

Island of  Guernsey

Ordinance of the States

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**The Database Rights
(Bailiwick of Guernsey)
Ordinance, 2005**

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No. XX of 2005

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The Database Rights (Bailiwick of Guernsey) Ordinance, 2005

THE STATES, in pursuance of their resolution of the 27th November, 2002^a, and in exercise of the powers conferred on them by sections 1 and 3 of the Intellectual Property (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004^b and sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^c, and all other powers enabling them in that behalf, hereby order:-

PART I

IMPLEMENTATION OF DIRECTIVE

Implementation of Directive on legal protection of databases.

1. This Ordinance implements in the Bailiwick Council Directive No. 96/9/EC of the 11th March, 1996 on the legal protection of databases^d.

PART II

DATABASES & DATABASE RIGHT

Databases.

2. In this Ordinance "**database**" means a collection of independent works, data or other materials which -

^a Article XIX of Billet d'État No. XXIII of 2002.

^b Order in Council No. XIV of 2004.

^c Order in Council No. III of 1994.

^d OJ L 077, 27/03/1996, pp. 0020-0028.

- (a) are arranged in a systematic or methodical way, and
- (b) are individually accessible by electronic or other means.

Database right.

3. (1) A property right ("**database right**") subsists, in accordance with this Ordinance, in a database if there has been a substantial investment in the collation of the contents of the database.

(2) For the purposes of subsection (1) it is immaterial whether or not the database or any of its contents is a copyright work within the meaning of section 1 of the Copyright (Bailiwick of Guernsey) Ordinance, 2005.

(3) This section has effect subject to section 8.

Maker of a database.

4. (1) Subject to subsections (2) to (4), the person who takes the initiative in collating the contents of a database and assumes the risk of investing in that collation shall be regarded as the maker of, and as having made, the database.

(2) Where a database is made by an employee in the course of his employment, his employer shall be regarded as the maker of the database, subject to any agreement to the contrary.

(3) Where a database is made by Her Majesty or by an officer or servant of the Crown in the course of his duties, Her Majesty shall be regarded as the maker of the database.

(4) Where a database is made by or under the direction or control of the States of Guernsey, the States of Alderney or the Chief Pleas of Sark -

- (a) the States of Guernsey, the States of Alderney or (as the case may be) the Chief Pleas of Sark shall be regarded as the maker of the database, and
- (b) if the database is made by or under the direction or control of two or more of the States of Guernsey, the States of Alderney and the Chief Pleas of Sark, those two or more shall be regarded as the joint makers of the database.

(5) For the purposes of this Ordinance a database is made jointly if two or more persons acting together in collaboration take the initiative in collating the contents of the database and assume the risk of investing in that collation.

(6) References in this Ordinance to the maker of a database shall, except as otherwise provided, be construed, in relation to a database which is made jointly, as references to all the makers of the database.

First ownership of database right.

5. The maker of a database is the first owner of database right in it.

Acts infringing database right.

6. (1) Subject to the provisions of this Ordinance, a person infringes database right in a database if, without the consent of the owner of the right, he extracts or re-utilises all or a substantial part of the contents of the database.

(2) For the purposes of this Ordinance, the repeated and

systematic extraction or re-utilisation of insubstantial parts of the contents of a database may amount to the extraction or re-utilisation of a substantial part of those contents.

Term of protection.

7. (1) Database right in a database expires at the end of the period of fifteen years from the end of the calendar year in which the making of the database was completed.

(2) Where a database is made available to the public before the end of the period referred to in subsection (1), database right in the database expires fifteen years from the end of the calendar year in which the database was first made available to the public.

(3) Any substantial change to the contents of a database, including a substantial change resulting from the accumulation of successive additions, deletions or alterations, which would result in the database being considered to be a substantial new investment, shall qualify the database resulting from that investment for its own term of protection.

(4) This section has effect subject to section 18.

Qualification for database right.

