

## INTELLECTUAL PROPERTY (COPYRIGHT AND RELATED RIGHTS) ACT 2005

### Principal Act

<b>Act. No. 2005-22</b>	<i>Commencement (LN.2005/080)</i>	28.4.2005
	<i>Assent</i>	10.3.2005
Amending enactments	Relevant current provisions	Commencement date
Act. 2006-21	ss. 61(3), 62(4), 63(2) & 65(2), Part IV (ss.254-269), Schs. 2, 4 & 5	20.7.2006

### Transposing:

Directive 91/250/EEC  
Directive 92/100/EEC  
Directive 93/83/EEC  
Directive 93/98/EEC  
Directive 96/9/EC  
Directive 2001/29/EC  
Directive 2001/84/EC

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RE-NUMBERING OF SECTIONS AS A CONSEQUENCE  
OF AMENDING ACT Act. 2006-21  
AS FROM 20.7.2006

<b>Old number</b>	<b>New Number</b>
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256	272
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AN ACT TO MAKE PROVISION FOR COPYRIGHT AND OTHER RELATED RIGHTS; AND TO TRANSPOSE INTO THE LAW OF GIBRALTAR COUNCIL DIRECTIVE 91/250/EEC OF 14 MAY 1991 ON THE LEGAL PROTECTION OF COMPUTER PROGRAMS; COUNCIL DIRECTIVE 92/100/EEC OF 19 NOVEMBER 1992 ON RENTAL RIGHT AND LENDING RIGHT AND ON CERTAIN RIGHTS RELATING TO COPYRIGHT IN THE FIELD OF INTELLECTUAL PROPERTY; COUNCIL DIRECTIVE 93/83/EEC OF 27 SEPTEMBER 1993 ON THE CO-ORDINATION OF CERTAIN RULES CONCERNING COPYRIGHT AND RIGHTS RELATED TO COPYRIGHT APPLICABLE TO SATELLITE BROADCASTING AND CABLE RE-TRANSMISSION; COUNCIL DIRECTIVE 93/98/EEC OF 29 OCTOBER 1993 HARMONISING THE TERM OF PROTECTION OF COPYRIGHT AND CERTAIN RELATED RIGHTS; DIRECTIVE 96/9/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 11 MARCH 1996 ON THE LEGAL PROTECTION OF DATABASES; AND DIRECTIVE 2001/29/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 22 MAY 2001 ON THE HARMONISATION OF CERTAIN ASPECTS OF COPYRIGHT AND RELATED RIGHTS IN THE INFORMATION SOCIETY; AND FOR CONNECTED PURPOSES.

## **PART I COPYRIGHT**

### **CHAPTER I SUBSISTENCE, OWNERSHIP AND DURATION OF COPYRIGHT**

#### *Introductory*

#### **Title and commencement.**

1.(1) This Act may be cited as the Intellectual Property (Copyright and Related Rights) Act 2005.

(2) This Act comes into operation on the day appointed by the Government by notice in the Gazette and different days may be appointed for different purposes.

#### **Copyright and copyright works.**

2.(1) Copyright is a property right which subsists in accordance with this Part in the following descriptions of work—

- (a) original literary, dramatic, musical or artistic works;

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- (b) sound recordings, films or broadcasts; and
- (c) the typographical arrangement of published editions.

(2) In this Part “copyright work” means a work of any of those descriptions in which copyright subsists.

(3) Copyright does not subsist in a work unless the requirements of this Part with respect to qualification for copyright protection are met (see section 165 and the provisions referred to there).

### **Rights subsisting in copyright works.**

3.(1) The owner of the copyright in a work of any description has the exclusive right to do the acts specified in Chapter II as the acts restricted by the copyright in a work of that description.

(2) In relation to certain descriptions of copyright work the following rights conferred by Chapter IV (moral rights) subsist in favour of the author, director or commissioner of the work, whether or not he is the owner of the copyright—

- (a) section 94 (right to be identified as author or director);
- (b) section 97 (right to object to derogatory treatment of work);  
and
- (c) section 102 (right to privacy of certain photographs and films).

### ***Descriptions of work and related provisions***

### **Literary, dramatic and musical works.**

4.(1) In this Part—

“literary work” means any work, other than a dramatic or musical work, which is written, spoken or sung, and accordingly includes—

- (a) a table or compilation, other than a database;
- (b) a computer program;
- (c) preparatory design material for a computer program; and
- (d) a database;

“dramatic work” includes a work of dance or mime; and

“musical work” means a work consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music.

(2) Copyright does not subsist in a literary, dramatic or musical work unless and until it is recorded, in writing or otherwise; and references in this Part to the time at which such a work is made are to the time at which it is so recorded.

(3) It is immaterial for the purposes of subsection (2) whether the work is recorded by or with the permission of the author; and where it is not recorded by the author, nothing in that subsection affects the question whether copyright subsists in the record as distinct from the work recorded.

#### **Databases.**

5.(1) In this Part “database” means a collection of independent works, data or other materials which—

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

(2) For the purposes of this Part a literary work consisting of a database is original if, and only if, by reason of the selection or arrangement of the contents of the database the database constitutes the author’s own intellectual creation.

#### **Artistic works.**

6.(1) In this Part “artistic work” means—

- (a) a graphic work, photograph, sculpture or collage, irrespective of artistic quality;
- (b) a work of architecture being a building or a model for a building; or
- (c) a work of artistic craftsmanship.

(2) In this Part—

“building” includes any fixed structure, and a part of a building or fixed structure;

“graphic work” includes—

- (a) any painting, drawing, diagram, map, chart or plan; and
- (b) any engraving, etching, lithograph, woodcut or similar work;

“photograph” means a recording of light or other radiation on any medium on which an image is produced or from which an image may by any means be produced, and which is not part of a film;

“sculpture” includes a cast or model made for purposes of sculpture.

### **Sound recordings.**

7.(1) In this Part “sound recording” means—

- (a) a recording of sounds, from which the sounds may be reproduced; or
- (b) a recording of the whole or any part of a literary, dramatic or musical work, from which sounds reproducing the work or part may be produced,

regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced.

(2) Copyright does not subsist in a sound recording which is, or to the extent that it is, a copy taken from a previous sound recording.

### **Films.**

8.(1) In this Part “film” means a recording on any medium from which a moving image may by any means be produced.

(2) The sound track accompanying a film shall be treated as part of the film for the purposes of this Part.

(3) Without prejudice to the generality of subsection (2), where that subsection applies—

- (a) references in this Part to showing a film include playing the film sound track to accompany the film;
- (b) references in this Part to playing a sound recording, or to communicating a sound recording to the public, do not include

playing or communicating the film sound track to accompany the film;

- (c) references in this Part to copying a work, so far as they apply to a sound recording, do not include copying the film sound track to accompany the film; and
- (d) references in this Part to the issuing, rental or lending of copies of a work, so far as they apply to a sound recording, do not include the issuing, rental or lending of copies of the sound track to accompany the film.

(4) Copyright does not subsist in a film which is, or to the extent that it is, a copy taken from a previous film.

(5) Nothing in this section affects any copyright subsisting in a film sound track as a sound recording.

#### **Broadcasts.**

9.(1) In this Part a “broadcast” means an electronic transmission of visual images, sounds or other information which—

- (a) is transmitted for simultaneous reception by members of the public and is capable of being lawfully received by them; or
- (b) is transmitted at a time determined solely by the person making the transmission for presentation to members of the public,

and which is not excepted by subsection (2); and references to broadcasting shall be construed accordingly.

(2) Excepted from the definition of “broadcast” is any internet transmission unless it is—

- (a) a transmission taking place simultaneously on the internet and by other means;
- (b) a concurrent transmission of a live event; or
- (c) a transmission of recorded moving images or sounds forming part of a programme service offered by the person responsible for making the transmission, being a service in which programmes are transmitted at scheduled times determined by that person.

(3) An encrypted transmission shall be regarded as capable of being lawfully received by members of the public only if decoding equipment has been made available to members of the public by or with the authority of the person making the transmission or the person providing the contents of the transmission.

(4) References in this Part to the person making a broadcast or a transmission which is a broadcast are—

- (a) to the person transmitting the programme, if he has responsibility to any extent for its contents; and
- (b) to any person providing the programme who makes with the person transmitting it the arrangements necessary for its transmission;

and references in this Part to a programme, in the context of broadcasting, are to any item included in a broadcast.

(5) For the purposes of this Part, the place from which a wireless broadcast is made is the place where, under the control and responsibility of the person making the broadcast, the programme-carrying signals are introduced into an uninterrupted chain of communication (including, in the case of a satellite transmission, the chain leading to the satellite and down towards the earth).

(6) Subsections (4) and (5) have effect subject to section 10 (safeguards in case of certain satellite broadcasts).

(7) References in this Part to the reception of a broadcast include reception of a broadcast relayed by means of a telecommunications system.

(8) The relaying of a broadcast by reception and immediate re-transmission shall be regarded for the purposes of this Part as a separate act of broadcasting from the making of the broadcast which is so re-transmitted.

(9) Copyright does not subsist in a broadcast which infringes, or to the extent that it infringes, the copyright in another broadcast.

#### **Safeguards in relation to certain satellite broadcasts.**

10.(1) This section applies where the place from which a broadcast by way of satellite transmission is made is located in a country other than Gibraltar, the United Kingdom or another EEA state and the law of that country fails to provide at least the following level of protection—

- (a) exclusive rights in relation to wireless broadcasting equivalent to those conferred by section 26 (infringement by communication to the public) on the authors of literary, dramatic, musical and artistic works, films and broadcasts;
- (b) a right in relation to live wireless broadcasting equivalent to that conferred on a performer by section 202(1)(b) (consent required for live broadcast of performance); and
- (c) a right for authors of sound recordings and performers to share in a single equitable remuneration in respect of the wireless broadcasting of sound recordings.

(2) Where the place from which the programme-carrying signals are transmitted to the satellite (“the uplink station”) is located in Gibraltar, the United Kingdom or another EEA state—

- (a) that place shall be treated as the place from which the broadcast is made; and
- (b) the person operating the uplink station shall be treated as the person making the broadcast.

(3) Where the uplink station is not located in Gibraltar, the United Kingdom or another EEA state but a person who is established in Gibraltar, the United Kingdom or another EEA state has commissioned the making of the broadcast—

- (a) that person shall be treated as the person making the broadcast; and
- (b) the place in which he has his principal establishment in the European Economic Area shall be treated as the place from which the broadcast is made.

#### **Published editions.**

11.(1) In this Part “published edition”, in the context of copyright in the typographical arrangement of a published edition, means a published edition of the whole or any part of one or more literary, dramatic or musical works.

(2) Copyright does not subsist in the typographical arrangement of a published edition if, or to the extent that, it reproduces the typographical arrangement of a previous edition.

#### ***Authorship and ownership of copyright***

**Authorship of work.**

12.(1) In this Part “author”, in relation to a work, means the person who creates it.

(2) That person shall be taken to be—

- (a) in the case of a sound recording, the producer;
- (b) in the case of a film, the producer and the principal director;
- (c) in the case of a broadcast, the person making the broadcast (see section 9(4)) or, in the case of a broadcast which relays another broadcast by reception and immediate re-transmission, the person making that other broadcast;
- (d) in the case of the typographical arrangement of a published edition, the publisher.

(3) In the case of a literary, dramatic, musical or artistic work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken.

(4) For the purposes of this Part a work is of “unknown authorship” if the identity of the author is unknown or, in the case of a work of joint authorship, if the identity of none of the authors is known.

(5) For the purposes of this Part the identity of an author shall be regarded as unknown if it is not possible for a person to ascertain his identity by reasonable inquiry; but if his identity is once known it shall not subsequently be regarded as unknown.

**Works of joint authorship.**

13.(1) In this Part a “work of joint authorship” means a work produced by the collaboration of two or more authors in which the contribution of each author is not distinct from that of the other author or authors.

(2) A film shall be treated as a work of joint authorship unless the producer and the principal director are the same person.

(3) A broadcast shall be treated as a work of joint authorship in any case where more than one person is to be taken as making the broadcast (see section 9(4)).

(4) References in this Part to the author of a work shall, except as otherwise provided, be construed in relation to a work of joint authorship as references to all the authors of the work.

**First ownership of copyright.**

14.(1) The author of a work is the first owner of any copyright in it, subject to the following provisions.

(2) Where a literary, dramatic, musical or artistic work, or a film, is made by an employee in the course of his employment, his employer is the first owner of any copyright in the work subject to any agreement to the contrary.

(3) This section does not apply to Crown copyright or Parliamentary copyright (see sections 172 and 174) or to copyright which subsists by virtue of section 177 (copyright of certain international organisations).

***Duration of copyright***

**Duration of copyright in literary, dramatic, musical or artistic works.**

15.(1) The following provisions have effect with respect to the duration of copyright in a literary, dramatic, musical or artistic work.

(2) Copyright expires at the end of the period of 70 years from the end of the calendar year in which the author dies, subject as follows.

(3) If the work is of unknown authorship, copyright expires—

- (a) at the end of the period of 70 years from the end of the calendar year in which the work was made; or
- (b) if during that period the work is made available to the public, at the end of the period of 70 years from the end of the calendar year in which it is first so made available,

subject as follows.

(4) Subsection (2) applies if the identity of the author becomes known before the end of the period specified in paragraph (a) or (b) of subsection (3).

(5) For the purposes of subsection (3) making available to the public includes—

- (a) in the case of a literary, dramatic or musical work—

- (i) performance in public; or
- (ii) communication to the public;
- (b) in the case of an artistic work—
  - (i) exhibition in public;
  - (ii) a film including the work being shown in public; or
  - (iii) communication to the public,

but in determining generally for the purposes of that subsection whether a work has been made available to the public no account shall be taken of any unauthorised act.

(6) Where the country of origin of a work is not Gibraltar, the United Kingdom or another EEA state and the author of the work is not a Gibraltarian or a national of the United Kingdom or another EEA state, the duration of copyright is that to which the work is entitled in the country of origin, provided that does not exceed the period which would apply under subsections (2) to (5).

(7) If the work is computer-generated the above provisions do not apply and copyright expires at the end of the period of 50 years from the end of the calendar year in which the work was made.

(8) The provisions of this section are adapted as follows in relation to a work of joint authorship –

- (a) the reference in subsection (2) to the death of the author shall be construed—
  - (i) if the identity of all of the authors is known, as a reference to the death of the last of them to die; and
  - (ii) if the identity of one or more of the authors is known and the identity of one or more others is not, as a reference to the death of the last whose identity is known;
- (b) the reference in subsection (4) to the identity of the author becoming known shall be construed as a reference to the identity of any of the authors becoming known;

- (c) the reference in subsection (6) to the author not being a Gibraltarian or a national of the United Kingdom or another EEA state shall be construed as a reference to none of the authors being a Gibraltarian or national of the United Kingdom or another EEA state.

(9) This section does not apply to Crown copyright or Parliamentary copyright (see sections 172 to 175) or to copyright which subsists by virtue of section 177 (copyright of certain international organisations).

#### **Duration of copyright in sound recordings.**

16.(1) The following provisions have effect with respect to the duration of copyright in a sound recording.

- (2) Subject to subsections (3) and (4), copyright expires—
  - (a) at the end of the period of 50 years from the end of the calendar year in which the recording is made; or
  - (b) if during that period the recording is published, 50 years from the end of the calendar year in which it is first published; or
  - (c) if during that period the recording is not published but is made available to the public by being played in public or communicated to the public, 50 years from the end of the calendar year in which it is first so made available,

but in determining whether a sound recording has been published, played in public or communicated to the public, no account shall be taken of any unauthorised act.

(3) Where the author of a sound recording is not a Gibraltarian or a national of the United Kingdom or another EEA state, the duration of copyright is that to which the sound recording is entitled in the country of which the author is a national, provided that does not exceed the period which would apply under subsection (2).

(4) If or to the extent that the application of subsection (3) would be at variance with an international obligation to which Gibraltar became subject prior to 29<sup>th</sup> October 1993, the duration of copyright shall be as specified in subsection (2).

#### **Duration of copyright in films.**

17.(1) The following provisions have effect with respect to the duration of copyright in a film.

(2) Copyright expires at the end of the period of 70 years from the end of the calendar year in which the death occurs of the last to die of the following persons—

- (a) the principal director;
- (b) the author of the screenplay;
- (c) the author of the dialogue; or
- (d) the composer of music specially created for and used in the film,

subject as follows.

(3) If the identity of one or more of the persons referred to in subsection (2)(a) to (d) is known and the identity of one or more others is not, the reference in that subsection to the death of the last of them to die shall be construed as a reference to the death of the last whose identity is known.

(4) If the identity of the persons referred to in subsection (2)(a) to (d) is unknown, copyright expires at—

- (a) the end of the period of 70 years from the end of the calendar year in which the film was made; or
- (b) if during that period the film is made available to the public, at the end of the period of 70 years from the end of the calendar year in which it is first so made available.

(5) Subsections (2) and (3) apply if the identity of any of those persons becomes known before the end of the period specified in paragraph (a) or (b) of subsection (4).

(6) For the purposes of subsection (4) making available to the public includes—

- (a) showing in public; or
- (b) communicating to the public,

but in determining generally for the purposes of that subsection whether a film has been made available to the public no account shall be taken of any unauthorised act.

(7) Where the country of origin is not Gibraltar, the United Kingdom or another EEA state and the author of the film is not a Gibraltarian or a national of the United Kingdom or another EEA state, the duration of copyright is that to which the work is entitled in the country of origin, provided that does not exceed the period which would apply under subsections (2) to (6).

(8) In relation to a film of which there are joint authors, the reference in subsection (7) to the author not being a Gibraltarian or a national of the United Kingdom or another EEA state shall be construed as a reference to none of the authors being a Gibraltarian or a national of the United Kingdom or another EEA state.

(9) If in any case there is no person falling within paragraphs (a) to (d) of subsection (2), the above provisions do not apply and copyright expires at the end of the period of 50 years from the end of the calendar year in which the film was made.

(10) For the purposes of this section the identity of any of the persons referred to in subsection (2)(a) to (d) shall be regarded as unknown if it is not possible for a person to ascertain his identity by reasonable inquiry; but if the identity of any such person is once known it shall not subsequently be regarded as unknown.

#### **Duration of copyright in broadcasts.**

18.(1) The following provisions have effect with respect to the duration of copyright in a broadcast.

(2) Copyright in a broadcast expires at the end of the period of 50 years from the end of the calendar year in which the broadcast was made, subject as follows.

(3) Where the author of the broadcast is not a Gibraltarian or a national of the United Kingdom or another EEA state, the duration of copyright in the broadcast is that to which it is entitled in the country of which the author is a national, provided that does not exceed the period which would apply under subsection (2).

(4) If or to the extent that the application of subsection (3) would be at variance with an international obligation to which Gibraltar became subject

prior to 29<sup>th</sup> October 1993, the duration of copyright shall be as specified in subsection (2).

(5) Copyright in a repeat broadcast expires at the same time as the copyright in the original broadcast; and accordingly no copyright arises in respect of a repeat broadcast which is broadcast after the expiry of the copyright in the original broadcast.

(6) A repeat broadcast means one which is a repeat of a broadcast previously made.

#### **Duration of copyright in typographical arrangement of published editions.**

19. Copyright in the typographical arrangement of a published edition expires at the end of the period of 25 years from the end of the calendar year in which the edition was first published.

#### **Meaning of country of origin.**

20.(1) For the purposes of the provisions of this Part relating to the duration of copyright the country of origin of a work shall be determined as follows.

(2) If the work is first published in a Berne Convention country and is not simultaneously published elsewhere, the country of origin is that country.

(3) If the work is first published simultaneously in two or more countries only one of which is a Berne Convention country, the country of origin is that country.

(4) If the work is first published simultaneously in two or more countries of which two or more are Berne Convention countries, then—

- (a) if any of those countries is Gibraltar, the United Kingdom or another EEA state, the country of origin is that country; and
- (b) if none of those countries is Gibraltar, the United Kingdom or another EEA state, the country of origin is the Berne Convention country which grants the shorter or shortest period of copyright protection.

(5) If the work is unpublished or is first published in a country which is not a Berne Convention country (and is not simultaneously published in a Berne Convention country), the country of origin is—

- (a) if the work is a film and the maker of the film has his headquarters in, or is domiciled or resident in a Berne Convention country, that country;
  - (b) if the work is—
    - (i) a work of architecture constructed in a Berne Convention country; or
    - (ii) an artistic work incorporated in a building or other structure situated in a Berne Convention country,  
  
that country;
  - (c) in any other case, the country of which the author of the work is a national.
- (6) In this section—
- (a) a “Berne Convention country” means a country which is a party to any Act of the International Convention for the Protection of Literary and Artistic Works signed at Berne on 9<sup>th</sup> September 1886; and
  - (b) references to simultaneous publication are to publication within 30 days of first publication.

## CHAPTER II RIGHTS OF COPYRIGHT OWNER

### *The acts restricted by copyright*

#### **The acts restricted by copyright in a work.**

21.(1) The owner of the copyright in a work has, in accordance with the following provisions of this Chapter, the exclusive right to do the following acts in Gibraltar—

- (a) to copy the work (see section 22);
- (b) to issue copies of the work to the public (see section 23);
- (c) to rent or lend the work to the public (see section 24);
- (d) to perform, show or play the work in public (see section 25);

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- (e) to communicate the work to the public (see section 26);
- (f) to make an adaptation of the work or do any of the above in relation to an adaptation (see section 27),

and those acts are referred to in this Part as the “acts restricted by the copyright”.

(2) Copyright in a work is infringed by a person who without the licence of the copyright owner does, or authorises another to do, any of the acts restricted by the copyright.

(3) References in this Part to the doing of an act restricted by the copyright in a work are to the doing of it—

- (a) in relation to the work as a whole or any substantial part of it; and
- (b) either directly or indirectly,

and it is immaterial whether any intervening acts themselves infringe copyright.

(4) This Chapter has effect subject to—

- (a) the provisions of Chapter III (acts permitted in relation to copyright works); and
- (b) the provisions of Chapter VII (provisions with respect to copyright licensing).

### **Infringement of copyright by copying.**

22.(1) The copying of the work is an act restricted by the copyright in every description of copyright work; and references in this Part to copying and copies shall be construed as follows.

(2) Copying in relation to a literary, dramatic, musical or artistic work means reproducing the work in any material form. This includes storing the work in any medium by electronic means.

(3) In relation to an artistic work copying includes the making of a copy in three dimensions of a two-dimensional work and the making of a copy in two dimensions of a three-dimensional work.

(4) Copying in relation to a film or broadcast includes making a photograph of the whole or any substantial part of any image forming part of the film or broadcast.

(5) Copying in relation to the typographical arrangement of a published edition means making a facsimile copy of the arrangement.

(6) Copying in relation to any description of work includes the making of copies which are transient or are incidental to some other use of the work.

### **Infringement by issue of copies to the public.**

23.(1) The issue to the public of copies of the work is an act restricted by the copyright in every description of copyright work.

(2) References in this Part to the issue to the public of copies of a work are to—

- (a) the act of putting into circulation in the EEA copies not previously put into circulation in the EEA by or with the consent of the copyright owner; or
- (b) the act of putting into circulation outside the EEA copies not previously put into circulation in the EEA or elsewhere.

(3) References in this Part to the issue to the public of copies of a work do not include—

- (a) any subsequent distribution, sale, hiring or loan of copies previously put into circulation (but see section 24: infringement by rental or lending); or
- (b) any subsequent importation of such copies into Gibraltar, the United Kingdom or another EEA state;

except so far as paragraph (a) of subsection (2) applies to putting into circulation in the EEA copies previously put into circulation outside the EEA.

(4) References in this Part to the issue of copies of a work include the issue of the original.

### **Infringement by rental or lending of work to the public.**

24.(1) The rental or lending of copies of the work to the public is an act restricted by the copyright in—

- (a) a literary, dramatic or musical work;
  - (b) an artistic work, other than—
    - (i) a work of architecture in the form of a building or a model for a building; or
    - (ii) a work of applied art; or
  - (c) a film or sound recording.
- (2) In this Part, subject to the following provisions of this section—
- (a) “rental” means making a copy of the work available for use, on terms that it will or may be returned, for direct or indirect economic or commercial advantage; and
  - (b) “lending” means making a copy of the work 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.
- (3) The expressions “rental” and “lending” do not include—
- (a) making available for the purpose of public performance, playing or showing in public or communication to the public;
  - (b) making available for the purpose of exhibition in public; or
  - (c) making available for on-the-spot reference use.
- (4) The expression “lending” does not include making available between establishments which are accessible to the public.
- (5) Where lending by an establishment accessible to the public gives rise to a payment the amount of which does not go beyond what is necessary to cover the operating costs of the establishment, there is no direct or indirect economic or commercial advantage for the purposes of this section.
- (6) References in this Part to the rental or lending of copies of a work include the rental or lending of the original.

**Infringement by performance, showing or playing of work in public.**

25.(1) The performance of the work in public is an act restricted by the copyright in a literary, dramatic or musical work.

(2) In this Part “performance”, in relation to a work—

- (a) includes delivery in the case of lectures, addresses, speeches and sermons; and
- (b) in general, includes any mode of visual or acoustic presentation, including presentation by means of a sound recording, film or broadcast of the work.

(3) The playing or showing of the work in public is an act restricted by the copyright in a sound recording, film or broadcast.

(4) Where copyright in a work is infringed by its being performed, played or shown in public by means of apparatus for receiving visual images or sounds conveyed by electronic means, the person by whom the visual images or sounds are sent, and in the case of a performance the performers, shall not be regarded as responsible for the infringement.

**Infringement by communication to the public.**

26.(1) The communication to the public of the work is an act restricted by the copyright in—

- (a) a literary, dramatic, musical or artistic work;
- (b) a sound recording or film; or
- (c) a broadcast.

(2) References in this Part to communication to the public are to communication to the public by electronic transmission, and in relation to a work include—

- (a) the broadcasting of the work;
- (b) the making available to the public of the work by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them.

**Infringement by making adaptation or act done in relation to adaptation.**

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27.(1) The making of an adaptation of the work is an act restricted by the copyright in a literary, dramatic or musical work.

For this purpose an adaptation is made when it is recorded, in writing or otherwise.

(2) The doing of any of the acts specified in sections 22 to 26, or subsection (1) above, in relation to an adaptation of the work is also an act restricted by the copyright in a literary, dramatic or musical work.

For this purpose it is immaterial whether the adaptation has been recorded, in writing or otherwise, at the time the act is done.

(3) In this Part “adaptation”–

- (a) in relation to a literary work, other than a computer program or a database, or in relation to a dramatic work, means–
  - (i) a translation of the work;
  - (ii) a version of a dramatic work in which it is converted into a non-dramatic work or, as the case may be, of a non-dramatic work in which it is converted into a dramatic work;
  - (iii) a version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical;
- (b) in relation to a computer program, means an arrangement or altered version of the program or translation of it;
- (c) in relation to a database, means an arrangement or altered version of the database or a translation of it;
- (d) in relation to a musical work, means an arrangement or transcription of the work.

(4) In relation to a computer program a “translation” includes a version of the program in which it is converted into or out of a computer language or code or into a different computer language or code.

(5) No inference shall be drawn from this section as to what does or does not amount to copying a work.

***Secondary infringement of copyright*****Secondary infringement: importing infringing copy.**

28. The copyright in a work is infringed by a person who, without the licence of the copyright owner, imports into Gibraltar, otherwise than for his private and domestic use, an article which is, and which he knows or has reason to believe is, an infringing copy of the work.

**Secondary infringement: possessing or dealing with infringing copy.**

29. The copyright in a work is infringed by a person who, without the licence of the copyright owner—

- (a) possesses in the course of a business;
- (b) sells or lets for hire, or offers or exposes for sale or hire;
- (c) in the course of a business exhibits in public or distributes; or
- (d) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright,

an article which is, and which he knows or has reason to believe is, an infringing copy of the work.

**Secondary infringement: providing means for making infringing copies.**

30.(1) Copyright in a work is infringed by a person who, without the licence of the copyright owner—

- (a) makes;
- (b) imports into Gibraltar;
- (c) possesses in the course of a business; or
- (d) sells or lets for hire, or offers or exposes for sale or hire,

an article specifically designed or adapted for making copies of that work, knowing or having reason to believe that it is to be used to make infringing copies.

(2) Copyright in a work is infringed by a person who without the licence of the copyright owner transmits the work by means of a telecommunications system (otherwise than by communication to the

public), knowing or having reason to believe that infringing copies of the work will be made by means of the reception of the transmission in Gibraltar or elsewhere.

**Secondary infringement: permitting use of premises for infringing performance.**

31.(1) Where the copyright in a literary, dramatic or musical work is infringed by a performance at a place of public entertainment, any person who gave permission for that place to be used for the performance is also liable for the infringement unless when he gave permission he believed on reasonable grounds that the performance would not infringe copyright.

(2) In this section “place of public entertainment” includes premises which are occupied mainly for other purposes but are from time to time made available for hire for the purposes of public entertainment.

**Secondary infringement: provision of apparatus for infringing performance.**

32.(1) Where copyright in a work is infringed by a public performance of the work, or by the playing or showing of the work in public, by means of apparatus for—

- (a) playing sound recordings;
- (b) showing films; or
- (c) receiving visual images or sounds conveyed by electronic means,

the following persons are also liable for the infringement.

(2) A person who supplied the apparatus, or any substantial part of it, is liable for the infringement if when he supplied the apparatus or part—

- (a) he knew or had reason to believe that the apparatus was likely to be so used as to infringe copyright; or
- (b) in the case of apparatus whose normal use involves a public performance, playing or showing, he did not believe on reasonable grounds that it would not be so used as to infringe copyright.

(3) An occupier of premises who gave permission for the apparatus to be brought onto the premises is liable for the infringement if when he gave

permission he knew or had reason to believe that the apparatus was likely to be so used as to infringe copyright.

(4) A person who supplied a copy of a sound recording or film used to infringe copyright is liable for the infringement if when he supplied it he knew or had reason to believe that what he supplied, or a copy made directly or indirectly from it, was likely to be so used as to infringe copyright.

### *Infringing copies*

#### **Meaning of “infringing copy”.**

33.(1) In this Part “infringing copy”, in relation to a copyright work, shall be construed in accordance with this section.

(2) An article is an infringing copy if its making constituted an infringement of the copyright in the work in question.

(3) An article is also an infringing copy if—

- (a) it has been or is proposed to be imported into Gibraltar; and
- (b) its making in Gibraltar would have constituted an infringement of the copyright in the work in question, or a breach of an exclusive licence agreement relating to that work.

(4) Where in any proceedings the question arises whether an article is an infringing copy and it is shown—

- (a) that the article is a copy of the work; and
- (b) that copyright subsists in the work or has subsisted at any time,

it shall be presumed until the contrary is proved that the article was made at a time when copyright subsisted in the work.

(5) Nothing in subsection (3) shall be construed as applying to an article which may lawfully be imported into Gibraltar by virtue of any enforceable Community right within the meaning of section 3(1) of the European Communities Act.

(6) In this Part “infringing copy” includes a copy falling to be treated as an infringing copy by virtue of any of the following provisions—

- section 40(8) (copies made for purposes of instruction or examination),

section 43(3) (recordings made by educational establishments for educational purposes);

section 44(7) (reprographic copying by educational establishments for purposes of instruction);

section 46(3)(b) (copies made by librarian or archivist in reliance on false declaration);

section 71(2) (further copies, adaptations, etc. of work in electronic form retained on transfer of principal copy);

section 78(2) (copies made for purpose of advertising artistic work for sale);

section 84(4) (copies made for purpose of broadcast);

section 86(2) (recording for the purposes of time-shifting);

section 87(2) (photographs of broadcasts); or

any provision of an order under section 162 (statutory licence for certain reprographic copying by educational establishments).

**Publication right.**

34.(1) A person who after the expiry of copyright protection, publishes for the first time a previously unpublished work has, in accordance with the following provisions, a property right (“publication right”) equivalent to copyright.

(2) For this purpose publication includes any means of making available to the public, in particular—

- (a) the issue of copies to the public;
- (b) making the work available by means of an electronic retrieval system;
- (c) the rental or lending of copies of the work to the public;
- (d) the performance, exhibition or showing of the work in public;  
or
- (e) communicating the work to the public;

and the definition of “publication” (found in section 185) does not apply to this section.

(3) No account shall be taken for this purpose of any unauthorised act. In relation to a time when there is no copyright in the work, an unauthorised act means an act done without the consent of the owner of the physical medium in which the work is embodied or on which it is recorded.

(4) A work qualifies for publication right only if–

- (a) first publication is in Gibraltar, the United Kingdom or another EEA state; and
- (b) the publisher of the work is at the time of first publication a Gibraltarian or a national of the United Kingdom or another EEA state,

and where two or more persons jointly publish the work, it is sufficient for the purposes of paragraph (b) if any of them is a Gibraltarian or a national of the United Kingdom or another EEA state.

(5) No publication right arises from the publication of a work in which Crown copyright or Parliamentary copyright subsisted.

(6) Publication right expires at the end of the period of 25 years from the end of the calendar year in which the work was first published.

(7) For the purposes of this section, “work” means a literary, dramatic, musical or artistic work or a film.

(8) The substantive provisions of this Part relating to copyright (but not moral rights in copyright works), that is the relevant provisions of Chapter II, Chapter III, Chapter V, Chapter VI and Chapter VII apply in relation to publication right as in relation to copyright, subject to the following exceptions and modifications.

(9) The following provisions do not apply–

- (a) sections 72, 79, 82 and 83;
- (b) sections 125 to 127; and
- (c) section 137(4).

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(10) The following provisions have effect with the modifications indicated—

- (a) in section 128(3) and (4) the maximum punishment on summary conviction is imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale, or both;
- (b) in section 137(2), 138 and 145 for “works of more than author” substitute “works of more than one publisher”.

(11) The other relevant provisions of this Part apply, with necessary adaptations, for the purposes of supplementing the substantive provisions of this Part as applied by this section.

### CHAPTER III ACTS PERMITTED IN RELATION TO COPYRIGHT WORKS

#### *Introductory*

#### **Introductory provisions.**

35.(1) The provisions of this Chapter specify acts which may be done in relation to copyright works notwithstanding the subsistence of copyright; they relate only to the question of infringement of copyright and do not affect any other right or obligation restricting the doing of any of the specified acts.

