

Educational Recording Agency – frequently asked questions

If you cannot find the answer to your query please contact the ERA office on era@cefm.co.uk or era@era.org.uk.

Please also submit any questions you feel may be relevant to the FAQ page.

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 literary, dramatic, musical and artistic works.

What does ERA license?

ERA grants licences to educational establishments covering rights that are recognised under two specific provisions of the Copyright, Designs and Patents Act 1988 (as amended).

We refer to this as “the Act” in these notes.

The two provisions are s35 (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”.

S35 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 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, the ERA licence enables educational establishments to create libraries or repositories of broadcasts which can be used for teaching and learning. The licence also enables access to online or on-demand broadcasts for educational use. Terms and conditions of public service broadcasters themselves may also state that online services (such as “catch-up” TV) may only be accessed for non-commercial educational use by establishments holding a valid ERA licence.

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.

What are the benefits of copyright and the section 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.

Who can take out an ERA Licence?

Only “educational establishments” can take out an ERA Licence.

Educational establishments are defined as schools (including independent schools) and other establishments specified by Orders of the Secretary of State under s 174 of the Copyright, Designs and Patents Act 1988.

These Orders provide for Colleges of Further Education, Universities and Colleges of Theology and Higher Education to be classified as educational establishments for this purpose.

If you are in doubt about whether the definition applies to your institution, please contact ERA for clarification.

In general, what can I copy from the television or radio?

The ERA Licence permits recordings of broadcasts to be made for non-commercial educational use. 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 radio and television broadcast. These will include (but are not limited to):

- BBC television and radio (BBC1, 2 , 3 and 4)
- ITV Network services (including ITV2, ITV3, ITV4, STV and UTV)
- Channel Four, E4, More 4 and Film 4
- Five television (including 5USA and 5Star)
- S4C

It also applies to any other licensed broadcast services.

Can I record on-demand services?

Changes in recent terms and conditions of the broadcaster members of ERA mean that educational establishments that hold an ERA Licence can access and download content from on-demand services such as BBC iPlayer, All 4, ITV Hub, My5 and Clic (S4C) in a similar way to personal private users.

Please check specific terms and conditions for details.

Can I use 'Podcasts' under the ERA Licence?

Podcasts from our Members' services may be downloaded for educational use when they are covered by the educational establishment terms described above.

Can I use YouTube under the ERA Licence?

Materials directly accessed from YouTube are not supported by the ERA Licence. The Terms and Conditions of YouTube refer to 'personal use only'.

Can I access foreign language broadcasts?

If your institution has access to a foreign language broadcast which is receivable in the UK, the ERA Licence will permit the recording and non-commercial educational use of that recording within the scope of the ERA Licence. However, the terms and conditions applied to the way in which the service is received by the institution require contractual compliance which may supersede this and need to be considered separately from the ERA Licence terms.

Are there broadcasts which I cannot record or copy under the ERA Licence?

Yes. Only broadcast material owned or represented by ERA Members is licensed through the ERA Licence. 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, in the absence of any alternative licensing scheme being in place, the s 35 provisions may apply to works not represented by ERA members.

Are there any other 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.

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.

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.

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?

Not specifically under the terms of the ERA Licence. However, provisions within The Copyright and Rights in Performances (Disability) Regulations 2014 may support educational establishments making accessible copies for the personal use of a disabled person in certain circumstances.

Subject to this, 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.

How can I use 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 the non-commercial educational purposes of a licensed establishment. This use includes relay by means of a secure electronic network for access by the establishment's pupils and staff, for example for showing on interactive whiteboards in classrooms or in the course of study off-site via a Virtual Learning Environment.

Who can use recordings?

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

What restrictions apply to the use of recordings?

Programmes may only be recorded, retained, stored and copied 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 activities, 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 materials e.g. a promotional prospectus

- Sale or commercial hire of recordings.

Can UK-based students borrow recordings?

Yes. Off-site streamed access to recordings by all students in a class or on a course through a secure service such as Blackboard or Moodle is covered by new ERA Licences from 1st April 2014.

In addition, 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 reduce 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.

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 ERA Licence.

Can I embed ERA recordings in PowerPoint presentations?

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

Who can make recordings?

ERA Recordings must always be made by or on behalf of the licensed educational establishment.

This means that copies created on the premises of an educational establishment must be made under direct supervision by a teacher or an employee of the establishment. Teachers are also able to make ERA Recordings at home provided that they are then able to deliver the copies to their establishment for further secure network use only within the scope of the ERA Licence.

If ERA Recordings are to be made on behalf of an educational establishment outside the educational premises for subsequent use within the scope of the ERA Licence, then (if the establishment is authorising the copying) written contractual terms must clearly be in place to ensure that the copies are only being made for the establishment and will not be retained or used by any third party.

Additionally ERA itself may have expressly agreed that a third party operating approved exchange services may retain ERA Recordings for access and use only by current ERA Licensees under an ERA Licence. Licensees should check with ERA to ensure that ERA agreements are in place before using any approved exchange service.

How can I store recordings?

Recordings can be stored on video or audio tapes, DVDs and CDs. Digital recordings and permitted downloads 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.

Can I make additional copies of my recordings?

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

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.

Any online exchange of copies between ERA licensed educational establishments is subject to the written approval of ERA and you should refer to ERA before undertaking such activity.

Does the ERA Licence cover the copying of pre-recorded videos?

The copying of commercially-produced, pre-recorded videos, audio tapes, CDs and DVDs 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.

Do 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 a jewel case or cover with the following:

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

How do I label digital recordings stored on a server?

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

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 uses ERA Recordings within the ERA Licence.

What might happen 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 Licensing 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 establishments i.e. primary, secondary, further or higher etc.
- The number of full-time (or full-time equivalent) students registered at the establishment.