8. (1) Database right does not subsist in a database unless, at the material time, its maker, or if it was made jointly, one or more of its makers, was -

(a) an individual who was a national of an EEA State or habitually resident within the EEA,

(b) a body which was incorporated under the law of an

EEA State and which, at that time, satisfied one of the conditions in subsection (2),

- (c) a partnership or other unincorporated body which was formed under the law of an EEA State and which, at that time, satisfied the condition in subsection (2)(a),
 - (d) an individual who was habitually resident within the Bailiwick or the Isle of Man,
 - (e) a body which was incorporated under the law of any part of the Bailiwick or the Isle of Man and which, at that time, satisfied one of the conditions in subsection (3), or
 - (f) a partnership or other unincorporated body which was formed under the law of any part of the Bailiwick or the Isle of Man and which, at that time, satisfied the condition in subsection (3)(a).
- (2) The conditions mentioned in subsections (1)(b) and (c) are -
- (a) that the body has its central administration or principal place of business within the EEA, or
 - (b) that the body has its registered office within the EEA and the body's operations are linked on an ongoing basis with the economy of an EEA State.
- (3) The conditions mentioned in subsections (1)(e) and (f) are -

- (a) that the body has its central administration or principal place of business within the Bailiwick or (as the case may be) the Isle of Man, or
- (b) that the body has its registered office within the Bailiwick or (as the case may be) the Isle of Man and the body's operations are linked on an ongoing basis with the economy of the Bailiwick or any part of it or (as the case may be) the Isle of Man.

(4) Subsection (1) does not apply in a case falling within section 4(3) or (4).

(5) In this section the "**material time**" means the time when the database was made or, if the making extended over a period, a substantial part of that period.

Avoidance of certain terms affecting lawful users.

9. (1) A lawful user of a database which has been made available to the public in any manner is entitled to extract or re-utilise insubstantial parts of the contents of the database for any purpose.

(2) Where under an agreement a person has a right to use a database, or part of a database, which has been made available to the public in any manner, any term or condition in the agreement shall be void insofar as it purports to prevent that person from extracting or re-utilising insubstantial parts of the contents of the database, or of that part of the database, for any purpose.

Exceptions to database right.

10. (1) Database right in a database which has been made available to the public in any manner is not infringed by fair dealing with a substantial part of its contents if -

- (a) that part is extracted from the database by a person who is, apart from this subsection, a lawful user of the database,
- (b) it is extracted for the purpose of illustration for teaching or research and not for any commercial purpose, and
- (c) the source is indicated.

(2) The provisions of Schedule 1 specify other acts which may be done in relation to a database notwithstanding the existence of database right.

Acts permitted on assumption as to expiry of database right.

11. (1) Database right in a database is not infringed by the extraction or re-utilisation of a substantial part of the contents of the database at a time when, or in pursuance of arrangements made at a time when -

- (a) it is not possible by reasonable inquiry to ascertain the identity of the maker, and
- (b) it is reasonable to assume that database right has expired.

(2) In the case of a database alleged to have been made jointly, subsection (1) applies in relation to each person alleged to be one of the makers.

Presumptions relevant to database right.

12. (1) The following presumptions apply in proceedings brought by virtue of this Ordinance in respect of a database.

(2) Where a name purporting to be that of the maker appeared on copies of the database as published, or on the database when it was made, the person whose name appeared shall be presumed, until the contrary is proved -

- (a) to be the maker of the database, and
- (b) to have made it in circumstances not falling within section 4(2) to (4).

(3) Where copies of the database as published bear a label or a mark stating -

- (a) that a named person was the maker of the database, or
- (b) that the database was first published in a specified year,

the label or mark is admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

(4) In the case of a database alleged to have been made jointly, subsections (2) and (3), so far as applicable, apply in relation to each person alleged to be one of the makers.

Application of copyright provisions to database right.

13. The following provisions of the Copyright (Bailiwick of Guernsey) Ordinance, 2005 -

- (a) sections 112 to 115 (dealing with rights in copyright works),
- (b) sections 121 and 122 (rights and remedies of copyright owners),
- (c) sections 127 and 129 (rights and remedies of exclusive licensee),

apply in relation to database right and databases in which that right subsists as they apply in relation to copyright and copyright works.

Licensing of database right.

14. The provisions of Schedule 2 have effect in respect of the licensing of database right.

PART III

SAVINGS & TRANSITIONAL PROVISIONS

Application of Ordinance : general rule.