(2) Where it is provided by this Chapter that an act does not infringe copyright, or may be done without infringing copyright, and no particular description of copyright work is mentioned, the act in question does not infringe the copyright in a work of any description.

(3) No inference shall be drawn from the description of any act which may by virtue of this Chapter be done without infringing copyright as to the scope of the acts restricted by the copyright in any description of work.

(4) The provisions of this Chapter are to be construed independently of each other, so that the fact that an act does not fall within one provision does not mean that it is not covered by another provision.

#### *General*

#### **Making of temporary copies.**

36. Copyright in a literary work, other than a computer program or database, or in a dramatic, musical or artistic work, the typographical arrangement of a published edition, a sound recording or a film, is not infringed by the making of a temporary copy which is transient or incidental, which is an integral and essential part of a technological process and the sole purpose of which is to enable—

- (a) a transmission of the work in a network between third parties by an intermediary; or
- (b) a lawful use of the work,

and which has no independent economic significance.

**Research and private study.**

37.(1) Fair dealing with a literary, dramatic, musical or artistic work for the purposes of research for a non-commercial purpose does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement.

(2) No acknowledgment is required in connection with fair dealing for the purposes mentioned in subsection (1) where this would be impossible for reasons of practicality or otherwise.

(3) Fair dealing with a literary, dramatic, musical or artistic work for the purposes of private study does not infringe any copyright in the work.

(4) Fair dealing with the typographical arrangement of a published edition for the purposes of research or private study does not infringe any copyright in the arrangement.

(5) Copying by a person other than the researcher or student himself is not fair dealing if—

- (a) in the case of a librarian, or a person acting on behalf of a librarian, he does anything which regulations under section 49 would not permit to be done under section 47 or 48 (articles or parts of published works: restriction on multiple copies of same material); or
- (b) in any other case, the person doing the copying knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time and for substantially the same purpose.

(6) It is not fair dealing–

- (a) to convert a computer program expressed in a low level language into a version expressed in a higher level language; or
- (b) incidentally in the course of so converting the program, to copy it,

(these acts being permitted if done in accordance with section 62 (decompilation)).

(7) It is not fair dealing to observe, study or test the functioning of a computer program in order to determine the ideas and principles which underlie any element of the program (these acts being permitted if done in accordance with section 63 (observing, studying and testing)).

**Criticism, review and news reporting.**

38.(1) Fair dealing with a work for the purpose of criticism or review, of that or another work or of a performance of a work, does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement and provided that the work has been made available to the public.

(2) For the purposes of subsection (1) a work has been made available to the public if it has been made available by any means, including–

- (a) the issue of copies to the public;
- (b) making the work available by means of an electronic retrieval system;
- (c) the rental or lending of copies of the work to the public;
- (d) the performance, exhibition, playing or showing of the work in public;
- (e) the communication to the public of the work,

but in determining generally for the purposes of that subsection whether a work has been made available to the public no account shall be taken of any unauthorised act.

(3) Fair dealing with a work (other than a photograph) for the purpose of reporting current events does not infringe any copyright in the work

provided that (subject to subsection (4)) it is accompanied by a sufficient acknowledgement.

(4) No acknowledgement is required in connection with the reporting of current events by means of a sound recording, film or broadcast where this would be impossible for reasons of practicality or otherwise.

#### **Incidental inclusion of copyright material.**

39.(1) Copyright in a work is not infringed by its incidental inclusion in an artistic work, sound recording, film or broadcast.

(2) Nor is the copyright infringed by the issue to the public of copies, or the playing, showing or communicating to the public of anything whose making was, by virtue of subsection (1), not an infringement of the copyright.

(3) A musical work, words spoken or sung with music, or so much of a sound recording or broadcast as includes a musical work or such words, shall not be regarded as incidentally included in another work if it is deliberately included.

#### *Education*

#### **Things done for the purposes of instruction or examination.**

40.(1) Copyright in a literary, dramatic, musical or artistic work is not infringed by its being copied in the course of instruction or of preparation for instruction, provided the copying—

- (a) is done by a person giving or receiving instruction;
- (b) is not done by means of a reprographic process; and
- (c) is accompanied by a sufficient acknowledgement,

and provided that the instruction is for a non-commercial purpose.

(2) Copyright in a sound recording, film or broadcast is not infringed by its being copied by making a film or film sound-track in the course of instruction, or of preparation for instruction, in the making of films or film sound-tracks, provided the copying—

- (a) is done by a person giving or receiving instruction; and
- (b) is accompanied by a sufficient acknowledgement,

and provided that the instruction is for a non-commercial purpose.

(3) Copyright in a literary, dramatic, musical or artistic work which has been made available to the public is not infringed by its being copied in the course of instruction or of preparation for instruction, provided the copying—

- (a) is fair dealing with the work;
- (b) is done by a person giving or receiving instruction;
- (c) is not done by means of a reprographic process; and
- (d) is accompanied by a sufficient acknowledgement.

(4) The provisions of section 38(2) (works made available to the public) apply for the purposes of subsection (3) as they apply for the purposes of section 38(1).

(5) Copyright is not infringed by anything done for the purposes of an examination by way of setting the questions, communicating the questions to the candidates or answering the questions, provided that the questions are accompanied by a sufficient acknowledgment.

(6) No acknowledgment is required in connection with copying as mentioned in subsection (1), (2) or (3) or in connection with anything done for the purposes mentioned in subsection (5), where this would be impossible for reasons of practicality or otherwise.

(7) Subsection (5) does not extend to the making of a reprographic copy of a musical work for use by an examination candidate in performing the work.

(8) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, it shall be treated as an infringing copy for the purpose of that dealing, and if that dealing infringes copyright for all subsequent purposes.

For this purpose “dealt with” means—

- (a) sold or let for hire, offered or exposed for sale or hire; or
- (b) communicated to the public, unless that communication, by virtue of subsection (5), is not an infringement of copyright.

**Anthologies for educational use.**

41.(1) The inclusion of a short passage from a published literary or dramatic work in a collection which—

- (a) is intended for use in educational establishments and is so described in its title, and in any advertisements issued by or on behalf of the publisher; and
- (b) consists mainly of material in which no copyright subsists,

does not infringe the copyright in the work if the work itself is not intended for use in such establishments and the inclusion is accompanied by a sufficient acknowledgement.

(2) Subsection (1) does not authorise the inclusion of more than two excerpts from copyright works by the same author in collections published by the same publisher over any period of five years.

(3) In relation to any given passage the reference in subsection (2) to excerpts from works by the same author—

- (a) shall be taken to include excerpts from works by him in collaboration with another; and
- (b) if the passage in question is from such a work, shall be taken to include excerpts from works by any of the authors, whether alone or in collaboration with another.

(4) References in this section to the use of a work in an educational establishment are to any use for the educational purposes of such an establishment.

**Performing, playing or showing work in course of activities of educational establishment.**

42.(1) The performance of a literary, dramatic or musical work before an audience consisting of teachers and pupils at an educational establishment and other persons directly connected with the activities of the establishment—

- (a) by a teacher or pupil in the course of the activities of the establishment; or
- (b) at the establishment by any person for the purposes of instruction,

is not a public performance for the purposes of infringement of copyright.

(2) The playing or showing of a sound recording, film or broadcast before such an audience at an educational establishment for the purposes of instruction is not a playing or showing of the work in public for the purposes of infringement of copyright.

(3) A person is not for this purpose directly connected with the activities of the educational establishment simply because he is the parent of a pupil at the establishment.

#### **Recording by educational establishments of broadcasts.**

43.(1) A recording of a broadcast, or a copy of such a recording, may be made by or on behalf of an educational establishment for the educational purposes of that establishment without thereby infringing the copyright in the broadcast, or in any work included in it, provided that it is accompanied by sufficient acknowledgement of the broadcast and that the educational purposes are non-commercial.

(2) Copyright is not infringed where a recording of a broadcast or copy of such a recording, whose making was by virtue of subsection (1) not an infringement of copyright, is communicated to the public by a person situated within the premises of an educational establishment provided that the communication cannot be received by any person situated outside the premises of that establishment.

(3) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, it shall be treated as an infringing copy for the purposes of that dealing, and if that dealing infringes copyright for all subsequent purposes.

For this purpose “dealt with” means sold or let for hire, offered or exposed for sale or hire, or communicated from within the premises of an educational establishment to any person situated outside those premises.

#### **Reprographic copying by educational establishments of passages from published works.**

44.(1) Reprographic copies of passages from published literary, dramatic or musical works may, to the extent permitted by this section, be made by or on behalf of an educational establishment for the purposes of instruction without infringing any copyright in the work, provided that they are accompanied by a sufficient acknowledgement and the instruction is for a non-commercial purpose.

(2) No acknowledgement is required in connection with the making of copies as mentioned in subsection (1) where this would be impossible for reasons of practicality or otherwise.

(3) Reprographic copies of passages from published editions may, to the extent permitted by this section, be made by or on behalf of an educational establishment for the purposes of instruction without infringing any copyright in the typographical arrangement of the edition.

(4) Not more than one per cent. of any work may be copied by or on behalf of an establishment by virtue of this section in any quarter, that is, in any period 1<sup>st</sup> January to 31<sup>st</sup> March, 1<sup>st</sup> April to 30<sup>th</sup> June, 1<sup>st</sup> July to 30<sup>th</sup> September or 1<sup>st</sup> October to 31<sup>st</sup> December.

(5) Copying is not authorised by this section if, or to the extent that, licences are available authorising the copying in question and the person making the copies knew or ought to have been aware of that fact.

(6) The terms of a licence granted to an educational establishment authorising the reprographic copying for the purposes of instruction of passages from published literary, dramatic or musical works are of no effect so far as they purport to restrict the proportion of a work which may be copied (whether on payment or free of charge) to less than that which would be permitted under this section.

(7) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with, it shall be treated as an infringing copy for the purposes of that dealing, and if that dealing infringes copyright for all subsequent purposes.

For this purpose “dealt with” means sold or let for hire, offered or exposed for sale or hire or communicated to the public.

#### **Lending of copies by educational establishments.**

45. Copyright in a work is not infringed by the lending of copies of the work by an educational establishment.

#### ***Libraries and archives***

#### **Libraries and archives: introductory.**

46.(1) In sections 47 to 53 (copying by librarians and archivists)—

- (a) references in any provision to a prescribed library or archive are to a library or archive of a description prescribed for the

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purposes of that provision by regulations made by the Minister;  
and

- (b) references in any provision to the prescribed conditions are to the conditions so prescribed.

(2) The regulations may provide that, where a librarian or archivist is required to be satisfied as to any matter before making or supplying a copy of a work—

- (a) he may rely on a signed declaration as to that matter by the person requesting the copy, unless he is aware that it is false in a material particular; and
- (b) in such cases as may be prescribed, he shall not make or supply a copy in the absence of a signed declaration in such form as may be prescribed.

(3) Where a person requesting a copy makes a declaration which is false in a material particular and is supplied with a copy which would have been an infringing copy if made by him—

- (a) he is liable for infringement of copyright as if he had made the copy himself; and
- (b) the copy shall be treated as an infringing copy.

(4) The regulations may make different provision for different descriptions of libraries or archives and for different purposes.

(5) References in this section, and in sections 47 to 53, to the librarian or archivist include a person acting on his behalf.

#### **Copying by librarians: articles in periodicals.**

47.(1) The librarian of a prescribed library may, if the prescribed conditions are complied with, make and supply a copy of an article in a periodical without infringing any copyright in the text, in any illustrations accompanying the text or in the typographical arrangement.

(2) The prescribed conditions shall include the following—

- (a) that copies are supplied only to persons satisfying the librarian that they require them for purposes of—
  - (i) research for a non-commercial purpose; or

(ii) private study,

and will not use them for any other purpose;

- (b) that no person is furnished with more than one copy of the same article or with copies of more than one article contained in the same issue of a periodical; and
- (c) that persons to whom copies are supplied are required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library) attributable to their production.

**Copying by librarians: parts of published works.**

48.(1) The librarian of a prescribed library may, if the prescribed conditions are complied with, make and supply from a published edition a copy of part of a literary, dramatic or musical work (other than an article in a periodical) without infringing any copyright in the work, in any illustrations accompanying the work or in the typographical arrangement.

(2) The prescribed conditions shall include the following–

(a) that copies are supplied only to persons satisfying the librarian that they require them for purposes of–

(i) research for a non-commercial purpose; or

(ii) private study,

and will not use them for any other purpose;

- (b) that no person is furnished with more than one copy of the same material or with a copy of more than a reasonable proportion of any work; and
- (c) that persons to whom copies are supplied are required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library) attributable to their production.

**Restriction on production of multiple copies of the same material.**

49.(1) Regulations for the purposes of sections 47 and 48 (copying by librarian of article or part of published work) shall contain provision to the

effect that a copy shall be supplied only to a person satisfying the librarian that his requirement is not related to any similar requirement of another person.

(2) The regulations may provide—

- (a) that requirements shall be regarded as similar if the requirements are for copies of substantially the same material at substantially the same time and for substantially the same purpose; and
- (b) that requirements of persons shall be regarded as related if those persons receive instruction to which the material is relevant at the same time and place.

**Lending of copies by libraries or archives.**

50. Copyright in a work of any description is not infringed by the lending of copies of the work by a prescribed library or archive which is not conducted for profit.

**Copying by librarians: supply of copies to other libraries.**

51.(1) The librarian of a prescribed library may, if the prescribed conditions are complied with, make and supply to another prescribed library a copy of—

- (a) an article in a periodical; or
- (b) the whole or part of a published edition of a literary, dramatic or musical work,

without infringing any copyright in the text of the article or, as the case may be, in the work, in any illustrations accompanying it or in the typographical arrangement.

(2) Subsection (1)(b) does not apply if at the time the copy is made the librarian making it knows, or could by reasonable inquiry ascertain, the name and address of a person entitled to authorise the making of the copy.

**Copying by librarians or archivists: replacement copies of works.**

52.(1) The librarian or archivist of a prescribed library or archive may, if the prescribed conditions are complied with, make a copy from any item in the permanent collection of the library or archive—

- (a) in order to preserve or replace that item by placing the copy in its permanent collection in addition to or in place of it; or
- (b) in order to replace in the permanent collection of another prescribed library or archive an item which has been lost, destroyed or damaged,

without infringing the copyright in any literary, dramatic or musical work, in any illustrations accompanying such a work or, in the case of a published edition, in the typographical arrangement.

(2) The prescribed conditions shall include provision for restricting the making of copies to cases where it is not reasonably practicable to purchase a copy of the item in question to fulfil that purpose.

**Copying by librarians or archivists: certain unpublished works.**

53.(1) The librarian or archivist of a prescribed library or archive may, if the prescribed conditions are complied with, make and supply a copy of the whole or part of a literary, dramatic or musical work from a document in the library or archive without infringing any copyright in the work or any illustrations accompanying it.

(2) This section does not apply if—

- (a) the work had been published before the document was deposited in the library or archive; or
- (b) the copyright owner has prohibited copying of the work,

and at the time the copy is made the librarian or archivist making it is, or ought to be, aware of that fact.

(3) The prescribed conditions shall include the following—

- (a) that copies are supplied only to persons satisfying the librarian or archivist that they require them for purposes of—
  - (i) research for a non-commercial purpose; or
  - (ii) private study,and will not use them for any other purpose;
- (b) that no person is furnished with more than one copy of the same material; and

- (c) that persons to whom copies are supplied are required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library or archive) attributable to their production.

**Copy of work required to be made as condition of export.**

54. If an article of cultural or historical importance or interest cannot lawfully be exported from Gibraltar unless a copy of it is made and deposited in an appropriate library or archive, it is not an infringement of copyright to make that copy.

*Public administration*

**Parliamentary and judicial proceedings.**

55.(1) Copyright is not infringed by anything done for the purposes of parliamentary or judicial proceedings.

(2) Copyright is not infringed by anything done for the purposes of reporting such proceedings; but this shall not be construed as authorising the copying of a work which is itself a published report of the proceedings.

**Statutory inquiries.**

56.(1) Copyright is not infringed by anything done for the purposes of the proceedings of a statutory inquiry.

(2) Copyright is not infringed by anything done for the purpose of reporting any such proceedings held in public; but this shall not be construed as authorising the copying of a work which is itself a published report of the proceedings.

(3) Copyright in a work is not infringed by the issue to the public of copies of the report of a statutory inquiry containing the work or material from it.

(4) In this section “statutory inquiry” means an inquiry held or investigation conducted in pursuance of a duty imposed or power conferred by law.

**Material open to public inspection or on official register.**

57.(1) Where material is open to public inspection pursuant to a statutory requirement, or is on a statutory register, any copyright in the material as a literary work is not infringed by the copying of so much of the material as

contains factual information of any description, by or with the authority of the appropriate person, for a purpose which does not involve the issuing of copies to the public.

(2) Where material is open to public inspection pursuant to a statutory requirement, copyright is not infringed by the copying or issuing to the public of copies of the material, by or with the authority of the appropriate person, for the purpose of enabling the material 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 material which is open to public inspection pursuant to a statutory requirement, or which is on a statutory register, contains information about matters of general scientific, technical, commercial or economic interest, copyright is not infringed by the copying or issuing to the public of copies of the material, by or with the authority of the appropriate person, for the purpose of disseminating that information.

(4) The Minister may by regulations provide that subsections (1), (2) or (3) shall, in such cases as may be specified in the regulations, apply only to copies marked in such manner as may be so specified.

(5) The Minister may by regulations provide that subsections (1) to (3) apply, to such extent and with such modifications as may be specified in the regulations—

- (a) to material made open to public inspection by—
  - (i) an international organisation specified in the regulations;  
or
  - (ii) a person so specified who has functions in Gibraltar under an international agreement to which Gibraltar is subject; or
- (b) to a register maintained by an international organisation specified in the regulations,

as they apply in relation to material open to public inspection pursuant to a statutory requirement or to a statutory register.

(6) In this section—

“appropriate person” means the person required to make the material 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 provision made by or under an enactment.

**Material communicated to the Crown in the course of public business.**

58.(1) This section applies where a literary, dramatic, musical or artistic work has in the course of public business been communicated to the Crown for any purpose, by or with the licence of the copyright owner and a document or other material thing recording or embodying the work is owned by or in the custody or control of the Crown.

(2) The Crown may, for the purpose for which the work was communicated to it, or any related purpose which could reasonably have been anticipated by the copyright owner, copy the work and issue copies of the work to the public without infringing any copyright in the work.

(3) The Crown may not copy a work, or issue copies of a work to the public, by virtue of this section if the work has previously been published otherwise than by virtue of this section.

(4) In subsection (1) “public business” includes any activity carried on by the Crown.

(5) This section has effect subject to any agreement to the contrary between the Crown and the copyright owner.

**Public records.**

59. Material which is comprised in public records which are open to inspection in pursuance of any enactment may be copied and a copy may be supplied to any person, by or with the authority of any officer appointed under that enactment, without infringement of copyright.

**Acts done under statutory authority.**

60.(1) Where the doing of a particular act is specifically authorised by an Act, whenever passed, then, unless the Act provides otherwise, the doing of that act does not infringe copyright.

(2) Nothing in this section shall be construed as excluding any defence of statutory authority otherwise available under or by virtue of any law.

*Computer programs: lawful users***Back up copies.**

61.(1) It is not an infringement of copyright for a lawful user of a copy of a computer program to make any back up copy of it which it is necessary for him to have for the purposes of his lawful use.

(2) For the purposes of this section and sections 62 to 64 a person is a lawful user of a computer program if (whether under a licence to do any acts restricted by the copyright in the program or otherwise), he has a right to use the program.

(3) Where an act is permitted under this section, it is irrelevant whether or not there exists any term or condition in an agreement which purports to prohibit or restrict the act (such terms being, by virtue of section 277, void).

**Decompilation.**

62.(1) It is not an infringement of copyright for a lawful user of a copy of a computer program expressed in a low level language—

- (a) to convert it into a version expressed in a higher level language; or
- (b) incidentally in the course of so converting a program, to copy it,

(that is, to “decompile” it), provided that the conditions in subsection (2) are met.

(2) The conditions are that—

- (a) it is necessary to decompile the program to obtain the information necessary to create an independent program which can be operated with the program decompiled or with another program (the “permitted objective”); and
- (b) the information so obtained is not used for any purpose other than the permitted objective.

(3) In particular, the conditions in subsection (2) are not met if the lawful user—

- (a) has readily available to him the information necessary to achieve the permitted objective;

- (b) does not confine the decompiling to such acts as are necessary to achieve the permitted objective;
- (c) supplies the information obtained by the decompiling to any person to whom it is not necessary to supply it in order to achieve the permitted objective; or
- (d) uses the information to create a program which is substantially similar in its expression to the program decompiled or to do any act restricted by copyright.

(4) Where an act is permitted under this section, it is irrelevant whether or not there exists any term or condition in an agreement which purports to prohibit or restrict the act (such terms being, by virtue of section 261, void).

#### **Observing, studying and testing of computer programs.**

63.(1) It is not an infringement of copyright for a lawful user of a copy of a computer program to observe, study or test the functioning of the program in order to determine the ideas and principles which underlie any element of the program if he does so while performing any of the acts of loading, displaying, running, transmitting or storing the program which he is entitled to do.

(2) Where an act is permitted under this section, it is irrelevant whether or not there exists any term or condition in an agreement which purports to prohibit or restrict the act (such terms being, by virtue of section 277, void).

#### **Other acts permitted to lawful users.**

64.(1) It is not an infringement of copyright for a lawful user of a copy of a computer program to copy or adapt it, provided that the copying or adapting—

- (a) is necessary for his lawful use; and
- (b) is not prohibited under any term or condition of an agreement regulating the circumstances in which his use is lawful.

(2) It may, in particular, be necessary for the lawful use of a computer program to copy it or adapt it for the purpose of correcting errors in it.

(3) This section does not apply to any copying or adapting permitted under section 61, 62 or 63.

***Databases: permitted acts*****Acts permitted in relation to databases.**

65.(1) It is not an infringement of copyright in a database for a person who has a right to use the database or any part of the database, (whether under a licence to do any of the acts restricted by the copyright in the database or otherwise) to do, in the exercise of that right, anything which is necessary for the purposes of access to and use of the contents of the database or of that part of the database.

(2) Where an act which would otherwise infringe copyright in a database is permitted under this section, it is irrelevant whether or not there exists any term or condition in any agreement which purports to prohibit or restrict the act (such terms being, by virtue of section 278, void).

**Designs****Design documents and models.**

66.(1) It is not an infringement of any copyright in a design document or model recording or embodying a design for anything other than an artistic work or a typeface to make an article to the design or to copy an article made to the design.

(2) Nor is it an infringement of the copyright to issue to the public, or include in a film or communicate to the public, anything the making of which was, by virtue of subsection (1), not an infringement of that copyright.

(3) In this section—

“design” means the design of any aspect of the shape or configuration (whether internal or external) of the whole or part of an article, other than surface decoration; and

“design document” means any record of a design, whether in the form of a drawing, a written description, a photograph, data stored in a computer or otherwise.

**Effect of exploitation of design derived from artistic work.**

67.(1) This section applies where an artistic work has been exploited, by or with the licence of the copyright owner, by—

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- (a) making by an industrial process articles falling to be treated for the purposes of this Part as copies of the work; and
- (b) marketing such articles, in Gibraltar or elsewhere.

(2) After the end of the period of 25 years from the end of the calendar year in which such articles are first marketed, the work may be copied by making articles of any description, or doing anything for the purpose of making articles of any description, and anything may be done in relation to articles so made, without infringing copyright in the work.

(3) Where only part of an artistic work is exploited as mentioned in subsection (1), subsection (2) applies only in relation to that part.

(4) The Minister may by regulations make provision—

- (a) as to the circumstances in which an article, or any description of article, is to be regarded for the purposes of this section as made by an industrial process;
- (b) excluding from the operation of this section such articles of a primarily literary or artistic character as he thinks fit.

(5) In this section—

- (a) references to articles do not include films; and
- (b) references to the marketing of an article are to its being sold or let for hire or offered or exposed for sale or hire.

#### **Things done in reliance on registration of design.**

68.(1) The copyright in an artistic work is not infringed by anything done—

- (a) in pursuance of an assignment or licence made or granted by a person registered under the Designs Act as the proprietor of a corresponding design; and
- (b) in good faith in reliance on the registration and without notice of any proceedings for the cancellation or invalidation of the registration or for rectifying the relevant entry in the register of designs;

and this is so notwithstanding that the person registered as the proprietor was not the proprietor of the design for the purposes of the Designs Act.

(2) In subsection (1) a “corresponding design”, in relation to an artistic work, means a design within the meaning of the Designs Act which if applied to an article would produce something which would be treated for the purposes of this Part as a copy of the artistic work.

### *Typefaces*

#### **Use of typeface in ordinary course of printing.**

69.(1) It is not an infringement of copyright in an artistic work consisting of the design of a typeface—

- (a) to use the typeface in the ordinary course of typing, composing text, typesetting or printing;
- (b) to possess an article for the purpose of such use; or
- (c) to do anything in relation to material produced by such use,

and this is so notwithstanding that an article is used which is an infringing copy of the work.

(2) However, the following provisions of this Part apply in relation to persons making, importing or dealing with articles specifically designed or adapted for producing material in a particular typeface, or possessing such articles for the purpose of dealing with them, as if the production of material as mentioned in subsection (1) did infringe copyright in the artistic work consisting of the design of the typeface—

section 30 (secondary infringement: making, importing, possessing or dealing with article for making infringing copy);

sections 119 and 120 (order for delivery up and right of seizure);

section 128(2) (offence of making or possessing such an article); and

section 129 (order for delivery up in criminal proceedings).

(3) The references in subsection (2) to “dealing with” an article are to selling, letting for hire, or offering or exposing for sale or hire, exhibiting in public, or distributing.

#### **Articles for producing material in particular typefaces.**

70.(1) This section applies to the copyright in an artistic work consisting of the design of a typeface where articles specifically designed or adapted for

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producing material in that typeface have been marketed by or with the licence of the copyright owner.

(2) After the period of 25 years from the end of the calendar year in which the first such articles are marketed, the work may be copied by making further such articles, or doing anything for the purpose of making such articles, and anything may be done in relation to articles so made, without infringing copyright in the work.

(3) In subsection (1) “marketed” means sold, let for hire or offered or exposed for sale or hire, in Gibraltar or elsewhere.

### *Works in electronic form*

#### **Transfers of copies of works in electronic form.**

71.(1) This section applies where a copy of a work in electronic form has been purchased on terms which, expressly or impliedly or by virtue of any rule of law, allow the purchaser to copy the work, or to adapt it or make copies of an adaptation, in connection with his use of it.

(2) If there are no express terms—

- (a) prohibiting the transfer of the copy by the purchaser, imposing obligations which continue after a transfer, prohibiting the assignment of any licence or terminating any licence on a transfer; or
- (b) providing for the terms on which a transferee may do the things which the purchaser was permitted to do,

anything which the purchaser was allowed to do may also be done without infringement of copyright by a transferee; but any copy, adaptation or copy of an adaptation made by the purchaser which is not also transferred shall be treated as an infringing copy for all purposes after the transfer.

(3) The same applies where the original purchased copy is no longer usable and what is transferred is a further copy used in its place.

(4) The above provisions also apply on a subsequent transfer, with the substitution for references in subsection (2) to the purchaser of references to the subsequent transferor.

### *Miscellaneous: literary, dramatic, musical and artistic works*

**Anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author.**

72.(1) Copyright in a literary, dramatic, musical or artistic work is not infringed by an act done 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 author; and
- (b) it is reasonable to assume—
  - (i) that copyright has expired; or
  - (ii) that the author died 70 years or more before the beginning of the calendar year in which the act is done or the arrangements are made.

(2) Subsection (1)(b)(ii) does not apply in relation to—

- (a) a work in which Crown copyright subsists; or
- (b) a work in which copyright originally vested in an international organisation by virtue of section 177 and in respect of which regulations under that section specify a copyright period longer than 70 years.

(3) In relation to a work of joint authorship—

- (a) the reference in subsection (1) to its being possible to ascertain the identity of the author shall be construed as a reference to its being possible to ascertain the identity of any of the authors; and
- (b) the reference in subsection (1)(b)(ii) to the author having died shall be construed as a reference to all the authors having died.

**Use of notes or recordings of spoken words in certain cases.**

73.(1) Where a record of spoken words is made, in writing or otherwise, for the purpose—

- (a) of reporting current events; or
- (b) of communicating to the public the whole or part of the work,

it is not an infringement of any copyright in the words as a literary work to use the record or material taken from it (or to copy the record, or any such material, and use the copy) for that purpose, provided the following conditions are met.

- (2) The conditions are that—
- (a) the record is a direct record of the spoken words and is not taken from a previous record or from a broadcast;
  - (b) the making of the record was not prohibited by the speaker and, where copyright already subsisted in the work, did not infringe copyright;
  - (c) the use made of the record or material taken from it is not of a kind prohibited by or on behalf of the speaker or copyright owner before the record was made; and
  - (d) the use is by or with the authority of a person who is lawfully in possession of the record.

**Public reading or recitation.**

74.(1) The reading or recitation in public by one person of a reasonable extract from a published literary or dramatic work does not infringe any copyright in the work if it is accompanied by a sufficient acknowledgement.

(2) Copyright in a work is not infringed by the making of a sound recording or the communication to the public of a reading or recitation which by virtue of subsection (1) does not infringe copyright in the work, provided that the recording or communication to the public consists mainly of material in relation to which it is not necessary to rely on that subsection.

**Abstracts of scientific or technical articles.**

75. Where an article on a scientific or technical subject is published in a periodical accompanied by an abstract indicating the contents of the article, it is not an infringement of copyright in the abstract, or in the article, to copy the abstract or issue copies of it to the public.

**Recording of folksongs.**

76.(1) A sound recording of a performance of a song may be made for the purpose of including it in an archive maintained by a designated body without infringing any copyright in the words as a literary work or in the

accompanying musical work, provided the conditions in subsection (2) below are met.

(2) The conditions are that—

- (a) the words are unpublished and of unknown authorship at the time the recording is made;
- (b) the making of the recording does not infringe any other copyright; and
- (c) its making is not prohibited by any performer.

(3) Copies of a sound recording made in reliance on subsection (1) and included in an archive maintained by a designated body may, if the prescribed conditions are met, be made and supplied by the archivist without infringing copyright in the recording or the works included in it.

(4) The prescribed conditions shall include the following—

- (a) that copies are only supplied to persons satisfying the archivist that they require them for purposes of—
  - (i) research for a non-commercial purpose; or
  - (ii) private study,and will not use them for any other purpose; and
- (b) that no person is furnished with more than one copy of the same recording.

(5) In this section—

- (a) “designated” means designated for the purposes of this section by regulations made by the Minister, who shall not designate a body unless satisfied that it is not established or conducted for profit;
- (b) “prescribed” means prescribed for the purpose of this section by regulations made by the Minister; and
- (c) references to the archivist include a person acting on his behalf.

**Representation of certain artistic works on public display.**

77.(1) This section applies to—

- (a) buildings; and
- (b) sculptures, models for buildings and works of artistic craftsmanship, if permanently situated in a public place or in premises open to the public.

(2) The copyright in such a work is not infringed by—

- (a) making a graphic work representing it;
- (b) making a photograph or film of it; or
- (c) making a broadcast of a visual image of it.

(3) Nor is the copyright infringed by the issue to the public of copies, or the communication to the public, of anything whose making was, by virtue of this section, not an infringement of the copyright.

**Advertisement of sale of artistic work.**

78.(1) It is not an infringement of copyright in an artistic work to copy it, or to issue copies to the public, for the purpose of advertising the sale of the work.

(2) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with for any other purpose, it shall be treated as an infringing copy for the purposes of that dealing, and if that dealing infringes copyright for all subsequent purposes.

For this purpose “dealt with” means sold or let for hire, offered or exposed for sale or hire, exhibited in public, distributed or communicated to the public.

**Making of subsequent works by same artist.**

79. Where the author of an artistic work is not the copyright owner, he does not infringe the copyright by copying the work in making another artistic work, provided he does not repeat or imitate the main design of the earlier work.

**Reconstruction of buildings.**

80. Anything done for the purposes of reconstructing a building does not infringe any copyright—

- (a) in the building; or
- (b) in any drawings or plans in accordance with which the building was, by or with the licence of the copyright owner, constructed.

*Miscellaneous: lending of works and playing of sound recordings*

**Lending to public of copies of certain works.**

81.(1) The Minister may by regulations provide that in such cases as may be specified in the regulations the lending to the public of copies of literary, dramatic, musical or artistic works, sound recordings or films shall be treated as licensed by the copyright owner subject only to the payment of such reasonable royalty or other payment as may be agreed or determined in default of agreement by the Court.

(2) Regulations may make different provision for different cases and may specify cases by reference to any factor relating to the work, the copies lent, the lender or the circumstances of the lending.

(3) Nothing in this section affects any liability under section 29 (secondary infringement: possessing or dealing with infringing copies) in respect of the lending of infringing copies.

**Films: acts permitted on assumptions as to expiry of copyright.**

82.(1) Copyright in a film is not infringed by an act done 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 any of the persons referred to in section 17(2)(a) to (d) (persons by reference to whose life the copyright period is ascertained); and
- (b) it is reasonable to assume—
  - (i) that copyright has expired; or
  - (ii) that the last to die of those persons died 70 years or more before the beginning of the calendar year in which the act is done or the arrangements are made.

(2) Subsection (1)(b)(ii) does not apply in relation to—

- (a) a film in which Crown copyright subsists; or

- (b) a film in which copyright originally vested in an international organisation by virtue of section 177 and in respect of which regulations under that section specify a copyright period longer than 70 years.

**Playing of sound recordings for purposes of club, society etc.**

83.(1) It is not an infringement of the copyright in a sound recording to play it as part of the activities of, or for the benefit of, a club, society or other organisation if the following conditions are met.

(2) The conditions are—

- (a) that the organisation is not established or conducted for profit and its main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare;
- (b) that the sound recording is played by a person who is acting primarily and directly for the benefit of the organisation and who is not acting with a view to gain;
- (c) that the proceeds of any charge for admission to the place where the recording is to be heard are applied solely for the purposes of the organisation; and
- (d) that the proceeds from any goods and services sold by, or on behalf of, the organisation—
  - (i) in the place where the sound recording is heard; and
  - (ii) on the occasion when the sound recording is played,are applied solely for the purposes of the organisation.

