2 or 6 thereof.
Programme Fee:	The fee payable by Educational Institutions calculated in accordance with Open University Worldwide 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.

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Designated Programmes:	The television programmes broadcast by the British Broadcasting Corporation or other broadcasting organisation(s) on behalf of the Open University. The expressions “recordings of the Designated Programmes” or “recorded Designated Programmes” includes Additional Copies.
Record off air:	To record by the use of video tape, video compact disc or any available recording and/or playback device whether available now or invented in the future, a transmission by broadcast or diffusion of television programmes to be received by television or similar receiving device.
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.
Additional Copies:	Copies made by the Licensee of Designated Programmes recorded by it.
Business Day:	Any day except Saturday, Sunday, a Bank Holiday, Christmas Day or Good Friday.
Educational Establishment:	An educational establishment as defined in section 174 of the Act.

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## **GRANT**

1. The School or the Educational Institution (hereinafter referred to as “the Licensee”) shall warrant that it is a School or Educational Institution, as the case may be, and Open University Worldwide 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.

## **TERM**

2. 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 Institutions, to expire on the date of the anniversary of any twelve month period.

## **WARRANTIES AND OBLIGATIONS OF OPEN UNIVERSITY WORLDWIDE LIMITED**

3.—(1) Warranties

Open University Worldwide 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 Worldwide Limited shall make available to the Licensee information about the transmission schedules of the Designated Programmes.

## **OBLIGATIONS OF THE LICENSEE**

4. 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 including by digital manipulation without prior written permission of Open University Worldwide 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 Institution, make up, retain and keep made up such detailed and accurate records as may be required by Open University Worldwide Limited of the Designated Programmes recorded and in particular shall complete the log sheets provided by or approved in writing by Open University Worldwide 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 Institution, return to Open University Worldwide Limited all duly completed log sheets on dates specified by Open University Worldwide 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 Worldwide 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 Institution, 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.

(9) in the event that the Licensee makes Additional Copies, report the making of such copies immediately to Open University Worldwide Limited. Upon receipt of such information from the Licensee, Open University Worldwide Limited will invoice the Licensee for the copies made and will maintain a record of the copies made.

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## **CONSIDERATION**

**5.** In consideration for the Licence:

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

### *NOTE*

Discounted fees to cover groups of licensees may be negotiated at the discretion of Open University Worldwide Limited.

## **TERMINATION**

**6.** Open University Worldwide 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 promptly to account and make payments hereunder or fail to perform any other obligation required of it hereunder and the Licensee shall not have cured or remedied such failure within 14 (fourteen) days of a request from Open University Worldwide 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 Institution, as the case may be.

## **ALTERATIONS TO AGREEMENT**

**7.** 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.

## **ASSIGNMENT**

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

## **EXPENSES**

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

## **FORCE MAJEURE**

10. 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.

## **SERVICE OF NOTICES**

11.—(1) Notices and other communications must be sent by first class post, fax or e-mail whether or not they are required to be in writing. They must be addressed to the recipient at the postal address, fax number or e-mail address specified in the Licence unless the parties have agreed an alternative address.

(2) Notice by post will be deemed served on the third Business Day after it was posted.

(3) Notice by fax or e-mail will only be deemed served if an automatic confirmation of correct sending is received by the sender. Then, if the notice is transmitted before 4 p.m. on a Business Day, it will be deemed served on that day, otherwise it will be deemed served on the next Business Day.

## **INDEMNITY**

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

## **LAW OF ENGLAND**

13. The law of England shall govern the Licence.

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## APPENDIX A

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

VAT is payable in addition to all fees shown

CATEGORY 1A: Primary Schools	£28 per annum
CATEGORY 1B: Secondary Schools	£78 per annum
ADDITIONAL COPIES (CATEGORY 1A and CATEGORY 1B)	The Licence fees shown above include the recording of any Designated Programme and up to four (4) Additional Copies thereof.
Where the Licensee makes more than four (4) Additional Copies, the fees charged will be:	
5–10 Additional Copies of any single Designated Programme	£30 for each Additional Copy
11–20 Additional Copies of any single Designated Programme	£20 for each Additional Copy
21-plus Additional Copies of any single Designated Programme	£10 for each Additional Copy



## APPENDIX B

### THE OPEN UNIVERSITY LICENSED OFF AIR RECORDING SCHEME

VAT is payable in addition to all fees shown

#### SCALE OF PROGRAMME FEES FOR EDUCATIONAL INSTITUTIONS

**1.**

<i>Number of Recordings</i>	<i>Fee per Annum or Part thereof</i>	<i>Unit Cost per Additional Recording</i>
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	

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<i>Number of Recordings</i>	<i>Fee per Annum or Part thereof</i>	<i>Unit Cost per Additional Recording</i>
401–499		£8.22
500	£3,869.20	£7.15

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.

## SCALE OF FEES FOR ADDITIONAL COPIES

### 2.

ADDITIONAL COPIES	The Programme fees shown in 1. above include the recording of any Designated Programme and up to four (4) Additional Copies thereof.
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Where the Licensee makes more than four (4) Additional Copies, the fees charged will be:

5–10 Additional Copies of any single Designated Programme	£30 each
11–20 Additional Copies of any single Designated Programme	£20 each
21-plus Additional Copies of any single Designated Programme	£10 each

## EXPLANATORY NOTE

*(This note is not part of the Order)*

Under section 35 of the Copyright, Designs and Patents Act 1988 (1988 c. 48) (“the Act”) recordings of broadcasts and cable programmes may be made by or on behalf of educational establishments for the educational purposes of that establishment without thereby infringing copyright. The section does not apply, however, if or to the extent that there is a licensing scheme certified for the purposes of that section under section 143 of the Act providing for the grant of licences.

This Order, made under section 143 of the Act, both certifies the scheme scheduled to it which is to be operated by Open University Worldwide Limited, and revokes the Copyright (Certification of Licensing Scheme for Educational Recording of Broadcasts) (Open University Educational Enterprises Limited) Order 1993 (S.I. 1993/2755) (“the 1993 Order”) which it replaces. It also revokes the Copyright (Certification of Licensing Scheme for Educational Recording of Broadcasts) (Open University Educational Enterprises Limited) (Amendment) Order 1996 (S.I. 1996/190) (“the 1996 Amendment Order”) which amended the 1993 Order.

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The certification under section 143 of the Act comes into operation, and the revocation of the 1993 Order and the 1996 Amendment Order takes effect, on 1st April 2003.