

# **A Guide to using Broadcasts for Educational Purposes**

## Introduction

ERA Licences support educational establishments building and retaining libraries of audio and audio-visual recordings for educational use.

Recordings must be sourced by or for educational establishments from

- (a) radio or television broadcasts **or**
- (b) online services making available programmes which have previously been broadcast when the terms and conditions of use expressly permit access under the terms of an ERA Licence.

Hundreds of television and radio stations are now receivable in the UK every day. These services are increasingly complemented by on demand services provided electronically using applications such as the BBC iPlayer. Together they provide an opportunity for selection and access to valuable teaching and learning resources.

Recordings made or sourced under the terms of an ERA Licence can be built into a resource bank for an educational establishment covering topics such as drama, wildlife, the arts and current affairs.

Copies of licensed recordings can be made for educational use within licensed premises. Clips from programmes can also be selected and used to encourage reference to the resource library, or for cross reference within class presentations or lectures. Increasingly, online relay within licensed premises linked to white board and other in-class presentations is widening the number of ways that licensed recordings can be used.

This booklet gives both practical advice on how to make the most of your Licence and general guidance on its terms. A section has been included to cover the additional opportunities now available through the new ERA Plus Licence.

Further information about the ERA Licence schemes and answers to frequently asked questions are available on ERA's website at: [www.era.org.uk](http://www.era.org.uk)

## The ERA Licensing Scheme

### What is the Educational Recording Agency?

On behalf of its Members, ERA operates a Licensing Scheme for educational use of copyright protected material.

Uniquely serving the UK education sector, ERA is one of a range of collecting societies which help copyright owners and performers derive an income from the licensed use of their works.

### ERA Members are:

- Authors' Licensing and Collecting Society Limited
- Association De Gestion Internationale Collective Des Oeuvres Audiovisuelles
- BBC Worldwide Limited
- BPI (British Recorded Music Industry) Limited
- Channel Four Television Corporation
- Channel 5 Broadcasting Limited
- Compact Collections Limited
- Design and Artists Copyright Society Limited
- Directors UK Limited
- Equity
- Focal International Limited
- The Incorporated Society of Musicians
- ITV Network Limited
- Mechanical Copyright Protection Society Limited
- Musicians' Union
- The Performing Right Society Limited
- Phonographic Performance Limited
- Sianel Pedwar Cymru

## What does ERA License?

ERA grants its principal Licences in accordance with the Licensing Scheme, which has been certified by the Secretary of State under Section 35 of the Copyright, Designs and Patents Act 1988 ('the Act'). The Licences issued by ERA under Section 35 authorise the following two non-commercial educational activities:

1. Recording from broadcasts made in the UK of the works and performances owned or represented by ERA members; and
2. electronic communication of licensed recordings within an educational establishment.

Recordings may be made by or on behalf of an educational establishment.

## What are the benefits of Copyright and Section 35?

Copyright law provides authors and performers with a way of earning a living through the use of their creativity. It also enables broadcasters, producers and publishers to secure fair reward for their investment in that creativity. While copyright law protects the interests of copyright owners, it also balances this with the needs of users. Section 35 of the Act achieves that balance by encouraging copyright owners to come together to offer a convenient and cost-effective licence, in this case for educational users.

## Who can take out an ERA Licence?

Section 35 of the Act permits ERA to license 'educational establishments' or their representative bodies. This covers:

- Local Authorities on behalf of their educational establishments, i.e. schools, media resources and teachers' centres, adult education units and off-site youth centres
- Independent schools
- Colleges of Further Education
- Universities and Colleges of Theology and Higher Education
- Schools of Nursing and schools teaching English as a Foreign Language

ERA cannot license public libraries, commercial training organisations or educational units in museums and galleries, as these are not 'educational establishments' according to the Act.

## What can Licensees record?

### In general, what can I record off-air?

The ERA Scheme permits recordings of broadcasts to be made for non-commercial educational use (see page 6). A 'broadcast' is defined as a transmission for simultaneous and lawful reception by members of the public, i.e. it is not encrypted or encoded and is for general reception, unlike pay per view services. The ERA Licence therefore covers scheduled free to air broadcasts on:

- BBC television and radio
- ITV Network services (including ITV2 and ITV3)
- Channel Four and E4
- Five television
- S4C

The number of broadcast services who expressly license their rights through ERA increased when Compact Collections Limited became a member of ERA.

