

COPYRIGHT AND DESIGNS ACT 2004



BERMUDA
2004 : 5

COPYRIGHT AND DESIGNS ACT 2004

[Date of Assent: 17 March 2004]

[Operative Date: 8 February 2008]

ARRANGEMENT OF SECTIONS

PART I COPYRIGHT	CHAPTER II SUBSISTENCE, OWNERSHIP AND DURATION OF COPYRIGHT
CHAPTER I PRELIMINARY	<i>Introductory</i>
1 Index of defined expressions	7 Copyright and copyright works
2 Minor definitions	8 Rights subsisting in copyright works
3 General provisions as to construction of this Part	<i>Descriptions of work and related provisions</i>
4 Construction of references to copyright owner	9 Literary, dramatic and musical works
5 Meaning of "educational establishment" and related expressions	10 Databases
6 Meaning of publication and commercial publication	11 Artistic works
	12 Sound recordings
	13 Films

COPYRIGHT AND DESIGNS ACT 2004

- | | | | |
|--|--|--|--|
| 14 | Broadcasts | 29 | Infringement by issue of copies to the public |
| 15 | Safeguards in case of certain satellite broadcasts | 30 | Infringement by rental or lending of work to the public |
| 16 | Cable programmes | 31 | Infringement by performance, showing or playing of work in public |
| 17 | Published editions | 32 | Infringement by broadcasting or inclusion in a cable programme service |
| <i>Authorship and ownership of copyright</i> | | 33 | Infringement by making adaptation or act done in relation to adaptation |
| 18 | Authorship of work | <i>Secondary infringement of copyright</i> | |
| 19 | Works of joint authorship | 34 | Secondary infringement: important infringing copy |
| 20 | First ownership of copyright | 35 | Secondary infringement: possessing or dealing with infringing copy |
| <i>Duration of copyright</i> | | 36 | Secondary infringement: providing means for making infringing copies |
| 21 | Duration of copyright in literary, dramatic, musical or artistic works | 37 | Secondary infringement: permitting use of premises for infringing performance |
| 22 | Duration of copyright in sound recordings | 38 | Secondary infringement: provision of apparatus for infringing performance etc. |
| 23 | Duration of copyright in films | <i>Infringing copies</i> | |
| 24 | Duration of copyright in broadcasts and cable programmes | 39 | Meaning of "infringing copy" |
| 25 | Duration of copyright in typographical arrangement of published editions | CHAPTER IV | |
| 26 | Meaning of country of origin | ACTS PERMITTED IN | |
| CHAPTER III | | | |
| RIGHTS OF COPYRIGHT OWNER | | | |
| <i>The acts restricted by copyright</i> | | | |
| 27 | The acts restricted by copyright in a work | | |
| 28 | Infringement of copyright by copying | | |

COPYRIGHT AND DESIGNS ACT 2004

RELATION TO COPYRIGHT WORKS	54	Reprographic copying by educational establishments of passages from published works
<i>Introductory</i>		
40 Introductory provisions		
<i>General</i>	55	Lending of copies by educational establishments
41 Research and private study		
42 Criticism, review and news reporting		
43 Incidental inclusion of copyright material	56	Libraries and archives: introductory
<i>Visual impairment</i>	57	Copying by librarians: articles in periodicals
44 Making a single accessible copy for personal use	58	Copying by librarians: parts of published works
45 Multiple copies for visually impaired persons	59	Restriction on production of multiple copies of the same material
46 Intermediate copies and records	60	Lending of copies by libraries or archives
47 Licensing schemes	61	Copying by libraries: supply of copies to other libraries
48 Limitations, etc. following infringements of copyright	62	Copying by librarians or archivists: replacement copies of works
49 Definitions and other supplementary provisions for sections 44 to 48	63	Copying by librarians or archivists: certain unpublished works
<i>Education</i>	64	Copy of work required to be made as condition of export
50 Things done for purposes of instruction or examination		
51 Anthologies for educational use		
52 Performing, playing or showing work in course of activities of educational establishment		
53 Recording by educational establishments of broadcasts and cable programmes		
		<i>Public administration</i>
	65	Legislative and judicial proceedings
	66	Commissions and statutory inquires
	67	Material open to public inspection or on official register

COPYRIGHT AND DESIGNS ACT 2004

68	Material communicated to the Crown in the course of public business	<i>Miscellaneous: literary, dramatic, musical and artistic works</i>	
69	Public records	81	Anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author
70	Acts done under statutory authority	82	Use of notes or recordings of spoken words in certain cases
	<i>Computer programs: lawful users</i>	83	Public reading or recitation
71	Back up copies	84	Abstracts of scientific or technical articles
72	Decompilation	85	Recordings of folksongs
73	Other acts permitted to lawful users	86	Representation of certain artistic works on public display
	<i>Databases: permitted acts</i>	87	Advertisement of sale of artistic work
74	Acts permitted in relation to databases	88	Making of subsequent works by same artist
	<i>Designs</i>	89	Reconstruction of buildings
75	Design documents and models		<i>Miscellaneous: lending of works and playing of sound recordings</i>
76	Effect of exploitation of design derived from artistic work	90	Lending to public of copies of certain works
77	Things done in reliance on registration of design	91	Royalty or other sum payable for lending of certain works
	<i>Typefaces</i>		<i>Miscellaneous: films and sound recordings</i>
78	Use of typeface in ordinary course of printing	92	Films: acts permitted on assumptions as to expiry of copyright etc.
79	Articles for producing material in particular typeface		
	<i>Works in electronic form</i>		
80	Transfers of copies of works in electronic form		

COPYRIGHT AND DESIGNS ACT 2004

93	Playing of sound recordings for purposes of club, society etc.	104	Requirement that right be asserted
		105	Exceptions to right
	<i>Miscellaneous: broadcasts and cable programme</i>		<i>Right to object to derogatory treatment of work</i>
94	Incidental recordings for purposes of broadcast or cable programme	106	Right to object to derogatory treatment of work
95	Recording for purposes of supervision and control of broadcasts and cable programmes	107	Exceptions to right
96	Recording for purposes of time-shifting	108	Qualification of right in certain cases
97	Photographs of television broadcast or cable programmes	109	Infringement of right by possessing or dealing with infringing article
98	Free public showing or playing of broadcast or cable programme		<i>False attribution of work</i>
99	Reception and re-transmission of broadcast in cable programme service	110	False attribution of work
100	Provision of sub-titled copies of broadcast or cable programme		<i>Right to privacy of certain photographs and films</i>
101	Recording for archival purposes	111	Right to privacy of certain photographs and films
	<i>Adaptations</i>		<i>Supplementary</i>
102	Adaptations	112	Duration of rights
		113	Consent and waiver of rights
		114	Application of provisions to joint works
		115	Application of provisions to parts of works
	CHAPTER V MORAL RIGHTS		CHAPTER VI DEALING WITH RIGHTS IN COPYRIGHT WORKS
	<i>Right to be identified as author or director</i>		<i>Copyright</i>
103	Right to be identified as author or director	116	Assignment and licences
		117	Prospective ownership of copyright

COPYRIGHT AND DESIGNS ACT 2004

- 118 Exclusive licences
- 119 Copyright to pass under will with unpublished work
- 120 Presumption of transfer of rental right in case of film production agreement
- Right to equitable remuneration where rental right transferred*
- 121 Right to equitable remuneration where rental right transferred
- 122 Equitable remuneration: reference of amount to Copyright Tribunal
- Moral rights*
- 123 Moral rights not assignable
- 124 Transmission of moral rights on death
- CHAPTER VII
REMEDIES FOR
INFRINGEMENT
- Rights and remedies of copyright owner*
- 125 Infringement actionable by copyright owner
- 126 Provisions as to damages in infringement action
- 127 Order for delivery up
- 128 Right to seize infringing copies and other articles
- Rights and remedies of exclusive licensee*
- 129 Rights and remedies of exclusive licensee
- 130 Exercise of concurrent rights
- Remedies for infringement of moral rights*
- 131 Remedies for infringement of moral rights
- Presumptions*
- 132 Presumptions relevant to literary, dramatic, musical and artistic works
- 133 Presumptions relevant to sound recordings, films and computer programmes
- 134 Presumptions relevant to works subject to Crown copyright
- Offences*
- 135 Criminal liability for making or dealing with infringing articles etc.
- Enforcement by consumer protection authority*
- 136 Enforcement by inspectors designated under Consumer Protection Act 1999
- 137 Order for delivery up in criminal proceedings
- 138 Search warrants
- Provision for preventing importation of infringing copies*
- 139 Infringing copies may be treated as prohibited goods

COPYRIGHT AND DESIGNS ACT 2004

- 140 Power of Minister of Finance to make regulations
- Supplementary*
- 141 Period after which remedy of delivery up not available
- 142 Order as to disposal of infringing copy or other article
- 143 Forfeiture of infringing copies, etc.
- 144 Jurisdiction of magistrates' court
- CHAPTER VIII
COPYRIGHT LICENSING
- Licensing schemes and licensing bodies*
- 145 Licensing schemes and licensing bodies
- Licensing schemes: references and applications*
- 146 Licensing schemes to which the following sections apply
- 147 Reference of proposed licensing scheme to Copyright Tribunal
- 148 Reference of licensing schemes to Copyright Tribunal
- 149 Further reference of scheme to Copyright Tribunal
- 150 Application for grant of licence in connection with licensing scheme
- 151 Application for review of order as to entitlement to licence
- 152 Effect of order of Copyright Tribunal as to licensing scheme
- Licensing by licensing bodies: references and applications*
- 153 Licences to which following sections apply
- 154 Reference to Copyright Tribunal of proposed licence
- 155 Reference to Copyright Tribunal of expiring licence
- 156 Application for review of order as to licence
- 157 Effect of order of Copyright Tribunal as to licence
- Factors to be taken into account in certain classes of case*
- 158 General considerations: unreasonable discrimination
- 159 Licences for reprographic copying
- 160 Licences for educational establishments in respect of works included in broadcasts or cable programmes
- 161 Licences to reflect conditions imposed by promoters of events
- 162 Licences to reflect payments in respect of underlying rights

COPYRIGHT AND DESIGNS ACT 2004

- 163 Licences in respect of works included in re-transmissions
- 164 Mention of specific matters not to exclude other relevant considerations
- Use as of right of sound recording in broadcasts and cable programme services*
- 165 Circumstances in which right available
- 166 Notice of intention to exercise right
- 167 Conditions for exercise of right
- 168 Applications to settle payments
- 169 References etc. about conditions, information and other terms
- 170 Application for review of order
- 171 Factors to be taken into account
- 172 Power to amend sections 165 to 171
- Implied indemnity in schemes or licences for reprographic copying*
- 173 Implied indemnity in certain schemes and licences for reprographic copying
- Reprographic copying by educational establishments*
- 174 Power to extend coverage of scheme or licence
- 175 Variation or discharge of order extending scheme or licence
- 176 Appeals against orders
- 177 Inquiry whether new scheme or general licence required
- 178 Statutory licence where recommendation not implemented
- Royalty or other sum payable for lending of certain works*
- 179 Royalty or other sum payable for lending of certain works
- Certification of licensing schemes*
- 180 Certification of licensing schemes
- CHAPTER IX
THE COPYRIGHT TRIBUNAL
- The Tribunal*
- 181 The Copyright Tribunal
- 182 Membership of the Copyright Tribunal
- 183 Financial provisions
- 184 Constitution for purposes of proceedings

COPYRIGHT AND DESIGNS ACT 2004

<i>Jurisdiction and procedure</i>	197	Bermuda ships and aircraft
185		Jurisdiction of the Copyright Tribunal
186		General power to make rules
187		Costs, proof of orders etc.
188		Award of interest
		<i>Appeals</i>
189		Appeal to the court on point of law
		CHAPTER X QUALIFICATION FOR AND EXTENT OF COPYRIGHT PROTECTION
		<i>Qualification for copyright protection</i>
190		Qualification for copyright protection
191		Qualification by reference to author
192		Qualification by reference to country of first publication
193		Qualification by reference to place of transmission
		<i>Extent and application of this Part</i>
194		Application of this Part to foreign countries
195		Denial of copyright protection to citizens of countries not giving adequate protection to Bermudian works
		<i>Supplementary</i>
196		Territorial waters
		CHAPTER XI MISCELLANEOUS AND GENERAL
		<i>Crown and Parliamentary copyright</i>
198		Crown copyright
199		Copyright in Acts
200		Parliamentary copyright
201		Copyright in Bills
202		The Legislature: supplementary provisions
		<i>Other Miscellaneous Provisions</i>
203		Copyright vesting in certain international organisations
204		Folklore etc.: anonymous unpublished works
		<i>Requirement of signature</i>
205		Requirement of signature: application in relation to body corporate
		<i>Transitional provisions and savings</i>
206		Transitional provisions and savings
207		Rights and privileges under other enactments or the common law
		PART II RIGHTS IN PERFORMANCES
		<i>Preliminary</i>
208		Index of defined expressions

COPYRIGHT AND DESIGNS ACT 2004

- 209 Expressions having same meaning as in copyright provisions
- 210 Rights conferred on performers and persons having recording rights
- Performers' rights*
- 211 Qualifying performances
- 212 Consent required for recording or transmission of live performance
- 213 Consent required for copying of recording
- 214 Consent required for issue of copies to the public
- 215 Consent required for rental or lending of copies to public
- 216 Right to equitable remuneration for exploitation of sound recording
- 217 Infringement of performer's rights by use of recording made without consent
- 218 Infringement of performer's rights by importing, possessing or dealing with illicit recording
- Rights of person having recording rights*
- 219 Exclusive recording contracts and persons having recording rights
- 220 Consent required for recording of performance subject to exclusive contract
- 221 Infringement of recording rights by use of recording made without consent
- 222 Infringement of recording rights by importing, possessing or dealing with illicit recording
- Exceptions to rights conferred*
- 223 Acts permitted notwithstanding rights conferred by this Part
- 224 Power of tribunal to give consent on behalf of performer in certain cases
- Duration of rights*
- 225 Duration of rights
- Performers' property rights*
- 226 Performers' property rights
- 227 Assignment and licences
- 228 Prospective ownership of a performer's property rights
- 229 Exclusive licences
- 230 Performer's property right to pass under will with unpublished original recording
- 231 Presumption of transfer of rental right in case of film production agreement
- 232 Right to equitable remuneration where rental right transferred

COPYRIGHT AND DESIGNS ACT 2004

- | | | |
|-----|---|--|
| 233 | Equitable remuneration:
reference of amount to
Copyright Tribunal | <i>Enforcement by consumer
protection authority</i> |
| 234 | Infringement actionable
by rights owner | 246 Enforcement by inspectors
designated under the
Consumer Protection Act
1999 |
| 235 | Provisions as to damages
in infringement actions | 247 Order for delivery up in
criminal proceedings |
| 236 | Rights and remedies for
exclusive licensee | 248 Search warrants |
| 237 | Exercise of concurrent
rights | 249 False representation of
authority to give consent |
| | <i>Non-property rights</i> | <i>Supplementary provisions with
respect to delivery up and
seizure</i> |
| 238 | Performers' non-property
rights | 250 Period after which remedy
of delivery up not
available |
| 239 | Transmissibility of rights
of persons having
recording rights | 251 Order as to disposal of
illicit recording |
| 240 | Consent | 252 Forfeiture of illicit
recordings |
| | <i>Remedies for infringement</i> | 253 Jurisdiction of
magistrates' court |
| 241 | Infringement actionable
as breach of statutory
duty | <i>Licensing of performers' property
rights</i> |
| | <i>Delivery up or seizure of illicit
recordings</i> | 254 Licensing of performers'
property rights |
| 242 | Order for delivery up | <i>Jurisdiction of Copyright
Tribunal</i> |
| 243 | Right to seize illicit
recordings | 255 Jurisdiction of Copyright
Tribunal |
| 244 | Meaning of "illicit
recording" | <i>Qualification for protection and
extent</i> |
| | <i>Offences</i> | 256 Qualifying countries,
individuals and persons |
| 245 | Criminal liability for
making, dealing with or
using illicit recordings | 257 Countries enjoying
reciprocal protection |

COPYRIGHT AND DESIGNS ACT 2004

- | | |
|---|---|
| 258 Territorial waters | 277 Database right: term applicable to certain existing databases |
| 259 Bermuda ships and aircraft | |
| PART III | PART IV |
| DATABASE RIGHT | MISCELLANEOUS AND GENERAL |
| <i>Database right</i> | <i>Devices designed to circumvent copy protection</i> |
| 260 Interpretation | 278 Devices designed to circumvent copy-protection |
| 261 Database right | <i>Computer programs</i> |
| 262 The maker of a database | 279 Avoidance of certain terms |
| 263 First ownership of database right | <i>Databases</i> |
| 264 Acts infringing database right | 280 Avoidance of certain terms relating to databases |
| 265 Term of protection | |
| 266 Qualification for database right | <i>Fraudulent reception of transmission</i> |
| 267 Avoidance of certain terms affecting lawful users | 281 Offence of fraudulently receiving programmes |
| 268 Exceptions to database right | 282 Unauthorised decoders |
| 269 Acts permitted on assumption as to expiry of database right | 283 Search warrants |
| 270 Presumptions relevant to database right | 284 Forfeiture of unauthorised decoders |
| 271 Application of copyright provisions to database right | 285 Rights and remedies in respect of apparatus etc. for unauthorised reception of transmission |
| 272 Licensing of database right | 286 Supplementary provisions as to fraudulent reception |
| 273 Database right: jurisdiction of Copyright Tribunal | |
| <i>Savings and transitional provisions</i> | |
| 274 General rule | |
| 275 General savings | |
| 276 Savings for copyright in certain existing database | |

COPYRIGHT AND DESIGNS ACT 2004

PART V DESIGN RIGHT	302	Prospective ownership of design right	
	303	Assignment of right in registered design presumed to carry with it design right	
	304	Exclusive licences	
CHAPTER 1 DESIGN RIGHT IN ORIGINAL DESIGNS		CHAPTER II RIGHTS OF DESIGN RIGHT, OWNER AND REMEDIES	
<i>Interpretation</i>		<i>Infringement of design right</i>	
287		305	Primary infringement of design right
288		306	Secondary infringement: importing or dealing with infringing article
289		307	Meaning of "infringing article"
290			<i>Remedies for infringement</i>
291		308	Rights and remedies of design right owner
		309	Order for delivery up
<i>Introductory</i>		310	Order as to disposal of infringing articles etc.
292		311	Jurisdiction of magistrates' court
293		312	Innocent infringement
294		313	Rights and remedies of exclusive licensee
295		314	Exercise of concurrent rights
			CHAPTER III EXCEPTIONS TO RIGHTS OF DESIGN RIGHT OWNERS
<i>Qualifications for design right protection</i>			<i>Infringement of copyright</i>
296		315	Infringement of copyright
297			
298			
299			
300			
<i>Dealings with design right</i>			
301			

COPYRIGHT AND DESIGNS ACT 2004

<i>Availability of licences of right</i>	CHAPTER V
316 Licences available in last five years of design	MISCELLANEOUS AND GENERAL
317 Undertaking to take licence of right in infringement proceedings	<i>Miscellaneous</i>
<i>General</i>	325 Remedy for groundless threats of infringement proceedings
318 Power to provide for further exceptions	326 Licensee under licence of right not to claim connection with design right owner
CHAPTER IV	327 Requirement of signature: application in relation to body corporate
JURISDICTION OF THE REGISTRAR-GENERAL AND THE COURT	
<i>Jurisdiction of the Registrar-General</i>	<i>Extent of operation of this Part</i>
319 Jurisdiction to decide matters relating to design right	328 Countries enjoying reciprocal protection
320 Application to settle terms of licence of right	329 Territorial waters
321 Settlement of terms where design right owner unknown	330 Bermuda ships and aircraft
322 Appeals as to terms of licence of right	PART VI
323 Rules	GENERAL AND SUPPLEMENTARY
<i>Jurisdiction of the court</i>	<i>Offences by body corporate</i>
324 References and appeals on design right matters	331 Offence by body corporate: liability of officers
	<i>Final provisions</i>
	332 Crown application
	333 Consequential amendment and repeal
	334 Short title and commencement

COPYRIGHT AND DESIGNS ACT 2004

SCHEDULES	Schedule 3
Schedule 1	Licensing of Performers' Property Rights
Copyright: Transitionals and Savings	Schedule 4
Schedule 2	Exceptions to Database Right for Public Administration
Rights in Performances: Permitted Acts	Schedule 5
	Licensing of Database Right

WHEREAS it is expedient to restate the law of copyright with amendments; to make fresh provisions with respect to the rights of performers and others in performances; to make provision with respect to devices designed to circumvent copy protection of works in electronic form; to make fresh provision penalising the fraudulent reception of transmissions; to make fresh provision with respect to database rights; to confer a design right in original designs; and for connected purposes:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:—

PART I COPYRIGHT

CHAPTER I PRELIMINARY

Index of defined expressions

1. 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) —

accessible copy	section 49(3)
acts restricted by copyright	section 27(1)
adaptation	section 33(5)
approved body	section 45(12)
archivist (in sections 56 to 63)	section 56(5)
article (in a periodical)	section 2
artistic work	section 11(1)
author	sections 18 and 19(4)

COPYRIGHT AND DESIGNS ACT 2004

broadcast (and related expressions)	section 14
building	section 11(2)
business	section 2
cable programme, cable programme service (and related expressions)	section 16
collective work	section 2
commencement (in Schedule 1)	paragraph 1(2) of that Schedule
commercial publication	section 6(2)
computer-generated	section 2
copy and copying	section 28
copyright (generally)	section 7
copyright (in Schedule 1)	paragraph 2(2) of that Schedule
copyright owner	sections 4 and 129(2)
Copyright Tribunal	section 181
copyright work	section 7(2)
country	section 2
country of origin	section 26
the Crown	section 2
Crown copyright	sections 198(2) and 199(3)
database	section 10(1)
dramatic work	section 9(1)
educational establishment	section 5(1)
electronic and electronic form	section 2
employed, employee, employer and employment	section 2
exclusive licence	section 118 (1)
existing works (in Schedule 1)	paragraph 1(3) of that Schedule
facsimile copy	section 2
film	section 13
future copyright	section 117(2)

COPYRIGHT AND DESIGNS ACT 2004

general licence (in sections 177 and 178)	section 177(7)
graphic work	section 11(2)
infringing copy	section 39
international organisation	section 2
issue of copies to the public	section 29
joint authorship (work of)	sections 19
judicial proceedings	section 2
lawful user (in sections 71 to 73)	section 71(2)
lending	section 30 (2) to (6)]
librarian (in sections 56 to 63)	section 56(5)
licence (in sections 154 to 157)	section 153
licence of copyright owner	sections 4, 116(4) and 117(3)
licensing body (in Chapter VIII)	section 145(2)
licensing scheme (generally)	section 145(1)
licensing scheme (in sections 147 to 152)	section 146(1)
literary work	section 9(1)
made (in relation to a literary, dramatic or musical work)	section 9(2)
musical work	section 9(1)
needletime	section 165(5)
the new copyright provisions in Schedule 1	paragraph 1(1) of that Schedule
the 1911 Act (in Schedule 1)	paragraph 1(1) of that Schedule
the 1956 Act (in Schedule 1)	paragraph 1(1) of that Schedule
on behalf of (in relation to an educational establishment)	section 5(4)
original (in relation to a database)	section 10(2)
Parliamentary copyright	sections 200(2) and 201(5)
performance	section 31(2)
photograph	section 11(2)

COPYRIGHT AND DESIGNS ACT 2004

prescribed conditions (in sections 57 to 63)	section 56(1)(b)
prescribed library or archive (in sections 57 to 63)	section 56(1)(a)
producer (in relation to a sound recording or film)	section 2
programme (in the context of broadcasting)	section 14(3)
prospective owner (of copyright)	section 117(2)
publication and related expressions	section 6
published edition (in the context of copyright in the typographical arrangement)	section 17
pupil	section 5(3)
rental	section 30(2) to (6)
rental right	section 2
reprographic copies and reprographic copying	section 2
reprographic process	section 2
sculpture	section 11(2)
signed	section 205
sound recording	sections 12 and 165(5)
sufficient acknowledgement	section 2
sufficient disclaimer	section 2
teacher	section 5(3)
telecommunications system	section 2
terms of payment	section 165(5)
typeface	section 2
unauthorised (as regards things done in relation to a work)	section 2
unknown (in relation to the author of a work)	section 18(5)
unknown authorship (work of)	section 18(4)

COPYRIGHT AND DESIGNS ACT 2004

visually impaired persons	section 49(9)
wireless telegraphy	section 2
work (in Schedule 1)	paragraph 2(1) of that Schedule
work of more than one author (in Chapter VIII)	section 145(4)
writing and written	section 2

Minor definitions

2. In this Part—

"article", in the context of an article in a periodical, includes an item of any description;

"Bermudian status" has the meaning given in the Bermuda Immigration and Protection Act 1956;

"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;

"copyright owner" shall be construed in accordance with section 4;

"country" includes any territory;

"the Crown" means the Crown in right of Her Majesty's Government in Bermuda;

"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;

COPYRIGHT AND DESIGNS ACT 2004

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

"Minister" means the Minister responsible for matters relating to intellectual property;

"premises" includes land, buildings, fixed or moveable structures, vehicles, vessels, aircraft and hovercraft;

"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;

"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 106 (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;

COPYRIGHT AND DESIGNS ACT 2004

"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 20(2) would have applied, the author's employer or, in either case, persons lawfully claiming under him; or
- (c) in pursuance of section 68 (copying etc. of certain material by the Crown);

"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.

