



# Copyright, Designs and Patents Act 1988

## 1988 CHAPTER 48

### PART I

#### COPYRIGHT

#### CHAPTER VIII

##### THE COPYRIGHT TRIBUNAL

**Modifications etc. (not altering text)**

- C1** Pt. I Ch. VIII (ss. 145-152) applied (1.12.1996) by [S.I. 1996/2967, reg. 17\(4\)](#) (with [Pt. III](#))  
Pt. I Ch. VIII (ss. 145-152) applied (1.1.1998) by [S.I. 1997/3032, reg. 25\(2\)](#) (with [Pt. IV](#))

#### *The Tribunal*

#### **145 The Copyright Tribunal.**

- (1) The Tribunal established under section 23 of the <sup>M1</sup>Copyright Act 1956 is renamed the Copyright Tribunal.
- (2) The Tribunal shall consist of a chairman and two deputy chairmen appointed by the Lord Chancellor, after consultation with the Lord Advocate, and not less than two or more than eight ordinary members appointed by the Secretary of State.
- (3) A person is not eligible for appointment as chairman or deputy chairman [<sup>F1</sup>unless—
  - (a) he has a 7 year general qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990;
  - (b) he is an advocate or solicitor in Scotland of at least 7 years' standing;
  - (c) he is a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least 7 years' standing; or
  - (d) he has held judicial office.]

*Status: Point in time view as at 31/03/1995. This version of this chapter contains provisions that are 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, Chapter VIII. (See end of Document for details)*

### Textual Amendments

**F1** Words substituted by [Courts and Legal Services Act 1990 \(c. 41, SIF 37\)](#), s. 71(2), **Sch. 10 para. 73**

### Modifications etc. (not altering text)

**C2** S. 145: functions of the Lord Advocate transferred to the Secretary of State, and all property, rights and liabilities to which the Lord Advocate is entitled or subject in connection with any such function transferred to the Secretary of State for Scotland (19.5.1999) by [S.I. 1999/678](#), [arts. 2, 3](#), **Sch. 1** (with [art. 7](#))

S. 145 modified (30.6.1999) by [S.I. 1999/1748](#), [art. 3](#), **Sch. 1 para. 10**

**C3** S. 145(2): transfer of certain functions (1.7.1999) by [S.I. 1999/1750](#), [arts. 1, 2](#), **Sch. 1**(with [art. 7](#)); [S.I. 1998/3178](#), [art. 3](#)

### Marginal Citations

**M1** [1956 c. 74](#).

## 146 Membership of the Tribunal.

- (1) The members of the Copyright Tribunal shall hold and vacate office in accordance with their terms of appointment, subject to the following provisions.
- (2) A member of the Tribunal may resign his office by notice in writing to the Secretary of State or, in the case of the chairman or a deputy chairman, to the Lord Chancellor.
- (3) The Secretary of State or, in the case of the chairman or a deputy chairman, the Lord Chancellor may by notice in writing to the member concerned remove him from office if—
  - (a) he has become bankrupt or made an arrangement with his creditors or, in Scotland, his estate has been sequestrated or he has executed a trust deed for his creditors or entered into a composition contract, or
  - (b) he is incapacitated by physical or mental illness,
 or if he is in the opinion of the Secretary of State or, as the case may be, the Lord Chancellor otherwise unable or unfit to perform his duties as member.
- [<sup>F2</sup>(3A) A person who is the chairman or a deputy chairman of the Tribunal shall vacate his office on the day on which he attains the age of 70 years; but this subsection is subject to section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 (power to authorise continuance in office up to the age of 75 years).]
- (4) If a member of the Tribunal is by reason of illness, absence or other reasonable cause for the time being unable to perform the duties of his office, either generally or in relation to particular proceedings, a person may be appointed to discharge his duties for a period not exceeding six months at one time or, as the case may be, in relation to those proceedings.
- (5) The appointment shall be made—
  - (a) in the case of the chairman or deputy chairman, by the Lord Chancellor, who shall appoint a person who would be eligible for appointment to that office, and
  - (b) in the case of an ordinary member, by the Secretary of State;

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and a person so appointed shall have during the period of his appointment, or in relation to the proceedings in question, the same powers as the person in whose place he is appointed.

- (6) The Lord Chancellor shall consult the Lord Advocate before exercising his powers under this section.

#### Textual Amendments

**F2** S. 146(3A) inserted (31.3.1995) by 1993 c. 8, s. 26, **Sch. 6 para.49**; S.I. 1995/631, **art. 2**

### 147 Financial provisions.

- (1) There shall be paid to the members of the Copyright Tribunal such remuneration (whether by way of salaries or fees), and such allowances, as the Secretary of State with the approval of the Treasury may determine.
- (2) The Secretary of State may appoint such staff for the Tribunal as, with the approval of the Treasury as to numbers and remuneration, he may determine.
- (3) The remuneration and allowances of members of the Tribunal, the remuneration of any staff and such other expenses of the Tribunal as the Secretary of State with the approval of the Treasury may determine shall be paid out of money provided by Parliament.

### 148 Constitution for purposes of proceedings.

- (1) For the purposes of any proceedings the Copyright Tribunal shall consist of—
  - (a) a chairman, who shall be either the chairman or a deputy chairman of the Tribunal, and
  - (b) two or more ordinary members.
- (2) If the members of the Tribunal dealing with any matter are not unanimous, the decision shall be taken by majority vote; and if, in such a case, the votes are equal the chairman shall have a further, casting vote.
- (3) Where part of any proceedings before the Tribunal has been heard and one or more members of the Tribunal are unable to continue, the Tribunal shall remain duly constituted for the purpose of those proceedings so long as the number of members is not reduced to less than three.
- (4) If the chairman is unable to continue, the chairman of the Tribunal shall—
  - (a) appoint one of the remaining members to act as chairman, and
  - (b) appoint a suitably qualified person to attend the proceedings and advise the members on any questions of law arising.
- (5) A person is “suitably qualified” for the purposes of subsection (4)(b) if he is, or is eligible for appointment as, a deputy chairman of the Tribunal.

