The Official Gazette

PUBLISHED BY AUTHORITY

VOL. CLX No. 125

Part A BRIDGETOWN, BARBADOS, 20TH NOVEMBER, 2025

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Resolution No. 17/2025 Ref. No. 0075/10 T[1]

PARLIAMENT

WHEREAS the Parliamentary Reform Commission was appointed on the 8th day of May 2023 to examine Barbados' Parliamentary system and make recommendations for the strengthening of Parliament and the country's system of democracy;

AND WHEREAS the Commission was empowered through its terms of Reference to deliberate on matters touching and concerning the Parliament and the Executive by:

(a) empowering, examining, and inquiring into Barbados' Parliamentary system, process and procedure;
(b) making recommendations to enlarge and strengthen Barbados' democracy;
(c) transforming Parliament into a culturally relevant, inclusive and modern institution and that the recommended reform proposals would enhance good governance and create a Parliamentary architecture befitting the new Republic;

AND WHEREAS having consulted extensively the Barbadian public here and abroad, the political parties and civil society, presented its report to the President of Barbados on the 27th June, 2024 with a wide range of recommendations consistent with its remit;

BE IT RESOLVED that the Parliament of Barbados take note of the Report of the Parliamentary Reform Commission 2024 and its recommendations.

APPROVED by the House of Assembly this 1st day of July, 2025.

A. HOLDER
Speaker.

APPROVED by the Senate this 29th day of October, 2025.

R. FARLEY
President.

BARBADOS

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Act 2025-28

CARIBBEAN COMMUNITY (FREE MOVEMENT OF NATIONALS) ACT, 2025-28

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SCHEDULE

LIST OF MEMBER STATES

BARBADOS

I assent
S. MASON
President of Barbados
13th November, 2025.

2025-28

An Act to provide for nationals of certain Member States of the Caribbean Community to enter Barbados, stay indefinitely and work without a work permit and for related matters.

[Commencement: 1st October, 2025]

ENACTED by the Parliament of Barbados as follows:

Short title

1. This Act may be cited as the *Caribbean Community (Free Movement of Nationals) Act, 2025*.

Interpretation

2.(1) In this Act,

"Community" means the Caribbean Community established by Article 2 of the Treaty and includes the CARICOM Single Market and Economy established by the provisions of the Treaty;

"dependant" means

(a) the spouse of a Community national unless, where the spouse is married, the parties to the marriage are living apart under a deed of separation or a decree or order of a court;

(b) a child or step-child of the Community national under the age of 18 years;

(c) a child adopted by the Community national in a manner recognised by law and who is under the age of 18 years; or

(d) any other relative who is, by reason of age or any infirmity of body or mind, wholly dependent on the Community national for subsistence;

"domestic driving permit", in relation to a Member State listed in the *Schedule*, means a document issued under the law of that Member State authorising the holder to drive motor vehicles, or a specified class or description of motor vehicles, in that Member State;

"freely-moving Community national" means

(a) a national of a Member State of the Community listed in the *Schedule*; and

(b) a dependant of a national of such a Member State;

"immigration officer" has the meaning assigned to it by section 2 of the *Immigration Act*, Cap. 190;

"motor vehicle" has the meaning assigned to it by section 2(1) of the *Road Traffic Act*, Cap. 295.

"national" means a person referred to in Article 32(5) of the Treaty;

"spouse" includes

(a) a single woman who has lived and cohabited with a single man as if she were in law his wife for a period of not less than 5 years immediately preceding the relevant date;

(b) a single man who has lived and cohabited with a single woman as if he were in law her husband for a period of not less than 5 years immediately preceding the relevant date,

but a reference to a single woman or a single man includes a reference to a widow or widower or to a woman or man who is divorced;

"Treaty" has the meaning assigned to it by section 2 of the *Caribbean Community Act*, Cap. 15;

"work permit" has the meaning assigned to it by section 2 of the *Immigration Act*, Cap. 190.

(2) In subsection (1), "relevant date" means, in relation to an unmarried spouse who

(a) entered Barbados upon or after the commencement of this Act, the date on which the spouse first entered Barbados; or

(b) was in Barbados before the commencement of this Act, the date on which the spouse applies to an immigration officer in such form as may be required to be treated as a freely-moving Community national.

Indefinite stay

3.(1) Notwithstanding section 13 of the *Immigration Act*, Cap. 190 but subject to section 8 of that Act,

(a) an immigration officer shall permit a freely-moving Community national to enter and remain in Barbados indefinitely; and

(b) a freely-moving Community national who entered Barbados prior to the commencement of this Act may remain in Barbados indefinitely.

(2) A freely-moving Community national shall, for the purposes of this Act and any other enactment be treated as remaining in Barbados indefinitely where the national

(a) indicates his intention to remain in Barbados indefinitely; or

(b) remains in Barbados of his own volition for more than 6 months.

(3) For the avoidance of doubt, sections 3 and 4 of the *Caribbean Community (Movement of Skilled Nationals) Act*, Cap. 186A do not apply to a freely-moving Community national.

Special provisions on discharge of seamen not to apply to freely-moving Community nationals

4. Section 14(2) of the *Immigration Act*, Cap. 190 does not apply to a freely-moving Community national.

Right to work without permit

5. Notwithstanding section 17 of the *Immigration Act*, Cap. 190,

(a) a freely-moving Community national may engage in any occupation or accept employment in Barbados without a work permit; and

(b) a person may engage or employ a freely-moving Community national in Barbados without the existence of a work permit in force in respect of the national.

Use of domestic driving permit

6. Notwithstanding anything contained in the *Road Traffic Act*, Cap. 295 or any statutory instrument made under that Act, a freely-moving Community national who holds a valid domestic driving permit is permitted to drive in Barbados during the period of 12 months from the date of his last entry in Barbados, or until the expiration of the permit, whichever is shorter, a motor vehicle of any class or description which he is authorised by the permit to drive.

Amendment of Schedule

7. The Minister may by Order amend the *Schedule*.

Regulations

8. The Minister may make Regulations for giving effect to this Act.

Amendment of Cap. 12

9. The *Representation of the People Act*, Cap. 12 is amended in

(a) section 2(1), by inserting the following definition in alphabetical order:

" "freely-moving Community national" has the meaning assigned to it by section 2 of the *Caribbean Community (Free Movement of Nationals) Act, 2025* (Act 2025-28);"; and

(b) in section 7(1), by deleting paragraph (b) and substituting the following:

"*(b)* is a Commonwealth citizen (other than a citizen of Barbados) or a freely-moving Community national who has resided in Barbados for a period of at least three years immediately before the qualifying date; and".

Amendment of Act 2021-3

10. The *Barbados Identity Management Act, 2021* (Act 2021-3) is amended in

(a) section 2, by inserting the following definition in alphabetical order:

" "freely-moving Community national" has the meaning assigned to it by section 2 of the *Caribbean Community (Free Movement of Nationals) Act, 2025* (Act 2025-28);"; and

(b) in section 5(1), by inserting after paragraph (j), the following:

"*(ja)*is a freely-moving Community national who is remaining in Barbados indefinitely;".

Commencement

11. This Act shall be deemed to have come into operation on the 1st day of October, 2025.

SCHEDULE

(Section 2)

LIST OF MEMBER STATES

1. Belize

2. Dominica

3. St. Vincent and the Grenadines

BARBADOS

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Act 2025-29

COPYRIGHT ACT, 2025-29

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BARBADOS

I assent
S. MASON
President of Barbados
13th November, 2025.

2025-29

An Act to revise the law of copyright.

[Commencement: by Proclamation]

ENACTED by the Parliament of Barbados as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Copyright Act, 2025*.

Interpretation

2.(1) In this Act,

"adaptation" means,

(a) in relation to a literary or dramatic work,

(i) a translation of the work which, in relation to a computer program, includes a version of the program in which it is converted into or out of a computer language or code or a different computer language or code otherwise than incidentally in the course of running the program;

(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 news-paper, magazine or similar periodical;

(b) in relation to a musical work, an arrangement or transcription of the work; or

(c) in relation to a database, means an arrangement or altered version of the database or a translation of it;

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

"artistic work" means

(a) a graphic work, photograph, sculpture or collage, whether the work is of artistic quality or not;

(b) a building or a model of a building, whether the building or model is of artistic quality or not; or

(c) any other work of artistic craftsmanship;

"author" in relation to a work, means the person who creates it, being, in relation to

(a) a literary or dramatic work, the author of the work;

(b) a musical work, the composer of the music, and in relation to accompanying words, if any, the author of the accompanying words;

(c) an artistic work other than a photograph, the artist;

(d) a photograph, the photographer;

(e) a sound recording or film, the producer;

(f) the typographical arrangement of a published edition, the publisher;

(g) a broadcast within the meaning of section 4(2), the person making the broadcast and, in the case of a broadcast by reception and immediate re-transmission, the person making that other broadcast;

(h) a cable programme, the person providing the cable programme service in which the programme is included;

(i) a computer-generated literary, dramatic, musical or artistic work, the person who makes the arrangements necessary for the creation of the work;

(j) a database, the person by whom the selection and the arrangement of the contents of the database are undertaken;

"Berne Union" means those countries which are contracting parties to any Act of the International Convention for the Protection of Literary and Artistic Works signed at Berne on 9th day of September, 1886 to which Barbados is a party;

"a broadcast" means a transmission by wireless telegraphy, including by terrestrial or satellite means of visual images, sounds, or other information or any combination of visual images, sounds or information, or the representations thereof, which

(a) having regard to section 4, is capable of being lawfully received by members of the public; or

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

"building" includes a fixed structure of any kind and a part of a building or fixed structure;

"business" includes a trade or profession;

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

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

(a) at 2 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;

"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 work" means a work generated by a computer in circumstances where a human author makes the necessary arrangements for the generation of the work;

"computer program" means a set of instructions, whether expressed in words or in schematic or other form, which is capable, when incorporated in a machine-readable medium, of causing an electronic or other device having information-processing capabilities to indicate, perform or achieve a particular function, task or result;

"copy" in relation to

(a) a work that is literary, dramatic, musical or database, means a reproduction of the work in any material form;

(b) an artistic work

(i) means a reproduction of the work in any material form; and

(ii) includes a reproduction in 3 dimensions if the artistic work is a two-dimensional work, and a reproduction in 2 dimensions if the artistic work is a 3 dimensional work;

(c) a work that is a film, television broadcast or cable programme, includes a photograph of the whole or any substantial part of any image forming part of the film, broadcast or cable programme;

(d) a work that is a typographical arrangement of a published edition, means a facsimile copy of the arrangement; and

(e) any description of work, includes a copy of the work that is transient or incidental to some other use of the work;

"copyright" has the meaning assigned to it by section 7;

"country" includes any territory;

"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;

"derogatory treatment" in relation

(a) to a literary work, dramatic work or musical work means

(i) the doing in relation to the work anything that results in a material distortion of, the mutilation of or a material alteration to the work that is prejudicial to the author's honour or reputation; or

(ii) the doing of anything else in relation to the work that is prejudicial to the author's honour or reputation;

(b) to an artistic work means

(i) the doing in relation to the work anything that results in a material distortion of, the destruction of, mutilation of or a material alteration to, the work that is prejudicial to the author's honour or reputation;

(ii) an exhibition in public of the work that is prejudicial to the author's honour or reputation because of the manner or place in which the exhibition occurs;

(iii) the doing of anything else in relation to the work that is prejudicial to the author's honour or reputation;

(c) to a film means

(i) the doing in relation to the film anything that results in a material distortion of, the mutilation of, or a material alteration to the film that is prejudicial to the maker's honour or reputation; or

(ii) the doing of anything else in relation to the film that is prejudicial to the honour or reputation of the maker of the film;

"director" in relation to a film, means the person who manages the dramatic and artistic aspects of the film by guiding the actors and technicians;

"distribution" means distribution to the public, for commercial purposes, of copies of a work by way of rental, lease, hire, loan or similar arrangement;

"dramatic work" includes a work of dance or mime;

"educational institution" has the meaning assigned to it by section 2 of the *Education Act*, Cap. 41;

"electronic retrieval system" means an electronic system

(a) in which works or performances may be stored; and

(b) from which a member of the public may cause a work or performance selected by him, to be transmitted, by wire or wireless means, at a time individually chosen by him, to receiving equipment under his control;

"exclusive licence" means a licence in writing signed by or on behalf of the owner of copyright in a work authorizing 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 owner of the copyright;

"exclusive recording contract" means a contract between a performer and another person under which that person is entitled, to the exclusion of all other persons, including the performer, to make recordings of one or more of his performances with a view to their being shown or played in public, sold, let for hire or otherwise commercially exploited;

"film" means a recording on any medium from which a moving image may by any means be produced;

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

"graphic work" includes

(a) any painting, drawing, diagram, map, chart or plan; and

(b) any engraving, etching, lithograph, woodcut or similar work;

"illicit recording" in relation to a performance means a recording wherever made, the making of which constitutes an infringement of any of the rights conferred on the performer or a person having recording rights in relation to the performance pursuant to , and which does not fall within any of the exceptions specified in or authorized pursuant to any provision of that Part;

"licence" means any licence that is issued or offered by a licensing body authorizing

(a) in relation to works in which copyright subsists, the doing or the authorization of any of the acts which the copyright owner has the exclusive right to do pursuant to section 10; or

(b) in relation to performer's property rights the doing or the authorization of any of the acts which the performer has the exclusive right to do pursuant to section

"licensing scheme" means a scheme setting out

(a) the classes of a case in which the operator of the scheme, or the person on whose behalf he acts, is willing to grant licences; and

(b) the terms on which licences would be granted in those classes of case;

"infringing copy" in relation to a protected work means

(a) any copy of the work, the making of which is not authorised under or by virtue of any provision of this Act; or

(b) any copy of the work that is or is proposed to be imported and its making in Barbados would have constituted an infringement of the copyright in the work in question or a breach of an exclusive licence relating to that work;

"licensing body" means a society or other organisation

(a) which has as its main object, or one of its main objects, the negotiating or granting, either as owner or prospective owner of copyright, or as exclusive licensee, or as agent for a copyright owner, of copyright licences, and whose objects include the granting of licences covering works of more than one copyright owner; or

(b) which has as its main object, or one of its main objects, the negotiating or granting, either as owner or prospective owner, or as exclusive licensee, or as agent of the owner of performer's property rights, of performer's property right licences, and whose objects include the granting of licences relating to the performances of more than one performer,

and such bodies under paragraphs *(a)* and *(b)* may be a single licensing body;

"literary work"

(a) means any work, other than a dramatic or musical work, which is written, spoken or sung; and

(b) includes

(i) a written table or compilation, other than a database; and

(ii) a computer program;

"manuscript" in relation to a work, means the original document embodying the work whether written by hand or not;

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

"performer" means any actor, singer, musician, dancer or other person who acts, sings, depicts, delivers, declaims, plays in or otherwise performs, a literary, dramatic, musical or artistic work; and references to the performer, in the context of the person having performer's rights, shall be construed to include

references to the person who, pursuant to any provision of this Act, is for the time being entitled to exercise those rights;

"performance" in relation to

(a) the rights conferred under Part IX, means

(i) a dramatic performance which includes dance and mime;

(ii) a musical performance;

(iii) a reading or recitation of a literary work; or

(iv) a performance of a variety act or any similar presentation,

that is, or to the extent that it is, a live performance, given by one or more individuals; and

(b) a literary, dramatic or musical work includes

(i) delivery in the case of lectures, addresses, speeches and sermons;

(ii) any mode of visual acoustic presentation, including presentation by means of sound recording, film, broadcast or cable programme of the work;

"person having recording rights" in relation to a performance means a person who

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

(b) is a qualified person, so, however, that, where a performance is subject to an exclusive recording contract but the person mentioned in paragraph *(a)* is not a qualified person, the expression shall be deemed to extend to any qualified person who is licensed by the person mentioned in paragraph *(a)* to make recordings of the performance with a view to their being shown or played in public, sold, let for hire or

otherwise commercially exploited or to whom the benefit of such a licence has been assigned;

"phonogram" means "sound recording";

"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;

"producer" in relation to a sound recording or film, means the person by whom the arrangements necessary for the making of the recording or film are undertaken;

"place of public entertainment" includes any premises which are from time to time made available for hire to such persons as may desire to hire them for purposes of public entertainment, including premises that are occupied mainly for other purposes;

"prospective owner" has the meaning assigned to it by section 29(1);

"protected work" means a work in which copyright subsists by virtue of this Act;

"publication" and "commercial publication" have the meanings assigned to those expressions, respectively by section 3;

"published edition" in relation to copyright in the typographical arrangement of a published edition, means the published edition of the whole or any part of one or more literary, dramatic, musical or artistic works;

"qualified person" means,

(a) in the case of an individual, a person who is a citizen of, or whose permanent residence is in, Barbados or a specified country; and

(b) in the case of a body corporate, a body incorporated or established under any enactment in force in Barbados or a specified country;

"qualifying performance" means a performance that

(a) is given by an individual who is a qualified person; or

(b) takes place in Barbados or a specified country;

"record" means any disc, tape, perforated roll or other device in which sounds are embodied so as to be capable of being reproduced therefrom, other than a soundtrack associated with a film, but includes, in relation to a performance, a film incorporating the performance;

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

(a) made directly from the live performance;

(b) made from a broadcast of, or cable programme including, the performance; or

(c) made directly or indirectly from another recording of the performance;

"rental" means any arrangement under which the original or a copy of a work or a recording of a performance is made available for use

(a) for payment in money or money's worth; or

(b) in the course of a business, as part of services or amenities for which payment is made,

on terms that it will or may be returned;

"reprographic process" means

(a) a process

(i) or making facsimile copies; or

(ii) involving the use of an appliance for making multiple copies; and

(b) in relation to a work held in electronic form includes any copying by electronic means but does not include the making of a film or sound recording;

"rights management information" includes information, or any representation thereof

(a) which identifies a copyright work or a recording of a performance;

(b) which identifies the author in relation to a copyright work or the performer or the producer in relation to a recording of a performance;

(c) which identifies the owner of any right in a copyright work, a performance, or a recording of a performance; or

(d) about the terms and conditions of use of a copyright work or recording of a performance,

where any of these items of information, or any representations thereof, are attached to or appear in connection with a copy of a copyright work or a copy of a recording of a performance, which is lawfully available to the public;

"rights protection measure" means any process, treatment, mechanism or system which is designed to prevent or inhibit the unauthorized exercise of any of the rights conferred by this Act;

"Rome Convention" means the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations done at Rome on 26th October, 1961 and to which Barbados is a party;

"sculpture" includes a cast or model made for purposes of sculpture;

"sound recording" means

(a) a recording of sounds from which 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 thereof may be produced,

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

"specified country" means a country specified by the Minister by order made under section 176;

"sufficient disclaimer" 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.