General provisions as to construction of this Part

3. (1) This Part restates and amends the law of copyright, that is, the provisions of the Copyright Act 1956 of the United Kingdom as amended (as extended to Bermuda by the Copyright (Bermuda) Order 1962).

(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.

Construction of references to copyright owner

4. (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.

COPYRIGHT AND DESIGNS ACT 2004

(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

5. (1) In this Part "educational establishment" means —
- (a) any school, within the meaning of the Education Act 1996; and
 - (b) any other description of educational establishment specified for the purposes of this Part, or that provision, by order of the Minister.

(2) An order 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 order.

(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.

(5) An order made under this section is subject to negative resolution procedure.

Meaning of publication and commercial publication

6. (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.

COPYRIGHT AND DESIGNS ACT 2004

(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 broadcasting of the work or its inclusion in a cable programme service (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 broadcasting of the work or its inclusion in a cable programme service (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 broadcasting of the work or its inclusion in a cable programme service.

(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.

COPYRIGHT AND DESIGNS ACT 2004

CHAPTER II SUBSISTENCE, OWNERSHIP AND DURATION OF COPYRIGHT

Introductory

Copyright and copyright works

7. (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;
- (b) sound recordings, films, broadcasts or cable programmes; 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.

Rights subsisting in copyright works

8. (1) The owner of the copyright in a work of any description has the exclusive right to do the acts specified in Chapter III (Rights of Copyright Owner) 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 V (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 103 (right to be identified as author or director);
- (b) section 106 (right to object to derogatory treatment of the work); and
- (c) section 111 (right to privacy of certain photographs and films).

Descriptions of work and related provisions

Literary, dramatic and musical works

9. (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;

COPYRIGHT AND DESIGNS ACT 2004

- (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

10. (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 it constitutes the author's own intellectual creation.

Artistic works

11. (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 —

COPYRIGHT AND DESIGNS ACT 2004

- (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 the purposes of sculpture.

Sound recordings

12. (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 reproduced;

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

13. (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 (1), where that subsection applies —

- (a) references in this Part to showing a film include playing the film sound track to accompany the film; and
- (b) references to playing a sound recording do not include playing the film 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.

COPYRIGHT AND DESIGNS ACT 2004

Broadcasts

14. (1) In this Part a "broadcast" means a transmission by wireless telegraphy of visual images, sounds or other information which —

(a) is capable of being lawfully received by members of the public; or

(b) is transmitted for presentation to members of the public;

and references to broadcasting shall be construed accordingly.

(2) 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.

(3) References in this Part to the person making a broadcast, broadcasting a work, or including a work in 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.

(4) For the purposes of this Part, the place from which a 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).

(5) Subsections (3) and (4) have effect subject to section 15 (safeguards in cases of certain satellite broadcasts).

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

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

Safeguards in case of certain satellite broadcasts

15. (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 Bermuda and the law of that country fails to provide at least the following level of protection —

COPYRIGHT AND DESIGNS ACT 2004

- (a) exclusive rights in relation to broadcasting equivalent to those conferred by section 32 (infringement by broadcasting) on the authors of literary, dramatic, musical and artistic works, films and broadcasts;
- (b) a right in relation to live broadcasting equivalent to that conferred on a performer by section 212(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 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 Bermuda —

- (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 Bermuda but a person who is established in Bermuda 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 Bermuda shall be treated as the place from which the broadcast is made.

Cable programmes

16. (1) In this Part—

"cable programme" means any item included in a cable programme service; and

"cable programme service" means a service which consists wholly or mainly in sending visual images, sounds or other information by means of a telecommunications system, otherwise than by wireless telegraphy, for reception —

- (a) at two or more places (whether for simultaneous reception or at different times in response to requests by different users); or
- (b) for presentation to members of the public;

and which is not, or so far as it is not, excepted by or under the following provisions of this section.

COPYRIGHT AND DESIGNS ACT 2004

(2) The following are excepted from the definition of "cable programme service" —

(a) a service or part of a service of which it is an essential feature that while visual images, sounds or other information are being conveyed by the person providing the service there will or may be sent from each place of reception, by means of the same system or (as the case may be) the same part of it, information (other than signals sent for the operation or control of the service) for reception by the person providing the service or other persons receiving it;

(b) a service run for the purposes of a business where —

(i) no person except the person carrying on the business is concerned in the control of the apparatus comprised in the system;

(ii) the visual images, sounds or other information are conveyed by the system solely for purposes internal to the running of the business and not by way of rendering a service or providing amenities for others; and

(iii) the system is not connected to any other telecommunications system;

(c) a service run by a single individual where —

(i) all the apparatus comprised in the system is under his control;

(ii) the visual images, sounds or other information conveyed by the system are conveyed solely for domestic purposes of his; and

(iii) the system is not connected to any other telecommunications system;

(d) services where —

(i) all the apparatus comprised in the system is situated in, or connects, premises which are in single occupation; and

(ii) the system is not connected to any other telecommunications system;

other than services operated as part of the amenities provided for residents or inmates of premises run as a business;

COPYRIGHT AND DESIGNS ACT 2004

(e) services which are, or to the extent that they are, run for persons providing broadcasting or cable programme services or providing programmes for such services.

(3) The Minister may by order, amend subsection (2) so as to add or remove exceptions, subject to such transitional provision as appears to him to be appropriate.

(4) An order made under this section is subject to affirmative resolution procedure.

(5) References in this Part to the inclusion of a cable programme or work in a cable programme service are to its transmission as part of the service; and references to the person including it are to the person providing the service.

(6) Copyright does not subsist in a cable programme —

(a) if it is included in a cable programme service by reception and immediate re-transmission of a broadcast; or

(b) if it infringes, or to the extent that it infringes, the copyright in another cable programme or in a broadcast.

Published editions

17. (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

18. (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 or, in the case of a broadcast which relays another broadcast by reception and immediate re-transmission, the person making that other broadcast;

COPYRIGHT AND DESIGNS ACT 2004

(d) in the case of a cable programme, the person providing the cable programme service in which the programme is included;

(e) 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

19. (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.

(4) References in this Part to the author of 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

20. (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, Parliamentary copyright or to copyright which subsists by virtue of section [203] (copyright of certain international organisations).

COPYRIGHT AND DESIGNS ACT 2004

Duration of copyright

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

21. (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) being broadcast or included in a cable programme service;

(b) in the case of an artistic work—

(i) exhibition in public;

(ii) a film including the work being shown in public; or

(iii) being included in a broadcast or cable programme service;

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 the work is not Bermuda and the author of the work does not possess Bermudian status, 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).

COPYRIGHT AND DESIGNS ACT 2004

(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 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 possessing Bermudian status shall be construed as a reference to none of the authors possessing Bermudian status.

(9) This section does not apply to Crown copyright, Parliamentary copyright or to copyright which subsists by virtue of section 203 (copyright of certain international organisations).

Duration of copyright in sound recordings

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

(2) Copyright expires —

(a) at the end of the period of 50 years from the end of the calendar year in which it is made; or

(b) if during that period it is released, 50 years from the end of the calendar year in which it is released;

subject as follows.

(3) For the purposes of subsection (2), a sound recording is "released" when it is first published, played in public, broadcast or included in a cable programme service; but in determining whether a sound recording has been released no account shall be taken of any unauthorised act.

(4) Where the author of a sound recording does not possess Bermudian status, the duration of copyright is that to which the sound

COPYRIGHT AND DESIGNS ACT 2004

recording is entitled in the country of which the author is a national, provided that does not exceed the period which would apply under subsections (2) and (3).

(5) If or to the extent that the application of subsection (4) would be at variance with an international obligation to which Bermuda became subject prior to 29 October 1993, the duration of copyright shall be as specified in subsections (2) and (3).

Duration of copyright in films

23. (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 subsections (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 subsections (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) being broadcast or included in a cable programme service;

COPYRIGHT AND DESIGNS ACT 2004

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 Bermuda and the author of the film does not possess Bermudian status, the duration of the 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 possessing Bermudian status shall be construed as a reference to none of the authors possessing Bermudian status.

(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.

(9) 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 and cable programmes

24. (1) The following provisions have effect with respect to the duration of copyright in a broadcast or cable programme.

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

(3) Where the author of the broadcast or cable programme does not possess Bermudian status, the duration of copyright in the broadcast or cable programme 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 Bermuda became subject prior to 29 October 1993, the duration of copyright shall be as specified in subsection (2).

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

COPYRIGHT AND DESIGNS ACT 2004

(6) A repeat broadcast or cable programme means one which is a repeat either of a broadcast previously made or of a cable programme previously included in a cable programme service.

Duration of copyright in typographical arrangement of published editions

25. 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

26. (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 Bermuda, the country of origin is that country; and
- (b) if none of those countries is Bermuda, 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;

COPYRIGHT AND DESIGNS ACT 2004

(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 9th September 1886; and

(b) references to simultaneous publication are to publication within 30 days of first publication.

CHAPTER III RIGHTS OF COPYRIGHT OWNER

The acts restricted by copyright

The acts restricted by copyright in a work

27. (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 Bermuda—

(a) to copy the work;

(b) to issue copies of the work to the public;

(c) to rent or lend the work to the public;

(d) to perform, show or play the work in public;

(e) to broadcast the work or include it in a cable programme service;

(f) to make an adaptation of the work or do any of the above in relation to an adaptation;

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.

COPYRIGHT AND DESIGNS ACT 2004

- (4) This Chapter has effect subject to—
- (a) the provisions of Chapter IV (acts permitted in relation to copyright works); and
 - (b) the provisions of Chapter VIII (copyright licensing).

Infringement of copyright by copying

28. (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, and 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, television broadcast or cable programme includes making a photograph of the whole or any substantial part of any image forming part of the film, broadcast or cable programme.

(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

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

COPYRIGHT AND DESIGNS ACT 2004

- (b) any subsequent importation of such copies into Bermuda;

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

- (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

30. (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 a 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, broadcasting or inclusion in a cable programme service;
- (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

COPYRIGHT AND DESIGNS ACT 2004

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

31. (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, broadcast or cable programme 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, broadcast or cable programme.

(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 broadcasting or inclusion in a cable programme service

32. The broadcasting of the work or its inclusion in a cable programme service 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 or cable programme.

Infringement by making adaptation or act done in relation to adaptation

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

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

COPYRIGHT AND DESIGNS ACT 2004

(3) The doing of any of the acts specified in sections 28 to 32, or subsection (1), in relation to an adaptation of the work is also an act restricted by the copyright in a literary, dramatic or musical work.

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

(5) 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 a 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.

(6) 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.

(7) 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

34. The copyright in a work is infringed by a person who, without the licence of the copyright owner, imports into Bermuda, 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

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

COPYRIGHT AND DESIGNS ACT 2004

- (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

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

- (a) makes;
- (b) imports into Bermuda;
- (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 broadcasting or inclusion in a cable programme service), knowing or having reason to believe that infringing copies of the work will be made by means of the reception of the transmission in Bermuda or elsewhere.

Secondary infringement: permitting use of premises for infringing performance

37. (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.

COPYRIGHT AND DESIGNS ACT 2004

Secondary infringement: provision of apparatus for infringing performance etc.

38. (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"

39. (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 Bermuda; and

COPYRIGHT AND DESIGNS ACT 2004

(b) its making in Bermuda 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) In this Part "infringing copy" includes a copy falling to be treated as an infringing copy by virtue of any of the following provisions —

- (a) section 50(5) (copies made for purposes of instruction or examination);
- (b) section 53(3) (recordings made by educational establishments for educational purposes);
- (c) section 54(5) (reprographical copying by education establishments for purposes of instruction);
- (d) section 56(3)(b) (copies made by librarian or archivist in reliance on false declaration);
- (e) section 80(2) (further copies, adaptations etc. of work in electronic form retained on transfer of principal copy);
- (f) section 87(2) (copies made for purpose of advertising artistic work for sale);
- (g) section 94(4) (copies made for purpose of broadcast or cable programme); or
- (h) any provision of an order under section 178 (statutory licence for certain reprographic copying by educational establishments).

CHAPTER IV ACTS PERMITTED IN RELATION TO COPYRIGHT WORKS

Introductory

Introductory provisions

40. (1) The provisions of this Chapter specify acts which may be done in relation to copyright works notwithstanding the subsistence of

COPYRIGHT AND DESIGNS ACT 2004

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

Research and private study

41. (1) Fair dealing with a literary work, other than a database, or a dramatic, musical or artistic work for the purposes of research or private study does not infringe any copyright in the work or, in the case of a published edition, in the typographical arrangement.

(2) Fair dealing with a database for the purposes of research or private study does not infringe any copyright in the database provided that the source is indicated.

(3) Fair dealing with the typographical arrangement of a published edition for the purposes mentioned in subsection (1) does not infringe any copyright in the arrangement.

(4) 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 59 would not permit to be done under section 57 or 58 (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.

(5) It is not fair dealing —

COPYRIGHT AND DESIGNS ACT 2004

(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 72 (Decompilation).

(6) The doing of anything in relation to a database for the purposes of research for a commercial purpose is not fair dealing with the database.

Criticism, review and news reporting

42. (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.

(2) 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 (3)) it is accompanied by a sufficient acknowledgement.

(3) No acknowledgement is required in connection with the reporting of current events by means of a sound recording, film, broadcast or cable programme.

Incidental inclusion of copyright material

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

(2) Nor is the copyright infringed by the issue to the public of copies, or the playing, showing, broadcasting or inclusion in a cable programme service, 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, broadcast or cable programme as includes a musical work or such words, shall not be regarded as incidentally included in another work if it is deliberately included.

Visual impairment

Making a single accessible copy for personal use

44. (1) If a visually impaired person has lawful possession or lawful use of a copy ("the master copy") of the whole or part of —

(a) a literary, dramatic, musical or artistic work; or

COPYRIGHT AND DESIGNS ACT 2004

(b) a published edition;

which is not accessible to him because of the impairment, it is not an infringement of copyright in the work, or in the typographical arrangement of the published edition, for an accessible copy of the master copy to be made for his personal use.

(2) Subsection (1) does not apply —

(a) if the master copy is of a musical work, or part of a musical work, and the making of an accessible copy would involve recording a performance of the work or part of it; or

(b) if the master copy is of a database, or part of a database, and the making of an accessible copy would infringe copyright in the database.

(3) Subsection (1) does not apply in relation to the making of an accessible copy for a particular visually impaired person if, or to the extent that, copies of the copyright work are commercially available, by or with the authority of the copyright owner, in a form that is accessible to that person.

(4) An accessible copy made under this section must be accompanied by —

(a) a statement that it is made under this section; and

(b) a sufficient acknowledgement.

(5) If a person makes an accessible copy on behalf of a visually impaired person under this section and charges for it, the sum charged must not exceed the cost of making and supplying the copy.

(6) If a person holds an accessible copy made under subsection (1) when he is not entitled to have it made under that subsection, the copy is to be treated as an infringing copy, unless he is a person falling within subsection (7)(b).

(7) A person who holds an accessible copy made under subsection (1) may transfer it to —

(a) a visually impaired person entitled to have the accessible copy made under subsection (1); or

(b) a person who has lawful possession of the master copy and intends to transfer the accessible copy to a person falling within paragraph (a).

(8) The transfer by a person ("V") of an accessible copy made under subsection (1) to another person ("T") is an infringement of copyright by V unless V has reasonable grounds for believing that T is a person falling within subsection (7)(a) or (b).

COPYRIGHT AND DESIGNS ACT 2004

(9) If an accessible copy which would be an infringing copy but for this section is subsequently dealt with —

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

(10) In subsection (9), "dealt with" means sold or let for hire or offered or exposed for sale or hire or included in a broadcast or cable programme service.

Multiple copies for visually impaired persons

45. (1) If an approved body has lawful possession of a copy ("the master copy") of the whole or part of —

- (a) a commercially published literary, dramatic, musical or artistic work; or
- (b) a commercially published edition;

it is not an infringement of copyright in the work, or in the typographical arrangement of the published edition, for the body to make, or supply, accessible copies for the personal use of visually impaired persons to whom the master copy is not accessible because of their impairment.

(2) Subsection (1) does not apply —

- (a) if the master copy is of a musical work, or part of a musical work, and the making of an accessible copy would involve recording a performance of the work or part of it; or
- (b) if the master copy is of a database, or part of a database, and the making of an accessible copy would infringe copyright in the database.

(3) Subsection (1) does not apply in relation to the making of an accessible copy if, or to the extent that, copies of the copyright work are commercially available, by or with the authority of the copyright owner, in a form that is accessible to the same or substantially the same degree.

(4) Subsection (1) does not apply in relation to the supply of an accessible copy of a particular visually impaired person if, or to the extent that, copies of the copyright work are commercially available, by or with the authority of the copyright owner, in a form that is accessible to that person.

(5) An accessible copy made under this section must be accompanied by —

- (a) a statement that it is made under this section; and

COPYRIGHT AND DESIGNS ACT 2004

(b) a sufficient acknowledgement.

(6) If an approved body charges for supplying a copy made under this section, the sum charged must not exceed the cost of making and supplying the copy.

(7) An approved body making copies under this section must, if it is an educational establishment, ensure that the copies will be used only for its educational purposes.

(8) If the master copy is in copy-protected electronic form, any accessible copy made of it under this section must, so far as it is reasonably practicable to do so, incorporate the same, or equally effective, copy protection (unless the copyright owner agrees otherwise).

(9) If an approved body continues to hold an accessible copy made under subsection (1) when it would no longer be entitled to make or supply such a copy under that subsection, the copy is to be treated as an infringing copy.

(10) If an accessible copy which would be an infringing copy but for this section is subsequently dealt with —

(a) it is to be treated as an infringing copy for the purposes of that dealing; and

(b) if that dealing infringes copyright, is to be treated as an infringing copy for all subsequent purposes.

(11) In subsection (10), "dealt with" means sold or let for hire or offered or exposed for sale or hire or included in a broadcast or cable programme service.

(12) "Approved body" means an educational establishment or a body that is not conducted for profit.

(13) "Supplying" includes lending.

Intermediate copies and records

46. (1) An approved body entitled to make accessible copies under section 45 may hold an intermediate copy of the master copy which is necessarily created during the production of the accessible copies, but only —

(a) if and so long as the approved body continues to be entitled to make accessible copies of that master copy; and

(b) for the purposes of the production of further accessible copies.

(2) An intermediate copy which is held in breach of subsection (1) is to be treated as an infringing copy.

COPYRIGHT AND DESIGNS ACT 2004

(3) An approved body may lend or transfer the intermediate copy to another approved body which is entitled to make accessible copies of the work or published edition under section 45.

(4) The loan or transfer by an approved body ("A") of an intermediate copy to another person ("B") is an infringement of copyright by A unless A has reasonable grounds for believing that B —

- (a) is another approved body which is entitled to make accessible copies of the work or published edition under section 45; and
- (b) will use the intermediate copy only for the purposes of the production of further accessible copies.

(5) If an approved body charges for lending or transferring the intermediate copy, the sum charged must not exceed the cost of the loan or transfer.

(6) An approved body must —

- (a) keep records of accessible copies made under section 45 and of the persons to whom they are supplied;
- (b) keep records of any intermediate copy lent or transferred under this section and of the persons to whom it is lent or transferred; and
- (c) allow the copyright owner or a person acting for him, on giving reasonable notice, to inspect the records at any reasonable time.

(7) Within a reasonable time of making an accessible copy under section 45, or lending or transferring an intermediate copy under this section, the approved body must —

- (a) notify each relevant representative body; or
- (b) if there is no such body, notify the copyright owner.

(8) A relevant representative body is a body which —

- (a) represents particular copyright owners, or owners of copyright in the type of copyright work concerned; and
- (b) has given notice to the Minister of the copyright owners, or the classes of copyright owner, represented by it.

(9) The requirement to notify the copyright owner under subsection (7)(b) does not apply if it is not reasonably possible for the approved body to ascertain the name and address of the copyright owner.

COPYRIGHT AND DESIGNS ACT 2004

Licensing schemes

47. (1) Section 45 does not apply to the making of an accessible copy in a particular form if —

- (a) a licensing scheme operated by a licensing body is in force under which licences may be granted by the licensing body permitting the making and supply of copies of the copyright work in that form;
- (b) the scheme is not unreasonably restrictive; and
- (c) the scheme and any modification made to it have been notified to the Minister by the licensing body.

(2) A scheme is unreasonably restrictive if it includes a term or condition which —

- (a) purports to prevent or limit the steps that may be taken under section 45 or 46; or
- (b) has that effect.

(3) But subsection (2) does not apply if —

- (a) the copyright work is no longer published by or with the authority of the copyright owner; and
- (b) there are reasonable grounds for preventing or restricting the making of accessible copies of the work.

(4) If section 45 or 46 is displaced by a licensing scheme, sections 148 to 151 apply in relation to the scheme as if it were one to which those sections applied as a result of section 146.

Limitations, etc. following infringement of copyright

48. (1) The Minister may make an order under this section if it appears to him that the making of copies —

- (a) under section 45; or
- (b) under a licence granted under a licensing scheme that has been notified under section 47;

has led to infringement of copyright on a scale which, in the Minister's opinion, would not have occurred if section 45 had not been in force, or the licence had not been granted.

(2) The order may prohibit one or more named approved bodies, or one or more specified categories of approved body, from —

- (a) acting under section 45; or
- (b) acting under a licence of a description specified in the order.

COPYRIGHT AND DESIGNS ACT 2004

- (3) The order may disapply —
- (a) the provisions of section 45; or
 - (b) the provisions of a licence, or a licensing scheme, of a description specified in the order,

in respect of the making of copies of a description so specified.

(4) If the Minister proposes to make an order he must, before making it, consult —

- (a) such bodies representing copyright owners as he thinks fit; and
- (b) such bodies representing visually impaired persons as he thinks fit.

(5) If the Minister proposes to make an order which includes a prohibition he must, before making it, consult —

- (a) if the proposed order is to apply to one or more named approved bodies, that body or those bodies;
- (b) if it is to apply to one or more specified categories of approved body, to such bodies representing approved bodies of that category or those categories as he thinks fit.

(6) An approved body which is prohibited by an order from acting under a licence may not apply to the Copyright Tribunal under section 150(1) in respect of a refusal or failure by a licensing body to grant such a licence.

Definitions and other supplementary provisions for sections 44 to 48

(1) This section supplements sections 44 to 48 and includes definitions.

(2) A copy of a copyright work (other than an accessible copy made under section 44 or 45) is to be taken to be accessible to a visually impaired person only if it is as accessible to him as it would be if he were not visually impaired.

(3) "Accessible copy", in relation to a copyright work, means a version which provides for a visually impaired person improved access to the work.

(4) An accessible copy may include facilities for navigating around the version of the copyright work but may not include —

- (a) changes that are not necessary to overcome problems caused by visual impairment; or

COPYRIGHT AND DESIGNS ACT 2004

- (b) changes which infringe the right (provided by section 106 not to have the work subjected to derogatory treatment.
- (5) "Approved body" has the meaning given in section 45(12).
- (6) "Lending", in relation to a copy, means making it available for use, otherwise than for direct or indirect economic or commercial advantage, on terms that it will or may be returned.
- (7) For the purposes of subsection (6), a loan is not to be treated as being for direct or indirect economic or commercial advantage if a charge is made for the loan which does not exceed the cost of making and supplying the copy.
- (8) The definition of "lending" in section 30 does not apply for the purposes of sections 45 and 46.
- (9) "Visually impaired person" means a person—
- (a) who is blind;
 - (b) who has an impairment of visual function which cannot be improved, by the use of corrective lenses, to a level that would normally be acceptable for reading without a special level or kind of light;
 - (c) who is unable, through physical disability, to hold or manipulate a book; or
 - (d) who is unable, through physical disability, to focus or move his eyes to the extent that would normally be acceptable for reading.
- (10) The Minister may by regulations prescribe —
- (a) the form in which; or
 - (b) the procedure in accordance with which any notice required under section 46 or 47, must be given.
- (11) Any power to make regulations or orders is exercisable subject to negative resolution procedure.

Education

Things done for purposes of instruction or examination

50. (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; and
 - (b) is not by means of a reprographic process.

COPYRIGHT AND DESIGNS ACT 2004

(2) Copyright in a sound recording, film, broadcast or cable programme 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 is done by a person giving or receiving instruction.

(3) 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.

(4) Subsection (3) does not extend to the making of a reprographic copy of a musical work for use by an examination candidate in performing the work.

(5) 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.

(6) For this purpose "dealt with" means sold or let for hire or offered or exposed for sale or hire.

