



# Copyright Licence Advice Note

## Introduction

*Recently, a number of sports clubs and associations have reported receiving correspondence from the Motion Picture Licensing Corporation ("MPLC") advising clubs that they need to obtain an additional licence from MPLC to show films to the public in common areas within their club houses otherwise they may be infringing copyright. This advice note explains the changes to laws relating to copyright in the UK, how it applies to the broadcasts and films, and whether sports clubs need to obtain any additional licenses (other than a TV licence and commercial subscription licence).*

## TV Licensing

If amateur clubs and sporting organisations ("you") wish to watch live or record programmes as they are being shown on TV or via an online TV service, or on demand, via any device in your club house (or "premises"), you must obtain a licence from TV Licensing (this is the brand under which the BBC administers the TV licensing system in the UK). This licence (the "TV Licence") covers the use of television receiving equipment such as a TV set, digital box, mobile phone or laptop to watch or record television programmes. Please note that the TV Licence does not however grant the holder any rights to actually view specific broadcasts or the content contained in a broadcast, as such. The remainder of this note is concerned with copyrights associated with broadcast content and the licences and permissions you may be required to obtain in addition to a TV Licence to be entitled to show broadcasts at your premises.

## What is copyright?

Copyright is governed by the Copyright Design and Patents Act 1988 (the "CDPA 1988"). The owner of copyright (the "Copyright Holder") is granted exclusive rights in literary, dramatic, musical and artistic works ("works") to allow or prevent the works being reproduced, published, performed, communicated, shown or played to the public without their permission (by virtue of sections 19 and 20 of the CDPA 1988). Under the CDPA 1988, the showing of a broadcast is legally a communication or "public performance" of the works, which requires the permission of the Copyright Holder unless it is specifically exempt by the statute.

How the Copyright Holder grants permission to communicate or use its copyright is at the Copyright Holder's own discretion. A Copyright Holder can choose to:

1. enter into an agreement directly with the broadcaster to authorise communication of their copyright and the broadcaster may then offer a licence to others, normally via commercial subscription licence terms, which allows the further communication to the public of the works. The scope of the commercial subscription will vary depending on whether you are an individual, business or club.

or

2. enter into a separate agreement directly with the party intending to show or play broadcasts. Such agreements are usually by means of a collective licence which allows the showing or playing or playing of a range of works, e.g. to play music in your premises you must obtain licences from PRS and PPL or to play certain films you may need to obtain a licence from the Copyright Holder or a collecting agency such as Motion Picture Licensing Corporation ("MPLC") acting on its behalf.

## Copyrights in television broadcasts

Each television broadcast contains a bundle of different copyright works so separate copyrights will exist in each element of original creative works in a programme, recording or film, e.g. the script, graphics, logos, photographs, cinematography, musical score will have separate rights which may require the permission of the Copyright Holder. Copyright will also arise in the broadcast of the relevant programme itself. Where a broadcaster does not own all of the copyrights in the content it broadcasts it will need to obtain a licence from the Copyright Holder of the each separate element of copyright to be able to include the Copyright Holder's copyright work in the broadcast.

The nature and scope of a licence granted by a Copyright Holder will in turn affect the manner in which the broadcast incorporating the Copyright Holder's work may be viewed so that the Copyright Holder may for example prohibit anything that may constitute a public performance of the broadcast that incorporates any of their work.

## Previously permitted acts?

Historically this was not a concern for sports clubs and other organisations as they could rely on specific exemptions or "permitted acts" under the CDPA 1988. In particular section 72(1) allowed sports clubs and organisations to show broadcasts, films and sound recordings without permission of the Copyright Holders where access to their premises was free of charge. This meant that sports clubs did not need permission from owners of film copyright and could rely on the provisions of s.72(1)(c) as a defence to an allegation of infringement of film copyright under ss.19 and 20 CDPA 1998 when making a transmission to the public without charging entry to their premises.

For broadcasts containing other elements, such as original literary, artistic, musical or dramatic works, as well as most commercially produced sound recordings, organisations needed and still need the permission of the relevant Copyright Holder of those works however in many cases for commercial reasons the Copyright Holders have elected not to enforce this requirement.