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### *Jurisdiction and procedure*

#### **149 Jurisdiction of the Tribunal.**

The function of the Copyright Tribunal is to hear and determine proceedings under—

- (a) section 118, 119, or 120 (reference of licensing scheme);
- (b) section 121 or 122 (application with respect to entitlement to licence under licensing scheme);
- (c) section 125, 126 or 127 (reference or application with respect to licensing by licensing body);
- [<sup>F3</sup>(cc) section 135D or 135E (application or reference with respect to use as of right of sound recordings in broadcasts or cable programme services);]
- (d) section 139 (appeal against order as to coverage of licensing scheme or licence);
- (e) section 142 (application to settle royalty or other sum payable for rental of sound recording, film or computer program);
- (f) section 144(4) (application to settle terms of copyright licence available as of right);
- (g) section 190 (application to give consent for purposes of Part II on behalf of performer);
- (h) paragraph 5 of Schedule 6 (determination of royalty or other remuneration to be paid to trustees for the Hospital for Sick Children).

#### **Textual Amendments**

**F3** S. 149(cc) inserted by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), s. 175(2)

#### **Modifications etc. (not altering text)**

**C4** S. 149 amended by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), s. 176, [Sch. 17 para. 7\(1\)](#)

#### **150 General power to make rules.**

- (1) The Lord Chancellor may, after consultation with the Lord Advocate, make rules for regulating proceedings before the Copyright Tribunal and, subject to the approval of the Treasury, as to the fees chargeable in respect of such proceedings.
- (2) The rules may apply in relation to the Tribunal—
  - (a) as respects proceedings in England and Wales, any of the provisions of the <sup>M2</sup>Arbitration Act 1950;
  - (b) as respects proceedings in Northern Ireland, any of the provisions of the <sup>M3</sup>Arbitration Act (Northern Ireland) 1937;
 and any provisions so applied shall be set out in or scheduled to the rules.
- (3) Provision shall be made by the rules—
  - (a) prohibiting the Tribunal from entertaining a reference under section 118, 119 or 120 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;

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- (b) specifying the parties to any proceedings and enabling the Tribunal to make a party to the proceedings any person or organisation satisfying the Tribunal that they have a substantial interest in the matter; and
  - (c) requiring the Tribunal to give the parties to proceedings an opportunity to state their case, in writing or orally as the rules may provide.
- (4) The rules may make provision for regulating or prescribing any matters incidental to or consequential upon any appeal from the Tribunal under section 152 (appeal to the court on point of law).
- (5) Rules 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.

#### Marginal Citations

**M2** 1950 c. 27.

**M3** 1937 c. 8 (N.I.).

## 151 Costs, proof of orders, &c.

- (1) The Copyright Tribunal may order that the costs of a party to proceedings before it shall be paid by such other party as the Tribunal may direct; and the Tribunal may tax or settle the amount of the costs, or direct in what manner they are to be taxed.
- (2) A document purporting to be a copy of an order of the Tribunal and to be certified by the chairman to be a true copy shall, in any proceedings, be sufficient evidence of the order unless the contrary is proved.
- (3) As respect proceedings in Scotland, the Tribunal has the like powers for securing the attendance of witnesses and the production of documents, and with regard to the examination of witnesses on oath, as an arbiter under a submission.

VALID FROM 01/11/1996

### [<sup>F4</sup>151A Award of interest.

- (1) Any of the following, namely—
- (a) a direction under section 123(3) so far as relating to a licence for broadcasting a work or including a work in a cable programme service;
  - (b) a direction under section 128(3) so far as so relating;
  - (c) an order under section 135D(1); and
  - (d) an order under section 135F confirming or varying an order under section 135D(1),
- may award simple interest at such rate and for such period, beginning not earlier than the relevant date and ending not later than the date of the order, as the Copyright Tribunal thinks reasonable in the circumstances.
- (2) In this section “the relevant date” means—
- (a) in relation to a direction under section 123(3), the date on which the reference was made;

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- (b) in relation to a direction under section 128(3), the date on which the reference or application was made;
- (c) in relation to an order section 135D(1), the date on which the first payment under section 135C(2) became due; and
- (d) in relation to an order under section 135F, the date on which the application was made.]

#### Textual Amendments

- F4** S. 151A inserted (1.11.1996 with effect as mentioned in s. 139(3)) by 1996 c. 55, s. 139(2) (with s. 43(6)); S.I. 1996/2120, art. 5, Sch. 2

### *Appeals*

#### **152 Appeal to the court on point of law.**

- (1) An appeal lies on any point of law arising from a decision of the Copyright Tribunal to the High Court or, in the case of proceedings of the Tribunal in Scotland, to the Court of Session.
- (2) Provision shall be made by rules under section 150 limiting the time within which an appeal may be brought.
- (3) Provision may be made by rules under that section—
  - (a) for suspending, or authorising or requiring the Tribunal to suspend, the operation of orders of the Tribunal in cases where its decision is appealed against;
  - (b) for modifying in relation to an order of the Tribunal whose operation is suspended the operation of any provision of this Act as to the effect of the order;
  - (c) for the publication of notices or the taking of other steps for securing that persons affected by the suspension of an order of the Tribunal will be informed of its suspension.

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