Anthologies for educational use

51. (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.

COPYRIGHT AND DESIGNS ACT 2004

(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

52. (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, broadcast or cable programme 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 and cable programmes

53. (1) A recording of a broadcast or cable programme, 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 cable programme, or in any work included in it.

(2) This section does not apply if or to the extent that there is a licensing scheme certified for the purposes of this section under section 180 providing for the grant of licences.

(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.

(4) For this purpose "dealt with" means sold or let for hire or offered or exposed for sale or hire.

COPYRIGHT AND DESIGNS ACT 2004

Reprographic copying by educational establishments of passages from published works

54. (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, or in the typographical arrangement.

(2) 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 1st January to 31st March, 1st April to 30th June, 1st July to 30th September or 1st October to 31st December.

(3) 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.

(4) 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 which would be permitted under this section.

(5) 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.

(6) For this purpose "dealt with" means sold or let for hire or offered or exposed for sale or hire.

Lending of copies by educational establishments

55. 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

56. (1) In sections 57 to 63 (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 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.

COPYRIGHT AND DESIGNS ACT 2004

(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 57 to 63, to the librarian or archivist include a person acting on his behalf.

(6) Regulations made under this section are subject to negative resolution procedure.

Copying by librarians: articles in periodicals

57. (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 research or private study, and will not use them for any other purposes;

(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.

COPYRIGHT AND DESIGNS ACT 2004

Copying by librarians: parts of published works

58. (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 research or 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

59. (1) Regulations for the purposes of sections 57 and 58 (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

60. 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

61. (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 —

COPYRIGHT AND DESIGNS ACT 2004

- (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

62. (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

63. (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.

COPYRIGHT AND DESIGNS ACT 2004

- (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 research or 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

64. If an article of cultural or historical importance or interest cannot lawfully be exported from Bermuda 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

65. (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.

Commissions and statutory inquiries

66. (1) Copyright is not infringed by anything done for the purposes of the proceedings of a commission or 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 commission or 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 or under an enactment.

COPYRIGHT AND DESIGNS ACT 2004

Material open to public inspection or on official register

67. (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 order provide that subsection (1), (2) or (3) shall, in such cases as may be specified in the order, apply only to copies marked in such manner as may be so specified.

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

(a) to material made open to public inspection by—

- (i) an international organisation specified in the order; or
- (ii) a person so specified who has functions in Bermuda under an international agreement to which Bermuda is party; or

(b) to a register maintained by an international organisation specified in the order;

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

COPYRIGHT AND DESIGNS ACT 2004

"statutory requirement" means a requirement imposed by provision made by or under an enactment.

(7) An order made under this section is subject to negative resolution procedure.

Material communicated to the Crown in the course of public business

68. (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 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

69. Material which is comprised in public records which are open to public inspection in pursuance of an 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 the copyright.

Acts done under statutory authority

70. (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 enactment.

COPYRIGHT AND DESIGNS ACT 2004

Computer programs: lawful users

Back up copies

71. (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 72 and 73 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 279, void).

Decompilation

72. (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 the 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

COPYRIGHT AND DESIGNS ACT 2004

(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 279, void).

Other acts permitted to lawful users

73. (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 71 or 72.

Databases: permitted acts

Acts permitted in relation to databases

74. (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 280 void).

Designs

Design documents and models

75. (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.

COPYRIGHT AND DESIGNS ACT 2004

(2) Nor is it an infringement of the copyright to issue to the public, or include in a film, broadcast or cable programme service, 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

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

(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 Bermuda 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 order 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.

(6) An order made under this section is subject to negative resolution procedure.

COPYRIGHT AND DESIGNS ACT 2004

Things done in reliance on registration of design

77. (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 Patents and Designs Act 1930 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 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 1930 Act.

(2) In subsection (1) a "corresponding design", in relation to an artistic work, means a design within the meaning of the 1930 Act which if applied to an article would produce something which would be treated for the purposes of the this Act as a copy of the artistic work.

Typefaces

Use of typeface in ordinary course of printing

78. (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 —

- (a) section 36 (secondary infringement: making; importing, possessing or dealing with article for making infringing copy);
- (b) sections 127 and 128 (order for delivery up and right of seizure),

COPYRIGHT AND DESIGNS ACT 2004

(c) section 135(2) (offence of making or possessing such an article); and

(d) section 137 (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 typeface

79. (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 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 Bermuda or elsewhere.

Works in electronic form

Transfers of copies of works in electronic form

80. (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.

COPYRIGHT AND DESIGNS ACT 2004

(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

- 81.(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 203 and in respect of which an Order under that section specifies 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

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

- (a) of reporting current events; or
- (b) of broadcasting or including in a cable programme service 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

COPYRIGHT AND DESIGNS ACT 2004

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 or cable programme;
 - (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

83. (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 broadcasting or inclusion in a cable programme service, of a reading or recitation which by virtue of subsection (1) does not infringe copyright in the work, provided that the recording, broadcast or cable programme consists mainly of material in relation to which it is not necessary to rely on that subsection.

Abstracts of scientific or technical articles

84. (1) 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.

(2) This section does not apply if or to the extent that is a licensing scheme certified for the purposes of this section under section 180 providing for the grant of licences.

Recordings of folksongs

85. (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) are met.

COPYRIGHT AND DESIGNS ACT 2004

- (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 research or 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 order of 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 purposes of this section by order of the Minister.
 - (c) references to the archivist include a person acting on his behalf.
- (6) An order made under this section is subject to negative resolution procedure.

Representation of certain artistic works on public display

86. (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

COPYRIGHT AND DESIGNS ACT 2004

(c) broadcasting or including in a cable programme service a visual image of it.

(3) Nor is the copyright infringed by the issue to the public of copies, or the broadcasting or inclusion in a cable programme service, of anything whose making was, by virtue of this section, not an infringement of the copyright.

Advertisement of sale of artistic work

87. (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.

(3) For this purpose "dealt with" means sold or let for hire, offered or exposed for sale or hire, exhibited in public or distributed.

Making of subsequent works by same artist

88. 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

89. 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

90. (1) The Minister may by order provide that in such cases as may be specified in the order 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 Copyright Tribunal.

COPYRIGHT AND DESIGNS ACT 2004

(2) No such order shall apply if, or to the extent that, there is a licensing scheme certified for the purposes of this section under section 180 providing for the grant of licences.

(3) An order 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.

(4) An order made under this section is subject to affirmative resolution procedure.

(5) Nothing in this section affects any liability under section 35 (secondary infringement: possessing or dealing with infringing copy) in respect of the lending of infringing copies.

Royalty or other sum payable for lending of certain works

91. (1) An application to settle the royalty or other sum payable in pursuance of section 90 (lending of copies of certain copyright works) may be made to the Copyright Tribunal by the copyright owner or the person claiming to be treated as licensed by him.

(2) The Tribunal 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 Tribunal to vary the order, and the Tribunal 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 Tribunal, 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 Tribunal.

Miscellaneous: films and sound recordings

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

92. (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 23(2)(a) to (d) (persons by reference to whose life the copyright period is ascertained); and

(b) it is reasonable to assume —

COPYRIGHT AND DESIGNS ACT 2004

- (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 203 and in respect of which an order under that section specifies a copyright period longer than 70 years.

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

93. (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; and
 - (b) 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.

Miscellaneous: broadcasts and cable programmes

Incidental recordings for purposes of broadcast or cable programme

94. (1) This section applies where by virtue of a licence or assignment of copyright a person is authorised to broadcast or include in a cable programme service —

- (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) That person 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 or cable programme —

- (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;

COPYRIGHT AND DESIGNS ACT 2004

- (b) in the case of an artistic work, to take a photograph or make a film of the work;
 - (c) in 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 or, as the case may be, including it in a cable programme service.
- (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 cable programmes

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

(2) Copyright is not infringed by the making or use by the Broadcasting Commissioners of recordings of programmes in connection with and for the purpose of carrying out their functions under the Broadcasting Commissioners Act 1953.

(3) In this section "prescribed" means prescribed by order of the Minister.

(4) An order made under this section shall be subject to negative resolution procedure.

Recording for purposes of time-shifting

96. The making for private and domestic use of a recording of a broadcast or cable programme 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 cable programme or in any work included in it.

Photographs of television broadcasts or cable programmes

97. The making for private and domestic use of a photograph of the whole or any part of an image forming part of a television broadcast or cable programme, or a copy of such a photograph, does not infringe any

COPYRIGHT AND DESIGNS ACT 2004

copyright in the broadcast or cable programme or in any film included in it.

Free public showing or playing of broadcast or cable programme

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

- (a) the broadcast or cable programme; or
- (b) any sound recording or film included in it.

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

(3) 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 or programmes is only incidental to the main purposes of the club or society.

(4) Where the making of the broadcast or inclusion of the programme in a cable programme service 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 or programme shall be taken into account in assessing the damages for that infringement.

Reception and re-transmission of broadcast in cable programme service

99. (1) This section applies where a broadcast made from a place in Bermuda is, by reception and immediate re-transmission, included in a cable programme service.

COPYRIGHT AND DESIGNS ACT 2004

(2) The copyright in the broadcast and in any work included in the broadcast is not infringed if the inclusion is in pursuance of a relevant requirement.

(3) In this section "relevant requirement" means a requirement under regulations made pursuant to section 59 of the Telecommunications Act 1986 regulating the provision of cable television service in Bermuda.

Provision of sub-titled copies of broadcast or cable programme

100. (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 television broadcasts or cable programmes and issue copies to the public, without infringing any copyright in the broadcasts or cable programmes or works included in them.

(2) A "designated body" means a body designated for the purposes of this section by order of the Minister; who shall not designate a body unless he is satisfied that it is not established or conducted for profit.

(3) An order made under this section is subject to negative resolution procedure.

(4) This section does not apply if, or to the extent that, there is a licensing scheme certified for the purposes of this section under section 180 providing for the grant of licences.

Recording for archival purposes

101. (1) A recording of a broadcast or cable programme 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 cable programme or in any work included in it.

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

(3) An order made under this section is subject to negative resolution procedure.

Adaptations

Adaptations

102. An act which by virtue of this Chapter may be done without infringing copyright in a literary, dramatic or musical work does not,

COPYRIGHT AND DESIGNS ACT 2004

where that work is an adaptation, infringe any copyright in the work from which the adaptation was made.

CHAPTER V MORAL RIGHTS

Right to be identified as author or director

Right to be identified as author or director

103. (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 104.

(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, broadcast or included in a cable programme service; 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 broadcast or included in a cable programme service;

COPYRIGHT AND DESIGNS ACT 2004

- (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, broadcast or included in a cable programme service 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, broadcast or cable programme 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 105 (exceptions to right).

Requirement that right be asserted

104. (1) A person does not infringe the right conferred by section 103 (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.

COPYRIGHT AND DESIGNS ACT 2004

(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

105. (1) The right conferred by section 103 (right to be identified as author or director) is subject to the following exceptions.

COPYRIGHT AND DESIGNS ACT 2004

(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 —

- (a) in the author's employer by virtue of section 20(2) (works produced in course of employment); or
- (b) in the director's employer by virtue of section 18(2)(b) (person to be treated as author of film).

(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 42 (fair dealing for certain purposes), so far as it relates to the reporting of current events by means of a sound recording, film, broadcast or cable programme;
- (b) section 43 (incidental inclusion of work in an artistic work, sound recording, film, broadcast or cable programme);
- (c) section 50(3) (examination questions);
- (d) section 65 (Parliamentary and judicial proceedings);
- (e) section 66(1) or (2) (Commissions and statutory inquiries);
- (f) section 75 (use of design documents and models);
- (g) section 76 (effect of exploitation of design derived from artistic work);
- (h) section 81 or 92 (acts permitted on assumptions as to expiry of copyright etc.).

(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;

COPYRIGHT AND DESIGNS ACT 2004

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 203;

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

106. (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 —
 - (a) publishes commercially, performs in public, broadcasts or includes in a cable programme service 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.

COPYRIGHT AND DESIGNS ACT 2004

(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 broadcasts or includes in a cable programme service 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, broadcasts or includes in a cable programme service 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 107 and 108 (exceptions to and qualifications of right).

Exceptions to right

107. (1) The right conferred by section 106 (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.

COPYRIGHT AND DESIGNS ACT 2004

- (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 81 or 92 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

108. (1) This section applies to—
- (a) works in which copyright originally vested in the author's employer by virtue of section 20(2) (works produced in course of employment) or in the director's employer by virtue of section 18(2)(b) (person to be treated as author of film);
 - (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 203.
- (2) The right conferred by section 106 (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;

COPYRIGHT AND DESIGNS ACT 2004

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
109. (1) The right conferred by section 106 (right to object to derogatory treatment of work) is also infringed by a person who —

- (a) possesses in the course of a business; or
- (b) sells or lets for hire, or offers or exposes for sale or hire; or
- (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 106; 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

110. (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.

COPYRIGHT AND DESIGNS ACT 2004

- (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, broadcasts it or includes it in a cable programme service as being the work of a person; or
 - (b) in the case of a film, shows it in public, broadcasts it or includes it in a cable programme service 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 —

- (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;

COPYRIGHT AND DESIGNS ACT 2004

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

111. (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 broadcast or included in a cable programme service;

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 43 (incidental inclusion of work in an artistic work, film, broadcast or cable programme);
- (b) section 65 (Parliamentary and judicial proceedings);
- (c) section 66 (Commissions and statutory inquiries);
- (d) section 70 (acts done under statutory authority);
- (e) section 81 or 92 (acts permitted on assumptions as to expiry of copyright, etc.).

Supplementary

Duration of rights

112. (1) The rights conferred by section 103 (right to be identified as author or director), section 106 (right to object to derogatory treatment of work) and section 111 (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 110 (false attribution) continues to subsist until 20 years after a person's death.

Consent and waiver of rights

113. (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.

COPYRIGHT AND DESIGNS ACT 2004

(3) A waiver —

(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

114. (1) The right conferred by section 103 (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 104 by each joint author in relation to himself.

(2) The right conferred by section 106 (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 113 of those rights by one joint author does not affect the rights of the other joint authors.

(4) The right conferred by section 110 (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.

(6) 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.

COPYRIGHT AND DESIGNS ACT 2004

(7) The right conferred by section 111 (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 113 by one of them does not affect the rights of the others.

Application of provisions to parts of works

115. (1) The rights conferred by section 103 (right to be identified as author or director) and section 111 (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 106 (right to object to derogatory treatment of work) and section 110 (false attribution) apply in relation to the whole or any part of a work.

CHAPTER VI DEALING WITH RIGHTS IN COPYRIGHT WORKS

Copyright

Assignment and licences

116. (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.

COPYRIGHT AND DESIGNS ACT 2004

Prospective ownership of copyright

117. (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

118. (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

119. 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;

COPYRIGHT AND DESIGNS ACT 2004

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

120. (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 a signature by or on behalf of the author does not exclude the operation of section 117(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 121 (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

121. (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.

(2) 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.

(3) 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.

COPYRIGHT AND DESIGNS ACT 2004

(4) 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.

(5) 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.

(6) 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 122 (reference of amount to Copyright Tribunal).

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

(8) 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.

(9) 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 Copyright Tribunal

122. (1) In default of agreement as to the amount payable by way of equitable remuneration under section 121, the person by or to whom it is payable may apply to the Copyright Tribunal to determine the amount payable.

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

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

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

(3) An order made on an application under subsection (2) has effect from the date on which it is made or such later date as may be specified by the Tribunal.

(4) On an application under this section the Tribunal 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.

COPYRIGHT AND DESIGNS ACT 2004

(5) 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.

(6) 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 Copyright Tribunal under this section.

Moral rights

Moral rights not assignable

123. The rights conferred by Chapter V (moral rights) are not assignable.

Transmission of moral rights on death

124. (1) On the death of a person entitled to the right conferred by section 103 (right to identification of author or director), section 106 (right to object to derogatory treatment of work) or section 111 (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 103 (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 106 (right to object to derogatory treatment of work) or

COPYRIGHT AND DESIGNS ACT 2004

section 111 (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 113 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 110 (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 VII REMEDIES FOR INFRINGEMENT

Rights and remedies of copyright owner

Infringement actionable by copyright owner

125. (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 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

126. (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 plaintiff 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;

COPYRIGHT AND DESIGNS ACT 2004

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

Order for delivery up

127. (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 141 (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 142 (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 142 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

128. (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 127, may be seized and detained by him or a person authorised by him.

(2) The right to seize and detain is exercisable subject to the following conditions and is subject to any decision of the court under section 142.

(3) Before anything is seized under this section notice of the time and place of the proposed seizure must be given to the Commissioner of Police.

(4) 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.

COPYRIGHT AND DESIGNS ACT 2004

(5) 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 prescribed particulars as to the person by whom or on whose authority the seizure is made and the grounds on which it is made.

(6) In this section "prescribed" means prescribed by an order of the Minister .

(7) An order made under this section is subject to negative resolution procedure.

Rights and remedies of exclusive licensee

Rights and remedies of exclusive licensee

129. (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.

Exercise of concurrent rights

130. (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 plaintiff 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

COPYRIGHT AND DESIGNS ACT 2004

- (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 127 (order for delivery up) or exercising the right conferred by section 128 (right of seizure); and the court may on the application of the licensee make such order under section 127 or, as the case may be, prohibiting or permitting the exercise by the copyright owner of the right conferred by section 128, as it thinks fit having regard to the terms of the licence.

Remedies for infringement of moral rights

Remedies for infringement of moral rights

131. (1) An infringement of a right conferred by Chapter V (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 106 (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

132. (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—

COPYRIGHT AND DESIGNS ACT 2004

- (a) to be the author of the work;
- (b) to have made it in circumstances not falling within section 20(2), 198, 200 or 203 (works produced in course of employment, Crown copyright or 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 192 (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 plaintiff'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, films and computer programs

133. (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—

COPYRIGHT AND DESIGNS ACT 2004

- (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 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, broadcast or included in a cable programme service 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.

(6) This presumption applies equally in proceedings relating to an infringement alleged to have occurred before the date on which the

COPYRIGHT AND DESIGNS ACT 2004

film was shown in public, broadcast or included in a cable programme service.

(7) 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

134. 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.

135. (1) A person commits an offence who, without the licence of the copyright owner—

- (a) makes for sale or hire;
- (b) imports into Bermuda 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; or
 - (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;

COPYRIGHT AND DESIGNS ACT 2004

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) Where copyright is infringed (otherwise than by reception of a broadcast or cable programme)—

- (a) by the public performance of a literary, dramatic or musical work; or
- (b) by the playing or showing in public of a sound recording or film;

any person who caused the work to be so performed, played or shown is guilty of an offence if he knew or had reason to believe that copyright would be infringed.

(4) 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 of six months or a fine of \$10,000 or both;
- (b) on conviction on indictment to imprisonment for a term of ten years or a fine of \$250,000 or both.

(5) A person guilty of any other offence under this section is liable on summary conviction to imprisonment for a term of six months or a fine of \$10,000 or both.

(6) Sections 132 to 134 (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 137.

Enforcement by consumer protection authority

Enforcement by inspectors designated under the Consumer Protection Act 1999

136. It is the duty of every inspector designated under section 27 of the Consumer Protection Act 1999 to enforce the provisions of section 135.

(2) The following provisions of the Consumer Protection Act 1999 apply in relation to the enforcement of that section by such inspector as they apply in relation to the enforcement of that Act —

- (a) section 28 (power to make test purchases, etc.);
- (b) section 29 (power to enter premises and to seize goods, etc.);
- (c) section 30 (offences connected to exercise of powers under section 29);

COPYRIGHT AND DESIGNS ACT 2004

- (d) section 31 (notice of test);
- (e) section 32 (compensation).

Order for delivery up in criminal proceedings

137. (1) The court before which proceedings are brought against a person for an offence under section 135 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 141 (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 142 (order as to disposal of infringing copy or other article).

(4) An appeal lies from an order made under this section by a magistrates' court to the Supreme 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 142.

(6) Nothing in this section affects the powers of the court as to forfeiture under the Criminal Code Act 1907 or any other enactment.

Search warrants

138. (1) Where a magistrate is satisfied by information on oath given by a police officer that there are reasonable grounds for believing—

COPYRIGHT AND DESIGNS ACT 2004

(a) that an offence under section 135 (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 police officer 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 police officer 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 police officer may seize an article if he reasonably believes that it is evidence that any offence under section 135 (1) or (2) has been or is about to be committed.

Provision for preventing importation of infringing copies

Infringing copies may be treated as prohibited goods

139. (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, 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 Collector 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 Bermuda 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 from outside Bermuda.

(5) This section does not apply to goods entered, or expected to be entered, for free circulation, export, re-export or for a suspensive

COPYRIGHT AND DESIGNS ACT 2004

procedure in respect of which an application may be made under regulations made under subsection (7).

(6) Subject to subsections (4) and (5), 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, is prohibited; but a person is not by reason of the prohibition liable to any penalty other than forfeiture of the goods.

(7) The Minister may make regulations laying down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods.

(8) Regulations made under this section are subject to affirmative resolution procedure.

Power of Minister of Finance to make regulations

140. (1) The Minister of Finance may make regulations, prescribing the form in which notice is to be given under section 139 and may require a person giving notice—

- (a) to furnish the Collector of Customs 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 Collector of Customs 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 Collector of Customs 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 Minister of Finance considers expedient.

(4) Regulations made under this section are subject to negative resolution procedure.

Supplementary

Period after which remedy of delivery up not available

141. (1) An application for an order under section 127 (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 under a disability within the meaning of the Limitation Act 1984; 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 under a disability or, as the case may be, could with reasonable diligence have discovered those facts.

(3) An order under section 137 (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

142. (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 127 or 137, or seized and detained in pursuance of the right conferred by section 128, 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

COPYRIGHT AND DESIGNS ACT 2004

(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 under section 251 or 310 of this Act or section 7 of the Trade Marks Act 1974 (which makes similar provision in relation to infringement of rights in performances and trade marks).

Forfeiture of infringing copies, etc.

143. (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 135 (1) or (2) (criminal liability for making or dealing with infringing articles, etc.);
 - (b) an offence under the Merchandise Marks Act 1889; or
 - (c) 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

COPYRIGHT AND DESIGNS ACT 2004

(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) A 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 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 for decision to the Supreme 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 consider appropriate.

Jurisdiction of magistrates' court

144. (1) A magistrates' court may entertain proceedings under—

- (a) section 127 (order for delivery up of infringing copy or other article);
- (b) section 130(5) (order as to exercise of rights by copyright owner where exclusive licensee has concurrent rights); or
- (c) section 142 (order as to disposal of infringing copy or other article);

where the value of the infringing copies and other articles in question does not exceed the magistrates' court limit for actions in tort.

(2) Nothing in this section shall be construed as limiting the jurisdiction of the Supreme Court.

COPYRIGHT AND DESIGNS ACT 2004

CHAPTER VIII COPYRIGHT LICENSING

Licensing schemes and licensing bodies

Licensing schemes and licensing bodies

145. (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.

(5) For this purpose a group of companies means a holding company and its subsidiaries, within the meaning of section 86 of the Companies Act 1981.

Licensing schemes: references and applications

Licensing schemes to which the following sections apply

146. Sections 147 to 152 (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) broadcasting the work or including it in a cable programme service;

and references in those sections to a licensing scheme shall be construed accordingly.

Reference of proposed licensing scheme to Copyright Tribunal

147. (1) The terms of a licensing scheme proposed to be operated by a licensing body may be referred to the Copyright Tribunal 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 Tribunal 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 Tribunal 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 Tribunal 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 Tribunal may determine.

Reference of licensing scheme to Copyright Tribunal

148. (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 Copyright Tribunal in so far as it relates to cases of that description.

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

(3) The Tribunal 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 Tribunal may determine to be reasonable in the circumstances.

COPYRIGHT AND DESIGNS ACT 2004

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

Further reference of scheme to Copyright Tribunal

149. (1) Where the Copyright Tribunal has on a previous reference of a licensing scheme under section 147 or 148, 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 Tribunal so far as it relates to cases of that description.

(2) A licensing scheme shall not, except with the special leave of the Tribunal, be referred again to the Tribunal 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 Tribunal under this section shall remain in operation until proceedings on the reference are concluded.

(4) The Tribunal 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 Tribunal 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 Tribunal may determine.

Application for grant of licence in connection with licensing scheme

150. (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 Copyright Tribunal.

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

COPYRIGHT AND DESIGNS ACT 2004

- (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 Tribunal.

(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 Tribunal 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 Tribunal 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 Tribunal may determine.

Application for review of order as to entitlement to licence

151. (1) Where the Copyright Tribunal has made an order under section 150 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 Tribunal to review its order.

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

- (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 fifteen 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 Tribunal shall on an application for review confirm or vary its order as the Tribunal 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.

COPYRIGHT AND DESIGNS ACT 2004

Effect of order of Copyright Tribunal as to licensing scheme

152. (1) A licensing scheme which has been confirmed or varied by the Copyright Tribunal—

- (a) under section 147 (reference of terms of proposed scheme); or
- (b) under section 148 or 149 (reference of existing scheme to Copyright Tribunal);

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

(4) If such a direction is made—

- (a) any necessary repayments, or further payments, shall be made in respect of charges already paid; and
- (b) the reference in 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.

