

SCHEDULES

SCHEDULE 9

Section 138.

AMENDMENTS OF COPYRIGHT, DESIGNS AND PATENTS ACT 1988 RELATING TO CABLE PROGRAMME SERVICES

1 For section 73 of the Copyright, Designs and Patents Act 1988 there is substituted—

“73 Reception and re-transmission of broadcast in cable programme service

- (1) This section applies where a broadcast made from a place in the United Kingdom is, by reception and immediate re-transmission, included in a cable programme service.
- (2) The copyright in the broadcast is not infringed—
 - (a) if the inclusion is in pursuance of a relevant requirement, or
 - (b) if and to the extent that the broadcast is made for reception in the area in which the cable programme service is provided and forms part of a qualifying service.
- (3) The copyright in any work included in the broadcast is not infringed if and to the extent that the broadcast is made for reception in the area in which the cable programme service is provided; but where the making of the broadcast was an infringement of the copyright in the work, the fact that the broadcast was re-transmitted as a programme in a cable programme service shall be taken into account in assessing the damages for that infringement.
- (4) Where—
 - (a) the inclusion is in pursuance of a relevant requirement, but
 - (b) to any extent, the area in which the cable programme service is provided (“the cable area”) falls outside the area for reception in which the broadcast is made (“the broadcast area”),the inclusion in the cable programme service (to the extent that it is provided for so much of the cable area as falls outside the broadcast area) of any work included in the broadcast shall, subject to subsection (5), be treated as licensed by the owner of the copyright in the work, subject only to the payment to him by the person making the broadcast of such reasonable royalty or other payment in respect of the inclusion of the broadcast in the cable programme service as may be agreed or determined in default of agreement by the Copyright Tribunal.
- (5) Subsection (4) does not apply if, or to the extent that, the inclusion of the work in the cable programme service is (apart from that subsection) licensed by the owner of the copyright in the work.
- (6) In this section “qualifying service” means, subject to subsection (8), any of the following services—
 - (a) a regional or national Channel 3 service,

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- (b) Channel 4, Channel 5 and S4C,
 - (c) the teletext service referred to in section 49(2) of the Broadcasting Act 1990,
 - (d) the service referred to in section 57(1A)(a) of that Act (power of S4C to provide digital service), and
 - (e) the television broadcasting services and teletext service of the British Broadcasting Corporation;
- and expressions used in this subsection have the same meaning as in Part I of the Broadcasting Act 1990.
- (7) In this section “relevant requirement” means a requirement imposed under—
- (a) section 78A of the Broadcasting Act 1990 (inclusion of certain services in local delivery services provided by digital means), or
 - (b) paragraph 4 of Part III of Schedule 12 to that Act (inclusion of certain services in diffusion services originally licensed under the Cable and Broadcasting Act 1984).
- (8) The Secretary of State may by order amend subsection (6) so as to add any service to, or remove any service from, the definition of “qualifying service”.
- (9) The Secretary of State may also by order—
- (a) provide that in specified cases subsection (3) is to apply in relation to broadcasts of a specified description which are not made as mentioned in that subsection, or
 - (b) exclude the application of that subsection in relation to broadcasts of a specified description made as mentioned in that subsection.
- (10) Where the Secretary of State exercises the power conferred by subsection (9) (b) in relation to broadcasts of any description, the order may also provide for subsection (4) to apply, subject to such modifications as may be specified in the order, in relation to broadcasts of that description.
- (11) An order under this section may contain such transitional provision as appears to the Secretary of State to be appropriate.
- (12) 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.

73A Royalty or other sum payable in pursuance of section 73(4)

- (1) An application to settle the royalty or other sum payable in pursuance of subsection (4) of section 73 (reception and re-transmission of broadcast in cable programme service) may be made to the Copyright Tribunal by the copyright owner or the person making the broadcast.
- (2) The Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.
- (3) Either party may subsequently apply to the Tribunal to vary the order, and 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.

