

Educational Recording Agency (ERA)

Code of Conduct

September 2017



enhancing the learning experience

The Purpose of this Code

This Code aims to:-

identify the rules governing ERA's governance structure, licensing arrangements, collection of fees, distribution practices and administration charges;

provide for transparency in terms of access to licence tariffs;

explain the mandates given to ERA by its members;

clarify service levels provided by ERA for members and licensees; and

clarify complaints/disputes procedures for members and licensees.

In this Code "the Act" means the Copyright, Designs and Patents Act 1988 (as amended).

What is the Educational Recording Agency (ERA)?

ERA is a collective management organisation.

ERA operates as a Company limited by guarantee, registered in England under company number 02423219.

ERA is authorised by its Members to operate its copyright Licensing Schemes within the United Kingdom of Great Britain and Northern Ireland, the Channel Islands and the Isle of Man.

On behalf of its Members, ERA operates a copyright Licensing Scheme for the benefit of educational establishments.

Licences issued by ERA are described as an ERA Licence.

ERA's Vision

Access within all educational establishments to licensed and rights-cleared educational use of audio and audio-visual archives linked to the capture of broadcasts in the digital world supported by the ERA Licence.

ERA's Aims

To provide all educational establishments with simple copyright licensing solutions which support innovative and accessible use of audio and audio-visual broadcast services and archives for the benefit of education, teaching and learning.

To enable the collection and payment of fair compensation for rights-owners represented by the members of ERA for uses which fall within the scope of the ERA Licence.

To create innovative licensing solutions for educational use of audio and audio-visual archives in the future.

ERA's Values

ERA operates to be:-

Efficient
Responsive
Accessible
Trusted
Transparent
Collaborative.

What is the ERA Licence?

ERA grants its licences to educational establishments covering rights which are recognised under two specific provisions of the Act as these have been amended by subsequent Regulations¹.

The two provisions are section 35 (which deals with broadcasts and copyright works included in broadcasts) and paragraph 6 of Schedule 2 (which deals with performances that are included in broadcasts).

For simplicity we shall refer to these provisions as "s 35 provisions".

S 35 provisions allow for copying and other uses of broadcasts and copyright works and performances included in the broadcasts (whether radio or television) by educational establishments for non-commercial, educational purposes; but make it clear that the uses are not permitted if, or to the extent that, licences are available authorising the acts in question.

ERA Members have agreed that their repertoire is to be licensed under ERA Licences for these purposes. It is referred to as "ERA Repertoire".

The ERA Licence permits educational establishments to make or cause others to make

¹ The Copyright and Rights in Performances (Research, Education, Libraries and Archives) Regulations 2014 (S.I.2014 No. 1372) (the 2014 Regulations) were implemented on 1 June 2014. The 2014 Regulations have changed the scope of s 35 and paragraph 6 Schedule 2 of the Act.

copies of ERA Repertoire within licensed ERA Recordings and to enable the ERA Recordings to be used for non-commercial, educational purposes of licensed educational establishments.

Essentially it supports libraries of previously broadcast programmes being created and used for non-commercial, educational use. In addition, terms and conditions for online services operated by the public service broadcasters (such as Catch up TV services) may provide that any defined rights of non-commercial, educational access or use by educational establishments is only permitted if a valid ERA Licence is held.

When ERA Recordings are electronically made available for viewing or listening by students and teaching staff, the ERA Licence requires that communication is only permitted using the secure networks operated by or for the educational establishment where they work.

The scope of ERA licences is described in more detail elsewhere in this Code.

Details of the ERA Licensing Scheme can be found on the ERA website at www.era.org.uk

ERA and its Obligations to Rights Holders

Who are the Members of ERA?

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
560 Media Rights Limited
Design and Artists Copyright Society
Directors UK Limited
Equity
Focal International Limited
The Incorporated Society of Musicians
ITV Network Limited
Mechanical Copyright Protection Society Limited
Musicians' Union
Open University Worldwide Limited
Performing Right Society Limited
Phonographic Performance Limited
Radio Independents Group
Sianel Pedwar Cymru

Who may become a Member of ERA?