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

(6) An order of the Tribunal under section 148 or 149 made with respect to a scheme which is certified for any purpose under section 180 has effect, so far as it varies the scheme by reducing the charges payable for licences, from the date on which the reference was made to the Tribunal.

(7) Where the Tribunal has made an order under section 150 (order as to entitlement to licence under licensing scheme) and the order

COPYRIGHT AND DESIGNS ACT 2004

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.

Licensing by licensing bodies: references and applications

Licences to which following sections apply

153. Sections 154 to 157 (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) broadcasting the work or including it in a cable programme service;

and references in those sections to a licence shall be construed accordingly.

Reference to Copyright Tribunal of proposed licence

154. (1) The terms on which a licensing body proposes to grant a licence may be referred to the Copyright Tribunal by the prospective licensee.

(2) The Tribunal 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 Tribunal 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 Tribunal may determine.

COPYRIGHT AND DESIGNS ACT 2004

Reference to Copyright Tribunal of expiring licence

155. (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 Copyright Tribunal 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 Tribunal shall remain in operation until proceedings on the reference are concluded.

(4) If the Tribunal 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 Tribunal may determine to be reasonable in the circumstances.

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

Application for review of order as to licence

156. (1) Where the Copyright Tribunal has made an order under section 154 or 155, the licensing body or the person entitled to the benefit of the order may apply to the Tribunal to review its order.

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

(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 fifteen months or less, or as a result of the decision on a previous application under this section is due to expire within fifteen months of that decision, until the last three months before the expiry date.

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

Effect of order of Copyright Tribunal as to licence

157. (1) Where the Copyright Tribunal has made an order under section 154 or 155 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

COPYRIGHT AND DESIGNS ACT 2004

(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 154, if assignment is not prohibited under the terms of the Tribunal's order; and

(b) in the case of an order under section 155, if assignment was not prohibited under the terms of the original licence.

(3) The Tribunal may direct that an order under section 154 or 155, or an order under section 156 varying such an order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference or application was made or, if later, on which the licence was granted or, as the case may be, was due to expire.

(4) If such a direction is made—

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

(b) the reference in 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

158. In determining what is reasonable on a reference or application under this Chapter relating to a licensing scheme or licence, the Copyright Tribunal 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.

COPYRIGHT AND DESIGNS ACT 2004

Licences for reprographic copying

159. Where a reference or application is made to the Copyright Tribunal 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 Tribunal 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 or cable programmes

160. (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 or cable programmes which include copyright works, or the making of copies of such recordings, for educational purposes.

(2) The Copyright Tribunal 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 or cable programme have already received, or are entitled to receive, payment in respect of their inclusion.

Licences to reflect conditions imposed by promoters of events

161. (1) This section applies to references or applications under this Chapter in respect of licences relating to sound recordings, films, broadcasts or cable programmes which include, or are to include, any entertainment or other event.

(2) The Copyright Tribunal shall have regard to any conditions imposed by the promoters of the entertainment or other event; and, in particular, the Tribunal 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 Tribunal to have regard to any such conditions in so far as they—

- (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, broadcast or cable programme.

COPYRIGHT AND DESIGNS ACT 2004

Licences to reflect payments in respect of underlying rights

162. (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 of copies of a work; or
 - (b) on an application under section 179 (royalty or other sum payable for lending of certain works);

the Copyright Tribunal 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, broadcasts or cable programmes, the Tribunal 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, broadcast or cable programme.

Licences in respect of works included in re-transmissions

163. (1) This section applies to references or applications under this Chapter relating to licences to include in a broadcast or cable programme service —

- (a) literary, dramatic, musical or artistic works; or
- (b) sound recordings or films;

where one broadcast or cable programme ("the first transmission") is, by reception and immediate re-transmission, to be further broadcast or included in a cable programme service ("the further transmission").

(2) So far as the further transmission is to the same area as the first transmission, the Copyright Tribunal 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.

Mention of specific matters not to exclude other relevant considerations

164. The mention in sections 158 to 163 of specific matters to which the Copyright Tribunal is to have regard in certain classes of case does not affect the Tribunal's general obligation in any case to have regard to all relevant considerations.

COPYRIGHT AND DESIGNS ACT 2004

Use as of right of sound recording in broadcasts and cable programme services

Circumstances in which right available

165. (1) Section 167 applies to the inclusion in a broadcast or cable programme service of any sound recordings if —

- (a) a licence to include those recordings in the broadcast or cable programme service could be granted by a licensing body or such a body could procure the grant of a licence to do so;
- (b) the condition in subsection (2) or (3) applies; and
- (c) the person including those recordings in the broadcast or cable programme service has complied with section 166.

(2) Where the person including the recordings in the broadcast or cable programme service does not hold a licence to do so, the condition is that the licensing body refuses to grant, or procure the grant of, such a licence, being a licence —

- (a) whose terms as to payment for including the recordings in the broadcast or cable programme service would be acceptable to him or comply with an order of the Copyright Tribunal under section 168 relating to such a licence or any scheme under which it would be granted; and
- (b) allowing unlimited needletime or such needletime as he has demanded.

(3) Where he holds a licence to include the recordings in the broadcast or cable programme service, the condition is that the terms of the licence limit needletime and the licensing body refuses to substitute or procure the substitution of terms allowing unlimited needletime or such needletime as he has demanded, or refuses to do so on terms that fall within subsection (2)(a).

(4) The references in subsection (2) to refusing to grant, or procure the grant of, a licence, and in subsection (3) to refusing to substitute or procure the substitution of terms, include failing to do so within a reasonable time of being asked.

(5) In this section and sections 166 to 171 —

"needletime" means the time in any period (whether determined as a number of hours in the period or a proportion of the period, or otherwise) in which any recordings may be included in a broadcast or cable programme service;

COPYRIGHT AND DESIGNS ACT 2004

"sound recording" does not include a film sound track when accompanying a film;

"terms of payment" means terms as to payment for including sound recordings in a broadcast or cable programme service.

Notice of intention to exercise right

166. (1) A person intending to avail himself of the right conferred by section 167 must—

- (a) give notice to the licensing body of his intention to exercise the right, asking the body to propose terms of payment; and
- (b) after receiving the proposal or the expiry of a reasonable period, give reasonable notice to the licensing body of the date on which he proposes to begin exercising that right, and the terms of payment in accordance with which he intends to do so.

(2) Where he has a licence to include the recordings in a broadcast or cable programme service, the date specified in a notice under subsection (1)(b) must not be sooner than the date of expiry of that licence except in a case falling within section 165(3).

(3) Before the person intending to avail himself of the right begins to exercise it, he must—

- (a) give reasonable notice to the Copyright Tribunal of his intention to exercise the right, and of the date on which he proposes to begin to do so; and
- (b) apply to the Tribunal under section 168 to settle the terms of payment.

Conditions for exercise of right

167. (1) A person who, on or after the date specified in a notice under section 166 (1)(b), includes in a broadcast or cable programme service any sound recordings in circumstances in which this section applies, and who—

- (a) complies with any reasonable condition, notice of which has been given to him by the licensing body, as to inclusion in the broadcasting or cable programme service of those recordings;
- (b) provides that body with such information about their inclusion in the broadcast or cable programme service as it may reasonably require; and
- (c) makes the payments to the licensing body that are required by this section;

COPYRIGHT AND DESIGNS ACT 2004

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.

(2) Payments are to be made at not less than quarterly intervals in arrears.

(3) The amount of any payment is that determined in accordance with any order of the Copyright Tribunal under section 168 or, if no such order has been made—

(a) in accordance with any proposal for terms of payment made by the licensing body pursuant to a request under section 166; or

(b) where no proposal has been so made or the amount determined in accordance with the proposal so made is unreasonably high, in accordance with the terms of payment notified to the licensing body under section 166(1)(b).

(4) Where this section applies to the inclusion in a broadcast or cable programme service of any sound recordings, it does so in place of any licence.

Applications to settle payments

168. (1) On an application to settle the terms of payment, the Copyright Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.

(2) An order under subsection (1) has effect from the date the applicant begins to exercise the right conferred by section 167 and any necessary repayments, or further payments, shall be made in respect of amounts that have fallen due.

References etc. about conditions, information and other terms

169. (1) A person exercising the right conferred by section 167, or who has given notice to the Copyright Tribunal of his intention to do so, may refer to the Tribunal—

(a) any question whether any condition as to the inclusion in a broadcast or cable programme service of sound recordings, notice of which has been given to him by the licensing body in question, is a reasonable condition; or

(b) any question whether any information is information which the licensing body can reasonably require him to provide.

(2) On a reference under this section, the Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.

COPYRIGHT AND DESIGNS ACT 2004

Application for review of order

170. (1) A person exercising the right conferred by section 167 or the licensing body may apply to the Copyright Tribunal to review any order under section 168 or 169.

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

- (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 fifteen months or less, or as a result of a decision on a previous application is due to expire within fifteen months of that decision, until the last three months before the expiry date.

(3) On the application the Tribunal 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 order under this section has effect from the date on which it is made or such later date as may be specified by the Tribunal.

Factors to be taken into account

171. (1) In determining what is reasonable on an application or reference under section 168 or 169, or on reviewing any order under section 170, the Copyright Tribunal shall—

- (a) have regard to the terms of any orders which it has made in the case of persons in similar circumstances exercising the right conferred by section 167; and
- (b) exercise its powers so as to secure that there is no unreasonable discrimination between persons exercising that right against the same licensing body.

(2) In settling the terms of payment under section 168, the Tribunal shall not be guided by any order it has made under any enactment other than that section.

(3) Section 163 (factors to be taken into account: re transmissions) applies on an application or reference under sections 168 to 170 as it applies on an application or reference relating to a licence.

Power to amend sections 165 to 171

172. (1) The Minister may by order amend sections 165 to 171 so as—

- (a) to include in any reference to sound recordings any works of a description specified in the order; or

COPYRIGHT AND DESIGNS ACT 2004

(b) to exclude from any reference to a broadcast or cable programme service any broadcast or cable programme service of a description so specified.

(2) An order may be made subject to such transitional provisions as appear to the Minister to be appropriate.

(3) An order made under this section is subject to affirmative resolution procedure.

Implied indemnity in schemes or licences for reprographic copying

Implied indemnity in certain schemes and licences for reprographic copying

173. (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

COPYRIGHT AND DESIGNS ACT 2004

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

174. (1) This section applies to—

- (a) a licensing scheme to which sections 147 to 152 apply and which is operated by a licensing body; or
- (b) a licence to which sections 154 to 157 apply;

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 such an order, the Minister shall give notice of the proposal to—

- (a) the copyright owners;
- (b) the licensing body in question; and

COPYRIGHT AND DESIGNS ACT 2004

(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 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

175. (1) The owner of the copyright in a work in respect of which an order is in force under section 174 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 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

176. (1) The owner of the copyright in a work which is the subject of an order under section 174 (order extending coverage of scheme or licence) may appeal to the Copyright Tribunal 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 175 (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 Tribunal 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 Tribunal may allow.

(4) An order under section 174 or 175 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 Tribunal 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

177. (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 174 (power to extend existing schemes and licences to similar works).

COPYRIGHT AND DESIGNS ACT 2004

(2) The Minister may prescribe by regulations, the procedure to be followed in relation to an inquiry.

(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) Regulations made under this section are subject to negative resolution procedure.

(7) In this section and section 178, 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

178. (1) The Minister may, within one year of the making of a recommendation under section 177 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—

COPYRIGHT AND DESIGNS ACT 2004

- (a) a certified licensing scheme has been established under which a licence is available to the establishment in question; or
- (b) a general licence has been—
 - (i) granted to or for the benefit of that establishment; or
 - (ii) referred by or on behalf of that establishment to the Copyright Tribunal under section 154 (reference of terms of proposed licence); or
 - (iii) 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 licence granted under a certified licensing scheme or 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.

(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.

(8) An order made under this section is subject to negative resolution procedure.

(9) In this section—

"dealt with" means sold or let for hire, offered or exposed for sale or hire, or exhibited in public;

"certified licensing scheme" means a licensing scheme certified for the purposes of this section under section 180.

COPYRIGHT AND DESIGNS ACT 2004

Royalty or other sum payable for lending of certain works

Royalty or other sum payable for lending of certain works

179. (1) An application to settle the royalty or other sum payable in pursuance of section 90 (lending of copies of certain copyright works) may be made to the Copyright Tribunal by the copyright owner or the person claiming to be treated as licensed by him.

(2) The Tribunal 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 Tribunal to vary the order, and the Tribunal 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 Tribunal, 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 Tribunal.

Certification of licensing schemes

Certification of licensing schemes

180. (1) A person operating or proposing to operate a licensing scheme may apply to the Minister to certify the scheme for the purposes of—

- (a) section 53 (educational recording of broadcasts or cable programmes);
- (b) section 84 (abstracts of scientific or technical articles);
- (c) section 90 (lending to public of copies of certain works);
- (d) section 100 (sub-titled copies of broadcasts or cable programmes for people who are deaf or hard of hearing);
or
- (e) section 178 (reprographic copying of published works by educational establishments).

(2) The Minister shall by order, certify the scheme if he is satisfied that it—

- a) enables the works to which it relates to be identified with sufficient certainty by persons likely to require licences; and

COPYRIGHT AND DESIGNS ACT 2004

(b) sets out clearly the charges (if any) payable and the other terms on which licences will be granted.

(3) The scheme shall be scheduled to the order and the certification shall come into operation for the purposes of section 53, 84, 90, 100 or 178, as the case may be—

(a) on such date, not less than eight weeks after the order is made, as may be specified in the order; or

(b) if the scheme is the subject of a reference under section 147 (reference of proposed scheme), any later date on which the order of the Copyright Tribunal under that section comes into force or the reference is withdrawn.

(4) A variation of the scheme is not effective unless a corresponding amendment of the order is made; and the Minister shall make such an amendment in the case of a variation ordered by the Copyright Tribunal on a reference under section 147, 148 or 149, and may do so in any other case if he thinks fit.

(5) The order shall be revoked if the scheme ceases to be operated and may be revoked if it appears to the Minister that it is no longer being operated according to its terms.

(6) An order made under this section is subject to negative resolution procedure.

CHAPTER IX THE COPYRIGHT TRIBUNAL

The Tribunal

The Copyright Tribunal

181. (1) There shall be a Copyright Tribunal for Bermuda.

(2) The Tribunal shall consist of a chairman, a deputy chairman and a panel of not less than six other members, appointed by the Minister after consultation with the Registrar-General.

(3) A person is not eligible for appointment as chairman or deputy chairman unless—

(a) he is a barrister and attorney of at least seven years standing or he has held judicial office; or

(b) he has considerable experience of copyright matters.

Membership of the Copyright Tribunal

182. (1) The members of the Copyright Tribunal shall hold and vacate office in accordance with their terms of appointment, subject to the following provisions.

COPYRIGHT AND DESIGNS ACT 2004

(2) The term of appointment of a member of the Tribunal shall not exceed 3 years, and may be renewed.

(3) A member of the Tribunal may resign his office by notice in writing to the Minister.

(4) The Minister may by notice in writing to the member concerned remove him from office if—

(a) he has become bankrupt or made an arrangement with his creditors;

(b) he is incapacitated by physical or mental illness; or

(c) he is in the opinion of the Minister otherwise unable or unfit to perform his duties as member.

(5) If a member of the Tribunal is by reason of illness, absence or other reasonable cause for the time being unable to perform the duties of his office, either generally or in relation to particular proceedings, a person may be appointed by the Minister to discharge his duties for a period not exceeding six months at one time or, as the case may be, in relation to those proceedings.

Financial provisions

183. (1) There shall be paid to the members of the Copyright Tribunal such remuneration, and such allowances, as the Minister with the approval of the Minister of Finance may determine.

(2) The Minister may with the approval of the Minister of Finance appoint such staff for the Tribunal as he may determine.

(3) The remuneration of any staff and such other expenses of the Tribunal as the Minister with the approval of the Minister of Finance may determine, shall be paid out of money provided by the Legislature.

Constitution for purposes of proceedings

184. (1) For the purposes of any proceedings the Copyright Tribunal shall consist of—

(a) a chairman, who shall be either the chairman or a deputy chairman of the Tribunal; and

(b) two other members appointed by the Minister from the panel of members.

(2) If the members of the Tribunal dealing with any matter are not unanimous, the decision shall be taken by majority vote; and if, in such a case, the votes are equal the chairman shall have a further, casting vote.

(3) If the chairman is unable to continue, he shall appoint one of the remaining members to act as chairman.

COPYRIGHT AND DESIGNS ACT 2004

(4) The chairman may (where necessary) appoint a suitably qualified person to attend the proceedings and advise the members on any technical questions on copyright issues arising.

(5) A person is suitably qualified for the purpose of subsection (4) if he is, or is eligible for appointment as, chairman or deputy chairman of the Tribunal.

Jurisdiction and procedure

Jurisdiction of the Copyright Tribunal

185. The Copyright Tribunal has jurisdiction under this Part to hear and determine proceedings under—

- (a) section 122 (application to determine amount of equitable remuneration under section 121);
- (b) section 147, 148 or 149 (reference of licensing scheme);
- (c) section 150 or 151 (application with respect to entitlement to licence under licensing scheme);
- (d) section 154, 155 or 156 (reference or application with respect to licensing by licensing body);
- (e) section 168 or 169 (application or reference with respect to use as of right of sound recordings in broadcasts or cable programme services);
- (f) section 176 (appeal against order as to coverage of licensing scheme or licence);
- (g) section 179 (application to settle royalty or other sum payable for lending of certain works).

General power to make rules

186. (1) The Minister may make rules for regulating proceedings before the Copyright Tribunal and, with the approval of the Minister of Finance, as to the fees chargeable in respect of such proceedings.

(2) The rules may apply in relation to the Tribunal any of the provisions of the Arbitration Act 1986.

(3) Provision shall be made by the rules—

- (a) prohibiting the Tribunal from entertaining a reference under section 147, 148 or 149 by a representative organisation unless the Tribunal is satisfied that the organisation is reasonably representative of the class of persons which it claims to represent;
- (b) specifying the parties to any proceedings and enabling the Tribunal to make a party to the proceedings any

COPYRIGHT AND DESIGNS ACT 2004

person or organisation satisfying the Tribunal that they have a substantial interest in the matter; and

(c) requiring the Tribunal to give the parties to proceedings an opportunity to state their case, in writing or orally as the rules may provide.

(4) The rules may make provision for regulating or prescribing any matters incidental to or consequential upon any appeal from the Tribunal under section 189 (appeal to the court on point of law).

(5) Rules made under this section are subject to negative resolution procedure.

Costs, proof of orders etc.

187. (1) The Copyright Tribunal may order that the costs of a party to proceedings before it shall be paid by such other party as the Tribunal may direct; and the Tribunal may tax or settle the amount of the costs, or direct in what manner they are to be taxed.

(2) A document purporting to be a copy of an order of the Tribunal and to be certified by the chairman to be a true copy shall, in any proceedings, be sufficient evidence of the order unless the contrary is proved.

Award of interest

188. (1) Any of the following, namely—

(a) a direction under section 152(3) so far as relating to a licence for broadcasting a work or including a work in a cable programme service;

(b) a direction under section 157 (3) so far as so relating;

(c) an order under section 168(1); and

(d) an order under section 170 confirming or varying an order under section 168(1),

may award simple interest at such rate for such period, beginning not earlier than the relevant date and ending not later than the date of the order, as the Copyright Tribunal thinks reasonable in the circumstances.

(2) In this section "the relevant date" means—

(a) in relation to a direction under section 152 (3), the date on which the reference was made;

(b) in relation to a direction under section 157 (3), the date on which the reference or application was made;

(c) in relation to an order under section 168 (1), the date on which the first payment under section 167 (2) became due; and

COPYRIGHT AND DESIGNS ACT 2004

- (d) in relation to an order under section 170, the date on which the application was made.

Appeals

Appeal to the court on point of law

189. (1) An appeal lies on any point of law arising from a decision of the Copyright Tribunal to the Supreme Court.

(2) Provision shall be made by rules under section 186 limiting the time within which an appeal may be brought.

(3) Provision may be made by rules under that section—

- (a) for suspending, or authorising or requiring the Tribunal to suspend, the operation of orders of the Tribunal in cases where its decision is appealed against;
- (b) for modifying in relation to an order of the Tribunal whose operation is suspended the operation of any provision of this Act as to the effect of the order;
- (c) for the publication of notices or the taking of other steps for securing that persons affected by the suspension of an order of the Tribunal will be informed of its suspension.

CHAPTER X QUALIFICATION FOR AND EXTENT OF COPYRIGHT PROTECTION

Qualification for copyright protection

Qualification for copyright protection

190. (1) Copyright does not subsist in a work unless the qualification requirements of this Chapter are satisfied as regards—

- (a) the author; or
- (b) the country in which the work was first published;
- (c) in the case of a broadcast or cable programme, the country from which the broadcast was made or the cable programme was sent .

(2) Subsection (1) does not apply in relation to Crown copyright or Parliamentary copyright or to copyright subsisting by virtue of section 203 (copyright of certain international organisations).

COPYRIGHT AND DESIGNS ACT 2004

(3) If the qualification requirements of this Chapter, or section 198, 200 or 203, 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

191. (1) A work qualifies for copyright protection if at the material time the author—

- (a) possesses Bermudian status;
- (b) is an individual domiciled or resident in Bermuda; or
- (c) is a body incorporated under the law of Bermuda.

(2) Where, or so far as, provision is made by order under section 194 (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 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—

- (a) section 20(1) and (2) (first ownership of copyright; entitlement of author or author's employer);
- (b) section 21 (duration of copyright), and section 18 (4) (meaning of "unknown authorship") so far as it applies for the purposes of section 21; and
- (c) section 81 (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;

COPYRIGHT AND DESIGNS ACT 2004

- (b) in the case of a broadcast, when the broadcast was made;
- (c) in the case of a cable programme, when the programme was included in a cable programme service;
- (d) 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

192. (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 Bermuda.

(2) Where, or so far as, provision is made by order under section 194 (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

193. (1) A broadcast qualifies for copyright protection if it is made from, and a cable programme qualifies for copyright protection if it is sent from, a place in Bermuda.

(2) Where, or so far as, provision is made by order under section 194 (application of this Part to foreign countries), a broadcast or cable programme also qualifies for copyright protection if it is made from or, as the case may be, sent from a place in a country to which the order relates.

Extent and application of this Part

Application of this Part to foreign countries

194. (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 persons who possess Bermudian status or who are domiciled or resident in Bermuda;
- (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 Bermuda;

COPYRIGHT AND DESIGNS ACT 2004

- (c) apply in relation to works first published in that country as they apply in relation to works first published in Bermuda; or
 - (d) apply in relation to broadcasts made from or cable programmes sent from that country as they apply in relation to broadcasts made from or cable programmes sent from Bermuda.
- (2) An order may make provision for all or any of the matters mentioned in subsection (1) and may—
- (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 Bermuda is also a party.
- (5) An order made under this section is subject to negative resolution procedure.

Denial of copyright protection to citizens of countries not giving adequate protection to Bermudian works

195. (1) If it appears to the Minister that the law of a country fails to give adequate protection to Bermudian 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 Bermuda); or
 - (b) bodies incorporated under the law of that country;

COPYRIGHT AND DESIGNS ACT 2004

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.

(4) In this section "Bermudian works" means works of which the author was a qualifying person at the material time within the meaning of section 191.

(5) An order made under this section is subject to negative resolution procedure.

Supplementary

Territorial waters

196. For the purposes of this Part the territorial waters of Bermuda shall be treated as part of Bermuda.

Bermuda ships and aircraft

197. (1) This Part applies to things done on a Bermuda ship or aircraft as it applies to things done in Bermuda.

(2) In this section "Bermuda ship" and "Bermuda aircraft" mean, respectively, a ship or an aircraft registered in Bermuda.

CHAPTER XI MISCELLANEOUS AND GENERAL

Crown and Parliamentary copyright

Crown copyright

198. (1) Where a work is made by Her Majesty or by an officer or servant of the Crown in the course of his duties—

- (a) the work qualifies for copyright protection notwithstanding section 190(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.

COPYRIGHT AND DESIGNS ACT 2004

(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.

Copyright in Acts

199. (1) Her Majesty is entitled to copyright in every Act of the Legislature.

(2) The copyright subsists from Governor's Assent until the end of the period of 50 years from the end of the calendar year in which the Assent was given.

(3) References in this Part to Crown copyright (except in section 198) 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

200. (1) Where a work is made by or under the direction or control of the Senate or House of Assembly—

- (a) the work qualifies for copyright protection notwithstanding section 190(1) (ordinary requirement as to qualification for copyright protection);
- (b) the House by whom, or under whose direction or control, the work is made is the first owner of any copyright in the work; and

Comment [VSC1]:

COPYRIGHT AND DESIGNS ACT 2004

(c) if the work is made by or under the direction or control of both Houses, the two houses are joint first owners of copyright.

