

OFF-AIR RECORDING IN EDUCATIONAL ESTABLISHMENTS



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History and Legal Background of the ERA Licensing Scheme

- Section 35 1988
- Membership
- Whom does ERA license?
- What is permitted?
- What is not permitted?
- Conditions - Labelling
 - Survey Requirements



**The Educational Recording Agency
Licensing Scheme was first certified by
Statutory Instrument on 5th April 1990
under:**

Section 35, Copyright, Designs and Patents Act, 1988

- (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.

ERA Members at 1 April 2005

- BBC Worldwide
- ITV Network Ltd
- Channel 4
- S4C
- Channel 5
- ALCS Ltd
- MCPS Ltd
- DACS
- PRS
- BPI
- PPL
- Equity
- ISM
- Musicians' Union

Whom does ERA License?

- Local Education Authorities on behalf of their educational establishments, ie. 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 transmissions cannot be received by people outside the establishment.**

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 the licence**
- **Adaptation, distortion or manipulation of the original broadcast**

Labelling Requirements of the ERA Licence

- All recordings made under the ERA Licence should be labelled with the following information:
- Date of Recording
- Title of Programme
- A notice stating
“This recording is to be used only for non-commercial educational purposes under the terms of the ERA Licence”

Labelling under the ERA Licence

- Physical “ERA Recordings” should include the ERA notice on the exterior of the copy or its packaging.
- When copies made under Licence are 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.

The ERA Survey

ERA Licensees may be required to participate in a survey of off-air recording from time to time.

This involves keeping a record of all recordings made over a specified time period.

A limited survey is being operated to monitor the ERA scheme, whilst ERA also considers the practicalities of surveying educational establishments with an ERA Plus Licence

ERA Licence Tariffs from 1 April 2009

- Primary 32p
- Secondary 56p
- Further Education £1.06
- Higher Education £1.67

Changes to Legislation Affecting ERA

- Copyright and Related Rights Regulations 1996
Para 6 Schedule 2 CDPA - Changes to rights in performances. Equity, the Musicians' Union and The Incorporated Society of Musicians specified as licensing rights in performances on behalf of their members.
- Copyright and Related Rights Regulations 2003

How did the 2003 Regulations change Section 35?

- 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

How did the 2003 Regulations change 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.

How did the 2003 Regulations change Section 35?

- 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 only permitted 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.

How did the 2003 Regulations change section 35?

- The broader scope of section 35 continues to recognise that off-air recordings may not be “dealt with” if copyright infringement is to be avoided
- “Dealt with” 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

ERA's reaction to 2003 regulations

- Increased repertoire of rights covered by ERA licences
- The Performing Right Society Limited and Phonographic Performance Limited joined ERA, in order that their full repertoire can be included for the purposes of rights licensed under the ERA Licence
- Separate licenses are still required from PRS and PPL for the exercise of rights not relevant to the ERA scheme.

ERA's reaction to 2003 Regulations

- Rights licensed by ERA from 1 April 2005 cover not only the making of recordings of broadcasts off-air for educational purposes, but also the “communication” of such recordings to students and teachers within the premises of licensed educational establishments.
- This extended use helps to reflect increased use of computers for access to material stored on school servers, and the use of white boards for presenting material in classrooms and lectures

ERA's Reaction to 2003 Regulations

Further increased repertoire of rights covered by ERA licences as AGICOA and DUK join ERA

ERA Members from 1 July 2007

- BBC Worldwide
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- S4C
- Channel 5
- ALCS Ltd
- AGICOA
- DACS
- PRS
- BPI
- PPL
- Equity
- ISM
- Musicians' Union
- DUK Ltd

The ERA Plus Licence

In response to user demand and changes to copyright law introduced by the Copyright and Related Rights Regulations 2003, ERA now offers an additional licence, ERA Plus, to enable educational establishments to use previously broadcast content in their courseware for delivery off-site to bona fide students and staff.

What does the ERA Plus Licence offer?

- An electronic library facility for educational establishments covering ERA Recordings
- Accessibility to ERA Recordings for non-commercial educational purposes by students and teachers regardless of whether they access the recordings on campus or off campus, subject to suitable password/secure token access systems being in place.

ERA Plus Tariffs from 1 April 2009

- Primary 16p
- Secondary 28p
- Further Education 53p
- Higher Education 84p

Combined ERA and ERA Plus Tariffs from 1 April 2009

- Primary 48p
- Secondary 84p
- Further Education £1.59
- Higher Education £2.51

ERA Plus issues

- Defining the market for the ERA Plus Licence.
- Enhancing the educational value of ERA recordings for educational establishments
- Securing a fair return for rights
- Technical issues – the pragmatic and the practical

ERA Plus Issues

- How can ERA help facilitate access to broadcast material in an educational context – as electronic transmission becomes an increasingly important means for access, interactivity and communication?
- Will educational establishments need to rely on third parties to service such electronic transmission requirements?
- Should licences be offered to service operators as agents for educational establishments within one or more educational sectors? (e.g Regional Broadband Consortia on behalf of schools linked to broadband within a defined area?)
- Can the licence require security levels which will adapt and develop alongside technological advances and “accepted code of practice” for monitoring authorised access to licensed material?

ERA Plus issues

- Will a “library” of recordings of broadcasts be a useful educational tool in the future?
- At present educational establishments find it useful to provide the library facility even though individual students can in theory record broadcasts off-air for personal use. Will the same apply in the increasingly interactive world of electronic educational communication?
- How can ERA best distinguish the benefits of its licence from other archive access (with more limited repertoire) via organisations such as the BBC and Channel 4

ERA Plus Issues

- Streaming
- Streamed Pay per View
- When is a stream a broadcast?
- What happens when a stream can be recorded by the end user?

Ongoing Legal Issues

- Gowers review of Intellectual Property
- EC Green Paper: Copyright in the Knowledge Economy

ERA Website

Full details about 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

Web Site Address:

<http://www.era.org.uk>

ERA email Address:

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