Any society, guild, association or other body (including other collective management organisations) which

is a substantial copyright owner or

represents copyright owners in respect of a substantial number of works in which copyright or rights in performances subsist or

represents a substantial number of copyright owners

in each case not already represented by one of the existing members of ERA for the purposes of licensing the rights relevant to the ERA Licensing Scheme, is eligible to apply for membership of ERA.

How does a representative body apply for membership of ERA?

Each member of ERA is entitled to nominate a representative for election to the ERA Board of Directors. The ERA Members elect members of the Board of Directors in General Meeting (following nominations for vacancies having been received).

The Board of ERA oversees new applications for membership and the terms which all members of ERA are required to observe as set out in the ERA Membership Agreement.

Any organisation which considers itself eligible for membership may apply to ERA for admission.

An application must be made in writing in such form and subject to such conditions as the Directors shall from time to time prescribe. The Directors may require an applicant to supply such evidence of eligibility as the Directors consider reasonably necessary.

All applicants are supplied with copies of the Articles of Association of ERA and the terms of the ERA Membership Agreement in the form applicable to all current members of ERA at the time a new application is made.

Membership Agreements

All members of ERA are required to observe the Articles of Association of ERA and the terms of the ERA Membership Agreement (as the same may be amended by agreement of ERA members from time to time).

The current Articles of Association of ERA and the standard terms of the Membership Agreement applicable to all members of ERA from time to time are provided by ERA to all members.

Copies of the Articles of Association of ERA and a template of the Membership Agreement terms can be reviewed by prospective members through copies posted on the ERA website at www.era.org.uk

Why is the approval of existing ERA members required for the admission of a new ERA Member?

Each ERA Member is either a collective management organisation, society, guild, association or other body (including other collective management organisations) which

is a substantial copyright owner or

represents copyright owners in respect of a substantial number of works in which copyright or rights in performances subsist or

represents a substantial number of copyright owners

in each case not already represented by one of the existing members of ERA for the purposes of licensing the rights relevant to the ERA Licensing Scheme, is eligible to apply for membership of ERA.

As such, ERA distributes the Licence Fees it collects to its members for onward distribution or allocation for the benefit of the copyright owners or performers which are represented by the individual ERA Member.

When a new membership application to ERA is made and membership criteria are satisfied, the existing members of ERA must accept a change in the way in which the total monies available for distribution by ERA are split and allocated to existing members under the agreed Distribution Policy, in order to provide for an agreed allocation to the new member at a level which that is also acceptable to the new member.

This process distinguishes ERA from other collective management organisations, where an individual copyright owner owns rights and mandates certain rights to a collective management organisation in return for securing payments linked to direct use of the licensed works, without directly affecting the entitlement of other members of the collective management organisation. When a new member joins ERA the distribution share of one or more of the existing members will go down in percentage terms to allow for the recognised share to be allocated to the new ERA Member. Application of ERA's approved Distribution Policy takes place on this understanding.

Can Members withdraw from ERA?

Yes. ERA members can give notice to ERA to withdraw from ERA. Details are set out in the Membership Agreement and the Articles of Association provided for all Members.

The Articles of Association of ERA provide for a Member to give not less than six months written notice of a wish to withdraw from membership of ERA.

Notices take effect at the end of a financial year of the Agency or as provided in the Membership Agreement to link with licensing obligations.

Withdrawal from ERA membership is enabled under the Articles of Association, whilst recognising that ERA Licences for schools are usually issued on an annual basis from 1 April in each year and for other educational establishments on an annual basis from 1 August in each year.

The s 35 provisions allow for specified permitted uses of copyright works if no licences are available authorising the acts in question. Any withdrawal from ERA membership would apply with this in mind.

Whom does ERA license?

Educational Establishments. The statutory definition of "educational establishment" is included in section 174 of the Act.

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 rights does ERA license?

The rights which ERA is authorised to license on behalf of its members are defined by the Articles of Association and the ERA Membership Agreement (as amended from time to time).