*Miscellaneous: broadcasts*

**Incidental recording for purposes of broadcast.**

84.(1) This section applies where by virtue of a licence or assignment of copyright a person is authorised to broadcast—

- (a) a literary, dramatic or musical work, or an adaptation of such a work;
- (b) an artistic work; or

- (c) a sound recording or film.

(2) He shall by virtue of this section be treated as licensed by the owner of the copyright in the work to do or authorise any of the following for the purposes of the broadcast—

- (a) in the case of a literary, dramatic or musical work, or an adaptation of such a work, to make a sound recording or film of the work or adaptation;
- (b) in the case of an artistic work, to take a photograph or make a film of the work;
- (c) in the case of a sound recording or film, to make a copy of it.

(3) That licence is subject to the condition that the recording, film, photograph or copy in question—

- (a) shall not be used for any other purpose; and
- (b) shall be destroyed within 28 days of being first used for broadcasting the work.

(4) A recording, film, photograph or copy made in accordance with this section shall be treated as an infringing copy—

- (a) for the purposes of any use in breach of the condition mentioned in subsection (3)(a); and
- (b) for all purposes after that condition or the condition mentioned in subsection (3)(b) is broken.

**Recording for purposes of supervision and control of broadcasts and other services.**

85.(1) Copyright is not infringed by the making or use by a prescribed broadcaster, for the purpose of maintaining supervision and control over programmes broadcast by that broadcaster, of recordings of those programmes.

(2) Copyright is not infringed by the making or use by the Gibraltar Broadcasting Corporation of recordings of programmes in connection with and for the purpose of carrying out their functions under the Gibraltar Broadcasting Corporation Act.

(3) In this section, “prescribed” means prescribed by regulations made by the Minister.

**Recording for the purposes of time-shifting.**

86.(1) The making in domestic premises for private and domestic use of a recording of a broadcast solely for the purpose of enabling it to be viewed or listened to at a more convenient time does not infringe any copyright in the broadcast or in any work included in it.

(2) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with—

- (a) it shall be treated as an infringing copy for the purposes of that dealing; and
- (b) if that dealing infringes copyright, it shall be treated as an infringing copy for all subsequent purposes.

(3) In subsection (2), “dealt with” means sold or let for hire, offered or exposed for sale or hire or communicated to the public.

**Photographs of broadcasts.**

87.(1) The making in domestic premises for private and domestic use of a photograph of the whole or any part of an image forming part of a broadcast, or a copy of such a photograph, does not infringe any copyright in the broadcast or in any film included in it.

(2) Where a copy which would otherwise be an infringing copy is made in accordance with this section but is subsequently dealt with—

- (a) it shall be treated as an infringing copy for the purposes of that dealing; and
- (b) if that dealing infringes copyright, it shall be treated as an infringing copy for all subsequent purposes.

(3) In subsection (2), “dealt with” means sold or let for hire, offered or exposed for sale or hire or communicated to the public.

**Free public showing or playing of broadcast.**

88.(1) The showing or playing in public of a broadcast to an audience who have not paid for admission to the place where the broadcast is to be seen or heard does not infringe any copyright in—

- (a) the broadcast; or
- (b) any sound recording (except so far as it is an excepted sound recording) included in it; or
- (c) any film included in it.

(2) For the purposes of this Part an “excepted sound recording” is a sound recording—

- (a) whose author is not the author of the broadcast in which it is included; and
- (b) which is a recording of music with or without words spoken or sung.

(3) Where by virtue of subsection (1) the copyright in a broadcast shown or played in public is not infringed, copyright in any excepted sound recording included in it is not infringed if the playing or showing of that broadcast in public—

- (a) forms part of the activities of an organisation that is not established or conducted for profit; and
- (b) is necessary for the purposes of—
  - (i) repairing equipment for the reception of broadcasts;
  - (ii) demonstrating that a repair to such equipment has been carried out; or
  - (iii) demonstrating such equipment which is being sold or let for hire or offered or exposed for sale or hire.

(4) The audience shall be treated as having paid for admission to a place—

- (a) if they have paid for admission to a place of which that place forms part; or
- (b) if goods or services are supplied at that place (or a place of which it forms part)—
  - (i) at prices which are substantially attributable to the facilities afforded for seeing or hearing the broadcast; or

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- (ii) at prices exceeding those usually charged there and which are partly attributable to those facilities.

(5) The following shall not be regarded as having paid for admission to a place—

- (a) persons admitted as residents or inmates of the place;
- (b) persons admitted as members of a club or society where the payment is only for membership of the club or society and the provision of facilities for seeing or hearing broadcasts is only incidental to the main purposes of the club or society.

(6) Where the making of the broadcast was an infringement of the copyright in a sound recording or film, the fact that it was heard or seen in public by the reception of the broadcast shall be taken into account in assessing the damages for that infringement.

#### **Reception and re-transmission of wireless broadcast by cable.**

89.(1) This section applies where a wireless broadcast made from a place in Gibraltar is received and immediately re-transmitted by cable.

(2) The copyright in the broadcast is not infringed—

- (a) if the retransmission by cable is in pursuance of a statutory requirement; or
- (b) if and to the extent that the broadcast is made for reception in the area in which it is re-transmitted by cable and forms part of a qualifying service.

(3) The copyright in any work included in the broadcast is not infringed if and to the extent that the broadcast is made for reception in the area in which it is retransmitted by cable; but where the making of the broadcast was an infringement of the copyright in the work, the fact that the broadcast was re-transmitted by cable shall be taken into account when assessing the damages for that infringement.

(4) Where—

- (a) the re-transmission by cable is in pursuance of a statutory requirement; but
- (b) to any extent, the area in which the re-transmission by cable takes place (the “cable area”) falls outside the area for

reception in which the broadcast is made (the “broadcast area”),

the retransmission by cable (to the extent that it is provided for so much of the cable area as falls outside the broadcast area) of any work included in the broadcast shall, subject to subsection (5), be treated as licensed by the owner of the copyright in the work, subject only to the payment to him by the person making the broadcast of such reasonable royalty or other payment in respect of the re-transmission by cable of the broadcast as may be agreed or determined in default of agreement by the Court.

(5) Subsection (4) does not apply if, or to the extent that, the re-transmission by cable is (apart from that subsection) licensed by the owner of the copyright in the work.

(6) In this section, “qualifying service” means any television broadcasting services provided by the Gibraltar Broadcasting Corporation or any broadcaster designated by the Minister by regulations.

(7) In this section references to re-transmission by cable include the transmission of microwave energy between terrestrial fixed points.

#### **Royalty or other sum payable in pursuance of section 89(4).**

90.(1) An application to settle the royalty or other sum payable in pursuance of section 89(4) (reception and retransmission of wireless broadcast by cable) may be made to the Court by the copyright owner or the person making the broadcast.

(2) The Court shall consider the matter and make such order as it may determine to be reasonable in the circumstances.

(3) Either party may subsequently apply to the Court to vary the order, and the Court shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.

(4) An application under subsection (3) shall not, except with the special leave of the Court, be made within twelve months from the date of the original order or of the order on a previous application under that subsection.

(5) An order under subsection (3) has effect from the date on which it is made or such later date as may be specified by the Court.

#### **Provision of sub-titled copies of broadcast.**

91.(1) A designated body may, for the purpose of providing people who are deaf or hard of hearing, or physically or mentally handicapped in other ways, with copies which are sub-titled or otherwise modified for their special needs, make copies of broadcasts and issue or lend copies to the public, without infringing any copyright in the broadcasts or works included in them.

(2) A “designated body” means a body designated for the purposes of this section by regulations made by the Minister, who shall not designate a body unless he is satisfied that it is not established or conducted for profit.

#### **Recording for archival purposes.**

92.(1) A recording of a broadcast of a designated class, or a copy of such a recording, may be made for the purpose of being placed in an archive maintained by a designated body without thereby infringing any copyright in the broadcast or in any work included in it.

(2) In subsection (1), “designated” means designated for the purposes of this section by regulations made by the Minister, who shall not designate a body unless he is satisfied that it is not established or conducted for profit.

### *Adaptations*

#### **Adaptations.**

93. An act which by virtue of this Chapter may be done without infringing copyright in a literary, dramatic or musical work does not, where that work is an adaptation, infringe any copyright in the work from which the adaptation was made.

## **CHAPTER IV MORAL RIGHTS**

### *Right to be identified as author or director*

#### **Right to be identified as author or director.**

94.(1) The author of a copyright literary, dramatic, musical or artistic work, and the director of a copyright film, has the right to be identified as the author or director of the work in the circumstances mentioned in this section; but the right is not infringed unless it has been asserted in accordance with section 95.

(2) The author of a literary work (other than words intended to be sung or spoken with music) or a dramatic work has the right to be identified whenever—

- (a) the work is published commercially, performed in public or communicated to the public; or
- (b) copies of a film or sound recording including the work are issued to the public,

and that right includes the right to be identified whenever any of those events occur in relation to an adaptation of the work as the author of the work from which the adaptation was made.

(3) The author of a musical work, or a literary work consisting of words intended to be sung or spoken with music, has the right to be identified whenever—

- (a) the work is published commercially;
- (b) copies of a sound recording of the work are issued to the public; or
- (c) a film of which the sound-track includes the work is shown in public or copies of such a film are issued to the public,

and that right includes the right to be identified whenever any of those events occur in relation to an adaptation of the work as the author of the work from which the adaptation was made.

(4) The author of an artistic work has the right to be identified whenever—

- (a) the work is published commercially or exhibited in public, or a visual image of it is communicated to the public;
- (b) a film including a visual image of the work is shown in public or copies of such a film are issued to the public; or
- (c) in the case of a work of architecture in the form of a building or a model for a building, a sculpture or a work of artistic craftsmanship, copies of a graphic work representing it, or of a photograph of it, are issued to the public.

(5) The author of a work of architecture in the form of a building also has the right to be identified on the building as constructed or, where more than one building is constructed to the design, on the first to be constructed.

(6) The director of a film has the right to be identified whenever the film is shown in public or communicated to the public or copies of the film are issued to the public.

(7) The right of the author or director under this section is—

- (a) in the case of commercial publication or the issue to the public of copies of a film or sound recording, to be identified in or on each copy or, if that is not appropriate, in some other manner likely to bring his identity to the notice of a person acquiring a copy;
- (b) in the case of identification on a building, to be identified by appropriate means visible to persons entering or approaching the building; and
- (c) in any other case, to be identified in a manner likely to bring his identity to the attention of a person seeing or hearing the performance, exhibition, showing or communication to the public in question,

and the identification must in each case be clear and reasonably prominent.

(8) If the author or director in asserting his right to be identified specifies a pseudonym, initials or some other particular form of identification, that form shall be used; otherwise any reasonable form of identification may be used.

(9) This section has effect subject to section 96 (exceptions to right).

**Requirement that right be asserted.**

95.(1) A person does not infringe the right conferred by section 94 (right to be identified as author or director) by doing any of the acts mentioned in that section unless the right has been asserted in accordance with the following provisions so as to bind him in relation to that act.

(2) The right may be asserted generally, or in relation to any specified act or description of acts—

- (a) on an assignment of copyright in the work, by including in the instrument effecting the assignment a statement that the author or director asserts in relation to that work his right to be identified; or

- (b) by instrument in writing signed by the author or director.
- (3) The right may also be asserted in relation to the public exhibition of an artistic work—
- (a) by securing that when the author or other first owner of copyright parts with possession of the original, or of a copy made by him or under his direction or control, the author is identified on the original or copy, or on a frame, mount or other thing to which it is attached; or
  - (b) by including in a licence by which the author or other first owner of copyright authorises the making of copies of the work a statement signed by or on behalf of the person granting the licence that the author asserts his right to be identified in the event of the public exhibition of a copy made in pursuance of the licence.
- (4) The persons bound by an assertion of the right under subsection (2) or (3) are—
- (a) in the case of an assertion under subsection (2)(a), the assignee and anyone claiming through him, whether or not he has notice of the assertion;
  - (b) in the case of an assertion under subsection (2)(b), anyone to whose notice the assertion is brought;
  - (c) in the case of an assertion under subsection (3)(a), anyone into whose hands that original or copy comes, whether or not the identification is still present or visible;
  - (d) in the case of an assertion under subsection (3)(b), the licensee and anyone into whose hands a copy made in pursuance of the licence comes, whether or not he has notice of the assertion.
- (5) In an action for infringement of the right the Court shall, in considering remedies, take into account any delay in asserting the right.

**Exceptions to right.**

96.(1) The right conferred by section 94 (right to be identified as author or director) is subject to the following exceptions.

(2) The right does not apply in relation to the following descriptions of work—

- (a) a computer program;
- (b) the design of a typeface;
- (c) any computer-generated work.

(3) The right does not apply to anything done by or with the authority of the copyright owner where copyright in the work originally vested in the author's or director's employer by virtue of section 14(2) (works produced in course of employment).

(4) The right is not infringed by an act which by virtue of any of the following provisions would not infringe copyright in the work—

- (a) section 38 (fair dealing for certain purposes), so far as it relates to the reporting of current events by means of a sound recording, film or broadcast;
- (b) section 39 (incidental inclusion of work in an artistic work, sound recording, film or broadcast);
- (c) section 40(5) (examination questions);
- (d) section 55 (parliamentary and judicial proceedings);
- (e) section 56(1) or (2) (statutory inquiries);
- (f) section 66 (use of design documents and models);
- (g) section 67 (effect of exploitation of design derived from artistic work);
- (h) section 72 and 82 (anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author).

(5) The right does not apply in relation to any work made for the purpose of reporting current events.

(6) The right does not apply in relation to the publication in—

- (a) a newspaper, magazine or similar periodical; or
- (b) an encyclopaedia, dictionary, yearbook or other collective work of reference,

of a literary, dramatic, musical or artistic work made for the purposes of such publication or made available with the consent of the author for the purposes of such publication.

- (7) The right does not apply in relation to—
- (a) a work in which Crown copyright or Parliamentary copyright subsists; or
  - (b) a work in which copyright originally vested in an international organisation by virtue of section 177,

unless the author or director has previously been identified as such in or on published copies of the work.

***Right to object to derogatory treatment of work***

**Right to object to derogatory treatment of work.**

97.(1) The author of a copyright literary, dramatic, musical or artistic work, and the director of a copyright film, has the right in the circumstances mentioned in this section not to have his work subjected to derogatory treatment.

- (2) For the purposes of this section—
- (a) “treatment” of a work means any addition to, deletion from or alteration to or adaptation of the work, other than—
    - (i) a translation of a literary or dramatic work; or
    - (ii) an arrangement or transcription of a musical work involving no more than a change of key or register; and
  - (b) the treatment of a work is derogatory if it amounts to distortion or mutilation of the work or is otherwise prejudicial to the honour or reputation of the author or director,

and in the following provisions of this section references to a derogatory treatment of a work shall be construed accordingly.

- (3) In the case of a literary, dramatic or musical work the right is infringed by a person who—

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- (a) publishes commercially, performs in public or communicates to the public a derogatory treatment of the work; or
  - (b) issues to the public copies of a film or sound recording of, or including, a derogatory treatment of the work.
- (4) In the case of an artistic work the right is infringed by a person who—
- (a) publishes commercially or exhibits in public a derogatory treatment of the work, or communicates to the public a visual image of a derogatory treatment of the work;
  - (b) shows in public a film including a visual image of a derogatory treatment of the work or issues to the public copies of such a film; or
  - (c) in the case of—
    - (i) a work of architecture in the form of a model for a building;
    - (ii) a sculpture; or
    - (iii) a work of artistic craftsmanship,

issues to the public copies of a graphic work representing, or of a photograph of, a derogatory treatment of the work.

(5) Subsection (4) does not apply to a work of architecture in the form of a building; but where the author of such a work is identified on the building and it is the subject of derogatory treatment he has the right to require the identification to be removed.

- (6) In the case of a film, the right is infringed by a person who—
- (a) shows in public or communicates to the public a derogatory treatment of the film; or
  - (b) issues to the public copies of a derogatory treatment of the film.

(7) The right conferred by this section extends to the treatment of parts of a work resulting from a previous treatment by a person other than the author or director, if those parts are attributed to, or are likely to be regarded as the work of, the author or director.

(8) This section has effect subject to sections 98 and 99 (exceptions to and qualifications of right).

**Exceptions to right.**

98.(1) The right conferred by section 97 (right to object to derogatory treatment of work) is subject to the following exceptions.

(2) The right does not apply to a computer program or to any computer-generated work.

(3) The right does not apply in relation to any work made for the purpose of reporting current events.

(4) The right does not apply in relation to the publication in—

- (a) a newspaper, magazine or similar periodical; or
- (b) an encyclopaedia, dictionary, yearbook or other collective work of reference,

of a literary, dramatic, musical or artistic work made for the purposes of such publication or made available with the consent of the author for the purposes of such publication.

Nor does the right apply in relation to any subsequent exploitation elsewhere of such a work without any modification of the published version.

(5) The right is not infringed by an act which by virtue of section 72 or 82 (anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author) would not infringe copyright.

(6) The right is not infringed by anything done for the purpose of—

- (a) avoiding the commission of an offence; or
- (b) complying with a duty imposed by or under an enactment,

provided, where the author or director is identified at the time of the relevant act or has previously been identified in or on published copies of the work, that there is a sufficient disclaimer.

**Qualification of right in certain cases.**

99.(1) This section applies to—

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- (a) works in which copyright originally vested in the author's or director's employer by virtue of section 14(2) (works produced in course of employment);
- (b) works in which Crown copyright or Parliamentary copyright subsists; and
- (c) works in which copyright originally vested in an international organisation by virtue of section 177.

(2) The right conferred by section 97 (right to object to derogatory treatment of work) does not apply to anything done in relation to such a work by or with the authority of the copyright owner unless the author or director—

- (a) is identified at the time of the relevant act; or
- (b) has previously been identified in or on published copies of the work,

and where in such a case the right does apply, it is not infringed if there is a sufficient disclaimer.

**Infringement of right by possessing or dealing with infringing article.**

100.(1) The right conferred by section 97 (right to object to derogatory treatment of work) is also infringed by a person who—

- (a) possesses in the course of a business;
- (b) sells or lets for hire, or offers or exposes for sale or hire;
- (c) in the course of a business exhibits in public or distributes; or
- (d) distributes otherwise than in the course of a business so as to affect prejudicially the honour or reputation of the author or director,

an article which is, and which he knows or has reason to believe is, an infringing article.

(2) An “infringing article” means a work or a copy of a work which—

- (a) has been subjected to derogatory treatment within the meaning of section 97; and

- (b) has been or is likely to be the subject of any of the acts mentioned in that section in circumstances infringing that right.

***False attribution of work***

**False attribution of work.**

101.(1) A person has the right in the circumstances mentioned in this section—

- (a) not to have a literary, dramatic, musical or artistic work falsely attributed to him as author; and
- (b) not to have a film falsely attributed to him as director,

and in this section an “attribution”, in relation to such a work, means a statement (express or implied) as to who is the author or director.

(2) The right is infringed by a person who—

- (a) issues to the public copies of a work of any of those descriptions in or on which there is a false attribution; or
- (b) exhibits in public an artistic work, or a copy of an artistic work, in or on which there is a false attribution.

(3) The right is also infringed by a person who—

- (a) in the case of a literary, dramatic or musical work, performs the work in public or communicates it to the public as being the work of a person, or
- (b) in the case of a film, shows it in public or communicates it to the public as being directed by a person,

knowing or having reason to believe that the attribution is false.

(4) The right is also infringed by the issue to the public or public display of material containing a false attribution in connection with any of the acts mentioned in subsection (2) or (3).

(5) The right is also infringed by a person who in the course of a business—

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- (a) possesses or deals with a copy of a work of any of the descriptions mentioned in subsection (1) in or on which there is a false attribution; or
- (b) in the case of an artistic work, possesses or deals with the work itself when there is a false attribution in or on it,

knowing or having reason to believe that there is such an attribution and that it is false.

(6) In the case of an artistic work the right is also infringed by a person who in the course of a business—

- (a) deals with a work which has been altered after the author parted with possession of it as being the unaltered work of the author; or
- (b) deals with a copy of such a work as being a copy of the unaltered work of the author,

knowing or having reason to believe that that is not the case.

(7) References in this section to dealing are to selling or letting for hire, offering or exposing for sale or hire, exhibiting in public, or distributing.

(8) This section applies where, contrary to the fact—

- (a) a literary, dramatic or musical work is falsely represented as being an adaptation of the work of a person; or
- (b) a copy of an artistic work is falsely represented as being a copy made by the author of the artistic work,

as it applies where the work is falsely attributed to a person as author.

### *Right to privacy of certain photographs and films*

#### **Right to privacy of certain photographs and films.**

102.(1) A person who for private and domestic purposes commissions the taking of a photograph or the making of a film has, where copyright subsists in the resulting work, the right not to have—

- (a) copies of the work issued to the public;
- (b) the work exhibited or shown in public; or

- (c) the work communicated to the public,

and, except as mentioned in subsection (2), a person who does or authorises the doing of any of those acts infringes that right.

(2) The right is not infringed by an act which by virtue of any of the following provisions would not infringe copyright in the work—

- (a) section 39 (incidental inclusion of work in an artistic work, film or broadcast);
- (b) section 55 (parliamentary and judicial proceedings);
- (c) section 56 (statutory inquiries);
- (d) section 60 (acts done under statutory authority);
- (e) section 72 and 82 (anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author).

### *Supplementary*

#### **Duration of rights.**

103.(1) The rights conferred by section 94 (right to be identified as author or director), section 97 (right to object to derogatory treatment of work) and section 102 (right to privacy of certain photographs and films) continue to subsist so long as copyright subsists in the work.

(2) The right conferred by section 101 (false attribution) continues to subsist until 20 years after a person's death.

#### **Consent and waiver of rights.**

104.(1) It is not an infringement of any of the rights conferred by this Chapter to do any act to which the person entitled to the right has consented.

(2) Any of those rights may be waived by instrument in writing signed by the person giving up the right.

(3) A waiver—

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- (a) may relate to a specific work, to works of a specified description or to works generally, and may relate to existing or future works; and
- (b) may be conditional or unconditional and may be expressed to be subject to revocation,

and if made in favour of the owner or prospective owner of the copyright in the work or works to which it relates, it shall be presumed to extend to his licensees and successors in title unless a contrary intention is expressed.

(4) Nothing in this Chapter shall be construed as excluding the operation of the general law of contract or estoppel in relation to an informal waiver or other transaction in relation to any of the rights mentioned in subsection (1).

#### **Application of provisions to joint works.**

105.(1) The right conferred by section 94 (right to be identified as author or director) is, in the case of a work of joint authorship, a right of each joint author to be identified as a joint author and must be asserted in accordance with section 95 by each joint author in relation to himself.

(2) The right conferred by section 97 (right to object to derogatory treatment of work) is, in the case of a work of joint authorship, a right of each joint author and his right is satisfied if he consents to the treatment in question.

(3) A waiver under section 104 of those rights by one joint author does not affect the rights of the other joint authors.

(4) The right conferred by section 101 (false attribution) is infringed, in the circumstances mentioned in that section—

- (a) by any false statement as to the authorship of a work of joint authorship; and
- (b) by the false attribution of joint authorship in relation to a work of sole authorship,

and such a false attribution infringes the right of every person to whom authorship of any description is, whether rightly or wrongly, attributed.

(5) The above provisions also apply (with any necessary adaptations) in relation to a film which was, or is alleged to have been, jointly directed, as they apply to a work which is, or is alleged to be, a work of joint authorship.

A film is “jointly directed” if it is made by the collaboration of two or more directors and the contribution of each director is not distinct from that of the other director or directors.

(6) The right conferred by section 102 (right to privacy of certain photographs and films) is, in the case of a work made in pursuance of a joint commission, a right of each person who commissioned the making of the work, so that—

- (a) the right of each is satisfied if he consents to the act in question; and
- (b) a waiver under section 104 by one of them does not affect the rights of the others.

#### **Application of provisions to parts of works.**

106.(1) The rights conferred by section 94 (right to be identified as author or director) and section 102 (right to privacy of certain photographs and films) apply in relation to the whole or any substantial part of a work.

(2) The rights conferred by section 97 (right to object to derogatory treatment of work) and section 101 (false attribution) apply in relation to the whole or any part of a work.

### **CHAPTER V DEALINGS WITH RIGHTS IN COPYRIGHT WORKS**

#### *Copyright*

#### **Assignment and licences.**

107.(1) Copyright is transmissible by assignment, by testamentary disposition or by operation of law, as personal or moveable property.

(2) An assignment or other transmission of copyright may be partial, that is, limited so as to apply—

- (a) to one or more, but not all, of the things the copyright owner has the exclusive right to do;
- (b) to part, but not the whole, of the period for which the copyright is to subsist.

(3) An assignment of copyright is not effective unless it is in writing signed by or on behalf of the assignor.

(4) A licence granted by a copyright owner is binding on every successor in title to his interest in the copyright, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser; and references in this Part to doing anything with, or without, the licence of the copyright owner shall be construed accordingly.

### **Prospective ownership of copyright.**

108.(1) Where by an agreement made in relation to future copyright, and signed by or on behalf of the prospective owner of the copyright, the prospective owner purports to assign the future copyright (wholly or partially) to another person, then if, on the copyright coming into existence, the assignee or another person claiming under him would be entitled as against all other persons to require the copyright to be vested in him, the copyright shall vest in the assignee or his successor in title by virtue of this subsection.

(2) In this Part—

“future copyright” means copyright which will or may come into existence in respect of a future work or class of works or on the occurrence of a future event; and

“prospective owner” shall be construed accordingly, and includes a person who is prospectively entitled to copyright by virtue of such an agreement as is mentioned in subsection (1).

(3) A licence granted by a prospective owner of copyright is binding on every successor in title to his interest (or prospective interest) in the right, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser; and references in this Part to doing anything with, or without, the licence of the copyright owner shall be construed accordingly.

### **Exclusive licences.**

109.(1) In this Part an “exclusive licence” means a licence in writing signed by or on behalf of the copyright owner authorising the licensee to the exclusion of all other persons, including the person granting the licence, to exercise a right which would otherwise be exercisable exclusively by the copyright owner.

(2) The licensee under an exclusive licence has the same rights against a successor in title who is bound by the licence as he has against the person granting the licence.

**Copyright to pass under will with unpublished work.**

110. Where under a bequest (whether specific or general) a person is entitled, beneficially or otherwise, to—

- (a) an original document or other material thing recording or embodying a literary, dramatic, musical or artistic work which was not published before the death of the testator; or
- (b) an original material thing containing a sound recording or film which was not published before the death of the testator,

the bequest shall, unless a contrary intention is indicated in the testator's will or a codicil to it, be construed as including the copyright in the work in so far as the testator was the owner of the copyright immediately before his death.

**Presumption of transfer of rental right in case of film production agreement.**

111.(1) Where an agreement concerning film production is concluded between an author and a film producer, the author shall be presumed, unless the agreement provides to the contrary, to have transferred to the film producer any rental right in relation to the film arising by virtue of the inclusion of a copy of the author's work in the film.

(2) In this section "author" means an author, or prospective author, of a literary, dramatic, musical or artistic work.

(3) Subsection (1) does not apply to any rental right in relation to the film arising by virtue of the inclusion in the film of the screenplay, the dialogue or music specifically created for and used in the film.

(4) Where this section applies, the absence of signature by or on behalf of the author does not exclude the operation of section 108(1) (effect of purported assignment of future copyright).

(5) The reference in subsection (1) to an agreement concluded between an author and a film producer includes any agreement having effect between those persons, whether made by them directly or through intermediaries.

(6) Section 112 (right to equitable remuneration on transfer of rental right) applies where there is a presumed transfer by virtue of this section as in the case of an actual transfer.

*Right to equitable remuneration where rental right transferred*

**Right to equitable remuneration where rental right transferred.**

112.(1) Where an author to whom this section applies has transferred his rental right concerning a sound recording or a film to the producer of the sound recording or film, he retains the right to equitable remuneration for the rental.

The authors to whom this section applies are—

- (a) the author of a literary, dramatic, musical or artistic work; and
- (b) the principal director of a film.

(2) The right to equitable remuneration under this section may not be assigned by the author except to a collecting society for the purpose of enabling it to enforce the right on his behalf.

The right is, however, transmissible by testamentary disposition or by operation of law as personal or moveable property; and it may be assigned or further transmitted by any person into whose hands it passes.

(3) Equitable remuneration under this section is payable by the person for the time being entitled to the rental right, that is, the person to whom the right was transferred or any successor in title of his.

(4) The amount payable by way of equitable remuneration is as agreed by or on behalf of the persons by and to whom it is payable, subject to section 113 (reference of amount to the Court).

(5) An agreement is of no effect in so far as it purports to exclude or restrict the right to equitable remuneration under this section.

(6) References in this section to the transfer of rental right by one person to another include any arrangement having that effect, whether made by them directly or through intermediaries.

(7) In this section a “collecting society” means a society or other organisation which has as its main object, or one of its main objects, the exercise of the right to equitable remuneration under this section on behalf of more than one author.

**Equitable remuneration: reference of amount to Court.**

113.(1) In default of agreement as to the amount payable by way of equitable remuneration under section 112, the person by or to whom it is payable may apply to the Court to determine the amount payable.

(2) A person to whom or by whom equitable remuneration is payable under that section may also apply to the Court—

- (a) to vary any agreement as to the amount payable; or
- (b) to vary any previous determination of the Court as to that matter,

but except with the special leave of the Court no such application may be made within twelve months from the date of a previous determination.

An order made on an application under this subsection has effect from the date on which it is made or such later date as may be specified by the Court.

(3) On an application under this section the Court shall consider the matter and make such order as to the method of calculating and paying equitable remuneration as it may determine to be reasonable in the circumstances, taking into account the importance of the contribution of the author to the film or sound recording.

(4) Remuneration shall not be considered inequitable merely because it was paid by way of a single payment or at the time of the transfer of the rental right.

(5) An agreement is of no effect in so far as it purports to prevent a person questioning the amount of equitable remuneration or to restrict the powers of the Court under this section.

***Moral rights*****Moral rights not assignable.**

114. The rights conferred by Chapter IV (moral rights) are not assignable.

**Transmission of moral rights on death.**

115.(1) On the death of a person entitled to the right conferred by section 94 (right to identification of author or director), section 97 (right to object to

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derogatory treatment of work) or section 102 (right to privacy of certain photographs and films)–

- (a) the right passes to such person as he may by testamentary disposition specifically direct,
- (b) if there is no such direction but the copyright in the work in question forms part of his estate, the right passes to the person to whom the copyright passes, and
- (c) if or to the extent that the right does not pass under paragraph (a) or (b) it is exercisable by his personal representatives.

(2) Where copyright forming part of a person's estate passes in part to one person and in part to another, as for example where a bequest is limited so as to apply–

- (a) to one or more, but not all, of the things the copyright owner has the exclusive right to do or authorise; or
- (b) to part, but not the whole, of the period for which the copyright is to subsist,

any right which passes with the copyright by virtue of subsection (1) is correspondingly divided.

(3) Where by virtue of subsection (1)(a) or (b) a right becomes exercisable by more than one person–

- (a) it may, in the case of the right conferred by section 94 (right to identification of author or director), be asserted by any of them;
- (b) it is, in the case of the right conferred by section 97 (right to object to derogatory treatment of work) or section 102 (right to privacy of certain photographs and films), a right exercisable by each of them and is satisfied in relation to any of them if he consents to the treatment or act in question; and
- (c) any waiver of the right in accordance with section 104 by one of them does not affect the rights of the others.

(4) A consent or waiver previously given or made binds any person to whom a right passes by virtue of subsection (1).

(5) Any infringement after a person's death of the right conferred by section 101 (false attribution) is actionable by his personal representatives.

(6) Any damages recovered by personal representatives by virtue of this section in respect of an infringement after a person's death shall devolve as part of his estate as if the right of action had subsisted and been vested in him immediately before his death.

## CHAPTER VI REMEDIES FOR INFRINGEMENT

### *Rights and remedies of copyright owner*

#### **Infringement actionable by copyright owner.**

116.(1) An infringement of copyright is actionable by the copyright owner.

(2) In an action for infringement of copyright all such relief by way of damages, injunctions, accounts or otherwise is available to the claimant as is available in respect of the infringement of any other property right.

(3) This section has effect subject to the following provisions of this Chapter.

#### **Provisions as to damages in infringement action.**

117.(1) Where in an action for infringement of copyright it is shown that at the time of the infringement the defendant did not know, and had no reason to believe, that copyright subsisted in the work to which the action relates, the claimant is not entitled to damages against him, but without prejudice to any other remedy.

(2) The Court may in an action for infringement of copyright having regard to all the circumstances, and in particular to—

- (a) the flagrancy of the infringement; and
- (b) any benefit accruing to the defendant by reason of the infringement,

award such additional damages as the justice of the case may require.

#### **Injunctions against service providers.**

118.(1) The Court shall have power to grant an injunction against a service provider, where that service provider has actual knowledge of another person using their service to infringe copyright.

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(2) In determining whether a service provider has actual knowledge for the purposes of this section, the Court shall take into account all matters which appear to it in the particular circumstances to be relevant.

(3) In this section “service provider” means any person providing a service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service.

#### **Order for delivery up.**

119.(1) Where a person—

- (a) has an infringing copy of a work in his possession, custody or control in the course of a business; or
- (b) has in his possession, custody or control an article specifically designed or adapted for making copies of a particular copyright work, knowing or having reason to believe that it has been or is to be used to make infringing copies,

the owner of the copyright in the work may apply to the Court for an order that the infringing copy or article be delivered up to him or to such other person as the Court may direct.

(2) An application shall not be made after the end of the period specified in section 134 (period after which remedy of delivery up not available); and no order shall be made unless the Court also makes, or it appears to the Court that there are grounds for making, an order under section 135 (order as to disposal of infringing copy or other article).

(3) A person to whom an infringing copy or other article is delivered up in pursuance of an order under this section shall, if an order under section 135 is not made, retain it pending the making of an order, or the decision not to make an order, under that section.

(4) Nothing in this section affects any other power of the Court.

#### **Right to seize infringing copies and other articles.**

120.(1) An infringing copy of a work which is found exposed or otherwise immediately available for sale or hire, and in respect of which the copyright owner would be entitled to apply for an order under section 119, may be seized and detained by him or a person authorised by him.

