



Evidence to the Gowers Review of Intellectual Property

Executive Summary

The Hospital Broadcasting Association is a registered charity which acts as an umbrella organisation representing and supporting approximately 250 independent hospital broadcasting organisations throughout the United Kingdom, the vast majority of which are registered charities in their own right.

Our members provide entertaining and informative programming to hundreds of thousands of patients in NHS hospitals every week. With the exception of four of our members, which provide TV services, this programming is in the form of a radio service. To the best of our knowledge, hospital broadcasting in the UK is an entirely voluntary activity, with no paid staff, and no statutory funding from the NHS or other central or local government. The individual stations are usually independent of the NHS Trust in whose hospitals they operate.

HBA would like to take the opportunity that the Review Team's examination of the current UK intellectual property framework provides to present the case for hospital broadcasters to be exempt from certain aspects of copyright law.

As will be explained below, it is our belief that the changes made to the Copyright, Designs and Patents Act 1988 by the Copyright and Related Rights Regulations 2003 had a significant, unintended consequence of removing an exemption that the majority of hospital broadcasting organisations were afforded under the Act as originally enacted.

In addition to restoring this previous exemption, we would ask that some further minor exemptions be considered to ensure that all aspects of the charitable work undertaken by our members are exempt.

An Introduction to Hospital Broadcasting

Hospital Radio started in 1921, when Thomas Hanstock demonstrated the potential of broadcasting football commentaries, church services and gramophone records to hospital patients in York County Hospital. That same mix of sports commentaries, church services and music is still the mainstay of many hospital radio stations 85 years later although, of course, technology has moved on significantly.

Thomas Hanstock managed to convince the management and nursing staff at York of the therapeutic value of patients, confined to their beds, being able to continue to follow the fortunes of their local football team, to participate in, albeit at a distance, a church service on Sunday, and to hear their favourite music. These same beliefs are today held by the thousands of volunteers who are involved in hospital broadcasting. Recent research by the Psychology Department at Glasgow Caledonian University has shown that listening to a favourite piece of music or comedy can take patients' minds off pain that they are suffering, proving what Thomas Hanstock and all the other hospital broadcasting volunteers over the last 85 years have thought all along.

Technologies used by Hospital Broadcasters

Transmission Technologies

The majority of hospital broadcasters, radio and TV, deliver their programmes to patients using a wired delivery system. In some cases, this will be the "traditional" system, with the electrical audio signal from the studio amplified and delivered to each bed in every ward, where it is converted to a pneumatic

HBA - supporting Hospital Broadcasting in the UK

For more information see www.hbauk.com, e-mail info@hbauk.com, or call 0870 321 6017.

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signal inside a plastic pipe to which are attached a set of earphones. As a result of the NHS Plan from 2000, around 200 hundred hospitals now benefit from the investment made by private companies, such as Patientline plc, who have installed fully-featured bedside entertainment systems. Once again, these systems deliver the signals around the hospitals over a wired infrastructure, but this time to computerised entertainment and telephone units at each bed.

Another distribution technology that has been used by hospital radio stations, although now only by about a dozen stations, is Induction Loop. This system uses a studio-based transmitter connected to a network of aerials in individual wards. Listeners can tune in via normal AM radios, but only within the confines of the hospital wards.

More recently, a number of hospital radio stations (32 at the last count) have taken advantage of the Long-Term Restricted Service Licences available from Ofcom to broadcast to their hospital site via a freely-radiating low-power AM or FM transmitter. The transmitted power is restricted to that necessary to serve only the hospital and, whilst the laws of physics mean that it is possible to tune in to these services outside the hospital, the licence terms preclude any acknowledgement of such listeners or publicity about the station aimed at these listeners.

Computerised Audio Playback

Over the last 10 years, the cost of technology has reduced significantly and today, like their commercial and BBC brethren, many hospital radio stations hold much of their music library on computer-based digital playback systems.

A typical hospital radio station will hold on their playback system copies of a few thousand songs, together with jingles, public service announcements and complete pre-recorded programmes. The individual items of audio can be accessed by a presenter in the studio and incorporated into live programmes, and can also be scheduled to be automatically played out by the computer when there is no presenter available.

The ability to provide their own distinct style of programming and information to the hospital community 24 hours a day, rather than only a few hours each evening when the majority of volunteers are available has been a major step forward in hospital broadcasting.

Hospital Broadcasting and Copyright

The position prior to 2003

Under the Copyright Designs and Patents Act 1988, as enacted, the act of broadcasting was defined (clause 6) as "a transmission by wireless telegraphy of visual images, sounds or other information". This meant that the vast majority of our members, whose programmes were delivered to patients via wired distribution systems, were not "broadcasting" – they were simply "playing or showing [...] the work in public". That act, of course, also usually infringes copyright (clause 19), however there is an exemption when the playing of the work is "part of the activities of [...] a club, society or other organisation [...] not established or conducted for profit and its main objects are charitable or otherwise concerned with the advancement of religion, education or social welfare" (clause 67 relating to sound recordings, clause 189 and Schedule 2, clause 15 relating to performances).

On this basis, and having sought legal opinion, it is our belief that under the 1988 Act, as enacted, hospital broadcasting organisations using wired distribution systems were exempt from copyright. Certainly, until 2003, none of the three copyright collecting societies (Phonographic Performance Ltd [PPL], the Performing Rights Society [PRS] and the Mechanical Copyright Protection Society [MCPS]) was actively pursuing most hospital broadcasting organisations (including those using induction loop technology) for licence fees.

