Draft Regulations laid before Parliament under section 116D(5) of and paragraph 1D(5) of Schedule 2A to the Copyright, Designs and Patents Act 1988, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No. XXXX

COPYRIGHT

The Copyright and Rights in Performances (Extended Collective Licensing) Regulations 2014

Made - - - - ***

Coming into force - - *1st October 2014*

A draft of the Regulations has been laid before and approved by each House of Parliament under section 116D(5) of and paragraph 1D(5) of Schedule 2A to the Copyright, Designs and Patents Act 1988(**1**).

The Secretary of State, in exercise of the powers conferred by sections 116B to 116D of and paragraphs 1B to 1D of Schedule 2A to that Act, makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Copyright and Rights in Performances (Extended Collective Licensing) Regulations 2014 and shall come into force on 1st October 2014.

Interpretation

2. In these Regulations—

"Act" means the Copyright, Designs and Patents Act 1988;

"authorisation" means an authorisation granted by the Secretary of State to a relevant licensing body under regulation 4 or 9;

"code of practice" means the code of practice adopted and published by the relevant licensing body;

"Codes Regulations" mean the Copyright (Regulation of Relevant Licensing Bodies) Regulations 2014(**2**);

(**1**) 1988 c.48, sections 116B to 116D were inserted by the Enterprise and Regulatory Reform Act 2013 (c.24), s 77 and paragraphs 1B to 1D were inserted into Schedule 2A by section 77 and Part 2 of Schedule 22 to the Enterprise and Regulatory Reform Act. Schedule 2A was inserted by S.I. 1996/2967.

(**2**) S.I. 2014/898.

"Comptroller" means the Comptroller-General of Patents, Designs and Trade Marks;

"distribution policy" means the distribution policy adopted and published by the relevant licensing body;

"Extended Collective Licensing Scheme" means a collective licensing scheme under which a relevant licensing body may grant licences in accordance with an authorisation under regulation 4 in respect of relevant works—

(a) in which copyright is owned by non-member right holders; or

(b) in relation to which the restricted acts in relation to the performance may be permitted or prohibited by non-member right holders;

"financial year" means the financial year of the relevant licensing body;

"member" means a right holder or a body representing right holders, including other relevant licensing bodies, fulfilling the membership requirements of and admitted to membership by a relevant licensing body;

"net licence fee" means the licence fee received by a relevant licensing body under an Extended Collective Licensing Scheme in respect of a relevant work less a reasonable administration fee;

"non-member right holder" means a right holder who is represented by the relevant licensing body under an Extended Collective Licensing Scheme but who is not a member of the relevant licensing body and whose rights in the relevant works are not the subject of an express contractual agreement with the relevant licensing body;

"opt out arrangements" means the steps to be followed by a right holder to limit or exclude the grant of licences under an Extended Collective Licensing Scheme;

"permitted use" means the acts—

(a) restricted by copyright, or

(b) to which sections 182, 182A, 182B, 182C, 182CA, 183 or 184 of the Act apply,

which the relevant licensing body is authorised to licence;

"relevant licensing body" means any body that is a licensing body within the meaning of section 116(2) of the Act and which—

(a) is authorised by way of assignment, licence or any other contractual arrangement to manage the rights of right holders in relevant works on behalf of more than one right holder, for the collective benefit of those right holders, as its sole or main purpose; and

(b) is either owned or controlled by its members or organised on a not for profit basis;

"representation" means the extent to which the relevant licensing body currently—

(a) acts on behalf of right holders in respect of relevant works of the type which will be the subject of the proposed Extended Collective Licensing Scheme; and

(b) holds right holders' rights in relevant works of the type which will be the subject of the proposed Extended Collective Licensing Scheme;

"required consent" means the informed consent of a substantial proportion of the members of the relevant licensing body who vote on the proposal;

"relevant work" has the meaning set out in regulation 3;

"restricted acts" means the acts in relation to a performance to which sections 182, 182A, 182B, 182C, 182CA, 183 or 184 of the Act(**3**) apply;

"right holder" has the meaning set out in regulation 3;

(**3**) Section 182 was substituted by, and sections 182A – 182 C and 182CA inserted by S.I 1996/2967 and amended by S.I . 2003/2498, S.I. 2006/18, S.I 2013/1782; section 183 was amended by S.I. 2003/2498.

"specified criteria" means the criteria set out in the Schedule to the Codes Regulations.

Relevant work and right holder

3.—(1) "Relevant work" means a work which is protected by copyright or a performance in respect of which certain acts constitute restricted acts.

(2) A reference to a "relevant work" includes a reference to a work or a performance, which itself falls within the definition of "relevant work" and is embedded in or incorporated in, or constitutes an integral part of, another relevant work.

(3) "Right holder" in relation to a relevant work means—

(a) an owner of the copyright in the relevant work;

(b) a licensee under an exclusive licence in relation to the relevant work;

(c) a person with rights to permit or prohibit one or more of the restricted acts in relation to a performance recorded by the relevant work and, in the case of a performance, which is embedded in, or incorporated in or constitutes an integral part of a relevant work, a person with rights to permit or prohibit one or more of the restricted acts in relation to the performance; and

(d) a licensee under an exclusive licence in relation to those rights.

Authorisation to operate an Extended Collective Licensing Scheme

4.—(1) The Secretary of State may, if he considers it reasonable in the circumstances to do so, authorise a relevant licensing body to operate an Extended Collective Licensing Scheme after receiving an application made in accordance with regulation 5 and completion of the procedure in regulations 6 to 8.