The right to seize and detain is exercisable subject to the following conditions and is subject to any decision of the Court under section 135.

(2) Before anything is seized under this section notice of the time and place of the proposed seizure must be given to a local police station.

(3) A person may for the purpose of exercising the right conferred by this section enter premises to which the public have access but may not seize anything in the possession, custody or control of a person at a permanent or regular place of business of his, and may not use any force.

(4) At the time when anything is seized under this section there shall be left at the place where it was seized a notice in the prescribed form containing the prescribed particulars as to the person by whom or on whose authority the seizure is made and the grounds on which it is made.

(5) In this section—

“premises” includes land, buildings, moveable structures, vehicles, vessels, aircraft and hovercraft; and

“prescribed” means prescribed by regulations made by the Minister.

### *Rights and remedies of licensee*

#### **Rights and remedies of exclusive licensee.**

121.(1) An exclusive licensee has, except against the copyright owner, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment.

(2) His rights and remedies are concurrent with those of the copyright owner; and references in the relevant provisions of this Part to the copyright owner shall be construed accordingly.

(3) In an action brought by an exclusive licensee by virtue of this section a defendant may avail himself of any defence which would have been available to him if the action had been brought by the copyright owner.

#### **Certain infringements actionable by a non-exclusive licensee.**

122.(1) A non-exclusive licensee may bring an action for infringement of copyright if—

- (a) the infringing act was directly connected to a prior licensed act of the licensee; and

- (b) the licence—
- (i) is in writing and is signed by or on behalf of the copyright owner; and
  - (ii) expressly grants the non-exclusive licensee a right of action under this section.

(2) In an action brought under this section, the non-exclusive licensee shall have the same rights and remedies available to him as the copyright owner would have had if he had brought the action.

(3) The rights granted under this section are concurrent with those of the copyright owner and references in the relevant provisions of this Part to the copyright owner shall be construed accordingly.

(4) In an action brought by a non-exclusive licensee by virtue of this section a defendant may avail himself of any defence which would have been available to him if the action had been brought by the copyright owner.

(5) Subsections (1) to (4) of section 123 shall apply to a non-exclusive licensee who has a right of action by virtue of this section as it applies to an exclusive licensee.

(6) In this section a “non-exclusive licensee” means the holder of a licence authorising the licensee to exercise a right which remains exercisable by the copyright owner.

#### **Exercise of concurrent rights.**

123.(1) Where an action for infringement of copyright brought by the copyright owner or an exclusive licensee relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action, the copyright owner or, as the case may be, the exclusive licensee may not, without the leave of the Court, proceed with the action unless the other is either joined as a claimant or added as a defendant.

(2) A copyright owner or exclusive licensee who is added as a defendant in pursuance of subsection (1) is not liable for any costs in the action unless he takes part in the proceedings.

(3) The above provisions do not affect the granting of interlocutory relief on an application by a copyright owner or exclusive licensee alone.

(4) Where an action for infringement of copyright is brought which relates

(wholly or partly) to an infringement in respect of which the copyright owner and an exclusive licensee have or had concurrent rights of action—

- (a) the Court shall in assessing damages take into account—
  - (i) the terms of the licence; and
  - (ii) any pecuniary remedy already awarded or available to either of them in respect of the infringement;
- (b) no account of profits shall be directed if an award of damages has been made, or an account of profits has been directed, in favour of the other of them in respect of the infringement; and
- (c) the Court shall if an account of profits is directed apportion the profits between them as the Court considers just, subject to any agreement between them;

and these provisions apply whether or not the copyright owner and the exclusive licensee are both parties to the action.

(5) The copyright owner shall notify any exclusive licensee having concurrent rights before applying for an order under section 119 (order for delivery up) or exercising the right conferred by section 120 (right of seizure); and the Court may on the application of the licensee make such order under section 119 or, as the case may be, prohibiting or permitting the exercise by the copyright owner of the right conferred by section 120, as it thinks fit having regard to the terms of the licence.

#### *Remedies for infringement of moral rights*

#### **Remedies for infringement of moral rights.**

124.(1) An infringement of a right conferred by Chapter IV (moral rights) is actionable as a breach of statutory duty owed to the person entitled to the right.

(2) In proceedings for infringement of the right conferred by section 97 (right to object to derogatory treatment of work) the Court may, if it thinks it is an adequate remedy in the circumstances, grant an injunction on terms prohibiting the doing of any act unless a disclaimer is made, in such terms and in such manner as may be approved by the Court, dissociating the author or director from the treatment of the work.

#### *Presumptions*

**Presumptions relevant to literary, dramatic, musical and artistic works.**

125.(1) The following presumptions apply in proceedings brought by virtue of this Chapter with respect to a literary, dramatic, musical or artistic work.

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

- (a) to be the author of the work;
- (b) to have made it in circumstances not falling within section 14(2), 172, 174 or 177 (works produced in course of employment, Crown copyright, Parliamentary copyright or copyright of certain international organisations).

(3) In the case of a work alleged to be a work of joint authorship, subsection (2) applies in relation to each person alleged to be one of the authors.

(4) Where no name purporting to be that of the author appeared as mentioned in subsection (2) but—

- (a) the work qualifies for copyright protection by virtue of section 167 (qualification by reference to country of first publication); and
- (b) a name purporting to be that of the publisher appeared on copies of the work as first published,

the person whose name appeared shall be presumed, until the contrary is proved, to have been the owner of the copyright at the time of publication.

(5) If the author of the work is dead or the identity of the author cannot be ascertained by reasonable inquiry, it shall be presumed, in the absence of evidence to the contrary—

- (a) that the work is an original work; and
- (b) that the claimant's allegations as to what was the first publication of the work and as to the country of first publication are correct.

**Presumptions relevant to sound recordings and films.**

126.(1) In proceedings brought by virtue of this Chapter with respect to a sound recording, where copies of the recording as issued to the public bear a label or other mark stating—

- (a) that a named person was the owner of copyright in the recording at the date of issue of the copies; or
- (b) that the recording was first published in a specified year or in a specified country,

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

(2) In proceedings brought by virtue of this Chapter with respect to a film, where copies of the film as issued to the public bear a statement—

- (a) that a named person was the director or producer of the film;
- (b) that a named person was the principal director, the author of the screenplay, the author of the dialogue or the composer of music specifically created for and used in the film;
- (c) that a named person was the owner of copyright in the film at the date of issue of the copies; or
- (d) that the film was first published in a specified year or in a specified country,

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

(3) In proceedings brought by virtue of this Chapter with respect to a computer program, where copies of the program are issued to the public in electronic form bearing a statement—

- (a) that a named person was the owner of copyright in the program at the date of issue of the copies; or
- (b) that the program was first published in a specified country or that copies of it were first issued to the public in electronic form in a specified year,

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

(4) The above presumptions apply equally in proceedings relating to an

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infringement alleged to have occurred before the date on which the copies were issued to the public.

(5) In proceedings brought by virtue of this Chapter with respect to a film, where the film as shown in public or communicated to the public bears a statement—

- (a) that a named person was the director or producer of the film;
- (b) that a named person was the principal director of the film, the author of the screenplay, the author of the dialogue or the composer of music specifically created for and used in the film; or
- (c) that a named person was the owner of copyright in the film immediately after it was made,

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

This presumption applies equally in proceedings relating to an infringement alleged to have occurred before the date on which the film was shown in public or communicated to the public.

(6) For the purposes of this section, a statement that a person was the director of a film shall be taken, unless a contrary indication appears, as meaning that he was the principal director of the film.

#### **Presumptions relevant to works subject to Crown copyright.**

127. In proceedings brought by virtue of this Chapter with respect to a literary, dramatic or musical work in which Crown copyright subsists, where there appears on printed copies of the work a statement of the year in which the work was first published commercially, that statement shall be admissible as evidence of the fact stated and shall be presumed to be correct in the absence of evidence to the contrary.

#### *Offences*

#### **Criminal liability for making or dealing with infringing articles etc.**

128.(1) A person commits an offence who, without the licence of the copyright owner—

- (a) makes for sale or hire;

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- (b) imports into Gibraltar otherwise than for his private and domestic use;
- (c) possesses in the course of a business with a view to committing any act infringing the copyright;
- (d) in the course of a business—
  - (i) sells or lets for hire;
  - (ii) offers or exposes for sale or hire;
  - (iii) exhibits in public;
  - (iv) distributes; or
- (e) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright,

an article which is, and which he knows or has reason to believe is, an infringing copy of a copyright work.

(2) A person commits an offence who—

- (a) makes an article specifically designed or adapted for making copies of a particular copyright work; or
- (b) has such an article in his possession,

knowing or having reason to believe that it is to be used to make infringing copies for sale or hire or for use in the course of a business.

(3) A person guilty of an offence under subsection (1)(a), (b), (d)(iv) or (e) is liable—

- (a) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;
- (b) on conviction on indictment to a fine or imprisonment for a term not exceeding two years, or both.

(4) A person guilty of any other offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both.

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(5) Sections 125 to 127 (presumptions as to various matters connected with copyright) do not apply to proceedings for an offence under this section; but without prejudice to their application in proceedings for an order under section 129.

**Order for delivery up in criminal proceedings.**

129.(1) The Court before which proceedings are brought against a person for an offence under section 128 may, if satisfied that at the time of his arrest or charge—

- (a) he had in his possession, custody or control in the course of a business an infringing copy of a copyright work; or
- (b) he had in his possession, custody or control an article specifically designed or adapted for making copies of a particular copyright work, knowing or having reason to believe that it had been or was to be used to make infringing copies,

order that the infringing copy or article be delivered up to the copyright owner or to such other person as the Court may direct.

(2) For this purpose a person shall be treated as charged with an offence when he is orally charged or is served with a summons or indictment.

(3) An order may be made by the Court of its own motion or on the application of the prosecutor, and may be made whether or not the person is convicted of the offence, but shall not be made—

- (a) after the end of the period specified in section 134 (period after which remedy of delivery up not available), or
- (b) if it appears to the Court unlikely that any order will be made under section 135 (order as to disposal of infringing copy or other article).

(4) An appeal lies from an order made under this section by the Court to the Appeal Court.

(5) A person to whom an infringing copy or other article is delivered up in pursuance of an order under this section shall retain it pending the making of an order, or the decision not to make an order, under section 135.

(6) Nothing in this section affects the powers of the Court as to forfeiture under section 248 of the Criminal Procedure Act (general provisions as to forfeiture in criminal proceedings).

**Search warrants.**

130.(1) Where a magistrate is satisfied by information on oath given by a constable that there are reasonable grounds for believing—

- (a) that an offence under section 128(1) or (2) has been or is about to be committed in any premises; and
- (b) that evidence that such an offence has been or is about to be committed is in those premises,

he may issue a warrant authorising a constable to enter and search the premises, using such reasonable force as is necessary.

(2) A warrant under this section—

- (a) may authorise persons to accompany any constable executing the warrant; and
- (b) remains in force for 28 days from the date of its issue.

(3) In executing a warrant issued under this section a constable may seize an article if he reasonably believes that it is evidence that any offence under section 128(1) or (2) has been or is about to be committed.

(4) In this section “premises” includes land, buildings, fixed or moveable structures, vehicles, vessels, aircraft and hovercraft.

**Offence by body corporate: liability of officers.**

131.(1) Where an offence under section 128 committed by a body corporate is proved to have been committed with the consent or connivance of a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In relation to a body corporate whose affairs are managed by its members “director” means a member of the body corporate.

***Provision for preventing importation of infringing copies*****Infringing copies may be treated as prohibited goods.**

132.(1) The owner of the copyright in a published literary, dramatic or musical work may give notice in writing to the Collector of Customs—

- (a) that he is the owner of the copyright in the work; and
- (b) that he requests the Collector of Customs, for a period specified in the notice, to treat as prohibited goods printed copies of the work which are infringing copies.

(2) The period specified in a notice under subsection (1) shall not exceed five years and shall not extend beyond the period for which copyright is to subsist.

(3) The owner of the copyright in a sound recording or film may give notice in writing to the Collectors of Customs—

- (a) that he is the owner of the copyright in the work;
- (b) that infringing copies of the work are expected to arrive in Gibraltar at a time and a place specified in the notice; and
- (c) that he requests the Collector of Customs to treat the copies as prohibited goods.

(4) The Collector of Customs may treat as prohibited goods only infringing copies of works which arrive in Gibraltar:

- (a) from outside the European Economic Area; or
- (b) from within that Area but not having been entered for free circulation.

(5) This section does not apply to goods placed in, or expected to be placed in, one of the situations referred to in Article 1(1), in respect of which an application may be made under Article 5(1), of Council Regulation (EC) No 1383/2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights.

(6) When a notice is in force under this section the importation of goods to which the notice relates, otherwise than by a person for his private and domestic use (subject to subsections (4) and (5)), is prohibited; but a person is not by reason of the prohibition liable to any penalty other than forfeiture of the goods.

**Power of Government to make regulations.**

133.(1) The Government may make regulations prescribing the form in which notice is to be given under section 132 and requiring a person giving notice—

- (a) to furnish the Government with such evidence as may be specified in the regulations, either on giving notice or when the goods are imported, or at both those times; and
- (b) to comply with such other conditions as may be specified in the regulations.

(2) The regulations may, in particular, require a person giving such a notice—

- (a) to pay such fees in respect of the notice as may be specified by the regulations;
- (b) to give such security as may be so specified in respect of any liability or expense which the Government may incur in consequence of the notice by reason of the detention of any article or anything done to an article detained;
- (c) to indemnify the Government against any such liability or expense, whether security has been given or not.

(3) The regulations may make different provision as respects different classes of case to which they apply and may include such incidental and supplementary provisions as the Government considers expedient.

### *Supplementary*

#### **Period after which remedy of delivery up not available.**

134.(1) An application for an order under section 119 (order for delivery up in civil proceedings) may not be made after the end of the period of six years from the date on which the infringing copy or article in question was made, subject to the following provisions.

(2) If during the whole or any part of that period the copyright owner—

- (a) is an infant or of unsound mind; or
- (b) is prevented by fraud or concealment from discovering the facts entitling him to apply for an order,

an application may be made at any time before the end of the period of six years from the date on which he ceased to be an infant or of unsound mind or, as the case may be, could with reasonable diligence have discovered those facts.

(3) An order under section 129 (order for delivery up in criminal proceedings) shall not, in any case, be made after the end of the period of six years from the date on which the infringing copy or article in question was made.

**Order as to disposal of infringing copy or other article.**

135.(1) An application may be made to the Court for an order that an infringing copy or other article delivered up in pursuance of an order under section 119 or 129, or seized and detained in pursuance of the right conferred by section 120, shall be—

- (a) forfeited to the copyright owner; or
- (b) destroyed or otherwise dealt with as the Court may think fit,

or for a decision that no such order should be made.

(2) In considering what order (if any) should be made, the Court shall consider whether other remedies available in an action for infringement of copyright would be adequate to compensate the copyright owner and to protect his interests.

(3) Provision shall be made by rules of Court as to the service of notice on persons having an interest in the copy or other articles, and any such person is entitled—

- (a) to appear in proceedings for an order under this section, whether or not he was served with notice; and
- (b) to appeal against any order made, whether or not he appeared,

and an order shall not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

(4) Where there is more than one person interested in a copy or other article, the Court shall make such order as it thinks just and may (in particular) direct that the article be sold, or otherwise dealt with, and the proceeds divided.

(5) If the Court decides that no order should be made under this section, the person in whose possession, custody or control the copy or other article was before being delivered up or seized is entitled to its return.

(6) References in this section to a person having an interest in a copy or other article include any person in whose favour an order could be made in respect of it under this section or by virtue of the Trade Marks Act.

**Forfeiture of infringing copies.**

136.(1) Where there have come into the possession of any person in connection with the investigation or prosecution of a relevant offence—

- (a) infringing copies of a copyright work; or
- (b) articles specifically designed or adapted for making copies of a particular copyright work,

that person may apply under this section for an order for the forfeiture of the infringing copies or articles.

(2) For the purposes of this section, “relevant offence” means—

- (a) an offence under section 128(1) or (2) (criminal liability for making or dealing with infringing articles); or
- (b) an offence involving dishonesty or deception.

(3) An application under this section may be made—

- (a) where proceedings have been brought in any court for a relevant offence relating to some or all of the infringing copies or articles, to that court; or
- (b) where no application for the forfeiture of the infringing copies or articles has been made under paragraph (a), by way of complaint to a magistrates’ court.

(4) On an application under this section, the court shall make an order for the forfeiture of any infringing copies or articles only if it is satisfied that a relevant offence has been committed in relation to the infringing copies or articles.

(5) The court may infer for the purposes of this section that such an offence has been committed in relation to any infringing copies or articles if

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it is satisfied that such an offence has been committed in relation to infringing copies or articles which are representative of the infringing copies or articles in question (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

(6) Any person aggrieved by an order made under this section by a magistrates' court, or by a decision of such a court not to make such an order, may appeal against that order or decision to the Court.

(7) An order under this section may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal.

(8) Subject to subsection (9), where any infringing copies or articles are forfeited under this section they shall be destroyed in accordance with such directions as the court may give.

(9) On making an order under this section the court may direct that the infringing copies or articles to which the order relates shall (instead of being destroyed) be forfeited to the owner of the copyright in question or dealt with in such other way as the court considers appropriate.

## CHAPTER VII COPYRIGHT LICENSING

### *Licensing schemes and licensing bodies*

#### **Licensing schemes and licensing bodies.**

137.(1) In this Part 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 copyright 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 Chapter a "licensing body" means a society or other organisation which has as its main object, or one of its main objects, the negotiation or granting, either as owner or prospective owner of copyright or as agent for him, of copyright licences, and whose objects include the granting of licences covering works of more than one author.

(3) In this section “copyright licences” means licences to do, or authorise the doing of, any of the acts restricted by copyright.

(4) References in this Chapter to licences or licensing schemes covering works of more than one author do not include licences or schemes covering only—

- (a) a single collective work or collective works of which the authors are the same; or
- (b) works made by, or by employees of or commissioned by, a single individual, firm, company or group of companies.

For this purpose a group of companies means a parent company and its subsidiaries, within the meaning of section 2 of the Companies (Consolidated Accounts) Act 1999.

**Licensing schemes to which the following sections apply.**

138. Sections 139 to 144 (references and applications with respect to licensing schemes) apply to licensing schemes which are operated by licensing bodies and cover works of more than one author, so far as they relate to licences for—

- (a) copying the work;
- (b) rental or lending of copies of the work to the public;
- (c) performing, showing or playing the work in public; or
- (d) communicating the work to the public,

and references in those sections to a licensing scheme shall be construed accordingly.

**Reference of proposed licensing scheme to Court.**

139.(1) The terms of a licensing scheme proposed to be operated by a licensing body may be referred to the 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 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 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 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 Court may determine.

**Reference of licensing scheme to Court.**

140.(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 Court in so far as it relates to cases of that description.

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

(3) The 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 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 Court may determine.

**Further reference of scheme to Court.**

141.(1) Where the Court has on a previous reference of a licensing scheme under section 139 or 140, or under this section, made an order with respect to 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 Court so far as it relates to cases of that description.

(2) A licensing scheme shall not, except with the special leave of the Court, be referred again to the 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 three months before the expiry of the order.

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

(4) The 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 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 Court may determine.

#### **Application for grant of licence in connection with licensing scheme.**

142.(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 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 Court.

(3) A case shall be regarded as excluded from a licensing scheme for the purposes of subsection (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 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 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 Court may determine.

**Application for review of order as to entitlement to licence.**

143.(1) Where the Court has made an order under section 142 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 Court to review its order.

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

- (a) within twelve months from the date of the order, or of the decision on a previous application under this section; 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 section is due to expire within 15 months of that decision, until the last three months before the expiry date.

(3) The Court shall on an application for review confirm or vary its order as the 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 Court as to licensing scheme.**

144.(1) A licensing scheme which has been confirmed or varied by the Court—

- (a) under section 139 (reference of terms of proposed scheme); or

- (b) under section 140 or 141 (reference of existing scheme to 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 copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question in accordance with the scheme.

(3) The 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.

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 subsection (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.

(4) Where the Court has made an order under section 142 (order as to entitlement to licence under licensing scheme) and the order remains in force, the person in whose favour the order is made shall 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,

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

***References and applications with respect to licensing by licensing bodies***

**Licences to which the following sections apply.**

145. Sections 146 to 149 (references and applications with respect to licensing by licensing bodies) apply to licences which are granted by a licensing body otherwise than in pursuance of a licensing scheme and cover works of more than one author, so far as they authorise—

- (a) copying the work;
- (b) rental or lending of copies of the work to the public;
- (c) performing, showing or playing the work in public; or
- (d) communicating the work to the public,

and references in those sections to a licence shall be construed accordingly.

**Reference to Court of proposed licence.**

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

(2) The 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 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 Court may determine.

**Reference to Court of expiring licence.**

147.(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 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 three months before the licence is due to expire.

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

(4) If the 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 Court may determine to be reasonable in the circumstances.

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

#### **Application for review of order as to licence.**

148.(1) Where the Court has made an order under section 146 or 147 (where that order did not relate to a licensing scheme), the licensing body or the person entitled to the benefit of the order may apply to the Court to review its order.

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

- (a) within twelve months from the date of the order or of the decision on a previous application under this section; 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 section is due to expire within 15 months of that decision, until the last three months before the expiry date.

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

#### **Effect of order of Court as to licence.**

149.(1) Where the Court has made an order under section 146 or 147 and the order remains in force, the person entitled to the benefit of the order shall 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,

be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright 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 section 146, if assignment is not prohibited under the terms of the Court's order; and
- (b) in the case of an order under section 147, if assignment was not prohibited under the terms of the original licence.

(3) The Court may direct that an order under section 146 or 147, or an order under section 148 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.

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 subsection (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.

*Factors to be taken into account in certain classes of case*

**General considerations: unreasonable discrimination.**

150. In determining what is reasonable on a reference or application under this Chapter relating to a licensing scheme or licence, the 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.

**Licences for reprographic copying.**

151. Where a reference or application is made to the Court under this Chapter relating to the licensing of reprographic copying of published literary, dramatic, musical or artistic works, or the typographical arrangement of published editions, the Court shall have regard to—

- (a) the extent to which published editions of the works in question are otherwise available;
- (b) the proportion of the work to be copied; and
- (c) the nature of the use to which the copies are likely to be put.

**Licences for educational establishments in respect of works included in broadcasts.**

152.(1) This section applies to references or applications under this Chapter relating to licences for the recording by or on behalf of educational establishments of broadcasts which include copyright works, or the making of copies of such recordings, for educational purposes.

(2) The Court shall, in considering what charges (if any) should be paid for a licence, have regard to the extent to which the owners of copyright in the works included in the broadcast have already received, or are entitled to receive, payment in respect of their inclusion.

**Licences to reflect conditions imposed by promoters of events.**

153.(1) This section applies to references or applications under this Chapter in respect of licences relating to sound recordings, films or broadcasts which include, or are to include, any entertainment or other event.

(2) The Court shall have regard to any conditions imposed by the promoters of the entertainment or other event; and, in particular, the Court shall not hold a refusal or failure to grant a licence to be unreasonable if it could not have been granted consistently with those conditions.

(3) Nothing in this section shall require the Court to have regard to any such conditions in so far as they—

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- (a) purport to regulate the charges to be imposed in respect of the grant of licences; or
- (b) relate to payments to be made to the promoters of any event in consideration of the grant of facilities for making the recording, film or broadcast.

**Licences to reflect payments in respect of underlying rights.**

154.(1) In considering what charges should be paid for a licence—

- (a) on a reference or application under this Chapter relating to licences for the rental or lending or copies of a work; or
- (b) on an application under section 163 (royalty or other sum payable for lending of certain works),

the Court shall take into account any reasonable payments which the owner of the copyright in the work is liable to make in consequence of the granting of the licence, or of the acts authorised by the licence, to owners of copyright in works included in that work.

(2) On any reference or application under this Chapter relating to licensing in respect of the copyright in sound recordings, films or broadcasts, the Court shall take into account, in considering what charges should be paid for a licence, any reasonable payments which the copyright owner is liable to make in consequence of the granting of the licence, or of the acts authorised by the licence, in respect of any performance included in the recording, film or broadcast.

**Licences in respect of works included in re-transmissions.**

155.(1) Subject to subsection (4) this section applies to references or applications under this Chapter relating to licences to include in a broadcast—

- (a) literary, dramatic, musical or artistic works; or
- (b) sound recordings or films,

where one broadcast (“the first transmission”) is, by reception and immediate re-transmission, to be further broadcast (“the further transmission”).

(2) So far as the further transmission is to the same area as the first transmission, the Court shall, in considering what charges (if any) should be

paid for licences for either transmission, have regard to the extent to which the copyright owner has already received, or is entitled to receive, payment for the other transmission which adequately remunerates him in respect of transmissions to that area.

(3) So far as the further transmission is to an area outside that to which the first transmission was made, the Court shall leave the further transmission out of account in considering what charges (if any) should be paid for licences for the first transmission.

(4) This section does not apply in relation to any application under section 90 (royalty or other sum payable in pursuance of section 89(4)).

**Mention of specific matters not to exclude other relevant considerations.**

156. The mention in sections 150 to 155 of specific matters to which the Court is to have regard in certain classes of case does not affect the Court's general obligation in any case to have regard to all relevant considerations.

***Implied indemnity in schemes or licences for reprographic copying***

**Implied indemnity in certain schemes and licences for reprographic copying.**

157.(1) This section applies to—

- (a) schemes for licensing reprographic copying of published literary, dramatic, musical or artistic works, or the typographical arrangement of published editions; and
- (b) licences granted by licensing bodies for such copying,

where the scheme or licence does not specify the works to which it applies with such particularity as to enable licensees to determine whether a work falls within the scheme or licence by inspection of the scheme or licence and the work.

(2) There is implied—

- (a) in every scheme to which this section applies an undertaking by the operator of the scheme to indemnify a person granted a licence under the scheme; and
- (b) in every licence to which this section applies an undertaking by the licensing body to indemnify the licensee,

against any liability incurred by him by reason of his having infringed copyright by making or authorising the making of reprographic copies of a work in circumstances within the apparent scope of his licence.

(3) The circumstances of a case are within the apparent scope of a licence if—

- (a) it is not apparent from inspection of the licence and the work that it does not fall within the description of works to which the licence applies; and
- (b) the licence does not expressly provide that it does not extend to copyright of the description infringed.

(4) In this section “liability” includes liability to pay costs; and this section applies in relation to costs reasonably incurred by a licensee in connection with actual or contemplated proceedings against him for infringement of copyright as it applies to sums which he is liable to pay in respect of such infringement.

(5) A scheme or licence to which this section applies may contain reasonable provision—

- (a) with respect to the manner in which, and time within which, claims under the undertaking implied by this section are to be made;
- (b) enabling the operator of the scheme or, as the case may be, the licensing body to take over the conduct of any proceedings affecting the amount of his liability to indemnify.

#### *Reprographic copying by educational establishments*

#### **Power to extend coverage of scheme or licence.**

158.(1) This section applies to—

- (a) a licensing scheme to which sections 139 to 144 apply (see section 138) and which is operated by a licensing body; or
- (b) a licence to which sections 146 to 149 apply (see section 145),

so far as it provides for the grant of licences, or is a licence, authorising the making by or on behalf of educational establishments for the purposes of instruction of reprographic copies of published literary, dramatic, musical or

artistic works, or of the typographical arrangement of published editions.

(2) If it appears to the Minister with respect to a scheme or licence to which this section applies that—

- (a) works of a description similar to those covered by the scheme or licence are unreasonably excluded from it; and
- (b) making them subject to the scheme or licence would not conflict with the normal exploitation of the works or unreasonably prejudice the legitimate interests of the copyright owners,

he may by order provide that the scheme or licence shall extend to those works.

(3) Where he proposes to make an order, the Minister shall give notice of the proposal to—

- (a) the copyright owners;
- (b) the licensing body in question; and
- (c) such persons or organisations representative of educational establishments, and such other persons or organisations, as the Minister thinks fit.

(4) The notice shall inform those persons of their right to make written or oral representations to the Minister about the proposal within six months from the date of the notice; and if any of them wishes to make oral representations, the Minister shall appoint a person to hear the representations and report to him.

(5) In considering whether to make an order under this section the Minister shall take into account any representations made to him in accordance with subsection (4), and such other matters as appear to him to be relevant.

#### **Variation or discharge of order extending scheme or licence.**

159.(1) The owner of the copyright in a work in respect of which an order is in force under section 158 may apply to the Minister for the variation or discharge of the order, stating his reasons for making the application.

(2) The Minister shall not entertain an application made within two years of the making of the original order, or of the making of an order on a

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previous application under this section, unless it appears to him that the circumstances are exceptional.

(3) On considering the reasons for the application the Minister may confirm the order forthwith; if he does not do so, he shall give notice of the application to—

- (a) the licensing body in question; and
- (b) such persons or organisations representative of educational establishments, and such other persons or organisations, as he thinks fit.

(4) The notice shall inform those persons of their right to make written or oral representations to the Minister about the application within the period of two months from the date of the notice; and if any of them wishes to make oral representations, the Minister shall appoint a person to hear the representations and report to him.

(5) In considering the application the Minister shall take into account the reasons for the application, any representations made to him in accordance with subsection (4), and such other matters as appear to him to be relevant.

(6) The Minister may make such order as he thinks fit confirming or discharging the order (or, as the case may be, the order as previously varied), or varying (or further varying) it so as to exclude works from it.

#### **Appeals against orders.**

160.(1) The owner of the copyright in a work which is the subject of an order under section 158 (order extending coverage of scheme or licence) may appeal to the Court which may confirm or discharge the order, or vary it so as to exclude works from it, as it thinks fit having regard to the considerations mentioned in subsection (2) of that section.

(2) Where the Minister has made an order under section 159 (order confirming, varying or discharging order extending coverage of scheme or licence)—

- (a) the person who applied for the order; or
- (b) any person or organisation representative of educational establishments who was given notice of the application for the order and made representations in accordance with subsection (4) of that section,

may appeal to the Court which may confirm or discharge the order or make any other order which the Minister might have made.

(3) An appeal under this section shall be brought within six weeks of the making of the order or such further period as the Court may allow.

(4) An order under section 158 or 159 shall not come into effect until the end of the period of six weeks from the making of the order or, if an appeal is brought before the end of that period, until the appeal proceedings are disposed of or withdrawn.

(5) If an appeal is brought after the end of that period, any decision of the Court on the appeal does not affect the validity of anything done in reliance on the order appealed against before that decision takes effect.

#### **Inquiry whether new scheme or general licence required.**

161.(1) The Minister may appoint a person to inquire into the question whether new provision is required (whether by way of a licensing scheme or general licence) to authorise the making by or on behalf of educational establishments for the purposes of instruction of reprographic copies of—

- (a) published literary, dramatic, musical or artistic works; or
- (b) the typographical arrangement of published editions,

of a description which appears to the Minister not to be covered by an existing licensing scheme or general licence and not to fall within the power conferred by section 158 (power to extend existing schemes and licences to similar works).

(2) The procedure to be followed in relation to an inquiry shall be such as may be prescribed by regulations made by the Minister.

(3) The regulations shall, in particular, provide for notice to be given to—

- (a) persons or organisations appearing to the Minister to represent the owners of copyright in works of that description; and
- (b) persons or organisations appearing to the Minister to represent educational establishments,

and for the making of written or oral representations by such persons; but without prejudice to the giving of notice to, and the making of representations by, other persons and organisations.

(4) The person appointed to hold the inquiry shall not recommend the making of new provision unless he is satisfied—

- (a) that it would be of advantage to educational establishments to be authorised to make reprographic copies of the works in question; and
- (b) that making those works subject to a licensing scheme or general licence would not conflict with the normal exploitation of the works or unreasonably prejudice the legitimate interests of the copyright owners.

(5) If he does recommend the making of new provision he shall specify any terms, other than terms as to charges payable, on which authorisation under the new provision should be available.

(6) In this section (and section 162) a “general licence” means a licence granted by a licensing body which covers all works of the description to which it applies.

#### **Statutory licence where recommendation not implemented.**

162.(1) The Minister may, within one year of the making of a recommendation under section 161 by order provide that if, or to the extent that, provision has not been made in accordance with the recommendation, the making by or on behalf of an educational establishment, for the purposes of instruction, of reprographic copies of the works to which the recommendation relates shall be treated as licensed by the owners of the copyright in the works.

(2) For that purpose provision shall be regarded as having been made in accordance with the recommendation if a general licence has been—

- (a) granted to or for the benefit of that establishment; or
- (b) referred by or on behalf of that establishment to the Court under section 146 (reference of terms of proposed licence); or
- (c) offered to or for the benefit of that establishment and refused without such a reference,

and the terms of the scheme or licence accord with the recommendation.

(3) The order shall also provide that any existing licence authorising the making of such copies (not being a general licence) shall cease to have

effect to the extent that it is more restricted or more onerous than the licence provided for by the order.

(4) The order shall provide for the licence to be free of royalty but, as respects other matters, subject to any terms specified in the recommendation and to such other terms as the Minister may think fit.

(5) The order may provide that where a copy which would otherwise be an infringing copy is made in accordance with the licence provided by the order but is subsequently dealt with, it shall be treated as an infringing copy for the purposes of that dealing, and if that dealing infringes copyright for all subsequent purposes.

In this subsection “dealt with” means sold or let for hire, offered or exposed for sale or hire, or exhibited in public.

(6) The order shall not come into force until at least six months after it is made.

(7) An order may be varied from time to time, but not so as to include works other than those to which the recommendation relates or remove any terms specified in the recommendation, and may be revoked.

#### *Royalty or other sum payable for lending of certain works*

#### **Royalty or other sum payable for lending of certain works.**

163.(1) An application to settle the royalty or other sum payable in pursuance of section 81 (lending of copies of certain works) may be made to the Court by the copyright owner or the person claiming to be treated as licensed by him.

(2) The Court shall consider the matter and make such order as it may determine to be reasonable in the circumstances.

(3) Either party may subsequently apply to the Court to vary the order, and the Court shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.

(4) An application under subsection (3) shall not, except with the special leave of the Court, be made within twelve months from the date of the original order or of the order on a previous application under that subsection.

(5) An order under subsection (3) has effect from the date on which it is made or such later date as may be specified by the Court.

