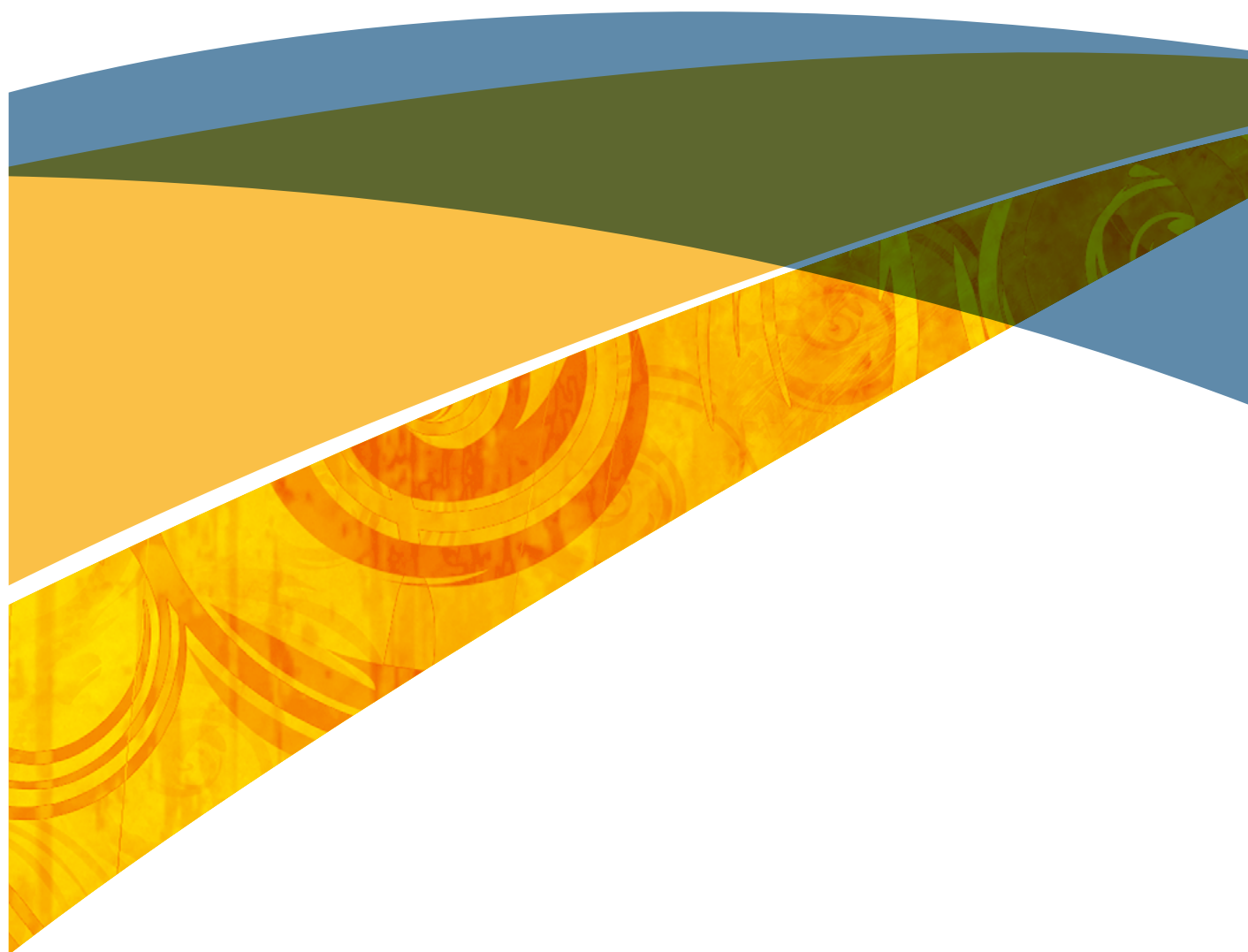




Intellectual
Property
Office

Changes to Copyright Law

Guidance on changes to Section 72 of the Copyright,
Designs and Patents Act 1988 –
free public showing or playing of broadcast





Contents

Overview	1
Who should read this guidance?	1
What is Section 72 CDPA?	2
What has changed?	2
What does this mean?	3
Will I need a licence to show free-to-air broadcasts?	3
Will I need a licence to show subscription television sports broadcasts?	4
Do non-commercial organisations need a licence to show television broadcasts?	4
Further information on intellectual property	4



Overview

Copyright protects literary, dramatic, musical and artistic works as well as films, sound recordings and broadcasts. If you want to copy or otherwise use a copyright work then you usually have to get permission from the copyright owner.