15. Subject to sections 16 and 17, this Ordinance applies to databases made before, on or after the date of commencement of this Ordinance.

General saving for existing agreements.

16. Nothing in this Ordinance affects any agreement made before the date of commencement of this Ordinance.

Other general savings.

17. No act done in respect of any database in which database right subsists by virtue of its maker (or one or more of its makers) falling within one of the provisions contained in sections 4(4) and 8(1) -

- (a) before the date of commencement of this Ordinance, or
- (b) on or after that date, in pursuance of an agreement made before that date,

shall be regarded as an infringement of database right in a database.

Database right : term applicable to certain existing databases.

18. Where -

- (a) the making of a database was completed during the period of fifteen years immediately preceding the date of commencement of this Ordinance,
- (b) the database is one in which database right subsists by virtue of its maker (or one or more of its makers) falling within one of the provisions contained in sections 4(4) and 8(1), and
- (c) database right begins to subsist in the database on the date of commencement of this Ordinance,

then database right shall subsist in the database for a period of fifteen years beginning on the date of commencement of this Ordinance.

PART IV
GENERAL PROVISIONS

Interpretation.

19. (1) In this Ordinance, unless the context requires otherwise -

"**Bailiff**" means the Bailiff, Deputy Bailiff, Lieutenant-Bailiff and Juge Délégué,

"**Bailiwick**" means the Bailiwick of Guernsey, and includes the territorial waters adjacent thereto,

"**collation**" of the contents of a database means the obtaining (for example, by the creating, finding, collecting, compiling, accumulating or assembling), organising (for example, by the designing or selecting), verifying or presenting thereof, and related expressions shall be construed accordingly,

"**contract of employment**" means a contract of service or apprenticeship, whether express or implied and whether written or oral,

"**Crown**" means the Crown in right of the Bailiwick,

"**database**" : see section 2,

"**database right**" : see section 3,

"**Department**" means the States of Guernsey Commerce and Employment Department,

"**EEA**" and related expressions : see subsection (6),

"**electronic**" means actuated by one or more of the following types of energy : electric, magnetic, electro-magnetic (including optical), electro-chemical and electro-mechanical,

"**employee**" means an individual who has entered into or who works under (or, where the employment has ceased, who worked under) a contract of employment,

"**employer**", in relation to an employee, means the person by whom the employee is (or, where the employment has ceased, was) employed,

"**enactment**" means any Law, Ordinance, Order in Council and Act of Parliament, and any subordinate legislation made thereunder,

"**extraction**", in relation to any contents of a database, means the permanent or temporary transfer of those contents to another medium by any means or in any form,

"**insubstantial**", in relation to part of the contents of a database, shall be construed subject to section 6(2),

"**investment**" includes any investment, whether of financial, human or technical resources,

"**jointly**", in relation to the making of a database : see section 4(6),

"**lawful user**", in relation to a database, means any person who (whether under a licence to do any of the acts restricted by any database

right in the database or otherwise) has a right to use the database,

"licensing body" and **"licensing scheme"** : see paragraph 1 of Schedule 2,

"maker", in relation to a database : see section 4,

"re-utilisation", in relation to any contents of a database, means making those contents available to the public by any means,

"Royal Court" means the Royal Court sitting as an Ordinary Court, constituted in accordance with paragraph 3(6) of Schedule 2, and

"substantial", in relation to any investment, extraction or re-utilisation, means substantial in terms of quantity or quality or a combination of both,

and other words or expressions which are defined in the Intellectual Property (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004^e have the same meanings as in that Law.

(2) The making of a copy of a database available for use, on terms that it will or may be returned, otherwise than for direct or indirect economic or commercial advantage, through an establishment which is accessible to the public shall not be taken, for the purposes of this Ordinance, to constitute extraction or re-utilisation of the content of the database.

^e Order in Council No. XIV of 2004.

(3) Where the making of a copy of a database available through an establishment which is accessible to the public gives rise to a payment the amount of which does not go beyond what is necessary to cover the costs of the establishment, there is no direct or indirect economic or commercial advantage for the purposes of subsection (2).