"telecommunication service" means a system for conveying visual images, sounds or other information by electronic means;

"Tribunal" means the Copyright Tribunal established under section 111;

"typeface" includes an ornamental motif used in printing;

"unauthorized" when used to describe any act done in relation to a work, means

(a) if copyright subsists in the work, any act done otherwise than by or with the licence of the owner of the copyright;

(b) if copyright does not subsist in the work, any act done otherwise than by or with the licence of the author or person lawfully claiming under him;

"WCT" means the WIPO Copyright Treaty adopted in Geneva on 20th December, 1996 and to which Barbados is a party;

"WIPO" means the World Intellectual Property Organisation;

"wireless telegraphy" means the sending of electromagnetic energy over paths not provided by a material substance constructed or arranged for that purpose;

"work" means

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

(b) a sound recording, film, broadcast or cable programme;

(c) the typographical arrangement of a published edition;

(d) a database;

"work of joint authorship" means a work produced by the collaboration of 2 or more authors in which the contribution of each author is not separate from the contribution of the other author or authors;

"WPPT" means the WIPO Performances and Phonograms Treaty adopted in Geneva on 20th December, 1996;

"writing" includes any form of notation, whether by hand or by printing, typewriting or any other process and regardless of the method by which or the medium in or on which it is recorded;

(2) References in this Act to the time at which, or the period during which, a work was made are references to the time or period at or during which it was first written down, recorded or expressed in some other material form.

(3) A reference in this Act

(a) to the inclusion of a cable programme or work in a cable programme service is a reference to its transmission as part of the service;

(b) to the person including a cable programme or work in a cable programme service, is a reference to the person providing the service; and

(c) to the copying of a work of any description shall be construed to include a reference to storing the work in any medium by electronic means.

(4) In determining the person vested with author's rights in respect of a literary, dramatic, musical or artistic work or database the following principles apply:

(a) if one individual was the author of the work, the rights vest in that individual;

(b) if 2 or more individuals were the authors of the work, the rights vest in them jointly;

(c) if there is no evidence to the contrary, the author of a work is the individual whose name is indicated on the work as its author.

(5) For the purposes of this Act, a public performance is a performance given in a theatre, cinema, concert hall, dance hall, club of any kind, bar, stadium, restaurant, hotel, commercial, banking or other industrial establishment or any other public place where musical works are performed or transmitted by radio or television, either with the participation of performers or by mechanical, electronic, sound or audiovisual processes.

(6) References 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 commissioned by, a single individual, firm, company or group of companies.

(7) References to licences or licensing schemes covering performances of more than one performer do not include licences or schemes covering only

(a) performances recorded in a single recording; or

(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, including holding companies or their subsidiaries.

Publication

3.(1) Subject to this section, for the purposes of this Act, publication in relation to a work means

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

(b) where the work is a literary, musical, dramatic or artistic work, database, sound recording or film, the making available of copies to the public by means of an electronic retrieval system; and

(c) the rental of sound recordings, films and computer programs,

and related expressions shall be construed accordingly.

(2) References in this Act to the issue to the public of copies of a work are to the act of putting into circulation copies not previously put into circulation in Barbados or elsewhere, and not to

(a) any subsequent distribution, sale, hiring or loan of those copies; or

(b) any subsequent importation of those copies into Barbados.

(3) For the purposes of this Act "commercial publication" in relation to a 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;

(b) where the work is a literary, musical, dramatic or artistic work, database, sound recording or film, making the work available to the public by means of an electronic retrieval system; or

(c) the rental of sound recordings, films and computer programs,

and related expressions shall be construed accordingly.

(4) 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 publication of the work.

(5) The following do not constitute publication for the purposes of this Act:

(a) in 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; or

(ii) the issue to the public or 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 playing or showing of the work in public; or

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

(6) A publication that is merely colourable and is not intended to satisfy the reasonable requirements of the public shall be disregarded for the purposes of this Act except in so far as it may constitute an infringement of copyright or rights conferred on performers or persons having recording rights or may constitute an offence under this Act.

(7) For the purposes of this Act, a publication in Barbados or in any other country shall not be treated as being other than the first publication by reason

only of an earlier publication elsewhere, if the 2 publications took place within a period of not more than 30 days.

(8) For the purposes of this Act, in determining

(a) whether a work has been published;

(b) whether a publication of a work was the first publication of the work; or

(c) whether a work was published or otherwise dealt with in the lifetime of a person,

any unauthorized publication or the doing of any other unauthorized act shall be disregarded.

Encrypted broadcast

4.(1) In relation to the broadcast of a work, 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.

(2) References in this Act to the person making a broadcast, broadcasting a work or including a work in a broadcast are references

(a) to the person transmitting the programme, to the extent that he has responsibility for its contents; and

(b) to any person providing the programme who makes with the person transmitting it the arrangements necessary for its transmission.

(3) References in this Act to a programme, in the context of broadcasting, are references to any item included in a broadcast.

(4) 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) The relaying of a broadcast by reception and immediate re-transmission by wireless means shall be regarded as a separate act of broadcasting from the making of the broadcast which is so re-transmitted.

Act binds the State

5. This Act binds the State.

PART II

PROTECTED WORKS

Requirements for protection

6.(1) Unless otherwise specifically provided in this Act, copyright shall not subsist in any work unless it satisfies the requirements specified in this Part respecting

(a) the category of work; and

(b) either

(i) the qualification of the author; or

(ii) the country or place of first publication, or in the case of a broadcast or cable programme, the country or place where it is made or from which it is sent, as the case may be.

(2) If the requirements of this Part or of section 178 are once satisfied in respect of a work, copyright does not cease to subsist by reason of any subsequent event.

Eligible works

7.(1) Copyright is a property right which, subject to the provisions of this section, may subsist in the following categories of work:

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

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

(c) typographical arrangements of published editions;

(d) original databases,

and copyright may subsist in a work irrespective of its quality or the purpose for which it was created.

(2) A literary, dramatic or musical work or database shall not be eligible for copyright protection unless it is recorded in writing or in some other form.

(3) Any reference in this Act to the time at which a work is made is a reference to the time at which it is recorded.

(4) For the purposes of subsection (2), it is immaterial 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 shall affect the question whether copyright subsists in the record of the work as distinct from the work recorded.

(5) Copyright shall not subsist in a sound recording or film that is, or to the extent that it is, a copy taken from a previous sound recording or film.

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

(7) Copyright shall 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.

(8) Copyright shall 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.

(9) A database is original if by reason of the selection or arrangement of the contents of the database, the database constitutes the author's own intellectual creation but if copyright subsists, it shall not extend to the data or material itself, and shall be without prejudice to any copyright subsisting in such data or material itself.

(10) Copyright protection does not extend to an idea, concept, process, principle, procedure, methods of operation, system or discovery or things of a similar nature.

Qualification for protection: author

8.(1) A work qualifies for copyright protection if the author was a qualified person at the material time.

(2) A work of joint authorship qualifies for copyright protection if any of the authors satisfies the requirement of subsection (1), but where a work qualifies for copyright protection only under this section, only those authors who satisfy such requirement shall be taken into account for the purposes of sections 10 and 27.

(3) In this section "the material time" means in relation to

(a) an unpublished literary, dramatic, musical or artistic work or database, when the work was made or, if the work extended over a period, a substantial part of that period;

(b) a published literary, dramatic, musical or artistic work or database when the work was first published or, if the author had died before that time, immediately before his death;

(c) a sound recording or film, when it was made;

(d) a broadcast, when the broadcast was made;

(e) a cable programme, when the programme was included in a cable programme service; and

(f) the typographical arrangement of a published edition, when the edition was first published.

Qualification for protection: first publication etc.

9.(1) A literary, dramatic, musical or artistic work, a database, a sound recording or film, or the typographical arrangement of a published edition qualifies for copyright protection if, having regard to section 3, it is first published in Barbados or a specified country.

(2) A broadcast qualifies for copyright protection if it is made from a place in Barbados or a specified country by a broadcasting organisation in possession of a valid licence granted to it under any law in force in Barbados or a specified country regulating broadcasting.

(3) A cable programme qualifies for copyright protection if it is sent from a place in Barbados or in a specified country in accordance with the law in force in Barbados or that country regulating transmission by cable.

Economic and moral rights

10.(1) By virtue of and subject to the provisions of this Act, the owner of the copyright in a work has the exclusive right to do or to authorize other persons to do any of the following acts in Barbados:

(a) to copy the work in accordance with section 11;

(b) to issue the work to the public in accordance with section 12;

(c) to rent the work to the public in accordance with section 13;

(d) to perform the work in public or, in the case of a sound recording, film, broadcast or cable programme, to play or show the work in public;

(e) to communicate the work to the public in accordance with section 14; or

(f) to make an adaptation of the work and, in relation to such adaptation, to do any or all of the foregoing acts.

(2) For the purposes of subsection (1) reference to the doing of any act in relation to any work means the doing of the act

(a) in relation to the whole or any substantial part of the work; and

(b) either directly or indirectly,

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

(3) By virtue of and subject to the provisions of this Act,

(a) the author of a literary, dramatic, musical or artistic work or database that is a protected work; or

(b) the director of a film that is a protected work,

has in respect of that work, whether or not he is the owner of the copyright in the work, the moral rights specified in Part III.

Copying

11. Copying in relation to a work of any description means reproducing the work in any material form.

Issue of copies to the public

12. The issue of the original or copies of the work to the public means issue through sale or other transfer of ownership subject to section 3(2).

Rental of copies to the public

13.(1) The rental of the original or copies of the work to the public means the rental of

(a) computer programs;

(b) films; or

(c) sound recordings and musical works embodied therein,

to the public.

(2) Subsection (1) shall not apply, in the case of computer programs, where the program itself is not the essential object of the rental.

Communication to the public

14. The communication to the public of a work shall mean the communication to the public of a

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

(b) sound recording or film;

(c) broadcast or cable programme; or

(d) database,

by electronic transmission and includes the broadcasting of the work and including the work in a cable programme service and the making available to the public of the work in such a way that members of the public may access it from a place and at a time individually chosen by them.

Duration of Copyright

Duration: literary work etc.

15.(1) Subject to this section, copyright in any literary, dramatic, musical or artistic work or database subsists for 70 years following the end of the calendar year in which the author dies.

(2) When copyright in a work referred to in subsection (1) is vested jointly in more than one author, the copyright subsists for 70 years immediately following the end of the calendar year in which the last surviving author dies.

(3) Where the author of a work referred to in subsection (1) is unknown, copyright in that work subsists for the 70 years immediately following the end of the calendar year in which the work was first published but if during that period the identity of the author is revealed, or his identity is no longer in doubt,

copyright subsists, for such period specified in subsection (1) or (2), as the circumstances require.

(4) Subsections (1) and (2) do not apply to a computer-generated work, the copyright in which expires at the end of the period of 70 years following the end of the calendar year in which the work was made.

(5) This section does not apply to copyright that subsists by virtue of section 178.

Duration: sound recordings and films

16.(1) Copyright in a sound recording subsists for 70 years immediately following the end of the year in which it was published or, failing such publication within 70 years from the making of the sound recording, 70 years from the end of the year in which the recording was made.

(2) Copyright in a film subsists for 70 years immediately following the end of the year in which it was made available to the public or, failing such event within 70 years from the making of such a work, 70 years from the end of the year in which it was made.

(3) For the purposes of subsection (1), a film is made available to the public when it is first communicated to the public or shown in public.

(4) For the purposes of subsection (3), in determining whether a film has been made available to the public, any unauthorized act shall be disregarded.

Duration: broadcasts and cable programmes

17.(1) Copyright in a broadcast or cable programme subsists for 70 years immediately following the end of the calendar year in which the broadcast was made or the programme included in a cable programme service.

(2) Copyright in a repeat broadcast or a repeat cable programme subsists for the same period as copyright in the original broadcast or cable programme and no copyright arises in respect of a repeat broadcast or a repeat cable programme

which is broadcast or, as the case may be, included in a cable programme service after the expiry of the copyright in the original broadcast or cable programme.

(3) Reference in subsection (2) to a repeat broadcast or a repeat cable programme means one that is a repeat of a broadcast previously made or a cable programme previously included in a cable programme service, as the case may be.

Duration: typographical arrangement of editions

18. Copyright in the typographical arrangement of a published edition subsists for 25 years immediately following the end of the calendar year in which the edition was first published.

PART III

MORAL RIGHTS

Identification with Work

Right to be identified as author etc.

19.(1) Subject to subsection (9), and to such exceptions as may be specified in or pursuant to any other provision of this Act, the author of a literary, dramatic, musical or artistic work or database that is a protected work and the director of a film that is a protected work have, respectively, the right to be identified as the author or, as the case may be, director of the work in the circumstances specified in this section.

(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 as such whenever

(a) the work or an adaptation thereof is published commercially, performed in public, communicated to the public, broadcast or included in a cable programme service; or

(b) copies of a film or sound recording including the work or an adaptation thereof are issued to the public.

(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 as such whenever

(a) the work or an adaptation thereof is published commercially;

(b) copies of a sound recording of the work or an adaptation thereof are issued to the public; or

(c) a film, the sound track of which includes the work, is shown in public or copies of such film are issued to the public.

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

(a) the work is published commercially or exhibited in public or communicated to the public or a visual image of it is broadcast or included in a cable programme service;

(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) In addition to the right specified in subsection (4)*(c)*, the author of a work of architecture in the form of a building 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 as such whenever the film is shown in public, communicated to the public or copies of the film are issued to the public.

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

(a) in the case of commercial publications 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, film, broadcast or cable programme in question, and the identification must, in each case, be clear and reasonably prominent.

(8) For the purposes of this section, any reasonable form of identification may be used.

(9) Except as may otherwise be explicitly provided by contract, the right conferred by this section does not apply in relation to

(a) a computer program, the design of a typeface or a computer-generated work;

(b) any work made for the purpose of reporting current events;

(c) the publication in a newspaper, magazine or similar periodical, or in an encyclopedia, dictionary, year book 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 purposes of such publication; or

(d) a work in which copyright originally vested in an international organisation by virtue of section 178, unless the author or director has previously been identified as such in or on published copies of the work.

Objection to Derogatory Treatment of Work

Right to object to derogatory treatment of work

20.(1) Subject to subsections (2) and (3), and to such exceptions as may be specified in or pursuant to any other provision of this Act, the author of a literary, dramatic, musical or artistic work or database that is a protected work and the director of a film that is a protected work have, respectively, the right not to have the work or any part thereof subjected to derogatory treatment and such right is infringed by any person who does any of the acts specified in section 42 in the circumstances so specified.

(2) The right referred to in subsection (1) does not apply in relation to

(a) a computer program or to a computer-generated work; or

(b) fair dealing with any work made for the purpose of reporting current events.

(3) The right referred to in subsection (1) does not apply to anything done by or with the authority of the copyright owner in relation to works in which copyright originally vested in an international organisation by virtue of section 178 unless the author or director

(a) is identified at the time of the relevant act; or

(b) has previously been identified in or on published copies of the work, and where in such a case the right does not apply, it is not infringed if there is a sufficient disclaimer.

False Attribution

False attribution of work

21.(1) A person has the right

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

(b) not to have a film falsely attributed to him as director.

(2) In this section, "attribution", in relation to a work, means a statement whether express or implied, as to the identity of the author or director.

(3) The right conferred by subsection (1) is infringed in the circumstances specified in section 45.

Privacy of Certain Photographs and Films

Right to privacy of photographs and films

22. Subject to section 46, a person who for private and domestic purposes commissions the taking of a photograph or the making of a film has, where the resulting work is a protected work, the right not to have

(a) copies of the work issued to the public;

(b) the work exhibited or shown in public;

(c) the work communicated to the public; or

(d) copies of the work rented to the public.

Duration: moral rights

23.(1) The rights conferred by sections 19, 20 and 22 subsist so long as copyright subsists in the work.