The terms of the ERA Licence have been published by ERA (see www.era.org.uk) and ERA members have all confirmed that the mandates they have granted to ERA support operation of the ERA Licence.

The Membership Agreement also describes the rights which are required to support operation of the ERA Licensing Scheme

How does ERA provide for a fair and balanced representation of Members within the internal decision-making process of ERA?

Each member of ERA is entitled to one vote on issues requiring votes from members.

The ERA members agree that the business of ERA is managed by the Board of Directors.

All members of the Board of Directors are non-executive Directors and together they provide a fair and balanced representation of the different categories of membership of ERA. As such, the Board of Directors has been authorised by the ERA members to exercise the supervisory function for ERA required under relevant Regulations² to monitor the activities and the performance of the duties of persons who manage the business of ERA.

Information about the staff of ERA including the Chief Executive is posted on the ERA website at www.era.org.uk

Each member of ERA is entitled to nominate a representative for election to the ERA Board of Directors. The ERA Members elect members of the Board of Directors in General Meeting (following nominations for vacancies having been received).

As a nominee of an ERA member, after an election to the Board is confirmed by ERA members, it is usually that nominee Director on the Board of ERA who will be asked to raise questions or concerns with the ERA secretariat.

If a question is raised for an ERA member other than by the nominated Director, the ERA secretariat will inform the nominated Director of the issue by email or otherwise as soon as reasonably practicable after the issue is raised. The nominated Director is then able to decide whether they wish to respond directly or instruct the ERA secretariat to respond, keeping the Director informed of responses made.

The contact details of ERA including the email address era@era.org.uk are published on the ERA website to enable members to raise questions with the ERA secretariat in writing, should they wish to do so other than through their nominated Board Director.

How does ERA deal with members transparently and represent the interests of its members equitably and with all due diligence and care?

Because each member is represented on the Board of ERA, correspondence and information about the general business of ERA is provided to all members of ERA in a regular and transparent way. (Each Board member can see the full list of Board members copied with correspondence and information about Board business).

However, correspondence relevant to an identified Category of ERA members may be kept confidential to the ERA members within that Category under the Category Split Agreements referred to in ERA's approved Distribution Policy.

² The Collective Management of Copyright (EU Directive) Regulations 2016

Approved Policies

ERA members are entitled to approve the general policies applied by ERA as its

Investment Policy

Policy on Deductions

Distribution Policy

Copies of all Approved Policies including a Bribery Policy and the following statement concerning the Modern Slavery Act 2015 are posted on the ERA website at www.era.org.uk

ERA Statement – Modern Slavery Act 2015

ERA is committed to the highest level of ethical standards and sound governance arrangements and sets high standards of impartiality, integrity and objectivity in relation to the stewardship of public funds and the management of its activities. It reserves the right to seek assurances from any organisation with which it trades that the organisation is not participating in any activity that would be in breach of the Modern Slavery Act 2015.

ERA adopts zero tolerance to corruption and bribery and this policy is endorsed by the Board of ERA.

The approved ERA Code of Conduct and Bribery Policy is published by ERA at www.era.org.uk

ERA supports the government's objectives to eradicate modern slavery and human trafficking, although the level of company turnover does not require publication of a "Slavery & Human Trafficking Statement" in each financial year.

However, ERA's Annual Transparency Report published at www.era.org.uk provides information on the activities of the company which relate to the licensing of copyright and related rights in ERA members within the ERA Licence.

In this context ERA calls on all organisations with which it engages to influence their global supply chains by improving transparency and accountability to ensure that they are free from slavery and human trafficking.

ERA and its Obligations to Licensees

ERA works to ensure that all those who may require an ERA Licence are treated fairly, honestly and courteously. As part of this process, ERA has published this Code of Conduct.

What does ERA Licensee?

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 the 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, ITV, Channel 4 and Channel 5 online services.

Guidance notes about the relevance of these services to educational establishments are published on the ERA website at www.era.org.uk

The services which may be accessed and used by holders of ERA Licences provide an opportunity for selection and access to valuable teaching and learning resources.

Recordings made or sourced under the terms of the 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 help 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 in which licensed recordings can be used.

