



# Broadcasting Act 1990

## 1990 CHAPTER 42

### PART IX

#### COPYRIGHT AND RELATED MATTERS

#### **175 Use as of right of sound recordings in broadcasts and cable programme services.**

- (1) In Chapter VII of Part I of the <sup>M1</sup>Copyright, Designs and Patents Act 1988 (copyright licensing) there shall be inserted after section 135—

*“ Use as of right of sound recordings in broadcasts and cable programme services*

#### **135A Circumstances in which right available.**

- (1) Section 135C applies to the inclusion in a broadcast or cable programme service of any sound recordings if—
- (a) a licence to include those recordings in the broadcast or cable programme service could be granted by a licensing body or such a body could procure the grant of a licence to do so,
  - (b) the condition in subsection (2) or (3) applies, and
  - (c) the person including those recordings in the broadcast or cable programme service has complied with section 135B.
- (2) Where the person including the recordings in the broadcast or cable programme service does not hold a licence to do so, the condition is that the licensing body refuses to grant, or procure the grant of, such a licence, being a licence—
- (a) whose terms as to payment for including the recordings in the broadcast or cable programme service would be acceptable to him or comply with an order of the Copyright Tribunal under section 135D relating to such a licence or any scheme under which it would be granted, and

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- (b) allowing unlimited needletime or such needletime as he has demanded.
- (3) Where he holds a licence to include the recordings in the broadcast or cable programme service, the condition is that the terms of the licence limit needletime and the licensing body refuses to substitute or procure the substitution of terms allowing unlimited needletime or such needletime as he has demanded, or refuses to do so on terms that fall within subsection (2)(a).
- (4) The references in subsection (2) to refusing to grant, or procure the grant of, a licence, and in subsection (3) to refusing to substitute or procure the substitution of terms, include failing to do so within a reasonable time of being asked.
- (5) In the group of sections from this section to section 135G—
  - “needletime” means the time in any period (whether determined as a number of hours in the period or a proportion of the period, or otherwise) in which any recordings may be included in a broadcast or cable programme service;
  - “sound recording” does not include a film sound track when accompanying a film.
- (6) In sections 135B to 135G, “terms of payment” means terms as to payment for including sound recordings in a broadcast or cable programme service.

**135B Notice of intention to exercise right.**

- (1) A person intending to avail himself of the right conferred by section 135C must—
  - (a) give notice to the licensing body of his intention to exercise the right, asking the body to propose terms of payment, and
  - (b) after receiving the proposal or the expiry of a reasonable period, give reasonable notice to the licensing body of the date on which he proposes to begin exercising that right, and the terms of payment in accordance with which he intends to do so.
- (2) Where he has a licence to include the recordings in a broadcast or cable programme service, the date specified in a notice under subsection (1)(b) must not be sooner than the date of expiry of that licence except in a case falling within section 135A(3).
- (3) Before the person intending to avail himself of the right begins to exercise it, he must—
  - (a) give reasonable notice to the Copyright Tribunal of his intention to exercise the right, and of the date on which he proposes to begin to do so, and
  - (b) apply to the Tribunal under section 135D to settle the terms of payment.

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### **135C Conditions for exercise of right.**

- (1) A person who, on or after the date specified in a notice under section 135B(1)(b), includes in a broadcast or cable programme service any sound recordings in circumstances in which this section applies, and who—
  - (a) complies with any reasonable condition, notice of which has been given to him by the licensing body, as to inclusion in the broadcast or cable programme service of those recordings,
  - (b) provides that body with such information about their inclusion in the broadcast or cable programme service as it may reasonably require, and
  - (c) makes the payments to the licensing body that are required by this section,shall be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question.
- (2) Payments are to be made at not less than quarterly intervals in arrears.
- (3) The amount of any payment is that determined in accordance with any order of the Copyright Tribunal under section 135D or, if no such order has been made—
  - (a) in accordance with any proposal for terms of payment made by the licensing body pursuant to a request under section 135B, or
  - (b) where no proposal has been so made or the amount determined in accordance with the proposal so made is unreasonably high, in accordance with the terms of payment notified to the licensing body under section 135B(1)(b).
- (4) Where this section applies to the inclusion in a broadcast or cable programme service of any sound recordings, it does so in place of any licence.

### **135D Applications to settle payments.**

- (1) On an application to settle the terms of payment, the Copyright Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.
- (2) An order under subsection (1) has effect from the date the applicant begins to exercise the right conferred by section 135C and any necessary repayments, or further payments, shall be made in respect of amounts that have fallen due.

### **135E References etc. about conditions, information and other terms.**

- (1) A person exercising the right conferred by section 135C, or who has given notice to the Copyright Tribunal of his intention to do so, may refer to the Tribunal—
  - (a) any question whether any condition as to the inclusion in a broadcast or cable programme service of sound recordings, notice of which has been given to him by the licensing body in question, is a reasonable condition, or

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- (b) any question whether any information is information which the licensing body can reasonably require him to provide.
- (2) On a reference under this section, the Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.

**135F Application for review of order.**

- (1) A person exercising the right conferred by section 135C or the licensing body may apply to the Copyright Tribunal to review any order under section 135D or 135E.
- (2) An application shall not be made, except with the special leave of the Tribunal—
  - (a) within twelve months from the date of the order, or of the decision on a previous application under this section, or
  - (b) if the order was made so as to be in force for fifteen months or less, or as a result of a decision on a previous application is due to expire within fifteen months of that decision, until the last three months before the expiry date.
- (3) On the application the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.
- (4) An order under this section has effect from the date on which it is made or such later date as may be specified by the Tribunal.

**135G Factors to be taken into account.**

- (1) In determining what is reasonable on an application or reference under section 135D or 135E, or on reviewing any order under section 135F, the Copyright Tribunal shall—
  - (a) have regard to the terms of any orders which it has made in the case of persons in similar circumstances exercising the right conferred by section 135C, and
  - (b) exercise its powers so as to secure that there is no unreasonable discrimination between persons exercising that right against the same licensing body.
- (2) In settling the terms of payment under section 135D, the Tribunal shall not be guided by any order it has made under any enactment other than that section.
- (3) Section 134 (factors to be taken into account: retransmissions) applies on an application or reference under sections 135D to 135F as it applies on an application or reference relating to a licence.”
- (2) In section 149 of that Act (jurisdiction of the Copyright Tribunal), after paragraph (c) there shall be inserted—
  - “(cc) section 135D or 135E (application or reference with respect to use as of right of sound recordings in broadcasts or cable programme services);”.
- (3) In section 179 of that Act (index of defined expressions)—

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- (a) in the appropriate places in alphabetical order there shall be inserted—
- “needletime section 135A”, and
- “terms of payment section 135A”, and
- (b) in the entry for sound recordings, for “section 5” there shall be substituted “sections 5 and 135A”.

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**Marginal Citations**

**M1** 1988 c. 48.

**Changes to legislation:**

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