The exception was those hospital radio stations which applied for a Long-Term Restricted Service Licence. It was made clear in the application paperwork that any station that obtained a licence would be expected to pay PPL and PRS a flat-rate fee for copyright licences, and those hospital radio stations that opted to take this route made that decision in the full knowledge of the copyright licence fees.

The current position

The Copyright and Related Rights Regulations 2003 amended clause 6 of the 1988 Act, redefining broadcasting to be "an electronic transmission of visual images, sounds or other information [to the public]". We understand that the thrust of this amendment was to treat cable TV systems in the same way as other broadcasting systems, and to bring internet-based broadcasting under the same regime. Unfortunately, it has, we presume unintentionally, also caught those of our members who, up until 31st October 2003, were not "broadcasting" according to the definition in the 1988 Act.

This has resulted in PPL actively pursuing hospital broadcasting organisations in an attempt to get them to apply for licences. 18 months of negotiations between HBA and PPL followed PPL's initial approach, eventually resulting in agreement on licensing terms that are not unduly restrictive to hospital broadcasters and involve payments that, whilst most unwelcome, are not likely to be the direct cause of the closure of any organisation. A copy of the licence is attached for the review team's information.

In addition to the "broadcasting" copyright licence, PPL also now require that hospital radio stations pay an annual licence fee to enable them to copy music from (for example) CD to their computerised playout system. Again, the level of the fee was subject to much negotiation between PPL and HBA.

To date PRS have not approached hospital radio stations (except those holding Long-Term Restricted Service Licences from Ofcom) with respect to copyright licensing and their website states hospital radio stations using an Induction Loop system to distribute their programmes to the bedside are given a free licence.

MCPS have likewise not sought to obtain any licence fees from our members. In fact, we have an e-mail from MCPS in 2001 stating that members of HBA are exempt from their "BR4" licence.

Hospital Broadcasting is not a threat to copyright holders

Copyright fees recompense writers, composers, artists and record companies for their work being exploited commercially. As explained above, hospital broadcasting is recognised in the UK as a charitable activity. It is not a commercial enterprise.

It is most unlikely that the broadcasting of music by a hospital radio station is going to result in the loss of income for the music industry. No patient in hospital is going to connect a recording device to their bedside radio to record the music for commercial gain – or even personal use! On the contrary, it is not unknown for patients to ask for details of particular tracks they have heard so that they can purchase copies on their return home.

Requested Exemptions

1 – Exemption for hospital broadcasters using wired distribution systems

Given the apparently unintentional consequence of the Copyright and Related Rights Regulations 2003, as explained above, we request that consideration be given to finding some way to, once again, exempt those hospital broadcasters that do not use wireless telegraphy to distribute their programmes to patients.

2 – Additional exemption for hospital broadcasters using Induction Loops

Given that the use of an Induction Loop based distribution system, whilst using wireless telegraphy for the delivery of the signal over the final few metres, is in all other ways analogous to the use of a wired system – specifically, the signal cannot be received except within the confines of the hospital – we request that the use, within a hospital environment, of such an extremely short-range wireless system be treated in the same way as a wired distribution system.

With regard to this requested exemption, we would like to point out that PPL, in their licence agreed with HBA, have accepted that induction loop distribution of hospital radio programmes should be treated as analogous to wired distribution.

3 – Exemption for all hospital broadcasters, irrespective of the distribution technology

As explained earlier, a number of our members utilise a low-powered freely-radiating AM or FM radio signal to deliver their programmes to patients in hospital. The only difference between those hospital broadcasting organisations which use these delivery methods and those which use wired or induction loop systems is that there is a certain amount of "overspill" of the signal into the surrounding neighbourhood, enabling those people who know of the station to tune in. As noted above, hospital radio stations using this distribution technology are, under the terms of their broadcasting licence, not allowed to publicise or acknowledge reception outside the hospital to which that licence relates.

We therefore request that consideration be given to "levelling the playing field" for all hospital broadcasting organisations by finding a way to exempt from copyright the charitable service they provide, irrespective of the technology used to distribute their programmes to their listeners.

4 – Exemption for hospital broadcasters from copyright infringement by copying audio

In addition to the act of "broadcasting", copyright restrictions also impinge on the operation of hospital broadcasting organisations in regards of the copying and holding on computerised playout systems. As explained above, such copying of audio material to computer playout system has become an inherent part of the way hospital radio stations provide their service 24-hours a day. Copies held on the computer systems are not used for any other purpose other than to provide the charitable service.

We therefore request that consideration be given to exempting the copying from one media to another as part of the operation of a hospital broadcasting organisation be exempted from copyright.

Concluding Remarks

HBA hopes that the review team concurs with our view that the charitable services provided by the thousands of volunteers involved in hospital broadcasting should be exempt from copyright infringement. Without the exemptions we request, there is a danger that some hospital broadcasting organisations will be unable to continue operating legally, due to lack of financial resources.

If there is further help that HBA can provide to the review team to assist in its deliberations, please contact our Secretary, Nigel Dallard via e-mail (secretary@hbauk.com), telephone (0870 321 6003), or post (54, St. Annes Close, Winchester, Hampshire, SO22 4LQ).