(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 Senate or House of Assembly 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, live broadcast or live cable programme of the proceedings of that House;

but a work shall not be regarded as made by or under the direction or control of either 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 Senate or House of Assembly, 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

201. (1) Copyright in every Bill introduced into the Legislature belongs, in accordance with the following provisions, to one or both Houses of the Legislature.

(2) Copyright in a public Bill belongs in the first instance to the House into which the Bill is introduced, and after the Bill has been carried to the second House to both Houses jointly, and subsists from the time when the text of the Bill is handed in to the House in which it is introduced.

(3) Copyright in a private Bill belongs to both Houses jointly and subsists from the time when a copy of the Bill is first deposited in either House.

(4) Copyright under this section ceases—

(a) on Governor's Assent; or

COPYRIGHT AND DESIGNS ACT 2004

- (b) if the Bill does not receive Governor's Assent, on the withdrawal or rejection of the Bill or the end of the Session:

Provided that, copyright in a Bill continues to subsist notwithstanding its rejection in any session by the Senate if, by virtue of sections 37 and 38 of the Constitution it remains possible for it to be presented for the Governor's Assent in that session.

(5) References in this Part to Parliamentary copyright (except in section 200) 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.

(6) 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.

The Legislature: supplementary provisions

202. (1) For the purposes of holding, dealing with and enforcing copyright, and in connection with all legal proceedings relating to copyright, each House of the Legislature 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 House of Assembly 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 Deputy Speaker.

(3) The functions of the Senate as owner of copyright shall be exercised by the President of the Senate on behalf of the Senate; and if so authorised by him, or in case of a vacancy in the office of the President, those functions may be discharged by the Vice-President.

(4) For this purpose a person who on the dissolution of the Legislature was Speaker or Deputy Speaker of the House of Assembly, or President or Vice-President of the Senate may continue to act until the corresponding appointment is made in the next Session of the Legislature.

(5) Legal proceedings relating to copyright —

- (a) shall be brought by or against the House of Assembly in the name of "The Speaker of the House of Assembly"; and
- (b) shall be brought by or against the Senate in the name of "The President of the Senate".

COPYRIGHT AND DESIGNS ACT 2004

Other miscellaneous provisions

Copyright vesting in certain international organisations

203. (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 191 (qualification by reference to author) or section 192 (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 order 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 the Minister by order, for the purpose of complying with the international obligations of Bermuda.

(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.

(5) An order made under this section is subject to negative resolution procedure.

Folklore etc.: anonymous unpublished works

204. (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 Bermuda, 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 order designate that body for the purposes of this section.

(3) A body so designated shall be recognised in Bermuda as having authority to do in place of the copyright owner anything, other

COPYRIGHT AND DESIGNS ACT 2004

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 191) 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.

(6) An order made under this section is subject to negative resolution procedure.

Requirement of signature

Requirement of signature: application in relation to body corporate

205. (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—

- (a) section 104(3)(b) (assertion by licensor of right to identification of author in case of public exhibition of copy made in pursuance of the licence);
- (b) section 116(3) (assignment of copyright);
- (c) section 117(1) (assignment of future copyright);
- (d) section 118(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—

- (a) section 104(2)(b) (assertion by instrument in writing of right to have author identified);
- (b) section 113(2) (waiver of moral rights).

Transitional provisions and savings

Transitional provisions and savings

206. 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.

COPYRIGHT AND DESIGNS ACT 2004

Rights and privileges under other enactments or the common law

207. (1) Nothing in this Part affects—
- (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 either House of the Legislature;
 - (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 V (moral rights).
- (5) The savings in subsection (1) have effect subject to section 199(4) and section 201(6) (copyright in Acts and Bills: exclusion of other rights in the nature of copyright).

PART II RIGHTS IN PERFORMANCES

Preliminary

Index of defined expressions

208. 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)—

broadcast (and related expressions)	section 209 (and section 14)
business	section 209(1) (and section 2)

COPYRIGHT AND DESIGNS ACT 2004

cable programme, cable programme service (and related expressions)	section 209(1) (and section 16)
consent of performer (in relation to performers property rights)	section 226(2)
country	section 209(1) (and section 2)
distribution right	section 214(5)
exclusive recording contract	section 219(1)
film	section 209(1) (and section 13)
illicit recording	section 244
lending right	section 215(7)
literary work	section 209(1) (and section 9(1))
performance	section 210(2)
performers non-property rights	section 238(1)
performers property rights	section 226(1)
published	section 209(1) (and section 6)
qualifying country	section 256(1)
qualifying individual	section 256(1) and (2)
qualifying performance	section 211
qualifying person	section 256(1) and (3)
recording (of a performance)	section 210(2)
recording rights (person having)	section 219(2) and (3)
rental right	section 215(7)
reproduction right	section 213(3)
rights owner (in relation to performers property rights)	section 226(3) and (4)
sound recording	section 209(1) (and section 12)

Expressions having same meaning as in copyright provisions

209. (1) The following expressions have the same meaning in this Part as in Part I (copyright)—

- Bermudian status
- broadcast
- business

cable programme
cable programme service
country
film
literary work
published
premises
prescribed
sound recording.

(2) The provisions of sections 14 (3) to (6), section 16(5) and 31(4) (supplementary provisions relating to broadcasting and cable programme services) 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.

Rights conferred on performers and persons having recording rights

210. (1) This Part confers rights—
- (a) on a performer, by requiring his consent to the exploitation of his performances; and
 - (b) on a person having recording rights in relation to a performance, in relation to recordings made without his consent or that of the performer;

and creates offences in relation to dealing with or using illicit recordings and certain other related acts.

(2) In this Part —
"performance" means—

- (a) a dramatic performance (which includes dance and mime);
- (b) a musical performance;
- (c) a reading or recitation of a literary work; or
- (d) 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; and

"recording", in relation to a performance, means a film or sound recording—

COPYRIGHT AND DESIGNS ACT 2004

- (a) made directly from the live performance;
- (b) made from a broadcast of, or cable programme including, the performance; or
- (c) made, directly or indirectly, from another recording of the performance.

(3) 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.

(4) 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 or cable programme including, the performance; and
- (b) any other right or obligation arising otherwise than under this Part.

Performers' rights

Qualifying performances

211. A performance is a qualifying performance for the purposes of the provisions of this Part relating to performers' rights if it is given by a qualifying individual or takes place in a qualifying country.

Comment [VSC2]:

Consent required for recording or transmission of live performance

212. (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, or includes live in a cable programme service, the whole or any substantial part of a qualifying performance; or
- (c) makes a recording of the whole or any substantial part of a qualifying performance directly from a broadcast of, or cable programme including, the live performance.

(2) A performer's rights are not infringed by the making of any such recording by a person for his private and domestic use.

(3) 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.

COPYRIGHT AND DESIGNS ACT 2004

Consent required for copying of recording

213. (1) A performer's rights are infringed by a person who, without his consent, makes, otherwise than for his private and domestic use, 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.

(3) The right of a performer under this section to authorise or prohibit the making of such copies is referred to in this Part as "reproduction right".

Consent required for issue of copies to the public

214. (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 Part to the issue to the public of copies of a recording are to —

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

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

- (a) any subsequent distribution, sale, hiring or loan of copies previously put into circulation; or
- (b) any subsequent importation of such copies into Bermuda;

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

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

(5) The right of a performer under this section to authorise or prohibit the issue of copies to the public is referred to in this Part as "distribution right".

Consent required for rental or lending of copies to public

215. (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.

COPYRIGHT AND DESIGNS ACT 2004

(2) In this Part, subject to the following provisions of this section—

(a) "rental" means making a copy of a recording 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 a recording 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, broadcasting or inclusion in a cable programme service;

(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 recording of a performance include the rental or lending of the original recording of the live performance.

(7) In this Part—

"rental right" means the right of a performer under this section to authorise or prohibit the rental of copies to the public; and

"lending right" means the right of a performer under this section to authorise or prohibit the lending of copies to the public.

Right to equitable remuneration for exploitation of sound recording

216. (1) Where a commercially published sound recording of the whole or any substantial part of a qualifying performance—

(a) is played in public; or

(b) is included in a broadcast or cable programme service;

the performer is entitled to equitable remuneration from the owner of the copyright in the sound recording.

COPYRIGHT AND DESIGNS ACT 2004

(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 it to enforce the right on his behalf.

(3) 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 Copyright Tribunal to determine the amount payable.

(6) A person to or by whom equitable remuneration is payable may also apply to the Tribunal—

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

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

(7) An order made on an application under subsection (6) has effect from the date on which it is made or such later date as may be specified by the Tribunal.

(8) On an application under subsection (6) the Tribunal 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.

(9) 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 Tribunal under this section.

Infringement of performer's rights by use of recording made without consent

217. A performer's rights are infringed by a person who, without his consent—

- (a) shows or plays in public the whole or any substantial part of a qualifying performance; or

COPYRIGHT AND DESIGNS ACT 2004

- (b) broadcasts or includes in a cable programme service 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 recording

218. (1) A performer's rights are infringed by a person who, without his consent—

- (a) imports into Bermuda 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.

Rights of person having recording rights

Exclusive recording contracts and persons having recording rights

219. (1) In this Part an "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 commercial exploitation.

(2) References in this Part to a "person having recording rights", in relation to a performance, are (subject to subsection (3)) to a person—

- (a) who is party to and has the benefit of an exclusive recording contract to which the performance is subject; or
- (b) to whom the benefit of such a contract has been assigned;

COPYRIGHT AND DESIGNS ACT 2004

and who is a qualifying person.

(3) If a performance is subject to an exclusive recording contract but the person mentioned in subsection (2) is not a qualifying person, references in this Part 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 commercial exploitation; or
- (b) to whom the benefit of such a licence has been assigned;

and who is a qualifying person.

(4) In this section "with a view to commercial exploitation" means with a view to the recordings being sold or let for hire, or shown or played in public.

Consent required for recording of performance subject to exclusive contract

220. (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, otherwise than for his private and domestic use.

(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

221. (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) shows or plays in public the whole or any substantial part of the performance; or
- (b) broadcasts or includes in a cable programme service 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 appropriate consent.

(2) The reference in subsection (1) to "the appropriate consent" is to the consent of—

- (a) the performer; or

COPYRIGHT AND DESIGNS ACT 2004

- (b) 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 illicit recording

222. (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 Bermuda 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 of those 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.

Exceptions to rights conferred

Acts permitted notwithstanding rights conferred by this Part

223. The provisions of Schedule 2 specify acts which may be done notwithstanding the rights conferred by this Part, being acts which correspond broadly to certain of those specified in Chapter IV of Part I (acts permitted notwithstanding copyright).

Power of tribunal to give consent on behalf of performer in certain cases

224. (1) The Copyright Tribunal 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 given by the Tribunal has effect as consent of the person entitled to the reproduction right for the purposes of—

- (a) the provisions of this Part relating to performers' rights; and

COPYRIGHT AND DESIGNS ACT 2004

- (b) section 245(3)(a) (criminal liability: sufficient consent in relation to qualifying performances);

and may be given subject to any conditions specified in the Tribunal's order.

(3) The Tribunal shall not give consent under subsection (1) except after the service or publication of such notices as may be required by rules made under section 186 (general procedural rules) or as the Tribunal may in any particular case direct.

(4) In any case the Tribunal 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;
- (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.

(5) Where the Tribunal 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.

Duration of rights

Duration of rights

225. (1) The following provisions have effect with respect to the duration of the rights conferred by this Part.

(2) The rights conferred by this Part 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.

(3) For the purposes of subsection (2) a recording is "released" when it is first published, played or shown in public, broadcast or included in a cable programme service; but in determining whether a

COPYRIGHT AND DESIGNS ACT 2004

recording has been released no account shall be taken of any unauthorised act.

(4) Where a performer does not possess Bermudian status, the duration of the rights conferred by this Part 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 subsections (2) and (3).

(5) If or to the extent that the application of subsection (4) would be at variance with an international obligation to which Bermuda became subject prior to 29th October 1993, the duration of the rights conferred by this Part shall be as specified in subsections (2) and (3).

Performers' property rights

Performers' property rights

226. (1) The following rights conferred by this Part on a performer—

- (a) reproduction right (section 213);
- (b) distribution right (section 214);
- (c) rental right and lending right (section 215);

are property rights ("a performer's property rights").

(2) References in this Part 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.

(3) 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 Part is the person who is entitled to the aspect of those rights relevant for that purpose.

(4) Where a performer's property rights (or any aspect of them) are owned by more than one person jointly, references in this Part 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.

Assignment and licences

227. (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;

COPYRIGHT AND DESIGNS ACT 2004

(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 by 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 a person deriving title from such a purchaser; and references in this Part to doing anything with, or without, the licence of the rights owner shall be construed accordingly.

Prospective ownership of a performer's property rights

228. (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 (wholly or partially) 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.

(4) References in this Part to doing anything with, or without, the licence of the rights owner shall be construed accordingly.

(5) 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

229. (1) In this Part 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 right to pass under will with unpublished original recording

230. 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

231. (1) Where an agreement concerning film production is concluded between a performer and a film producer, 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 228 (effect of purported assignment of future rights).

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

(4) Section 232 (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

232. (1) Where a performer 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.

(2) The reference in subsection (1) to the transfer of rental right by one person to another includes any arrangement having that effect, whether made by them directly or through intermediaries.

(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.

(4) 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.

COPYRIGHT AND DESIGNS ACT 2004

(5) 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.

(6) 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 233 (reference of amount to Copyright Tribunal).

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

(8) 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 on behalf of more than one performer.

Equitable remuneration: reference of amount to Copyright Tribunal

233. (1) In default of agreement as to the amount payable by way of equitable remuneration under section 232, the person by or to whom it is payable may apply to the Copyright Tribunal to determine the amount payable.

(2) A person to or by whom equitable remuneration is payable may also apply to the Tribunal—

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

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

(3) An order made on an application under subsection (2) has effect from the date on which it is made or such later date as may be specified by the Tribunal.

(4) On an application under this section the Tribunal 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.

(5) 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.

(6) 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 Copyright Tribunal under this section.

COPYRIGHT AND DESIGNS ACT 2004

Infringement actionable by rights owner

234. (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 Part.

Provisions as to damages in infringement actions

235. (1) 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, but without prejudice to any other remedy.

(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 for exclusive licensee

236. (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 Part 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

237. (1) Where an action for infringement of a performer's property rights brought by the rights owner or an exclusive licensee relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action, the rights owner or, as the case may be, the

COPYRIGHT AND DESIGNS ACT 2004

exclusive licensee may not, without the leave of the court, proceed with the action unless the other is either joined as plaintiff or added as a defendant.

(2) A rights 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 the rights owner or exclusive licensee alone.

(4) Where an action for infringement of a performer's property rights is brought which relates (wholly or partly) 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; 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 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 242 (order for delivery up) or exercising the right conferred by section 243 (right of seizure); and the court may on the application of the licensee make such order under section 242 or, as the case may be, prohibiting or permitting the exercise by the rights owner of the right conferred by section 243, as it thinks fit having regard to the terms of the licence.

Non-property rights

Performers' non-property rights

238. (1) The rights conferred on a performer by—

- (a) section 212 (consent required for recording etc. of live performance);

COPYRIGHT AND DESIGNS ACT 2004

(b) section 217 (infringement of performer's rights by use of recording made without consent); and

(c) section 218 (infringement of performer's rights by importing, possessing or dealing with illicit recording);

are not assignable or transmissible, except to the following extent referred to in this Part as "a 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 estate representatives.

(3) References in this Part 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.

Transmissibility of rights of person having recording rights

239. (1) The rights conferred by this Part on a person having recording rights are not assignable or transmissible.

(2) This does not affect section 219 (2)(b) or (3)(b), so far as those provisions confer rights under this Part on a person to whom the benefit of a contract or licence is assigned.

Consent

240. (1) Consent for the purposes of this Part 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

COPYRIGHT AND DESIGNS ACT 2004

person to whom the right passes in the same way as if the consent had been given by him.

Remedies for infringement

Infringement actionable as breach of statutory duty

241. An infringement of—

- (a) a performer's non-property rights; or
- (b) any right conferred by this Part 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 for delivery up

242. (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 Part 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.

(2) An application shall not be made after the end of the period specified in section 250; 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 251 (order as to disposal of illicit recording).

(3) A person to whom a recording is delivered up in pursuance of an order under this section shall, if an order under section 251 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 illicit recordings

243. (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 242, may be seized and detained by him or a person authorised by him.

(2) The right to seize and detain is exercisable subject to the following conditions and is subject to any decision of the court under section 251.

(3) Before anything is seized under this section notice of the time and place of the proposed seizure must be given to the Commissioner of Police.

COPYRIGHT AND DESIGNS ACT 2004

(4) 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.

(5) 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.

(6) In this section "prescribed" means prescribed by order of the Minister.

(7) An order of the Minister under this section is subject to negative resolution procedure.

Meaning of "illicit recording"

244. (1) In this Part "illicit recording", in relation to a performance, shall be construed in accordance with this section.

(2) For the purposes of a performer's rights, a recording of the whole or any substantial part of a performance of his is an illicit recording if it is made, otherwise than for private purposes, without his consent.

(3) 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 is an illicit recording if it is made, otherwise than for private purposes, without his consent or that of the performer.

(4) For the purposes of sections 245 and 247 (offences and orders for delivery up in criminal proceedings), a recording is an illicit recording if it is an illicit recording for the purposes mentioned in subsection (2) or subsection (3).

(5) In this Part "illicit recording" includes a recording falling to be treated as an illicit recording by virtue of any of the following provisions of Schedule 2—

- (a) paragraph 4(3) (recordings made for purposes of instruction or examination);
- (b) paragraph 6(2) (recordings made by educational establishments for educational purposes);
- (c) paragraph 13(2) (recordings of performance in electronic form retained on transfer of principal recording); or
- (d) paragraph 18(3) (recordings made for purposes of broadcast or cable programme);

COPYRIGHT AND DESIGNS ACT 2004

but otherwise does not include a recording made in accordance with any of the provisions of that Schedule.

(6) It is immaterial for the purposes of this section where the recording was made.

Offences

Criminal liability for making, dealing with or using illicit recordings

245. (1) A person commits an offence who without sufficient consent—

- (a) makes for sale or hire; or
- (b) imports into Bermuda otherwise than for his private and domestic use; or
- (c) possesses in the course of a business with a view to committing any act infringing the rights conferred by this Part; or
- (d) in the course of a business—
 - (i) sells or lets for hire; or
 - (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) A person commits an offence who causes a recording of a performance made without sufficient consent to be—

- (a) shown or played in public; or
- (b) broadcast or included in a cable programme service;

thereby infringing any of the rights conferred by this Part, if he knows or has reason to believe that those rights are thereby infringed.

(3) In subsections (1) and (2) "sufficient consent" means—

- (a) in the case of a qualifying performance, the consent of the performer; and
- (b) in the case of a non-qualifying performance subject to an exclusive recording contract—
 - (i) for the purposes of subsection (1)(a) (making of recording), the consent of the performer or the person having recording rights; and
 - (ii) for the purposes of subsections (1)(b), (c) and (d) and subsection (2) (dealing with or using

COPYRIGHT AND DESIGNS ACT 2004

recording), the consent of the person having recording rights.

(4) 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.

(5) No offence is committed under subsection (1) or (2) by the commission of an act which by virtue of any provision of Schedule 2 may be done without infringing the rights conferred by this Part.

(6) A person guilty of an offence under subsection (1)(a), (b) or (d)(iii) is liable—

(a) on summary conviction to imprisonment for a term of six months or a fine of \$10,000, or both;

(b) on conviction on indictment to imprisonment for a term of ten years or to a fine of \$250,000, or both.

(7) A person guilty of any other offence under this section is liable on summary conviction to a fine of \$10,000 or imprisonment for a term of six months, or both.

Enforcement by consumer protection authority

Enforcement by inspectors designated under the Consumer Protection Act 1999

246. (1) It is the duty of every inspector designated under section 27 of the Consumer Protection Act 1999 to enforce the provisions of section 245.

(2) The following provisions of the Consumer Protection Act 1999 apply in relation to the enforcement of that section by such inspector as they apply in relation to the enforcement of that Act—

(a) section 28 (power to make test purchases, etc.);

(b) section 29 (power to enter premises and to seize goods, etc.)

(c) section 30 (offences connected to exercise of powers under section 29);

(d) section 31 (notice of test);

(e) section 32 (compensation).

Order for delivery up in criminal proceedings

247. (1) The court before which proceedings are brought against a person for an offence under section 245 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

COPYRIGHT AND DESIGNS ACT 2004

delivered up to a person having performers' 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 250 (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 251 (order as to disposal of illicit recording).

(4) An appeal lies from an order made under this section by a magistrates' court to the Supreme Court.

(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 251.

(6) Nothing in this section affects the powers of the court as to forfeiture under the Criminal Code Act 1907 or any other enactment.

Search warrants

248. (1) Where a magistrate is satisfied by information on oath given by a police officer that there are reasonable grounds for believing—

- (a) that an offence under section 245(1) (offences of making, importing, possessing, selling etc. or distributing illicit recordings) 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 police officer to enter and search the premises, using such reasonable force as is necessary.

(2) A warrant under subsection (1)—

- (a) may authorise persons to accompany any police officer executing the warrant; and
- (b) remains in force for 28 days from the date of its issue.

COPYRIGHT AND DESIGNS ACT 2004

(3) In executing a warrant issued under subsection (1) a police officer may seize an article if he reasonably believes that it is evidence that any offence under section 245(1) has been or is about to be committed.

False representation of authority to give consent

249. (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 Part 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 of six months or a fine of \$10,000 or both.

Supplementary provisions with respect to delivery up and seizure

Period after which remedy of delivery up not available

250. (1) An application for an order under section 242 (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 illicit recording in question was made, subject to the following provisions.

(2) If during the whole or any part of that period a person entitled to apply for an order—

(a) is under a disability, within the meaning of the Limitation Act 1984; or

(b) is prevented by fraud or concealment from discovering the facts entitling him to apply;

an application may be made by him at any time before the end of the period of six years from the date on which he ceased to be under a disability or, as the case may be, could with reasonable diligence have discovered those facts.

(4) An order under section 247 (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 illicit recording in question was made.

Order as to disposal of illicit recording

251. (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 242 or 247, or seized and detained in pursuance of the right conferred by section 243, 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

COPYRIGHT AND DESIGNS ACT 2004

- (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 Part would be adequate to compensate the person or persons entitled to the rights and to protect their interests.

(3) Provision shall be made by rules of court as to the service of notice on persons having an interest in the recording, 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 142 or 310 .

Forfeiture of illicit recordings

252. (1) Where illicit recordings of a performance have come into the possession of any person in connection with the investigation or prosecution of a relevant offence, that person may apply under this section for an order for the forfeiture of the illicit recordings.

- (2) For the purposes of this section "relevant offence" means —
 - (a) an offence under section 245(1) (criminal liability for making or dealing with illicit recordings),
 - (b) an offence under the Merchandise Marks Act 1889; or
 - (c) an offence involving dishonesty or deception.

COPYRIGHT AND DESIGNS ACT 2004

(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 illicit recordings, to that court; or

(b) where no application for the forfeiture of the illicit recordings 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 illicit recordings only if it is satisfied that a relevant offence has been committed in relation to the illicit recordings.

(5) A court may infer for the purposes of this section that such an offence has been committed in relation to any illicit recordings if it is satisfied that such an offence has been committed in relation to illicit recordings which are representative of the illicit recordings in question (whether by reason of being 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 Supreme 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 illicit recordings 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 illicit recordings to which the order relates shall (instead of being destroyed) be forfeited to the person having the performers' rights or recording rights in question or dealt with in such other way as the court considers appropriate.

Jurisdiction of magistrates' court

253. (1) A magistrates' court may entertain proceedings under—

(a) section 242 (order for delivery up of illicit recording); or

(b) section 251 (order as to disposal of illicit recording).

(2) Nothing in this section shall be construed as affecting the jurisdiction of the Supreme Court.

Licensing of performers' property rights.

COPYRIGHT AND DESIGNS ACT 2004

Licensing of performers' property rights

254. The provisions of Schedule 3 have effect with respect to the licensing of performers' property rights.

Jurisdiction of Copyright Tribunal

Jurisdiction of Copyright Tribunal

255. (1) The Copyright Tribunal has jurisdiction under this Part to hear and determine proceedings under—

- (a) section 216 (amount of equitable remuneration for exploitation of commercial sound recording);
- (b) section 224 (application to give consent on behalf of owner of reproduction right);
- (c) section 233 (amount of equitable remuneration on transfer of rental right);
- (d) paragraph 3, 4 or 5 of Schedule 3 and paragraphs 3, 4 and 5 of Schedule 5 (reference of licensing scheme);
- (e) paragraph 6 or 7 of Schedule 3 and paragraphs 6 or 7 of Schedule 5 (application with respect to licence under licensing scheme);
- (f) paragraph 10, 11 or 12 of Schedule 3 and paragraph 10, 11 or 12 of Schedule 5 (reference or application with respect to licensing by licensing body);
- (g) paragraph 15 of Schedule 3 (application to settle royalty for certain lending).