(2) An authorisation must specify—

(a) the types of relevant work to which it applies; and

(b) the permitted use.

(3) A relevant licensing body authorised under paragraph (1) may license all rights within the scope of the Extended Collective Licensing Scheme provided that the relevant licensing body—

(a) grants scheme licences in accordance with the terms and conditions notified to the Secretary of State under regulation 5(p);

(b) carries out its licensing activities in accordance with its code of practice;

(c) complies with the requirements of these Regulations; and

(d) complies with the conditions of its authorisation.

(4) The Secretary of State may only grant an authorisation to a relevant licensing body if the Secretary of State is satisfied that—

(a) at the time of the authorisation, the relevant licensing body licenses by way of collective licence relevant works of the type which are to be the subject of the proposed Extended Collective Licensing Scheme;

(b) the relevant licensing body's representation in the type of relevant works which are to be the subject of the proposed Extended Collective Licensing Scheme is significant;

(c) the code of practice of the relevant licensing body is consistent with the specified criteria including the criteria concerning the protection of non-member right holders;

(d) the opt out arrangements, including those for multiple works, are adequate to protect the interests of right holders;

(e) the arrangements for publicising the scheme, for contacting non–member right holders in order to distribute the net licence fees and for distributing any net licence fees which remain undistributed are appropriate for the proposed scheme, having regard to the interests of non-member right holders; and

(f) the relevant licensing body has obtained the required consent to the proposed Extended Collective Licensing Scheme.

(5) An authorisation is personal to the relevant licensing body and the authorisation may not be transferred to any other person or body.

(6) An authorisation continues in force until the earlier of the expiration of five years from the date of the grant of the authorisation or until revocation or cancellation in accordance with regulation 14 or 15.

Application for authorisation

5.—(1) An application for authorisation under regulation 4 must be made in writing to the Secretary of State in the form required by the Secretary of State, including in electronic form, and must contain—

(a) a summary of the application;

(b) the name of the applicant;

(c) evidence that the applicant is a relevant licensing body;

(d) an address for service on the applicant in the European Economic Area;

(e) the types of relevant work to which the Extended Collective Licensing Scheme will apply;

(f) the right holders' rights in relation to relevant works which the relevant licensing body seeks to be authorised to license;

(g) the opt out arrangements that the relevant licensing body will adopt including the steps which a non-member right holder is required to take to opt out of a proposed Extended Collective Licensing Scheme before the scheme commences and whether the consent of the Secretary of State is sought as described in regulation 16(5)(b);

(h) the number of right holders—

(i) who have notified the relevant licensing body that they wish to opt out of the proposed Extended Collective Licensing Scheme; or

(ii) whose rights, as a result of contractual arrangements with the relevant licensing body, will not fall within the Extended Collective Licensing Scheme

together, in each case and to the extent that the relevant licensing body has been notified by the relevant right holder, with the number of relevant works in which those right holders have rights;

(i) evidence of the representation provided by the relevant licensing body;

(j) evidence that the relevant licensing body has obtained the required consent;

(k) the information that was provided by the relevant licensing body to the relevant members, when seeking the required consent;

(l) a copy of any collective licence, in force at the date of the application for authorisation, under which the relevant licensing body licenses relevant works of the type which will be the subject of the proposed Extended Collective Licensing Scheme;

(m) the code of practice that the relevant licensing body will operate in relation to its licensing activities if the authorisation is granted and which is consistent with the specified criteria, including the criteria concerning the protection of non-member right holders;

(n) a copy of any report relating to the code of practice adopted by the relevant licensing body which has been produced by an independent code reviewer in accordance with the terms of the self-regulatory code of practice or by a code reviewer appointed by the Secretary of State under regulation 6 of the Codes Regulations;

(o) a declaration signed on behalf of the relevant licensing body confirming that, at the time of the application, it is complying in all material respects with the terms of its code of practice;

(p) a copy of the terms and conditions of the licence which the relevant licensing body proposes to grant its licensees under the Extended Collective Licensing Scheme;

(q) a copy of the distribution policy which the relevant licensing body proposes to operate in relation to its licensing activities if the authorisation is granted;

(r) the arrangements for publicising the Extended Collective Licensing Scheme to non-member right holders and third parties before its introduction and during the life of the scheme; and

(s) the methods by which the relevant licensing body will contact non-member right holders and distribute the net licence fees to them.

(2) An application for authorisation under regulation 4 must be accompanied by an initial fee to reimburse the Secretary of State for any administrative expenses incurred in connection with the application for authorisation.

Response to an application

6.—(1) If an application, submitted in accordance with regulation 4 or 9, complies with the requirements of the relevant regulation the Secretary of State must within 14 days of its receipt inform the relevant licensing body—

(a) that the application has been received;

(b) of any additional information that the Secretary of State requires to facilitate consideration of the application; and

(c) of the date by which the application will be determined.

(2) If an application submitted in accordance with regulation 4 or 9 does not meet the requirements of the relevant regulation the Secretary of State shall within 14 days of receipt inform the relevant licensing body in writing that the application has been rejected, together with a statement of the reasons for that decision.

Authorisation procedure

7.—(1) Before granting an authorisation under regulation 4 or 9 the Secretary of State must—

(a) publish a notice setting out details of the application for authorisation in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons likely to be affected by the authorisation; and

(b) consider any comments provided in accordance with the notice.

(2) The notice must state the period (which must be not less than 28 days starting with the date of publication of the notice) within which comments may be provided to the Secretary of State regarding the proposed authorisation.