



Copyright Act 1956

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PART IV

PERFORMING RIGHT TRIBUNAL

23 Establishment of tribunal

- (1) There shall be established a tribunal, to be called the Performing Right Tribunal (in this Act referred to as “the tribunal”), for the purpose of exercising the jurisdiction conferred by the provisions of this Part of this Act.
- (2) The tribunal shall consist of a chairman appointed by the Lord Chancellor, who shall be a barrister, advocate or solicitor of not less than seven years' standing or a person who has held judicial office, and of not less than two nor more than four other members appointed by the Board of Trade.
- (3) A person shall be disqualified for being appointed, or being, a member of the tribunal so long as he is a member of the Commons House of Parliament, or of the Senate or House of Commons of Northern Ireland.
- (4) The provisions of the Fourth Schedule to this Act shall have effect with respect to the tribunal.
- (5) There shall be paid to the members of the tribunal such remuneration (whether by way of salaries or fees), and such allowances, as the Board of Trade, with the approval of the Treasury, may determine in the case of those members respectively.
- (6) The Board of Trade may appoint such officers and servants of the tribunal as the Board, with the approval of the Treasury as to numbers and remuneration, may determine.
- (7) The remuneration and allowances of members of the tribunal, the remuneration of any officers and servants appointed under the last preceding subsection, and such other expenses of the tribunal as the Board of Trade with the approval of the Treasury may determine; shall be paid out of moneys provided by Parliament.

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24 General provisions as to jurisdiction of tribunal

- (1) Subject to the provisions of this Part of this Act, the function of the tribunal shall be to determine disputes arising between licensing bodies and persons requiring licences, or organisations claiming to be representative of such persons, either—
 - (a) on the reference of a licence scheme to the tribunal, or
 - (b) on the application of a person requiring a licence either in accordance with a licence scheme or in a case not covered by a licence scheme.
- (2) In this Part of this Act “licence ” means a licence granted by or on behalf of the owner, or prospective owner, of the copyright in a literary, dramatic or musical work, or in a sound recording or a television broadcast, being—
 - (a) in the case of a literary, dramatic or musical work, a licence to perform in public, or to broadcast, the work or an adaptation thereof, or to cause the work or an adaptation thereof to be transmitted to subscribers to a diffusion service;
 - (b) in the case of a sound recording, a licence to cause it to be heard in public, or to broadcast it;
 - (c) in the case of a television broadcast, a licence to cause it, in so far as it consists of visual images, to be seen in public and, in so far as it consists of sounds, to be heard in public.
- (3) In this Part of this Act “licensing body ”—
 - (a) in relation to such licences as are mentioned in paragraph (a) of the last preceding subsection, means a society or other organisation which has as its main object, or one of its main objects, the negotiation or granting of such licences, either as owner or prospective owner of copyright or as agent for the owners or prospective owners thereof;
 - (b) in relation to such licences as are mentioned in paragraph (b) of the last preceding subsection, means any owner or prospective owner of copyright in sound recordings, or any person or body of persons acting as agent for any owners or prospective owners of copyright in sound recordings in relation to the negotiation or granting of such licences ; and
 - (c) in relation to such licences as are mentioned in paragraph (c) of the last preceding subsection, means the Corporation or the Authority or any organisation appointed by them, or either of them, in accordance with the provisions of the Fifth Schedule to this Act:

Provided that paragraph (a) of this subsection shall not apply to an organisation by reason that its objects include the negotiation or granting of individual licences, each relating to a single work or the works of a single author, if they do not include the negotiation or granting of general licences, each extending to the works of several authors.
- (4) In this Part of this Act “licence scheme ”, in relation to licences of any description, means a scheme made by one or more licensing bodies, setting out the classes of cases in which they, or the persons on whose behalf they act, are willing to grant licences of that description, and the charges (if any), and terms and conditions, subject to which licences would be granted in those classes of cases ; and in this subsection “scheme ” includes anything in the nature of a scheme, whether described therein as a scheme or as a tariff or by any other name.
- (5) References in this Part of this Act to terms and conditions are references to any terms and conditions other than those relating to the amount of a charge for a licence; and

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references to giving an opportunity to a person of presenting his case are references to giving him an opportunity, at his option, of submitting representations in writing, or of being heard, or of submitting representations in writing and being heard.

