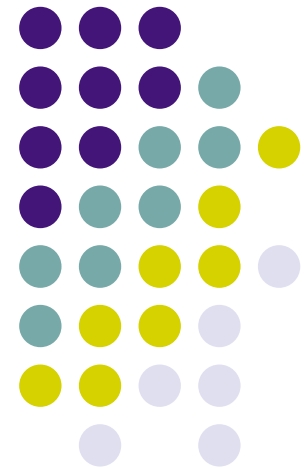


ERA Plus – unexplored potential?

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September
2010

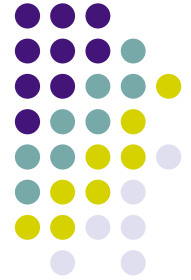


Copyright working for education



- Many copyright works are created specifically for educational purposes.
- UK exceptions and limitations have developed concerning:
 - Things done for purposes of instruction or examination.
 - Use within anthologies for educational use.
 - Performing, playing or showing work in the course of activities of educational establishments.
 - Recording of broadcasts by or for educational establishments.
 - Communication of “educational” recordings within educational establishments.
 - Reprographic copying by educational establishments of passages from published works.
 - Lending of copies by educational establishments.

Off-air recording of broadcasts



- When implemented the CDPA provided a challenge to rights owners.
- Use your rights through a licence scheme or “lose them”.
- ERA obtained certification for its first licence scheme on 5 April 1990 under section 35 of the Copyright, Designs and Patents Act 1988.

Section 35, CDPA 1988



The relevant clause then stated:

- (1) A recording of a broadcast or cable programme, or a copy of such a recording, may be made by or on behalf of an educational establishment for the educational purposes of that establishment without thereby infringing the copyright in the broadcast or cable programme, or any work included in it.
- (2) This section does not apply if or to the extent that there is a licensing scheme certified for the purposes of this section under section 143 providing for the grant of licences.
- (3) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, it shall be treated as an infringing copy for the purposes of that dealing, and if that dealing infringes copyright for all subsequent purposes.

For this purpose “dealt with” means sold or let for hire or offered or exposed for sale or hire.

New Regulations in 2003 extended the scope of section 35



- Recordings can now be made from “broadcasts”. Reference to recording “cable programmes” has been dropped.
- New definition of “broadcast” applies under section 6 CDPA.
- Excepted from the definition of “broadcast” are most internet transmissions. However some simulcasts are covered.

Copyright (Permitted Acts) (Amendment) Regulations 2010



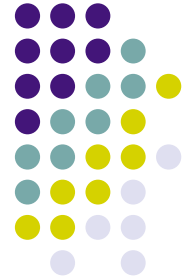
- Changes proposed that would have made ERA Plus use directly linked to the provisions of s 35 (and paragraph 6 Schedule 2) CDPA.
- No infringement by an educational establishment when licensed recordings are communicated to “authorised persons” and all reasonable steps are taken to secure that only authorised persons are able to receive the communication.



Authorised persons

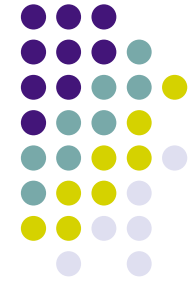
- IPO links to “teacher” and “pupil” as defined by the CDPA
- ERA proposing licences should cover
 - Pupils enrolled at an educational establishment
 - Contracted members of the academic, research or teaching staff who have been authorised by the licensed establishment to have access to recordings (including electronic access).

Further extension to cover extracts sourced from materials where contractual terms (and extension of s35 and paragraph 6 Schedule 2 CDPA) permit



- Recordings of short extracts from published films or sound recordings.
- Should these be available for use within the scope of the ERA Plus licence if sourced from
 - IPTV services (contractual terms permitting)
 - DVDs
 - Sound recordings

How long should a permitted extract be?



- One per cent of the duration of sound recording or film.
- How much of an underlying work is included in one per cent of a sound recording or film?
- Would access from IPTV services be helpful?
- Acknowledgments of the educational nature of the extract and limits on use required.

Qualifications for ERA licences



- Off-air recordings of broadcasts under section 35 may only be made by or on behalf of an educational establishment for the educational purposes of that establishment provided that
- There is sufficient acknowledgement of the broadcast
- and
- the educational purposes are non-commercial.

Progress under the main ERA Licence



- Section 35 now acknowledges that the use of off-air recordings of broadcasts for educational purposes may also be extended to limited “communication to the public” of the recordings.
- “Communication to the public” is currently only permitted under the main ERA Licence
 - by a person situated within the premises of an educational establishment
and
 - provided that the communication cannot be received by a person outside the premises of that establishment.