These include all the broadcast services (with Ofcom licences) operated by:-

- (a) Discovery Communications Europe Limited (for example Discovery Science)
- (b) NGC Europe Limited (for example National Geographic Channel, National Geographic Channel HD, Wild UK, Nat Geo Wild (Europe) and Wild HD)
- (c) AETN UK.

It also applies to any other licensed broadcast services. These cover both radio and television services.

## What about on-demand services?

On-demand services, i.e. where the viewer or listener actively chooses the viewing or listening time or content of individual programmes as part of that service, are not considered to be broadcasts under the Act and are therefore not automatically covered by an ERA licence nor by any part of Section 35.

There are different types of on-demand services (e.g. podcasts). Where the terms and conditions for reception of the service permit customers to record programmes for subsequent viewing, care needs to be taken to ensure that any recording or subsequent educational use does not go beyond private non-commercial recording permitted by those terms and conditions.

Broadcast programme services where the provider or broadcaster offers a range of fixed viewing times for the viewer to select from, are not on-demand services and may be recorded. This includes simulcasts of the broadcast delivered via the internet.

Non-scheduled internet transmissions are not broadcasts and are not automatically covered by the ERA Licence.

However in some cases, the terms and conditions applicable for use may make an express link to allow holders of an ERA Licence to access the service for educational purposes. More information about this will be published by ERA in due course.

### Can I record "Podcasts" under the ERA Licence?

ERA Licences permit recording of "broadcasts" by educational establishments. However "podcasts" are not technically the same as "broadcasts".

"Podcasts" involve "the inclusion of Programmes or parts of them

in audio and/or media files containing the domain name and address of the media file and thereafter making the file available for electronic transmission so that the file can be downloaded by third parties for subsequent access".

Taking this definition, podcasting involves "electronic transmission" which amounts to "making material available on demand". It does not involve "broadcasting".

Podcasts are therefore "on-demand services", and similar to BBC iPlayer. Any recording will be governed by the contractual terms and conditions that are applied when the podcasts are made available to the public.

### **Are there any broadcasts which I cannot record under the ERA Licence?**

Yes. Only broadcast material owned or represented by ERA Members is licensed through the ERA Scheme for off-air recording. This means that some broadcasts and material included in them, such as advertisements, are not covered by the Licence because ERA Members do not own or control the rights in them.

However, if you record these broadcasts for non-commercial educational purposes, your recordings will not infringe copyright in the ways relevant to the ERA Licence, unless a certified Section 35 licence scheme applies (see question below). This is because Section 35 (1) states that where works are not covered by a certified scheme, then educational establishments may reproduce and communicate them electronically on-site for non-commercial educational purposes without infringing copyright. You will need to adequately acknowledge, i.e. label, any broadcast recordings you make under Section 35 (1). See page 8 for guidance on labelling.

### **Are there any licensing schemes for broadcast material not owned by ERA Members?**

Section 35 permits rights owners who are not ERA Members to set up parallel licensing schemes covering the materials they own or represent. To date, only the Open University has set up a licensing scheme covering its own programmes.

### **Can I record parts of programmes?**

Yes, extracts or parts of a programme may be recorded and then stored in either analogue or digital form. Note that the terms of the ERA Licence, including labelling requirements, also apply to recorded extracts (see page 8).

### **Can I adapt recordings?**

No. Programme material must be used as it has been broadcast. This does not stop extracts or clips from programmes being used. However, adaptation, amendment, distortion, or mutilation of material is not authorised under the Licence. For example, adapting a recording by separating the original soundtrack from the picture and substituting a new commentary for the original is not permitted.

Modern software packages facilitate the extraction and "re-editing" of film and broadcast material, and licensed establishments should ensure that such tools are used responsibly by students.

Programme credits are considered part of a broadcast and should not be edited from recordings.

### **Can I subtitle recordings for hearing-impaired students or add audio description?**

No. The addition of subtitles or audio description to material recorded under the Licence is not permitted. However, subtitles

and audio description broadcast with programme material can be recorded and should then be treated in the same way as other licensed recordings.

If you wish to add subtitles or audio description to recorded material, you need to approach the owners of the works in question to check whether their consent is required.