## What has changed?

Following legal action brought by the Football Association Premier League against pubs using unauthorised satellite decoder cards to show live Premier League football matches, new regulations were introduced and came into force from 15 June 2016. The Copyright (Free Public Showing or Playing) (Amendment) Regulations 2016, SI 2016/565 amended s.72 (1) of CDPA 1988 and its main purpose is to remove "film" from the scope of the s 72 (1) exemption.

For the purposes of the CDPA 1988 "film" is defined in section 5B as "a recording on any medium from which a moving image may by any means be produced" including "the sound track accompanying a film". The definition is sufficiently wide to include television programmes, movies, films and sporting events contained in any broadcast, and therefore sports clubs and organisations showing films, where access to their premises is free of charge, can no longer rely on the s.72 (1) exemption and must consider whether permission of the Copyright Holder(s) of the copyright(s) in the film must be obtained.

## What does this mean?

1. Anyone wishing to show broadcasts of a film in public may need to have obtained the permission of the Copyright Holder of the relevant film either directly from the Copyright Holder (or a collecting agency acting on its behalf) or indirectly via the relevant broadcaster in so far as the broadcaster has the right and authority to grant such permission.
2. Whereas in the past Copyright Holders may have chosen not to seek to enforce their copyright in the public showing of their works due to section 72 of CDPA 1988 as evidenced by the approaches being made by the MPLC they may now seek to do so.

## What should you do?

Recently a number of sports clubs have been contacted speculatively by the likes of MPLC, advising that an umbrella licence is required to show any "films" at the premises.

- It is your responsibility to ensure:
  - (i) the correct licence and permissions are in place to cover television programmes and/or film shown or intended to be shown at your premises,or
  - (ii) ensure that such content is not displayed.

This should involve reviewing the terms of any subscriptions you may have, as well as assessing your current and intended future use of television sets (and similar equipment) at your premises including the channels made available and the types of programme

commonly viewed on that equipment. Carrying out such a review will serve to inform your assessment of the nature of the licences and permissions that you may require. For example if it is your practice to only show sports channels there would be no need to obtain a licence from MPLC as you will not be showing any of the films covered by their licence.

Remember, you will only have the rights which have been passed on to the broadcaster from the Copyright Holder unless you enter into a direct agreement with the Copyright Holder.

- **Free-to-air channels:** Provided there is a suitable TV licence issued by TV Licensing for the sports club's premises, Copyright Holders have tended not to enforce their copyright in relation to content shown in public on free-to-air channels but as indicated above this practice may change. Accordingly you may need to check with the relevant free to air broadcasters whether you are permitted to show films contained in broadcasts in public.
- **Commercial subscriptions:** If you have a commercial subscription to show exclusive subscription broadcasts, it will act as a licence to show the content at the premises specified in the subscription terms and conditions between you and the broadcaster. You should however check the terms of the subscription to clarify whether they cover the showing of films contained in broadcasts in public.

Therefore if you have any concerns about showing films on free-to-air channels or commercial subscription broadcasts you should to check with the broadcasters, to verify whether you are allowed to show films contained in broadcasts at your premises.

In the same way that you need to ascertain whether a PPL / PRS licence is needed to show or play any other underlying works in music, if the broadcaster confirms that they only have a licence to broadcast the film, e.g. commercial subscription does not cover your intended communication to the public of a particular film, you need to seek the permission of the Copyright Holder.

- The Copyright Holder of a film is usually the production company. Increasingly production companies are using licensing bodies like MPLC or Filmbank to grant non-commercial organisations such as sports clubs (and commercial organisations) the right to show films to the public without infringing the copyright of the Copyright Holder. An MPLC "umbrella licence" allows unlimited public performance of the film for an annual fee calculated in accordance the total area of your sports club and the number of members for each club.

Please note however that a licence from an organisation such as MPLC will only cover works by Copyright Holder whom that organisation (e.g. MPLC) is authorised to represent. Accordingly if you decide that you need to obtain a licence please ensure that the licensing organisation has the right to grant the licence that you require.

## What are the consequences of doing nothing?

It is a criminal offence to watch, record live TV programmes or films on any channel or device without a TV Licence. If you do not have the correct TV Licence you risk criminal prosecution and a fine. In addition if you show broadcasts or recordings of films at your premises then they are likely to be considered to a "public performance" or communication and if you do not have permission from the Copyright Holder you may be infringing copyright. The Copyright Holder may also pursue you for damages and if the infringement is deliberate this may also lead to a criminal prosecution and a fine.

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