(2) The right conferred by section 21 subsists until the end of the period of 20 years immediately following the year in which the person died.

Consent and waiver of rights

24.(1) A person having a right conferred under this Part may consent to the doing of any act affecting such right or may waive the right.

(2) A right to which subsection (1) refers may be waived by instrument in writing signed by the person waiving the right, and the waiver

(a) may relate to works generally or to a specific work or class of works and may relate to existing or future works; and

(b) may be conditional or unconditional and may be expressed to be subject to revocation.

(3) Where a waiver is made in favour of the owner or prospective owner of the copyright in the work 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 Part 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 to which this Part relates.

Application of provisions to joint works

25.(1) The right conferred under section 19 is, in the case of a work of joint authorship, a right of each joint author to be identified as a joint author.

(2) The right conferred by section 20 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 of rights under section 24 by one joint author does not affect the rights of the other joint authors.

(4) Subsections (1), (2), and (3) also apply, with such modifications and adaptations as are necessary, in relation to a film that was, or is alleged to have been, jointly directed as they apply to a work which is, or alleged to be, a work of joint authorship and for the purposes of this subsection, a film is "jointly

directed" if it is made by the collaboration of 2 or more directors and the contribution of each director is not distinct from that of the other director or directors.

(5) The right conferred by section 22 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 24 by one of them does not affect the rights of the others.

Application of provisions to parts of work

26. The rights conferred by

(a) sections 19 and 22 apply in relation to the whole or any substantial part of a work; and

(b) sections 20 and 21 apply in relation to the whole or any part of a work.

PART IV

OWNERSHIP AND ASSIGNMENT OF RIGHTS

Ownership of Copyright

Ownership of copyright

27.(1) Subject to this section, the author of a protected work is the first owner of any copyright in that work unless there is an agreement to the contrary.

(2) Where a protected work is the work of an employee made during the course of his employment, his employer is the first owner of any copyright in the work.

(3) Where a protected work is made under a contract for services, the person who commissioned the work is the first owner of any copyright in the work.

(4) Where a protected work is a work of joint authorship the authors thereof shall be co-owners of the copyright in that work.

(5) In respect of folklore, that is to say, all literary and artistic works that

(a) constitute a basic element of the traditional and cultural heritage of Barbados;

(b) were created in Barbados by various groups of the community; and

(c) survive from generation to generation,

the rights of the author vest in the State to the same extent as if the State had been the original creator of the folklore.

(6) The rights of the State in respect of folklore are enforceable at the instance of the Attorney-General.

(7) Subsection (1) does not apply to copyright subsisting in a work pursuant to section 178.

Assignment of Copyright

Assignment and licences

28.(1) Subject to the provisions of this section, copyright in a work may be transferred as personal or moveable property by

(a) assignment;

(b) testamentary disposition; or

(c) operation of law,

and a transfer pursuant to this section by way of assignment shall not be effective unless it is in writing and signed by or on behalf of the assignor.

(2) An assignment or other transfer of copyright may be partial, that is to say, limited

(a) to one or more, but not all, of the things the owner of the copyright has the exclusive right to do;

(b) to part, but not the whole, of the period for which copyright subsists.

(3) A licence granted by the owner of copyright in a work shall be binding on every successor in title to his interests in copyright except a purchaser in good faith for valuable consideration and without notice, whether actual or constructive, of the licence or a person deriving title from such a purchaser.

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

Prospective ownership of copyright

29.(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, whether wholly or partially, to another person, then, if on the coming into existence of the copyright 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) A licence granted by a prospective owner of copyright is binding on every successor in title to his interests or prospective interests in the right, except a purchaser in good faith for valuable consideration and without notice, whether actual or constructive, of the licence or a person deriving title from such a purchaser.

(3) References in this Act to doing anything with or without the licence of the copyright owner shall be construed accordingly.

Exclusive licence

30. 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 in unpublished manuscript passes under will

31. Where under a bequest, whether specific or general, a person is entitled, beneficially or otherwise, to

(a) an original document or other material thing that records or embodies a literary, dramatic, musical or artistic work or database that was not published before the death of the testator; or

(b) an original material thing containing a sound recording or film that was not published before the death of the testator,

then, unless a contrary intention appears in the testator's will or a codicil thereto, the bequest shall 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.

Transmission of Moral Rights

Moral rights etc. not assignable

32. The rights conferred under Part III are not assignable.

Transmission of moral rights etc. on death

33.(1) The rights conferred by sections 19, 20 and 22 pass by succession.

(2) Where copyright forming part of a person's estate passes in part to one person and in part to another, any right that passes with the copyright by virtue of subsection (1) is correspondingly divided.

(3) Where by virtue of subsection (1), a right becomes exercisable by more than one person, then

(a) where the right is conferred by section 20 or 22, it is a right exercisable by each of them and is satisfied in relation to any of them if he consents thereto; and

(b) any waiver of the right in accordance with section 24 by one of them does not affect the rights of the others.

(4) A consent or waiver previously given 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 21 is actionable by his personal representatives.

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

PART V

INFRINGEMENT OF RIGHTS

General Provisions

Effect of this Part

34. This Part has effect with respect to

(a) authorizing the doing of specified acts in relation to a protected work; or

(b) providing for the licensing of a protected work.

Infringement of Copyright

Acts infringing copyright

35.(1) Copyright in a work is infringed by any person who, without the licence of the copyright owner, does, in relation to that work, any of the acts which the copyright owner has the exclusive right to do pursuant to section 10.

(2) Copyright in a work is infringed by a person who, without the licence of the copyright owner, imports for any purpose other than for his private and domestic use, an article which he knows or has reason to believe is an infringing copy of the work.

(3) Copyright in a work is infringed by a person who, without the licence of the copyright owner

(a) possesses in the course of a business;

(b) sells or lets for hire or offers or exposes for sale or hire;

(c) exhibits in public or distributes in the course of a business; 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 that is, and that he knows or has reason to believe is, an infringing copy of the work.

(4) Copyright in a work is infringed by a person who, without the licence of the copyright owner

(a) makes;

(b) imports;

(c) possesses in the course of a business; or

(d) sells or lets for hire or offers 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 used to make infringing copies.

(5) 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 Barbados or elsewhere.

(6) 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 guilty of the infringement, unless when he gave permission he believed on reasonable grounds that the performance would not infringe copyright.

(7) 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 playing sound recordings or showing films or making copies of photographs or receiving visual images or sounds conveyed by electronic means, the persons specified in subsection (8) are also guilty of the infringement.

(8) The persons referred to in subsection (7) are

(a) a person who supplied the apparatus or any substantial part of it, if when he supplied the apparatus or part

(i) he knew or had reason to believe that the apparatus was likely to be so used to infringe copyright; or

(ii) 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 used to infringe copyright;

(b) an occupier of premises who gave permission for the apparatus to be brought onto the premises, if when he gave permission he knew or had reason to believe that the apparatus was likely to be used to infringe copyright; and

(c) a person who supplied a copy of a sound recording or film used to infringe copyright, 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 used to infringe copyright.

Remedies of Copyright Owner

Action by owner of copyright

36.(1) An infringement of copyright is actionable at the suit of the copyright owner. subject to this section, in any action for an infringement all such relief by way of damages, injunction, accounts or otherwise, shall be available to the claimant as is available in respect of the infringement of any other proprietary right.

(2) Where in an action under this section an infringement of copyright is proved or admitted the court shall, having regard to any benefit accruing to the defendant by reason of the infringement, to the flagrancy of the infringement and to all other material considerations, have power to award such additional damages as the court considers appropriate in the circumstances.

(3) 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, then, the claimant is not entitled to damages against him.

(4) Subsection (3) does not affect any other remedy available to a claimant referred to in that subsection.

Delivery up: civil proceedings

37.(1) Subject to this section and section 39(5), where a person

(a) in the course of his business has an infringing copy of a work in his possession, custody or control; or

(b) has in his possession, custody or control an article specifically designed or adapted for making copies of a particular protected work, knowing

or having reason to believe that it has been or is being used to make infringing copies,

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

(2) An application under subsection (1) shall not be made after the end of the period specified in section 170(1) 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 169 for the disposal of the infringing copy or article, as the case may be.

(3) A person to whom an infringing copy or other article is delivered up pursuant to an order made under this section shall, if an order under section 169 is not made, retain it pending the making of an order or the decision not to make an order, under that section.

Remedies of Exclusive Licensee

Infringement of rights of exclusive licensee

38. 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.

Infringement where rights concurrent

39.(1) The rights and remedies of an exclusive licensee are concurrent with those of the copyright owner and reference in the relevant provisions of this Act to the copyright owner shall be construed accordingly.

(2) Where an action for infringement of copyright is brought by the copyright owner or by an exclusive licensee, and the action relates, wholly or partly to an infringement in respect of which they have concurrent rights of action, the copyright owner or the exclusive licensee, as the case may be, shall not be entitled, except with the leave of the court, to proceed with the action, unless the other

party is either joined as a claimant in the action or added as a defendant but this subsection shall not affect the granting of an interlocutory injunction on the application of either of them.

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

(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, then, whether or not the copyright owner and the exclusive licensee are both parties to the action, the court

(a) shall, in assessing damages take into account the terms of the licence and any pecuniary remedy already awarded or available to either of them in respect of the infringement;

(b) shall not direct an account of profits 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) shall, if an account of profits is directed, apportion the profits between them as the court considers just, subject to any agreement between them.

(5) The copyright owner shall notify any exclusive licensee having concurrent rights before applying under section 37 for an order for delivery up of infringing copies of a work, and the High Court may, on the application of the licensee, having regard to the terms of the licence make such order under section 37 as it thinks fit.

Infringement of rights of licensing body

40.(1) A licensing body may bring an action for infringement of the copyright in a work within the repertoire of the licensing body, called "the certain work", if

(a) the infringing act was capable of being licensed by the licensing body;

(b) the defendant is not licensed by the licensing body; and

(c) the licensing body is authorized, directly or indirectly, by the copyright owner in the certain work to license the defendant and

(i) the copyright owner, or any other person with his authority, has not granted, at any time, any licence in the certain work in Barbados which could have been granted by the licensing body, had the licensing body been in existence and so authorised at the time, and which is still in force;

(ii) the copyright owner, or any other person with his authority, has not granted, within the past 2 years, any licences in the certain work in Barbados which could have been granted by the licensing body; and

(iii) the copyright owner, or any other person with his authority, has not, within the past 2 years, brought any action for infringement of the certain work within Barbados.

(2) In an action brought under this section, the licensing body shall have the same rights and remedies available to it as the copyright owner would have had, if the copyright owner had brought the action.

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

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

(5) Section 39 shall apply to a licensing body which has a right of action by virtue of this section as it applies to an exclusive licensee.

(6) In this section "repertoire of the licensing body" means the aggregate of the works which the licensing body has the right to license.

Infringement of Moral Rights

Infringement of right to be identified as author or director

41.(1) Subject to subsection (2), the right conferred by section 19 is infringed by any person who fails to identify the author of a work or the director of a film whenever any action specified in that section occurs in relation to that work or film.

(2) The following acts do not constitute an infringement of the right conferred by section 19 in relation to a work to the extent that such acts are permitted under Part VI in relation to the work:

(a) fair dealing with the work for the purposes of criticism, review or the reporting of current events by means of a sound recording, film, broadcast or cable programme;

(b) the incidental inclusion of the work in an artistic work, sound recording, film, broadcast or cable programme;

(c) the use of the work for examination purposes;

(d) acts done for the purposes of parliamentary or judicial proceedings or proceedings of a statutory inquiry;

(e) the use of design documents and models;

(f) the use of a design derived from artistic work;

(g) acts permitted in relation to anonymous or pseudonymous works on the assumption that copyright in the works has expired or that the author is dead.

Infringement of right to object to derogatory treatment of work

42.(1) The right conferred on an author and a director by section 20 to object to derogatory treatment of their works is infringed where the acts described in subsections (2) to (5) are done in relation to those works.

(2) The right referred to in subsection (1) is infringed in the case of a literary, dramatic or musical work or database by a person who

(a) publishes commercially, performs in public or communicates to the public a derogatory treatment of the work; or

(b) issues to the public copies of a film or sound recording of or including a derogatory treatment of the work.

(3) The right referred to in subsection (1) is infringed in the case of an artistic work by a person

(a) who

(i) publishes commercially or exhibits in public a derogatory treatment of the work; or

(ii) communicates to the public a visual image of a derogatory treatment of the work;

(b) who 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) who

(i) in the case of a work of architecture in the from of a model for a building; or

(ii) in the case of a sculpture or work of artistic craftsmanship,

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

(4) Subsection (3) does not apply to a work of architecture in the form of a building but where the author of such work is identified on the building and it is the subject of derogatory treatment, he has the right to require that identification to be removed.

(5) In the case of a film, the right is infringed by a person

(a) who shows in public, or communicates to the public a derogatory treatment of the film;

(b) who issues to the public copies of a derogatory treatment of the film; or

(c) who, along with the film, plays in public, communicates to the public, or issues to the public copies of, a derogatory treatment of the film sound track.

Infringement by possession of infringing article

43.(1) The right conferred by section 20 is also infringed by a person who

(a) possesses in the course of a business;

(b) sells or lets for hire or offers or exposes for sale or hire;

(c) in the course of a business, exhibits in public or distributes; or

(d) distributes otherwise than in the course of a business, in circumstances likely 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 that

(a) has been subjected to derogatory treatment; and

(b) has been or is likely to be the subject of any of the acts mentioned in this section and section 42 in circumstances infringing that right.

Acts not infringing section 20

44.(1) The right conferred by section 20 is not infringed by any act done for the purpose of

(a) avoiding the commission of an offence; or

(b) complying with a duty imposed by or under an enactment.

(2) It is a sufficient disclaimer if the author or director is identified at the time of the act referred to in subsection (1) or has previously been identified in or on published copies of the work.

False attribution of work: infringement of right

45.(1) Subject to this section, the right conferred on a person by section 21 not to have a literary, dramatic, musical or artistic work or database falsely attributed to him as author or a film falsely attributed to him as director, is infringed by a person who

(a) issues to the public or rents to the public copies of any such work in or on which there is a false attribution;

(b) exhibits in public an artistic work or a copy of an artistic work in or on which there is a false attribution.

(2) The right referred to in subsection (1) is also infringed by a person who,

(a) in the case of a literary, dramatic or musical work performs the work in public, or communicates it to the public as being the work of a named person;

(b) in the case of a film, shows it in public, or communicates it to the public as having been directed by a named person; or

(c) in the case of a database, communicates it to the public as being the work of a named person,

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

(3) The right referred to in subsection (1) is also infringed by any person who issues to the public, rents to the public, or displays in public any material containing a false attribution in connection with any act referred to in subsection (1) or (2).

(4) The right referred to in subsection (1) is also infringed by any person who, in the course of a business,

(a) possesses or deals with a copy of a work referred to in that subsection 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 an attribution and that it is false.

(5) The right referred to in subsection (1) is also infringed, in the case of an artistic work, by a person who, in the course of a business,

(a) deals with a work that has been altered after the author parted with possession of it as if it were the unaltered work of the author; or

(b) deals with a copy of such a work as if it were a copy of the unaltered work of the author,

knowing or having reason to believe that the work has been altered.

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

(7) This section applies where a work is falsely represented as being an adaptation of the work of a person as it applies where the work is falsely attributed to a person as author.

Infringement of privacy right respecting photographs, etc.

46. The right conferred by section 22 in relation to a commissioned photograph or film is infringed by a person who does or authorizes the doing of any act mentioned in that section in relation to that work but the right is not infringed by any act which, pursuant to Part VI, would not be an infringement of the copyright in the work.

Effect of consent and waiver of right

47. It is not an infringement of any right conferred by section 19, 20, 21 or 22 to do any act to which the person entitled to the right has consented pursuant to section 24 or in respect of which he has given a waiver pursuant to that section.

Remedies for infringing moral rights, etc.

48.(1) Any person whose right under section 19, 20, 21 or 22 is infringed may institute proceedings in the High Court

(a) for an injunction to prevent the infringement; or

(b) for recovery of damages for the infringement.

(2) The grant of an injunction under subsection (1) *(a)* does not deprive a person of any damages that may be awarded to him for loss sustained by him as a result of infringement of his right.

(3) Where in an action an infringement of a right referred to in subsection (1) is proved or admitted, the court may, in addition to the grant of an injunction or the award of damages or both, order the defendant to publish a correction in such terms and in such manner as the court may direct.

Presumptions

Presumptions where action releases to literary works, etc.

49.(1) This section applies to an action brought under this Part with respect to a literary, dramatic, musical or artistic work or database.

(2) Where a name purporting to be that of the author appeared on a work referred to in subsection (1) when it was made or on copies of the published work, it shall be presumed that the person whose name appeared on the work is the author of the work and also the owner of the copyright in the work, until the contrary is proved.

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

(4) Where no name purporting to be that of the author appeared on a work referred to in subsection (1) but

(a) pursuant to section 9(1), the work qualifies for copyright protection by virtue of the country of first publication; and

(b) a name purporting to be that of the publisher appeared on the copies of the work as first published,

then, it shall be presumed that the person whose name appeared was the owner of copyright at the time of publication, until the contrary is proved.