(4) Subsection (2) does not apply to the making of a copy of a database available for on-the-spot reference use.

(5) Where a copy of a database has been sold within the EEA, the Bailiwick or the Isle of Man by, or with the consent of, the owner of the database right in the database, the further sale within the EEA, the Bailiwick or the Isle of Man of that copy shall not be taken for the purposes of this Ordinance to constitute extraction or re-utilisation of the contents of the database.

(6) In this Ordinance -

"**EEA**" means the European Economic Area,

"**EEA Agreement**" means the Agreement on the European Economic Area signed at Oporto on the 2nd May, 1992, as adjusted by the Protocol signed at Brussels on the 17th March, 1993,

"**EEA national**" means a national of an EEA state, and

"**EEA State**" means a state which is a contracting party to the EEA Agreement,

and references in this Ordinance to a person being an EEA national shall be construed in relation to a body corporate as references to its being incorporated

under the law of an EEA State.

(7) The Interpretation (Guernsey) Law, 1948^f applies to the interpretation of this Ordinance throughout the Bailiwick.

(8) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, repealed and re-enacted (with or without modification), extended or applied.

Citation.

20. This Ordinance may be cited as the Database Rights (Bailiwick of Guernsey) Ordinance, 2005.

Extent.

21. This Ordinance has effect throughout the Bailiwick.

Commencement.

22. This Ordinance shall come into force on the 1st January, 2006.

^f Ordres en Conseil Vol. XIII, p. 355.

SCHEDULE 1

Section 10(2)

EXCEPTIONS TO DATABASE RIGHT FOR
PUBLIC ADMINISTRATION, ETC

States proceedings and judicial proceedings

1. (1) Database right in a database is not infringed by anything done for the purposes of States proceedings or judicial proceedings or for the purposes of reporting such proceedings.

(2) In this paragraph -

"**judicial proceedings**" includes proceedings before any court, tribunal or person having authority to decide any matter affecting a person's legal rights or liabilities, and

"**States proceedings**" means proceedings in the States of Deliberation, the States of Alderney or the Chief Pleas of Sark.

Tribunals of Inquiry and statutory inquiries

2. (1) Database right in a database is not infringed by anything done for -

(a) the purposes of the proceedings of a Tribunal of Inquiry or statutory inquiry, or

(b) the purpose of reporting any such proceedings held in public.

(2) Database right in a database is not infringed by the issue to the public of copies of the report of a Tribunal of Inquiry or statutory inquiry containing the contents of the database.

(3) In this paragraph -

"**statutory inquiry**" means an inquiry held or investigation conducted in pursuance of a duty imposed or power conferred by or under a statutory provision, and

"**Tribunal of Inquiry**" means a tribunal established under the Tribunals of Inquiry (Evidence) (Guernsey) Law, 1949^g.

Material open to public inspection or on official register

3. (1) Where the contents of a database are open to public inspection pursuant to a statutory requirement, or are on a statutory register, database right in the database is not infringed by the extraction of all or a substantial part of the contents containing factual information of any description, by or with the authority of the appropriate person, for a purpose which does not involve re-utilisation of all or a substantial part of the contents.

(2) Where the contents of a database are open to public inspection pursuant to a statutory requirement, database right in the database is not infringed by the extraction or re-utilisation of all or a substantial part of the contents, by or with the authority of the appropriate person, for the purpose of enabling the

^g Ordres en Conseil Vol. XIV, p. 45.

contents to be inspected at a more convenient time or place or otherwise facilitating the exercise of any right for the purpose of which the requirement is imposed.

(3) Where the contents of a database which is open to public inspection pursuant to a statutory requirement, or which is on a statutory register, contain information about matters of general scientific, technical, commercial or economic interest, database right in the database is not infringed by the extraction or re-utilisation of all or a substantial part of the contents, by or with the authority of the appropriate person, for the purpose of disseminating that information.

(4) In this paragraph -

"appropriate person" means the person required to make the contents of the database open to public inspection or, as the case may be, the person maintaining the register,

"statutory register" means a register maintained in pursuance of a statutory requirement, and

"statutory requirement" means a requirement imposed by or under a statutory provision.