25 Reference of licence schemes to tribunal

- (1) Where, at any time while a licence scheme is in operation, a dispute arises with respect to the scheme between the licensing body operating the scheme and—
 - (a) an organisation claiming to be representative of persons requiring licences in cases of a class to which the scheme applies, or
 - (b) any person claiming that he requires a licence in a case of a class to which the scheme applies,the organisation or person in question may refer the scheme to the tribunal in so far as it relates to cases of that class.
- (2) The parties to a reference under this section shall be—
 - (a) the organisation or person at whose instance the reference is made;
 - (b) the licensing body operating the scheme to which the reference relates; and
 - (c) such other organisations or persons (if any) as apply to the tribunal to be made parties to the reference and, in accordance with the next following subsection, are made parties thereto.
- (3) Where an organisation (whether claiming to be representative of persons requiring licences or not) or a person (whether requiring a licence or not) applies to the tribunal to be made a party to a reference, and the tribunal is satisfied that the organisation or person has a substantial interest in the matter in dispute, the tribunal may, if it thinks fit, make that organisation or person a party to the reference.
- (4) The tribunal shall not entertain a reference under this section by an organisation unless the tribunal is satisfied that the organisation is reasonably representative of the class of persons which it claims to represent.
- (5) Subject to the last preceding subsection, the tribunal, on any reference under this section, shall consider the matter in dispute, and, after giving to the parties to the reference an opportunity of presenting their cases respectively, shall make such order, either confirming or varying the scheme, in so far as it relates to cases of the class to which the reference relates, as the tribunal may determine to be reasonable in the circumstances.
- (6) An order of the tribunal under this section may, notwithstanding anything contained in the licence scheme to which it relates, be made so as to be in force either indefinitely or for such period as the tribunal may determine.
- (7) Where a licence scheme has been referred to the tribunal under this section, then, notwithstanding anything contained in the scheme,—
 - (a) the scheme shall remain in operation until the tribunal has made an order in pursuance of the reference, and
 - (b) after such an order has been made, the scheme shall remain in operation, in so far as it relates to the class of cases in respect of which the order was made, so long as the order remains in force:

Provided that this subsection shall not apply in relation to a reference as respects any period after the reference has been withdrawn, or has been discharged by virtue of subsection (4) of this section.

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26 Further reference of scheme to tribunal

- (1) Where the tribunal has made an order under the last preceding section with respect to a licence scheme, then, subject to the next following subsection, at any time while the order remains in force,—
 - (a) the licensing body operating the scheme, or
 - (b) any organisation claiming to be representative of persons requiring licences in cases of the class to which the order applies, or
 - (c) any person claiming that he requires a licence in a case of that class,
 may refer the scheme again to the tribunal, in so far as it relates to cases of that class.
- (2) A licence scheme shall not, except with the special leave of the tribunal, be referred again to the tribunal under the preceding subsection at a time earlier than—
 - (a) the end of the period of twelve months beginning with the date on which the order in question was made, in the case of an order made so as to be in force indefinitely or for a period exceeding fifteen months, or
 - (b) the beginning of the period of three months ending with the date of expiry of the order, in the case of an order made so as to be in force for fifteen months or less.
- (3) The parties to a reference under this section shall be—
 - (a) the licensing body, organisation or person at whose instance the reference is made;
 - (b) the licensing body operating the scheme to which the reference relates, if the reference is not made at their instance; and
 - (c) such other organisations or persons (if any) as apply to the tribunal to be made parties to the reference and, in accordance with the provisions applicable in that behalf by virtue of subsection (5) of this section, are made parties thereto.
- (4) Subject to the next following subsection, the tribunal, on any reference under this section, shall consider the matter in dispute, and, after giving to the parties to the reference an opportunity of presenting their cases respectively, shall make such order in relation to the scheme as previously confirmed or varied, in so far as it relates to cases of the class in question, either by way of confirming, varying or further varying the scheme, as the tribunal may determine to be reasonable in the circumstances.
- (5) Subsections (3), (4), (6) and (7) of the last preceding section shall apply for the purposes of this section.
- (6) The preceding provisions of this section shall have effect in relation to orders made under this section as they have effect in relation to orders made under the last preceding section.
- (7) Nothing in this section shall be construed as preventing a licence scheme, in respect of which an order has been made under the last preceding section, from being again referred to the tribunal under that section, either—
 - (a) at any time, in so far as the scheme relates to cases of a class to which the order does not apply, or
 - (b) after the expiration of the order, in so far as the scheme relates to cases of the class to which the order applied while it was in force.

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27 Applications to tribunal

- (1) For the purposes of this Part of this Act a case shall be taken to be covered by a licence scheme if, in accordance with a licence scheme for the time being in operation, licences would be granted in cases of the class to which that case belongs:

Provided that where, in accordance with the provisions of a licence scheme,—

- (a) the licences which would be so granted would be subject to terms and conditions whereby particular matters would be excepted from the licences, and
- (b) the case in question relates to one or more matters falling within such an exception,

that case shall be taken not to be covered by the scheme.