(5) Where the author of a work is dead or where the identity of the author cannot be ascertained by reasonable inquiry, it shall be presumed, until the contrary is proved

(a) that the work is an original work; and

(b) that the claimant's allegations as to what was the first publication of the work and as to the country of first publication are correct.

Presumptions where action relates to sound recordings, films, or computer programs

50.(1) This section applies to an action brought under this Part with respect to a sound recording, film or computer program.

(2) Where an action is brought under this Part with respect to a sound recording, and copies of the recording 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 named country,

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

(3) Where an action is brought under this Part with respect to a film, and copies of the film issued to the public bear a statement

(a) that a named person was the author or director of the film;

(b) that a named person was the owner of copyright in the film at the date of issue of the copies; or

(c) that the film was first published in a specified year or in a named country,

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

(4) Where an action is brought under this Part with respect to a computer program, and 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 named country or that copies of it were first issued to the public in electronic form in a specified year,

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

(5) The presumptions specified in subsections (2), (3) and (4) apply equally in an action relating to an infringement alleged to have occurred before the date on which the copies were issued to the public as they apply to an action relating to an infringement alleged to have occurred on or after that date.

(6) Where an action is brought under this Part with respect to a film, and the film as shown in public, or communicated to the public bears a statement

(a) that a named person was the author or director of the film; or

(b) that a named person was the owner of copyright in the film immediately after it was made,

the statement is admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved and the presumption applies equally in an action relating to an infringement alleged to have occurred before the date on which the film was shown in public, or communicated to the public as it applies in an action relating to an infringement alleged to have occurred on or after that date.

Offences

Offences in respect of dealings which infringe copyright

51.(1) Any person who at a time when copyright in a work subsists by virtue of this Act

(a) makes for sale or hire; or

(b) in the course of a business sells or lets for hire, offers or exposes for sale or hire, exhibits in public or distributes;

(c) imports for purposes other than his private and domestic use; or

(d) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright,

any article which he knows or has reason to believe is an infringing copy of that work, is guilty of an offence.

(2) A person is guilty of an offence who, at the time when copyright subsists in a work by virtue of this Act, makes or has in his possession an article specifically designed or adapted for making copies of that work, knowing that it is to be used for making infringing copies for sale or hire or for use in the course of business.

(3) A person is guilty of an offence who, otherwise than by reception of a broadcast or cable programme, causes

(a) a literary, dramatic or musical work to be performed in public; or

(b) a sound recording or film to be played, or as the case may be, shown in public,

knowing or having reason to believe that copyright subsists in the work and that the performance, playing or showing, as the case may be, constitutes an infringement of the copyright.

(4) A person guilty of an offence under subsection (1) is liable

(a) on summary conviction to a fine of $100 000 or to imprisonment for 5 years or to both;

(b) on conviction on indictment to a fine of $500 000 or to imprisonment for 10 years or to both.

(5) A person guilty of an offence under this section, other than an offence under subsection (1), is liable

(a) on summary conviction to a fine of $50 000 or to imprisonment for 2 years or to both;

(b) on conviction on indictment to a fine of $200 000 or to imprisonment for 5 years or to both.

Order to deliver up

52.(1) The presumptions specified in sections 49 and 50 apply to proceedings for an order under this section.

(2) Subject to subsection (4), the court before which proceedings are brought against a person for an offence under section 51 may, if it is satisfied that at the time of his arrest or charge

(a) he had in his possession, custody or control in the course of business, an infringing copy of a protected work; or

(b) he had in his possession, custody or control an article specifically designed or adapted for making copies of a particular protected work knowing or having reason to believe that it had been or was to be used to a 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.

(3) An order may be made by the court of its own motion or on the application of the prosecution and may be made whether or not the person is convicted of the offence.

(4) The court shall not make an order in proceedings under this section

(a) after the time specified in section 170; or

(b) if it appears to the court unlikely that any order will be made under section 169.

(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 169.

Supplementary

Application of provisions as to entry and search

53. For the purposes of this Part, the provisions of sections 172 and 173 apply in respect of the entry and search of any premises.

Restricting importation of infringing copies

54.(1) The owner of the copyright in any published literary, dramatic or musical work or database may give notice in writing to the Comptroller of Customs

(a) that he is the owner of the copyright in the work; and

(b) that he requests the Comptroller to treat as prohibited goods under the *Customs Act*, Cap. 66, during a period specified in the notice, printed copies of the work which are infringing copies.

(2) The period specified in a notice given under subsection (1) shall not exceed 5 years and shall not extend beyond the end of the period for which the copyright may subsist, whichever is shorter.

(3) The owner of the copyright in a sound recording or film may give notice in writing to the Comptroller 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 Barbados at a time and place specified in the notice; and

(c) that he requests the Comptroller to treat copies as prohibited imports under the *Customs Act*, Cap. 66.

(4) Subject to subsection (5), where a notice has been given in accordance with this section, the importation into Barbados of goods to which the notice relates is prohibited but notwithstanding anything contained in the *Customs Act*, Cap. 66, a person is not, by reason that any goods are treated as prohibited goods

by virtue of this section, liable to any penalty under that Act other than forfeiture of the goods.

(5) Subsection (4) does not apply to the importation of any article by a person for his private or domestic use.

(6) A person giving notice under this section shall

(a) comply with such conditions as may be prescribed by regulations; and

(b) satisfy such requirements as may be prescribed in connection with the giving of the notice including requirements relating to

(i) the form of the notice;

(ii) the furnishing of evidence, whether on giving notice, or on the importation of the goods, or both;

(iii) the payment of fees in respect of the notice;

(iv) the giving of security in respect of any liability or expense which the Comptroller may incur in consequence of the notice by reason of the detention of any article or anything done to an article detained by the Comptroller;

(v) the indemnification of the Comptroller against any such liability or expenses, whether security has been given or not; and

(vi) such incidental or supplementary matters,

and the regulations may make different provisions as respect different classes of case.

PART VI

EXCEPTIONS TO INFRINGEMENT OF COPYRIGHT

Preliminary

Definition of sufficient acknowledgment

55. In this Part,

"sufficient acknowledgment" means an acknowledgment 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 or the author has agreed or required that no acknowledgment of his name should be made;

(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.

General Exceptions

Research and private study

56. Subject to section 58, fair dealing with a literary, dramatic, musical or artistic work or database for the purposes of research or private study does not infringe copyright in the work or, in the case of a published edition, in the typographical arrangement.

Criticism, review and reporting

57.(1) Subject to section 58,

(a) fair dealing with a protected work for the purposes of criticism or review of that or another work or of a performance of a work; and

(b) fair dealing with a protected work, other than a photograph, for the purpose of reporting current events,

does not infringe copyright in the work if it is accompanied by a sufficient acknowledgment.

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

Determining fair dealing

58. For the purpose of determining whether an act done in relation to a work constitutes fair dealing, the court determining the question shall take account of all factors that appear to it to be relevant, including

(a) the nature of the work in question;

(b) the extent and portion of that part of the work affected by the act in relation to the whole of the work;

(c) the purpose and character of the use; and

(d) the effect of the act upon the potential market for, or the commercial value of, the work.

Incidental inclusion of protected work

59. Copyright in a work is not infringed

(a) by its incidental inclusion in an artistic work, sound recording, film, broadcast or cable programme; or

(b) by the issue to the public of copies or the playing, showing, or communication to the public of anything whose making was not an infringement of copyright by virtue of paragraph *(a)*,

and for the purposes of this section, 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 if it is deliberately included.

Use of Work for Educational Purposes

Acts done for purposes of instruction or examination

60.(1) Copyright in a literary, dramatic, musical or artistic work or database is not infringed by its being copied in the course of instruction or of preparation for instruction, if the copying is done by a person giving or receiving instruction and is not by means of a reprographic process.

(2) Copyright in 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, if the copying is done by a person giving or receiving instruction.

(3) Copyright in a work is not infringed by anything done for the purposes of an examination by way of setting the questions, communicating the questions to candidates or answering the questions.

Anthologies for educational use

61.(1) The inclusion in a collection intended for use in educational establishments of a short passage from a published literary or dramatic work does not infringe copyright in the work if

(a) the collection is described in the title and in any advertisement thereof issued by or on behalf of the publisher, as being so intended;

(b) the work was not itself published for the use of educational establishments;

(c) the collection consists mainly of material in which no copyright subsists; and

(d) the inclusion is accompanied by a sufficient acknowledgment.

(2) Subsection (1) does not authorize the inclusion of more than 2 excerpts from protected works by the same author in a collection published by the same publisher over any period of 5 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.

Recording of broadcasts, etc. by educational establishments

62.(1) Subject to subsection (2), 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 institution for the educational purposes of that institution without thereby infringing the copyright in the broadcast or cable programme or in any work included in it.

(2) Subsection (1) shall not apply if or to the extent that there is a licensing scheme certified pursuant to section 110 for the purposes of this section.

Restriction on reprographic copying by educational establishments

63.(1) Subject to this section, reprographic copies of passages from published literary, dramatic or musical works may be made by or on behalf of an educational institution for the purposes of instruction without infringing any copyright in the work or in the typographical arrangement.

(2) Not more than 5 per cent of any work may be copied by or on behalf of an educational institution by virtue of this section in any one period of 3 months.

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

(4) Where a licence is granted to an educational institution authorizing the reprographic copying of passages from any published literary, dramatic or musical work, for use by the institution, then, any term of that licence which

purports to restrict the proportion of work which may be copied, whether on payment or free of charge, to less than that permitted under this section is of no effect.

Subsequent dealings with authorised copies

64.(1) Where a copy of a work would be an infringing copy if the making thereof were not authorized under sections 60, 62 or 63 and such copy is subsequently dealt with it shall be treated as an infringing copy for the purposes of that dealing and that dealing infringes copyright for all subsequent purposes.

(2) In subsection (1) "dealt with" means sold, or let for hire or offered or exposed for sale or hire.

Interpretation of references: regulations

65.(1) In sections 66 to 69 references to the librarian or archivist include references to a person acting on his behalf.

(2) Regulations may provide that a librarian or archivist who is, pursuant to sections 66 and 69, required to be satisfied as to a matter before making or supplying a copy of a work

(a) is entitled to rely on a declaration as to that matter, signed by the person requesting the copy, unless he is aware that the declaration is false in any material particular;

(b) in such cases as may be prescribed, shall not make or supply a copy to any person in the absence of a declaration by that person.

(3) Where a person requesting a copy of a work makes a declaration that is false in material particular and is supplied with a copy of the work that would have been an infringing copy if made by him, that person shall be liable for infringement of copyright as if he had made the copy himself, and the copy supplied shall be treated as an infringing copy.

Supply by librarian of copies of published work

66.(1) The librarian of a prescribed library or archive may, if the prescribed conditions are complied with

(a) make and supply a copy of an article in a periodical; or

(b) make and supply from a published edition, a copy of part of a literary, dramatic or musical work, not being an article in a periodical,

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

(2) The conditions prescribed pursuant to subsection (1) shall include the following:

(a) that copies shall be 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) in relation to an article, that no person shall be 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;

(c) in relation to a work referred to in subsection (1)*(b)*, that no person shall be furnished with more than one copy of the same material or of a copy of more than a reasonable proportion of any work; and

(d) 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.

Supply of copies to other libraries

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

(a) an article in a periodical; or

(b) the whole or part of a published edition of a literary, dramatic or musical work,

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

(2) Subsection (1)*(b)* shall 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.

Replacing copies of work

68.(1) The librarian 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 for the purposes of

(a) preserving or replacing the item by placing the copy in such a permanent collection in addition to or in place of the item;

(b) replacing 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 or database, 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 provisions restricting the making of copies to cases where it is not reasonably practicable to purchase a copy of the item in question for the purpose.

Copying of unpublished work

69.(1) Subject to subsection (2), the librarian 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 in any illustrations accompanying it.

(2) Subsection (1) shall not apply where

(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 of the making of the copy the librarian ought to have been aware of that fact.

(3) 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 any 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.

Exceptions Relating to Public Administration

Parliamentary and judicial proceedings and statutory inquiries

70.(1) Copyright in a work is not infringed by anything done for the purposes of parliamentary or judicial proceedings or, subject to subsection (3), for the purposes of reporting such proceedings.

(2) Copyright in a work is not infringed by anything done for the purposes of the proceedings of a statutory inquiry or, subject to subsection (3), for the purposes of reporting any such proceedings held in public.

(3) The provisions of subsections (1) and (2) relating to the reporting of proceedings shall not be construed as authorising the copying of a work which is itself a published report of the proceedings.

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

(5) 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.

Public records

71. Where any protected work or a reproduction of any such work is comprised in any public record pursuant to any enactment which is, by virtue of that enactment open to public inspection, the copyright in the work is not infringed by the making or supplying to any person of any copy of the work by or under the direction of any officer appointed or acting under the authority of the enactment.

Designs

Design documents and models

72.(1) It is not an infringement of any copyright in a design document or in a model that records or embodies a design for anything, except an artistic work or a typeface, to make an article to the design or to copy an article made to the design.

(2) It is not an infringement of any copyright to issue to the public or to include in a film, or communication to the public anything the making of which was, by virtue of subsection (1), not an infringement of that copyright.

(3) In this section,

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

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

Where design derived from artistic work is exploited

73.(1) 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 under this Act as copies of the work; and

(b) marketing such articles in Barbados or elsewhere,

then, after the end of the period of 25 years from the end of the calendar year in which such articles are first marketed, a person may, without infringing copyright in the work, copy the work by making articles of any description or by doing anything for the purpose of making articles of any description, or by doing anything in relation to articles so made.

(2) Where any part of an artistic work is exploited in the manner described in subsection (1), then, the provisions of that subsection apply only in relation to that part.

(3) The Minister may by order make provision

(a) respecting 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.

(4) In this section

(a) references to articles do not include films; and

(b) references to the marketing of an article are references to its being sold or let for hire or offered or exposed for sale or hire.

Works in Electronic Form

Transfer of works in electronic form

74.(1) Where 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 to make copies of an adaptation in connection with his use of it, then, in the absence of any express terms

(a) prohibiting the transfer of the copy by the purchaser;

(b) imposing obligations which continue after a transfer;

(c) prohibiting the assignment of any licence;

(d) terminating any licence on a transfer; or

(e) providing for the terms on which a transferee may do the things which the purchaser was permitted to do,

anything which the purchaser was permitted to do may also be done by a transferee without infringement of copyright.

(2) Any copy or adaptation, or copy of an adaptation of a work referred to in subsection (1) that is made by the purchaser and not also transferred with the copy, adaptation or copy of the adaptation referred to in that subsection shall, after the transfer, be treated as an infringing copy for all purposes.

(3) Subsections (1) and (2) apply where the original purchased copy is no longer usable and what is transferred is a further copy used in its place.

(4) This section applies also on a subsequent transfer, with the substitution for references in subsection (2) to the purchaser by references to the subsequent transferor.

Temporary copies

75. The copyright in a work is not infringed by the making of a transient and incidental copy of that work which is technically required for the making available of the work to the public, by wire or wireless means, in such a way that members of the public may access the work from a place and at a time individually chosen by them, or the viewing of or listening to the work by a member of the public to whom the work has been lawfully made available and which has no independent economic significance.

Miscellaneous: Literary, Dramatic, Musical and Artistic Works and Databases

Anonymous and pseudonymous literary etc. works

76.(1) Copyright in a literary, dramatic, musical or artistic work or database is not infringed by an act done at a time when, or in pursuance of an arrangement 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 the 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 work in which copyright originally vested in an international organisation by virtue of section 178 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 not 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 the last surviving author having died.

Record of spoken work

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

(a) reporting current events; or

(b) communicating to the public the whole or part of the work,

it is not an infringement of any copyright in the words as a literary work to use the record or material taken from it, or to copy the record or such material and use the copy, for that purpose, if the conditions specified in subsection (2) are met.

(2) The conditions referred to in subsection (1) 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.

Reading or recitation in public

78.(1) The reading or recitation in public of any reasonable extract from a published literary or dramatic work is not an infringement of copyright in the work, if accompanied by a sufficient acknowledgment.

(2) Copyright in a work is not infringed by the making of a sound recording of the work, or the communication to the public of the work, or a reading or recitation of the work which, by virtue of subsection (1), does not infringe copyright in the work.

Representation of artistic works on public display

79.(1) This section applies to

(a) buildings;

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

(2) The copyright in a work referred to in subsection (1) is not infringed by

(a) making a graphic work representing it;

(b) making a photograph or film of it;

(c) communicating to the public a visual image of it; or

(d) issuing to the public copies, or communicating to the public anything whose making was, by virtue of this section, not an infringement of copyright.

Reconstruction of buildings

80. Anything done for the purposes of reconstructing a building does not infringe any copyright in the building or in any drawings or plans in accordance with which the building was constructed by or with the licence of the copyright owner.

Subsequent work by same artist

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

Computer Programs

Back-up copies of computer programs

82.(1) It is not an infringement of the copyright in a computer program for a lawful user of a copy of the computer program to make a backup 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 83, 84 and 85, a person is a "lawful user" of a computer program where, whether under a licence or otherwise, he has a right to use the program.

Interoperability of computer programs

83.(1) It is not an infringement of the copyright in a computer program for a lawful user

(a) to make a permanent or temporary copy of the whole or a part of the computer program by any means or in any form; or

(b) to make a translation, adaptation, arrangement or any other alteration of the computer program and to copy the results thereof,

to obtain the information necessary to create an independent computer program which can be operated with the original program or with other programs where the conditions set out in subsection (2) are complied with.