*Material communicated to the Crown or the States
in the course of public business*

4. (1) This paragraph applies where the contents of a database have in the course of public business been communicated to the Crown or the States for any purpose, by or with the licence of the owner of the database right, and a document or other material thing recording or embodying the contents of the database is owned by or in the custody or control of the Crown or, as the case may

be, the States.

(2) The Crown or, as the case may be, the States may, for the purpose for which the contents of the database were communicated to it, or any related purpose which could reasonably have been anticipated by the owner of the database right in the database, extract or re-utilise all or a substantial part of the contents without infringing database right in the database.

(3) The Crown or the States may not re-utilise the contents of a database by virtue of this paragraph if the contents have previously been published otherwise than by virtue of this paragraph.

(4) In this paragraph -

"**public business**" includes any activity carried on by the Crown or the States,

"**States**" means the States of Guernsey, the States of Alderney or the Chief Pleas of Sark.

(5) This paragraph has effect subject to any agreement to the contrary between the Crown or, as the case may be, the States, and the owner of the database right in the database.

Public records

5. (1) The contents of a database which are comprised in any part of the public records of the Island of Guernsey, the Island of Alderney or the Island of Sark may be re-utilised by or with the authority of any officer responsible for maintaining that part of those records without infringement of database right in the

database.

(2) In this paragraph "**public records**" means the records kept for the purposes of or pursuant to its functions by any court, police force, department or committee of the States of Guernsey, States of Alderney or Chief Pleas of Sark or other public authority in the Bailiwick.

Acts done under statutory authority

6. (1) Where the doing of a particular act is specifically authorised by a statutory provision, whenever enacted, then, unless that statutory provision provides otherwise, the doing of the act does not infringe database right in a database.

(2) Nothing in this paragraph excludes any defence of statutory authority otherwise available under or by virtue of any statutory provision.

Legal deposit libraries

7. (1) Database right in a database is not infringed by the copying of a work from the internet by a legal deposit library or person acting on its behalf if -

- (a) the work is of a prescribed description,
- (b) its publication on the internet, or a person publishing it there, is connected with the Bailiwick in a prescribed manner, and
- (c) the copying is done in accordance with any prescribed conditions.

(2) Database right in a database is not infringed by the doing of anything in relation to relevant material -

(a) permitted to be done under regulations made under this paragraph or section 59 of the Copyright (Bailiwick of Guernsey) Ordinance, 2005, and

(b) done in accordance with any prescribed conditions.

(3) In this paragraph -

"legal deposit library" means any library or archive administered by the States of Guernsey, States of Alderney or Chief Pleas of Sark (or any other prescribed library or archive) which is not conducted for profit, and includes the Guille-Allés Library, the Priaulx Library and the States Archive Service,

"prescribed" means prescribed by regulations of the Department under this paragraph or under section 59 of the Copyright (Bailiwick of Guernsey) Ordinance, 2005, and

"relevant material" means -

(a) a copy of a work published in a medium other than print,

(b) a copy of a computer program or any information necessary in order to access the work, and

- (c) a copy of any manual and other material that accompanies the work material.

(4) Regulations under this Ordinance -

- (a) may be amended or repealed by subsequent regulations hereunder,
- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient, and
- (c) may contain provision making consequential amendments to this Ordinance.

(5) Any power conferred by this Ordinance to make regulations may be exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised -
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
- (iii) any such provision either unconditionally or subject to any prescribed conditions.

(6) Regulations made by the Department under this Ordinance shall be laid before a meeting of the States as soon as possible after being made and, if at that or the next meeting the States resolve that the regulations be annulled, then they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

SCHEDULE 2

Section 14

LICENSING OF DATABASE RIGHT

Licensing scheme and licensing bodies

1. (1) In this Schedule a "**licensing scheme**" means a scheme setting out -

- (a) the classes of case in which the operator of the scheme, or the person on whose behalf he acts, is willing to grant database right licences, and
- (b) the terms on which licences would be granted in those classes of case,

and for this purpose a "**scheme**" includes anything in the nature of a scheme, whether described as a scheme or as a tariff or by any other name.