The Resources and Case Studies section of the ERA website includes information about how licensees may make the most of their ERA Licence.

In addition, the Licence section of the ERA website includes answers to Frequently Asked Questions linked to the scope of the ERA Licence.

The website also includes information about how licensees are able to contact ERA to seek answers to any questions they may have linked to application of the ERA Licence.

What licence fees apply to licences granted by ERA?

The ERA Licence provides that

“Rights granted under ERA Licences shall be granted in consideration of payment to ERA of relevant ERA Licence Fees.

The ERA Licence Fees shall be calculated by reference to the period for which the ERA Licence has been granted and by reference to the applicable tariff published on the ERA website in respect of that period.

The annual tariff for fees under ERA Licences shall be calculated by category of student in the Relevant Educational Establishments to which an ERA Licence applies and against which Authorised Users relevant to the ERA Licence will be defined.

ERA Licence Fees for Agreements running for a period of less than one year shall be calculated on a pro-rata basis against the applicable annual tariff.

Discounted rates or fee abatements against published tariffs may be negotiated at ERA’s discretion when ERA Licence Fees are paid by or on behalf of recognised and identified groups of Relevant Educational Establishments to which the terms of an ERA Licence shall be applied”.

Tariffs applicable under the ERA Licence can be found by visiting www.era.org.uk

How much does an ERA Licence cost?

Licence fees are calculated against student numbers 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 full-time equivalent) students registered at the establishment.

To see ERA's current per capita tariffs, go to www.era.org.uk

What are the terms of ERA Licences?

The full terms and conditions of the ERA Licence (and the ERA and ERA Plus Licences applied prior to the launch of the New ERA Licence) are published on the ERA website at www.era.org.uk .

Consultation takes place with bodies representing the affected groups of schools or other types of educational establishments when terms of ERA Licences are changed in any significant way.

How does ERA cover its costs?

Each year the members of ERA, acting by its Directors, approve a budget to cover the running costs of the secretariat.

This approved budget is funded by an allocation of licence fees earned and otherwise distributable to ERA members and provision for bank interest which is earned from any licence fees held by ERA pending distribution to Members in accordance with the approval procedures provided in the ERA Membership Agreement.

The approved ERA Investment Policy and ERA Policy on Deductions apply for management of the ERA budget and authorisation for payment of agreed budgeted costs from the ERA membership.

Distributions to members are, in general, made every three months.

Members of ERA acting as agents for broadcasters

The number of broadcast services which expressly license their rights through ERA increased as a result of the membership of Compact Collections Limited and 560 Media Rights Limited.

Compact Collections Limited is an agent which, for the purposes of operation of ERA Licences, covers relevant rights in the broadcast services (with Ofcom licences) operated and owned or controlled by

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

560 Media Rights Limited covers relevant rights in the broadcast services (with Ofcom licences) operated and owned or controlled by Discovery Communications Europe Limited (for example Discovery Science).

What are the benefits of Copyright and the s 35 provisions?

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. The section 35 provisions achieve that balance by encouraging copyright owners to come together to offer a convenient and cost-effective licence, in this case for educational users.

What should I do if I have questions about ERA Licences?

The FAQ section of the ERA website available at www.era.org.uk includes answers to most frequently asked questions concerning what ERA Licences cover (and what is not covered).

If you have a question which is not covered by this information, please write to or email ERA at era@era.org.uk

ERA and its dealings with prospective and current licensees

Why might ERA contact you?

If you are a school, it may be that the Licence fees due for the school to have the benefit of an ERA Licence have been paid for centrally (for example by the Department for Education for funded schools in England) or Local Authorities for some schools in Scotland and Wales).

Local Authorities who agree to blanket payments are sent information about ERA Licences. A schedule to the Licence issued by ERA lists all the schools for whom ERA Licence fees have been paid. Local Authorities may contact schools to provide information about this process.

In addition, ERA has an agreement in place with the Centre for Education and Finance Management (CEFM), under which CEFM acts as agent to ERA for the issuing of licence documentation to individual schools.