(2) The conditions referred to in subsection (1) are that

(a) those acts are performed by the lawful user or on his behalf by a person authorized to do so;

(b) the information necessary to achieve interoperability has not previously been available to the person referred to in paragraph *(a)*; and

(c) those acts are confined to the parts of the original program which are necessary to achieve interoperability.

(3) Subsections (1) and (2) shall not permit the information obtained through their application

(a) to be used other than to achieve the interoperability of the independently created computer program;

(b) to be given to persons other than those referred to in that subsection, except where necessary for the interoperability of the independently created computer program; or

(c) to be used for the development, production or marketing of a computer program substantially similar in its expression, or for any other act which infringes copyright.

Use of and error correction in computer programs

84. It is not an infringement of the copyright in a computer program for a lawful user of a copy of the computer program to make a permanent or temporary copy of the whole or a part of the program by any means and in any form or to translate, adapt or arrange or in any other way alter the computer program where such actions are necessary for the use of the program by the lawful user in accordance with its intended purpose, including error correction.

Observation, study and testing of computer programs

85. It is not an infringement of the copyright in a computer program for a lawful user of a copy of the computer program to observe, study or test the functioning of the program in order to determine the ideas and principles which underlie any element of the program, where he does so while performing any of

the acts of loading, displaying, running, transmitting or storing the program which he is authorized to do.

Databases

Use of the contents of a database

86. 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 or otherwise, to undertake any of the exclusive rights 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.

Miscellaneous: Sound Recordings, Films and Computer Programs

Licensed rental of sound recordings, etc.

87.(1) The Minister may by order, subject to negative resolution, provide that in such cases as may be specified in the order, the rental to the public of copies of sound recordings, films or computer programs 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, and in the event of the failure of the parties to agree, as may be determined by the Tribunal.

(2) An order under subsection (1) shall not apply if, or to the extent that, there is a licensing scheme certified under section 110 for the purposes of this section.

(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 rented, the persons renting or the circumstances of the rental.

(4) Nothing in this section affects any liability under section 35 in respect of the rental of infringing copies.

Playing of sound recordings for purposes of charitable organisations

88. 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

(a) 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) 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 recording for the purposes of broadcast or cable programme

89.(1) This section applies where by virtue of a licence or assignment of copyright a person is authorized to communicate to the public from a place in Barbados or a specified country

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

(b) an artistic work; or

(c) a sound recording or film.

(2) The person referred to in subsection (1) shall, by virtue of this section, be treated as licensed by the owner of the copyright in the work to do or authorize any of the following for the purposes of communication to the public

(a) in the case of a literary, dramatic or musical work or an adaptation of such a work, to make a sound recording or film of the work or adaptation;

(b) in the case of the artistic work, to take a photograph or make a film of the work;

(c) in the case of a sound recording or film, to make a copy of the sound recording or film.

(3) A licence under subsection (2) is subject to the following conditions:

(a) the recording, film, photograph or copy in question shall not be used for a purpose that is not granted by the licence; and

(b) the recording, film, photograph or copy shall be destroyed within twenty-eight 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 is an infringing copy

(a) if it is used for any purpose in breach of the condition mentioned in subsection (3)*(a)*; and

(b) for all purposes after the condition set out in subsection (3)*(a)* or the condition mentioned in subsection (3)*(b)* is breached.

Recording broadcasts for programme control

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

(2) Copyright is not infringed by the making or use by the Broadcasting Authority of recordings of programmes in connection with and for the purpose of carrying out its functions under the *Broadcasting Act*, Cap. 274B.

Recording for archival purposes

91.(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

the Archives Department or in an archive maintained by a body designated by the Minister by order.

(2) For the purposes of this Act, a recording referred to in subsection (1) does not infringe copyright in the broadcast or cable programme or in any work included in it.

(3) For the purposes of subsection (1), the Minister shall not designate a body unless he is satisfied that it is not established or conducted for profit.

Reception and re-transmission of broadcast in cable programme service

92.(1) Where a literary, dramatic or musical work or film is broadcast with the licence of the copyright owner from a place in Barbados or a specified country, any person may, without obtaining the licence of the copyright owner, incorporate the work by means of the reception of the broadcast in a cable programme service.

(2) Subsection (1) applies only where

(a) the transmission by the cable programme service takes place simultaneously with the reception of the broadcast;

(b) the programme in which the literary, dramatic or musical work or film is incorporated is transmitted without alteration of any kind.

(3) Any work included in the cable programme service shall, subject to subsection (4), be treated as licensed by the copyright owner referred to in subsection (1), subject to payment to him by the person providing the cable programme service of such reasonable remuneration in respect of the transmission as may be agreed.

(4) Where the copyright owner referred to in subsection (1) and the person who incorporates the work pursuant to that subsection cannot agree on the remuneration referred to in subsection (3) the remuneration shall be fixed by the Tribunal.

(5) For the purposes of this subsection

(a) an alteration to a programme includes the addition thereto of new material not contained in the programme as broadcast, or the omission from the transmission of any material contained in the programme as broadcast; and

(b) "material" includes a commercial advertisement.

Recording for the purpose of time-shifting

93. 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.

Adaptations

Adaptations

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

PART VII

COPYRIGHT AND PERFORMER'S PROPERTY RIGHTS LICENSING

Preliminary

Licensing schemes to which sections 96 to 101 apply

95. Sections 96 to 101 apply to licensing schemes which are operated by licensing bodies in relation to

(a) the copyright in works of more than one copyright owner, so far as they relate to licences for any of the acts which the copyright owner has the exclusive right to do pursuant tosection 10; and

(b) the performer's property rights of more than one performer, so far as they relate to licences for any of the acts which the performer has the exclusive right to do pursuant to section 127.

References and applications respecting licensing schemes

Reference of proposed licensing scheme

96.(1) The terms of a licensing scheme which a licensing body proposes to operate may be referred to the 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) Where 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 only as it relates to cases of the description to

which the reference relates, as the Tribunal thinks reasonable in the circumstances.

(4) An order made under subsection (3) may be of indefinite duration or may endure for such period as the Tribunal may determine.

Reference of existing licensing scheme

97.(1) Where during the operation of a licensing scheme 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 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 only 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) An order made under subsection (3) may be of indefinite duration or may endure for such period as the Tribunal may determine.

Further reference of scheme

98.(1) Where the Tribunal has on a previous reference of a licensing scheme under section 96 or 97, 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) an applicant for 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 after 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 that 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 only 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) An order made pursuant to subsection (4) 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

99.(1) A person who, in a case covered by a licensing scheme, claims 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 Tribunal.

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

(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 that 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) An order made under subsection (4) may be of indefinite duration or may endure for such period as the Tribunal may determine.

Application for review of order as to entitlement to licence

100.(1) Where the Tribunal has made an order under section 90 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, except with the special leave of the Tribunal, be made

(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

101.(1) A licensing scheme that has been confirmed or varied by the Tribunal under section 96 or 97 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 is 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 same position as regards infringement of copyright or infringement of performer's property rights as if he had at all material times been the holder of a licence granted by the owner of the copyright or the rights in question in accordance with the scheme.

(3) The Tribunal may direct that the order, so far as it varies the amount of the charges payable, shall have effect from a date before that on which it is made, not being a date earlier than the date on which the reference was made or, where the scheme came into operation after the reference was made, not being a date earlier than the date on which the scheme came into operation but no such direction may be made where subsection (5) applies.

(4) If a direction is made under subsection (3)

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

(b) the reference in paragraph *(a)* of subsection (2) to the charges payable under the scheme shall be construed as a reference to the charges so payable by virtue of the order.

(5) Any order of the Tribunal under section 96 or 97 made with respect to a scheme that is certified for any purpose under section 110 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.

(6) Where the Tribunal makes an order under section 99 and the order remains in force, the person in whose favour the order is made shall, if he satisfies the conditions specified in subsection (7), be in the same position as regards infringement of copyright or infringement of performer's property rights as if he had at all material times been the holder of a licence granted by the owner of the copyright or rights in question on the terms specified in the order.

(7) The conditions referred to in subsection (6) are that the person mentioned in that subsection shall

(a) pay to the operator of the scheme any charges payable in accordance with the order or, if the amount cannot be ascertained, give an undertaking to pay the charges when ascertained; and

(b) comply with the other terms specified in the order.

Licences to which sections 103 to 106 apply

102. Sections 103 to 106 apply to the following descriptions of licence granted by a licensing body otherwise than in pursuance of a licensing scheme

(a) licences relating to the copyright in literary, dramatic, musical or artistic works or films, or film sound-tracks when accompanying a film, which cover works of more than one author, so far as they authorize

(i) copying the work;

(ii) performing, playing or showing the work in public; or

(iii) communicating the work to the public;

(b) any licence relating to the copyright in a sound recording other than a film sound-track when accompanying a film, broadcast or cable programme, or the typographical arrangement of a published edition;

(c) all licences in relation to the copyright in sound recordings, films or computer programs so far as they relate to the rental of copies to the public; and

(d) licences in respect of the acts which the performer has the exclusive right to do pursuant to paragraphs *(a)*, *(c)* and *(d)* of section 127.

Reference to Tribunal of proposed licence

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

(2) The Tribunal shall first decide whether to entertain the reference referred to in subsection (1), 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

104.(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 Tribunal on the grounds 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 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

105.(1) Where the Tribunal has made an order under section 103 or 104, 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, except with the special leave of the Tribunal, be made,

(a) within 12 months from the date of the order referred to in subsection (1) 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 in the circumstances.

Effect of order of Tribunal

106.(1) Where the Tribunal makes an order under section 103 or 104 and the order remains in force, the person entitled to the benefit of the order shall, if he satisfies the conditions specified in subsection (2), be in the same position as regards infringement of copyright or infringement of performer's rights as if he had at all material times been the holder of a licence granted by the owner of the copyright or the performer's property rights in question on the terms specified in the order.

(2) The conditions referred to in subsection (1) are that the person mentioned in that subsection shall

(a) pay to the licensing body any charges payable in accordance with the order or, if the amount cannot be ascertained, give an undertaking to pay the charges when ascertained; and

(b) comply with the other terms specified in the order.

(3) The benefit of the order may be assigned

(a) in the case of an order under section 103, if assignment is not prohibited under the terms of the Tribunal order; and

(b) in the case of an order under section 104, if assignment was not prohibited under the terms of the original licence.

(4) The Tribunal may direct that an order under section 103 or 104, or an order under section 105 varying such an order, so far as it varies the amount of charges payable, shall not have effect from a date

(a) before that on which it was made, not being a date earlier than the date on which the reference or application was made; or

(b) where a licence was granted or was due to expire after the reference was made, not being a date earlier than the date on which the licence was granted or, as the case may be, was due to expire.

(5) If a direction referred to in subsection (4) 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.

Supplementary

Matters to be taken into account by Tribunal

107. Regulations made under section 181 may prescribe the matters that the Tribunal shall take into account on a reference or application under this Part in respect of any class or classes of case.

Applications to settle the remuneration payable for the rental of certain works or the inclusion of a work in a cable programme service

108.(1) An application to settle the remuneration or other sum payable in pursuance of section 87 or section 92 may be made to the 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 12 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.

Applications to settle the remuneration or share payable for the communication to the public of a sound recording of a performance

109.(1) An application to settle the remuneration or other sum or share payable in pursuance of section 137 may be made to the Tribunal by the copyright owner of the sound recording, any performer whose performance is recorded or the person claiming to be treated as licensed by the copyright owner.

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

(3) Any 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 12 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.

Ministerial order in relation to licensing scheme

110.(1) On the application of any person operating or proposing to operate a licensing scheme for the purposes of section 62 or section 87 or such other provisions as may be prescribed, 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.

(2) The scheme shall be scheduled to the order and the scheme shall come into operation for the purposes of section 62, or such other provisions as may be prescribed

(a) on such date, being not less than 8 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 96, on any later date on which the order of the Tribunal under that section comes into force or the reference is withdrawn.

(3) A variation of the scheme is not effective unless the order is amended by the Minister and the Minister shall make the amendment in the case of a variation ordered by the Tribunal on a reference under section 96, 97 or 98, and may do so in any other case if he thinks fit.

(4) The Minister may by order revoke an order made under subsection (1) if it appears to him that the scheme to which the order relates is no longer being operated according to its terms, and shall revoke the order if the scheme ceases to be operated.

PART VIII

THE COPYRIGHT TRIBUNAL

Establishment of Copyright Tribunal

111.(1) The Copyright Tribunal, in this Act referred to as "the Tribunal" is established.

(2) The Tribunal shall comprise

(a) three attorneys-at-law of at least 10 years standing; and

(b) four other members.

(3) The members of the Tribunal

(a) shall be appointed by the Minister for a period of 3 years; and

(b) shall be eligible for re-appointment.

(4) Subject to this section, the provisions of the *Administrative Appeal Tribunal Act*, Cap. 109A apply for the purpose of giving effect to this section.

(5) The members of the Tribunal shall receive such remuneration as the Minister determines.

Jurisdiction of Tribunal

112.(1) The functions of the Tribunal are

(a) to hear and determine

(i) any matter referred to it pursuant to any provision of Part VII relating to licensing;

(ii) any application under section 108 to settle the remuneration or other sum or share payable for rental of a sound recording, film or computer program or the retransmission of a work in a cable programme service;

(iii) any application under section 109 to settle the remuneration or other sum or share payable for the playing, broadcasting or inclusion in a cable programme service of a sound recording;

(b) to make recommendations to the Minister on the rate of remuneration or other payments payable in respect of the use or presentation, in such national cultural events as he may by order designate, of any works or performance in which copyright or other rights subsist.

(2) Where the Tribunal is exercising its jurisdiction

(a) under subsection (1)*(a)*, the matter shall be considered by 3 members of the Tribunal, at least one of whom must be an attorney-at-law, who shall be the Chairman of that panel;

(b) under subsection (1)*(b)*, the matter shall be considered by 5 members of the Tribunal, at least one of whom must be an attorney-at-law, who shall be Chairman of that panel.

Regulations respecting proceedings of Tribunal

113.(1) The Minister may make regulations respecting the proceedings before the Tribunal.

(2) Without affecting subsection (1), regulations made under this section shall

(a) prohibit the Tribunal from entertaining a reference under section 96, 97 or 98 by a representative organisation unless the Tribunal is satisfied that the organisation is reasonably representative of the class of the persons it claims to represent;

(b) specify the parties to any proceedings and enable the Tribunal to join as a party to the proceedings any person or organisation that the Tribunal is satisfied has a substantial interest in the matter; and

(c) require the Tribunal to give the parties to proceedings an opportunity to state their cases, in writing or orally as the regulations may provide.

(3) The regulations may prescribe any matter incidental to or consequential upon any appeal from the Tribunal under section 114.

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

Appeal on point of law

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

(2) The Tribunal may, by way of case stated, refer a question of law to the High Court for its opinion.

(3) The decision of the High Court, whether on an appeal or on a case stated, shall be final.

(4) Regulations made under section 113 may limit the time within which an appeal may be brought.

PART IX

RIGHTS IN PERFORMANCE

Conferment of rights in performance

115. The rights conferred by this Part are independent of

(a) any copyright in or moral rights relating to any work used or performed in the performance; and

(b) any other right or obligation arising otherwise than under this Part.

Performer's Non-Property Rights

Performers' non-property rights

116.(1) A performer has the exclusive right, in respect of a qualifying performance, to authorize

(a) the making of a sound recording of the whole or any substantial part of the performance directly from the live performance;

(b) the broadcasting live, or inclusion live in a cable programme service, of the whole or any substantial part of the performance; or

(c) the making of a sound recording of the whole or any substantial part of a live performance directly from a broadcast of, or cable programme including, the performance,

such rights being "performer's non-property rights".

(2) The rights of a performer conferred by this section are infringed by a person who, without the consent of the performer, undertakes or authorizes another to undertake any of the acts referred to in subsection (1).

(3) The rights of a performer are not infringed by the making of a sound recording referred to in subsection (1)*(c)* by a person for his private and domestic use.

Transfer of performer's non-property rights

117.(1) A performer's non-property rights may be assigned or transmitted in accordance with this section.

(2) On the death of a person entitled to performer's non-property rights

(a) the rights pass 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 rights are exercisable by his personal representatives.

(3) References in this Part to the performer, in the context of the person having performer's non-property rights, 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 is exercisable by more than one person, it is exercisable by each of them independently of the other or others.

(5) Subsections (1), (2) and (3) are without prejudice to any rights conferred by this Act on a person to whom the benefit of an exclusive recording contract or licence to make a recording of a performance has been assigned.

(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.

Secondary Infringement of Performer's Non-Property Rights

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

118. A performer's non-property rights are infringed by a person who, without the performer's consent

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

(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 made without the performer's consent and which the person knows or has reason to believe was so made.

Consent required for adaption of recording

119.(1) A performer's non-property rights are infringed by a person who, without his consent, uses an original recording of a qualifying performance, whether authorized or not, for the purpose of making an adaptation of the recording.

(2) In subsection (1) "an adaptation of the recording" means a recording in which the performance is accompanied by lyrics or music not contained in the original recording.