- (2) Any person who claims, in a case covered by a licence scheme, that the licensing body operating the scheme have refused or failed to grant him a licence in accordance with the provisions of the scheme, or to procure the grant to him of such a licence, may apply to the tribunal under this section.

- (3) Any person who claims that he requires a licence in a case not covered by a licence scheme, and either—

- (a) that a licensing body have refused or failed to grant the licence, or to procure the grant thereof, and that in the circumstances it is unreasonable that the licence should not be granted, or
- (b) that any charges, terms or conditions subject to which a licensing body propose that the licence should be granted are unreasonable,

may apply to the tribunal under this section.

- (4) Where an organisation (whether claiming to be representative of persons requiring licences or not) or a person (whether requiring a licence or not) applies to the tribunal to be made a party to an application under the preceding provisions of this section, and the tribunal is satisfied that the organisation or person has a substantial interest in the matter in dispute, the tribunal may, if it thinks fit, make that organisation or person a party to the application.

- (5) On any application under subsection (2) or subsection (3) of this section the tribunal shall give to the applicant and to the licensing body in question and to every other party (if any) to the application an opportunity of presenting their cases respectively; and if the tribunal is satisfied that the claim of the applicant is well-founded, the tribunal shall make an order declaring that, in respect of the matters specified in the order, the applicant is entitled to a licence on such terms and conditions, and subject to the payment of such charges (if any) as—

- (a) in the case of an application under subsection (2) of this section, the tribunal may determine to be applicable in accordance with the licence scheme, or
- (b) in the case of an application under subsection (3) of this section, the tribunal may determine to be reasonable in the circumstances.

- (6) Any reference in this section to a failure to grant or procure the grant of a licence shall be construed as a reference to a failure to grant it, or to procure the grant thereof, within a reasonable time after being requested to do so.

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28 Exercise of jurisdiction of tribunal in relation to diffusion of foreign broadcasts

- (1) Where, on a reference to the tribunal under this Part of this Act relating to licences to cause works to be transmitted to subscribers to a diffusion service in the United Kingdom, the tribunal is satisfied—

- (a) that the licences are required wholly or partly for the purpose of distributing programmes broadcast, from a place outside the United Kingdom, by an organisation other than the Corporation and the Authority, and
- (b) that, under the arrangements in accordance with which the programmes are broadcast by that organisation, charges are payable by or on behalf of the organisation to another body, as being the body entitled under the relevant copyright law to authorise the broadcasting of those works from that place,

the tribunal shall, subject to the next following subsection, exercise its powers under this Part of this Act as the tribunal may consider appropriate for securing that the persons requiring the licences are exempted from the payment of any charges for them in so far as the licences are required for the purpose of distributing those programmes.

- (2) If on such a reference as is mentioned in the last preceding subsection the tribunal is satisfied as to the matters mentioned in paragraphs (a) and (b) of that subsection, but it is shown to the satisfaction of the tribunal that the charges payable by or on behalf of the organisation, as mentioned in paragraph (b) of that subsection,—

- (a) make no allowance for the fact that, in consequence of the broadcasting of the works in question by that organisation, the persons requiring the licences may be enabled to cause those works to be transmitted to subscribers to diffusion services in the United Kingdom, or
- (b) do not adequately reflect the extent to which it is likely that those persons will cause those works to be so transmitted in consequence of their being so broadcast,

the last preceding subsection shall not apply, but the tribunal shall exercise its powers under this Part of this Act so as to secure that the charges payable for the licences, in so far as the licences are required for the purpose mentioned in the last preceding subsection, are on a scale not exceeding that appearing to the tribunal to be requisite for making good the deficiency (as mentioned in paragraph (a) or paragraph (b) of this subsection, as the case may be) in the charges payable by or on behalf of the organisation broadcasting the works.

- (3) The preceding provisions of this section shall have effect, with the necessary modifications, in relation to applications under this Part of this Act as they have effect in relation to references thereunder.
- (4) In this section “the relevant copyright law”, in relation to works broadcast from a place outside the United Kingdom, means so much of the laws of the country in which that place is situated as confers rights similar to copyright under this Act or as otherwise relates to such rights; and any reference to works includes a reference to adaptations thereof.

29 Effect of orders of tribunal, and supplementary provisions relating thereto

- (1) Where an order made on a reference under this Part of this Act with respect to a licence scheme is for the time being in force, any person who, in a case covered by the scheme as confirmed or varied by the order, does anything which—

- (a) apart from this subsection would be an infringement of copyright, but

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(b) would not be such an infringement if he were the holder of a licence granted in accordance with the scheme, as confirmed or varied by the order, in so far as the scheme relates to cases comprised in the order,
shall, if he has complied with the requirements specified in the next following subsection, be in the like position, in any proceedings for infringement of that copyright, as if he had at the material time been the holder of such a licence.