## Using recordings

### How can I use off-air recordings?

Licensed recordings can be retained, stored and copied (in both analogue and digital formats). Recordings can be made on physical formats such as DVDs or stored in digital form. The recordings can then be used for educational purposes within the premises of a licensed establishment. This use includes relay within the establishment, for example for showing on interactive whiteboards in classrooms.

### What restrictions apply?

The above activities fall within the remit of the ERA Licence, but programmes may only be recorded and used by licensed establishments for non-commercial 'educational purposes'. Although the law does not define this term, licensees will be familiar with types of activities which are commercial in nature, e.g. promotional, which are not purely 'educational'.

For clarification, here are some examples of **excluded** uses:

- Showing recordings for entertainment purposes, whether or not the audience has made a payment or donation to see the performance

- Including recordings or extracts in any corporate materials, e.g. video, CD or DVD to promote the establishment, student societies or facilities within the establishment
- Using stills from recordings on the establishment's website or in any other corporate material, e.g. a promotional prospectus
- Sale or commercial hire of recordings.

### Who can use recordings?

Registered students, teachers or other employees directly involved in the students' education can watch or listen to them.

Digital recordings stored on-site, e.g. on an establishment's central server, may only be accessed from on-site terminals. A suitable security or password protection system needs to be in place to ensure recorded material is not accessed by students at home or anywhere off-site, as this is not permitted under the ERA Scheme or any part of Section 35.

### Can UK-based students borrow recordings?

Yes. Registered students (including UK-based distance learning students) may borrow and take off-site a licensed recording on cassette, CD or DVD. As this may diminish licensees' ability to ensure adherence to Licence terms and conditions, ERA recommends that you ask students to sign a declaration to confirm the material will be used only for legitimate non-commercial educational purposes. This does not authorise the making of multiple copies of recordings, for example, authorising copying onto memory sticks used by individual students. **However, off-site streamed access to recordings by all students in a class or on a course may be licensed under the ERA Plus Licence** see page 10.

### **Can I supply recordings to students based overseas?**

No. Supplying recordings in either hard copy form or by electronic means to distance learning students outside the UK is not permitted under the Licence.

### **Can I embed recordings in Power Point presentations?**

Yes, including licensed recordings in such presentations is permitted, as long as the Licence conditions are met.

## **Making, storing and retaining recordings**

### **Who can make recordings?**

Teachers or other employees of a licensed educational establishment e.g. technicians, librarians or auxiliaries, may make recordings on-site or at home. Recordings made off-site may only be delivered to the establishment in hard copy form e.g. DVD, cassette, etc. and not using on-line services such as email.

Recordings may also be made by a resource centre covered by a blanket Licence (e.g. a Local Authority Licence) on behalf of licensed educational establishments provided that your ERA Licence acknowledges the link with such LA.

Licensees may also nominate a third party, e.g. a local health promotion unit, to record and copy broadcast material on their behalf under a written third party agreement with ERA.

Copies made by an authorised resource centre or other third party may only be delivered to the establishment in hard copy form and not by email, unless prior written permission has been obtained from ERA.

### **How can I store recordings?**

Recordings can be made directly onto DVDs and CDs, or videos or audio tapes. Digital recordings may also be stored on a licensed establishment's server. Appropriate security systems must be in place to ensure that only authorised students and teachers can access the recordings. Access is limited to within educational establishments unless an ERA Plus Licence is secured to cover agreed off site access (see separate section on ERA Plus).

### **Can I make additional copies of my recordings?**

Yes, recordings made under the Scheme may be copied for educational use, as long as the conditions of the ERA Licence are met and no commercial element is involved.

For example, licensed establishments may copy recordings and supply them on cassette or disc to ERA licensees who have missed a broadcast. Note that on-line delivery and electronic transmission of copies between licensees or a licensed resource centre is not permitted unless written third party agreements with ERA are in place to cover such exchange. If you are not sure whether such arrangements are in place, please contact ERA before authorising any exchange.

Licensees making copies for other licensed establishments may recover out-of-pocket costs e.g. postage, purchase of video, DVD, CD etc. Charging a fee over and above out-of-pocket costs for copies provided to a third party is 'dealing' under the Act and is not permitted. Copies that are dealt with are infringing copies and may leave anyone responsible for the dealing open to legal action.

### **What about copying pre-recorded videos?**

The copying of commercially produced, pre-recorded videos, audio tapes, CDs and DVDs or programming provided in any on-demand services is not authorised by the ERA Licence

### **Can I digitise my analogue recordings?**

Yes, analogue recordings made under Licence may be transferred into digital formats for the educational use of licensed establishments. For example, recordings currently on video may be digitised and stored on DVD or on the licensee's server.