ERA Plus – recognises further practical developments



- ERA Plus – serves the need for communication to authorised pupils and staff when working off campus by using online resources.
- The ERA Plus Licence supports the audio and audio-visual library resources of educational establishments.

Drawing a line between “educational purposes” and other uses



- The broader scope of section 35 must continue to recognise that off-air recordings may not be “dealt with” if copyright infringement is to be avoided.
- “Dealt with” currently means sold, let for hire, offered or exposed for sale or hire or communicated from within the premises of an educational establishment to any person outside those premises.
- If s 35 extended – “dealt with” beyond licences would apply to communication to the public which is
 - (a) from within an educational establishment to anyone other than an authorised person
or
 - (b) instigated by or on behalf of an authorised person (i.e an individual file sharing recordings accessed from the library of the educational establishment) – as opposed to an educational establishment.

How did ERA move with technology?



- To ensure that the ERA scheme reflects the wider scope of Section 35, a new licence scheme was introduced with effect from 1 April 2005 and was subsequently revised. The last formal changes took effect from 1 April 2009.
- Information about the revised scope of the ERA scheme, and responses to frequently asked questions concerning what can and cannot be done under an ERA Licence has been posted on the ERA website at www.era.org.uk

How much does an ERA Licence cost?

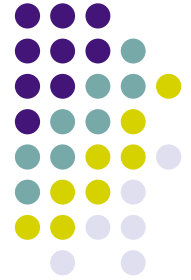


	Cost per Student
● Primary / Preparatory Educational Establishments	32p
● Secondary Educational Establishments	56p
● Further Education Establishments (inc. Sixth Form Colleges)	£1.06
● Higher Education Establishments	£1.67
● Other Educational Establishments designated from time to time by the Secretary of State	£1.67

Discounted rates may be negotiated at ERA's discretion to cover groups of Educational Establishments.

Rates from 1 April 2009

ERA Plus



- Launched on 1 August 2007.
- An add-on licence for those holding an ERA Licence.
- ERA members' repertoire only.
- Allows licensed off-air recordings to be accessed (in the form of communication to the public) by students and teachers whether they are on the premises of their school, college or university, or at home or working elsewhere within the UK.
- It is called the “ERA Plus Licence”.

How much does ERA Plus cost?



- Licences additional communication to the public rights
- Annual tariffs at 50% of rate under the ERA Licence scheme
- Current annual tariffs for each full time equivalent student

Primary/Preparatory	16p
Secondary	28p
Further Education	53p
Higher Education	84p

Whom does ERA Licence?



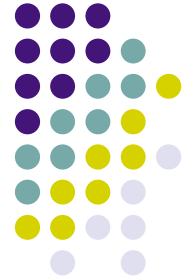
Currently:

- Local Education Authorities on behalf of their educational establishments, i.e. schools, teachers' centres, resource centres etc.
- Independent Schools
- Universities and Colleges of Further and Higher Education
- Theological Colleges
- Schools of Nursing and English as a Foreign Language.

What is permitted



- **Recording for educational purposes of all broadcast programmes except those produced by the Open University.**
- **The indefinite retention of such recordings.**
- **Unlimited copies of recordings may be made by the establishment provided that they are only to be used for educational purposes.**
- **Recordings may be made by teaching staff at home.**
- **Loans of physical copies between licensed establishments permitted – but not electronic transfer of copies outside establishments.**
- **Communication of recordings by electronic transmission to students and staff within a licensed educational establishment, provided that the transmission cannot be received by people outside the establishment.**
- **Extended option covered by the ERA Plus Licence.**



What is not permitted

- **Public performance to fee-paying or “non-educational” audiences.**
- **The copying of commercial video cassettes or any other forms of recording.**
- **Renting or selling any recordings made under licence.**
- **Adaptation, distortion or manipulation of original broadcast.**

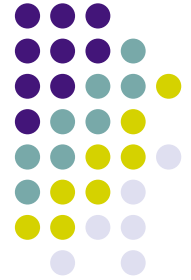
Labelling requirements of the ERA Licence



All recordings made under the ERA Licence should be labelled with the following information:

- **Date of broadcast**
- **Programme title**
- **Broadcaster**
- **A notice stating:**
“This recording is to be used only for non-commercial educational purposes under the terms of the ERA Licence”.

Labelling Requirements of the ERA Licence



- **Physical “ERA Recordings” should include the ERA notice on the exterior of the copy or its packaging.**
- **When copies are made under Licence or stored in digital form for access through a computer server, the statement should be included as a written opening credit or on a “home” webpage opened before access to the recording is permitted.**

ERA website



Full details for the ERA Scheme and the ERA Plus Licence may be found on ERA's website. ERA Licences can be renewed or applied for on this website:

www.era.org.uk

ERA email address:
era@era.org.uk