(2) The said requirements are—

- (a) that, at all material times, the said person has complied with the terms and conditions which, in accordance with the licence scheme as confirmed or varied by the order, would be applicable to a licence covering the case in question, and
- (b) if, in accordance with the scheme as so confirmed or varied, any charges are payable in respect of such a licence, that at the material time he had paid those charges to the licensing body operating the scheme, or, if at that time the amount payable could not be ascertained, he had given an undertaking to the licensing body to pay the charges when ascertained.

(3) Where the tribunal has made an order under section twenty-seven of this Act declaring that a person is entitled to a licence in respect of any matters specified in the order, then if—

- (a) that person has complied with the terms and conditions specified in the order, and
- (b) in a case where the order requires the payment of charges, he has paid those charges to the licensing body in accordance with the order, or, if the order so provides, has given to the licensing body an undertaking to pay the charges when ascertained,

he shall be in the like position, in any proceedings for infringement of copyright relating to any of those matters, as if he had at all material times been the holder of a licence granted by the owner of the copyright in question on the terms and conditions specified in the order.

(4) In the exercise of its jurisdiction in respect of licences relating to television broadcasts, the tribunal shall have regard (among other matters) to any conditions imposed by the promoters of any entertainment or other event which is to be comprised in the broadcasts; and, in particular, the tribunal shall not hold a refusal or failure to grant a licence to be unreasonable if it could not have been granted consistently with those conditions:

Provided that nothing in this subsection shall require the tribunal to have regard to any such conditions in so far as they purport to regulate the charges to be imposed in respect of the grant of licences, or in so far as they relate to payments to be made to the promoters of any event in consideration of the grant of facilities for broadcasting.

(5) Where, on a reference to the tribunal under this Part of this Act,—

- (a) the reference relates to licences in respect of copyright in sound recordings or in television broadcasts, and
- (b) the tribunal is satisfied that any of the licences in question are required for the purposes of organisations such as are mentioned in paragraph (b) of subsection (7) of section twelve of this Act,

the tribunal may, if it thinks fit, exercise its powers under this Part of this Act so as to reduce, in the case of those organisations, to such extent as the tribunal thinks fit, the charges which it determines generally to be reasonable in relation to cases of the class

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to which the reference relates, or, if it thinks fit, so as to exempt those organisations from the payment of any such charges.

- (6) The last preceding subsection shall have effect, with the necessary modifications, in relation to applications under this Part of this Act as it has effect in relation to references thereunder.
- (7) In relation to copyright in a literary, dramatic or musical work, any reference in this section to proceedings for infringement of copyright includes a reference to proceedings brought by virtue of subsection (5) of section twenty-one of this Act.

30 Reference of questions of law to the court

- (1) Any question of law arising in the course of proceedings before the tribunal may, at the request of any party to the proceedings, be referred by the tribunal to the court for decision, whether before or after the tribunal has given its decision in the proceedings:

Provided that a question shall not be referred to the court by virtue of this subsection in pursuance of a request made after the date on which the tribunal gave its decision, unless the request is made before the end of such period as may be prescribed by rules made under the Fourth Schedule to this Act.

- (2) If the tribunal, after giving its decision in any proceedings, refuses any such request to refer a question to the court, the party by whom the request was made may, within such period as may be prescribed by rules of court, apply to the court for an order directing the tribunal to refer the question to the court.
- (3) On any reference to the court under this section with respect to any proceedings before the tribunal, and on any application under the last preceding subsection with respect to any such proceedings, every party to the proceedings before the tribunal shall be entitled to appear and to be heard.
- (4) Where, after the tribunal has given its decision in any proceedings, the tribunal refers to the court under this section a question of law which arose in the course of the proceedings, and the court decides that the question was erroneously determined by the tribunal,—
 - (a) the tribunal, if it considers it requisite to do so for the purpose of giving effect to the decision of the court, shall give to the parties to the proceedings a further opportunity of presenting their cases respectively;
 - (b) in any event, the tribunal shall reconsider the matter in dispute in conformity with the decision of the court;
 - (c) if on such reconsideration it appears to the tribunal to be appropriate to do so, the tribunal shall make such order revoking or modifying any order previously made by it in the proceedings, or, in the case of proceedings under section twenty-seven of this Act where the tribunal refused to make an order, shall make such order under that section, as on such reconsideration the tribunal determines to be appropriate.
- (5) Any reference of a question by the tribunal to the court under this section shall be by way of stating a case for the opinion of the court; and the decision of the court on any such reference shall be final.
- (6) In this section “the court”—
 - (a) in relation to any proceedings of the tribunal in England or Wales, or in Northern Ireland, means the High Court; and

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- (b) in relation to any proceedings of the tribunal in Scotland, means the Court of Session.