



# Enterprise and Regulatory Reform Act 2013

## 2013 CHAPTER 24

### PART 6

#### MISCELLANEOUS AND GENERAL

#### *Copyright and rights in performances*

#### **77 Licensing of copyright and performers' rights**

- (1) The Copyright, Designs and Patents Act 1988 is amended as follows.
- (2) In section 116 (licensing schemes and licensing bodies) after subsection (4) insert—
  - “(5) Schedule A1 confers powers to provide for the regulation of licensing bodies.”
- (3) After section 116 insert—

#### *“Orphan works licensing and extended collective licensing*

#### **116A Power to provide for licensing of orphan works**

- (1) The Secretary of State may by regulations provide for the grant of licences in respect of works that qualify as orphan works under the regulations.
- (2) The regulations may—
  - (a) specify a person or a description of persons authorised to grant licences, or
  - (b) provide for a person designated in the regulations to specify a person or a description of persons authorised to grant licences

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*Status: This is the original version (as it was originally enacted).*

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- (3) The regulations must provide that, for a work to qualify as an orphan work, it is a requirement that the owner of copyright in it has not been found after a diligent search made in accordance with the regulations.
- (4) The regulations may provide for the granting of licences to do, or authorise the doing of, any act restricted by copyright that would otherwise require the consent of the missing owner.
- (5) The regulations must provide for any licence—
  - (a) to have effect as if granted by the missing owner;
  - (b) not to give exclusive rights;
  - (c) not to be granted to a person authorised to grant licences.
- (6) The regulations may apply to a work although it is not known whether copyright subsists in it, and references to a missing owner and a right or interest of a missing owner are to be read as including references to a supposed owner and a supposed right or interest.

#### **116B Extended collective licensing**

- (1) The Secretary of State may by regulations provide for a licensing body that applies to the Secretary of State under the regulations to be authorised to grant copyright licences in respect of works in which copyright is not owned by the body or a person on whose behalf the body acts.
- (2) An authorisation must specify—
  - (a) the types of work to which it applies, and
  - (b) the acts restricted by copyright that the licensing body is authorised to license.
- (3) The regulations must provide for the copyright owner to have a right to limit or exclude the grant of licences by virtue of the regulations.
- (4) The regulations must provide for any licence not to give exclusive rights.
- (5) In this section “copyright licences” has the same meaning as in section 116.
- (6) Nothing in this section applies in relation to Crown copyright or Parliamentary copyright.

#### **116C General provision about licensing under sections 116A and 116B**

- (1) This section and section 116D apply to regulations under sections 116A and 116B.
- (2) The regulations may provide for a body to be or remain authorised to grant licences only if specified requirements are met, and for a question whether they are met to be determined by a person, and in a manner, specified in the regulations.
- (3) The regulations may specify other matters to be taken into account in any decision to be made under the regulations as to whether to authorise a person to grant licences.

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

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- (4) The regulations must provide for the treatment of any royalties or other sums paid in respect of a licence, including—
  - (a) the deduction of administrative costs;
  - (b) the period for which sums must be held;
  - (c) the treatment of sums after that period (as bona vacantia or otherwise).
- (5) The regulations must provide for circumstances in which an authorisation to grant licences may be withdrawn, and for determining the rights and obligations of any person if an authorisation is withdrawn.
- (6) The regulations may include other provision for the purposes of authorisation and licensing, including in particular provision—
  - (a) for determining the rights and obligations of any person if a work ceases to qualify as an orphan work (or ceases to qualify by reference to any copyright owner), or if a rights owner exercises the right referred to in section 116B(3), while a licence is in force;
  - (b) about maintenance of registers and access to them;
  - (c) permitting the use of a work for incidental purposes including an application or search;
  - (d) for a right conferred by section 77 to be treated as having been asserted in accordance with section 78;
  - (e) for the payment of fees to cover administrative expenses.

#### **116D Regulations under sections 116A and 116B**

- (1) The power to make regulations includes power—
    - (a) to make incidental, supplementary or consequential provision, including provision extending or restricting the jurisdiction of the Copyright Tribunal or conferring powers on it;
    - (b) to make transitional, transitory or saving provision;
    - (c) to make different provision for different purposes.
  - (2) Regulations under any provision may amend this Part, or any other enactment or subordinate legislation passed or made before that provision comes into force, for the purpose of making consequential provision or extending or restricting the jurisdiction of the Copyright Tribunal or conferring powers on it.
  - (3) Regulations may make provision by reference to guidance issued from time to time by any person.
  - (4) The power to make regulations is exercisable by statutory instrument.
  - (5) A statutory instrument containing regulations may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”
- (4) Schedule 22 (which inserts Schedule A1 to the Copyright, Designs and Patents Act 1988 and makes provision in relation to performers’ rights corresponding to provision made by this section in relation to copyright) has effect.