(2) The provisions of Chapter IX of Part I (general provisions relating to the Copyright Tribunal) apply in relation to the Tribunal when exercising any jurisdiction under this Part.

(3) Provision shall be made by rules under section 186 prohibiting the Tribunal from entertaining a reference under paragraph 3, 4 or 5 of Schedule 3 (reference of licensing scheme) by a representative organisation unless the Tribunal is satisfied that the organisation is reasonably representative of the class of persons which it claims to represent.

Qualification for protection and extent

Qualifying countries, individuals and persons

256. (1) In this Part—

"qualifying country" means—

- (a) Bermuda; or

COPYRIGHT AND DESIGNS ACT 2004

(b) to the extent that an order under section 257 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; and

"qualifying person" means a qualifying individual or a body corporate or other body having legal personality which—

(a) is formed under the law of Bermuda or another qualifying country; and

(b) has in any qualifying country a place of business at which substantial business activity is carried on.

(2) The reference in the definition of "qualifying individual" to a person's being a citizen or subject of a qualifying country shall be construed in relation to Bermuda, as a reference to his possessing Bermudian status.

(3) In determining for the purposes of the definition of "qualifying person" whether 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.

Countries enjoying reciprocal protection

257. (1) The Minister may by order 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 Bermudian performances.

(2) A "Convention country" means a country which is a party to a Convention relating to performers' rights to which Bermuda is also a party.

(3) A "Bermudian performance" means a performance—

(a) given by an individual who has Bermudian status or is domiciled or resident in Bermuda; or

(b) taking place in Bermuda.

(4) If the law of that country provides adequate protection only for certain descriptions of performance, an order under subsection (1)(b) designating that country shall contain provision limiting to a corresponding extent the protection afforded by this Part in relation to performances connected with that country.

COPYRIGHT AND DESIGNS ACT 2004

(5) An order made under this section is subject to negative resolution procedure.

Territorial waters

258. For the purposes of this Part the territorial waters of Bermuda shall be treated as part of Bermuda.

Bermuda ships and aircraft

259. (1) This Part applies to things done on a Bermuda ship or aircraft as it applies to things done in Bermuda.

(2) In this section "Bermuda ship" and "Bermuda aircraft" mean respectively, a ship or an aircraft registered in Bermuda.

PART III DATABASE RIGHT

Database right

Interpretation

260. (1) In this Part—

"Bermudian status" has the meaning given in section 2;

"database" has the meaning given in section 10(1);

"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 264(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 262(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;

"maker", in relation to a database, shall be construed in accordance with section 262;

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

COPYRIGHT AND DESIGNS ACT 2004

"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 Bermuda by, or with the consent of, the owner of the database right in the database, the further sale within Bermuda 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

261. (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.

(3) This section has effect subject to section 266.

The maker of a database

262. (1) Subject to subsections (2) and (3), 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 as having made, the database.

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

(3) Subject to subsection (4), 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.

COPYRIGHT AND DESIGNS ACT 2004

(4) Where a database is made by or under the directions or control of the Senate or the House of Assembly—

- (a) the Senate or House of Assembly by whom, or under whose direction or control, the database is made shall be regarded as the maker of the database; and
- (b) if the database is made by or under the direction or control of both Houses, the Senate and House of Assembly shall be regarded as the joint makers 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

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

Acts infringing database right

264. (1) Subject to 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 the 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

265. (1) Database right in a database expires at the end of the period of 15 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 15 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 substantial new investment shall qualify the database resulting from that investment for its own term of protection.

COPYRIGHT AND DESIGNS ACT 2004

- (4) This section has effect subject to section 277.

Qualification for database right

266. (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 possessed Bermudian status or was ordinarily resident in Bermuda; or
- (b) was a body incorporated under the law of Bermuda 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 Bermuda and which, at that time, satisfied one of the conditions of subsection (2)(a).

- (2) The conditions mentioned in subsections (1)(b) and (c) are—

- (a) that the body has its principal place of business in Bermuda; or
- (b) that the body has its registered office in Bermuda and the body's operations are linked on an ongoing basis with the economy of Bermuda.

(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.

Avoidance of certain terms affecting lawful users

267. (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

268. (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 paragraph a lawful user of the database;

COPYRIGHT AND DESIGNS ACT 2004

- (b) it is extracted for the purpose of illustration for teaching or research and not for any commercial purpose; and
- (c) the source is indicated.

(2) The provisions of Schedule 4 specify other acts which may be done in relation to a database notwithstanding the existence of database right.

Acts permitted on assumption as to expiry of database right

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

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

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

Presumptions relevant to database right

270. (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 section 262(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.

COPYRIGHT AND DESIGNS ACT 2004

Application of copyright provisions to database right

271. The following provisions—

- (a) sections 116 to 119 (dealing with rights in copyright works);
- (b) sections 125 and 126 (rights and remedies of copyright owner);
- (c) sections 129 and 130 (rights and remedies of exclusive licensee);

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

Licensing of database right

272. The provisions of Schedule 5 have effect with respect to the licensing of database right.

Database right: jurisdiction of Copyright Tribunal

273. (1) The Copyright Tribunal has jurisdiction under this Part to hear and determine proceedings under the following provisions of Schedule 5—

- (a) paragraph 3, 4 or 5 (reference of licensing scheme);
- (b) paragraph 6 or 7 (application with respect to licence under licensing scheme);
- (c) paragraph 10, 11 or 12 (reference or application with respect to licence by licensing body).

(2) The provisions of Chapter IX of Part I (general provisions relating to the Copyright Tribunal) apply in relation to the Tribunal when exercising any jurisdiction under this Part.

(3) Provision shall be made by rules under section 186 prohibiting the Tribunal from entertaining a reference under paragraph 3, 4 or 5 of Schedule 5 (reference of licensing scheme) by a representative organisation unless the Tribunal is satisfied that the organisation is reasonably representative of the class of persons which it claims to represent.

Savings and transitional provisions

General rule

274. Subject to sections 275 and 276, this Part applies to databases made before or after commencement.

COPYRIGHT AND DESIGNS ACT 2004

General savings

275. (1) Nothing in this Part affects any agreement made before commencement.

(2) No act done—

(a) before commencement; or

(b) after commencement, in pursuance of an agreement made before commencement;

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

Saving for copyright in certain existing databases

276. (1) Where a database—

(a) was created on or before 27 March 1996; and

(b) is a copyright work immediately before commencement;

copyright shall continue to subsist in the database for the remainder of its copyright term.

(2) In this section "copyright term" means the period of the duration of copyright under section 21 (duration of copyright in literary, dramatic, musical or artistic works).

Database right: term applicable to certain existing databases

277. Where—

(a) the making of a database was complete on or after 1 January 1983; and

(b) on commencement, database right begins to subsist in the database;

database right shall subsist in the database for the period of 15 years beginning with the date of commencement of this section..

Part IV Miscellaneous and General

Devices designed to circumvent copy protection

Devices designed to circumvent copy-protection

278. (1) This section applies where copies of a copyright work are issued to the public, by or with the licence of the copyright owner, in an electronic form which is copy-protected.

COPYRIGHT AND DESIGNS ACT 2004

(2) The person issuing the copies to the public has the same rights against a person who, knowing or having reason to believe that it will be used to make infringing copies—

- (a) makes, imports, sells or lets for hire, offers or exposes for sale or hire, or advertises for sale or hire, any device or means specifically designed or adapted to circumvent the form of copy-protection employed; or
- (b) publishes information intended to enable or assist persons to circumvent that form of copy-protection;

as a copyright owner has in respect of an infringement of copyright.

(3) Where the copies being issued to the public as mentioned in subsection (1) are copies of a computer program, subsection (2) applies as if for the words "or advertises for sale or hire" there were substituted "advertises for sale or hire or possesses in the course of a business.

(4) Further, that person has the same rights under section 127 or 128 (delivery up or seizure of certain articles) in relation to any such device or means which a person has in his possession, custody or control with the intention that it should be used to make infringing copies of copyright works, as a copyright owner has in relation to an infringing copy.

(5) References in this section to copy-protection include any device or means intended to prevent or restrict copying of a work or to impair the quality of copies made.

Computer programs

Avoidance of certain terms

279. (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 it is necessary for him to have for the purposes of the agreed use;
- (b) where the conditions in section 72(2) are met, the decompiling of the program; or
- (c) the use of any device or means to observe, study or test the functioning of the program in order to understand the ideas and principles which underlie any element of the program.

(2) In this section, decompile, in relation to a computer program, has the same meaning as in section 72.

Databases

Avoidance of certain terms relating to databases

280. 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 far as it purports to prohibit or restrict the performance of any act which would but for section 74 infringe the copyright in the database.

Fraudulent reception of transmission

Offence of fraudulently receiving programmes

281. A person who dishonestly receives a programme included in a broadcasting or cable programme service provided from a place in Bermuda with intent to avoid payment of any charge applicable to the reception of the programme commits an offence and is liable on summary conviction to a fine of \$10,000.

Unauthorised decoders

282. (1) A person who makes, imports, sells or lets for hire, offers or exposes for sale or hire, or advertises for sale or hire, any unauthorised decoder shall be guilty of an offence and liable—

- (a) on summary conviction to imprisonment for a term of six months, or to a fine of \$10,000 or to both;
- (b) on conviction on indictment, to imprisonment for a term of ten years, or to a fine of \$250,000, or to both.

(2) 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 knowing, that the decoder was an unauthorised decoder.

(3) This section does not have effect in relation to any offence committed before the commencement of this section.

(4) In this section—

"apparatus" includes any device, component or electronic data;

"decoder" means any apparatus which is designed or adapted to enable (whether on its own or with any other apparatus) an encrypted transmission to be decoded;

"transmission" means any programme included in a broadcasting or cable programme service which is provided from a place in Bermuda; and

"unauthorised", in relation to a decoder, means a decoder which will enable encrypted transmissions to be viewed in decoded

COPYRIGHT AND DESIGNS ACT 2004

form without payment of the fee (however imposed) which the person making the transmission, or on whose behalf it is made, charges for viewing those transmissions, or viewing any service of which they form part.

Search warrants

283. (1) Where a magistrate is satisfied by information on oath given by a police officer that there are reasonable grounds for believing —

- (a) that an offence under section 282(1) 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 police officer to enter and search the premises, using such reasonable force as is necessary.

(2) A warrant under subsection (1) —

- (a) may authorise persons to accompany any police officer executing the warrant; and
- (b) remains in force for 28 days from the date of its issue.

(3) In executing a warrant issued under subsection (1) a police officer may seize an article if he reasonably believes that it is evidence that any offence under section 282(1) 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.

Forfeiture of unauthorised decoders

284. (1) Where unauthorised decoders have come into the possession of any person in connection with the investigation or prosecution of a relevant offence, that person may apply under this section for an order for the forfeiture of the unauthorised decoders.

(2) For the purposes of this section "relevant offence" means —

- (a) an offence under section 282(1) (criminal liability for making, importing, etc. unauthorised decoders),
- (b) an offence under the Merchandise Marks Act 1974; or
- (c) 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 unauthorised decoders, to that court; or

COPYRIGHT AND DESIGNS ACT 2004

(b) where no application for the forfeiture of the unauthorised decoders 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 unauthorised decoders only if it is satisfied that a relevant offence has been committed in relation to the unauthorised decoders.

(5) A court may infer for the purposes of this section that such an offence has been committed in relation to any unauthorised decoders if it is satisfied that such an offence has been committed in relation to unauthorised decoders which are representative of the unauthorised decoders 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 Supreme 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 unauthorised decoders 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 unauthorised decoders to which the order relates shall (instead of being destroyed) be forfeited to a person who has rights or remedies under section 285 in relation to the unauthorised decoders in question, or dealt with in such other way as the court considers appropriate.

Rights and remedies in respect of apparatus, etc. for unauthorised reception of transmissions

285. (1) A person who—

- (a) makes charges for the reception of programmes included in a broadcasting or cable programme service provided from a place in Bermuda; or
- (b) sends encrypted transmissions of any other description from a place in Bermuda;

is entitled to the following rights and remedies.

(2) He has the same rights and remedies against a person who

—

- (a) makes, imports or sells or lets for hire, offers or exposes for sale or hire, or advertises for sale or hire, any

COPYRIGHT AND DESIGNS ACT 2004

apparatus or device designed or adapted to enable or assist persons to receive the programmes or other transmissions when they are not entitled to do so; or

- (b) publishes any information which is calculated to enable or assist persons to receive the programmes or other transmissions when they are not entitled to do so;

as a copyright owner has in respect of an infringement of copyright.

(3) Further, he has the same rights under section 127 or 128 (delivery up or seizure of certain articles) in relation to any such apparatus or device as a copyright owner has in relation to an infringing copy.

(4) In section 126 (1) (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 infringed the rights conferred by this section.

(6) Section 142 applies, with the necessary modifications, in relation to the disposal of anything delivered up or seized by virtue of subsection (3).

Supplementary provisions as to fraudulent reception

286.(1) The Minister may by order —

- (a) provide that section 281 applies in relation to programmes included in services provided from a country or territory outside Bermuda; and
- (b) provide that section 285 applies in relation to such programmes and to encrypted transmissions sent from such a country or territory.

(2) Where sections 281 and 285 apply in relation to a broadcasting service or cable programme service, they also apply to any service run for the person providing that service, or a person providing programmes for that service, which consists wholly or mainly in the sending by means of a telecommunications system of sounds or visual images, or both.

(3) In sections 281, 282 and 285, and this section, "programme", "broadcasting" and "cable programme service", and related expressions, have the same meaning as in Part I (copyright).

(4) An order made under this section is subject to negative resolution procedure.

**PART V
DESIGN RIGHT**

**CHAPTER 1
DESIGN RIGHT IN ORIGINAL DESIGNS**

Interpretation

Index of defined expressions

287. 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)—

Bermudian design	section 288(1)
business	section 288(1)
commercial purposes	section 288(3)
commission	section 288(1)
computer-generated	section 288(1)
country	section 288(1)
design	section 292(2)
design document	section 288(1)
designer	sections 290(2) and 293(2)
design right	section 292(1)
design right owner	sections 289(2) and 313(2)
employee, employment and employer	section 288(1)
exclusive licence	section 304(1)
infringing article	section 307
joint design	section 290(1)
licence (of the design right owner)	sections 289(2), 301(4) and 302(3)
making articles to a design	section 305(2)
marketing (and related expressions)	section 288(2)
original	section 292(4)
qualifying individual	section 296(1)
qualifying person	sections 296(1) and (2)

signed

section 327

Minor definitions

288. (1) In this Part—

"Bermudian design" means a design which qualifies for design right protection by reason of a connection with Bermuda of the designer or the person by whom the design is commissioned or the designer is employed;

"business" includes a trade or profession;

"commission" means a commission for money or money's worth;

"computer-generated", in relation to a design, means that the design is generated by computer in circumstances such that there is no human designer,

"country" includes any territory;

"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;

"employee", "employment" and "employer" refer to employment under a contract of service or of apprenticeship;

(2) References in this Part to "marketing", in relation to an article, are to its being sold or let for hire, or offered or exposed for sale or hire, in the course of a business, and related expressions shall be construed accordingly; but no account shall be taken for the purposes of this Part of marketing which is merely colourable and not intended to satisfy the reasonable requirements of the public.

(3) References in this Part to an act being done in relation to an article for "commercial purposes" are to its being done with a view to the article in question being sold or hired in the course of a business.

Construction of references to design right owner

289. (1) Where different persons are (whether in consequence of a partial assignment or otherwise) entitled to different aspects of design right in a work, the design right owner for any purpose of this Part is the person who is entitled to the right in the respect relevant for that purpose.

(2) Where design right (or any aspect of design right) is owned by more than one person jointly, references in this Part to the design right owner are to all the owners, so that, in particular, any requirement of the licence of the design right owner requires the licence of all of them.

COPYRIGHT AND DESIGNS ACT 2004

Joint designs

290. (1) In this Part a "joint design" means a design produced by the collaboration of two or more designers in which the contribution of each is not distinct from that of the other or others.

(2) References in this Part to the designer of a design shall, except as otherwise provided, be construed in relation to a joint design as references to all the designers of the design.

Application of provisions to articles in kit form

291. (1) The provisions of this Part apply in relation to a kit, that is, a complete or substantially complete set of components intended to be assembled into an article, as they apply in relation to the assembled article.

(2) Subsection (1) does not affect the question whether design right subsists in any aspect of the design of the components of a kit as opposed to the design of the assembled article.

Introductory

Design right

292. (1) Design right is a property right which subsists in accordance with this Part in an original design.

(2) In this Part "design" means the design of any aspect of the shape or configuration (whether internal or external) of the whole or part of an article.

(3) Design right does not subsist in—

- (a) a method or principle of construction;
- (b) features of shape or configuration of an article which—
 - (i) enable the article to be connected to, or placed in, around or against, another article so that either article may perform its function; or
 - (ii) are dependent upon the appearance of another article of which the article is intended by the designer to form an integral part; or
- (c) surface decoration.

(4) A design is not "original" for the purposes of this Part if it is commonplace in the design field in question at the time of its creation.

(5) Design right subsists in a design only if the design qualifies for design right protection by reference to—

- (a) the designer or the person by whom the design was commissioned or the designer employed; or

COPYRIGHT AND DESIGNS ACT 2004

(b) the person by whom and country in which articles made to the design were first marketed;

or in accordance with any order under section 300 (power to make further provision with respect to qualification).

(6) Design right does not subsist unless and until the design has been recorded in a design document or an article has been made to the design.

(7) Design right does not subsist in a design which was so recorded, or to which an article was made, before the commencement of this Part.

The designer

293. (1) In this Part the "designer", in relation to a design, means the person who creates it.

(2) In the case of a computer-generated design the person by whom the arrangements necessary for the creation of the design are undertaken shall be taken to be the designer.

Ownership of design right

294. (1) The designer is the first owner of any design right in a design which is not created in pursuance of a commission or in the course of employment.

(2) Where a design is created in pursuance of a commission, the person commissioning the design is the first owner of any design right in it.

(3) Where, in a case not falling within subsection (2) a design is created by an employee in the course of his employment, his employer is the first owner of any design right in the design.

(4) If a design qualifies for design right protection by virtue of section 299 (qualification by reference to first marketing of articles made to the design), the above rules do not apply and the person by whom the articles in question are marketed is the first owner of the design right.

Duration of design right

295. (1) Design right expires—

(a) 15 years from the end of the calendar year in which the design was first recorded in a design document or an article was first made to the design, whichever first occurred; or

(b) if articles made to the design are made available for sale or hire within 5 years from the end of that calendar year, 10 years from the end of the calendar year in which that first occurred.

COPYRIGHT AND DESIGNS ACT 2004

(2) The reference in subsection (1) to articles being made available for sale or hire is to their being made so available anywhere in the world by or with the licence of the design right owner.

Qualifications for design right protection

Qualifying individuals and qualifying persons

296. (1) In this Part—

"qualifying individual" means a citizen or subject of, or an individual ordinarily resident in, a qualifying country; and

"qualifying person" means —

- (a) a qualifying individual; or
- (b) a body corporate or other body having legal personality which—
 - (i) is formed under the law of a part of or another qualifying country; and
 - (ii) has in any qualifying country a place of business at which substantial business activity is carried on.

(2) References in this Part to a qualifying person include the Crown and the government of any other qualifying country.

(3) In this section "qualifying country" means—

- (a) Bermuda; or
- (b) to the extent that an order under section 328 so provides, a country designated under that section as enjoying reciprocal protection.

(4) The reference in the definition of "qualifying individual" to a person's being a citizen or subject of a qualifying country shall be construed in relation to Bermuda, as a reference to his possessing Bermudian status.

(5) In determining for the purpose of the definition of "qualifying person" whether 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.

Qualification by reference to designer

297. (1) This section applies to a design which is not created in pursuance of a commission or in the course of employment.

COPYRIGHT AND DESIGNS ACT 2004

(2) A design to which this section applies qualifies for design right protection if the designer is a qualifying individual or, in the case of a computer-generated design, a qualifying person.

(3) A joint design to which this section applies qualifies for design right protection if any of the designers is a qualifying individual or, as the case may be, a qualifying person.

(4) Where a joint design qualifies for design right protection under this section, only those designers who are qualifying individuals or qualifying persons are entitled to design right under section 294(1) (first ownership of design right: entitlement of designer).

Qualification by reference to commissioner or employer

298. (1) A design qualifies for design right protection if it is created in pursuance of a commission from, or in the course of employment with, a qualifying person.

(2) In the case of a joint commission or joint employment a design qualifies for design right protection if any of the commissioners or employers is a qualifying person.

(3) Where a design which is jointly commissioned or created in the course of joint employment qualifies for design right protection under this section, only those commissioners or employers who are qualifying persons are entitled to design right under section 294(2) or (3) (first ownership of design right: entitlement of commissioner or employer).

Qualification by reference to first marketing

299. (1) A design which does not qualify for design right protection under section 297 or 298 (qualification by reference to designer, commissioner or employer) qualifies for design right protection if the first marketing of articles made to the design—

(a) is by a qualifying person who is exclusively authorised to put such articles on the market in Bermuda; and

(b) takes place in Bermuda.

(2) If the first marketing of articles made to the design is done jointly by two or more persons, the design qualifies for design right protection if any of those persons meets the requirements specified in subsection (1)(a).

(3) In such a case only the persons who meet those requirements are entitled to design right under section 294(4) (first ownership of design right: entitlement of first marketer of articles made to the design).

(4) In subsection (1)(a) "exclusively authorised" refers—

COPYRIGHT AND DESIGNS ACT 2004

- (a) to authorisation by the person who would have been first owner of design right as designer, commissioner of the design or employer of the designer if he had been a qualifying person, or by a person lawfully claiming under such a person; and
- (b) to exclusivity capable of being enforced by legal proceedings in Bermuda.

Power to make further provision as to qualification

300. (1) The Minister may, with a view to fulfilling an international obligation of Bermuda, by order provide that a design qualifies for design right protection if such requirements as are specified in the order are met.

(2) An order may make different provision for different descriptions of design or article; and may make such consequential modifications of the operation of section 294 (ownership of design right) and sections 297 to 299 (other means of qualification) as appear to the Minister to be appropriate.

(3) An order made under this section is subject to negative resolution procedure.

Dealings with design right

Assignment and licences

301. (1) Design right is transmissible by assignment, by testamentary disposition or by operation of law, as personal or moveable property.

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

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

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

(4) A licence granted by the owner of design right is binding on every successor in title to his 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 design right owner shall be construed accordingly.

COPYRIGHT AND DESIGNS ACT 2004

Prospective ownership of design right

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

(2) In this section—

"future design right" means design right which will or may come into existence in respect of a future design or class of designs or on the occurrence of a future event; and

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

(3) A licence granted by a prospective owner of design right 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 design right owner shall be construed accordingly.

Assignment of right in registered design presumed to carry with it design right

303. Where a design consisting of a design in which design right subsists is registered under the Patents and Designs Act 1930 and the proprietor of the registered design is also the design right owner, an assignment of the right in the registered design shall be taken to be also an assignment of the design right, unless a contrary intention appears.

Exclusive licences

304. (1) In this Part an "exclusive licence" means a licence in writing signed by or on behalf of the design right 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 design right owner.

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

**CHAPTER II
RIGHTS OF DESIGN RIGHT, OWNER AND REMEDIES**

Infringement of design right

Primary infringement of design right

305. (1) The owner of design right in a design has the exclusive right to reproduce the design for commercial purposes—

- (a) by making articles to that design; or
- (b) by making a design document recording the design for the purpose of enabling such articles to be made.

(2) Reproduction of a design by making articles to the design means copying the design so as to produce articles exactly or substantially to that design, and references in this Part to making articles to a design shall be construed accordingly.

(3) Design right is infringed by a person who without the licence of the design right owner does, or authorises another to do, anything which by virtue of this section is the exclusive right of the design right owner.

(4) For the purposes of this section reproduction may be direct or indirect, and it is immaterial whether any intervening acts themselves infringe the design right.

(5) This section has effect subject to the provisions of Chapter III (exceptions to rights of design right owner).

Secondary infringement: importing or dealing with infringing article

306. (1) Design right is infringed by a person who, without the licence of the design right owner—

- (a) imports into Bermuda for commercial purposes; or
- (b) has in his possession for commercial purposes; or
- (c) sells, lets for hire, or offers or exposes for sale or hire, in the course of a business;

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

(2) This section has effect subject to the provisions of Chapter III (exceptions to rights of design right owner).

Meaning of "infringing article"

307. (1) In this Part "infringing article", in relation to a design, shall be construed in accordance with this section.

COPYRIGHT AND DESIGNS ACT 2004

(2) An article is an infringing article if its making to that design was an infringement of design right in the design.

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

(a) it has been or is proposed to be imported into Bermuda; and

(b) its making to that design in Bermuda would have been an infringement of design right in the design or a breach of an exclusive licence agreement relating to the design.