Copyright law seeks to strike a balance between the interests of copyright owners and users of copyright material in a way which promotes creativity and innovation, economic growth, and wider benefits to society. To help achieve this balance, the law provides a number of exceptions which set out activities which do not infringe copyright and therefore do not need the permission of the rightsholder.

One such exception is provided by Section 72 of the Copyright, Designs and Patents Act 1988 (CDPA), which allows for the public showing or playing of a broadcast by organisations that do not charge an entry fee. The law on this exception has changed, which affects the way organisations can broadcast films in public.

The majority of uses of copyright materials require permission from copyright owners, so you should be careful when considering whether you can rely on an exception, and if in doubt you should seek legal advice. Copyright infringement is against the law. Deliberate infringement may lead to a criminal prosecution, so you should take care when using copyright materials. Further guidance on copyright is available on the [GOV.UK](https://www.gov.uk) website.


Who should read this guidance?

This guidance is aimed at all organisations (including charities, voluntary and not-for-profit organisations) which show television broadcasts in public. It will be of particular interest to pubs and other premises which choose to show live sporting events.

What rights are there in television broadcasts?

A television broadcast contains a bundle of different copyrights. In a broadcast, copyright may subsist in:

- The broadcast itself;
- Any underlying creative work, including:
 - Literary works (e.g. a script);
 - Artistic works (e.g. graphics, logos, photographs);
 - Musical works (e.g. the musical score in a sound recording);
 - Dramatic works (e.g. choreography);
- Any sound recording;
- The 'film', consisting of the recording (fixation) of the audiovisual content.



Example: In television sports broadcasts, the music and logos shown in the broadcast of a football match are protected as creative works, and a recording of the match itself (e.g. unedited match footage) may be protected as a fixation. Copyright gives rightsholders the exclusive right to authorise or prevent their works being communicated, performed, shown or played to the public. When such communication is authorised, it is usually done in one of two ways:

- Rightsholders can choose to authorise these acts in their agreements with broadcasters. After gaining authorisation from the relevant rightsholders, a broadcaster may offer a commercial subscription which authorises the further communication to the public of the works by third party organisations (such as pubs). This is what usually happens when broadcasters such as Sky and BT sell commercial sports packages. A pub wishing to show Premier League football to its customers will therefore be able to do so if they subscribe to a commercial sports packages which includes the relevant copyright permissions.
- Alternatively to licensing via agreements with broadcasters, rightsholders may require organisations which show or play broadcasts, such as a pubs, to obtain permission from them. This will usually be done through a collective licence which permits the showing or playing of a range of works - for example, to play music, licences are required from PRS (which represents owners of music copyright) and PPL (the body which represents owners of sound recording and performance copyrights).

What is Section 72 CDPA?

Section 72(1) permits premises allowing free public access to show television broadcasts without the permission of certain copyright owners. Previously, Section 72(1) applied to film, broadcast and certain sound recording copyrights. Following amendment, film has been removed from the scope of this exception.

Section 72(1B) provides an exception to copyright infringement for the playing or showing of a broadcast, and any films and sound recordings included in it, where the use is necessary for the demonstration or repair of radios, televisions and similar equipment for receiving broadcasts. This exception has been retained.

What has changed?

Previously, Section 72 allowed organisations which do not charge for admission to show television broadcasts and any film contained in the broadcast without the permission of the copyright holder. Permission was still required in relation to original literary, artistic, musical and dramatic works contained in the broadcast, as well as certain sound recordings.

Following legal action brought by the Football Association Premier League against pubs using unauthorised satellite decoder cards to show live Premier League football matches, the scope of the Section 72 provision was questioned. The court found that there was inconsistency between the CDPA in relation to the inclusion of 'in any film included in a broadcast' and what is set out in EU legislation.