*Compulsory collective administration of certain rights*

**Collective exercise of certain rights in relation to cable re-transmission.**

164.(1) This section applies to the right of the owner of copyright in a literary, dramatic, musical or artistic work, sound recording, or a film to grant or refuse authorisation for cable re-transmission of a wireless broadcast from the United Kingdom or another EEA state in which the work is included.

That right is referred to below as “cable re-transmission right”.

(2) Cable re-transmission right may be exercised against a cable operator only through a licensing body.

(3) Where a copyright owner has not transferred management of his cable re-transmission right to a licensing body, the licensing body which manages rights of the same category shall be deemed to be mandated to manage his right.

Where more than one licensing body manages rights of that category, he may choose which of them is deemed to be mandated to manage his right.

(4) A copyright owner to whom subsection (3) applies has the same rights and obligations resulting from any relevant agreement between the cable operator and the licensing body as have copyright owners who have transferred management of their cable re-transmission right to that licensing body.

(5) Any rights to which a copyright owner may be entitled by virtue of subsection (4) must be claimed within the period of three years beginning with the date of the cable re-transmission concerned.

(6) This section does not affect any rights exercisable by the maker of the broadcast, whether in relation to the broadcast or the work included in it.

(7) In this section—

“cable operator” means a person responsible for cable re-transmission of a wireless broadcast; and

“cable re-transmission” means the reception and immediate re-transmission by cable, including the transmission of microwave

energy between terrestrial fixed points, of a wireless broadcasts.

**CHAPTER VIII  
QUALIFICATION FOR AND EXTENT OF COPYRIGHT  
PROTECTION**

*Qualification for copyright protection*

**Qualification for copyright protection.**

165.(1) Copyright does not subsist in a work unless the qualification requirements of this Chapter are satisfied as regards—

- (a) the author (see section 166); or
- (b) the country in which the work was first published (see section 167); or
- (c) in the case of a broadcast, the country from which the broadcast was made (see section 168).

(2) Subsection (1) does not apply in relation to Crown copyright or Parliamentary copyright (see sections 172 to 175) or to copyright subsisting by virtue of section 177 (copyright of certain international organisations).

(3) If the qualification requirements of this Chapter, or section 172, 174 or 177, are once satisfied in respect of a work, copyright does not cease to subsist by reason of any subsequent event.

**Qualification by reference to author.**

166.(1) A work qualifies for copyright protection if at the material time the author—

- (a) is a Gibraltar or a national of the United Kingdom or another EEA state;
- (b) is an individual domiciled or resident in Gibraltar, the United Kingdom or another EEA state; or
- (c) is a body incorporated under the law of Gibraltar, the United Kingdom or another EEA state.

(2) Where, or so far as, provision is made by order under section 169 (application of this Part to foreign countries), a work also qualifies for copyright protection if at the material time the author was a citizen or

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subject of, an individual domiciled or resident in, or a body incorporated under the law of, a country to which the order relates.

(3) A work of joint authorship qualifies for copyright protection if at the material time any of the authors satisfies the requirements of subsection (1) or (2); but where a work qualifies for copyright protection only under this section, only those authors who satisfy those requirements shall be taken into account for the purposes of—

section 14(1) and (2) (first ownership of copyright; entitlement of author or author's employer);

section 15 (duration of copyright), and section 12(4) (meaning of "unknown authorship") so far as it applies for the purposes of section 15; and

section 72 (anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author).

(4) The material time in relation to a literary, dramatic, musical or artistic work is—

(a) in the case of an unpublished work, when the work was made or, if the making of the work extended over a period, a substantial part of that period;

(b) in the case of a published work, when the work was first published or, if the author had died before that time, immediately before his death.

(5) The material time in relation to other descriptions of work is as follows—

(a) in the case of a sound recording or film, when it was made;

(b) in the case of a broadcast, when the broadcast was made;

(c) in the case of the typographical arrangement of a published edition, when the edition was first published.

#### **Qualification by reference to country of first publication.**

167.(1) A literary, dramatic, musical or artistic work, a sound recording or film, or the typographical arrangement of a published edition, qualifies for copyright protection if it is first published in Gibraltar, the United Kingdom or another EEA state.

(2) Where, or so far as, provision is made by order under section 169 (application of this Part to foreign countries), such a work also qualifies for copyright protection if it is first published in a country to which the order relates.

(3) For the purposes of this section, publication in one country shall not be regarded as other than the first publication by reason of simultaneous publication elsewhere; and for this purpose publication elsewhere within the previous 30 days shall be treated as simultaneous.

**Qualification by reference to place of transmission.**

168.(1) A broadcast qualifies for copyright protection if it is made from a place in Gibraltar, the United Kingdom or another EEA state.

(2) Where, or so far as, provision is made by order under section 169 (application of this Part to foreign countries), a broadcast also qualifies for copyright protection if it is made from a place in a country to which the order relates.

**Application of this Part to foreign countries.**

169.(1) The Minister may by order make provision for applying in relation to a foreign country any of the provisions of this Part specified in the order, so as to secure that those provisions—

- (a) apply in relation to persons who are citizens or subjects of that country or are domiciled or resident there, as they apply to Gibraltarians or persons who are domiciled or resident in Gibraltar; or
- (b) apply in relation to bodies incorporated under the law of that country as they apply in relation to bodies incorporated under the law of Gibraltar; or
- (c) apply in relation to works first published in that country as they apply in relation to works first published in Gibraltar; or
- (d) apply in relation to broadcasts made from that country as they apply in relation to broadcasts made from Gibraltar.

(2) An order may make provision for all or any of the matters mentioned in subsection (1) and may—

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- (a) apply any provisions of this Part subject to such exceptions and modifications as are specified in the order; and
- (b) direct that any provisions of this Part apply either generally or in relation to such classes of works, or other classes of case, as are specified in the order.

(3) Except in the case of a Convention country, the Minister shall not make an order under this section in relation to a country unless satisfied that provision has been or will be made under the law of that country, in respect of the class of works to which the order relates, giving adequate protection to the owners of copyright under this Part.

(4) In subsection (3) “Convention country” means a country which is a party to a Convention relating to copyright to which Gibraltar is also subject.

**Denial of copyright protection to citizens of countries not giving adequate protection to Gibraltarian works.**

170.(1) If it appears to the Minister that the law of a country fails to give adequate protection to Gibraltarian works to which this section applies, or to one or more classes of such works, the Minister may make provision by order in accordance with this section restricting the rights conferred by this Part in relation to works of authors connected with that country.

(2) An order under this section shall designate the country concerned and provide that, for the purposes specified in the order, works first published after a date specified in the order shall not be treated as qualifying for copyright protection by virtue of such publication if at that time the authors are—

- (a) citizens or subjects of that country (not domiciled or resident in Gibraltar); or
- (b) bodies incorporated under the law of that country,

and the order may make such provision for all the purposes of this Part or for such purposes as are specified in the order, and either generally or in relation to such class of cases as are specified in the order, having regard to the nature and extent of that failure referred to in subsection (1).

(3) This section applies to literary, dramatic, musical and artistic works, sound recordings and films; and “Gibraltarian works” means works of which the author was a qualifying person at the material time within the meaning of section 166.

*Supplementary***Gibraltarian ships, aircraft and hovercraft.**

171.(1) This Part applies to things done on a Gibraltar ship, aircraft or hovercraft as it applies to things done in Gibraltar.

(2) In this section “Gibraltar ship”, “Gibraltar aircraft” and “Gibraltar hovercraft” mean, respectively, a ship, aircraft or hovercraft registered in Gibraltar.

**CHAPTER IX  
MISCELLANEOUS AND GENERAL***Crown and Parliamentary copyright***Crown copyright.**

172.(1) Where a work is made by an officer or servant of the Crown in the course of his duties—

- (a) the work qualifies for copyright protection notwithstanding section 165(1) (ordinary requirement as to qualification for copyright protection); and
- (b) the Crown is the first owner of any copyright in the work.

(2) Copyright in such a work is referred to in this Part as “Crown copyright”, notwithstanding that it may be, or have been, assigned to another person.

(3) Crown copyright in a literary, dramatic, musical or artistic work continues to subsist—

- (a) until the end of the period of 125 years from the end of the calendar year in which the work was made; or
- (b) if the work is published commercially before the end of the period of 75 years from the end of the calendar year in which it was made, until the end of the period of 50 years from the end of the calendar year in which it was first so published.

(4) In the case of a work of joint authorship where one or more but not all of the authors are persons falling within subsection (1), this section applies

only in relation to those authors and the copyright subsisting by virtue of their contribution to the work.

(5) Except as mentioned above, and subject to any express exclusion elsewhere in this Part, the provisions of this Part apply in relation to Crown copyright as to other copyright.

(6) This section does not apply to a work if, or to the extent that, Parliamentary copyright subsists in the work (see sections 174 and 175).

### **Copyright in Acts.**

173.(1) The Crown is entitled to copyright in every Act of the Parliament.

(2) The copyright subsists from the time when a copy of the Act is first published until the end of the period of 50 years from the end of the calendar year in which the Act was so published.

(3) References in this Part to Crown copyright (except in section 172) include copyright under this section; and, except as mentioned above, the provisions of this Part apply in relation to copyright under this section as to other Crown copyright.

(4) No other copyright, or right in the nature of copyright, subsists in an Act.

### **Parliamentary copyright.**

174.(1) Where a work is made by or under the direction or control of the Parliament—

- (a) the work qualifies for copyright protection notwithstanding section 165(1) (ordinary requirement as to qualification for copyright protection); and
- (b) the Parliament is the first owner of any copyright in the work.

(2) Copyright in such a work is referred to in this Part as “Parliamentary copyright”, notwithstanding that it may be, or have been, assigned to another person.

(3) Parliamentary copyright in a literary, dramatic, musical or artistic work continues to subsist until the end of the period of 50 years from the end of the calendar year in which the work was made.

(4) For the purposes of this section, works made by or under the direction or control of the Parliament include—

- (a) any work made by an officer or employee of that House in the course of his duties; and
- (b) any sound recording, film or live broadcast of the proceedings of that House,

but a work shall not be regarded as made by or under the direction or control of that House by reason only of its being commissioned by or on behalf of that House.

(5) In the case of a work of joint authorship where one or more but not all of the authors are acting on behalf of, or under the direction or control of, the Parliament, this section applies only in relation to those authors and the copyright subsisting by virtue of their contribution to the work.

(6) Except as mentioned above, and subject to any express exclusion elsewhere in this Part, the provisions of this Part apply in relation to Parliamentary copyright as to other copyright.

### **Copyright in Bills.**

175.(1) Copyright in every Bill introduced into the Parliament belongs, in accordance with the following provisions, to the Parliament; and copyright subsists from the time when a copy of the Bill is first published.

(2) Copyright under this section ceases—

- (a) from the time when a copy of the Act is first published (as referred to in section 173(2)); or
- (b) if the Bill does not receive Governor's Assent, on the withdrawal or rejection of the Bill or the end of the Session.

(3) References in this Part to Parliamentary copyright (except in section 174) include copyright under this section; and, except as mentioned above, the provisions of this Part apply in relation to copyright under this section as to other Parliamentary copyright.

(4) No other copyright, or right in the nature of copyright, subsists in a Bill after copyright has once subsisted under this section; but without prejudice to the subsequent operation of this section in relation to a Bill which, not having passed in one Session, is reintroduced in a subsequent Session.

**Parliament: supplementary provisions with respect to copyright.**

176.(1) For the purposes of holding, dealing with and enforcing copyright, and in connection with all legal proceedings relating to copyright, the Parliament shall be treated as having the legal capacities of a body corporate, which shall not be affected by a prorogation or dissolution.

(2) The functions of the Parliament as owner of copyright shall be exercised by the Speaker on behalf of the House; and if so authorised by the Speaker, or in case of a vacancy in the office of Speaker, those functions may be discharged by the Clerk of the Parliament.

(3) For this purpose a person who on the dissolution of the Parliament was Speaker of the Parliament or Clerk of the Parliament may continue to act until the corresponding appointment is made in the next Session of the Parliament.

(4) Legal proceedings relating to copyright shall be brought by or against the Parliament in the name of “The Speaker of the Parliament”.

**Copyright vesting in certain international organisations.**

177.(1) Where an original literary, dramatic, musical or artistic work—

- (a) is made by an officer or employee of, or is published by, an international organisation to which this section applies; and
- (b) does not qualify for copyright protection under section 166 (qualification by reference to author) or section 167 (qualification by reference to country of first publication),

copyright nevertheless subsists in the work by virtue of this section and the organisation is first owner of that copyright.

(2) The international organisations to which this section applies are those as to which the Minister has by regulations declared that it is expedient that this section should apply.

(3) Copyright of which an international organisation is first owner by virtue of this section continues to subsist until the end of the period of 50 years from the end of the calendar year in which the work was made or such longer period as may be specified by regulations made by the Minister for the purpose of complying with any international obligations to which Gibraltar is subject.

(4) An international organisation to which this section applies shall be deemed to have, and to have had at all material times, the legal capacities of a body corporate for the purpose of holding, dealing with and enforcing copyright and in connection with all legal proceedings relating to copyright.

**Folklore, etc: anonymous unpublished works.**

178.(1) Where in the case of an unpublished literary, dramatic, musical or artistic work of unknown authorship there is evidence that the author (or, in the case of a joint work, any of the authors) was a qualifying individual by connection with a country outside Gibraltar, it shall be presumed until the contrary is proved that he was such a qualifying individual and that copyright accordingly subsists in the work, subject to the provisions of this Part.

(2) If under the law of that country a body is appointed to protect and enforce copyright in such works, the Minister may by regulations designate that body for the purposes of this section.

(3) A body so designated shall be authorised in Gibraltar as having authority to do in place of the copyright owner anything, other than assign copyright, which it is empowered to do under the law of that country; and it may, in particular, bring proceedings in its own name.

(4) In subsection (1) a “qualifying individual” means an individual who at the material time (within the meaning of section 166) was a person whose works qualified under that section for copyright protection.

(5) This section does not apply if there has been an assignment of copyright in the work by the author of which notice has been given to the designated body; and nothing in this section affects the validity of an assignment of copyright made, or licence granted, by the author or a person lawfully claiming under him.

**Transitional provisions and savings.**

179. Schedule 1 contains transitional provisions and savings relating to works made, and acts or events occurring, before the commencement of this Part, and otherwise with respect to the operation of the provisions of this Part.

**Rights and privileges under other enactments or the common law.**

180.(1) Nothing in this Part affects—

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- (a) any right or privilege of any person under any enactment (except where the enactment is expressly repealed, amended or modified by this Act);
- (b) any right or privilege of the Crown subsisting otherwise than under an enactment;
- (c) any right or privilege of the Parliament;
- (d) the right of the Crown or any person deriving title from the Crown to sell, use or otherwise deal with articles forfeited under the laws relating to customs;
- (e) the operation of any rule of equity relating to breaches of trust or confidence.

(2) Subject to those savings, no copyright or right in the nature of copyright shall subsist otherwise than by virtue of this Part or some other enactment in that behalf.

(3) Nothing in this Part affects any rule of law preventing or restricting the enforcement of copyright, on grounds of public interest or otherwise.

(4) Nothing in this Part affects any right of action or other remedy, whether civil or criminal, available otherwise than under this Part in respect of acts infringing any of the rights conferred by Chapter IV (moral rights).

(5) The savings in subsection (1) have effect subject to section 173(4) and section 175(4) (copyright in Acts and Bills: exclusion of other rights in the nature of copyright).

### *Interpretation*

#### **General provisions as to construction.**

181.(1) This Part restates and amends the law of copyright, that is, the provisions of the Copyright Act 1956, as amended (as extended to Gibraltar by the Copyright (Gibraltar) Order 1960, as amended).

(2) A provision of this Part which corresponds to a provision of the previous law shall not be construed as departing from the previous law merely because of a change of expression.

(3) Decisions under the previous law may be referred to for the purpose of establishing whether a provision of this Part departs from the previous law, or otherwise for establishing the true construction of this Part.

**Meaning of EEA and related expressions.**

182.(1) In this Part—

“the EEA” means the European Economic Area;

“EEA national” means a national of an EEA state; and

“EEA state” means a state which is a contracting party to the EEA Agreement.

(2) References in this Part 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.

(3) The “EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by the Protocol signed at Brussels on 17 March 1993 and as amended from time to time.

**Construction of references to copyright owner.**

183.(1) Where different persons are (whether in consequence of a partial assignment or otherwise) entitled to different aspects of copyright in a work, the copyright owner for any purpose of this Part is the person who is entitled to the aspect of copyright relevant for that purpose.

(2) Where copyright (or any aspect of copyright) is owned by more than one person jointly, references in this Part to the copyright owner are to all the owners, so that, in particular, any requirement of the licence of the copyright owner requires the licence of all of them.

**Meaning of “educational establishment” and related expressions.**

184.(1) The expression “educational establishment” in a provision of this Part means—

- (a) any school within the meaning of the Education and Training Act; and
- (b) any other description of educational establishment specified for the purposes of this Part, or that provision, by regulations made by the Minister.

(2) Regulations under subsection (1)(b) may specify a description of educational establishment by reference to the instruments from time to time in force under any enactment specified in the regulations.

(3) In relation to an educational establishment the expressions “teacher” and “pupil” in this Part include, respectively, any person who gives and any person who receives instruction.

(4) References in this Part to anything being done “on behalf of” an educational establishment are to its being done for the purposes of that establishment by any person.

**Meaning of publication and commercial publication.**

185.(1) In this Part “publication”, in relation to a work—

- (a) means the issue of copies to the public; and
- (b) includes, in the case of a literary, dramatic, musical or artistic work, making it available to the public by means of an electronic retrieval system,

and related expressions shall be construed accordingly.

(2) In this Part “commercial publication”, in relation to a literary, dramatic, musical or artistic work means—

- (a) issuing copies of the work to the public at a time when copies made in advance of the receipt of orders are generally available to the public; or
- (b) making the work available to the public by means of an electronic retrieval system,

and related expressions shall be construed accordingly.

(3) In the case of a work of architecture in the form of a building, or an artistic work incorporated in a building, construction of the building shall be treated as equivalent to publication of the work.

(4) The following do not constitute publication for the purposes of this Part and references to commercial publication shall be construed accordingly—

- (a) in the case of a literary, dramatic or musical work—

- (i) the performance of the work; or
  - (ii) the communication to the public of the work (otherwise than for the purposes of an electronic retrieval system);
- (b) in the case of an artistic work–
- (i) the exhibition of the work;
  - (ii) the issue to the public of copies of a graphic work representing, or of photographs of, a work of architecture in the form of a building or a model for a building, a sculpture or a work of artistic craftsmanship;
  - (iii) the issue to the public of copies of a film including the work; or
  - (iv) the communication to the public of the work (otherwise than for the purposes of an electronic retrieval system);
- (c) in the case of a sound recording or film–
- (i) the work being played or shown in public; or
  - (ii) the communication to the public of the work.

(5) References in this Part to publication or commercial publication do not include publication which is merely colourable and not intended to satisfy the reasonable requirements of the public.

(6) No account shall be taken for the purposes of this section of any unauthorised act.

**Requirement of signature: application in relation to body corporate.**

186.(1) The requirement in the following provisions that an instrument be signed by or on behalf of a person is also satisfied in the case of a body corporate by the affixing of its seal–

section 95(3)(b) (assertion by licensor of right to identification of author in case of public exhibition of copy made in pursuance of the licence);

section 107(3) (assignment of copyright);

section 108(1) (assignment of future copyright);

section 109(1) (grant of exclusive licence).

(2) The requirement in the following provisions that an instrument be signed by a person is satisfied in the case of a body corporate by signature on behalf of the body or by the affixing of its seal–

section 95(2)(b) (assertion by instrument in writing of right to have author identified);

section 104(2) (waiver of moral rights).

**Minor definitions.**

187. In this Part–

“article”, in the context of an article in a periodical, includes an item of any description;

“business” includes a trade or profession;

“collective work” means–

(a) a work of joint authorship; or

(b) a work in which there are distinct contributions by different authors or in which works or parts of works of different authors are incorporated;

“computer-generated”, in relation to a work, means that the work is generated by computer in circumstances such that there is no human author of the work;

“country” includes any territory;

“Court” means the Supreme Court;

“the Crown” means the Crown in right of Her Majesty’s Government of Gibraltar;

“electronic” means actuated by electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy, and “in electronic form” means in a form usable only by electronic means;

“employed”, “employee”, “employer” and “employment” refer to employment under a contract of service or of apprenticeship;

- “facsimile copy” includes a copy which is reduced or enlarged in scale;
- “international organisation” means an organisation the members of which include one or more states;
- “judicial proceedings” includes proceedings before any court or person having authority to decide any matter affecting a person’s legal rights or liabilities;
- “Minister” the Minister with responsibility for Trade and Industry;
- “parliamentary proceedings” includes proceedings of the Parliament and the European Parliament;
- “private study” does not include any study which is directly or indirectly for a commercial purpose;
- “producer”, in relation to a sound recording or a film, means the person by whom the arrangements necessary for the making of the sound recording or film are undertaken;
- “rental right means the right of a copyright owner to authorise or prohibit the rental of copies of the work (see section 24);
- “reprographic copy” and “reprographic copying” refer to copying by means of a reprographic process;
- “reprographic process” means a process—
- (a) for making facsimile copies; or
  - (b) involving the use of an appliance for making multiple copies,
- and includes, in relation to a work held in electronic form, any copying by electronic means, but does not include the making of a film or sound recording;
- “sufficient acknowledgement” means an acknowledgement identifying the work in question by its title or other description, and identifying the author unless—
- (a) in the case of a published work, it is published anonymously;
  - (b) in the case of an unpublished work, it is not possible for a person to ascertain the identity of the author by reasonable inquiry;

“sufficient disclaimer”, in relation to an act capable of infringing the right conferred by section 97 (right to object to derogatory treatment of work), means a clear and reasonably prominent indication—

- (a) given at the time of the act; and
- (b) if the author or director is then identified, appearing along with the identification,

that the work has been subjected to treatment to which the author or director has not consented;

“telecommunications system” means a system for conveying visual images, sounds or other information by electronic means;

“typeface” includes an ornamental motif used in printing;

“unauthorised”, as regards anything done in relation to a work, means done otherwise than—

- (a) by or with the licence of the copyright owner; or
- (b) if copyright does not subsist in the work, by or with the licence of the author or, in a case where section 14(2) would have applied, the author’s employer or, in either case, persons lawfully claiming under him, or
- (c) in pursuance of section 58 (copying, etc. of certain material by the Crown);

“wireless broadcast” means a broadcast by means of wireless telegraphy;

“wireless telegraphy” means the sending of electro-magnetic energy over paths not provided by a material substance constructed or arranged for that purpose, but does not include the transmission of microwave energy between terrestrial fixed points;

“writing” includes any form of notation or code, whether by hand or otherwise and regardless of the method by which, or medium in or on which, it is recorded, and “written” shall be construed accordingly.

**Index of defined expressions.**

188. The following Table shows provisions defining or otherwise explaining expressions used in this Part (other than provisions defining or explaining an expression used only in the same section)–

acts restricted by copyright	Section 21
adaptation	Section 27(3)
archivist (in sections 46 to 53)	Section 46(5)
article (in a periodical)	Section 187
artistic work	Section 6(1)
author	Section 12 and 13(4)
broadcast (and related expressions)	Section 9
building	Section 6(2)
business	Section 187
collective work	Section 187
commencement (in schedule 1)	Paragraph 1(2) of Schedule 1
commercial publication	Section 185
communication to the public	Section 26
computer generated	Section 187
copy and copying	Section 22
copyright (generally)	Section 2
copyright (in Schedule 1)	Paragraph 2(2) of Schedule 1
copyright owner	Section 121(2) and 183
copyright work	Section 2(2)
country	Section 187
country of origin	Section 20

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the Crown	Section 187
Crown copyright	Section 172(2) and 173(3)
database	Section 5
dramatic work	Section 4(1)
educational establishment	Section 184
EEA, EEA national and EEA state	Section 182
electronic and electronic form	Section 187
employed, employee, employer, employment	Section 187
excepted sound recording	Section 88(2)
exclusive licence	Section 109(1)
existing works (in Schedule 1)	Paragraph 1(3) of Schedule 1
facsimile copy	Section 187
film	Section 8
future copyright	Section 108(2)
general licence (in sections 161, 162)	Section 161(6)
graphic work	Section 6(2)
infringing copy	Section 33
international organisation	Section 187
issue of copies to the public	Section 23
joint authorship (work of)	Section 13
judicial proceedings	Section 187
lawful user (in sections 61-64)	Section 61(2)
lending	Section 24(2)-(6)

librarian (in sections 46-53)	Section 46(5)
licence (in sections 146-149)	Section 145
licence of copyright owner	Sections 107(4), 108(3) and 183
licensing body (in Chapter VII)	Section 137(2)
licensing scheme (generally)	Section 137(1)
licensing scheme (in sections 139-144)	Section 138
literary work	Section 4
made	Section 4(2)
Minister	Section 187
musical work	Section 4(1)
the new copyright provisions (in Schedule 1)	Paragraph 1(1) of Schedule 1
the 1911 Act (in Schedule 1)	Paragraph 1(1) of Schedule 1
the 1956 Act (in Schedule 1)	Paragraph 1(1) of Schedule 1
on behalf of (an educational establishment)	Section 184(4)
original (in relation to a database)	Section 5(2)
Parliamentary copyright	Section 174(2), (7), 175(3)
Parliamentary proceedings	Section 187
performance	Section 25
photograph	Section 6(2)
prescribed conditions (in sections 47-53)	Section 46(1)(b)

prescribed library or archive (in sections 47-53)	Section 46(1)(a)
private study	Section 187
producer (sound recording or film)	Section 187
programme (in the context of broadcasting)	Section 9(4)
prospective owner	Section 108(2)
publication and related expressions	Section 185
published edition (typographical arrangement)	Section 11
pupil	Section 184(3)
rental	Section 24(2)-(6)
rental right	Section 187
reprographic copies and reprographic copying	Section 187
reprographic process	Section 187
sculpture	Section 6(2)
signed	Section 186
sound recording	Section 7
sufficient acknowledgement	Section 187
sufficient disclaimer	Section 187
teacher	Section 184(3)
telecommunications system	Section 187
typeface	Section 187
unauthorised (things done in relation to a work)	Section 187

unknown (in relation to the author of a work)	Section 12(5)
unknown authorship (work of)	Section 12(4)
wireless broadcast	Section 187
wireless telegraphy	Section 187
work (in Schedule 1)	Paragraph 2(2) of Schedule 1
work of more than one author (in Chapter VII)	Section 137(4)
writing and written	Section 187

## PART II DATABASE RIGHT

### Interpretation.

189.(1) In this Part, unless the context otherwise requires—

“database” has the meaning given by section 5(1) of this Act;

“EEA” and related expressions have the same meaning as in Part I;

“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 193(2);

“investment” includes any investment, whether of financial, human or technical resources;

“jointly”, in relation to the making of a database, shall be construed in accordance with section 191(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;

“re-utilisation”, in relation to any contents of a database, means making those contents available to the public by any means; and

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

(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 Part to constitute extraction or re-utilisation of the contents of the database.

(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 Gibraltar, the United Kingdom or the EEA by, or with the consent of, the owner of the database right in the database, the further sale within Gibraltar, the United Kingdom or the EEA of that copy shall not be taken for the purposes of this Part to constitute extraction or re-utilisation of the contents of the database.

#### **Database right.**

190.(1) A property right (“database right”) subsists, in accordance with this Part, in a database if there has been a substantial investment in obtaining, verifying or presenting 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 Part I of this Act.

(3) This section has effect subject to section 195.

#### **The maker of a database.**

191.(1) Subject to subsections (2) to (4), the person who takes the initiative in obtaining, verifying or presenting the contents of a database and assumes the risk of investing in that obtaining, verification or presentation shall be regarded as the maker of, and 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 an officer or servant of the Crown in the course of his duties, the Crown shall be regarded as the maker of the database.

(4) Where a database is made by or under the direction or control of the Parliament, the Parliament shall be regarded as the maker of the database.

(5) For the purposes of this Part, a database is made jointly if two or more persons acting together in collaboration take the initiative in obtaining, verifying or presenting the contents of the database and assume the risk of investing in that obtaining, verification or presentation.

(6) References in this Part 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.**

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

#### **Acts infringing database right.**

193.(1) Subject to the provisions of this Part, 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 a database.

(2) For the purposes of this Part, 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.**

194.(1) Database right in a database shall run until 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 shall expire 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 paragraph 52 of Schedule 1.

**Qualification for database right.**

195.(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 Gibraltarian or a national of the United Kingdom or another EEA state or habitually resident within Gibraltar, the United Kingdom or another EEA state;
- (b) a body which was incorporated under the law of Gibraltar, the United Kingdom or another EEA state and which, at that time, satisfied one of the conditions in subsection (2); or
- (c) a partnership or other unincorporated body which was formed under the law of Gibraltar, the United Kingdom or another EEA state and which, at that time, satisfied the condition in subsection (2)(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 Gibraltar, the United Kingdom or another EEA state; or
- (b) that the body has its registered office within Gibraltar, the United Kingdom or another EEA state and the body's operations are linked on an ongoing basis with the economy of Gibraltar, the United Kingdom or another EEA state.

(3) 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.

(4) The provisions of this Part shall also apply to a database made in the countries or territories listed in Schedule 3 where at the material time, its maker, or if it was made jointly, one or more of its makers, was—

- (a) an individual who was habitually resident in that country or territory;
- (b) a body which was incorporated under the law of that country or territory and which, at that time, had its central administration or principal place of business within that country or territory or had its registered office within that country or territory and its operations are linked on an ongoing basis with the economy of that country or territory; or
- (c) a partnership or other unincorporated body which was formed under that country or territory and which, at that time, had its central administration or principal place of business within that country or territory.

(5) The Minister may by notice in the Gazette amend the list of countries contained in Schedule 3.

#### **Avoidance of certain terms affecting lawful users.**

196.(1) A lawful user of a database which has been made available to the public in any manner shall be 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 in so far 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.**

197.(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 section 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 acts permitted despite copyright as detailed in sections 55 to 60 are also permitted despite the rights conferred by this Part.

**Acts permitted on assumption as to expiry of database right.**

198.(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 the 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.**

199.(1) The following presumptions apply in proceedings brought by virtue of this Part with respect to 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 sections 191(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 shall be 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.**

200.(1) Sections 107 to 110, 116 to 118 and 121 to 123 apply in relation to database right and databases in which that right subsists as they apply in relation to copyright and copyright works.

(2) The provisions of sections 137 to 150 apply with respect to the licensing of database right as they apply to the licensing of copyright.

### **PART III RIGHTS IN PERFORMANCES**

#### **CHAPTER I INTRODUCTORY**

##### **Interpretation.**

201.(1) In this Part, unless the context otherwise requires—

“exclusive recording contract” means a contract between a performer and another person under which that person is entitled to the exclusion of all other persons, including the performer, to make recordings of one or more of his performances with a view to their being sold or let for hire, or shown or played in public;

“illicit recording” means—

(a) for the purposes of a performer’s rights, a recording of the whole or any substantial part of a performance of his which is made, otherwise than for private purposes, without his consent; or

(b) for the purposes of the rights of a person having recording rights, a recording of the whole or any substantial part of a performance subject to the exclusive recording contract if it is made, otherwise than for private purposes, without his consent or that of the performer,

and it is immaterial where the recording was made. It includes a recording falling to be treated as an illicit recording by virtue of any of the following provisions (which apply by virtue of section 215)—

section 40(8) (things done for the purposes of instruction or examination);

section 43(3) (recording by educational establishments of broadcasts);

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section 71(2) (transfer of copies of works in electronic form);

section 84(4) (incidental recording for purposes of broadcast);

section 86(2) (recording for the purposes of time-shifting); or

Section 87(2) (photographs of broadcasts),

but otherwise does not include a recording made in accordance with any of the provisions referred to in section 215. For the purposes of this definition, references to “infringing copies” in the sections referred to above should be read as “illicit recordings”;

“licence” means licences to undertake or authorise the undertaking of any of the acts restricted by the performer’s property rights;

“performance” means a dramatic performance (which includes dance and mime), a musical performance, a reading or recitation of a literary work, or a performance of a variety act or any similar presentation which is, or so far as it is, a live performance given by one or more individuals;

“qualifying country” means—

- (a) Gibraltar;
- (b) the United Kingdom or another EEA state; or
- (c) to the extent that an order under section 243 so provides, a country designated under that section as enjoying reciprocal protection;

“qualifying individual” means a citizen or subject of, or an individual resident in, a qualifying country;

“qualifying performance” means a performance given by a qualifying individual or a performance which takes place in a qualifying country;

“qualifying person” means a qualifying individual or a body corporate or other body having legal personality which—

- (a) is formed under the law of Gibraltar or another qualifying country; and

- (b) has in a qualifying country a place of business at which substantial business activity is carried on,

and in determining whether a substantial business activity is carried on at a place of business in any country, no account shall be taken of dealings in goods which are at all material times outside that country; and

“recording” in relation to a performance, means a film or sound recording—

- (a) made directly from the live performance;
- (b) made from a broadcast of the performance; or
- (c) made, directly or indirectly, from another recording of the performance.

(2) The following words and expressions have the same meaning in this Part as in Part I—

- (a) broadcast;
- (b) business;
- (c) communication to the public;
- (d) commercial publication;
- (e) country;
- (f) EEA and related expressions;
- (g) film;
- (h) Gibraltar ship, aircraft and hovercraft;
- (i) issue to the public;
- (j) lending;
- (k) literary work;
- (l) Minister
- (m) premises;

- (n) publication;
- (o) rental;
- (p) service provider;
- (q) signed;
- (r) sound recording; and
- (s) wireless broadcast.

(3) The provisions of—

- (a) section 8(2) and (3) (supplementary provisions relating to films); and
- (b) section 9(4)-(8) and 25(4) (supplementary provisions relating to broadcasting,

apply for the purposes of this Part, and in relation to an infringement of the rights conferred by this Part, as they apply for the purposes of Part I and in relation to an infringement of copyright.

(4) The rights conferred by this Part apply in relation to performances taking place before the commencement of this Part, but no act done before commencement, or in pursuance of arrangements made before commencement, shall be regarded as infringing those rights.