Infringement of performer's non-property rights by importing, possessing etc. illicit recording

120.(1) A performer's non-property rights are infringed by a person who, without his consent

(a) imports otherwise than for his private and domestic use; or

(b) in the course of 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 his predecessor in title the court may award to the performer such amount by way of damages as is reasonable compensation for 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.

Infringement of performer's non-property rights by importing, possessing etc. apparatus designed to make illicit recordings

121. A performer's non-property rights are infringed by a person who, without the performer's consent

(a) imports otherwise than for his private and domestic use; or

(b) in the course of business possesses, sells or lets for hire, offers or exposes for sale or hire, or distributes,

an article specially designed or adapted for making recordings of a performance, knowing or having reason to believe that it has been or is to be used to make illicit recordings of that performer's performance.

Persons Having Recording Rights

Consent required for recording of performance subject to exclusive contract

122.(1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent, 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 referred to in subsection (1), 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

123.(1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent

(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 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 illicit recording

124.(1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent

(a) imports 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 referred to in subsection (1), a defendant shows that the illicit recording was innocently acquired by him or his predecessor in title, the Court may award to the person whose rights were infringed such amount by way of damages as is reasonable compensation for 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.

Relief available for infringement

125. 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 and all such relief by way of damages, injunction, accounts or otherwise shall be available to the person so entitled.

Consent

126.(1) Consent for the purposes of this Part 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 prior consent given by a person through whom the first-mentioned person derives his rights under the exclusive recording contract or licence in question, in the same way as if the consent had been given by the first-mentioned person.

(3) Where a right conferred by this Part passes to another person, any consent binding on the person previously entitled binds the person to whom the right passes in the same way as if the consent had been given by the person to whom the right passes.

Performer's Property Rights

Performer's property rights

127.(1) A performer has the exclusive right, in respect of a qualifying performance, to undertake or to authorize

(a) the making of a copy of a sound recording of the whole or any substantial part of the performance whether the copy is made directly or indirectly;

(b) the issue to the public of copies of a sound recording of the whole or any substantial part of the performance;

(c) the rental to the public of copies of a sound recording of the whole or any substantial part of the performance; or

(d) the making available, by wire or wireless means, of copies of a sound recording of the whole or any substantial part of the performance in such a way that members of the public may access it from a place and at a time individually chosen by them.

(2) The rights referred to in subsection (1) are performer's property rights.

Right to equitable remuneration

128.(1) A performer has a right to equitable remuneration from the owner of the copyright in a commercially published sound recording of the whole or a substantial part of a qualifying performance if it

(a) is played in public, or

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

(2) A performer shall not assign or transfer the right to equitable remuneration under this section except to a collecting society for the purpose of enabling the collecting society to exercise that right on his behalf.

Transfer of performer's property rights

129.(1) Subject to the provisions of this section, a performer's property rights may be transferred as personal or moveable property by

(a) assignment;

(b) testamentary disposition; or

(c) operation of law,

and a transfer pursuant to this section by way of assignment shall not be effective unless it is in writing and signed by or on behalf of the assignor.

(2) An assignment or other transfer of a performer's property rights may be partial, that is to say, limited

(a) to one or more, but not all, of the things requiring the authorization of the rights owner;

(b) to a part, but not the whole, of the period for which the rights subsist.

(3) A licence granted by the owner of a performer's property rights shall be binding on every successor in title to his interests 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 Act to doing anything with or without the licence of the rights owner shall be construed accordingly.

Prospective ownership of performer's property rights

130.(1) 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 the future performer's property rights , wholly or partially, to another person, then, if on the coming into existence of the rights 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, the rights shall vest in the assignee or his successor in title by virtue of this subsection.

(2) A licence granted by a prospective owner of a performer's property rights is binding on every successor in title to his interests or prospective interests 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 Act to doing anything with or without the licence of the owner of the rights shall be construed accordingly.

Exclusive licences

131.(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 authorizing the licensee to the exclusion of all other persons, including the person granting the licence, to do anything requiring the consent of the rights owner.

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

Performer's property rights in unpublished recording passes under will

132. Where under a bequest, whether specific or general, a person is entitled, beneficially or otherwise, to any material thing containing an original recording of a performance that was not published before the death of the testator then, unless a contrary intention appears in the testator's will or a codicil thereto, the bequest shall be construed as including the performer's property rights in relation to the recording to which the testator was entitled immediately before his death.

Infringement of Performer's Property Rights

Infringement of performer's property rights

133.(1) An infringement of a performer's property rights is actionable at the suit of the rights owner and, subject to this section, in any action for an infringement all such relief by way of damages, injunction, accounts or otherwise, shall be available to the claimant as is available in respect of the infringement of any other proprietary right.

(2) Where in an action under this section an infringement of performer's property rights is proved or admitted the court shall, having regard to any benefit accruing to the defendant by reason of the infringement, to the flagrancy of the infringement and to all other material considerations, have power to award such additional damages as the court considers appropriate in the circumstances.

(3) Where in an action for infringement of 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, then, the claimant is not entitled to damages against him.

(4) Subsection (3) does not affect any other remedy available to a claimant referred to in that subsection.

Rights of exclusive licensees

134. An exclusive licensee has, except against the owner of 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.

Concurrent rights

135.(1) The rights and remedies of an exclusive licensee are concurrent with those of the owner of the performer's property rights and reference in the relevant provisions of this Act to the rights owner shall be construed accordingly.

(2) Where an action for infringement of performer's property rights is brought by the rights owner or by an exclusive licensee, and the action relates, wholly or partly to an infringement in respect of which they have concurrent rights of action, the rights owner or the exclusive licensee, as the case may be, shall not be entitled, except with the leave of the court, to proceed with the action, unless the other party is either joined as a claimant in the action or added as a defendant but this subsection shall not affect the granting of an interlocutory injunction on the application of either of them.

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

(4) Where an action for infringement of 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, then, whether or not the rights owner and the exclusive licensee are both parties to the action, the court

(a) shall, in assessing damages take into account the terms of the licence and any pecuniary remedy already awarded or available to either of them in respect of the infringement;

(b) shall not direct an account of profits 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) shall, if an account of profits is directed, apportion the profits between them as the court considers just, subject to any agreement between them.

(5) The rights owner shall notify any exclusive licensee having concurrent rights before applying under section 159 for an order for delivery up of infringing copies or other articles, and the High Court may, on the application of the licensee, having regard to the terms of the licence make such order under section 159 as it thinks fit.

Presumptions

136. In proceedings brought by virtue of this Part with respect to the rights in a performance, where copies of a recording of the performance as issued to the public bear a statement that a named person was the performer, the statement shall be admissible as evidence of the fact stated and shall be presumed to be correct until the contrary is proved.

Remuneration

Right to remuneration

137.(1) Notwithstanding the provisions of section 10, this section shall apply where a commercially published sound recording of the whole or a substantial part of a qualifying performance

(a) is played in public; or

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

(2) If the person playing or broadcasting the sound recording or including it in a cable programme service complies with the requirements of this section, that person shall be treated as licensed by the copyright owner of the sound recording.

(3) The requirements of this section are that such person

(a) agrees to make payment of equitable remuneration in respect of such playing, broadcasting, or inclusion in a cable programme service to a licensing body capable of licensing such activities and making payment to the copyright owner and performers;

(b) informs the licensing body of the date and time it intends to play, broadcast or include the sound recording in a cable programme service;

(c) makes payment to the licensing body as the licensing body requires;

(d) complies with any reasonable conditions relating to payments under this section as may be notified to such person by the licensing body from time to time; and

(e) complies with any reasonable requests for information from the licensing body to enable it to calculate and manage payments under this section.

(4) Where the person intending to play sound recordings in public or to broadcast sound recordings or include sound recordings in a cable programme service and the licensing body cannot agree on the remuneration referred to in subsection (3), the remuneration shall be fixed by the Tribunal.

(5) The Tribunal may also fix the amounts or shares of the remuneration between the copyright owner and performers.

(6) The right to equitable remuneration under this section may be assigned or transferred by a performer to a collecting society pursuant to section 128.

Exceptions to Infringement

Permitted acts in relation to performances

138. Notwithstanding the rights in performances conferred by this Part,

(a) any act done in relation to a performance or recording in the circumstances specified in sections 139 to 151 does not constitute an infringement of the rights; and

(b) the Tribunal may give consent on behalf of a performer in the circumstances specified in section 151.

Fair dealing for criticism etc.

139. 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 this Part, and the provisions of section 58 shall, with the necessary modifications, apply in determining whether or not an act constitutes fair dealing.

Incidental inclusion of performance or recording

140.(1) The rights conferred by this Part are not infringed

(a) by the incidental inclusion in a sound recording, film, broadcast or cable programme of a performance or recording;

(b) 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 not an infringement of those rights, by virtue of paragraph *(a)*.

(2) For the purposes of this section, 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.

Acts done to recording or performance for purposes of instruction, etc.

141.(1) The rights conferred by this Part are not infringed

(a) 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, if the person by whom the copying is done is the person giving or receiving instruction;

(b) by the copying of a recording of a performance for the purposes of setting or answering the questions in an examination; or

(c) by anything done for the purposes of an examination by way of communicating the questions to the candidates.

(2) Where a recording that would otherwise be an illicit recording is made in accordance with this section or section 142 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 this Part, it shall be treated as an illicit recording for all subsequent purposes.

(3) For the purposes of subsection (3), “dealt with” means sold or let for hire, or offered or exposed for sale or hire.

Recording of broadcasts and cable programmes by educational establishments

142. A recording of a broadcast or cable programme or a copy of such 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 this Part in relation to any performance or recording included in it.

Acts done to performance or recording for parliamentary proceedings, etc.

143. The rights conferred by this Part are not infringed by anything done for the purposes of

(a) parliamentary or judicial proceedings or the reporting of such proceedings; or

(b) the proceedings of a statutory inquiry or the reporting of such proceedings.

Transfer of recording of performance in electronic form

144.(1) Where a recording of a performance in electronic form has been purchased on terms that, 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, then, in the absence of any express terms

(a) prohibiting the transfer of the recording by the purchaser;

(b) imposing obligations that continue after a transfer;

(c) prohibiting the assignment of any consent;

(d) terminating any consent on a transfer; or

(e) providing for the terms on which a transferee may do the things that the purchaser was permitted to do,

anything that 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 that is not also transferred shall be treated as an illicit recording for all purposes after the transfer.

(2) Subsection (1) applies where the original purchased recording is no longer usable and what is transferred is a further copy used in its place.

(3) This section also applies on a subsequent transfer, with the substitution for references in subsection (1) to the purchaser of references to the subsequent transferor.

(4) This section does not apply in relation to a recording purchased before the 14th day of August, 1998.

Temporary copy of a performance recording

145. The rights conferred by this Part are not infringed by the making of a transient and incidental copy of a recording of a performance which is technically required for

(a) the making available of the performance to the public, by wire or wireless means, in such a way that members of the public may access the performance from a place and at a time individually chosen by them; or

(b) the viewing of or listening to the performance by a member of the public to whom the performance has been lawfully made available.

Use of recordings of spoken words

146.(1) Where a recording of the reading or recitation of a literary work is made for the purpose of

(a) reporting current events; or

(b) 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 this Part to use the recording or to copy the recording and use the copy, for that purpose, if the conditions specified in subsection (2) are met.

(2) The conditions referred to in subsection (1) 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.

Playing sound recording as part of activities of charitable organisation, etc.

147. It is not an infringement of any right conferred by this Part to play a sound recording as part of the activities of, or for the benefit of, a club, society or other organisation if

(a) 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) 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.

Incidental recording for purposes of broadcast or cable programme

148.(1) Subject to subsection (2), a person who proposes to broadcast a recording of a performance, or to include a recording of a performance in a cable programme service, in circumstances that do not infringe the rights conferred by this Part, shall be treated as having consented for the purposes of this Part to the making of a further recording for the purposes of the broadcast or cable programme.

(2) The consent given under subsection (1) is subject to the following conditions:

(a) the further recording shall not be used for any other purpose; and

(b) such recording 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 section shall be treated as an illicit recording

(a) if it is used for any purpose contrary to the condition mentioned in subsection (2)*(a)*;

(b) for all purposes after that condition or the condition mentioned in subsection (2)*(b)* is breached.

Recordings for supervision and control of programmes

149. The rights conferred by this Part are not infringed

(a) by the making or use by a prescribed broadcasting organisation for the purpose of maintaining supervision and control over programmes broadcast by that organisation, of recordings of those programmes; or

(b) by the making or use of recordings by the Broadcasting Authority in connection with and for the purpose of carrying out its functions under the *Broadcasting Act*, Cap. 274B.

Recording of broadcast or cable programme for archival purposes

150.(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 the Archives Department or an archive maintained by a designated body without thereby infringing any right conferred by this Part in relation to a performance or recording included in the broadcast or cable programme.

(2) In this section “designated” has the meaning assigned to that expression in section 91.

Tribunal may consent on behalf of performer

151.(1) Subject to this section, the Tribunal may, on the application of a person who wishes to make a recording from a previous recording of a performance, give consent in a case where

(a) the identity or whereabouts of a performer cannot be ascertained by reasonable inquiry; or

(b) a performer unreasonably withholds his consent.

(2) Consent given by the Tribunal has effect as consent of the performer for the purposes of

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

(b) of section 161(3)*(a)*,

and such consent may be given subject to such conditions as the Tribunal may specify in the Tribunal’s order.

(3) The Tribunal shall not give consent

(a) under subsection (1)*(a)*, except after the service or publication of such notices as may be required by regulations made under section 113 or as the Tribunal may in any particular case direct;

(b) under subsection (1)*(b)*, unless it is satisfied that the performer's reasons for withholding consent do not include the protection of any legitimate interest of his but it shall be for the performer to show what his reasons are for withholding consent, and in default of evidence as to his reasons the Tribunal may draw such inferences as it thinks fit.

(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 performer, make such order as it thinks fit as to the payment to be made to the performer in consideration of consent being given.

Duration of Performer's Property Rights

Duration of rights in performance

152. The rights conferred by this Part

(a) on a performer, subsist for 70 years after the end of the year in which the performance was recorded;

(b) on a producer of a sound recording, subsist for 70 years immediately following the year in which it was published or, failing such publication within 70 years from the making of the sound recording, 70 years from the end of the year in which the recording was made.

Moral Rights in Performances

Right to be identified as performer

153.(1) Subject to subsections (3) and (4) a performer has, where practicable, the right to be identified as the performer of his performance in the circumstances specified in this section.

(2) Where a performer uses a pseudonym, initials or other form of identification that form shall be used to identify the performance.

(3) The right provided in subsection (1) shall not be infringed by anything done undersections 140, 141*(b)*, and 143.

(4) The right provided in subsection (1) shall not apply in relation to a performance or a recording of a performance made for the purpose of reporting current events.

Right to object to derogatory treatment of a performance

154.(1) Subject to subsections (2) and (3) a performer shall have the right to object to any distortion, mutilation or other modification of his performance or a recording thereof, which would prejudice the performer's reputation.

(2) Subject to subsection (3), the right referred to in section (1) shall not apply in relation to a performance or a recording of a performance made for the purpose of reporting current events.

(3) The right referred to in subsection (1) is not infringed by anything done for the purposes of

(a) avoiding any contravention of civil or criminal law;

(b) complying with a duty imposed by or under an enactment; or

(c) in the case of authorised broadcasters or authorised cable programme service providers, avoiding the inclusion in a programme which is broadcast or included in a cable programme service by those broadcasters or providers, of anything which offends public morality or which is likely to encourage or incite to crime or to lead to public disorder.

(4) Subsection (3) shall not apply unless the performer is identified at the time of the act concerned or has previously been identified in or on recordings of the performance which have been lawfully made available to the public and there is a sufficient disclaimer.

(5) In this Part "sufficient disclaimer", in relation to an act capable of infringing the right referred to in subsection (1), means a clear and reasonably prominent indication given at the time of the act, or where the performer is then identified, appearing along with the identification, that the recording has been subjected to an action to which the performer has not consented.

Duration of normal rights in performances

155. The rights conferred by sections 153 and 154 subsist for as long as the performer's right subsists in the performance.

Consent and waiver of rights

156.(1) A person having a moral right conferred under this Part may consent to the doing of any act affecting such right or may waive the right.

(2) A right to which subsection (1) refers may be waived by instrument in writing signed by the person waiving the right, and the waiver

(a) may relate to performances or recordings thereof generally or to a specific performance or recording thereof or to a specified description of performances or recordings thereof and may relate to existing or future performances or recordings thereof; and

(b) may be conditional or unconditional and may be expressed to be subject to revocation.

(3) Where a waiver is made in favour of the owner or prospective owner of the rights in the performance or recording thereof, or performances or recordings thereof, it shall be presumed to extend to his licensees and successors in title, unless a contrary intention is expressed.

(4) Nothing in this Part 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 to which this Part relates.

Assignment and transfer of moral rights in performances

157.(1) The moral rights conferred under this Part are not assignable.

(2) On the death of a person entitled to the rights specified in sections 153 and 154

(a) the right passes by testamentary disposition to such person as the person entitled to the right may direct;

(b) where there is no direction as to whom the right passes but the performer's rights in the recording of the performance concerned forms part of an estate, the right passes to the person to whom the performer's rights pass, and

(c) where the right does not pass under paragraph *(a)* or *(b)*, it is exercisable by the personal representatives of the person entitled to the right.