(4) Where it is shown that an article is made to a design in which design right subsists or has subsisted at any time, it shall be presumed until the contrary is proved that the article was made at a time when design right subsisted.

(5) The expression "infringing article" does not include a design document, notwithstanding that its making was or would have been an infringement of design right.

Remedies for infringement

Rights and remedies of design right owner

308. (1) An infringement of design right is actionable by the design right owner.

(2) In an action for infringement of design right 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) The court may in an action for infringement of design right, 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.

(4) This section has effect subject to section 312 (innocent infringement).

Order for delivery up

309. (1) Where a person—

(a) has in his possession, custody or control for commercial purposes an infringing article; or

(b) has in his possession, custody or control anything specifically designed or adapted for making articles to a

COPYRIGHT AND DESIGNS ACT 2004

particular design, knowing or having reason to believe that it has been or is to be used to make an infringing article;

the owner of the design right in the design in question may apply to the court for an order that the infringing article or other thing 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 the following provisions of this section; 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 310 (order as to disposal of infringing article, etc.).

(3) Subject to subsection (4), an application for an order under this section may not be made after the end of the period of 6 years from the date on which the article or thing in question was made.

(4) If during the whole or any part of that period the design right owner—

- (a) is under a disability; 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 6 years from the date on which he ceased to be under a disability or, as the case may be, could with reasonable diligence have discovered those facts.

(5) In subsection (4) "disability" has the same meaning as in the Limitation Act 1984.

(6) A person to whom an infringing article or other thing is delivered up in pursuance of an order under this section shall, if an order under section 310 is not made, retain it pending the making of an order, or the decision not to make an order, under that section.

(7) Nothing in this section affects any other power of the court.

Order as to disposal of infringing articles, etc.

310. (1) An application may be made to the court for an order that an infringing article or other thing delivered up in pursuance of an order under section 309 shall be—

- (a) forfeited to the design right 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.

COPYRIGHT AND DESIGNS ACT 2004

(2) In considering what order (if any) should be made, the court shall consider whether other remedies available in an action for infringement of design right would be adequate to compensate the design right 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 article or other thing, 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 an article or other thing, the court shall make such order as it thinks just and may (in particular) direct that the thing 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 article or other thing was before being delivered up or seized is entitled to its return.

(6) References in this section to a person having an interest in an article or other thing include any person in whose favour an order could be made in respect of it under this section or under section 142 or 251 (which make similar provision in relation to infringement of copyright, and rights in performances).

Jurisdiction of magistrates' court

311. (1) A magistrates' court may entertain proceedings under—

(a) section 309 (order for delivery up of infringing article, etc.);

(b) section 310 (order as to disposal of infringing article, etc.); or

(c) section 314(5) (application by exclusive licensee having concurrent rights),

(2) Nothing in this section shall be construed as affecting the jurisdiction of the Supreme Court.

COPYRIGHT AND DESIGNS ACT 2004

Innocent infringement

312. (1) Where in an action for infringement of design right brought by virtue of section 305 (primary infringement) it is shown that at the time of the infringement the defendant did not know, and had no reason to believe, that design right subsisted in the design to which the action relates, the plaintiff is not entitled to damages against him, but without prejudice to any other remedy.

(2) Where in an action for infringement of design right brought by virtue of section 306 (secondary infringement) a defendant shows that the infringing article 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 royalty in respect of the act complained of.

(3) In subsection (2) "innocently acquired" means that the person acquiring the article did not know and had no reason to believe that it was an infringing article.

Rights and remedies of exclusive licensee

313. (1) An exclusive licensee has, except against the design right 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 design right owner; and references in the relevant provisions of this Part to the design right 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 design right owner.

Exercise of concurrent rights

314. (1) Where an action for infringement of design right brought by the design right owner or an exclusive licensee relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action, the design right 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 plaintiff or added as a defendant.

(2) A design right 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 the application of the design right owner or an exclusive licensee.

(4) Where an action for infringement of design right is brought which relates (wholly or partly) to an infringement in respect of which the

COPYRIGHT AND DESIGNS ACT 2004

design right owner and an exclusive licensee have 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 design right owner and the exclusive licensee are both parties to the action.

(5) The design right owner shall notify any exclusive licensee having concurrent rights before applying for an order under section 309 (order for delivery up of infringing article, etc.); and the court may on the application of the licensee make such order under that section as it thinks fit having regard to the terms of the licence.

CHAPTER III EXCEPTIONS TO RIGHTS OF DESIGN RIGHT OWNERS

Infringement of copyright

Infringement of copyright

315. Where copyright subsists in a work which consists of or includes a design in which design right subsists, it is not an infringement of design right in the design to do anything which is an infringement of the copyright in that work.

Availability of licences of right

Licences available in last five years of design

316. (1) Any person is entitled as of right to a licence to do in the last 5 years of the design right term anything which would otherwise infringe the design right.

(2) The terms of the licence shall, in default of agreement, be settled by the Registrar-General.

COPYRIGHT AND DESIGNS ACT 2004

(3) The Minister may if it appears to him necessary in order to—

- (a) comply with an international obligation of Bermuda; or
- (b) secure or maintain reciprocal protection for Bermuda designs in other countries;

by order exclude from the operation of subsection (1) designs of a description specified in the order or designs applied to articles of a description so specified.

(4) An order made under this section is subject to negative resolution procedure.

Undertaking to take licence of right in infringement proceedings

317. (1) If in proceedings for infringement of design right in a design in respect of which a licence is available as of right under section 316 the defendant undertakes to take a licence on such terms as may be agreed or, in default of agreement, settled by the Registrar-General under that section—

- (a) no injunction shall be granted against him;
- (b) no order for delivery up shall be made under section 309; and
- (c) the amount recoverable against him by way of damages or on an account of profits shall not exceed double the amount which would have been payable by him as licensee if such a licence on those terms had been granted before the earliest infringement.

(2) An undertaking may be given at any time before final order in the proceedings, without any admission of liability.

(3) Nothing in this section affects the remedies available in respect of an infringement committed before licences of right were available.

General

Power to provide for further exceptions

318. (1) The Minister may if it appears to him necessary in order to—

- (a) comply with an international obligation of; or
- (b) secure or maintain reciprocal protection for Bermudian designs in other countries;

by order , provide that acts of a description specified in the order do not infringe design right.

COPYRIGHT AND DESIGNS ACT 2004

(2) An order made under this section is subject to negative resolution procedure and may make different provision for different descriptions of design or article.

CHAPTER IV JURISDICTION OF THE REGISTRAR-GENERAL AND THE COURT

Jurisdiction of the Registrar-General

Jurisdiction to decide matters relating to design right

319. (1) A party to a dispute as to any of the following matters may refer the dispute to the Registrar-General for his decision—

- (a) the subsistence of design right;
- (b) the term of design right; or
- (c) the identity of the person in whom design right first vested;

and the Registrar-General's decision on the reference is binding on the parties to the dispute.

(2) No other court or tribunal shall decide any such matter except—

- (a) on a reference or appeal from the Registrar-General;
- (b) in infringement or other proceedings in which the issue arises incidentally; or
- (c) in proceedings brought with the agreement of the parties or the leave of the Registrar-General.

(3) The Registrar-General has jurisdiction to decide any incidental question of fact or law arising in the course of a reference under this section.

Application to settle terms of licence of right

320. (1) A person requiring a licence which is available as of right by virtue of section 316 (licences available in last five years of design right) may apply to the Registrar-General to settle the terms of the licence.

(2) No application for the settlement of the terms of a licence available by virtue of section 316 may be made earlier than one year before the earliest date on which the licence may take effect under that section.

(3) The terms of a licence settled by the Registrar-General shall authorise the licensee to do everything which would be an infringement of the design right in the absence of a licence.

COPYRIGHT AND DESIGNS ACT 2004

(4) In settling the terms of a licence the Registrar-General shall have regard to such factors as may be prescribed by the by order.

(5) An order made under subsection (4) is subject to negative resolution procedure.

(6) Where the terms of a licence are settled by the Registrar-General, the licence has effect in the case of an application in respect of a licence available by virtue of section 316 made before the earliest date on which the licence may take effect under that section, from that date.

Settlement of terms where design right owner unknown

321. (1) This section applies where a person making an application under section 320 (settlement of terms of licence of right) is unable on reasonable inquiry to discover the identity of the design right owner.

(2) The Registrar-General may in settling the terms of the licence order that the licence shall be free of any obligation as to royalties or other payments.

(3) If such an order is made the design right owner may apply to the Registrar-General to vary the terms of the licence with effect from the date on which his application is made.

(4) If the terms of a licence are settled by the Registrar-General and it is subsequently established that a licence was not available as of right, the licensee shall not be liable in damages for, or for an account of profits in respect of, anything done before he was aware of any claim by the design right owner that a licence was not available.

Appeals as to terms of licence of right

322. An appeal lies from any decision of the Registrar General under section 320 or 321 (settlement of terms of licence of right) to the Supreme Court.

Rules

323. (1) The Minister may make rules, for regulating the procedure to be followed in connection with any proceeding before the Registrar-General under this Part.

(2) Rules may, in particular, make provision—

- (a) prescribing forms;
- (b) authorising the rectification of irregularities of procedure;
- (c) regulating the mode of giving evidence and empowering the Registrar-General to compel the attendance of witnesses and the discovery of and production of documents;

COPYRIGHT AND DESIGNS ACT 2004

- (d) providing for the appointment of advisers to assist the Registrar-General in proceedings before him;
- (e) prescribing time limits for doing anything required to be done (and providing for the alteration of any such limit); and
- (f) empowering the Registrar-General to award costs and to direct how, to what party and from what parties, costs are to be paid.

(3) The Minister of Finance may prescribe the fees to be paid under the Government Fees Act 1965 in connection with proceedings before the Registrar-General.

(4) The remuneration of an adviser appointed to assist the Registrar-General shall be determined by the Minister with the consent of the Minister of Finance and shall be defrayed out of money provided by the Legislature.

Jurisdiction of the court

References and appeals on design right matters

324. (1) In any proceedings before him under section 319 (reference of matter relating to design right), the Registrar-General may at any time order the whole proceedings or any question or issue (whether of fact or law) to be referred, on such terms as he may direct, to the Supreme Court.

(2) The Registrar-General shall make such an order if the parties to the proceedings agree that he should do so.

(3) On a reference under this section the court may exercise any power available to the Registrar-General by virtue of this Part as respects the matter referred to it and, following its determination, may refer any matter back to the Registrar-General.

(4) An appeal lies from any decision of the Registrar-General in proceedings before him under section 319 (decisions on matters relating to design right) to the Supreme Court.

CHAPTER V MISCELLANEOUS AND GENERAL

Miscellaneous

Remedy for groundless threats of infringement proceedings

325. (1) Where a person threatens another person with proceedings for infringement of design right, a person aggrieved by the threats may bring an action against him claiming—

COPYRIGHT AND DESIGNS ACT 2004

- (a) a declaration to the effect that the threats are unjustifiable;
- (b) an injunction against the continuance of the threats;
- (c) damages in respect of any loss which he has sustained by the threats.

(2) If the plaintiff proves that the threats were made and that he is a person aggrieved by them, he is entitled to the relief claimed unless the defendant shows that the acts in respect of which proceedings were threatened did constitute, or if done would have constituted, an infringement of the design right concerned.

(3) Proceedings may not be brought under this section in respect of a threat to bring proceedings for an infringement alleged to consist of making or importing anything.

(4) Mere notification that a design is protected by design right does not constitute a threat of proceedings for the purposes of this section.

Licensee under licence of right not to claim connection with design right owner

326. (1) A person who has a licence in respect of a design by virtue of section 316 (licences of right) shall not, without the consent of the design right owner—

- (a) apply to goods which he is marketing, or proposes to market, in reliance on that licence a trade description indicating that he is the licensee of the design right owner; or
- (b) use any such trade description in an advertisement in relation to such goods.

(2) A contravention of subsection (1) is actionable by the design right owner.

(3) In this section "trade description", the reference to applying a trade description to goods has the same meaning as in the Merchandise Marks Act 1889.

Requirement of signature: application in relation to body corporate

327. 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 affixing its seal—

- (a) section 301(3) (assignment of design right);
- (b) section 302(1) (assignment of future design right);
- (c) section 304(1) (grant of exclusive licence).

COPYRIGHT AND DESIGNS ACT 2004

Extent of operation of this Part

Countries enjoying reciprocal protection

328. (1) The Minister may, if it appears to him that the law of a country provides adequate protection for Bermudian designs, by order designate that country as one enjoying reciprocal protection under this Part.

(2) If the law of a country provides adequate protection only for certain classes of Bermudian design, or only for designs applied to certain classes of article, any order designating that country shall contain provision limiting, to a corresponding extent, the protection afforded by this Part in relation to designs connected with that country.

(3) An order made under this section is subject to negative resolution procedure.

Territorial waters

329. For the purposes of this Part the territorial waters of Bermuda shall be treated as part of Bermuda.

Bermuda ships and aircraft

330. (1) This Part applies to things done on a ship or aircraft registered in Bermuda as it applies to things done in Bermuda.

(2) In this section, 'Bermuda Ship' or 'Bermuda aircraft' means respectively a ship or aircraft registered in Bermuda.

PART VI GENERAL AND SUPPLEMENTARY

Offences by body corporate

Offence by body corporate: liability of officers

331. (1) Where an offence under this Act 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.

Final provisions

Crown application

332. This Act binds the Crown.

COPYRIGHT AND DESIGNS ACT 2004

Consequential amendment and repeal

333. (1) Section 4 of the Crown Proceedings Act 1966 is amended by inserting the words "or design right" after the word "copyright" where it first occurs in subsection (1).

(2) The Performers' Protection Act 1967 is repealed.

Short title and commencement

334. (1) This Act may be cited as the Copyright and Designs Act 2004.

(2) Except for this section, the provisions of this Act shall come into force on such day as the Minister may appoint by notice published in the Gazette, and the Minister may appoint different days for different provisions or different purposes.

SCHEDULE 1 (section 206)

COPYRIGHT: TRANSITIONAL PROVISIONS AND SAVINGS

Introductory

1 (1) In this Schedule —

"the 1911 Act" means the Copyright Act 1911 as applied in Bermuda;

"the 1956 Act" means the Copyright Act 1956 of the United Kingdom as applied in Bermuda; 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 the Act in substitution for a

COPYRIGHT AND DESIGNS ACT 2004

right subsisting immediately before the commencement of that Act;

(b) references in this Schedule to copyright in a second 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.

COPYRIGHT AND DESIGNS ACT 2004

Subsistence of copyright

5 (1) Copyright subsists in an existing work after commencement only if copyright subsisted in it immediately before commencement.

(2) Subparagraph (1) does not prevent an existing work qualifying for copyright protection after commencement—

- (a) under section 192 (qualification by virtue of first publication); or
- (b) by virtue of an order under section 194 (application of Part I to foreign countries).

6 (1) Copyright shall not subsist by virtue of this Act in an artistic work made before 6th August 1962 which at the time when the work was made constituted a design capable of registration under the Patents and Designs Act 1930 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) In subparagraph (2)(a) "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 6th August 1962.

(2) When a film made before that date was original dramatic work within the meaning of the 1911 Act, the new copyright provisions have effect in relation to the film as of it was an original dramatic work within the meaning of Part 1.

COPYRIGHT AND DESIGNS ACT 2004

(3) The new copyright provisions have effect in relation to photographs forming part of a film made before 6th August 1962 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 broadcast made before 6th August 1962; or

(b) a cable programme included in a cable programme service before 1st January 1985;

and any such broadcast or cable programme shall be disregarded for the purposes of section 24(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 V 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—

COPYRIGHT AND DESIGNS ACT 2004

- (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.

(2) 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.

(3) 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 6th August 1962;
- (d) published sound recordings and sound recordings made before 6th August 1962;
- (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).

(4) 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

COPYRIGHT AND DESIGNS ACT 2004

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 21(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 21(2) applies (general rule: life of the author plus 70 years).

(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) 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 6th August 1962.

(6) 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 6th August 1962;
- (b) films not falling within subparagraph (3)(e);

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.

(7) 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 21 to 25.

(8) The above provisions do not apply to works subject to Crown or Parliamentary copyright.

Acts infringing copyright

13 (1) The provisions of Chapters III and IV 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.

COPYRIGHT AND DESIGNS ACT 2004

(2) So much of section 29(2) as extends the restricted act of issuing copies to the public to include the rental to the public of copies of sound recordings, films or computer programs does not apply in relation to a copy of a sound recording, film or computer program acquired by any person before commencement for the purpose of renting it to the public.

(3) For the purposes of section 39 (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 Bermuda, shall be determined

(a) in relation to an article made on or after 6th August 1962 and before commencement, by reference to the 1956 Act; and

(b) in relation to an article made before 6th August 1962, by reference to the 1911 Act.

(4) For the purposes of the application of sections 43(2), 75(2) and 86(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.

(5) Section 79 (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 (2) of the period of 25 years from the end of the calendar year in which the new copyright provisions come into force.

(6) Section 80 (transfer of copies, adaptations, etc. of work in electronic form) does not apply in relation to a copy purchased before commencement.

(7) In section 89 (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 81 (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 81 (assumption as to expiry of copyright) does not apply in relation to photographs.

(3) Subsection (1)(b)(ii) of section 81 (assumption as to death of author) applies only—

COPYRIGHT AND DESIGNS ACT 2004

(a) where paragraph 12(4)(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(7) 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) broadcasting the work or including it in a cable programme service; 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 75 (exclusion of copyright protection in relation to works recorded or embodied in design document or models) does not apply for 10 years after commencement in relation to a design recorded or embodied in a design document or model before commencement.

(2) During those ten years the following provisions of Part III (design right) apply to any relevant copyright as in relation to design right—

- (a) sections 316 and 317 (availability of licences of right); and
- (b) sections 320 and 321 (application to Registrar-General to settle terms of licence of right).

(3) In section 316 as it applies by virtue of this paragraph, for the reference in subsection (1) to the last 5 years of the design right term there shall be substituted a reference to the last 5 years of the period of 10 years referred to in subparagraph (1), or to so much of those last 5 years during which copyright subsists.

(4) In section 317 as it applies by virtue of this paragraph, for the reference in subsection (1)(b) to section 309 there shall be substituted a reference to section 127.

(5) Where a licence of right is available by virtue of this paragraph, a person to whom a licence was granted before commencement may apply to the Registrar-General for an order adjusting the terms of that licence.

(6) The provisions of sections 322 and 323 (appeals and rules) apply in relation to proceedings brought under or by virtue of this paragraph as to proceedings under Part V.

(7) A licence granted by virtue of this paragraph shall relate only to acts which would be permitted by section 75 if the design document or model had been made after commencement.

(8) Section 128 (right to seize infringing copies, etc.) does not apply during the period of 10 years referred to in subparagraph (1) in relation to anything to which it would not apply if the design in question had been first recorded or embodied in a design document or model after commencement.

(9) Nothing in this paragraph affects the operation of any rule of law preventing or restricting the enforcement of copyright in relation to a design.

19 (1) 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 76(2) of this Act applies with the substitution for the period of 25 years mentioned

COPYRIGHT AND DESIGNS ACT 2004

there of the relevant period of 15 years as defined in section 10(3) of the 1956 Act.

(2) Except as provided in subparagraph (1), section 76 applies only where articles are marketed as mentioned in subsection (1)(b) after commencement.

Moral rights

20 (1) No act done before commencement is actionable by virtue of any provision of Chapter V 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.

21 (1) The following provisions have effect with respect to the rights conferred by—

(a) section 103 (right to be identified as author or director), and

(b) section 106 (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.

22 The right conferred by section 111 (right to privacy of certain photographs and films) does not apply to photographs taken or films made before commencement.

Assignments and licences

23 (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

COPYRIGHT AND DESIGNS ACT 2004

- (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.

24 (1) Section 117(1) (assignment of future copyright: statutory vesting of legal interest on copyright coming into existence) does not apply in relation to an agreement made before 6th August 1962.

(2) The repeal by this Act 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.

25 Section 118(2) (rights of exclusive licensee against successors in title of person granting licence) does not apply in relation to an exclusive licence granted before commencement.

26 (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 6th August 1962, 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;

COPYRIGHT AND DESIGNS ACT 2004

(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.

27 (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.

(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.

28 Section 118(2) (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

29 (1) Section 119 (copyright to pass under will with original document or other material thing embodying unpublished work)—

(a) does not apply where the testator died before 6th August 1962; 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.

COPYRIGHT AND DESIGNS ACT 2004

(2) In the case of an author who died before 6th August 1962, 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

30 (1) Sections 125 and 126 (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 127 and 128 (delivery up or seizure of infringing copies, etc.) 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, etc.), do not apply after commencement except for the purposes of proceedings begun before commencement.

(3) Sections 129 and 130 (rights and remedies of exclusive licensee) apply where sections 125 to 128 apply; section 19 of the 1956 Act continues to apply where section 17 or 18 of that Act applies.

(4) Sections 132 to 134 (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.

31 Sections 129 and 130 (rights and remedies of exclusive licensee) do not apply to a licence granted before 6th August 1962.

32 (1) The provisions of section 135 (criminal liability for making or dealing with infringing articles, etc.) 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 138 (search warrants) applies in relation to offences committed before commencement in relation to which section 21A of the 1956 Act applied; section 21A continues to apply in relation to warrants issued before commencement.

Qualification for copyright protection

33 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.

COPYRIGHT AND DESIGNS ACT 2004

Territorial waters

34 Section 196 (application of Part I to things done in territorial waters), does not apply in relation to anything done before commencement.

Bermuda ships and aircraft

35 Section 197 (Bermuda ships and aircraft) does not apply in relation to anything done before commencement.

Crown copyright

36 (1) Section 198 (general provisions as to Crown copyright) applies to an existing work if—

(a) section 39 of the 1956 Act applies to the work immediately before commencement; and

(b) the work is not one to which section 199, 200 or 201 applies (copyright in Acts and Bills and Parliamentary copyright);

(2) Section 198(1)(b) (first ownership of copyright) has effect subject to any agreement entered into before commencement under section 39(6) of the 1956 Act.

37 (1) The following provisions have effect with respect to the duration of copyright in existing works to which section 198 (Crown copyright) applies.

(2) 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.

(3) 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 6th August 1962;

(e) published sound recordings and sound recordings made before 6th August 1962;

COPYRIGHT AND DESIGNS ACT 2004

- (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).

(4) Copyright in unpublished literary, dramatic or musical works continues to subsist until—

- (a) the date on which copyright expires in accordance with section 198(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.

(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 engravings;
- (b) unpublished photographs taken on or after 6th August 1962.

(6) Copyright in a film or sound recording not falling within subparagraph (2) 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.

38 Section 199 (copyright in Acts) applies to existing Acts of the Legislature.

Parliamentary copyright

39 (1) Section 200 (general provisions as to Parliamentary copyright) applies to existing unpublished literary, dramatic, musical or artistic works, but does not otherwise apply to existing works.

(2) Section 201 (copyright in Bills) does not apply—

- (a) to a public Bill which was introduced into the Legislature and published before commencement; or
- (b) to a private Bill of which a copy was deposited in either House before commencement.

Copyright vesting in certain international organisations

40 (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 203(1); but otherwise

COPYRIGHT AND DESIGNS ACT 2004

section 203 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"

41 Section 6(3) (construction of building treated as equivalent to publication) applies only where the construction of the building began after commencement.

Meaning of "unauthorised"

42 For the purposes of the application of the definition in section 2 (minor definitions) of the expression "unauthorised" in relation to things done before commencement—

- (a) paragraph (a) applies in relation to things done before 6th August 1962 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.

SCHEDULE 2

(section 223)

RIGHTS IN PERFORMANCES: PERMITTED ACTS

Introductory

1 (1) The provisions of this Schedule specify acts which may be done in relation to a performance or recording notwithstanding the rights conferred by Part II; they relate only to the question of infringement of those rights and do not affect any other right or obligation restricting the doing of any of the specified acts.

(2) No inference shall be drawn from the description of any act which may by virtue of this Schedule be done without infringing the rights conferred by Part II as to the scope of those rights.

(3) The provisions of this Schedule 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.

COPYRIGHT AND DESIGNS ACT 2004

Criticism, reviews and news reporting

- 2 (1) Fair dealing with a performance or recording—
- (a) for the purpose of criticism or review, of that or another performance or recording, or of a work; or
 - (b) for the purpose of reporting current events;

does not infringe any of the rights conferred by Part II.

- (2) Expressions used in this paragraph have the same meaning as in section 42.

Incidental inclusion of performance or recording

- 3 (1) The rights conferred by Part II are not infringed by the incidental inclusion of a performance or recording in a sound recording, film, broadcast or cable programme.

(2) Nor are those rights infringed by anything done in relation to copies of, or the playing, showing, broadcasting or inclusion in a cable programme service of, anything whose making was, by virtue of subparagraph (1), not an infringement of those rights.