(5) The rights conferred by this Part are independent of—

- (a) any copyright in, or moral rights relating to, any work performed or any film or sound recording of, or broadcast including, the performance; and
- (b) any other right or obligation arising otherwise than under this Part.

(6) This Part applies to things done on a Gibraltar ship, aircraft or hovercraft as it applies to things done in Gibraltar.

## CHAPTER II ECONOMIC RIGHTS

### *Performers' rights*

**Recording and broadcast of live performance.**

202.(1) A performer's rights are infringed by a person who, without his consent—

- (a) makes a recording of the whole or any substantial part of a qualifying performance directly from the live performance;
- (b) broadcasts live the whole or any substantial part of a qualifying performance;
- (c) makes a recording of the whole or any substantial part of a qualifying performance directly from a broadcast of the live performance.

(2) In an action for infringement of a performer's rights brought by virtue of this section damages shall not be awarded against a defendant who shows that at the time of the infringement he believed on reasonable grounds that consent had been given.

**Performer's reproduction right.**

203.(1) A performer's rights are infringed by a person who, without his consent, makes a copy of a recording of the whole or any substantial part of a qualifying performance.

(2) It is immaterial whether the copy is made directly or indirectly; and making a copy of a recording includes making a copy which is transient or is incidental to some other use of the original recording.

(3) The right of a performer under this section to authorise or prohibit the making of such copies is referred to in this Chapter as the performer's "reproduction right".

(4) The performer's reproduction right is a property right ("performer's property right").

**Performer's distribution right.**

204.(1) A performer's rights are infringed by a person who, without his consent, issues to the public copies of a recording of the whole or any substantial part of a qualifying performance.

(2) References in this Chapter to the issue to the public of copies of a recording of a performance include the issue of the original recording of the live performance.

(3) The right of a performer under this section to authorise or prohibit the issue of copies to the public is referred to in this Chapter as the performer's "distribution right".

(4) The performer's distribution right is a property right ("performer's property right").

#### **Performer's rental and lending right.**

205.(1) A performer's rights are infringed by a person who, without his consent, rents or lends to the public copies of a recording of the whole or any substantial part of a qualifying performance.

(2) References in this Chapter to the rental or lending of copies of a recording of a performance include the rental or lending of the original recording of the live performance.

(3) The right of a performer under this section to authorise or prohibit the rental or lending of such copies is referred to in this Chapter as the performer's "rental right" and "lending right".

(4) The performer's rental right and lending right are property rights ("performer's property right").

#### **Performer's making available right.**

206.(1) A performer's rights are infringed by a person who, without his consent, makes available to the public a recording of the whole or any substantial part of a qualifying performance by electronic transmission in such a way that members of the public may access the recording from a place and at a time individually chosen by them.

(2) The right of a performer under this section to authorise or prohibit the making available to the public of a recording is referred to in this Chapter as the performer's "making available right".

(3) The performer's making available right is a property right ("performer's property right").

#### **Infringement of performer's rights by use of recording made without consent.**

207. A performer's rights are infringed by a person who, without his consent, shows or plays in public or communicates to the public the whole or any substantial part of a qualifying performance by means of a recording which was, and which that person knows or has reason to believe was, made without the performer's consent.

**Infringement of performer's rights by importing, possessing or dealing with illicit recordings.**

208.(1) A performer's rights are infringed by a person who, without his consent—

- (a) imports into Gibraltar otherwise than for his private and domestic use; or
- (b) in the course of a business possesses, sells or lets for hire, offers or exposes for sale or hire, or distributes,

a recording of a qualifying performance which is, and which that person knows or has reason to believe is, an illicit recording.

(2) Where in an action for infringement of a performer's rights brought by virtue of this section a defendant shows that the illicit recording was innocently acquired by him or a predecessor in title of his, the only remedy available against him in respect of the infringement is damages not exceeding a reasonable payment in respect of the act complained of.

(3) In subsection (2) "innocently acquired" means that the person acquiring the recording did not know and had no reason to believe that it was an illicit recording.

**Performer's right to equitable remuneration for exploitation of sound recording.**

209.(1) Where a commercially published sound recording of the whole or any substantial part of a qualifying performance is played in public or is communicated to the public otherwise than by its being made available to the public in the way mentioned in section 206(1) the performer is entitled to equitable remuneration from the owner of the copyright in the sound recording.

(2) In subsection (1), the reference to publication of a sound recording includes making it available to the public by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them.

(3) The right to equitable remuneration under this section may not be assigned by the performer except to a collecting society for the purpose of enabling it to enforce the right on his behalf.

The right is, however, transmissible by testamentary disposition or by operation of law as personal or moveable property; and it may be assigned or further transmitted by any person into whose hands it passes.

(4) The amount payable by way of equitable remuneration is as agreed by or on behalf of the persons by and to whom it is payable, subject to the following provisions.

(5) In default of agreement as to the amount payable by way of equitable remuneration, the person by or to whom it is payable may apply to the Court to determine the amount payable.

(6) A person to or by whom equitable remuneration is payable may also apply to the Court—

- (a) to vary any agreement as to the amount payable; or
- (b) to vary any previous determination of the Court as to that matter,

but except with the special leave of the Court no such application may be made within twelve months from the date of the previous determination.

An order made on an application under this subsection has effect from the date on which it is made or such later date as may be specified by the Court.

(7) On an application under this section the Court shall consider the matter and make such order as to the method of calculating and paying equitable remuneration as it may determine to be reasonable in the circumstances, taking into account the importance of the contribution of the performer to the sound recording.

(8) An agreement is of no effect in so far as it purports—

- (a) to exclude or restrict the right to equitable remuneration under this section; or
- (b) to prevent a person questioning the amount of equitable remuneration or to restrict the powers of the Court under this section.

(9) In this section, “collecting society” means a society or other organisation which has as its main objects, or one of its main objects, the exercise of the right to equitable remuneration on behalf of more than one performer.

*Rights of a person having recording rights.*

**Exclusive recording contracts and persons having recording rights.**

210.(1) References in this Chapter to a “person having recording rights”, in relation to a performance, are (subject to subsection (2)) to a person who is party to and has the benefit of an exclusive recording contract to which the performance is subject, or to whom the benefit of such a contract has been assigned, and who is a qualifying person.

(2) If a performance is subject to an exclusive recording contract but the person mentioned in subsection (1) is not a qualifying person, references in this Chapter to a “person having recording rights” in relation to the performance are to any person—

- (a) who is licensed by such a person to make recordings of the performance with a view to their being sold or let for hire, or shown or played in public; or
- (b) to whom the benefit of such a licence has been assigned,

and who is a qualifying person.

**Infringement of recording rights by recording a performance subject to an exclusive contract.**

211.(1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent or that of the performer, makes a recording of the whole or any substantial part of the performance.

(2) In an action for infringement of those rights brought by virtue of this section damages shall not be awarded against a defendant who shows that at the time of the infringement he believed on reasonable grounds that consent had been given.

**Infringement of recording rights by use of recording made without consent.**

212. A person infringes the rights of a person having recording rights in relation to a performance who, without his consent or, in the case of a qualifying performance, that of the performer—

- (a) shows or plays in public; or
- (b) communicates to the public,

the whole or any substantial part of the performance, by means of a recording which was, and which that person knows or has reason to believe was, made without the consent of the performer or the person who at the time the consent was given had recording rights in relation to the performance (or, if there was more than one such person, of all of them).

**Infringement of recording rights by importing, possessing or dealing with certain recordings.**

213.(1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent or, in the case of a qualifying performance, that of the performer—

- (a) imports into Gibraltar otherwise than for his private and domestic use; or
- (b) in the course of a business possesses, sells or lets for hire, offers or exposes for sale or hire, or distributes,

a recording of the performance which is, and which that person knows or has reason to believe is, an illicit recording.

(2) Where in an action for infringement brought by virtue of this section a defendant shows that the illicit recording was innocently acquired by him or a predecessor in title of his, the only remedy available against him in respect of the infringement is damages not exceeding a reasonable payment in respect of the act complained of.

(3) In subsection (2) “innocently acquired” means that the person acquiring the recording did not know and had no reason to believe that it was an illicit recording.

**Transmissibility of rights of a person having recording rights.**

214. The rights conferred by this Chapter on a person having recording rights are not assignable or transmissible. But this does not affect section 210, so far as it confers rights under this Chapter on a person to whom the benefit of a contract or licence is assigned.

*Exceptions*

**Acts permitted despite rights conferred by this Chapter.**

215. The rights conferred by this Chapter are not infringed by an act which by virtue of any of the following provisions would not infringe copyright—

- section 35 (introductory provisions);
- section 36 (making of temporary copies);
- section 38 (criticism, review and news reporting);
- section 39 (incidental inclusion of copyright material);
- section 40 (things done for the purposes of instruction or examination);
- section 42 (performing, playing or showing work in educational establishment);
- section 43 (recording by educational establishment of broadcasts);
- section 45 (lending of copies by educational establishments);
- section 46 (libraries and archives: introductory);
- section 47 (copying by librarians: articles in periodicals);
- section 48 (copying by librarians: parts of published works);
- section 49 (restrictions on production of multiple copies of the same material);
- section 50 (lending of copies by librarians);
- section 54 (copy of work required to be made as condition of export);
- section 55 (parliamentary and judicial proceedings);
- section 56 (statutory inquiries);
- section 57 (material open to public inspection or on official register);
- section 58 (material communicated to the Crown in the course of public business);
- section 59 (public records);

- section 60 (acts done under statutory authority);
- section 71 (transfers of copies of works in electronic form);
- section 73 (use of notes or recordings of spoken words in certain cases);
- section 76 (recording of folk songs);
- section 81 (lending to public of copies of certain works);
- section 83 (playing of sound recordings for purposes of club, society etc.);
- section 84 (incidental recording for purposes of broadcast);
- section 85 (recording for purposes of supervision and control of broadcasts and other services);
- section 88 (free public showing or playing of broadcast);
- section 89 (reception and re-transmission of wireless broadcast by cable);
- section 90 (royalty or other sum payable in pursuance of section 89(4));
- section 91 (provision of sub-titled copies of broadcast); and
- section 92 (recording for archival purposes).

**Power of Court to give consent on behalf of performer in certain cases.**

216.(1) The Court may, on the application of a person wishing to make a copy of a recording of a performance, give consent in a case where the identity or whereabouts of the person entitled to the reproduction right cannot be ascertained by reasonable inquiry.

(2) Consent by the Court has effect as consent of the person entitled to the reproduction right for the purposes of—

- (a) the provisions of this Chapter relating to performer's rights; and

- (b) section 237 (criminal liability: consent in relation to qualifying performances),

and may be given subject to any conditions specified in the Court's order.

(3) The Court shall take into account the following factors—

- (a) whether the original recording was made with the performer's consent and is lawfully in the possession or control of the person proposing to make the further recording; and
- (b) whether the making of the further recording is consistent with the obligations of the parties to the arrangements under which, or is otherwise consistent with the purposes for which, the original recording was made.

(4) Where the Court gives consent under this section it shall, in default of agreement between the applicant and the person entitled to the reproduction right, make such order as it thinks fit as to the payment to be made to that person in consideration of consent being given.

(5) The Court shall not give consent under subsection (1) except after the service or publication of such notices as the Court may in any particular case direct.

### *Duration of rights*

#### **Duration of performer's rights.**

217.(1) The rights conferred by this Chapter in relation to a performance expire—

- (a) at the end of the period of 50 years from the end of the calendar year in which the performance takes place; or
- (b) if during that period a recording of the performance is released, 50 years from the end of the calendar year in which it is released,

subject as follows.

(2) Where a performer is not a Gibraltar or a national of the United Kingdom or another EEA state, the duration of the rights conferred by this Chapter in relation to his performance is that to which the performance is entitled in the country of which he is a national, provided that does not exceed the period which would apply under subsection (1).

(3) If or to the extent that the application of subsection (2) would be at variance with an international obligation to which Gibraltar became subject prior to 29 October 1993, the duration of the rights conferred by this Chapter shall be as specified in subsection (1).

(4) For the purposes of subsection (1), a recording is “released” when it is first published, played or shown in public or communicated to the public; but in determining whether a recording has been released no account shall be taken of any unauthorised act.

### *Performer’s property rights*

#### **Performer’s property rights.**

218.(1) References in this Chapter to the consent of the performer shall be construed in relation to a performer’s property rights as references to the consent of the rights owner.

(2) Where different persons are (whether in consequence of a partial assignment or otherwise) entitled to different aspects of a performer’s property rights in relation to a performance, the rights owner for any purpose of this Chapter is the person who is entitled to the aspect of those rights relevant for that purpose.

(3) Where a performer’s property rights (or any aspect of them) is owned by more than one person jointly, references in this Chapter to the rights owner are to all the owners, so that, in particular, any requirement of the licence of the rights owner requires the licence of all of them.

#### **Assignments and licences.**

219.(1) A performer’s property rights are transmissible by assignment, by testamentary disposition or by operation of law as personal or moveable property.

(2) An assignment or other transmission of a performer’s property rights may be partial, that is, limited so as to apply—

- (a) to one or more, but not all, of the things requiring the consent of the rights owner;
- (b) to part, but not the whole, of the period for which the rights are to subsist.

(3) An assignment of a performer's property rights is not effective unless it is in writing signed on or on behalf of the assignor.

(4) A licence granted by the owner of a performer's property rights is binding on every successor in title to his interest in the rights, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or person deriving title from such a purchaser; and references in this Chapter to doing anything with, or without, the licence of the rights owner shall be construed accordingly.

(5) The provisions of sections 137 to 150 and 163 shall have effect with respect to the licensing of a performer's property rights.

### **Prospective ownership of a performer's property rights.**

220.(1) This section applies where by an agreement made in relation to a future recording of a performance, and signed by or on behalf of the performer, the performer purports to assign his performer's property rights, in whole or in part, to another person.

(2) If, on the rights coming into existence the assignee or another person claiming under him would be entitled as against all other persons to require the rights to be vested in him, they shall vest in the assignee or his successor in title by virtue of this subsection.

(3) A licence granted by a prospective owner of a performer's property rights is binding on every successor in title to his interest (or prospective interest) in the rights, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser.

References in this Chapter to doing anything with, or without, the licence of the rights owner shall be construed accordingly.

(4) In subsection (3), "prospective owner" in relation to a performer's property rights means a person who is prospectively entitled to those rights by virtue of such an agreement as is mentioned in subsection (1).

### **Exclusive licences.**

221.(1) In this Chapter an "exclusive licence" means a licence in writing signed by or on behalf of the owner of a performer's property rights authorising the licensee to the exclusion of all other persons, including the person granting the licence, to do anything requiring the consent of the rights owner.

(2) The licensee under an exclusive licence has the same rights against a successor in title who is bound by the licence as he has against the person granting the licence.

**Performer's property rights to pass under will with unpublished original recording.**

222. Where under a bequest (whether general or specific) a person is entitled beneficially or otherwise to any material thing containing an original recording of a performance which was not published before the death of the testator, the bequest shall, unless a contrary intention is indicated in the testator's will or a codicil to it, be construed as including any performer's rights in relation to the recording to which the testator was entitled immediately before his death.

**Presumption of transfer of rental right in case of film production agreement.**

223.(1) Where an agreement concerning film production is concluded between a performer and a film producer (including any agreement having effect between those persons whether made by them directly or through intermediaries), the performer shall be presumed, unless the agreement provides to the contrary, to have transferred to the film producer any rental right in relation to the film arising from the inclusion of a recording of his performance in the film.

(2) Where this section applies, the absence of signature by or on behalf of the performer does not exclude the operation of section 220 (effect of purported assignment of future rights).

(3) Section 224 (right to equitable remuneration where rental right transferred) applies where there is a presumed transfer by virtue of this section as in the case of an actual transfer.

**Right to equitable remuneration where rental right transferred.**

224.(1) Where a performer has transferred his rental right (including any arrangement having that effect, whether made by them directly or through intermediaries) concerning a sound recording or a film to the producer of the sound recording or film, he retains the right to equitable remuneration for the rental.

(2) The right to equitable remuneration under this section may not be assigned by the performer except to a collecting society for the purpose of enabling the collecting society to exercise that right on his behalf.

That right is, however, transmissible by testamentary disposition or by operation of law, as personal or moveable property; and it may be assigned or further transmitted by any person into whose hands it passes.

(3) Equitable remuneration under this section is payable by the person for the time being entitled to the rental right, that is, the person to whom the right was transferred or any successor in title of his.

(4) The amount payable by way of equitable remuneration is as agreed by or on behalf of the persons by and to whom it is payable, subject to section 225 (reference of amount to Court).

(5) An agreement is of no effect in so far as it purports to exclude or restrict the right to equitable remuneration under this section.

(6) In this section “collecting society” means a society or other organisation which has as its main object, or one of its main objects, the exercise of the right to equitable remuneration on behalf of more than one performer.

**Equitable remuneration: reference of amount to Court.**

225.(1) In default of agreement as to the amount payable by way of equitable remuneration under section 224, the person by or to whom it is payable may apply to the Court to determine the amount payable.

(2) A person to or by whom equitable remuneration is payable may also apply to the Court—

- (a) to vary any agreement as to the amount payable; or
- (b) to vary any previous determination of the Court as to that matter,

but except with the special leave of the Court no such application may be made within twelve months from the date of a previous determination.

An order made on an application under this subsection has effect from the date on which it is made or such later date as may be specified by the Court.

(3) On an application under this section the Court shall consider the matter and make such order as to the method of calculating and paying equitable remuneration as it may determine to be reasonable in the circumstances, taking into account the importance of the contribution of the performer to the film or sound recording.

(4) Remuneration shall not be considered inequitable merely because it was paid by way of a single payment or at the time of the transfer of the rental right.

(5) An agreement is of no effect in so far as it purports to prevent a person questioning the amount of equitable remuneration or to restrict the powers of the Court under this section.

**Infringement actionable by rights owner.**

226.(1) An infringement of a performer's property rights is actionable by the rights owner.

(2) In an action for infringement of a performer's property rights all such relief by way of damages, injunctions, accounts or otherwise is available to the plaintiff as is available in respect of the infringement of any other property right.

(3) This section has effect subject to the following provisions of this Chapter.

**Provisions as to damages in infringement action.**

227.(1) Without prejudice to any other remedy, where in an action for infringement of a performer's property rights it is shown that at the time of the infringement the defendant did not know, and had no reason to believe, that the rights subsisted in the recording to which the action relates, the plaintiff is not entitled to damages against him.

(2) The Court may in an action for infringement of a performer's property rights having regard to all the circumstances, and in particular to—

- (a) the flagrancy of the infringement; and
- (b) any benefit accruing to the defendant by reason of the infringement,

award such additional damages as the justice of the case may require.

**Rights and remedies of exclusive licensee.**

228.(1) An exclusive licensee has, except against the owner of a performer's property rights, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment.

(2) His rights and remedies are concurrent with those of the rights owner; and references in the relevant provisions of this Chapter to the rights owner shall be construed accordingly.

(3) In an action brought by an exclusive licensee by virtue of this section a defendant may avail himself of any defence which would have been available to him if the action had been brought by the rights owner.

**Exercise of concurrent rights.**

229.(1) Where an action for an infringement of a performer's property rights brought by the rights owner or an exclusive licensee relates (in whole or in part) to an infringement in respect of which they have concurrent rights of action, the rights owner or, as the case may be, the exclusive licensee may not, without the leave of the Court, proceed with the action unless the other is either joined as claimant or added as defendant.

(2) A rights owner or exclusive licensee who is added as defendant in pursuance of subsection (1) is not liable for any costs in the action unless he takes part in the proceedings.

(3) The above provisions do not affect the granting of interlocutory relief on an application by the rights owner or exclusive licensee alone.

(4) Where an action for infringement of a performer's property rights is brought which relates, in whole or in part, to an infringement in respect of which the rights owner and an exclusive licensee have or had concurrent rights of action—

- (a) the Court shall in assessing damages take into account—
  - (i) the terms of the licence; and
  - (ii) any pecuniary remedy already awarded or available to either of them in respect of the infringement;
- (b) no account of profits shall be directed if an award of damages has been made, or an account of profits has been directed, in favour of the other of them in respect of the infringement;
- (c) the Court shall, if an account of profits is directed, apportion the profits between them as the Court thinks just, subject to any agreement between the rights owner and the exclusive licensee,

and these provisions apply whether or not the rights owner and the exclusive licensee are both parties to the action.

(5) The owner of a performer's property rights shall notify any exclusive licensee having concurrent rights before applying for an order under section 234 (order for delivery up) or exercising the right conferred by section 235 (right of seizure). The Court may on the application of the licensee make such order under section 234 or, as the case may be, prohibiting or permitting the exercise by the rights owner of the rights conferred by section 235 as it thinks fit having regard to the terms of the licence.

**Requirement for signatures and its application in relation to body corporate.**

230.(1) The requirement that an instrument be signed by or on behalf of a person is also satisfied in the case of a body corporate by the affixing of its seal.

(2) The requirement that an instrument be signed by a person is also satisfied in the case of a body corporate by signature on behalf of the body or the affixing of its seal.

*Non-property rights*

**Performer's non-property rights.**

231.(1) The rights conferred on a performer by—

section 202 (consent required for recording of live performance);

section 207 (infringement of performer's rights by use of recording made without consent); and

section 208 (infringement of performer's rights importing, possessing or dealing with illicit recording);

are not assignable or transmissible, except to the following extent.

They are referred to in this Chapter as “performer's non-property rights”.

(2) On the death of a person entitled to any such right—

(a) the right passes to such person as he may by testamentary disposition specifically direct; and

(b) if or to the extent that there is no such direction, the right is exercisable by his personal representatives.

(3) References in this Chapter to the performer, in the context of the person having any such right, shall be construed as references to the person for the time being entitled to exercise those rights.

(4) Where by virtue of subsection (2)(a) a right becomes exercisable by more than one person, it is exercisable by each of them independently of the other or others.

(5) Any damages recovered by personal representatives by virtue of this section in respect of an infringement after a person's death shall devolve as part of his estate as if the right of action had subsisted and been vested in him immediately before his death.

#### **Consent.**

232.(1) Consent for the purposes of this Chapter by a person having a performer's non-property rights, or by a person having recording rights, may be given in relation to a specific performance, a specified description of performances or performances generally, and may relate to past or future performances.

(2) A person having recording rights in a performance is bound by any consent given by a person through whom he derives his rights under the exclusive recording contract or licence in question, in the same way as if the consent had been given by him.

(3) Where a performer's non property right passes to another person, any consent binding on the person previously entitled binds the person to whom the right passes in the same way as if the consent had been given by him.

#### **Remedies for infringement of a performer's rights and recording rights.**

233.(1) An infringement of a performer's non-property rights or a right conferred by this Chapter on a person having recording rights is actionable by the person entitled to the right as a breach of statutory duty.

#### ***Delivery up or seizure of illicit recordings***

#### **Order of the Court for delivery up.**

234.(1) Where a person has in his possession, custody or control in the course of a business an illicit recording of a performance, a person having performer's rights or recording rights in relation to the performance under this Chapter may apply to the Court for an order that the recording be delivered up to him or to such other person as the Court may direct.

This version is out of date

(2) An application shall not be made after the end of the period of six years from the date on which the recording in question was made unless the person entitled to apply for an order—

- (a) is an infant or of unsound mind; or
- (b) is prevented by fraud or concealment from discovering the facts entitling him to apply.

In such circumstances, an application may be made at any time before the end of the period of six years from the date on which he ceased to be an infant or of unsound mind, or, as the case may be, could with reasonable diligence have discovered those facts.

(3) No order under subsection (1) shall be made unless the Court also makes, or it appears to the Court that there are grounds for making, an order under section 236 (order as to disposal of the recording in question).

(4) A person to whom a recording is delivered up in pursuance of an order under this section shall, if an order under section 236 as to disposal of the recording is not made, retain it pending the making of such an order, or the decision not to make such an order.

(5) Nothing in this section affects any power of the Court.

#### **Seizure of illicit recording.**

235.(1) An illicit recording of a performance which is found exposed or otherwise immediately available for sale or hire, and in respect of which a person would be entitled to apply for an order under section 234, may be seized and detained by the performer or a person authorised by him. The right to seize and detain is exercisable subject to the following conditions and is subject to any decision of the Court under section 236 (order as to disposal of the illicit recording).

(2) Before anything is seized under this section notice of time and place of the proposed seizure must be given to a local police station.

(3) A person may for the purpose of exercising the right conferred by this section enter premises to which the public have access but may not seize anything in the possession, custody or control of a person at a permanent or regular place of business of his and may not use force.

(4) At the time when anything is seized under this section there shall be left at the place where it was seized a notice in a form prescribed by the

Minister containing adequate details as to the person by whom or on whose authority the seizure is made and the grounds on which it is made.

**Order as to disposal of illicit recording.**

236.(1) An application may be made to the Court for an order that an illicit recording of a performance delivered up in pursuance of an order under section 234 or 238 or seized and detained in pursuance of the right conferred by section 235, shall be—

- (a) forfeited to such person having performer's rights or recording rights in relation to the performance as the Court may direct; or
- (b) destroyed or otherwise dealt with as the Court may think fit,

or for a decision that no such order should be made.

(2) In considering what order (if any) should be made, the Court shall consider whether other remedies available in an action for infringement of the rights conferred by this Chapter would be adequate to compensate the person or persons entitled to the rights and to protect their interests.

(3) Provision shall be made by the rules of the Court as to the service of notice on persons having an interest in the copy or other articles, and any such person is entitled—

- (a) to appear in proceedings for an order under this section, whether or not he was served with notice; and
- (b) to appeal against any order made, whether or not he appeared,

and an order shall not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

(4) Where there is more than one person interested in a recording, the Court shall make such order as it thinks just and may (in particular) direct that the recording be sold, or otherwise dealt with, and the proceeds divided.

(5) If the Court decides that no order should be made under this section, the person in whose possession, custody or control the recording was before being delivered up or seized is entitled to its return.

(6) References in this section to a person having an interest in a recording include any person in whose favour an order could be made in respect of the recording under this section or under section 135 or the Trade Marks Act.

### *Offences*

#### **Criminal liability for making, dealing with or using illicit recordings.**

237.(1) A person commits an offence who without sufficient consent—

- (a) makes for sale or hire;
- (b) imports into Gibraltar otherwise than for his private and domestic use;
- (c) in the course of a business—
  - (i) sells or lets for hire;
  - (ii) offers or exposes for sale or hire; or
  - (iii) distributes,

a recording which is, and which he knows or has reason to believe is, an illicit recording.

(2) In subsection (1) “sufficient consent” means—

- (a) in the case of a qualifying performance, the consent of the performer; and
- (b) in case of a non-qualifying performance subject to an exclusive recording contract—
  - (i) for the purposes of subsection (1)(a) (making of a recording), the consent of the performer or the person having recording rights; and
  - (ii) for the purposes of subsection (1)(b) and (c) (dealing with or using recording), the consent of the person having recording rights.

The references in this subsection to the person having recording rights are to the person having those rights at the time the consent is given or, if there is more than one such person, to all of them.

(3) No offence is committed under subsection (1) by the commission of an act which by virtue of any provision of section 215 may be done without infringing the rights conferred by this Chapter.

(4) A person guilty of an offence under subsection (1) (a), (b) or (c)(iii) is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum or to both; or
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years, or to both.

(5) A person guilty of any other offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale or imprisonment for a term not exceeding six months or both.

#### **Order for delivery up in criminal proceedings.**

238.(1) The Court before which proceedings are brought against a person for an offence under section 237 may, if satisfied that at the time of his arrest or charge he had in his possession, custody or control in the course of a business an illicit recording of a performance, order that it be delivered up to a person having performer's rights or recording rights in relation to the performance or to such other person as the Court may direct.

(2) For this purpose a person shall be treated as charged with an offence when he is orally charged or is served with a summons or indictment.

(3) An order may be made by the Court of its own motion or on the application of the prosecutor, and may be made whether or not the person is convicted of the offence, but shall not be made—

- (a) after the end of the period specified in section 234(2); or
- (b) if it appears to the Court unlikely that any order will be made under section 236 (order as to disposal of illicit recording).

(4) An appeal lies from an order made under this section by the Court to the Court of Appeal.

(5) A person to whom an illicit recording is delivered up in pursuance of an order under this section shall retain it pending the making of an order, or the decision not to make an order, under section 236.

(6) Nothing in this section affects the powers of the Court as to forfeiture under section 248 of the Criminal Procedure Act (general provisions as to forfeiture in criminal proceedings).

#### **Search warrants.**

239.(1) Where a magistrate is satisfied by information on oath given by a constable that there are reasonable grounds for believing—

- (a) that an offence under section 237 has been or is about to be committed in any premises; and
- (b) that evidence that such an offence has been or is about to be committed is in those premises,

he may issue a warrant authorising a constable to enter and search the premises, using such reasonable force as is necessary.

(2) A warrant under this section—

- (a) may authorise persons to accompany any constable executing the warrant; and
- (b) remains in force for 28 days from the date of its issue.

(3) In executing a warrant issued under this section a constable may seize an article if he reasonably believes that it is evidence that any offence under section 237 has been or is about to be committed.

#### **False representation of authority to give consent.**

240.(1) It is an offence for a person to represent falsely that he is authorised by any person to give consent for the purposes of this Chapter in relation to a performance, unless he believes on reasonable grounds that he is so authorised.

(2) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both.

#### **Offence by body corporate: liability of officers.**

241.(1) Where an offence under this Chapter committed by a body corporate is proved to have been committed with the consent or connivance of a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body

corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In relation to a body corporate whose affairs are managed by its members “director” means a member of the body corporate.

#### **Injunctions against service providers.**

242.(1) The Court shall have the power to grant an injunction against a service provider, where that service provider has actual knowledge of another person using their service to infringe a performer’s property right.

(2) In determining whether a service provider has actual knowledge for the purpose of this section, the Court shall take into account all matters which appear to it in the particular circumstances to be relevant.

#### *Extension of protection*

#### **Countries enjoying reciprocal protection.**

243.(1) The Minister may by regulations designate as enjoying reciprocal protection under this Part—

- (a) a Convention country; or
- (b) a country as to which the Minister is satisfied that provision has been or will be made under its law giving adequate protection for Gibraltar performances.

(2) A “Convention country” means a country which is party to a Convention relating to performers’ rights to which Gibraltar is also subject.

(3) A “Gibraltar performance” means a performance—

- (a) given by an individual who is a Gibraltarian or is domiciled or resident in Gibraltar; or
- (b) taking place in Gibraltar.

(4) If the law of that country provides adequate protection only for certain descriptions of performance, the regulations under subsection (1)(b) designating that country shall contain provision limiting to a corresponding extent the protection afforded by this Chapter in relation to performances connected with that country.

### **CHAPTER III**

## MORAL RIGHTS

### *Right to be identified as performer*

#### **The right to be identified as the performer.**

244.(1) Subject to section 246, whenever a person—

- (a) organises or promotes a qualifying performance that is given in public;
- (b) broadcasts a qualifying performance;
- (c) communicates to the public a sound recording of a qualifying performance; or
- (d) issues to the public copies of such a recording,

the performer has the right to be identified as such.

If the performer uses a pseudonym, initials or other form of identification, that form shall be used to identify his performance; otherwise any reasonable form of identification may be used.

(2) The right of a performer under subsection (1) is—

- (a) in the case of a performance that is given in public, to be identified in any programme accompanying the performance or in some other manner likely to bring his identity to the notice of a person seeing or hearing the performance;
- (b) in the case of a sound recording that is issued to the public, to be identified in or on each copy or, if that is not appropriate, in some other manner likely to bring his identity to the notice of a person acquiring a copy;
- (c) in the case of a performance that is broadcast, to be identified in a manner likely to bring his identity to the notice of a person seeing or hearing the broadcast; and
- (d) in the case of a sound recording that is communicated to the public, to be identified in a manner likely to bring his identity to the notice of a person hearing the communication.

(3) If or to the extent that the performance is given by a group—

(a) the right conferred by this section on a performer is a right to have the group identified (and not a right to be identified individually);

(b) subsections (1) and (2) apply with the necessary modifications.

(4) In this Chapter “group” means two or more performers who have a particular name by which they may be identified collectively.

(5) The right conferred by this section applies in relation to the whole or any substantial part of a performance.

**Requirement that right be asserted.**

245.(1) A person does not infringe the right conferred by section 244 (right to be identified as performer) by doing any of the acts mentioned in that section unless the right has been asserted in accordance with the following provisions so as to bind him in relation to that act.

(2) The right may be asserted generally, or in relation to any specified act or description of acts—

(a) on an assignment of a performer’s property rights in the work, by including in the instrument effecting the assignment a statement that the performer asserts in relation to the performance his right to be identified; or

(b) by instrument in writing signed by the performer.

An assertion which relates to a performance by a group may be made only by a person acting on behalf of the group.

(3) The persons bound by an assertion of the right under subsection (2) are—

(a) in the case of an assertion under subsection (2)(a), the assignee and anyone claiming through him, whether or not he has notice of the assertion; and

(b) in the case of an assertion under subsection (2)(b) anyone to whose notice the assertion is brought.

(4) In an action for infringement of the right the Court shall, in considering remedies, take into account any delay in asserting the right.

**Exceptions to right.**

246.(1) The right referred to in section 244 (right to be identified as performer) does not apply in relation to any performance given for the purposes of—

- (a) reporting current events; or
- (b) advertising any goods or services.

(2) The right referred to in section 244 (right to be identified as performer) is not infringed by an act which, by virtue of section 215, would not infringe any of the following rights conferred by Chapter II of this Part—

- (a) fair dealing (as detailed in section 38), so far as it relates to the reporting of current events by means of a sound recording, film or broadcast;
- (b) the incidental inclusion of a performance or recording (as detailed in section 39);
- (c) things done for the purpose of examination questions (as detailed in section 40);
- (d) things done for the purposes of parliamentary and judicial proceedings (as detailed in section 55); and
- (e) things done for the purposes of statutory inquiries (as detailed in section 56).

(3) The right referred to in section 244 (right to be identified as performer) does not apply if it would be impractical to identify the performer for any reason, including the nature of the performance in the manner in which the performance is used.

### *Right to object to derogatory treatment of work*

#### **The right to object to derogatory treatment of work.**

247.(1) Subject to section 248, the performer of a qualifying performance has a right which is infringed if—

- (a) the performance is broadcast with modifications that are prejudicial to the reputation of the performer; or

- (b) by means of a sound recording the performance is played in public, communicated or issued to the public, with such modifications.