(2) In this Schedule a "**licensing body**" means a society or other organisation which has as its main object, or one of its main objects, the negotiating or granting, whether as owner or prospective owner of a database right or as agent for him, of database right licences, and whose objects include the granting of licences covering the databases of more than one maker.

(3) In this paragraph "**database right licences**" means licences to do, or authorise the doing of, any of the things for which consent is required under section 6.

2. Paragraphs 3 to 8 apply to licensing schemes which are operated by licensing bodies and cover databases of more than one maker so far as they relate to licences for extracting or re-utilising all or a substantial part of the contents of a database; and references in those paragraphs to a "**licensing scheme**" shall be construed accordingly.

Reference of proposed licensing scheme to Royal Court

3. (1) The terms of a licensing scheme proposed to be operated by a licensing body may be referred to the Royal Court by an organisation claiming to be representative of persons claiming that they require licences in cases of a description to which the scheme would apply, either generally or in relation to any description of case.

(2) The Royal Court shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.

(3) If the Royal Court decides to entertain the reference it shall consider the matter referred and make such order, either confirming or varying the proposed scheme, either generally or so far as it relates to cases of the description to which the reference relates, as the Royal Court may determine to be reasonable in the circumstances.

(4) The order may be made so as to be in force indefinitely or for such period as the Royal Court may determine.

(5) The Royal Court shall not entertain a reference by a representative organisation under this paragraph unless satisfied that the organisation is reasonably representative of the class of persons which it claims to

represent.

(6) In this Schedule "**the Royal Court**" means the Royal Court sitting as an Ordinary Court and, for the purposes of this Schedule, the Royal Court-

- (a) is constituted by the Bailiff sitting unaccompanied by the Jurats,
- (b) may appoint one or more assessors to assist it in the determination of any matter before it, and
- (c) has, in relation to functions conferred on it by this Schedule, jurisdiction throughout the Bailiwick.

Reference of licensing scheme to Royal Court

4. (1) If while a licensing scheme is in operation a dispute arises between the operator of the scheme and -

- (a) a person claiming that he requires a licence in a case of a description to which the scheme applies, or
- (b) an organisation claiming to be representative of such persons,

that person or organisation may refer the scheme to the Royal Court in so far as it relates to cases of that description.

(2) A scheme which has been referred to the Royal Court under this paragraph shall remain in operation until proceedings on the reference are concluded.

(3) The Royal Court shall consider the matter in dispute and make such order, either confirming or varying the scheme so far as it relates to cases of the description to which the reference relates, as the Royal Court may determine to be reasonable in the circumstances.

(4) The order may be made so as to be in force indefinitely or for such period as the Royal Court may determine.

(5) Paragraph 3(5) applies to references by a representative organisation under this paragraph as it applies to references under paragraph 3.

Further reference of licensing scheme to Royal Court

5. (1) Where the Royal Court has on a previous reference of a licensing scheme under paragraph 3 or 4, or under this paragraph, made an order in respect of the scheme, then, while the order remains in force -

- (a) the operator of the scheme,
- (b) a person claiming that he requires a licence in a case of the description to which the order applies, or
- (c) an organisation claiming to be representative of such persons,

may refer the scheme again to the Royal Court so far as it relates to cases of that

description.

(2) A licensing scheme shall not, except with the leave of the Royal Court, be referred again to the Royal Court in respect of the same description of cases -

- (a) within twelve months from the date of the order on the previous reference, or
- (b) if the order was made so as to be in force for 15 months or less, until the last six months before the expiry of the order.

(3) A scheme which has been referred to the Royal Court under this paragraph shall remain in operation until proceedings on the reference are concluded.

(4) The Royal Court shall consider the matter in dispute and make such order, either confirming, varying or further varying the scheme so far as it relates to cases of the description to which the reference relates, as the Royal Court may determine to be reasonable in the circumstances.

(5) The order may be made so as to be in force indefinitely or for such period as the Royal Court may determine.

(6) Paragraph 3(5) applies to references by a representative organisation under this paragraph as it applies to references under paragraph 3.