(3) A performance or recording so far as it consists of music, or words spoken or sung with music, shall not be regarded as incidentally included in a sound recording, broadcast or cable programme if it is deliberately included.

- (4) Expressions used in this paragraph have the same meaning as in section 43.

Things done for purposes of instruction or examination

- 4 (1) The rights conferred by Part II are not infringed by the copying of a recording of a performance in the course of instruction, or of preparation for instruction, in the making of films or film sound-tracks, provided the copying is done by a person giving or receiving instruction.

- (2) The rights conferred by Part II are not infringed—
- (a) by the copying of a recording of a performance for the purposes of setting or answering the questions in an examination; or
 - (b) by anything done for the purposes of an examination by way of communicating the questions to the candidates.

(3) Where a recording which would otherwise be an illicit recording is made in accordance with this paragraph but is subsequently dealt with, it shall be treated as an illicit recording for the purposes of that dealing, and if that dealing infringes any right conferred by Part II for all subsequent purposes.

COPYRIGHT AND DESIGNS ACT 2004

(4) For this purpose "dealt with" means sold or let for hire, or offered or exposed for sale or hire.

(5) Expressions used in this paragraph have the same meaning as in section 50.

Playing or showing sound recording, film, broadcast or cable programme at educational establishment

5 (1) The playing or showing of a sound recording, film, broadcast or cable programme at an educational establishment for the purposes of instruction before an audience consisting of teachers and pupils at the establishment and other persons directly connected with the activities of the establishment is not a playing or showing of a performance in public for the purposes of infringement of the rights conferred by Part II.

(2) 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.

(3) Expressions used in this paragraph have the same meaning as in section 52, and any provision made under section 5(2) with respect to the application of that section also applies for the purposes of this paragraph.

Recording of broadcasts and cable programmes by educational establishments

6 (1) A recording of a broadcast or cable programme, 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 any of the rights conferred by Part II in relation to any performance or recording included in it.

(2) Where a recording which would otherwise be an illicit recording is made in accordance with this paragraph but is subsequently dealt with, it shall be treated as an illicit recording for the purposes of that dealing, and if that dealing infringes any right conferred by Part II for all subsequent purposes.

(3) For this purpose "dealt with" means sold or let for hire, or offered or exposed for sale or hire.

(4) Expressions used in this paragraph have the same meaning as in section 53, and any provision made under section 5(2) with respect to the application of that section also applies for the purposes of this paragraph.

COPYRIGHT AND DESIGNS ACT 2004

Lending of copies by educational establishments

7 (1) The rights conferred by Part II are not infringed by the lending of copies of a recording of a performance by an educational establishment.

(2) Expressions used in this paragraph have the same meaning as in section 55, and any provision made under section 5(2) with respect to the application of that section also applies for the purposes of this paragraph.

Lending of copies by libraries or archives

8 (1) The rights conferred by Part II are not infringed by the lending of copies of a recording of a performance by a prescribed library or archive which is not conducted for profit.

(2) Expressions used in this paragraph have the same meaning as in section 60; and any provision under section 56 prescribing libraries or archives for the purposes of that section applies also for the purposes of this paragraph.

Parliamentary and judicial proceedings

9 (1) The rights conferred by Part II are not infringed by anything done for the purposes of parliamentary or judicial proceedings or for the purpose of reporting such proceedings.

(2) Expressions used in this paragraph have the same meaning as in section 65.

Commissions and statutory inquiries

10 (1) The rights conferred by Part II are not infringed by anything done for the purposes of the proceedings of a commission or statutory inquiry or for the purpose of reporting any such proceedings held in public.

(2) Expressions used in this paragraph have the same meaning as in section 66.

Public records

11 (1) Material which is comprised in public records which are open to public inspection in pursuance of an 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 infringing any right conferred by Part II.

(2) Expressions used in this paragraph have the same meaning as in section 69.

COPYRIGHT AND DESIGNS ACT 2004

Acts done under statutory authority

12 (1) Where the doing of a particular act is specifically authorised by an enactment, whenever passed, then, unless the enactment provides otherwise, the doing of that act does not infringe the rights conferred by Part II.

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

(3) Expressions used in this paragraph have the same meaning as in section 70.

Transfer of copies of works in electronic form

13 (1) This paragraph applies where a recording of a performance in electronic form has been purchased on terms which, expressly or impliedly or by virtue of any rule of law, allow the purchaser to make further recordings in connection with his use of the recording.

(2) If there are no express terms—

(a) prohibiting the transfer of the recording by the purchaser, imposing obligations which continue after a transfer, prohibiting the assignment of any consent or terminating any consent 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 by a transferee without infringement of the rights conferred by this Part, but any recording made by the purchaser which is not also transferred shall be treated as an illicit recording for all purposes after the transfer.

(3) Subparagraphs (1) and (2) apply where the original purchased recording 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 subparagraph (2) to the purchaser of references to the subsequent transferor.

(5) This paragraph does not apply in relation to a recording purchased before the commencement of Part II.

(6) Expressions used in this paragraph have the same meaning as in section 80.

Use of recordings of spoken works in certain cases

14 (1) Where a recording of the reading or recitation of a literary work is made for the purpose—

COPYRIGHT AND DESIGNS ACT 2004

- (a) of reporting current events; or
- (b) of broadcasting or including in a cable programme service the whole or part of the reading or recitation;

it is not an infringement of the rights conferred by Part II to use the recording (or to copy the recording and use the copy) for that purpose, provided the conditions in subparagraph (2) are met.

- (2) The conditions are that—
 - (a) the recording is a direct recording of the reading or recitation and is not taken from a previous recording or from a broadcast or cable programme;
 - (b) the making of the recording was not prohibited by or on behalf of the person giving the reading or recitation;
 - (c) the use made of the recording is not of a kind prohibited by or on behalf of that person before the recording was made; and
 - (d) the use is by or with the authority of a person who is lawfully in possession of the recording.

(3) Expressions used in this paragraph have the same meaning as in section 82.

Recordings of folksongs

15 (1) A 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 of the rights conferred by Part II, provided the conditions in subparagraph (2) 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 copyright; and
 - (c) its making is not prohibited by any performer.

(3) Copies of a recording made in reliance on subparagraph (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 any of the rights conferred by Part II.

- (4) In this paragraph—

"designated body" means a body designated for the purposes of section 85; and

COPYRIGHT AND DESIGNS ACT 2004

"the prescribed conditions" means the conditions prescribed for the purposes of subsection (3) of that section;

and other expressions used in this paragraph have the same meaning as in that section.

Lending of certain recordings

16 (1) The Minister may by order provide that in such cases as may be specified in the order the lending to the public of copies of films or sound recordings shall be treated as licensed by the performer subject only to the payment of such reasonable royalty or other payment as may be agreed or determined in default of agreement by the Copyright Tribunal.

(3) An order 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.

(4) An order shall be made subject to the affirmative resolution procedure.

(5) Nothing in this section affects any liability under section 211(1)(b) (secondary infringement: possessing or dealing with illicit recording) in respect of the lending of illicit recordings.

(6) Expressions used in this paragraph have the same meaning as in section 90.

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

17 (1) It is not an infringement of any right conferred by Part II to play a sound recording 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; and

(b) 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.

(3) Expressions used in this paragraph have the same meaning as in section 93.

Incidental recording for purposes of broadcast or cable programme

18 (1) A person who proposes to broadcast a recording of a performance, or include a recording of a performance in a cable

COPYRIGHT AND DESIGNS ACT 2004

programme service, in circumstances not infringing the rights conferred by Part II shall be treated as having consent for the purposes of that Part for the making of a further recording for the purposes of the broadcast or cable programme.

(2) That consent is subject to the condition that the further recording—

- (a) shall not be used for any other purpose; and
- (b) shall be destroyed within 28 days of being first used for broadcasting the performance or including it in a cable programme service.

(3) A recording made in accordance with this paragraph shall be treated as an illicit recording—

- (a) for the purposes of any use in breach of the condition mentioned in subparagraph (2)(a); and
- (b) for all purposes after that condition or the condition mentioned in subparagraph (2)(b) is broken.

(4) Expressions used in this paragraph have the same meaning as in section 94.

Recordings for purposes of supervision and control of broadcasts and cable programmes

19 (1) The rights conferred by Part II are not infringed by the making or use by the Broadcasting Commissioners, for the purpose of maintaining supervision and control over programmes broadcast by them, of recordings of those programmes.

(2) In this paragraph "Broadcasting Commissioners" has the same meaning as in the Broadcasting Commissioners Act 1953.

Free public showing or playing of broadcast or cable programme

20 (1) The showing or playing in public of a broadcast or cable programme to an audience who have not paid for admission to the place where the broadcast or programme is to be seen or heard does not infringe any right conferred by Part II in relation to a performance or recording included in—

- (a) the broadcast or cable programme; or
- (b) any sound recording or film which is played or shown in public by reception of the broadcast or cable programme.

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

COPYRIGHT AND DESIGNS ACT 2004

- (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 programme; or
 - (ii) at prices exceeding those usually charged there and which are partly attributable to those facilities.
- (3) 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 or programmes is only incidental to the main purposes of the club or society.
- (4) Where the making of the broadcast or inclusion of the programme in a cable programme service was an infringement of the rights conferred by Part II in relation to a performance or recording, the fact that it was heard or seen in public by the reception of the broadcast or programme shall be taken into account in assessing the damages for that infringement.
- (5) Expressions used in this paragraph have the same meaning as in section 98.

Reception and re-transmission of broadcast in cable programme service

- 21 (1) This paragraph applies where a broadcast made from a place in Bermuda is, by reception and immediate re-transmission, included in a cable programme service.
- (2) The rights conferred by Part II in relation to a performance or recording included in the broadcast are not infringed if and to the extent that the broadcast is made for reception in the area in which the cable programme service is provided; but where the making of the broadcast was an infringement of those rights, the fact that the broadcast was re-transmitted as a programme in a cable programme service shall be taken into account in assessing the damages for that infringement.
- (3) The Minister may by order —
- (a) provide that in specified cases subparagraph (2) is to apply in relation to broadcasts of a specified description

COPYRIGHT AND DESIGNS ACT 2004

which are not made as mentioned in that subparagraph; or

(b) exclude the application of that subparagraph in relation to broadcasts of a specified description made as mentioned in that subparagraph.

(4) An order made under this paragraph may contain such transitional provisions as appear to the Minister to be appropriate is subject to negative resolution procedure.

(5) Expressions used in this paragraph have the same meaning as in section 99.

Provision of sub-titled copies of broadcast or cable programme

22 (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 recordings of television broadcasts or cable programmes without infringing any right conferred by Part II in relation to a performance or recording included in the broadcast or cable programme.

(2) In this paragraph "designated body" means a body designated for the purposes of section 100 and other expressions used in this paragraph have the same meaning as in that section.

Recording of broadcast or cable programme for archival purposes

23 (1) A recording of a broadcast or cable programme 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 right conferred by Part II in relation to a performance or recording included in the broadcast or cable programme.

(2) In this paragraph "designated class" and "designated body" means a class or body designated for the purposes of section 101 and other expressions used in this paragraph have the same meaning as in that section.

SCHEDULE 3 (section 254)

LICENSING OF PERFORMERS' PROPERTY RIGHTS

Licensing schemes and licensing bodies

1 (1) In Part II a "licensing scheme" means a scheme setting out

COPYRIGHT AND DESIGNS ACT 2004

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

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

(2) In Part II a "licensing body" means a society or other organisation which has as its main object, or one of its main objects, the negotiating or granting, whether as owner or prospective owner of a performer's property rights or as agent for him, of performers' property right licences, and whose objects include the granting of licences covering the performances of more than one performer.

(3) In this paragraph "performers' property right licences" means licences to do, or authorise the doing of, any of the things for which consent is required under section 213, 214 or 215.

(4) References in this Part to licences or licensing schemes covering the performances of more than one performer do not include licences or schemes covering only—

- (a) performances recorded in a single recording;
- (b) performances recorded in more than one recording where—
 - (i) the performers giving the performances are the same; or
 - (ii) the recordings are made by, or by employees of or commissioned by, a single individual, firm, company or group of companies.

(5) For this purpose a group of companies means a holding company and its subsidiaries within the meaning of section 2 of the Companies Act 1981.

References and applications with respect to licensing schemes

2 Paragraphs 3 to 8 (references and applications with respect to licensing schemes) apply to licensing schemes operated by licensing bodies in relation to a performer's property rights which cover the performances of more than one performer, so far as they relate to licences for—

- (a) copying a recording of the whole or any substantial part of a qualifying performance; or
- (b) renting or lending copies of a recording to the public;

COPYRIGHT AND DESIGNS ACT 2004

and in those paragraphs "licensing scheme" means a licensing scheme of any of those descriptions.

Reference of proposed licensing scheme to tribunal

3 (1) The terms of a licensing scheme proposed to be operated by a licensing body may be referred to the Copyright Tribunal 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 Tribunal 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 Tribunal 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 Tribunal 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 Tribunal may determine.

Reference of licensing scheme to tribunal

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

(a) a person claiming that he requires a licence in a case of a description to which the scheme applies; or

(b) an organisation claiming to be representative of such persons;

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

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

(3) The Tribunal 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 Tribunal 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 Tribunal may determine.

COPYRIGHT AND DESIGNS ACT 2004

Further reference of scheme to tribunal

5 (1) Where the Copyright Tribunal has on a previous reference of a licensing scheme under paragraph 3 or 4, or under this paragraph, 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 Tribunal so far as it relates to cases of that description.

(2) A licensing scheme shall not, except with the special leave of the Tribunal, be referred again to the Tribunal in respect of the same description of cases—

- (a) within 12 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 3 months before the expiry of the order.

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

(4) The Tribunal 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 Tribunal 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 Tribunal may determine.

Application for grant of licence in connection with licensing scheme

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

(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

COPYRIGHT AND DESIGNS ACT 2004

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 Copyright Tribunal.

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

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

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

(4) If the Tribunal 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 Tribunal 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 Tribunal may determine.

Application for review of order as to entitlement to licence

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

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

- (a) within 12 months from the date of the order, or of the decision on a previous application under this paragraph; or

- (b) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this paragraph is due to expire within 15 months of that decision, until the last 3 months before the expiry date.

(3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal 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.

COPYRIGHT AND DESIGNS ACT 2004

Effect of order of tribunal as to licensing scheme

8 (1) A licensing scheme which has been confirmed or varied by the Copyright Tribunal—

- (a) under paragraph 3 (reference of terms of proposed scheme); or
- (b) under paragraph 4 or 5 (reference of existing scheme to Tribunal);

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 performers' property rights as if he had at all material times been the holder of a licence granted by the rights owner in question in accordance with the scheme.

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

(4) If such a direction is made—

- (a) any necessary repayments, or further payments, shall be made in respect of charges already paid; and
- (b) the reference in subparagraph (2)(a) to the charges payable under the scheme shall be construed as a reference to the charges so payable by virtue of the order.

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

(6) An order of the Tribunal under paragraph 4 or 5 made with respect to a scheme which is certified for any purpose under paragraph 16 has effect, so far as it varies the scheme by reducing the charges

COPYRIGHT AND DESIGNS ACT 2004

payable for licences, from the date on which the reference was made to the Tribunal.

(7) Where the Tribunal has made an order under paragraph 6 (order as to entitlement to licence under licensing scheme) and the order remains in force, the person in whose favour the order is made 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 performers' property rights as if he had at all material times been the holder of a licence granted by the rights owner in question on the terms specified in the order.

References and applications with respect to licensing by licensing bodies

9 Paragraphs 10 to 13 (references and applications with respect to licensing by licensing bodies) apply to licences relating to a performer's property rights which cover the performance of more than one performer granted by a licensing body otherwise than in pursuance of a licensing scheme, so far as the licences authorise—

- (a) copying a recording of the whole or any substantial part of a qualifying performance; or
- (b) renting or lending copies of a recording to the public;

and references in those paragraphs to a licence shall be construed accordingly.

Reference to tribunal of proposed licence

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

(2) The Tribunal 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 Tribunal 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 Tribunal may determine.

COPYRIGHT AND DESIGNS ACT 2004

Reference to tribunal of expiring licence

11 (1) A licensee under a licence which is due to expire, by effluxion of time or as a result of notice given by the licensing body, may apply to the Copyright Tribunal 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 3 months before the licence is due to expire.

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

(4) If the Tribunal 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 Tribunal may determine to be reasonable in the circumstances.

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

Application for review of order as to licence

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

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

(a) within 12 months from the date of the order or of the decision on a previous application under this paragraph; or

(b) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this paragraph is due to expire within 15 months of that decision, until the last 3 months before the expiry date.

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

Effect of order of tribunal as to licence

13 (1) Where the Copyright Tribunal has made an order under paragraph 10 or 11 and the order remains in force, the person entitled to the benefit of the order shall if he—

COPYRIGHT AND DESIGNS ACT 2004

- (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 performers' property rights as if he had at all material times been the holder of a licence granted by the rights owner in question on the terms specified in the order.

- (2) The benefit of the order may be assigned—
 - (a) in the case of an order under paragraph 10, if assignment is not prohibited under the terms of the Tribunal's order; and
 - (b) in the case of an order under paragraph 11, if assignment was not prohibited under the terms of the original licence.

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

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

General considerations: unreasonable discrimination

14 (1) In determining what is reasonable on a reference or application under this Schedule relating to a licensing scheme or licence, the Copyright Tribunal 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

COPYRIGHT AND DESIGNS ACT 2004

and licensees under other schemes operated by, or other licences granted by, the same person.

(2) Subparagraph (1) does not affect the Tribunal's general obligation in any case to have regard to all relevant circumstances.

Application to settle royalty or other sum payable for lending

15 (1) An application to settle the royalty or other sum payable in pursuance of paragraph 16 of Schedule 2 (lending of certain recordings) may be made to the Copyright Tribunal by the owner of a performer's property rights or the person claiming to be treated as licensed by him.

(2) The Tribunal 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 Tribunal to vary the order, and the Tribunal 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 subparagraph (3) shall not, except with the special leave of the Tribunal, be made within 12 months from the date of the original order or of the order on a previous application under that subparagraph.

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

Certification of licensing schemes

16 (1) A person operating or proposing to operate a licensing scheme may apply to the Minister to certify the scheme for the purposes of paragraph 16 of Schedule 2 (lending of certain recordings).

(2) The Minister shall by order certify the scheme if he is satisfied that it—

- (a) enables the works to which it relates to be identified with sufficient certainty by persons likely to require licences; and
- (b) sets out clearly the charges (if any) payable and the other terms on which licences will be granted.

(3) The scheme shall be scheduled to the order and the certification shall come into operation for the purposes of paragraph 16 of Schedule 2—

- (a) on such date, being not less than 8 weeks after the order is made, as may be specified in the order; or

COPYRIGHT AND DESIGNS ACT 2004

(b) if the scheme is the subject of a reference under paragraph 3 (reference of proposed scheme), any later date on which the order of the Copyright Tribunal under that paragraph comes into force or the reference is withdrawn.

(4) A variation of the scheme is not effective unless a corresponding amendment of the order is made; and the Minister shall make such an amendment in the case of a variation ordered by the Copyright Tribunal on a reference under paragraph 3,4 or 5, and may do so in any other case if he thinks fit.

(5) The order shall be revoked if the scheme ceases to be operated and may be revoked if it appears to the Minister that it is no longer being operated according to its terms.

(6) An order made under this section is subject to negative resolution procedure.

**EXCEPTIONS TO DATABASE RIGHT FOR PUBLIC
ADMINISTRATION**

Legislative and judicial proceedings

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

Commissions and statutory inquiries

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

(a) the purposes of the proceedings of a commission or statutory inquiry; or

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

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

Material open to public inspection or on official register

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

(2) Where the contents of a database are open to public inspection pursuant to a statutory requirement, database right in the database is not infringed by the extraction or re-utilisation of all or a substantial part of the contents, by or with the authority of the appropriate person, for the purpose of enabling the contents to be inspected at a more convenient time or place or otherwise facilitating the exercise of any right for the purpose of which the requirement is imposed.

(3) Where the contents of a database which is open to public inspection pursuant to a statutory requirement, or which is on a statutory register, contain information about matters of general scientific, technical, commercial or economic interest, database right in the database is not infringed by the extraction or re-utilisation of all or a

COPYRIGHT AND DESIGNS ACT 2004

substantial part of the contents, by or with the authority of the appropriate person, for the purpose of disseminating that information.

(4) In this paragraph—

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

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

"statutory requirement" means a requirement imposed by provision made by or under an enactment.

Material communicated to the Crown in the course of public business

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

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

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

(4) In subparagraph (1) "public business" includes any activity carried on by the Crown.

(5) This paragraph has effect subject to any agreement to the contrary between the Crown and the owner of the database right in the database.

Public records

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

COPYRIGHT AND DESIGNS ACT 2004

Acts done under statutory authority

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

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

SCHEDULE 5

(section 272)

LICENSING OF DATABASE RIGHT

Licensing scheme and licensing bodies

1 (1) In this Schedule a "licensing scheme" means a scheme setting out—

(a) the classes of case in which the operator of the scheme, or the person on whose behalf he acts, is willing to grant database right licences; and

(b) the terms on which licences would be granted in those classes of case;

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

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

(3) In this paragraph "database right licences" means licences to do, or authorise the doing of, any of the things for which consent is required under section 264.

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

Reference of proposed licensing scheme to tribunal

3 (1) The terms of a licensing scheme proposed to be operated by a licensing body may be referred to the Copyright Tribunal by an organisation claiming to be representative of persons claiming that they

COPYRIGHT AND DESIGNS ACT 2004

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 Tribunal 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 Tribunal 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 Tribunal 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 Tribunal may determine.

Reference of licensing scheme to tribunal

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

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

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

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

(3) The Tribunal 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 Tribunal 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 Tribunal may determine.

Further reference of scheme to tribunal

5 (1) Where the Copyright Tribunal has on a previous reference of a licensing scheme under paragraph 3 or 4, or under this paragraph, 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

COPYRIGHT AND DESIGNS ACT 2004

- (c) an organisation claiming to be representative of such persons;

may refer the scheme again to the Tribunal so far as it relates to cases of that description.

(2) A licensing scheme shall not, except with the special leave of the Tribunal, be referred again to the Tribunal in respect of the same description of cases—

- (a) within 12 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 3 months before the expiry of the order.

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

(4) The Tribunal 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 Tribunal 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 Tribunal may determine.

Application for grant of licence in connection with licensing scheme

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

(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 Copyright Tribunal.

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

COPYRIGHT AND DESIGNS ACT 2004

- (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 Tribunal 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 Tribunal 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 Tribunal may determine.

Application for review of order as to entitlement to licence

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

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

- (a) within 12 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 3 months before the expiry date.

(3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal 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 tribunal as to licensing scheme

8 (1) A licensing scheme which has been confirmed or varied by the Copyright Tribunal—

- (a) under paragraph 3 (reference of terms of proposed scheme); or
- (b) under paragraph 4 or 5 (reference of existing scheme to Tribunal);

COPYRIGHT AND DESIGNS ACT 2004

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

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

(a) pays to the operator of the scheme any charges payable under the scheme in respect of a licence covering the case in question or, if the amount cannot be ascertained, gives an undertaking to the operator to pay them when ascertained; and

(b) complies with the other terms applicable to such a licence under the scheme;

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

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

(4) If such a direction is made—

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

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

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

(6) Where the Tribunal has made an order under paragraph 6 (order as to entitlement to licence under licensing scheme) and the order remains in force, the person in whose favour the order is made 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 database right as if he had at all material times been the holder of a licence granted by the

COPYRIGHT AND DESIGNS ACT 2004

owner of the database right in question on the terms specified in the order.

References and applications with respect to licences by licensing bodies

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

Reference to tribunal of proposed licence

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

(2) The Tribunal 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 Tribunal 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 Tribunal may determine.

Reference to tribunal of expiring licence

11 (1) A licensee under a licence which is due to expire, by effluxion of time or as a result of notice given by the licensing body, may apply to the Copyright Tribunal 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 3 months before the licence is due to expire.

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

(4) If the Tribunal 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 Tribunal may determine to be reasonable in the circumstances.

COPYRIGHT AND DESIGNS ACT 2004

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

Application for review of order as to licence

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

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

(a) within 12 months from the date of the order or of the decision on a previous application under this paragraph; or

(b) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this section is due to expire within 15 months of that decision, until the last 3 months before the expiry date.

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

Effect of order of tribunal as to licence

13 (1) Where the Copyright Tribunal has made an order under paragraph 10 or 11 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 database right as if he had at all material times been the holder of a licence granted by the owner of the database right in question on the terms specified in the order.

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

(a) in the case of an order under paragraph 10, if assignment is not prohibited under the terms of the Tribunal's order; and

COPYRIGHT AND DESIGNS ACT 2004

(b) in the case of an order under paragraph 11, if assignment was not prohibited under the terms of the original licence.

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

(4) If such a direction is made—

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

General considerations: unreasonable discrimination

14 In determining what is reasonable on a reference or application under this Schedule relating to a licensing scheme or licence, the Copyright Tribunal 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.