(2) The right conferred by subsection (1) is also infringed by a person who—

- (a) possesses in the course of business; or
- (b) sells or lets for hire, or offers or exposes for sale or hire; or
- (c) distributes,

an article which is, and which he knows or has reason to believe is, an infringing article.

(3) An “infringing article” means a sound recording of a qualifying performance with modifications that are prejudicial to the reputation of the performer.

(4) The right conferred by subsection (1) applies in relation to the whole or any part of a performance.

#### **Exceptions to right.**

248.(1) The right referred to in section 247(1)—

- (a) does not apply to any performance given for the purpose of reporting current events; and
- (b) is not infringed by anything done for the avoidance of the commission of an offence or complying with a duty imposed by or under an enactment, provided, where the performer is identified at the time of the relevant act or has previously been identified in or on copies of a sound recording issued to the public, that there is sufficient disclaimer.

(2) For the purposes of this section, “sufficient disclaimer”, in relation to an act capable of infringing the right, means a clear and reasonably prominent indication—

- (a) given at the time of the act; and
- (b) if the performer is then identified, appearing along with the identification,

that the modifications in question were made without the performer's consent.

### *Supplementary*

#### **Duration of rights.**

249. The rights of a performer conferred by this Chapter continue to subsist for so long as the rights conferred by Chapter II (economic rights) subsist in the qualifying performance.

#### **Consent and waiver of rights.**

250.(1) It is not an infringement of the rights conferred by this Chapter to do any act to which the person entitled to the right has consented.

(2) Any of those rights may be waived by instrument in writing and signed by the person giving up the right.

(3) A waiver—

- (a) may relate to a specific performance, to performances of a specific description or to performances generally, and may relate to existing or future performances; and
- (b) may be conditional or unconditional and may be expressed to be subject to revocation,

and if made in favour of the owner or prospective owner of a performer's property rights in the performance or performances to which it relates, it shall be presumed to extend to his licensees and successors in title unless a contrary intention is expressed.

(4) In respect of a performance by a group, consent or waiver of the right conferred by section 244 may be given or made only by a person acting on behalf of the group.

(5) Nothing in this Chapter shall exclude the general law of contract or estoppel in relation to an informal waiver or other transaction in relation to the rights conferred by this Chapter.

(6) Where a right in a performance by a group becomes exercisable by another person, subsections (1)-(5) apply as if the person were a member of the group.

**Moral rights not assignable.**

251. The rights conferred by this Chapter are not assignable.

**Transmission of moral rights on death.**

252.(1) On the death of a person entitled to the rights conferred by this Chapter–

- (a) the right passes to such persons as he may by testamentary disposition specifically direct;
- (b) if there is no such direction but the performer's property rights in respect of the performance form part of his estate, the right passes to the person to whom the performer's property right passes; and
- (c) if or to the extent that the right does not pass under paragraph (a) or (b) it is exercisable by his personal representatives.

(2) Where a performer's property rights pass in part to one person and in part to another, as for example where a bequest is limited so as to apply–

- (a) to one or more, but not all, of the things the rights owner has the exclusive right to do or authorise; or
- (b) to part, but not the whole, of the period for which the rights subsist,

any right which passes with the performer's property rights by virtue of subsection (1) is correspondingly divided.

(3) Where by virtue of subsection (1)(a) or (b) a right becomes exercisable by more than one person–

- (a) it may, in the case of the right conferred by section 244 (right to be identified as performer), be asserted by any of them;
- (b) it is, in the case of the right conferred by section 247 (right to object to derogatory treatment of work), a right exercisable by each of them and is satisfied in relation to any of them if he consents to the treatment or act in question; and
- (c) any waiver of the right in accordance with section 250 by one of them does not affect the rights of the others.

(4) A consent or waiver previously given or made binds any person to whom a right passes by virtue of subsection (1).

(5) Any damages recovered by personal representatives by virtue of this section in respect of an infringement after a person's death shall devolve as part of his estate as if the right of action had subsisted and been vested in him immediately before his death.

### *Remedies for infringement of moral rights*

#### **Remedies for infringement of a performer's moral rights.**

253.(1) An infringement of a right conferred by this Chapter is actionable as a breach of statutory duty owed to the person entitled to the right.

(2) Where proceedings for infringement of the right conferred by section 244 relate to a performance by a group, it shall be a defence to prove—

- (a) that a person claiming to act on behalf of the group consented to the defendant's conduct or purported to waive the right; and
- (b) that the defendant reasonably believed that the person was acting on behalf of the group.

(3) In proceedings for infringement of the right to object to derogatory treatment of work, the Court may, if it thinks it is an adequate remedy in the circumstances, grant an injunction prohibiting the act unless a sufficient disclaimer is made, in such terms and in such a manner as may be approved by the Court, dissociating the performer from the broadcast or sound recording of the performance.

## **PART IV ARTISTS RESALE RIGHT**

### **Interpretation.**

254.(1) In this Part—

“author”, in relation to a work, means the person who creates it;

“collecting society” has the meaning given in section 266(5);

“contract date”, in relation to a sale, means the time at which the contract of sale was made;

“EEA state” means a member State, Iceland, Liechtenstein or Norway and a reference to EEA State shall be deemed to include a reference to Gibraltar;

“qualifying body” has the meaning given in section 259(4);

“qualifying individual” has the meaning given in section 262(3);

“resale” is to be construed in accordance with section 264;

“resale right” has the meaning given in section 255 (and, unless the context otherwise requires, includes a share in resale right);

“resale royalty” has the meaning given in section 255;

“sale” is to be construed in accordance with subsection (2);

“sale price” has the meaning given in section 255(4);

“work” has the meaning given in section 256;

“work of joint authorship” has the meaning given in section 257(4).

(2) The following provisions apply in relation to the construction of “sale” and “contract of sale”–

- (a) a contract of sale of goods is a contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price;
- (b) there may be a contract of sale between one part owner and another;
- (c) a contract of sale may be absolute or conditional;
- (d) where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale;
- (e) where under a contract of sale the transfer of the property in the goods is to take place at a future time or subject to some condition later to be fulfilled the contract is called an agreement to sell;

- (f) an agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

**Artist's resale right.**

255.(1) The author of a work in which copyright subsists shall, in accordance with this Part, have a right ("resale right") to a royalty on any sale of the work which is a resale subsequent to the first transfer of ownership by the author ("resale royalty").

(2) Resale right in a work shall continue to subsist so long as copyright subsists in the work.

(3) The royalty shall be an amount based on the sale price calculated in accordance with Schedule 4.

(4) The sale price is the price obtained for the sale, net of the tax payable on the sale, and converted into Euro at the European Central Bank reference rate prevailing at the contract date.

(5) For the purposes of subsection (1), "transfer of ownership by the author" includes in particular—

- (a) transmission of the work from the author by testamentary disposition, or in accordance with the rules of intestate succession;
- (b) disposal of the work by the author's personal representatives for the purposes of the administration of his estate; and
- (c) disposal of the work by an official receiver for the purposes of the realisation of the author's estate.

**Works covered.**

256.(1) For the purposes of this Part, "work" means any work of graphic or plastic art such as a picture, a collage, a painting, a drawing, an engraving, a print, a lithograph, a sculpture, a tapestry, a ceramic, an item of glassware or a photograph.

(2) However, a copy of a work is not to be regarded as a work unless the copy is one of a limited number which have been made by the author or under his authority.

**Joint authorship.**

257.(1) In the case of a work of joint authorship, the resale right shall belong to the authors as owners in common.

(2) The right shall be held in equal shares or in such other shares as may be agreed.

(3) Such an agreement must be in writing signed by or on behalf of each party to the agreement.

(4) “Work of joint authorship” means a work created by two or more authors.

#### **Proof of authorship.**

258.(1) Where a name purporting to be that of the author appeared on the work when it was made, the person whose name appeared shall, unless the contrary is proved, be presumed to be the author of the work.

(2) In the case of a work alleged to be a work of joint authorship, paragraph (1) applies in relation to each person alleged to be one of the authors.

#### **Assignment etc.**

259.(1) Resale right is not assignable.

(2) Any charge on a resale right is void.

(3) Subsection (1) does not prevent the transfer of a resale right which was transmitted to a qualifying body under section 261 (or is deemed to have been so transmitted under section 268), provided that the transfer is to another qualifying body.

(4) A qualifying body is a body which—

- (a) is a charity within the meaning of the Charities Act; or
- (b) is a foreign charity, and has its central administration in an EEA state or a country listed in Schedule 5.

(5) In subsection (4) “foreign charity” means a body which is established outside Gibraltar for purposes similar to those for which a body within subsection (4)(a) may be established, and which is subject to similar rules regarding the distribution and application of its assets.

**Waiver etc.**

260.(1) A waiver of a resale right shall have no effect.

(2) An agreement to share or repay resale royalties shall be void.

(3) Subsection (2) does not affect any agreement made for the purposes of the management of resale right in accordance with section 266.

**Persons entitled on succession.**

261.(1) Subject to section 262(2), resale right in respect of a work is transmissible as personal or moveable property by testamentary disposition or in accordance with the rules of intestate succession; and it may be further so transmitted by any person into whose hands it passes.

(2) Resale right may be so transmitted only to—

(a) a natural person; or

(b) a qualifying body.

(3) Notwithstanding subsection (2), a resale right may be transmitted as bona vacantia.

(4) Where a resale right is transmitted to more than one person, it shall belong to them as owners in common.

**Requirements as to nationality etc.**

262.(1) Resale right may be exercised in respect of a sale only by a person who, at the contract date, is—

(a) a qualifying individual; or

(b) a qualifying body.

(2) Resale right may be transmitted under section 261 only by a person who, at the time of his death, is a qualifying individual.

(3) A qualifying individual is a natural person who is—

(a) a national of an EEA state; or

(b) a national of a country listed in Schedule 5.

(4) Nothing in this section prevents a resale right from being exercised after it has been transmitted as bona vacantia.

(5) Resale right may vest by operation of law in—

- (a) a personal representative of a deceased person; or
- (b) an official receiver,

and nothing in this section prevents a resale right from being exercised by any person acting in that capacity.

#### **Trusts.**

263. Nothing in sections 259, 261 or 262 prevents a resale right from being—

- (a) held, and exercised in respect of a sale, by any person acting as trustee for the person who would otherwise be entitled to exercise the right (“the beneficiary”); or
- (b) transferred to such a trustee, or from the trustee to the beneficiary.

#### **“Resale”.**

264. (1) The sale of a work may be regarded as a resale notwithstanding that the first transfer of ownership was not made for a money (or any) consideration.

(2) The sale of a work may be regarded as a resale only if the conditions mentioned in subsection (3) are satisfied in respect of that sale.

(3) The conditions are that—

- (a) the buyer or the seller, or (where the sale takes place through an agent) the agent of the buyer or the seller, is acting in the course of a business of dealing in works of art; and
- (b) the sale price is not less than 1,000 Euro.

(4) The sale of a work is not to be regarded as a resale if—

- (a) the seller previously acquired the work directly from the author less than three years before the sale; and

- (b) the sale price does not exceed 10,000 Euro.

**Liability to pay resale royalty.**

265.(1) The following shall be jointly and severally liable to pay the resale royalty due in respect of a sale—

- (a) the seller; and
- (b) the relevant person (within the meaning of subsection (2)).

(2) The relevant person is a person who satisfies the condition mentioned in section 264(3)(a) and who is—

- (a) the agent of the seller; or
- (b) where there is no such agent, the agent of the buyer; or
- (c) where there are no such agents, the buyer.

(3) Liability shall arise on the completion of the sale; however, a person who is liable may withhold payment until evidence of entitlement to be paid the royalty is produced.

(4) Any liability to pay resale royalty in respect of a resale right which belongs to two or more persons as owners in common is discharged by a payment of the total amount of royalty to one of those persons.

**Collective management.**

266.(1) Resale right may be exercised only through a collecting society.

(2) Where the holder of the resale right has not transferred the management of his right to a collecting society, the collecting society which manages copyright on behalf of artists shall be deemed to be mandated to manage his right.

(3) Where there is more than one such collecting society, the holder may choose which of them is so mandated.

(4) A holder to whom subsection (2) applies has the same rights and obligations, in respect of the management of his right, as have holders who have transferred the management of their right to the collecting society concerned.

(5) For those purposes—

- (a) “collecting society” means a society or other organisation which has as its main object, or one of its main objects, the administration of rights on behalf of more than one artist; and
- (b) the management of resale right is the collection of resale royalty on behalf of the holder of the right in return for a fixed fee or a percentage of the royalty.

**Right to information.**

267.(1) A holder of resale right in respect of a sale, or a person acting on his behalf, shall have the right to obtain information by making a request under this section.

(2) Such a request—

- (a) may be made to any person who (in relation to that sale) satisfies the condition mentioned in section 264(3)(a); but
- (b) must be made within three years of the sale to which it relates.

(3) The information that may be so requested is any that may be necessary in order to secure payment of the resale royalty, and in particular to ascertain—

- (a) the amount of royalty that is due; and
- (b) where the royalty is not paid by the person to whom the request is made, the name and address of any person who is liable.

(4) The person to whom the request is made shall do everything within his power to supply the information requested within 90 days of the receipt of the request.

(5) If that information is not supplied within the period mentioned in subsection (4), the person making the request may, in accordance with rules of court, apply to the Supreme Court for an order requiring the person to whom the request is made to supply the information.

(6) Information obtained under this section shall be treated as confidential.

**Transitional provisions.**

268.(1) This Part—

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- (a) does not apply to sales where the contract date preceded the commencement of the Part; but
- (b) applies notwithstanding that the work sold was made before that commencement.

(2) Where the author of a work (or a person to whom the resale right in that work is deemed to have been transmitted under this section) died before the commencement of this Part, and was at the time of his death a qualifying individual—

- (a) if he was the owner of the copyright in the work immediately before his death, and on his death a qualifying person became beneficially entitled to that copyright (or to part of it), the resale right in the work shall be deemed to have been transmitted to that person;
- (b) if he was the owner of the work (but not the copyright in it) immediately before his death, and on his death a qualifying person became beneficially entitled to the work, the resale right shall be deemed to have been transmitted to that person;
- (c) otherwise, the resale right shall be deemed to have been transmitted to the qualifying persons who were beneficially entitled to the residue of his personal estate.

(3) Where the author of the work was one of a number of joint authors, the right deemed to have been transmitted by the author under this section is one of that number of equal shares in the resale right.

(4) Where a resale right is deemed to have been transmitted to more than one person under subsection (2)(a), (b) or (c), the resale right shall be deemed to have been transmitted to them in equal shares as owners in common.

(5) In this section, “qualifying person” means a person to whom a resale right may be transmitted under section 261(2) and (3).

#### **Sales before 1st January 2010.**

269. Where a resale right is transmitted under section 261, or deemed to have been transmitted under section 268, it may not be exercised in respect of any sale where the contract date precedes 1st January 2010.

### **PART V MISCELLANEOUS AND GENERAL**

*Circumvention of protection measures***Circumvention of technical devices applied to computer programs.**

270.(1) This section applies where—

- (a) a technical device has been applied to a computer program; and
- (b) a person (A) knowing or having reason to believe that it will be used to make infringing copies—
  - (i) manufactures for sale or hire, imports, distributes, sells or lets for hire, offers or exposes for sale or hire, advertises for sale or hire or has in his possession for commercial purposes any means the sole intended purpose of which is to facilitate the unauthorised removal or circumvention of the technical device; or
  - (ii) publishes information intended to enable or assist persons to remove or circumvent the technical device.

(2) The following persons have the same rights against A as a copyright owner has in respect of an infringement of copyright—

- (a) a person—
  - (i) issuing to the public copies of; or
  - (ii) communicating to the public,  
  
the computer program to which the technical device has been applied;
- (b) the copyright owner or his exclusive licensee, if he is not the person specified in paragraph (a);
- (c) the owner or exclusive licensee of any intellectual property right in the technical device applied to the computer program.

(3) The rights conferred by subsection (2) are concurrent, and sections 121(3) and 123(1) to (4) apply, in proceedings under this section, in relation to persons with concurrent rights as they apply, in proceedings mentioned in those provisions, in relation to a copyright owner and exclusive licensee with concurrent rights.

(4) Further, the persons in subsection (2) have the same rights under section 119 or 120 (delivery up or seizure of certain articles) in relation to any such means as is referred to in subsection (1) which a person has in his possession, custody or control with the intention that it should be used to facilitate the unauthorised removal or circumvention of any technical device which has been applied to a computer program, as a copyright owner has in relation to an infringing copy.

(5) The rights conferred by subsection (4) are concurrent, and section 123(5) shall apply, as respects anything done under section 119 or 120 by virtue of subsection (4), in relation to persons with concurrent rights as it applies, as respects anything done under section 119 or 120, in relation to a copyright owner and exclusive licensee with concurrent rights.

(6) In this section references to a technical device in relation to a computer program are to any device intended to prevent or restrict acts that are not authorised by the copyright owner of that computer program and are restricted by copyright.

(7) The following provisions apply in relation to proceedings under this section as in relation to proceedings under Part 1 (copyright)-

- (a) sections 125 to 127 (presumptions as to certain matters relating to copyright); and
- (b) section 135, with the necessary modifications, in relation to the disposal of anything delivered up or seized by virtue of subsection (4).

(8) Expressions used in this section which are defined for the purposes of Part 1 of this Act (copyright) have the same meaning as in that Part.

### **Circumvention of technological measures.**

271.(1) This section applies where—

- (a) effective technological measures have been applied to a copyright work other than a computer program; and
- (b) a person (B) does anything which circumvents those measures knowing, or with reasonable grounds to know, that he is pursuing that objective.

(2) This section does not apply where a person, for the purposes of research into cryptography, does anything which circumvents effective

technological measures unless in so doing, or in issuing information derived from that research, he affects prejudicially the rights of the copyright owner.

(3) The following persons have the same rights against B as a copyright owner has in respect of an infringement of copyright—

- (a) a person—
  - (i) issuing to the public copies of; or
  - (ii) communicating to the public,  
  
the work to which effective technological measures have been applied; and
- (b) the copyright owner or his exclusive licensee, if he is not the person specified in paragraph (a).

(4) The rights conferred by subsection (3) are concurrent, and sections 121(3) and 123(1) to (4) apply, in proceedings under this section, in relation to persons with concurrent rights as they apply, in proceedings mentioned in those provisions, in relation to a copyright owner and exclusive licensee with concurrent rights.

(5) Sections 125 to 127 (presumptions as to certain matters relating to copyright) apply in relation to proceedings under this section as in relation to proceedings under Part 1 (copyright).

(6) Subsections (1) to (4) and any other provision of this Act as it has effect for the purposes of those subsections apply, with any necessary adaptations, to rights in performances, publication right and database right.

(7) The provisions of section 199 (presumptions relevant to database right) apply in proceedings brought by virtue of this section in relation to database right.

#### **Devices and services designed to circumvent technological measures.**

272.(1) A person commits an offence if he—

- (a) manufactures for sale or hire;
- (b) imports into Gibraltar otherwise than for his private and domestic use;
- (c) in the course of a business—

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- (i) sells or lets for hire;
  - (ii) offers or exposes for sale or hire;
  - (iii) advertises for sale or hire;
  - (iv) possesses; or
  - (v) distributes; or
- (d) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the copyright owner,

any device, product or component which is primarily designed, produced, or adapted for the purpose of enabling or facilitating the circumvention of effective technological measures.

(2) A person commits an offence if he provides, promotes, advertises or markets—

- (a) in the course of a business, or
- (b) otherwise than in the course of a business to such an extent as to affect prejudicially the copyright owner,

a service the purpose of which is to enable or facilitate the circumvention of effective technological measures.

(3) Subsections (1) and (2) do not make unlawful anything done by, or on behalf of, law enforcement agencies or any of the intelligence services—

- (a) in the interests of national security; or
- (b) for the purpose of the prevention or detection of crime, the investigation of an offence, or the conduct of a prosecution,

and in this subsection “intelligence services” means the Security Service, the Secret Intelligence Service or GCHQ.

(4) A person guilty of an offence under subsection (1) or (2) is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding three months, or to a fine not exceeding level 5 on the standard scale, or both;

- (b) on conviction on indictment to a fine or imprisonment for a term not exceeding two years, or both.

(5) It is a defence to any prosecution for an offence under this section for the defendant to prove that he did not know, and had no reasonable ground for believing, that—

- (a) the device, product or component; or
- (b) the service,

enabled or facilitated the circumvention of effective technological measures.

**Rights and remedies in respect of devices and services designed to circumvent technological measures.**

273.(1) This section applies where—

- (a) effective technological measures have been applied to a copyright work other than a computer program; and
- (b) a person (C) manufactures, imports, distributes, sells or lets for hire, offers or exposes for sale or hire, advertises for sale or hire, or has in his possession for commercial purposes any device, product or component, or provides services which—
  - (i) are promoted, advertised or marketed for the purpose of the circumvention of;
  - (ii) have only a limited commercially significant purpose or use other than to circumvent; or
  - (iii) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of,

those measures.

(2) The following persons have the same rights against C as a copyright owner has in respect of an infringement of copyright—

- (a) a person—
  - (i) issuing to the public copies of; or
  - (ii) communicating to the public,

the work to which effective technological measures have been applied;

- (b) the copyright owner or his exclusive licensee, if he is not the person specified in paragraph (a); and
- (c) the owner or exclusive licensee of any intellectual property right in the effective technological measures applied to the work.

(3) The rights conferred by subsection (2) are concurrent, and sections 121(3) and 123(1) to (4) apply, in proceedings under this section, in relation to persons with concurrent rights as they apply, in proceedings mentioned in those provisions, in relation to a copyright owner and exclusive licensee with concurrent rights.

(4) Further, the persons in subsection (2) have the same rights under section 119 or 120 (delivery up or seizure of certain articles) in relation to any such device, product or component which a person has in his possession, custody or control with the intention that it should be used to circumvent effective technological measures, as a copyright owner has in relation to any infringing copy.

(5) The rights conferred by subsection (4) are concurrent, and section 123(5) shall apply, as respects anything done under section 119 or 120 by virtue of subsection (4), in relation to persons with concurrent rights as it applies, as respects anything done under section 119 or 120, in relation to a copyright owner and exclusive licensee with concurrent rights.

(6) The following provisions apply in relation to proceedings under this section as in relation to proceedings under Part 1 (copyright)–

- (a) sections 125 to 127 (presumptions as to certain matters relating to copyright); and
- (b) section 135, with the necessary modifications, in relation to the disposal of anything delivered up or seized by virtue of subsection (4).

(7) In section 117 (innocent infringement of copyright) as it applies to proceedings for infringement of the rights conferred by this section, the reference to the defendant not knowing or having reason to believe that copyright subsisted in the work shall be construed as a reference to his not knowing or having reason to believe that his acts enabled or facilitated an infringement of copyright.

(8) Subsections (1) to (5) and (7) and any other provision of this Act as it has effect for the purposes of those subsections apply, with any necessary adaptations, to rights in performances, publication right and database right.

(9) The provisions of section 199 (presumptions relevant to database right) apply in proceedings brought by virtue of this section in relation to database right.

### **Remedy where effective technological measures prevent permitted acts.**

274.(1) In this section—

“permitted act” means an act which may be done in relation to copyright works, notwithstanding the subsistence of copyright, by virtue of a provision of this Act listed in Schedule 2;

“voluntary measure or agreement” means—

- (a) any measure taken voluntarily by a copyright owner, his exclusive licensee or a person issuing copies of, or communicating to the public, a work other than a computer program; or
- (b) any agreement between a copyright owner, his exclusive licensee or a person issuing copies of, or communicating to the public, a work other than a computer program and another party,

the effect of which is to enable a person to carry out a permitted act.

(2) Where the application of any effective technological measure to a copyright work other than a computer program prevents a person from carrying out a permitted act in relation to that work then that person or a person being a representative of a class of persons prevented from carrying out a permitted act may issue a notice of complaint to the Minister.

(3) Following receipt of a notice of complaint, the Minister may give to the owner of that copyright work or an exclusive licensee such directions as appear to the Minister to be requisite or expedient for the purpose of—

- (a) establishing whether any voluntary measure or agreement relevant to the copyright work the subject of the complaint subsists; or

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- (b) (where it is established there is no subsisting voluntary measure or agreement) ensuring that the owner or exclusive licensee of that copyright work makes available to the complainant the means of carrying out the permitted act the subject of the complaint to the extent necessary to so benefit from that permitted act.

(4) The Minister may also give directions—

- (a) as to the form and manner in which a notice of complaint in subsection (2) may be delivered to him;
- (b) as to the form and manner in which evidence of any voluntary measure or agreement may be delivered to him; and
- (c) generally as to the procedure to be followed in relation to a complaint made under this section;

and shall publish directions given under this subsection in such manner as in his opinion will secure adequate publicity for them.

(5) It shall be the duty of any person to whom a direction is given under subsection (3)(a) or (b) to give effect to that direction.

(6) The obligation to comply with a direction given under subsection (3)(b) is a duty owed to the complainant or, where the complaint is made by a representative of a class of persons, to that representative and to each person in the class represented; and a breach of the duty is actionable accordingly (subject to the defences and other incidents applying to actions for breach of statutory duty).

(7) Any direction under this section may be varied or revoked by a subsequent direction under this section.

(8) Any direction given under this section shall be in writing.

(9) This section does not apply to copyright works made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them.

(10) This section applies only where a complainant has lawful access to the protected copyright work, or where the complainant is a representative of a class of persons, where the class of persons have lawful access to the work.

(11) Subsections (1) to (10) apply with any necessary adaptations to—

- (a) rights in performances, and in this context the expression “permitted act” refers to an act that may be done by virtue of section 215;
- (b) database right, and in this context the expression “permitted act” refers to an act that may be done by virtue of section 197; and
- (c) publication right.

#### **Interpretation of sections 271 to 274.**

275.(1) In sections 271 to 274, “technological measures” are any technology, device or component which is designed, in the normal course of its operation, to protect a copyright work other than a computer program.

(2) Such measures are “effective” if the use of the work is controlled by the copyright owner through—

- (a) an access control or protection process such as encryption, scrambling or other transformation of the work; or
- (b) a copy control mechanism,

which achieves the intended protection.

(3) In this section, the reference to—

- (a) protection of a work is to the prevention or restriction of acts that are not authorised by the copyright owner of that work and are restricted by copyright; and
- (b) use of a work does not extend to any use of the work that is outside the scope of the acts restricted by copyright.

(4) Expressions used in sections 255 to 258 which are defined for the purposes of Part 1 of this Act (copyright) have the same meaning as in that Part.

#### ***Rights management information***

#### **Electronic rights management information.**

This version is out of date

276.(1) This section applies where a person (D), knowingly and without authority, removes or alters electronic rights management information which—

- (a) is associated with a copy of a copyright work; or
- (b) appears in connection with the communication to the public of a copyright work, and

where D knows, or has reason to believe, that by so doing he is inducing, enabling, facilitating or concealing an infringement of copyright.

(2) This section also applies where a person (E), knowingly and without authority, distributes, imports for distribution or communicates to the public copies of a copyright work from which electronic rights management information—

- (a) associated with the copies; or
- (b) appearing in connection with the communication to the public of the work,

has been removed or altered without authority and where E knows, or has reason to believe, that by so doing he is inducing, enabling, facilitating or concealing an infringement of copyright.

(3) A person issuing to the public copies of, or communicating, the work to the public, has the same rights against D and E as a copyright owner has in respect of an infringement of copyright.

(4) The copyright owner or his exclusive licensee, if he is not the person issuing to the public copies of, or communicating, the work to the public, also has the same rights against D and E as he has in respect of an infringement of copyright.

(5) The rights conferred by subsections (3) and (4) are concurrent, and sections 121(3) and 123(1) to (4) apply, in proceedings under this section, in relation to persons with concurrent rights as they apply, in proceedings mentioned in those provisions, in relation to a copyright owner and exclusive licensee with concurrent rights.

(6) Sections 125 to 127 (presumptions as to certain matters relating to copyright) apply in relation to proceedings under this section as in relation to proceedings under Part 1 (copyright).

(7) In this section—

- (a) expressions which are defined for the purposes of Part 1 of this Act (copyright) have the same meaning as in that Part; and
- (b) “rights management information” means any information provided by the copyright owner or the holder of any right under copyright which identifies the work, the author, the copyright owner or the holder of any intellectual property rights, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information.

(8) Subsections (1) to (5) and any other provision of this Act as it has effect for the purposes of those subsections, apply, with any necessary adaptations, to rights in performances, publication right and database right.

(9) The provisions of section 199 (presumptions relevant to database right) apply in proceedings brought by virtue of this section in relation to database right.

### *Computer programs*

#### **Avoidance of certain terms.**

277.(1) Where a person has the use of a computer program under an agreement, any term or condition in the agreement shall be void in so far as it purports to prohibit or restrict—

- (a) the making of any back up copy of the program which is necessary for him to have for the purposes of the agreed use;
- (b) where the conditions in section 62(2) are met, the decompiling of the program; or
- (c) the observing, studying or testing of the functioning of the program in accordance with section 63.

(2) In this section “decompile”, in relation to a computer program, has the same meaning as in section 62.

### *Databases*

#### **Avoidance of certain terms relating to databases.**

278. Where under an agreement a person has a right to use a database or part of a database, any term or condition in the agreement shall be void in so

*This version is out of date*

far as it purport to prohibit or restrict the performance of any act which would but for section 65 infringe the copyright in the database.

*Regulations*

**Power to make regulations.**

279. The Government may make regulations in respect of any matter and for any purpose relating to the subject matter of this Act.

## SCHEDULE 1

(Section 179)

## PART I

**1911 AND 1956 ACTS: COPYRIGHT - TRANSITIONAL  
PROVISIONS AND SAVINGS***Introductory*

1.(1) In this Schedule—

“the 1911 Act” means the Copyright Act 1911 as applied in Gibraltar;

“the 1956 Act” means the Copyright Act 1956 as applied in Gibraltar;  
and

“the new copyright provisions” means the provisions of this Act relating  
to copyright, that is, Part I (including this Schedule).

(2) References in this Schedule to “commencement”, without more, are to  
the date on which the new copyright provisions come into force.

(3) References in this Schedule to “existing works” are to works made  
before commencement; and for this purpose a work of which the making  
extended over a period shall be taken to have been made when its making  
was completed.

2.(1) In relation to the 1956 Act, references in this Schedule to a work  
include any work or other subject-matter within the meaning of that Act.

(2) In relation to the 1911 Act—

(a) references in this Schedule to copyright include the right  
conferred by section 24 of that Act in substitution for a right  
subsisting immediately before the commencement of that Act;

(b) references in this Schedule to copyright in a sound recording  
are to the copyright under that Act in records embodying the  
recording; and

(c) references in this Schedule to copyright in a film are to any  
copyright under that Act in the film (so far as it constituted a  
dramatic work for the purposes of that Act) or in photographs  
forming part of the film.

*General principles: continuity of the law*

3. The new copyright provisions apply in relation to things existing at commencement as they apply in relation to things coming into existence after commencement, subject to any express provision to the contrary.

4.(1) The provisions of this paragraph have effect for securing the continuity of the law so far as the new copyright provisions re-enact (with or without modification) earlier provisions.

(2) A reference in an enactment, instrument or other document to copyright, or to a work or other subject-matter in which copyright subsists, which apart from this Act would be construed as referring to copyright under the 1956 Act shall be construed, so far as may be required for continuing its effect, as being, or as the case may require, including, a reference to copyright under this Act or to works in which copyright subsists under this Act.

(3) Anything done (including subordinate legislation made), or having effect as done, under or for the purposes of a provision repealed by this Act has effect as if done under or for the purposes of the corresponding provision of the new copyright provisions.

(4) References (expressed or implied) in this Act or any other enactment, instrument or document to any of the new copyright provisions shall, so far as the context permits, be construed as including, in relation to times, circumstances and purposes before commencement, a reference to corresponding earlier provisions.

(5) A reference (express or implied) in an enactment, instrument or other document to a provision repealed by this Act shall be construed, so far as may be required for continuing its effect, as a reference to the corresponding provision of this Act.

(6) The provisions of this paragraph have effect subject to any specific transitional provision or saving and to any express amendment made by this Act.

*Subsistence of copyright*

5.(1) Copyright subsists in an existing work after commencement only if copyright subsisted in it immediately before commencement.

(2) Sub-paragraph (1) does not prevent an existing work qualifying for copyright protection after commencement—

- (a) under section 167 (qualification by virtue of first publication);  
or
- (b) by virtue of an order under section 169 (application of Part I to foreign countries).

6.(1) Copyright shall not subsist by virtue of this Act in an artistic work made before 1st June 1960 which at the time when the work was made constituted a design capable of registration under the Designs Act or under the enactments repealed by that Act, and was used, or intended to be used, as a model or pattern to be multiplied by an industrial process.

(2) For this purpose a design shall be deemed to be used as a model or pattern to be multiplied by any industrial process—

- (a) when the design is reproduced or is intended to be reproduced on more than 50 single articles, unless all the articles in which the design is reproduced or is intended to be reproduced together form only a single set of articles; or
- (b) when the design is to be applied to—
  - (i) printed paper hangings,
  - (ii) carpets, floor cloths or oil cloths, manufactured or sold in lengths or pieces,
  - (iii) textile piece goods, or textile goods manufactured or sold in lengths or pieces, or
  - (iv) lace, not made by hand.

(3) For the purposes of subparagraph 6(2)(a)–

“article” means any article of manufacture and includes any part of an article if that part is made or sold separately;

“set of articles” means a number of articles of the same general character ordinarily on sale or intended to be used together, to each of which the same design, or the same design with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof, is applied.

7.(1) No copyright subsists in a film, as such, made before 1st June 1960.

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(2) Where a film made before that date was an original dramatic work within the meaning of the 1911 Act, the new copyright provisions have effect in relation to the film as if it was an original dramatic work within the meaning of Part I.

(3) The new copyright provisions have effect in relation to photographs forming part of a film made before 1st June 1960 as they have effect in relation to photographs not forming part of a film.

8.(1) A film sound-track to which section 13(9) of the 1956 Act applied before commencement (film to be taken to include sounds in associated sound-track) shall be treated for the purposes of the new copyright provisions not as part of the film, but as a sound recording.