Application for grant of licence in connection with licensing scheme

6. (1) A person who claims, in a case covered by a licensing scheme, that the operator of the scheme has refused to grant him or procure the grant to him of a licence in accordance with the scheme, or has failed to do so within a reasonable time after being asked, may apply to the Royal Court.

(2) A person who claims, in a case excluded from a licensing scheme, that the operator of the scheme either -

(a) has refused to grant him a licence or procure the grant to him of a licence, or has failed to do so within a reasonable time of being asked, and that in the circumstances it is unreasonable that a licence should not be granted, or

(b) proposes terms for a licence which are unreasonable,

may apply to the Royal Court.

(3) A case shall be regarded as excluded from a licensing scheme for the purposes of subparagraph (2) if -

(a) the scheme provides for the grant of licences subject to terms excepting matters from the licence and the case falls within such an exception, or

(b) the case is so similar to those in which licences are granted under the scheme that it is unreasonable that it should not be dealt with in the same way.

(4) If the Royal Court is satisfied that the claim is well-founded, it

shall make an order declaring that, in respect of the matters specified in the order, the applicant is entitled to a licence on such terms as the Royal Court may determine to be applicable in accordance with the scheme or, as the case may be, to be reasonable in the circumstances.

(5) The order may be made so as to be in force indefinitely or for such period as the Royal Court may determine.

Application for review of order as to entitlement to licence

7. (1) Where the Royal Court has made an order under paragraph 6 that a person is entitled to a licence under a licensing scheme, the operator of the scheme or the original applicant may apply to the Royal Court to review its order.

(2) An application shall not be made, except with the special leave of the Royal Court -

(a) within twelve months from the date of the order, or of the decision on a previous application under this paragraph, or

(b) if the order was made so as to be in force for 15 months or less, or if as a result of the decision on a previous application under this paragraph the order is due to expire within 15 months of that decision, until the last six months before the expiry date.

(3) The Royal Court shall on an application for review confirm or vary its order as the Royal Court may determine to be reasonable having regard to the terms applicable in accordance with the licensing scheme or, as the case may

be, the circumstances of the case.

Effect of order of Royal Court as to licensing scheme

8. (1) A licensing scheme which has been confirmed or varied by the Royal Court -

- (a) under paragraph 3 (reference of terms of proposed scheme), or
- (b) under paragraph 4 or 5 (reference of existing scheme to Royal Court),

shall be in force or, as the case may be, remain in operation, so far as it relates to the description of case in respect of which the order was made, so long as the order remains in force.

(2) While the order is in force a person who in a case of a class to which the order applies -

- (a) pays to the operator of the scheme any charges payable under the scheme in respect of a licence covering the case in question or, if the amount cannot be ascertained, gives an undertaking to the operator to pay them when ascertained, and
- (b) complies with the other terms applicable to such a licence under the scheme,

shall be in the same position as regards infringement of database right as if he had

at all material times been the holder of a licence granted by the owner of the database right in question in accordance with the scheme.

(3) The Royal Court may direct that the order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference was made or, if later, on which the scheme came into operation.

(4) If such a direction is made -

(a) any necessary repayments, or further payments, shall be made in respect of charges already paid, and

(b) the reference in subparagraph (2)(a) to the charges payable under the scheme shall be construed as a reference to the charges so payable by virtue of the order.

(5) No such direction may be made where subparagraph (6) applies.

(6) Where the Royal Court has made an order under paragraph 6 (order as to entitlement to licence under licensing scheme) and the order remains in force, the person in whose favour the order is made, if he -

(a) pays to the operator of the scheme any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained, and

(b) complies with the other terms specified in the order,

shall be in the same position as regards infringement of database right as if he had at all material times been the holder of a licence granted by the owner of the database right in question on the terms specified in the order.

References and applications in respect of licences by licensing bodies

9. Paragraphs 10 to 13 (references and applications in respect of licensing by licensing bodies) apply to licences relating to database right which cover databases of more than one maker granted by a licensing body otherwise than in pursuance of a licensing scheme, so far as the licences authorise extracting or re-utilising all or a substantial part of the contents of a database, and references in those paragraphs to a licence shall be construed accordingly.