The previous wording and interpretation of Section 72 had led some commercial premises to attempt to rely on the exception to show exclusive subscription television broadcasts without paying for the required commercial licences, often attempting to remove the creative aspects of sports broadcasts (e.g. by switching off the sound, placing cards over logos, or using masking technology which obscures logos), and relying on Section 72 in respect of film fixations. This made it difficult, though not impossible, for copyright owners to take legal action to enforce the use of commercial subscriptions, distorting the market between pubs which pay for commercial subscriptions, and those that use comparatively cheaper unauthorised systems.

Following a full Government consultation and a subsequent technical review, the Government has removed the reference to 'film' from the Section 72 exception.

What does this mean?

The removal of 'film' from Section 72 means that those wishing to show broadcasts in public may need to gain the permission of film rightsholders to show the film contained within a broadcast, as is currently the case for certain other rights. Separate licences may still be required from PRS and PPL in relation to music contained in a broadcast, as well as any other underlying rightsholder who chooses to enforce/license their copyright.


Section 72 continues to apply to the broadcast itself – as opposed to the works contained within the broadcast – which means that as long as copyright permissions have been obtained from the relevant copyright owners, no additional permission to show the broadcast is required from the broadcaster.

We are not aware of there having been any immediate changes to the way broadcast films are licensed as a result of this change. Underlying rights have always been licensable under UK copyright law but many rightsholders have chosen not to do this. It is possible that this will continue to be the case following amendment of Section 72. It is also possible that, over time, rightsholders may change the way they license their works. Any changes in licensing practices will be for rightsholders to decide.

Will I need a licence to show free-to-air broadcasts?

The change to Section 72 only affects the showing or playing of broadcasts in public by organisations and premises that do not charge an entrance fee. Most broadcast content already contains 'underlying' copyright protected content (such as graphic and dramatic works) and, despite this content being licensable, many rightsholders choose not to license this material or enforce against such public communication.

Free-to-air channels tend not to charge commercial premises for showing television programmes to the public. Pubs and other premises showing free-to-air broadcasts may need to check with broadcasters that they are permitted to show the films contained within a broadcast, in the same way that they need to ascertain whether they have permission to show or play any other underlying works (e.g. music). Currently, the only additional licences required to show free-to-air broadcasts to the public appear to be the collective licences offered by PRS and PPL in relation to music content, but the method of licensing is ultimately a commercial decision for rightsholders.



N.B Use of a television set (to receive free-to-air and subscription television) requires a television licence – this licence only covers the use of any television receiving equipment such as the TV set, digital box, PC, laptop or mobile phone to watch or record television programmes (see: www.tvlicensing.co.uk/check-if-you-need-one?WT.ac=home_plt_check).

Will I need a licence to show subscription television sports broadcasts?

Yes. Pubs and other commercial premises have always required a commercial subscription to show exclusive subscription broadcasts, and the change to Section 72 has made this position clearer. In such cases, the commercial subscription acts as a licence. For example, in the UK, Sky Sports and BT Sport are authorised to broadcast live Premier League games.

Do non-commercial organisations need a licence to show television broadcasts?

The law on showing television broadcasts to the public is the same for both commercial and non-commercial organisations, and the above guidance is applicable to both. However, many copyright owners choose to permit non-commercial activity without a licence or at a reduced rate. This is something which will need to be checked with the relevant broadcasters and/or copyright owners.

Further information on Intellectual Property

IP information: Learn more about Intellectual Property by visiting the IPO web pages: www.ipo.gov.uk

Licensing: More information can be found at: <http://www.ipo.gov.uk/types/copy/c-other/c-licence.htm>

IP Healthcheck: The IPO's free IP Healthcheck can help you to find out more about the different IP rights and how they affect you and your business: www.ipo.gov.uk/iphealthcheck

Note: This guidance sets out the general principles of the changes to copyright law, but it is not legal advice. It is recommended that you obtain legal advice in circumstances where you have specific questions relating to the law.

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Published: July 2016

DPS-004273



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