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- (4) An application under subsection (3) shall not, except with the special leave of the Tribunal, be made within twelve months from the date of the original order or of the order on a previous application under that subsection.
- (5) An order under subsection (3) has effect from the date on which it is made or such later date as may be specified by the Tribunal.”
- 2 (1) Section 134 of that Act (licences in respect of works included in re-transmissions) is amended as follows.
- (2) At the beginning of subsection (1) there is inserted “Subject to subsection (3A)”.
- (3) After subsection (3) there is inserted—
- “*(3A)* This section does not apply in relation to any application under section 73A (royalty or other sum payable in pursuance of section 73(4)).”
- 3 In section 149 of that Act (jurisdiction of Copyright Tribunal), before paragraph (a) there is inserted—
- “(za) section 73 (determination of royalty or other remuneration to be paid with respect to re-transmission of broadcast including work);”.
- 4 In section 205B of that Act (jurisdiction of Copyright Tribunal under Part II), after paragraph (c) there is inserted—
- “(cc) paragraph 19 of Schedule 2 (determination of royalty or other remuneration to be paid with respect to re-transmission of broadcast including performance or recording);”.
- 5 For paragraph 19 of Schedule 2 to that Act there is substituted—

“Reception and re-transmission of broadcast in cable programme service

- 19 (1) This paragraph applies where a broadcast made from a place in the United Kingdom is, by reception and immediate re-transmission, included in a cable programme service.
- (2) The rights conferred by Part II in relation to a performance or recording included in the broadcast are not infringed if and to the extent that the broadcast is made for reception in the area in which the cable programme service is provided; but where the making of the broadcast was an infringement of those rights, the fact that the broadcast was re-transmitted as a programme in a cable programme service shall be taken into account in assessing the damages for that infringement.
- (3) Where—
- (a) the inclusion is in pursuance of a relevant requirement, but
- (b) to any extent, the area in which the cable programme service is provided (“the cable area”) falls outside the area for reception in which the broadcast is made (“the broadcast area”),
- the inclusion in the cable programme service (to the extent that it is provided for so much of the cable area as falls outside the broadcast area) of any performance or recording included in the broadcast shall, subject to sub-paragraph (4), be treated as licensed by the owner of the rights conferred by Part II in relation to the performance or recording, subject only to the payment to him by the person making the broadcast

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of such reasonable royalty or other payment in respect of the inclusion of the broadcast in the cable programme service as may be agreed or determined in default of agreement by the Copyright Tribunal.

- (4) Sub-paragraph (3) does not apply if, or to the extent that, the inclusion of the work in the cable programme service is (apart from that sub-paragraph) licensed by the owner of the rights conferred by Part II in relation to the performance or recording.
- (5) The Secretary of State may by order—
 - (a) provide that in specified cases sub-paragraph (2) is to apply in relation to broadcasts of a specified description which are not made as mentioned in that sub-paragraph, or
 - (b) exclude the application of that sub-paragraph in relation to broadcasts of a specified description made as mentioned in that sub-paragraph.
- (6) Where the Secretary of State exercises the power conferred by sub-paragraph (5)(b) in relation to broadcasts of any description, the order may also provide for sub-paragraph (3) to apply, subject to such modifications as may be specified in the order, in relation to broadcasts of that description.
- (7) An order under this paragraph may contain such transitional provision as appears to the Secretary of State to be appropriate.
- (8) An order under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) Expressions used in this paragraph have the same meaning as in section 73.”

6 After paragraph 19 of Schedule 2 to that Act there is inserted—

- “19A (1) An application to settle the royalty or other sum payable in pursuance of sub-paragraph (3) of paragraph 19 may be made to the Copyright Tribunal by the owner of the rights conferred by Part II or the person making the broadcast.
- (2) The Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.
 - (3) Either party may subsequently apply to the Tribunal to vary the order, and 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 application under sub-paragraph (3) shall not, except with the special leave of the Tribunal, be made within twelve months from the date of the original order or of the order on a previous application under that sub-paragraph.
 - (5) An order under sub-paragraph (3) has effect from the date on which it is made or such later date as may be specified by the Tribunal.”