### **How long can I retain recorded material?**

- Programmes recorded after 30th May 1990 under the terms of an ERA Licence can be retained indefinitely by a licensed educational establishment whilst it continues to hold a valid ERA Licence.
- Programmes recorded prior to 1st August 1989 are governed by the terms of the licence under which they were recorded. Most licences did not permit the indefinite retention of recordings.

Recordings which are no longer needed or covered by a current Licence must be destroyed and may not be sold or otherwise dealt with.

## **Acknowledging Broadcasts**

### **Do all recordings need to be labelled?**

Yes. All recordings, whether analogue or digital, must be clearly and appropriately labelled. Failure to do so may lead to Licences being withdrawn.

### **What do I need to include on the label?**

Always label or mark up the cassette or jewel case plus the tape or disc itself with the following four items:

1. Date (when the recording was made)
2. Name of the broadcaster
3. Programme title
4. The wording 'This recording is to be used only for educational and non-commercial purposes under the terms of the ERA Licence'.

For details of labels and label templates currently available from ERA, go to [www.era.org.uk](http://www.era.org.uk)

### **How do I label digital recordings stored on a server?**

Include the four items above as a written opening credit or webpage which must be viewed or listened to before access to the recording is permitted.

## **Scheme Administration and Regulation**

### **How does ERA ensure compliance with the Licence?**

Under the terms of the Licence, ERA is entitled to inspect recordings, including how they are stored and labelled (whether in physical form or on a server under the control of an establishment). By prior arrangement, ERA's liaison officer visits licensed establishments to check compliance and to help establishments maximise their use of the ERA Scheme.

### **What happens to an educational establishment which uses recordings without a Licence?**

An establishment making or using off-air recordings without an ERA Licence is in breach of copyright law and risks criminal prosecution or civil action.

### **How is Scheme usage monitored?**

From time to time, ERA may require a small sample of educational establishments to help monitor the effectiveness of the Scheme. This may involve licensees in simple record-keeping or completion of a short survey. It may also cover reporting on use linked to the software used to help store and make available licensed recordings for use under the ERA Licence.

Our Liaison Officer visits participating establishments to explain procedures and is available to assist with queries throughout the exercise.

### **How much does an ERA Licence cost?**

Licence fees are calculated on an annual basis according to:

- The type of educational establishment i.e. primary, secondary, further or higher etc.
- The number of full-time (or equivalent) students registered at the establishment

To see ERA's current per capita tariffs, go to:  
[www.era.org.uk](http://www.era.org.uk)

## The ERA PLUS Licence



### ERA offers additional licence opportunity

ERA now offers its licensees the opportunity to take out an additional licence which will enable licensed ERA recordings to be accessed by students and teachers online, whether they are on the premises of their school, college or university, or at home or working elsewhere within the UK. The additional licence is called the "ERA Plus Licence".

### Who can take out an ERA PLUS licence?

Only educational establishments, or bodies acting on behalf of educational establishments which hold ERA Licences, are eligible to take out ERA Plus Licences. This is because the right to copy broadcasts for non-commercial educational purposes by making ERA recordings continues to be governed by the terms of the ERA Licence.

The ERA Plus Licence extends rights granted by ERA Members to authorise licensed ERA recordings to be accessed by students and teachers online from outside the premises of their establishment when at home or working elsewhere across the UK.

### How much does it cost?

The annual tariff for licences is calculated taking into account the number of full-time or full-time equivalent students who have the benefit of an ERA Licence.

Current tariffs can be found on the ERA website at [www.era.org.uk](http://www.era.org.uk)

If discounts have been applied to calculation of fees paid under an ERA Licence because blanket licences have been taken out, the same discounts will be offered to bodies which extend the blanket licence arrangements to cover ERA Plus.

### What other terms apply?

The ERA Plus licence is very much an extension of the ERA Licence itself. A full copy of the terms of the Licence can be found on our website [www.era.org.uk](http://www.era.org.uk)

Licensees are required to have in place procedures to ensure that only "Authorised Users" will be able to gain access to ERA recordings stored on the servers of a licensed establishment. The recordings cannot be posted for open access by people who are not Authorised Users or for any purposes other than educational use.

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