Reference to Royal Court of proposed licence

10. (1) The terms on which a licensing body proposes to grant a licence may be referred to the Royal Court by the prospective licensee.

(2) The Royal Court shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.

(3) If the Royal Court decides to entertain the reference it shall consider the terms of the proposed licence and make such order, either confirming or varying the terms, as it may determine to be reasonable in the circumstances.

(4) The order may be made so as to be in force indefinitely or for such period as the Royal Court may determine.

Reference to Royal Court of expiring licence

11. (1) A licensee under a licence which is due to expire, by effluxion of time or as a result of notice given by the licensing body, may apply to the Royal Court on the ground that it is unreasonable in the circumstances that the licence should cease to be in force.

(2) Such an application may not be made until the last six months before the licence is due to expire.

(3) A licence in respect of which a reference has been made to the Royal Court shall remain in operation until proceedings on the reference are concluded.

(4) If the Royal Court finds the application well-founded, it shall make an order declaring that the licensee shall continue to be entitled to the benefit of the licence on such terms as the Royal Court may determine to be reasonable in the circumstances.

(5) An order of the Royal Court under this paragraph may be made so as to be in force indefinitely or for such period as the Royal Court may determine.

Application for review of order as to licence

12. (1) Where the Royal Court has made an order under paragraph 10 or 11, the licensing body or the person entitled to the benefit of the order may apply to the Royal Court to review its order.

(2) An application shall not be made, except with the special leave

of the Royal Court -

- (a) within twelve months from the date of the order or of the decision on a previous application under this paragraph, or
- (b) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this paragraph is due to expire within 15 months of that decision, until the last six months before the expiry date.

(3) The Royal Court shall on an application for review confirm or vary its order as the Royal Court may determine to be reasonable in the circumstances.

Effect of order of Royal Court as to licence

13. (1) Where the Royal Court has made an order under paragraph 10 or 11 and the order remains in force, the person entitled to the benefit of the order, if he -

- (a) pays to the licensing body any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained, and
- (b) complies with the other terms specified in the order,

shall be in the same position as regards infringement of database right as if he had

at all material times been the holder of a licence granted by the owner of the database right in question on the terms specified in the order.

(2) The benefit of the order may be assigned -

- (a) in the case of an order under paragraph 10, if assignment is not prohibited under the terms of the Royal Court's order, and
- (b) in the case of an order under paragraph 11, if assignment was not prohibited under the terms of the original licence.

(3) The Royal Court may direct that an order under paragraph 10 or 11, or an order under paragraph 12 varying such an order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference or application was made or, if later, on which the licence was granted or, as the case may be, was due to expire.

(4) If such a direction is made -

- (a) any necessary repayments, or further payments, shall be made in respect of charges already paid, and
- (b) the reference in subparagraph (1)(a) to the charges payable in accordance with the order shall be construed, where the order is varied by a later order, as a reference to the charges so payable by virtue of the later order.

General considerations: unreasonable discrimination

14. In determining what is reasonable on a reference or application under this Schedule relating to a licensing scheme or licence, the Royal Court shall have regard to -

- (a) the availability of other schemes, or the granting of other licences, to other persons in similar circumstances, and
- (b) the terms of those schemes or licences,

and shall exercise its powers so as to secure that there is no unreasonable discrimination between licensees, or prospective licensees, under the scheme or licence to which the reference or application relates and licensees under other schemes operated by, or other licences granted by, the same person.

*Power of Royal Court to give consent on behalf of owner
in certain cases*

15. (1) The Royal Court may, on the application of a person wishing to extract or re-utilise all or a substantial part of the contents of a database, give consent in a case where the identity or whereabouts of the owner of the database right cannot be ascertained by reasonable inquiry.

(2) Consent given by the Royal Court has effect as consent of the owner of the database right for the purposes of the provisions of this Ordinance and may be given subject to any conditions specified in the Royal Court's order, including conditions as to the payment to be made in consideration of consent being given.

(3) The Royal Court shall not give consent under subparagraph (1) except after the service or publication of such notices as may be required by rules of court or as the Royal Court may in any particular case direct.