(3) Where a performer's rights forming part of an estate pass in part to one person and in part to another, so as to apply

(a) to one or more, but not all, of the acts the rights owner has the right to authorize or prohibit, or

(b) to a part, but not the whole, of the period for which the performer's rights are to subsist,

any right which passes with the performer's rights by virtue of subsection (2) is divided accordingly.

(4) Where, under subsection (2), a right becomes exercisable by more than one person

(a) it may, in the case of the right specified in section 153, be exercised by any of them;

(b) it is, in the case of the right specified in section 154, exercisable by each of them; and

(c) any waiver of the right under section 156 made by one of them shall not affect the rights of the other persons.

(5) A consent or waiver binds any person to whom a right passes under subsection (2).

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

Remedies for Infringement of Rights in Performances

Infringement actionable

158.(1) Any person whose rights under this Part are in imminent danger of being infringed, are being infringed or have been infringed, may institute proceedings in the High Court

(a) for an injunction to prevent the infringement or to prohibit the continuation of the infringement;

(b) for recovery of damages for the infringement; or

(c) for an account of profits or such other relief as may be available in respect of the infringement of any other property right.

(2) The grant of an injunction under subsection (1) does not deprive a person of any damages or other relief that may be awarded to him for loss sustained by him as a result of the infringement of his rights under this Part.

(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.

(4) The remedies provided by this section are in addition to any other sanctions.

Delivery up of illicit recording: civil proceedings

159.(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 rights under this Part in relation to the performance 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 170 and the court shall not make an order under this section unless it also makes an order under section 169 for the disposal of the recording, or it is of the opinion that there are grounds on which an order under that section could be made.

(3) A person to whom a recording is delivered up in pursuance of an order under this section shall, if an order under section 169 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.

Moral rights

160.(1) Any person whose moral rights under section 153 or 154 are infringed may institute proceedings in the High Court

(a) for an injunction to prevent the infringement;

(b) for recovery of damages for the infringement; or

(c) for an account of profits or such other relief as may be available in respect of the infringement of any other property right.

(2) The grant of an injunction under subsection (1)*(a)* does not deprive a person of any damages or other relief that may be awarded to him for loss sustained by him as a result of infringement of his right.

(3) Where in an action an infringement of a right referred to in subsection (1) is proved or admitted, the court may, in addition to the grant of an injunction or

the award of damages or other relief or both, order the defendant to publish a correction in such terms and in such manner as the court may direct.

Offences

Making, dealing with or using illicit recordings

161.(1) A person is guilty of an offence who, without sufficient consent

(a) makes for sale or hire;

(b) imports otherwise than for his private and domestic use;

(c) possesses in the course of business with a view to doing any act infringing the rights conferred by this Part; or

(d) in the course of business

(i) sells or lets for hire;

(ii) offers or exposes for sale or hire; or

(iii) distributes,

a recording which is, and which he knows or has reason to believe is, an illicit recording.

(2) A person is guilty of 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 that is not subject to an exclusive recording contract, the consent of the performer; and

(b) in the case of a performance that is subject to an exclusive recording contract, the consent of the person having recording rights.

(4) Reference in this section to the person having recording rights is 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 doing of an act which, by virtue of any provision of this Part, may be done without infringing the rights conferred by this Part.

(6) A person guilty of an offence under subsection (1) or (2) is liable

(a) on summary conviction to a fine of $100 000 or to imprisonment for 5 years or to both; or

(b) on conviction on indictment to a fine of $500 000 or to imprisonment for 10 years or to both.

Order for delivery up of illicit recording in criminal proceedings

162.(1) The court before which proceedings are brought against a person for an offence under section 161 may, if satisfied that at the time he was arrested or charged he had in his possession, custody or control in the course of business an illicit recording of a performance, order that it be delivered up to a person having performer's rights or recording rights in relation to the performance, or to such other person as the court may direct.

(2) The court may on its own motion or on the application of the prosecution make an order, and an order may be made whether or not the person is convicted of the offence.

(3) The court may not make an order under this section

(a) after the end of the period specified in section 170; or

(b) if it appears to the court unlikely that any order will be made under section 169.

(4) An appeal lies to the Court of Appeal from an order made under this section.

(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 169.

False representation of authority to give consent

163.(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 authorized.

(2) A person guilty of an offence under this section is liable on summary conviction to a fine of $10 000 or to imprisonment for one year or to both.

PART X

CIRCUMVENTION OF TECHNOLOGICAL MEASURES

Devices designed to circumvent protection

164.(1) This section applies where, by or with the licence of the rights owner, copies of copyright works to which rights protection measures have been applied or recordings of performances to which rights protection measures have been applied, are communicated to the public or issued or rented to the public.

(2) A person who

(a) makes, sells, rents or exposes for sale or rental, or imports, or has in his possession, power or control any device or means, specifically designed or adapted to circumvent rights protection measures; or

(b) provides or offers information or any service intended to enable or assist persons to circumvent rights protection measures,

is guilty of an offence is liable on summary conviction to a fine of $100 000 or 5 years imprisonment or to both.

(3) A person who communicates to the public, issues to the public or rents to the public the copies referred to in subsection (1) has the same rights and remedies against a person who undertakes any of the activities referred to in subsection (1) as a rights owner has in respect of an infringement of any of his rights under this Act.

(4) The presumptions as to ownership of rights specified in sections 49, 50 and 136 shall apply in any proceedings under this section, whether criminal or civil, as in proceedings for infringement of copyright in a work.

(5) Sections 52, 162 and 159 shall apply with any necessary modifications in relation to the disposal of anything delivered up or seized by virtue of subsection (2).

(6) Sections 37, 152, 159 and 161 shall apply with any necessary modifications in relation to the disposal of anything delivered up or seized by virtue of subsection (3).

(7) For the purposes of this section, the activities set out in subsections 2 *(a)* and *(b)* shall be known as "protection-defeating activities".

Apparatus, etc., for unauthorised reception of transmission

165.(1) This section applies where a person is authorized by the rights owner

(a) to make charges for the reception of programmes included in a broadcast or cable programme service; or

(b) to send encrypted transmissions of any other description.

(2) A person who

(a) makes, sells, rents or exposes for sale or rental, or imports, or has in his possession, power or control any device or means, specifically designed or adapted to enable or assist persons to receive those programmes or transmissions when those persons are not so entitled; or

(b) provides or offers information or any service intended to enable or assist persons to receive those programmes or transmissions when those persons are not so entitled,

is guilty of an offence and is liable on summary conviction to a fine of $100 00 or to 5 years imprisonment or to both.

(3) A person referred to in subsection (1) has the same rights and remedies against a person who undertakes any of the activities referred to in subsection (1) as a rights owner has in respect of an infringement of any of his rights under this Act.

(4) The presumptions as to ownership of rights specified in sections 49, 50 and 136 shall apply in any proceedings under this section, whether criminal or civil, as in proceedings for infringement of copyright in a work.

(5) Sections 52, 162 and 159 shall apply with any necessary modifications in relation to the disposal of anything delivered up or seized by virtue of subsection (2).

(6) Sections 37, 152, 159 and 161shall apply with any necessary modifications in relation to the disposal of anything delivered up or seized by virtue of subsection (3).

(7) For the purposes of this section, the activities set out in subsections 2*(a)* and *(b)* shall be known as “access enabling activities”.

Unlawful reception of broadcasts or cable programmes

166. A person who receives a broadcast or cable programme to which rights protection measures have been applied, knowing or having reason to believe that it is being received unlawfully with the intent to avoid payment of any charge applied by the rights owner for the reception of that broadcast or cable programme is guilty of an offence and is liable on summary conviction to a fine of $10 000 or imprisonment for 5 years or to both.

PART XI

RIGHTS MANAGEMENT INFORMATION

Offences in respect of unlawful acts which interfere with rights management information

167.(1) A person is guilty of an offence

(a) if he removes or alters rights management information from copies of copyright works or copies of recordings of performances knowing or having reason to believe that the primary purpose or effect of such removal or alteration is to induce, enable, facilitate or conceal an infringement of any right conferred by this Act;

(b) if he communicates to the public or issues to the public or rents to the public copies of copyright works or copies of recordings of performances, referred to in paragraph *(a)*, knowing or having reason to believe that rights management information has been removed or altered from those copies; or

(c) if he

(i) sells, rents or lends, or offers or exposes for sale, rental or loan;

(ii) imports; or

(iii) in the course of a business, trade or profession, has in his possession, custody or control,

copies of copyright works or copies of recordings of performances, referred to in paragraph *(a)*, knowing or having reason to believe that rights management information has been removed or altered from those copies.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine of $100 000 or to imprisonment for 5 years or to both.

(3) Sections 50, 162, 169 and 170 shall apply with any necessary modifications in relation to the disposal of anything delivered up or seized by virtue of subsection (1).

Rights and remedies in respect of unlawful acts which interfere with rights management information

168.(1) A person who provides rights management information has the same rights and remedies against

(a) a person who removes or alters rights management information from copies of copyright works or copies of recordings of performances, knowing or having reason to believe that the primary purpose or effect of such removal or alteration is to induce, enable, facilitate or conceal an infringement of any right conferred by this Act;

(b) a person who communicates to the public, issues to the public or rents to the public copies of copyright works or copies of recordings of performances or re-utilises copies of databases, referred to in paragraph *(a)*, knowing or having reason to believe that rights management information has been removed or altered from those copies; or

(c) a person who

(i) offers or exposes for sale or rental;

(ii) imports; or

(iii) in the course of a business, trade or profession, has in his possession, power or control;

copies of copyright works or copies of recordings of performances referred to in paragraph *(a)*, knowing or having reason to believe that rights management information has been removed or altered from those copies,

as a rights owner has in respect of an infringement of any of his rights under this Act.

(2) Sections 33, 127, 131 and 132 shall apply with any necessary modifications in relation to the disposal of anything delivered up or seized by virtue of subsection (1).

PART XII

GENERAL

Order for disposal of infringing copy of illicit recording

169.(1) An application may be made to the Court for

(a) an order that an infringing copy or article delivered up in pursuance of an order under section 37 or 52 shall be

(i) forfeited to the copyright owner; or

(ii) destroyed or otherwise dealt with as the Court may direct;

(b) an order that an illicit recording of a performance delivered up in pursuance of an order under section 159 or 162 shall be

(i) forfeited to such person having performer's rights or recording rights in relation to the performance as the court may direct; or

(ii) destroyed or otherwise dealt with as the court may direct;

(c) an order that an article designed or adapted to circumvent rights protection measures, delivered up in pursuance of an order under section 164 shall be

(i) forfeited to such person having the right to apply such rights protection measures; or

(ii) destroyed or otherwise dealt with as the court may direct;

(d) an order that an article designed or adapted to enable persons to receive programmes or transmissions when those persons are not so entitled, delivered up in pursuance of an order under section 165 shall be

(i) forfeited to such person having the right to make the charges or to send encrypted transmissions as the court may direct; or

(ii) destroyed or otherwise dealt with as the court may direct;

(e) an order that an article from which rights management information has been removed or altered, delivered up in pursuance of an order under section 167 or 168 shall be

(i) forfeited to such person who provides the rights management information; or

(ii) destroyed or otherwise dealt with as the court may direct; or

(f) a decision that no order under paragraphs *(a)*, *(b)*, *(c)*, *(d)*, or *(e)*, as the case may be, should be made.

(2) In considering what order, if any, should be made, the Court shall have regard to all the circumstances of the case and, in particular

(a) where the infringement relates to copyright in a work, whether other remedies available in an action for infringement of copyright would be adequate to compensate the copyright owner and to protect his interests; and

(b) where the infringement relates to rights conferred under Part IX, whether other remedies available in an action for infringement of those rights would be adequate to compensate the person or persons entitled to the rights and to protect their interests.

(3) The Minister may by regulations make provision respecting the service of notice on persons having an interest in an infringing copy or other articles or an illicit recording, as the case may be, 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.

(4) An order made under this section 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.

(5) Where there is more than one person interested in an infringing copy or other article, or as the case may be, an illicit recording, the court shall make such order as it thinks just and may, in particular, direct that such copy, article or recording be sold, or otherwise dealt with, and the proceeds divided.

(6) If the Court decides that no order should be made under this section, the person in whose possession, custody or control the copy or article or, as the case may be, the recording was before being delivered up or seized is entitled to its return.

(7) References in this section to a person having an interest in a copy or other articles or recordings include any person in whose favour an order could be made in respect of the copy, article or, as the case may be, recording under this section.

Period after which remedy of delivery up not available

170.(1) Subject to subsection (2), an application for an order under section 37 or 159 may not be made after the end of the period of 6 years from the date on which the infringing copy or article or, as the case may be, the illicit recording in question was made.

(2) Where during the whole or any part of the period specified in subsection (1) a person entitled to apply for an order

(a) is under a disability; or

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

an application may be made by him at anytime before the end of the period of 6 years after 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.

Time limit for prosecution

171. No prosecution for an offence under this Act shall be commenced after the expiration of 5 years after the commission of the offence or one year after the discovery thereof, whichever date last occurs.

Powers of members of Police Service

172.(1) Subject to subsection (3), a member of the Police Service, hereinafter referred to as an officer, to whom a warrant is issued pursuant to section 173 may

(a) enter and search any premises or place;

(b) stop, board and search any vessel, other than a ship of war, or any aircraft, other than a military aircraft; or

(c) stop and search any vehicle in which the officer reasonably suspects there is an infringing copy of a work or an illicit recording or any article used or intended to be used for making infringing copies or illicit recording; and

(d) seize, remove or detain

(i) any article which appears to the officer to be an infringing copy of an illicit recording or any other article which appears to him to be intended for use for making such copies or recordings;

(ii) any article which appears to the officer to be capable of being used in protection-defeating activities under section 164 or access-enabling activities under section 165 or from or to which rights management information has been removed or altered; and

(iii) anything which appears to him to be or to contain, or to be likely to be or to contain, evidence of an offence under this Act.

(2) An officer to whom a warrant has been issued under section 173 may, with such assistance as is necessary,

(a) break open any outer or inner door of any place which he is authorized by this section to enter and search;

(b) forcibly board any vessel, aircraft or vehicle which he is authorized under this Act to stop, board and search;

(c) remove by force any person or thing obstructing him in the exercise of any power conferred on him by this Act;

(d) detain any person found in any place which he is authorized under this section to search until each place has been searched;

(e) detain any vessel or aircraft which he is authorized under this section to stop, board and search, and prevent any person from approaching or boarding such vessel or aircraft until it has been searched;

(f) detain any vehicle which he is authorised under this Act to stop and search until it has been searched.

(3) It shall be the duty of any officer in the execution of any directions given under subsection (1) to produce the warrant containing the directions to the owner or occupier of any premises, place, vessel or aircraft entered or vehicle stopped, pursuant to such directions if required by such owner or occupier to do so.

Restrictions on entry and search

173. A magistrate may, if he is satisfied by proof upon oath that there is reasonable ground for believing that there is in any building, ship, boat, aircraft,

vehicle, box, receptacle or other structure or place, hereinafter called "the premises", any article which may be seized, removed or detained under any provision of this Act, issue a warrant authorising a member of the Police Service not below the rank of Sergeant, with such assistance as may be necessary, to enter and search the premises.

Obstruction of member of Police Service

174.(1) Without prejudice to any other enactment, any person who

(a) wilfully obstructs a member of the Police Service in the exercise of his powers or the performance of his duties under this Act;

(b) wilfully fails to comply with any requirement properly made of him by any such member; or

(c) without reasonable excuse fails to give such member any other assistance which he may reasonably require to be given for the purpose of exercising his powers or performing his duties under this Act,

is liable on summary conviction to a fine of $20 000 or to imprisonment for 2 years or to both.

(2) A person who, when required to give information to a member of the Police Service in the exercise of his powers or the performance of his duties under this Act, knowingly gives false or misleading information to any such member is liable on summary conviction to a fine of $10 000 or to imprisonment for one year or to both.

(3) Nothing in this section shall be construed as requiring any person to give any information that may incriminate him.

Offences by bodies corporate

175. Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who purported to act in any

such capacity, he, as well as the body corporate, is guilty of that offence and is liable to be proceeded against and punished accordingly.

Reciprocity

176.(1) Subject to this section, the Minister may, by order, provide for reciprocal treatment to be given to any country that provides protection in respect of Barbados

(a) in relation to persons who are citizens or permanent residents of that country as they apply to persons who are citizens or permanent residents of Barbados;

(b) in relation to bodies incorporated or established under the laws of that country as they apply in relation to bodies incorporated or established under the laws of Barbados;

(c) in relation to literary, dramatic, musical or artistic works, databases, sound recordings, films and editions first published in that country as they apply in relation to such works, sound recordings, films and editions first published in Barbados;

(d) 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 Barbados;

(e) in relation

(i) to performances taking place in that country or given by an individual who is a citizen or habitual resident of that country;

(ii) to performances incorporated in a phonogram which is protected by Article 5 of the Rome Convention; or

(iii) to performances, not being fixed on a phonogram, that are carried by a broadcast which is protected by Article 6 of the Rome Convention,

as they apply in relation to performances taking place in Barbados or given by an individual who is a citizen or habitual resident of Barbados.