Where schools or other educational establishments may need to take out an ERA Licence, ERA or its agent (CEFM), may make contact to check the status of a current ERA Licence and to invite renewals. Enquiries about pupil or student numbers and outstanding invoices may also be reasons for contact.

In addition to posting information on its website, ERA and its agents may also send to educational establishments information about new services or repertoire available under current or prospective licences.

Why might ERA ask for information from you?

ERA will request information to ascertain whether an educational establishment holds the ERA Licence that is required to cover the uses permitted under published terms and conditions.

ERA Licence terms also provide for recordings to be labelled and for information about use to be provided to ERA to assist ERA in informing its Members about use of their repertoire.

This in turn enables ERA members to relay to their own members information about the practical application of ERA Licences and assist with the distribution of licences fees to individual rights owners.

Licence terms also provide that ERA may secure declarations from educational establishments that an ERA licence is no longer required and that recordings made or held under previous licences have been deleted or destroyed.

Payments to ERA

Licence Fees payable for ERA Licences may be paid by BACS transfer or by cheque.

Right to cancel licences

Licences are granted on an annual basis by ERA. Licensees are invited to contact ERA should mergers or other changes to the status of an educational establishment become relevant prior to any Licence renewal.

Data held by ERA

ERA is registered with the Information Commissioner as a data processor under the Data Protection Act 1998 (as modified and extended by the Privacy and Electronic Communications (EC Directive) Regulations 2003).

The Registration number is Z7045807.

Contacting ERA

You may contact ERA:

(a) by post, addressed to

Educational Recording Agency

1st Floor, Barnard's Inn, 86 Fetter Lane, London EC4A 1EN

(b) by email addressed to

era@era.org.uk

(c) by telephone 00 (44) 20 7837 3222

between the hours of 10am and 4pm, Mondays to Fridays (excluding bank holidays).

We shall acknowledge receipt of correspondence requesting information from ERA within two working days of receipt and (when practical) respond in full within a further ten working days.

ERA will advise correspondents if it is not able to respond in full within the above timescale and of the likely time that it will take to respond in full.

If you are not satisfied with the service offered by ERA, what are the next steps?

Complaints

1. ERA works to ensure that all who approach ERA are treated with courtesy.

2. ERA hopes that any concerns will be dealt with by the individual member of staff with whom you deal.
3. Following this, if you have a complaint about whether ERA has met its commitments under this Code of Conduct, you are requested to write to ERA setting out your complaint.

You may contact ERA with your complaint:-

by post addressed to

Educational Recording Agency

1st Floor, Barnard's Inn, 86 Fetter Lane, London EC4A 1EN

by email addressed to era@era.org.uk

by telephone – 020 7837 3222 between the hours of 10am and 4pm, Mondays to Fridays (excluding bank holidays).

We shall acknowledge receipt of correspondence requesting information from ERA within two working days of receipt and (when practical) respond in full within a further ten working days.

ERA will advise correspondents if it is not able to respond in full within the above timescale and of the likely time that it will take to respond in full.

4. If you remain dissatisfied with any response to a complaint then you should write to the Chief Executive of ERA within a period of one month explaining the reasons why you remain dissatisfied.

Your letter will be acknowledged within ten working days of receipt and the Chief Executive will either:

- (a) confirm the view or decision previously provided by an ERA member of staff and advise you of a further right of appeal; or
- (b) undertake to write with a full response after appropriate advice has been taken with an indication of the timescale within which you can expect a full response.

If we believe that we cannot do more than we have already done under our Complaints Procedure, we shall advise you of this.

ERA Complaints Procedure

All members of ERA staff are informed of the provisions of this Code of Conduct and are expected to comply with its terms.

Referral of Complaints to the Ombudsman

As part of the appeals procedure relevant to any complaints not otherwise resolved, ERA has put in place procedures for complaints to be referred to an independent dispute resolution service run by Ombudsman Services Limited.

If the appropriate internal procedures are exhausted, it is proposed that unresolved complaints may be dealt with through this service.

For more information about Ombudsman Services Limited visit www.ombudsman-services.org

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1st Floor. Barnard's Inn
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Telephone 020 7837 3222