(2) However—

- (a) copyright subsists in the sound recording only if copyright subsisted in the film immediately before commencement, and it continues to subsist until copyright in the film expires;
- (b) the author and first owner of copyright in the film shall be treated as having been author and first owner of the copyright in the sound recording; and
- (c) anything done before commencement under or in relation to the copyright in the film continues to have effect in relation to the sound recording as in relation to the film.

9. No copyright subsists in—

- (a) a wireless broadcast made before 1 June 1960; or
- (b) a broadcast by cable made before 1 January 1985;

and any such broadcast shall be disregarded for the purposes of section 18(5) (duration of copyright in repeats).

#### *Authorship of work*

10. The question who was the author of an existing work shall be determined in accordance with the new copyright provisions for the purposes of the rights conferred by Chapter IV of Part I (moral rights), and for all other purposes shall be determined in accordance with the law in force at the time the work was made.

#### *First ownership of copyright*

11.(1) The question who was first owner of copyright in an existing work shall be determined in accordance with the law in force at the time the work was made.

(2) Where before commencement a person commissioned the making of a work in circumstances falling within—

- (a) section 4(3) of the 1956 Act or paragraph (a) of the proviso to section 5(1) of the 1911 Act (photographs, portraits and engravings); or
- (b) the proviso to section 12(4) of the 1956 Act (sound recordings),

those provisions apply to determine first ownership of copyright in any work made in pursuance of the commission after commencement.

***Duration of copyright in existing works***

12.(1) The following provisions have effect with respect to the duration of copyright in existing works.

The question which provision applies to a work shall be determined by reference to the facts immediately before commencement; and expressions used in this paragraph which were defined for the purposes of the 1956 Act have the same meaning as in that Act.

(2) Copyright in the following descriptions of work continues to subsist until the date on which it would have expired under the 1956 Act—

- (a) literary, dramatic or musical works in relation to which the period of 50 years mentioned in the proviso to section 2(3) of the 1956 Act (duration of copyright in works made available to the public after the death of the author) has begun to run;
- (b) engravings in relation to which the period of 50 years mentioned in the proviso to section 3(4) of the 1956 Act (duration of copyright in works published after the death of the author) has begun to run;
- (c) published photographs and photographs taken before 1st June 1960;
- (d) published sound recordings and sound recordings made before 1st June 1960;

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- (e) published films and films falling within section 13(3)(a) of the 1956 Act (films registered under former enactments relating to registration of films).

(3) Copyright in anonymous or pseudonymous literary, dramatic, musical or artistic works (other than photographs) continues to subsist—

- (a) if the work is published, until the date on which it would have expired in accordance with the 1956 Act; and
- (b) if the work is unpublished, until the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force or, if during that period the work is first made available to the public within the meaning of section 15(3) (duration of copyright in works of unknown authorship), the date on which copyright expires in accordance with that provision;

unless, in any case, the identity of the author becomes known before that date, in which case section 15(3) applies (general rule: life of the author plus 70 years).

(4) Copyright in the following descriptions of work continues to subsist until the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force—

- (a) literary, dramatic and musical works of which the author has died and in relation to which none of the acts mentioned in paragraphs (a) to (e) of the proviso to section 2(3) of the 1956 Act has been done;
- (b) unpublished engravings of which the author has died;
- (c) unpublished photographs taken on or after 1st June 1960.

(5) Copyright in the following descriptions of work continues to subsist until the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force—

- (a) unpublished sound recordings made on or after 1st June 1960;
- (b) films not falling within sub-paragraph (2)(e) above,

unless the recording or film is published before the end of that period in which case copyright in it shall continue until the end of the period of 50

years from the end of the calendar year in which the recording or film is published.

(6) Copyright in any other description of existing work continues to subsist until the date on which copyright in that description of work expires in accordance with sections 15 to 19 of this Act.

(7) The above provisions do not apply to works subject to Crown or Parliamentary copyright.

### *Acts infringing copyright*

13.(1) The provisions of Chapters II and III of Part I as to the acts constituting an infringement of copyright apply only in relation to acts done after commencement; the provisions of the 1956 Act continue to apply in relation to acts done before commencement.

(2) For the purposes of section 33 (meaning of “infringing copy”) the question whether the making of an article constituted an infringement of copyright, or would have done if the article had been made in Gibraltar, shall be determined—

- (a) in relation to an article made on or after 1st June 1960 and before commencement, by reference to the 1956 Act, and
- (b) in relation to an article made before 1st June 1960, by reference to the 1911 Act.

(3) For the purposes of the application of sections 39(2), 66(2) and 77(3) (subsequent exploitation of things whose making was, by virtue of an earlier provision of the section, not an infringement of copyright) to things made before commencement, it shall be assumed that the new copyright provisions were in force at all material times.

(4) Section 70 (articles for producing material in a particular typeface) applies where articles have been marketed as mentioned in subsection (1) before commencement with the substitution for the period mentioned in subsection (3) of the period of 25 years from the end of the calendar year in which the new copyright provisions come into force.

(5) Section 71 (transfer of copies, adaptations, &c. of work in electronic form) does not apply in relation to a copy purchased before commencement.

(6) In section 80 (reconstruction of buildings) the reference to the owner of the copyright in the drawings or plans is, in relation to buildings constructed before commencement, to the person who at the time of the

construction was the owner of the copyright in the drawings or plans under the 1956 Act, the 1911 Act or any enactment repealed by the 1911 Act.

14.(1) Section 72 (anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author) has effect in relation to existing works subject to the following provisions.

(2) Subsection (1)(b)(i) of section 72 (assumption as to expiry of copyright) does not apply in relation to photographs.

(3) Subsection (1)(b)(ii) of section 72 (assumption as to death of author) applies only—

- (a) where paragraph 12(3)(b) applies (unpublished anonymous or pseudonymous works), after the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force; or
- (b) where paragraph 12(6) applies (cases in which the duration of copyright is the same under the new copyright provisions as under the previous law).

15. The following provisions of section 7 of the 1956 Act continue to apply in relation to existing works—

- (a) subsection (6) (copying of unpublished works from manuscript or copy in library, museum or other institution);
- (b) subsection (7) (publication of work containing material to which subsection (6) applies), except paragraph (a) (duty to give notice of intended publication);
- (c) subsection (8) (subsequent broadcasting, performance, etc. of material published in accordance with subsection (7));

and subsection (9)(d) (illustrations) continues to apply for the purposes of those provisions.

16. Where in the case of a dramatic or musical work made before 1st July 1912, the right conferred by the 1911 Act did not include the sole right to perform the work in public, the acts restricted by the copyright shall be treated as not including—

- (a) performing the work in public;
- (b) communicating the work to the public; or

- (c) doing any of the above in relation to an adaptation of the work;

and where the right conferred by the 1911 Act consisted only of the sole right to perform the work in public, the acts restricted by the copyright shall be treated as consisting only of those acts.

17. Where a work made before 1st July 1912 consists of an essay, article or portion forming part of and first published in a review, magazine or other periodical or work of a like nature, the copyright is subject to any right of publishing the essay, article, or portion in a separate form to which the author was entitled at the commencement of the 1911 Act, or would if that Act had not been passed, have become entitled under section 18 of the Copyright Act 1842.

### *Designs*

18.(1) Section 66 (exclusion of copyright protection in relation to works recorded or embodied in design document or models) does not apply for ten years after commencement in relation to a design recorded or embodied in a design document or model before commencement.

(2) A licence granted by virtue of this paragraph shall relate only to acts which would be permitted by section 66 if the design document or model had been made after commencement.

(3) Section 120 (right to seize infringing copies) does not apply during the period of ten years referred to in sub-paragraph (1) in relation to anything which it would not apply if the design in question had been first recorded or embodied in a design document or model after commencement.

(4) Nothing in this paragraph affects the operation of any rule of law preventing or restricting the enforcement of copyright in relation to a design.

(5) Where section 10 of the 1956 Act (effect of industrial application of design corresponding to artistic work) applied in relation to an artistic work at any time before commencement, section 67(2) of this Act applies with the substitution for the period of 25 years mentioned there of the relevant period of 15 years as defined in section 10(3) of the 1956 Act.

(6) Except as provided in sub-paragraph (1), section 67 applies only where articles are marketed as mentioned in subsection (1)(b) after commencement.

### *Moral rights*

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19.(1) No act done before commencement is actionable by virtue of any provision of Chapter IV of Part I (moral rights).

(2) Section 43 of the 1956 Act (false attribution of authorship) continues to apply in relation to acts done before commencement.

20.(1) The following provisions have effect with respect to the rights conferred by—

- (a) section 94 (right to be identified as author or director); and
- (b) section 97 (right to object to derogatory treatment of work).

(2) The rights do not apply—

- (a) in relation to a literary, dramatic, musical and artistic work of which the author died before commencement; or
- (b) in relation to a film made before commencement.

(3) The rights in relation to an existing literary, dramatic, musical or artistic work do not apply—

- (a) where copyright first vested in the author, to anything which by virtue of an assignment of copyright made or licence granted before commencement may be done without infringing copyright;
- (b) where copyright first vested in a person other than the author, to anything done by or with the licence of the copyright owner.

21. The right conferred by section 102 (right to privacy of certain photographs and films) does not apply to photographs taken or films made before commencement.

#### *Assignments and licences*

22.(1) Any document made or event occurring before commencement which had any operation—

- (a) affecting the ownership of the copyright in an existing work, or
- (b) creating, transferring or terminating an interest, right or licence in respect of the copyright in an existing work,

has the corresponding operation in relation to copyright in the work under this Act.

(2) Expressions used in such a document shall be construed in accordance with their effect immediately before commencement.

23.(1) Section 108(1) of this Act (assignment of future copyright: statutory vesting of legal interest on copyright coming into existence) does not apply in relation to an agreement made before 1st June 1960.

(2) The repeal of section 37(2) of the 1956 Act (assignment of future copyright: devolution of right where assignee dies before copyright comes into existence) does not affect the operation of that provision in relation to an agreement made before commencement.

24.(1) Where the author of a literary, dramatic, musical or artistic work was the first owner of the copyright in it, no assignment of the copyright and no grant of any interest in it, made by him (otherwise than by will) after the passing of the 1911 Act and before 1st June 1960, shall be operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of 25 years from the death of the author.

(2) The reversionary interest in the copyright expectant on the termination of that period may after commencement be assigned by the author during his life but in the absence of any assignment shall, on his death, devolve on his legal personal representatives as part of his estate.

(3) Nothing in this paragraph affects—

- (a) an assignment of the reversionary interest by a person to whom it has been assigned;
- (b) an assignment of the reversionary interest after the death of the author by his personal representatives or any person becoming entitled to it; or
- (c) any assignment of the copyright after the reversionary interest has fallen in.

(4) Nothing in this paragraph applies to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work.

(5) In sub-paragraph (4) “collective work” means—

- (a) any encyclopaedia, dictionary, yearbook, or similar work;

- (b) a newspaper, review, magazine, or similar periodical; and
- (c) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated.

25.(1) This paragraph applies where copyright subsists in a literary, dramatic, musical or artistic work made before 1st July 1912 in relation to which the author, before the commencement of the 1911 Act, made such an assignment or grant as was mentioned in paragraph (a) of the proviso to section 24(1) of that Act (assignment or grant of copyright or performing right for full term of the right under the previous law).

(2) If before commencement any event has occurred or notice has been given which by virtue of paragraph 38 of Schedule 7 to the 1956 Act had any operation in relation to copyright in the work under that Act, the event or notice has the corresponding operation in relation to copyright under this Act.

(3) Any right which immediately before commencement would by virtue of paragraph 38(3) of that Schedule have been exercisable in relation to the work, or copyright in it, is exercisable in relation to the work or copyright in it under this Act.

(4) If in accordance with paragraph 38(4) of that Schedule copyright would, on a date after the commencement of the 1956 Act, have reverted to the author or his personal representatives and that date falls after the commencement of the new copyright provisions—

- (a) the copyright in the work shall revert to the author or his personal representatives, as the case may be; and
- (b) any interest of any other person in the copyright which subsists on that date by virtue of any document made before the commencement of the 1911 Act shall thereupon determine.

26. Section 109(2) of this Act (rights of exclusive licensee against successors in title of person granting licence) does not apply in relation to an exclusive licence granted before commencement.

### *Bequests*

27.(1) Section 110 of this Act (copyright to pass under will with original document or other material thing embodying unpublished work)—

- (a) does not apply where the testator died before 1st June 1960; and
- (b) where the testator died on or after that date and before commencement, applies only in relation to an original document embodying a work.

(2) In the case of an author who died before 1st June 1960, the ownership after his death of a manuscript of his, where such ownership has been acquired under a testamentary disposition made by him and the manuscript is of a work which has not been published or performed in public, is prima facie proof of the copyright being with the owner of the manuscript.

### *Remedies for infringement*

28.(1) Sections 116 and 117 of this Act (remedies for infringement) apply only in relation to an infringement of copyright committed after commencement; section 17 of the 1956 Act continues to apply in relation to infringements committed before commencement.

(2) Sections 119 and 120 of this Act (delivery up or seizure of infringing copies) apply to infringing copies and other articles made before or after commencement; section 18 of the 1956 Act, and section 7 of the 1911 Act, (conversion damages, &c), do not apply after commencement except for the purposes of proceedings begun before commencement.

(3) Sections 121 to 123 of this Act (rights and remedies of exclusive licensee) apply where sections 116 to 120 of this Act apply; section 19 of the 1956 Act continues to apply where section 17 or 18 of that Act applies.

(4) Sections 125 to 127 of this Act (presumptions) apply only in proceedings brought by virtue of this Act; section 20 of the 1956 Act continues to apply in proceedings brought by virtue of that Act.

29. Sections 121 and 123 of this Act (rights and remedies of exclusive licensee) do not apply to a licence granted before 1st June 1960.

30.(1) The provisions of section 128 of this Act (criminal liability for making or dealing with infringing articles) apply only in relation to acts done after commencement; section 21 of the 1956 Act (penalties and summary proceedings in respect of dealings which infringe copyright) continues to apply in relation to acts done before commencement.

(2) Section 130 of this Act (search warrants) applies in relation to offences committed before commencement in relation to which section 21A or 21B

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of the 1956 Act applied; sections 21A and 21B continue to apply in relation to warrants issued before commencement.

### *Qualification for copyright protection*

31. Every work in which copyright subsisted under the 1956 Act immediately before commencement shall be deemed to satisfy the requirements of Part I of this Act as to qualification for copyright protection.

### *Gibraltarian ships, aircraft and hovercraft*

32. Section 171 (Gibraltarian ships, aircraft and hovercraft) does not apply in relation to anything done before commencement.

### *Crown copyright*

33.(1) Section 172 of this Act (general provisions as to Crown copyright) applies to an existing work if–

- (a) section 39 of the 1956 Act applied to the work immediately before commencement; and
- (b) the work is not one to which section 173, 174 or 175 applies (copyright in Acts and Bills and Parliamentary copyright: see paragraphs 34 and 35 below).

(2) Section 172 (1)(b) (first ownership of copyright) has effect subject to any agreement entered into before commencement under section 39(6) of the 1956 Act.

34.(1) The following provisions have effect with respect to the duration of copyright in existing works to which section 172 (Crown copyright) applies.

The question which provision applies to a work shall be determined by reference to the facts immediately before commencement; and expressions used in this paragraph which were defined for the purposes of the 1956 Act have the same meaning as in that Act.

(2) Copyright in the following descriptions of work continues to subsist until the date on which it would have expired in accordance with the 1956 Act–

- (a) published literary, dramatic or musical works;
- (b) artistic works other than engravings or photographs;

- (c) published engravings;
- (d) published photographs and photographs taken before 1st June 1960;
- (e) published sound recordings and sound recordings made before 1st June 1960;
- (f) published films and films falling within section 13(3)(a) of the 1956 Act (films registered under former enactments relating to registration of films).

(3) Copyright in unpublished literary, dramatic or musical works continues to subsist until—

- (a) the date on which copyright expires in accordance with section 172(3); or
- (b) the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force,

whichever is the later.

(4) Copyright in the following descriptions of work continues to subsist until the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force—

- (a) unpublished engravings;
- (b) unpublished photographs taken on or after 1st June 1960.

(5) Copyright in a film or sound recording not falling within subparagraph (2) above continues to subsist until the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force, unless the film or recording is published before the end of that period, in which case copyright expires 50 years from the end of the calendar year in which it is published.

(6) Section 173 (copyright in Acts) applies to existing Acts.

#### *Parliamentary copyright*

35.(1) Section 174 of this Act (general provisions as to Parliamentary copyright) applies to existing unpublished literary, dramatic, musical or artistic works, but does not otherwise apply to existing works.

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(2) Section 175 (copyright in Parliamentary Bills) does not apply to a Bill which was introduced into the Parliament and published before commencement.

*Copyright vesting in certain international organisations*

36.(1) Any work in which immediately before commencement copyright subsisted by virtue of section 33 of the 1956 Act shall be deemed to satisfy the requirements of section 177(1); but otherwise section 177 does not apply to works made or, as the case may be, published before commencement.

(2) Copyright in any such work which is unpublished continues to subsist until the date on which it would have expired in accordance with the 1956 Act, or the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force, whichever is the earlier.

*Meaning of publication*

37. Section 185(3) (construction of building treated as equivalent to publication) applies only where the construction of the building began after commencement.

*Meaning of “unauthorised”*

38. For the purposes of the application of the definition in section 187 (minor definitions) of the expression “unauthorised” in relation to things done before commencement—

- (a) paragraph (a) applies in relation to things done before 1st June 1960 as if the reference to the licence of the copyright owner were a reference to his consent or acquiescence;
- (b) paragraph (b) applies with the substitution for the words from “or, in a case” to the end of the words “or any person lawfully claiming under him”; and
- (c) paragraph (c) shall be disregarded.

**PART II**

**EU DIRECTIVES: COPYRIGHT AND RELATED RIGHTS –  
TRANSITIONAL PROVISIONS**

*Introductory*

39.(1) For the purposes of this Part–

- (a) a work of which the making extended over a period shall be taken to have been made when its making was completed;
- (b) “existing”, in relation to a work or performance, means made or given before commencement;
- (c) “new right” means a right arising by virtue of this Act, in relation to a copyright work, a work in which publication right vests, or a qualifying performance, to authorise or prohibit an act. The expression does not include–
  - (i) a right corresponding to a right which existed immediately before commencement; or
  - (ii) a right to remuneration arising by virtue of this Act.

#### *General rules*

40.(1) Subject to anything in paragraph 41, the provisions of this Act apply to–

- (a) copyright works made;
- (b) performances given;
- (c) databases, in which database right vests, made; and
- (d) works, in which publication right vests, first published,

before or after commencement.

(2) No act done before commencement shall be regarded as an infringement of any new right, or as giving rise to any right to remuneration arising by virtue of this Act.

#### *Saving for certain existing agreements*

41. Except where otherwise expressly provided, nothing in this Act affects any agreement made before commencement.

42. No act done after commencement in pursuance of any agreement made before commencement shall be regarded as an infringement of any new right.

***Satellite broadcasting: international co-production agreements***

43.(1) This paragraph applies to an agreement concluded before 1 January 1995—

- (a) between two or more co-producers of a film, one of whom is a Gibraltarian or a national of the United Kingdom or another EEA state; and
- (b) the provisions of which grant to the parties exclusive rights to exploit all communication to the public of the film in separate geographical areas.

(2) Where such an agreement giving such exclusive exploitation rights in relation to Gibraltar does not expressly or by implication address satellite broadcasting from Gibraltar, the person to whom those exclusive rights have been granted shall not make any such broadcast without the consent of any other party to the agreement whose language-related exploitation rights would be adversely affected by that broadcast.

***New rights: effect of pre-commencement authorisation of copying***

44. Where before commencement—

- (a) the owner or prospective owner of copyright in a literary, dramatic, musical or artistic work has authorised a person to make a copy of the work; or
- (b) the owner or prospective owner of performer's rights in a performance has authorised a person to make a copy of a recording of the performance,

any new right in relation to that copy shall vest on commencement in the person so authorised, subject to any agreement to the contrary.

***New rights: effect of pre-commencement of film production agreement***

45.(1) Sections 111 and 223 (presumption of transfer of rental right in case of production agreement) apply in relation to an agreement concluded before commencement.

As section 111 so applies, the restriction in subsection (3) of that section shall be omitted (exclusion of presumption in relation to screenplay, dialogue or music specifically created for the film).

(2) Sections 112 and 224 (right to equitable remuneration where rental right transferred) have effect accordingly, but subject to paragraph 46.

***Right to equitable remuneration applicable to rental***

46. No right to equitable remuneration under section 112 or 224 (rights to equitable remuneration where rental right transferred) arises—

- (a) in respect of any rental of a sound recording or film before 1 July 1997; or
- (b) in respect of any rental after that date of a sound recording or film made in pursuance of an agreement entered into before 1 July 1994, unless the author or performer (or a successor in title of his) has before 1 January 1997 notified the person by whom the remuneration would be payable that he intends to exercise that right.

***Savings for existing stocks***

47.(1) Any new right in relation to a copyright work does not apply to a copy of the work acquired by a person before 1 July 1994 for the purpose of renting or lending it to the public.

(2) Any new right in relation to a qualifying performance does not apply to a copy of a recording of the performance acquired by a person before 1 July 1994 for the purpose of renting or lending it to the public.

***Lending of copies by libraries or archives***

48. Until the making of regulations under section 46 for the purposes of section 50 (lending of copies by libraries or archives), the reference in section 50(2) to a prescribed library shall be construed as a reference to any library in Gibraltar prescribed by the Copyright (Libraries) Regulations.

***Authorship of films***

49. It is not an infringement of any right which the principal director has by virtue of this Act to do anything after commencement in pursuance of arrangements for the exploitation of the film made before 19 November 1992. This does not affect any right of his to equitable remuneration under section 112.

***Databases***

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50.(1) No act done in respect of any database in which the maker of the database (or one or more of its makers) fell within one of the provisions of section 195(1) (a), (b) and (c) of this Act—

- (a) before 1 January 1998; or
- (b) after 31 December 1997, in pursuance of an agreement made before 1 January 1998,

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

(2) No act done in respect of any database in which the maker of the database (or one or more of its makers) fell within one of the provisions of section 195(1) (d), (e) and (f) of this Act—

- (a) before 1 November 2003; or
- (b) after 31 October 2003, in pursuance of an agreement made before 1 November 2003,

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

51.(1) Where a database—

- (a) was created on or before 27 March 1996; and
- (b) is a copyright work immediately before 1 January 1998,

copyright shall continue to subsist in the database for the remainder of its copyright term.

(2) In this paragraph “copyright term” means the period of the duration of copyright under section 15 of this Act (duration of copyright in literary, dramatic, musical or artistic works).

52. Where—

- (a) the making of a database was completed on or after 1 January 1983 and before commencement; and
- (b) either—
  - (i) on 1 January 1998, the database was a database in which the maker of the database (or one or more of its makers)

fell within the provisions of section 195(1) (a), (b) and (c) of this Act; or

- (ii) on 1 November 2003, the database was a database in which the maker of the database (or one or more of its makers) fell within the provisions of sections 195(1) (d), (e) and (f) of this Act,

then database right shall subsist in the database for the period of fifteen years beginning with commencement.

***Extended and revived copyright: interpretation***

53. In the provisions of the following paragraphs relating to copyright—

- (a) “existing”, in relation to a work, means made before commencement;
- (b) “existing copyright work” means a work in which copyright subsisted immediately before commencement;
- (c) “extended copyright” means any copyright which subsists by virtue of the new copyright provisions after the date on which it would have expired under any earlier enactment relating to copyright; and
- (d) “revived copyright” means any copyright which subsists by virtue of the new copyright provisions after having expired under any earlier enactment relating to copyright.

54. In relation to a film in which copyright did not exist as such but was protected;

- (a) as an original dramatic work; or
- (b) by virtue of the protection of the photographs forming part of the film,

references in this Part to copyright in a film are to any copyright in the film as an original dramatic work, or as the case may be, in photographs forming part of the film.

***Duration of copyright: application of new copyright provisions***

55. The provisions of this Act relating to duration of copyright apply—

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- (a) to copyright works made after commencement;
- (b) to existing works which first qualify for copyright protection after commencement;
- (c) to existing copyright works; and
- (d) to existing works in which copyright expired before 31 December 1995 but which were on 1 July 1995 protected in Gibraltar, the United Kingdom or another EEA state under legislation relating to copyright or related rights.

#### ***Ownership of extended copyright***

56.(1) The person who is the owner of the copyright in a work immediately before commencement is as from commencement the owner of any extended copyright in the work, subject as follows.

(2) If he is entitled to copyright for a period less than the whole of the copyright period under the provisions of the 1956 Act, any extended copyright is part of the reversionary interest expectant on the termination of that period.

#### ***Ownership of revived copyright***

57.(1) The person who was the owner of the copyright in a work immediately before it expired (the “former copyright owner”) is as from commencement the owner of any revived copyright in the work, subject as follows.

(2) If the former copyright owner has died before commencement, or in the case of a legal person has ceased to exist before commencement, the revived copyright shall vest—

- (a) in the case of a film, in the principal director of the film or his personal representatives; and
- (b) in any other case, in the author of the work or his personal representatives.

(3) Where revived copyright vests in personal representatives by virtue of sub-paragraph (2), it shall be held by them for the benefit of the person who would have been entitled to it had it been vested in the principal director or author immediately before his death and had devolved as part of his estate.

#### ***Prospective ownership of extended or revived copyright***

58.(1) Where by an agreement made before commencement in relation to extended or revived copyright, and signed by or on behalf of the prospective owner of the copyright, the prospective owner purports to assign the extended or revived copyright (wholly or partially) to another person, then if, on commencement the assignee or another person claiming under him would be entitled as against all other persons to require the copyright to be vested in him, the copyright shall vest in the assignee or his successor in title by virtue of this paragraph.

(2) A licence granted by a prospective owner of extended or revived copyright is binding on every successor in title to his interest (or prospective interest) in the right, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser; and references in Part I of the Act to doing anything with, or without, the licence of the copyright owner shall be construed accordingly.

(3) In sub-paragraph (2) “prospective owner” includes a person who is prospectively entitled to extended or revived copyright by virtue of such an agreement as is mentioned in sub-paragraph (1).

*Extended copyright: existing licences, agreements etc.*

59.(1) Any copyright licence, any term or condition of an agreement relating to the exploitation of a copyright work, or any waiver or assertion of moral rights, which—

- (a) subsists immediately before commencement in relation to an existing copyright work; and
- (b) is not to expire before the end of the copyright period under the provisions of the 1956 Act,

shall continue to have effect during the period of any extended copyright, subject to any agreement to the contrary.

(2) Any copyright licence, or term or condition relating to the exploitation of a copyright work, imposed by order of the Court which—

- (a) subsists immediately before commencement in relation to an existing copyright work; and
- (b) is not to expire before the end of the copyright period under the provisions of the 1956 Act,

shall continue to have effect during the period of any extended copyright, subject to any further order of the Court.

***Revived copyright: exercise of moral rights***

60.(1) The following provisions have effect with respect to the exercise of moral rights in relation to a work in which there is revived copyright.

(2) Any waiver or assertion of moral rights which subsisted immediately before the expiry of copyright shall continue to have effect during the period of revived copyright.

(3) Moral rights are exercisable after commencement by the author of a work or, as the case may be, the director of a film in which revived copyright subsists, as with any other copyright work.

***Revived copyright: saving for acts of exploitation when work in public domain etc.***

61.(1) No act done before commencement shall be regarded as infringing revived copyright in a work.

(2) It is not an infringement of revived copyright in a work—

- (a) to do anything after commencement in pursuance of arrangements made before 1st January 1995 at a time when copyright did not subsist in the work; or
- (b) to issue to the public after commencement copies of the work made before 1st July 1995 at a time when copyright did not subsist in the work.

(3) It is not an infringement of revived copyright in a work to do anything after commencement in relation to a literary, dramatic, musical or artistic work or a film made before commencement, or made in pursuance of arrangements made before commencement, which contains a copy of that work or is an adaptation of that work if—

- (a) the copy or adaptation was made before 1st July 1995 at a time when copyright did not subsist in the work in which revived copyright subsists, or
- (b) the copy or adaptation was made in pursuance of arrangements made before 1st July 1995 at a time when copyright did not subsist in the work in which revived copyright subsists.

(4) It is not an infringement of revived copyright in a work to do after commencement anything which is a restricted act in relation to the work if the act is done at a time when, or is done in pursuance of arrangements made at a time when, the name and address of a person entitled to authorise the act cannot by reasonable inquiry be ascertained.

(5) In this paragraph “arrangements” means arrangements for the exploitation of the work in question.

(6) It is not an infringement of any moral right to do anything which by virtue of this paragraph is not an infringement of copyright.

***Revived copyright: use as of right subject to reasonable royalty***

62.(1) In the case of a work in which revived copyright subsists any acts restricted by the copyright shall be treated as licensed by the copyright owner, subject only to the payment of such reasonable royalty or other remuneration as may be agreed or determined in default of agreement by the Court.

(2) A person intending to avail himself of the right conferred by this paragraph must give reasonable notice of his intention to the copyright owner, stating when he intends to begin to do the acts.

(3) If he does not give such notice, his acts shall not be treated as licensed.

(4) If he does give such notice, his acts shall be treated as licensed and a reasonable royalty or other remuneration shall be payable in respect of them despite the fact that its amount is not agreed or determined until later.

(5) This paragraph does not apply if or to the extent that a licence to do the acts could be granted by a licensing body (within the meaning of section 137(2) of this Act), whether or not under a licensing scheme.

***Revived copyright: application to Court***

63.(1) An application to settle the royalty or other remuneration payable in pursuance of paragraph 62 may be made to the Court by the copyright owner or the person claiming to be treated as licensed by him.

(2) The Court shall consider the matter and make such order as it may determine to be reasonable in the circumstances.

(3) Either party may subsequently apply to the Court to vary the order, and the Court shall consider the matter and make such order confirming or

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varying the original order as it may determine to be reasonable in the circumstances.

(4) An application under sub-paragraph (3) shall not, except with the special leave of the Court, be made within twelve months from the date of the original order or of the order on a previous application under that sub-paragraph.

(5) An order under sub-paragraph (3) has effect from the date on which it is made or such later date as may be specified by the Court.

#### *Construction of references to EEA states*

64.(1) For the purpose of the new copyright provisions relating to the term of copyright protection applicable to a work of which the country of origin is not Gibraltar, the United Kingdom or another EEA state and of which the author is not a Gibraltarian or a national of the United Kingdom or another EEA state—

- (a) a work first published before 1st July 1995 shall be treated as published in Gibraltar, the United Kingdom or another EEA state if it was on that date regarded under the law of Gibraltar, the United Kingdom or another EEA state as having been published in that country;
- (b) an unpublished film made before 1st July 1995 shall be treated as originating in Gibraltar, the United Kingdom or another EEA state if it was on that date regarded under the law of Gibraltar, the United Kingdom or another EEA state as a film whose maker had his headquarters in, or was domiciled or resident in, that country; and
- (c) the author of a work made before 1st July 1995 shall be treated as a Gibraltarian or a national of the United Kingdom or another EEA state if he was on that date regarded under the law of Gibraltar, the United Kingdom or another EEA state as a Gibraltarian or a national of the United Kingdom or another EEA state.

The references above to the law of Gibraltar, the United Kingdom or another EEA state are to the law of that country having effect for the purposes of rights corresponding to those provided for in Part I of this Act.

#### *Performers' moral rights*

65. The rights conferred by Chapter IV of Part III do not apply in relation to a sound recording—

- (a) where the performer of that recording died before commencement;
- (b) where the performer's property rights in that recording are no longer owned by the performer immediately prior to commencement, to anything done by or with the licence of the owner of those rights.

SCHEDULE 2

(Section 274)

**PERMITTED ACTS TO WHICH SECTION 274 APPLIES**

*Copyright exceptions*

Section 37 (research and private study)

Section 40(1), (2) and (5) (things done for purposes of instruction or examination)

Section 43 (recording by educational establishments of broadcasts)

Section 44 (reprographic copying by educational establishments of passages from published works)

Section 47 (copying by librarians: articles in periodicals)

Section 48 (copying by librarians: parts of published works)

Section 51 (copying by librarians: supply of copies to other libraries)

Section 52 (copying by librarians or archivists: replacement copies of works)

Section 53 (copying by librarians or archivists: certain unpublished works)

Section 54 (copy of work required to be made as condition of export)

Section 55 (parliamentary and judicial proceedings)

Section 56 (statutory inquiries)

Section 57 (material open to public inspection or on official register)

Section 58 (material communicated to the Crown in the course of public business)

Section 59 (public records)

Section 60 (acts done under statutory authority)

Section 76 (recording of folksongs)

Section 84 (incidental recording for purposes of broadcast)

Section 85 (recording for purposes of supervision and control of broadcasts and other services)

Section 86 (recording for purposes of time-shifting)

Section 87 (photographs of broadcasts)

Section 91 (provision of sub-titled copies of broadcast)

Section 92 (recording for archival purposes)

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**SCHEDULE 3**

(Section 195)

1. The Isle of Man.

**SCHEDULE 4**

Section 255(3)

**CALCULATION OF RESALE ROYALTY**

1. The resale royalty payable on the sale of a work shall be the sum of the following amounts, being percentage amounts of consecutive portions of the sale price—

Portion of the sale price	Percentage amount
From 0 to 50,000 Euro	4%
From 50,000.01 to 200,000 Euro	3%
From 200,000.01 to 350,000 Euro	1%
From 350,000.01 to 500,000 Euro	0.5%
Exceeding 500,000 Euro	0.25%

2. However, the total amount of royalty payable on the sale shall not in any event exceed 12,500 Euro.

**SCHEDULE 5**

Section 259(4) and 262(3)

**COUNTRIES OUTSIDE THE EEA WHOSE NATIONALS MAY  
ENJOY RESALE RIGHT**

**COUNTRY/TERRITORY**

Algeria  
Brazil  
Bulgaria  
Burkina Faso  
Chile  
Congo  
Costa Rica  
Croatia  
Ecuador  
Guinea  
Iraq  
Ivory Coast  
Laos  
Madagascar  
Mali  
Monaco  
Morocco  
Peru  
Philippines  
Romania  
Russian Federation  
Senegal  
Serbia and Montenegro  
Tunisia  
Turkey  
Uruguay