(2) An order made under subsection (1) may apply any provision of this Act in relation to any country

(a) without exception or modification, or subject to such exceptions and modifications as may be specified in the order; or

(b) generally or in relation to such classes of works or other classes of case as may be so specified.

(3) An order shall not be made under subsection (1) in relation to any country unless the country is

(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 in respect of the class of works or, as the case may be, the performances, to which the order relates, giving adequate protection to the owner of copyright under this Act or, as the case may be, to Barbadian performances as defined in section 177(5).

(4) In this section, "Convention country" means a country that is party to a Convention relating to copyright or performers' rights, as the case may be, to which Barbados is also a party.

Denial of copyright or rights in performance

177.(1) The Minister may, by order, make provision in relation to a country whose laws

(a) do not give adequate protection to Barbadian works to which this section applies or to Barbadian performances; or

(b) do not give adequate protection in the case of one or more classes of such works or performances,

whether the lack of protection relates to the nature of the work or performance or the nationality, citizenship or country of its author or performer or all of those matters.

(2) An order made under this section shall designate the country concerned and may provide either generally or in relation to such classes of case as are specified in the order that copyright shall not subsist in works first published, or, as the case may be, that rights in performances shall not subsist in performances first given, after a date specified in the order, which may be a date before 14th August, 1998, if, at the time of the first publication of those works or the giving of the performances, as the case may be, the authors of the works or the performers were or are

(a) citizens or nationals of that country, not being at that time persons whose permanent residence is in Barbados or a specified country, excluding the country concerned; or

(b) in the case of works, bodies incorporated or established under the laws of that country.

(3) The Minister shall, in making an order under this section, have regard to the nature and extent of the lack of protection for Barbadian works or Barbadian performances in consequence of which the order is being made.

(4) This section applies to literary, dramatic, musical and artistic works and databases, sound recordings and films.

(5) For the purposes of this section

"Barbadian performances" means

(a) performances given by individuals who are citizens or permanent residents of Barbados; or

(b) performances that take place in Barbados

"Barbadian works" means works of which the author was a qualified person at the material time within the meaning of section 7(3).

(6) In respect of Barbadian works, this section does not apply to citizens or nationals of a country that is a member of the Berne Union or a contracting party to the WCT.

(7) In respect of Barbadian performances, this section does not apply to citizens or nationals of a country that is a contracting party to the Rome Convention or to the WPPT.

International organisations

178.(1) This section applies to international organisations to which the Minister by order has declared that it is expedient that this section should apply.

(2) Where an original literary, dramatic, musical or artistic work is first published by or under the direction or control of an international organisation to which this section applies in such circumstances that copyright would not, except by virtue of this subsection, subsist in the work immediately after the first publication thereof, and

(a) the work is so published in pursuance of an agreement with the author which does not reserve to the author the copyright, if any, in the work; or

(b) the work was made in such circumstances that, if it had been first published in Barbados, the organisation would have been entitled to the copyright in the work,

then copyright shall subsist in the work by virtue of this section and the organisation shall be first owner of that copyright.

(3) Copyright of which an international organisation is first owner by virtue of this section shall subsist for 50 calendar years immediately following the 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 Barbados.

(4) An organisation to which this section applies that does not have and has never had the legal capacity of a body corporate conferred upon it shall have, and

shall be deemed at all material times to have had, the legal capacity of a body corporate for the purpose of holding, dealing with and enforcing copyright, and in connection with all legal proceedings relating to copyright.

Territorial waters and exclusive economic zone

179.(1) For the purposes of this Act, the territorial waters and the exclusive economic zone of Barbados shall be treated as part of Barbados.

(2) This Act applies to things done in the exclusive economic zone as it applies to things done in Barbados.

(3) In this section,

"exclusive economic zone" means the marine zone established by section 3 of the *Marine Boundaries and Jurisdiction Act*, Cap. 387;

"territorial waters" means the territorial waters of Barbados defined in section 3 of the *Barbados Territorial Waters Act*, Cap. 386.

Act applies to Barbadian ships, aircraft

180.(1) This Act applies to things done on a Barbadian ship or Barbadian aircraft as it applies to things done in Barbados.

(2) In this section,

(a) "Barbadian ship" means a vessel registered under Part I of the *Shipping Act*, Cap. 296;

(b) "Barbadian aircraft" means an aircraft registered under the *Civil Aviation (Airworthiness) Regulations, 2007* (S.I. 2007 No. 157).

Regulations

181. The Minister may make regulations

(a) prescribing anything that is by this Act authorized or required to be prescribed; and

(b) prescribing anything that is necessary for the purpose of giving effect to this Act.

Equity

182. Nothing in this Act shall affect the operation of any rule of equity relating to breaches of trust or confidence.

Transitional

183. Any copyright or other rights similar to those described in this Act that were vested in any person immediately before 14th day of August, 1998 continue to be vested in him and are enforceable by him in the same manner as other rights under this Act.

Repeal

184. The *Copyright Act*, Cap. 300 is repealed.

Commencement

185. This Act shall come into operation on a date to be fixed by proclamation.

BARBADOS

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Statutory Instrument

S.I. 2025 No. 128

Duties, Taxes and Other Payments (Exemption) Act

(Act 2023–14)

DUTIES TAXES AND OTHER PAYMENTS (EXEMPTION) (LISA SCOTT) ORDER, 2025

The Minister, in exercise of the powers conferred on him by section 3 of the *Duties, Taxes and Other Payments (Exemption) Act*, makes the following Order:

1. This Order may be cited as the *Duties, Taxes and Other Payments (Exemption) (Lisa Scott) Order, 2025*.

2. Lisa Scott is exempt from the payment of

(a) import duty in the amount of $9,000.00;

(b) excise tax in the amount of $13,615.50; and

(c) value added tax in the amount of $7,457.71,

in respect of the purchase of a 2014 Nissan NV200 Vanette van, Chassis Number VM20-059698 for the purpose of transporting a person with disabilities.

Made by the Minister this 17th day of November, 2025.

RYAN STRAUGHN

Minister responsible for Finance

BARBADOS

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Statutory Instrument

S.I. 2025 No. 129

Duties, Taxes and Other Payments (Exemption) Act

(Act 2023–14)

DUTIES TAXES AND OTHER PAYMENTS (EXEMPTION) (NOSAMUDIANA IYARE) ORDER, 2025

The Minister, in exercise of the powers conferred on him by section 3 of the *Duties, Taxes and Other Payments (Exemption) Act*, makes the following Order:

1. This Order may be cited as the *Duties, Taxes and Other Payments (Exemption) (Nosamudiana Iyare) Order, 2025*.

2. Nosamudiana Iyare is exempt from the payment of

(a) import duty in the amount of $12,950.00;

(b) excise tax in the amount of $9,990.00; and

(c) value added tax in the amount of $10,489.50,

in respect of the purchase of a 2020 Toyota Sienta Hybrid, Chassis Number NSP172-7012041, for the purpose of transporting a person with disabilities.

Made by the Minister this 17th day of November, 2025.

RYAN STRAUGHN

Minister responsible for Finance

BARBADOS

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S.I. 2025 No. 130

Duties, Taxes and Other Payments (Exemption) Act

(Act 2023–14)

DUTIES TAXES AND OTHER PAYMENTS (EXEMPTION) (CORENE CRICHLOW) ORDER, 2025

The Minister, in exercise of the powers conferred on him by section 3 of the *Duties, Taxes and Other Payments (Exemption) Act*, makes the following Order:

1. This Order may be cited as the *Duties, Taxes and Other Payments (Exemption) (Corene Crichlow) Order, 2025*.

2. Corene Crichlow is exempt from the payment of

(a) import duty in the amount of $5,400.00;

(b) excise tax in the amount of $13,283.16; and

(c) value added tax in the amount of $5,369.55,

in respect of the purchase of a 2019 Toyota Voxy Wheel Chair Carrier motor vehicle, Chassis Number ZRR80-0515303, for the purpose of transporting a person with disabilities.

Made by the Minister this 17th day of November, 2025.

RYAN STRAUGHN

Minister responsible for Finance

BARBADOS

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Statutory Instrument

S.I. 2025 No. 131

Duties, Taxes and Other Payments (Exemption) Act

(Act 2023–14)

DUTIES, TAXES AND OTHER PAYMENTS (EXEMPTION) (WATNEY WOODS) ORDER, 2025

The Minister, in exercise of the powers conferred on him by section 3 of the *Duties, Taxes and Other Payments (Exemption) Act*, makes the following Order:

1. This Order may be cited as the *Duties, Taxes and Other Payments (Exemption) (Watney Woods) Order, 20*25.

2. Mr. Watney Woods, is exempt from the payment of $26,739.20 being import duty, excise tax, and value added tax in respect of the purchase of a 2019 Toyota Vitz Hybrid motor vehicle bearing engine number 1NZ-1LM/R745408 and vehicle chassis number NHP130-4006862.

Made by the Minister this 17th day of November, 2025.

RYAN STRAUGHN

Minister responsible for Finance

BARBADOS

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S.I. 2025 No. 132

Duties, Taxes and Other Payments (Exemption) Act

(Act 2023–14)

DUTIES, TAXES AND OTHER PAYMENTS (EXEMPTION) (THE MARIA HOLDER MEMORIAL TRUST) ORDER, 2025

The Minister, in exercise of the powers conferred on him by section 3 of the *Duties, Taxes and Other Payments (Exemption) Act*, makes the following Order:

1. This Order may be cited as the *Duties, Taxes and Other Payments (Exemption) (The Maria Holder Memorial Trust) Order, 2025*.

2. The Maria Holder Memorial Trust, a charity registered under the *Charities Act*, Cap. 243, is exempt from the payment of

(a) import duty in the amount of $4 292.00;

(b) excise tax in the amount of $29 634.97; and

(c) value added tax in the amount of $13 448.22,

in respect of the purchase of a 2024 Toyota Hiace Panel Van, Chassis Number JTFHK02P100017310, to be donated to the Barbados Red Cross Society.

Made by the Minister this 17th day of November, 2025.

RYAN STRAUGHN

Minister responsible for Finance

BARBADOS

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S.I. 2025 No. 133

Duties, Taxes and Other Payments (Exemption) Act

(Act 2023–14)

DUTIES, TAXES AND OTHER PAYMENTS (EXEMPTION) (BETHEL SENIOR CITIZEN'S HOME) ORDER, 2025

The Minister, in exercise of the powers conferred on him by section 3 of the *Duties, Taxes and Other Payments (Exemption) Act*, makes the following Order:

1. This Order may be cited as the *Duties, Taxes and Other Payments (Exemption) (Bethel Senior Citizen's Home) Order, 2025*.

2. Bethel Senior Citizen's Home, is exempt from the payment of $15,032.37 being interest owed in respect of outstanding national insurance contributions.

Made by the Minister this 17th day of November, 2025.

RYAN STRAUGHN

Minister responsible for Finance

BARBADOS

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Statutory Instrument

S.I. 2025 No. 134

Tourism Development Act

CAP. 341

TOURISM DEVELOPMENT (TAMARIND HILL VILLA) NOTICE, 2025

The Minister, in exercise of the powers conferred on him by section 5 of the *Tourism Development Act*, gives the following Notice:

1. This Notice may be cited as the *Tourism Development (Tamarind Hill Villa) Notice, 2025*.

2. Interim approval has been granted, with the approval of the Cabinet, to the applicant, HillTop Ethics (Barbados) Inc., in respect of a tourism project for the construction of a vacation rental property to be known as "Tamarind Hill Villa" situate at Lot 9 Warners in the parish of Christ Church.

Given by the Minister this 14th day of November, 2025.

G. P. I. GOODING-EDGHILL

Minister responsible for Tourism

BARBADOS

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Statutory Instrument

S.I. 2025 No. 135

Tourism Development Act

CAP. 341

TOURISM DEVELOPMENT (BLUFF HOUSE HOTEL) NOTICE, 2025

The Minister, in exercise of the powers conferred on him by section 5 of the *Tourism Development Act*, gives the following Notice:

1. This Notice may be cited as the *Tourism Development (Bluff House Hotel) Notice, 2025*.

2. Interim approval has been granted, with the approval of the Cabinet, to the applicant, SIMVIC Inc., in respect of a tourism project for the construction of a hotel to be known as "Bluff House Hotel" situate at Lot 3 Bluff House, Sandy Lane in the parish of Saint James.

Given by the Minister this 14th day of November, 2025.

G. P. I. GOODING-EDGHILL

Minister responsible for Tourism

BARBADOS

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S.I. 2025 No. 136

Tourism Development Act

CAP. 341

TOURISM DEVELOPMENT (RUM MANOR VILLA) NOTICE, 2025

The Minister, in exercise of the powers conferred on him by section 5 of the *Tourism Development Act*, gives the following Notice:

1. This Notice may be cited as the *Tourism Development (Rum Manor Villa) Notice, 2025*.

2. Interim approval has been granted, with the approval of the Cabinet, to the applicant, Rum Manor (BVI) Ltd., in respect of a tourism project for the construction of a vacation rental property to be known as "Rum Manor Villa" situate at 124 West Ridge Gap 2 Sandy Lane in the parish of Saint James.

Given by the Minister this 14th day of November, 2025.

G. P. I. GOODING-EDGHILL

Minister responsible for Tourism

BARBADOS

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Statutory Instrument

S.I. 2025 No. 137

Tourism Development Act

CAP. 341

TOURISM DEVELOPMENT (CALADIUM LUX COTTAGES) NOTICE, 2025

The Minister, in exercise of the powers conferred on him by section 5 of the *Tourism Development Act*, gives the following Notice:

1. This Notice may be cited as the *Tourism Development (Caladium Lux Cottages) Notice, 2025*.

2. Interim approval has been granted, with the approval of the Cabinet, to the applicants, Wayne Allan Yearwood and Elizabeth Nicole Yearwood, in respect of a tourism project for the construction of a vacation rental property to be known as "Caladium Lux Cottages" situate at Lot 1 Ocean View Road, Landsdown, Enterprise in the parish of Christ Church.

Given by the Minister this 14th day of November, 2025.

G. P. I. GOODING-EDGHILL

Minister responsible for Tourism

BARBADOS

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Statutory Instrument

S.I. 2025 No. 138

Tourism Development Act

CAP. 341

TOURISM DEVELOPMENT (MOONFLEET COTTAGE) NOTICE, 2025

The Minister, in exercise of the powers conferred on him by section 5 of the *Tourism Development Act*, gives the following Notice:

1. This Notice may be cited as the *Tourism Development (Moonfleet Cottage) Notice, 2025*.

2. Interim approval has been granted, with the approval of the Cabinet to the applicant, T & L Paradise Home Inc., in respect of a tourism project for the construction of a vacation rental property to be known as "Moonfleet Cottage" situate at Lot 4A Moonfleet, Holetown in the parish of Saint James.

Given by the Minister this 14th day of November, 2025.

G. P. I. GOODING-EDGHILL

Minister responsible for Tourism

BARBADOS

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S.I. 2025 No. 139

Tourism Development Act

CAP. 341

TOURISM DEVELOPMENT (QUIES VILLA) NOTICE, 2025

The Minister, in exercise of the powers conferred on him by section 5 of the *Tourism Development Act*, gives the following Notice:

1. This Notice may be cited as the *Tourism Development (Quies Villa) Notice, 2025*.

2. Interim approval has been granted, with the approval of the Cabinet, to the applicant, Seland Corporation, in respect of a tourism project for the construction of a vacation rental property to be known as "Quies Villa" situate at Lot 2 Cattlewash in the parish of Saint Joseph.

Given by the Minister this 14th day of November, 2025.

G. P. I. GOODING-EDGHILL

Minister responsible for Tourism

BARBADOS

The Official Gazette Part A 20th November, 2025

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S.I. 2025 No. 140

Tourism Development Act

CAP. 341

TOURISM DEVELOPMENT (THE LEELA VIDA) NOTICE, 2025

The Minister, in exercise of the powers conferred on him by section 5 of the *Tourism Development Act*, gives the following Notice:

1. This Notice may be cited as the *Tourism Development (The Leela Vida) Notice, 2025*.

2. Interim approval has been granted, with the approval of the Cabinet, to the applicant, Power Health Ltd., in respect of a tourism project for the construction of a tourist recreational facility to be known as "The Leela Vida", situate at 11 Long Beach Road, Chancery Lane in the parish of Christ Church.

Given by the Minister this 14th day of November, 2025.

G. P. I. GOODING-EDGHILL

Minister responsible for Tourism

BARBADOS

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Statutory Instrument

S.I. 2025 No. 141

Tourism Development Act

CAP. 341

TOURISM DEVELOPMENT (SUNSET RIDGE HOLIDAY VILLA) NOTICE, 2025

The Minister, in exercise of the powers conferred on him by section 5 of the *Tourism Development Act*, gives the following Notice:

1. This Notice may be cited as the *Tourism Development (Sunset Ridge Holiday Villa) Notice, 2025*.

2. Interim approval has been granted, with the approval of the Cabinet, to the applicant, Galerfam Caribbean Holdings Inc., in respect of a tourism project for the construction of a vacation rental property to be known as "Sunset Ridge Holiday Villa" situate at Lot 22 Church Road, Ashton Hall, in the parish of Saint Peter.

Given by the Minister this 14th day of November, 2025.

G. P. I. GOODING-EDGHILL

Minister responsible for Tourism

Printed and Published by
the Barbados Government Printing Department